

Spain Immigration Detention Profile

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INTRODUCTION

Operations at Spain's immigration detention facilities have faced intense criticism and opposition, including from detainees, local officials, and civil society organisations.¹ The poor treatment of detainees in some facilities and the perceived inadequacy of detention as a response to migration and refugee challenges have spurred doubts about the need to maintain Spain's large network of detention centres (called *centros de internamiento de extranjeros*, or CIEs) and a broad-based civil society campaign demanding closure has gained momentum. Local authorities in several cities—including Madrid, Barcelona, and Valencia—have been key supporters of this campaign, resulting in a rare confluence of activists and officials.² Recent court rulings have also found that immigration officials failed to implement regulations for CIEs during 2015.³

Between 2011-2015, the number of people placed in immigration detention fell by 50 percent and occupancy rates at CIEs dropped to 35 percent. According to Spain's National Mechanism for the Prevention of Torture (NPM), in 2015 only 2,871 of the country's 6,930 detainees were deported.⁴ The percentage of detainees who are

¹ María Hernández, "El motín en el CIE de Aluche, arma arrojadiza entre Podemos e Interior," *El Mundo*, 19 October 2016, <http://www.elmundo.es/madrid/2016/10/19/580758fce5fdea21278b45fd.html>.

² "La Generalitat pide el cierre del CIE de Barcelona tras intentar fugarse 40 internos," *la Nueva España*, 2 November 2016, <http://www.lne.es/espana/2016/11/03/generalitat-pide-cierre-cie-barcelona/2007388.html>.

³ Txema Santana, "Interior reconoce que incumple la legalidad en los Centros de Extranjeros," *El País*, 19 October 2015. http://politica.elpais.com/politica/2015/10/19/actualidad/1445251381_382346.html; Servicio Jesuita a Migrantes de España, "Vulnerables Vulnerabilizados – Informe Anual 2015," 8 September 2016, <http://www.sjme.org/sjme/item/815-2016-09-18-07-03-41>.

⁴ Mecanismo Nacional de Prevención de la Tortura, Informe Anual 2015, 2016, https://www.defensordelpueblo.es/wp-content/uploads/2016/07/Informe_Anuar_MNP_2015.pdf.

deported has been below 50 percent for several years.⁵ This low deportation rate is due to the high number of *inexpulsables* (non-deportable persons) placed in detention, which observers argue demonstrates that detention has become an arbitrary form of punishment that “criminalizes migrants.”⁶

According to the National Police, the drop in detention numbers is due to the use of improved criteria to assess the need for detention and increased police cooperation with countries of origin and transit.⁷ This has led to a drop in mass identification controls, from 90,406 in 2011 to 30,306 in 2015.⁸ However, parallel to the decline in detention numbers has been an increase in summary expulsions (*expulsiones exprés*), involving removal from Spanish territory directly from police stations within 72 hours of apprehension. This form of expedited removal bypasses the intervention of the juridical power, raising concerns about the protection needs of those deported.⁹ The lower level of detention might also be correlated to another set of figures. Eurostat reports that 56.6 percent of non-EU citizens (168,345 persons) “refused entry at EU-28 external borders by Member States in 2015” were recorded in Spain. By comparison, the second top EU member for such entry refusal was Poland, at 10.2 percent.¹⁰

The CIE in Barcelona illustrates the political and bureaucratic struggles over immigration detention that have been exasperated in Spain because of the disjuncture between its centralized immigration authority (under the Interior Ministry) and decentralized governance system. The CIE was temporarily closed for repairs in October 2015 and was due to re-open in June 2016.¹¹ However, the re-opening was postponed because of a dispute between local and national authorities. The city council, the local government (Generalitat), and civil society demanded the permanent closure of the facility.¹² Federal

⁵ José Villahoz Rodríguez, “Especial consideración a CIE de Algeciras,” in Margarita Martínez Escamilla (Coord.), *Detención, internamiento y expulsión administrativa de personas extranjeras*, 2015, <http://eprints.sim.ucm.es/34492/1/FINAL.%20DIC%202015%20LIBRO%20CGPJ.pdf>; Servicio Jesuita a Migrantes-España, *CIE y Expulsiones Exprés, Informe anual 2014*, 2014, <http://www.sjme.org/sjme/item/794-cie-y-expulsiones-expres>.

⁶ Servicio Jesuita a Migrantes de España, “Vulnerables Vulnerabilizados – Informe Anual 2015,” 8 September 2016, <http://www.sjme.org/sjme/item/815-2016-09-18-07-03-41>; David Moffette and Christian Orgaz Alonso, “Using Criminal Charges to Punish Administrative Immigration Offences in Spain,” *Border Criminologies* blog, University of Oxford, 19 January 2015, <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2015/01/using-criminal>.

⁷ For more information on this, see the section on “Mass Apprehensions” in the GDP’s 2013 profile on Spain, available at <https://www.globaldetentionproject.org/immigration-detention-in-spain-2>.

⁸ Policía Nacional, “España recibió en 2015 menos del 1% de la inmigración irregular que llegó a la Unión Europea,” 21 July 2016, http://www.policia.es/prensa/20160721_2.html.

⁹ Servicio Jesuita a Migrantes-España, *CIE y Expulsiones Exprés, Informe anual 2014*, 2014, <http://www.sjme.org/sjme/item/794-cie-y-expulsiones-expres>; Margarita Martínez Escamilla (Coord.), *Detención, internamiento y expulsión administrativa de personas extranjeras*, I+D+i Iusmigrante 2015, <http://eprints.sim.ucm.es/34492/1/FINAL.%20DIC%202015%20LIBRO%20CGPJ.pdf>.

¹⁰ Eurostat, Statistics on enforcement of immigration legislation, Data extracted in June 2016, http://ec.europa.eu/eurostat/statistics-explained/index.php/Statistics_on_enforcement_of_immigration_legislation.

¹¹ Comisión Española de Ayuda al Refugiado (CEAR), *Informe 2016: Las personas refugiadas en España y Europa*, 2016, http://www.cear.es/wp-content/uploads/2016/06/Informe_CEAR_2016.pdf.

¹² <http://www.elperiodico.com/es/noticias/sociedad/colau-ordena-cierre-del-centro-extranjeros-zona-franca-5252129> and Europa Press, “Frente común de Barcelona, Govern, Parlament y entidades para exigir el cierre del CIE Zona Franca,” *La Vanguardia*, 18 July 2016,

authorities responded that the local government had no jurisdiction and therefore had no competence for preventing the reopening. The facility reopened in July 2016¹³ after a judge argued that she did not have competency.¹⁴

Spain has been notable for its efforts to “externalise” immigration controls to nearby countries in Africa. It has worked with the EU and Frontex¹⁵ to interdict migrant boats en route to the Canary Islands,¹⁶ helped operate a detention centre in Mauritania, and collaborated closely with police forces from Senegal to Morocco, providing them ships and training to monitor coasts and intercept boats.¹⁷

While Spanish authorities have hailed its external control efforts a success,¹⁸ observers have noted that the growing populations of undocumented migrants and asylum seekers in Spain’s two enclaves in Morocco (Ceuta and Melilla) are a consequence of these externalization policies. According to UNHCR, from January to October 2015, 5,000 people entered Ceuta and Melilla, including 2,000 persons fleeing Syria, 70 percent of whom were women and children.¹⁹ The land borders surrounding these enclaves have for many years experienced violent confrontations as Spanish and Moroccan police attempt to stop people from crossing into Spanish territory. The deaths of asylum seekers during these confrontations have drawn attention to the practice of summary returns known as “hot returns” or “push-backs” (*devoluciones en caliente*). The government eventually adopted a law legalising push-backs despite criticism from both UNHCR²⁰ and the Spanish ombudsman (*Defensor del Pueblo*).²¹

In March 2014 the government approved for the first time regulations on operations at CIEs (Royal Decree 162/2014). The regulations have been criticized by NGOs and

<http://www.lavanguardia.com/local/barcelona/20160718/403301707056/frente-comun-cierre-cie-zona-franca-barcelona.html>.

¹³ Toni Sust, “El Gobierno desoye a Colau y ha reabierto hoy mismo el CIE de Barcelona,” *El Periódico*, 7 July 2016, <http://www.elperiodico.com/es/noticias/sociedad/delegacion-del-gobierno-desoye-colau-anuncia-proxima-reapertura-del-cie-barcelona-5253246>.

¹⁴ Clara Blanchar, “El juez deniega el permiso al Ayuntamiento de Barcelona para inspeccionar el CIE,” *El País*, 20 July 2016, http://ccaa.elpais.com/ccaa/2016/07/20/catalunya/1469012142_794868.html.

¹⁵ In particular through Frontex maritime surveillance operations HERA I (€370,000) and Hera II (€3,200,000) in the second semester of 2006. <http://frontex.europa.eu/search-results/?q=spain&p=2>.

¹⁶ Sergio Carrera, *The EU Border Management Strategy: Frontex and the Challenges of Irregular Immigration in the Canary Islands*, CEPS Working Document No. 261/March 2007, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1338019.

¹⁷ European Migration Network, “Annual Immigration and Asylum Policy report – Spain 2015,” http://extranjeros.empleo.gob.es/es/redeuropeamigracion/Informe_Anual_Políticas_Inmigración_Asilo.

¹⁸ *The Economist*, “Forward Defence - What other Europeans can learn from Spanish efforts to limit illegal migration,” 17 October 2015. <http://www.economist.com/news/europe/21674726-what-other-europeans-can-learn-spanish-efforts-limit-illegal-migration-forward-defence>.

¹⁹ William Spindler, “UNHCR concerned over Spain’s bid to legalize push-backs from enclaves,” UNHCR 28 October 2014. <http://www.unhcr.org/news/latest/2014/10/544f7c669/unhcr-concerned-spains-bid-legalize-push-backs-enclaves.html>.

²⁰ William Spindler, “UNHCR concerned over Spain’s bid to legalize push-backs from enclaves,” UNHCR 28 October 2014, <http://www.unhcr.org/news/latest/2014/10/544f7c669/unhcr-concerned-spains-bid-legalize-push-backs-enclaves.html>.

²¹ “Rechazos en Frontera”: ¿Frontera sin Derechos?, Informe Jurídico, Informe promovido desde el Proyecto I+D+i IUSMIGRANTE, 13 April 2015.

academics for failing to establish norms that would improve living conditions and guarantee full access to rights.²² Detainees and advocates continue to frequently denounce poor conditions of detention, inadequate legal and medical assistance, lack of information, impunity in cases of abuse, and little or no follow up to complaints lodged by detainees.²³ Notably, none of the cases of deaths in detention from 2011- 2013 had been fully investigated as of mid-2016 ([see GDP 2013 Profile](#)).²⁴

LAW, POLICIES, PRACTICES

Key norms. The Constitution provides the right to liberty and protection against arbitrary detention (art. 17), including the guarantees of due process in articles 24 and 25. Legal norms relevant to immigration-related detention are provided in several sources: the Organic Law 4/2000 of 11 January, on the rights and liberties of foreign persons in Spain and their social integration,²⁵ as amended by Organic Law 2/2009 of 11 December (Aliens Act or LOEX); Organic Law 4/2015 of 30 March, on the Protection of citizens' security; the Royal Decree 557/2011 of 20 April (RLOEX), approving the Regulation of the Organic Law 4/2000; the Royal Decree 162/2014 of 14 March, approving the operating regulation and internal regime of immigration detention centres ("Centros de Internamiento de Extranjeros" or "CIE");²⁶ Circular 6/2014 establishing certain criteria for detention in CIE to proceed;²⁷ Asylum Law 12/2009 of 30 October, regulating the right to asylum and subsidiary protection, as amended by Organic Law 2/2014 of 25 March; the Framework Protocol for the Protection of Victims of Human Trafficking of 28 October 2011 (FPHT); the Framework Protocol on proceedings regarding unaccompanied foreign minors (MENA) of October 2014;²⁸ and the Penal Code as amended by Organic Law 1/2015 of 30 March.

Organic Law 4/2015 incorporates an additional provision to the Organic Law 4/2000, establishing a special regime for Ceuta and Melilla and authorizing summary returns to prevent irregular entry to those territories. This regime of exception has been criticized by the Council of Europe's Commissioner for Human Rights for its lack of procedural

²² Ángeles Solanes Corella, "Un análisis crítico de los centros de internamiento de extranjeros en España: Normativa, realidad y alternativa," in *Revista Telemática de Filosofía del Derecho*, nº 19, 2016, <https://ocspi.wordpress.com/cies/>.

²³ Salvador Lacruz Zorita, *Opacidad, indefensión e impunidad en los centros de internamiento de extranjeros*, Master thesis defense, Salva Lacruz, supervised by Professor Ángeles Solanes Corella, Human Rights Masters, Democratie and International Justice, Democracia y Justicia Internacional, Instituto de Derechos Humanos de la Universidad de Valencia, 2013. Video. Length: 22mn. <http://www.youtube.com/watch?v=bPI1rHz3kR0>.

²⁴ Cynthia Lub, "Semana de lucha contra los CIEs, las cárceles racistas de Europa," *La Izquierda*, 16 June 2015, http://www.laizquierdadiario.com/spip.php?page=movil-nota&id_article=18325.

²⁵ http://noticias.juridicas.com/base_datos/Admin/lo4-2000.html.

²⁶ https://www.boe.es/diario_boe/txt.php?id=BOE-A-2014-2749.

²⁷ Policía Nacional, "La Dirección General de la Policía establece los criterios para el ingreso en los Centros de Internamiento de Extranjeros." Interior Ministry, 27 July 2014, http://www.policia.es/prensa/20140727_3.html.

²⁸ Boletín Oficial del Estado, Num. 251, Jueves 16 de octubre de 2014, Sec. III. Pag. 83894, <http://www.boe.es/boe/dias/2014/10/16/pdfs/BOE-A-2014-10515.pdf>.

standards to protect asylum seekers. Another EU member state, [France](#), makes similar exceptions to its migration law in its overseas territory of Mayotte, in the Indian Ocean.

Grounds for detention and deportation. Royal Decree 162/2014 stipulates that the purpose of detention (the specific term used is “internment”) in CIEs is to guarantee the deportation of foreigners. Deportation can be either an administrative sanction for violating the immigration law, a consequence of a refusal of entry, a consequence of having been convicted of a crime, or as a substitution for a criminal conviction. The Aliens Law uses different expressions to refer to different types of deportation: expulsion, refusal of entry and devolution. All types of deportations may lead to administrative detention.

a. Expulsion. Detention to ensure expulsion can be ordered in the following cases: (1) because of alleged violations to art. 53 and 54 of the Aliens Law, including being on Spanish territory without proper authorization, posing a threat to public order, or for-profit participating in clandestine migration; or (2) pending expulsion of non-citizens (legal residents or not) convicted of criminal offences in cases where the law provides for expulsion as a substitute for prison sentences for over a year (and up to six years) or the payment of a fine (Article 57(2),(4) and (7) and Article 89 of the Penal Code, as amended by Organic Law 5/2010). According to Circular 6/2014 criteria such as personal, social, and familiar circumstances of the foreigner and the feasibility of executing the expulsion have to come into account before ordering detention. According to Jesuit Migrant Service-Spain this practice rarely seems applied.²⁹

b. Refusal of entry. When a foreigner attempts to enter Spanish territory without the required documentation, authorities will deny entrance and order “return.” If return cannot be executed within 72 hours, the border control authority must refer the situation to a judge who will decide on detention (Article 60.1).

c. Devolution. When a non-citizen has violated a re-entry ban or attempted to enter Spanish territory illegally, authorities will execute the return. If return cannot be executed within 72 hours, the administrative authority must also refer the situation to a judge who will decide on detention (Article 58.6).

Qualified expulsions (*expulsiones cualificadas*). Authorities use the expression “qualified expulsions” to refer to the deportation of foreigners with criminal records via a hybrid combination of administrative measures under the Aliens and Penal Code provisions. It is however not clear which procedure authorities apply in these cases as “qualified expulsions” are not defined in law and government statistics on “*expulsiones cualificadas*” seem to include “administrative” expulsions under immigration law.³⁰ In addition, “qualified expulsions” may include persons only “known to the police” further blurring the lines. In 2012, in an address to the Spanish Congress, the Interior Ministry used the high percentage of persons with criminal records in CIEs (scheduled for

²⁹ Servicio Jesuita a Migrantes de España, “Vulnerables Vulnerabilizados – Informe Anual 2015,” 8 September 2016, <http://www.sjme.org/sjme/item/815-2016-09-18-07-03-41>.

³⁰ Email message from criminal law Prof. José Miguel Sánchez Tomás to Mariette Grange, Global Detention Project, 8 August 2016.

“qualified expulsions”) to argue that a substantive number of detainees in CIEs were criminals. A consortium of academics denounced this claim, which they said could be used by the government to justify a punitive environment in CIEs and reduce empathy for detainees.³¹

Detaining authorities. The Aliens Act does not specify which authorities can detain irregular non-citizens for purposes of deportation. Royal Decree 162/2014 stipulates that once the order of detention has been issued, the police is responsible for transferring the foreigner to the detention centre (Article 25.1). According to Police Order INT/28/2013 of 18 January article 9.4 the Central Unit of Expulsions and Repatriations (Unidad Central de Expulsiones y Repatriaciones) manages all aspects of expulsions; the supervision and coordination of CIEs; and the information flow with penal institutions in relation to the release of foreign prisoners.³²

Length of detention and re-detention. According to the Aliens Act, government authorities can initially take a person into custody for a maximum 72 hours before having to refer him/her to an investigating judge to get a judicial order prolonging confinement at an officially designated detention centre (Article 61.1.d). Once a detention order is issued, the detainee is to be kept in custody only as long as necessary to affect expulsion, with the maximum detention period set at 60 days (Article 62.2). Spain previously had a maximum detention period of 40 days. Along with a host of other EU countries, it expanded detention limits after adoption of the EU Return Directive (for more on the impact of the directive on detention periods, see [Flynn and Cannon 2010](#)).³³ However, together with France (with a 45-day limit), Spain kept the length of detention well below the 18-month limit allowed in the Return Directive. NGOs have highlighted that the average duration of detention has increased over the last years. According to police records, the average stay in detention was 24 days in 2015.³⁴

The Jesuit Migrant Service-Spain (SJM-E) reported that a fourth of the 346 detainees it visited in Barcelona in 2015 had previously been detained. The High Court has ruled against the logic of re-detaining persons under the same charge, even if the multiple detention spells do not exceed the 60-day limit and cancelled Article 21.3 of the Regulation of Organic Law 4/2000.³⁵ However, according to SJM-E, the practice continued in 2015.

³¹ Margarita Martínez Escamilla (dir.), “Mujeres en el CIE: Género, Inmigración e Internamiento,” Proyecto I+D+i *Iusmigrante*, 2013. http://www.migrarconderechos.es/bibliografia/Mujeres_en_el_CIE.

³² <http://www.interior.gob.es/web/servicios-al-ciudadano/normativa/ordenes-int/orden-int-28-2013-de-18-de-enero>.

³³ Izabella Majcher, “Crimmigration” in the European Union through the Lens of Immigration Detention, Global Detention Project Working Paper No.6, September 2013, <https://www.globaldetentionproject.org/crimmigration-in-the-european-union-through-the-lens-of-immigration-detention>.

³⁴ Policía Nacional, “España recibió en 2015 menos del 1% de la inmigración irregular que llegó a la Unión Europea,” 21 July 2016, http://www.policia.es/prensa/20160721_2.html.

³⁵ Servicio Jesuita a Migrantes de España, “Vulnerables Vulnerabilizados – Informe Anual 2015,” 8 September 2016, <http://www.sjme.org/sjme/item/815-2016-09-18-07-03-41>.

Procedural standards. Royal Decree 162/2014 stipulates that nobody can be detained without a decision by the competent judicial authority (Article 2.1). Detainees have the following rights: to be informed about their situation (Royal Decree Article 29); to have the person they designate in Spain, their lawyer and the consulate of their country informed about the detention (Article 31); to be assisted by a lawyer; to be assisted by an interpreter; to contact NGOs and national and international organizations; and to file complaints and petitions in defense of their rights before the Director of the CIE, the administrative and juridical competent organs, the Public Prosecutor, and the Ombudsman (Aliens Act, Article 62 bis and Royal Decree 162/2014, Articles 16 and 19). Any complaints or petitions will be presented to the director of the centre who will respond or redirect to the appropriate authority.

In practice, according to civil society sources, lack of information about their legal situation, the rights they are entitled to, and the date and details of expulsion are the most frequent complaints among detainees.³⁶ Lack of information has also been an obstacle for people in need of protection.³⁷ The limited access to interpreters and translators³⁸ - available only under request of lawyers - hinders access to information.³⁹

Royal Decree 162/2014 provides for agreements to be concluded with Bar Associations in order to provide legal assistance to detainees (Article 15.4 in fine). The Spanish Government in the response to the 2014 Report of the European Committee for the Prevention of Torture stated that “several collaboration agreements have been concluded with a number of Bar Associations.”⁴⁰ However, NGOs have pointed out that only one agreement has been reached - with the Bar Association of Barcelona. The Madrid Bar Association has been providing legal assistance, but no covenant has been signed yet. Access to legal assistance depends on which CIE the foreigner is being detained.⁴¹ Another issue raised by NGOs is the lack of budget allocation for the planned agreements.⁴²

³⁶ Servicio Jesuita a Migrantes-España, *CIE y Expulsiones Exprés, Informe anual 2014*, 2014, <http://www.sjme.org/sjme/item/794-cie-y-expulsiones-expres>; Asylum Information Database (AIDA), Country Report: Spain, 2016, http://www.asylumineurope.org/sites/default/files/report-download/aida_es_0.pdf.

³⁷ Cristina Manzanedo, "Las calamitosas condiciones de internamiento en los CIE españoles," in Margarita Martínez Escamilla (Coord.), *Detención, internamiento y expulsión administrativa de personas extranjeras*, 2015, <http://eprints.sim.ucm.es/34492/1/FINAL.%20DIC%202015%20LIBRO%20CGPJ.pdf>.

³⁸ Asylum Information Database (AIDA), Country Report: Spain, 2016, http://www.asylumineurope.org/sites/default/files/report-download/aida_es_0.pdf.

³⁹ Karibu Amigos del Pueblo Africano, *CIE: intento fallido de expulsión, El internamiento en el CIE de Madrid y los vuelos de repatriación de las personas subsaharianas, Informe 2015*, 2016, <http://www.asociacionkaribu.org/doc/KARIBU-informeCIE-2015.pdf>.

⁴⁰ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *Response of the Spanish Government to the report 2014*, 2015, <http://www.cpt.coe.int/documents/esp/2015-20-inf-eng.pdf>.

⁴¹ Mecanismo Nacional de Prevención de la Tortura, *Informe Anual 2014*, 2015, https://www.defensordelpueblo.es/wp-content/uploads/2015/06/MNP_2014.pdf.

⁴² Servicio Jesuita a Migrantes-España, *CIE y Expulsiones Exprés, Informe anual 2014*, 2014, <http://www.sjme.org/sjme/item/794-cie-y-expulsiones-expres>.

Supervisory judges have played an important role in improving the living conditions of detainees.⁴³ However, improvements remain uneven among CIEs in different jurisdictions. Furthermore, judges' rulings are contingent upon the submission of complaints, which depends on the availability of legal assistance.

Some observers have argued that there is evidence of impunity related to the handling of complaints in detention centres. The Spanish Mechanism for the Prevention of Torture has contended that there has been a failure to investigate complaints of ill-treatment.⁴⁴ According to one scholar, there has been little follow up to the hundreds of complaints lodged with the ombudsman. Detainees who lodge complaints are often immediately expelled; access to witnesses is difficult; medical records are not available; and relevant security and police officials involved do not carry visible identification tags.⁴⁵

Vulnerable groups. Royal Decree 162/2014 provides for specialized care for vulnerable people: minors, disabled persons, the elderly, pregnant women, single parents with minors, and survivors of torture, rape or other serious forms of psychological, physical or sexual violence (Article 1.4). Circular 6/2014 especially addresses the situation of vulnerability as a circumstance that should be taken into account when deciding on detention.

a. Minors and families. Article 62.4 of the Aliens Act states that children should not be placed in immigration detention. However, Article 62 bis indirectly provides for the detention of minors as it recognizes the right of detainees to “be accompanied by their minor children, provided that the Public Prosecutor gives his agreement to this measure and that the centre includes units that ensure family unity and privacy” (Aliens Act Article 62 bis.1.i and Royal Decree 162/2014 Article 16.2.k).

As for unaccompanied minors, they cannot be detained and their protection comes within the remit of the autonomous regions (Article 35). Unaccompanied minors are housed in children’s shelters (*centros de acogida de menores*).

According to the Interior Ministry, 19 children were placed in detention in 2015. Although the ministry did not stipulate whether they were accompanied, a report by SJM appears to indicate that they were unaccompanied.⁴⁶

⁴³ Cristina Manzanedo, "Las calamitosas condiciones de internamiento en los CIE españoles," in Margarita Martínez Escamilla (Coord.), *Detención, internamiento y expulsión administrativa de personas extranjeras*, 2015, <http://eprints.sim.ucm.es/34492/1/FINAL.%20DIC%202015%20LIBRO%20CGPJ.pdf>.

⁴⁴ Amnistía Internacional (AI), *Hay Alternativas: No a la Detención De Personas Inmigrantes: Comentarios al borrador del Gobierno sobre el reglamento de los centros de internamiento de extranjeros*, Sección española de Amnistía Internacional, 2013, <http://www.es.amnesty.org/noticias/noticias/articulo/el-internamiento-indiscriminado-de-inmigrantes-como-politica-de-control-migratorio/>.

⁴⁵ Salvador Lacruz Zorita, *Opacidad, indefensión e impunidad en los centros de internamiento de extranjeros*, Master thesis defense, Salva Lacruz, supervised by Professor Ángeles Solanes Corella, Human Rights Masters, Democratie and International Justice, Democracia y Justicia Internacional, Instituto de Derechos Humanos de la Universidad de Valencia, 2013. Video. Length: 22mn. <http://www.youtube.com/watch?v=bPI1rHz3kR0>.

⁴⁶ Servicio Jesuita a Migrantes de España, "Vulnerables Vulnerabilizados – Informe Anual 2015," 8 September 2016, <http://www.sjme.org/sjme/item/815-2016-09-18-07-03-41>.

The Framework Protocol for Unaccompanied Foreign Minors (UAMs)—adopted on 22 July 2014 as an inter-ministerial agreement—establishes the bases for institutional and administrative coordination with regards to actions in relation to unaccompanied foreign minors. The Protocol sets some guidelines on locating and identifying minors, determining their age, and placing them under the care of the social services.⁴⁷ The UN Human Rights Committee has welcomed the adoption of the Protocol but has also expressed its concerns about the methods used in the practice for determining the age of children.⁴⁸ Practices of age assessment – provided by Article 35.3 of the Aliens Act - have been under discussion and several cases of non-identified minors in detention have been reported.⁴⁹ For example, the radiological test employed in CIE Algeciras has been highly criticized.⁵⁰ The Supreme Court⁵¹ established a precedent saying that minors with identity documents should not be subject to age assessment process,⁵² adding that age assessment process could proceed only if there are reasons to consider that the documents they exhibit is not reliable.⁵³ A top UN official has stated that the Spanish authorities keep challenging unaccompanied minors' age and has argued that the Framework Protocol “seems to contain instructions contrary to the doctrine of Human Rights, the majority opinion of European judges and judgments of the Supreme Court.”⁵⁴

b. Families. Although the CIEs Regulation does not explicitly make provisions for the detention of families, Article 57—which deals with disciplinary measures including physical separation from other detainees—seems to imply that mothers with their children can be detained (Article 57(6 (a-d)). In 2015 the Supreme Court revoked Articles 7.3 and 16.2 (k) of the Regulation of Organic law 4/2000 for failing to comply

⁴⁷ European Migration Network (EMN), *Annual Report on Immigration and Asylum Policies, National Report Spain (Part I)*, 2014, http://extranjeros.empleo.gob.es/es/redeuropeamigracion/Informe_Anuar_Politicar_Inmigracion_Asilodoc_2014/Informe_Anuar_de_Politicar_de_Inmigracion_y_Asilod_2014_EN.pdf.

⁴⁸ UN, Human Rights Committee, *Concluding observations on the sixth periodic report of Spain*, 2015, <file:///C:/Users/MPARC/Downloads/G1518110.pdf>.

⁴⁹ Asylum Information Database (AIDA), *Country Report: Spain*, 2016, http://www.asylumineurope.org/sites/default/files/report-download/aida_es_0.pdf.

⁵⁰ José Villahoz Rodríguez, "Especial consideración a CIE de Algeciras," in Margarita Martínez Escamilla (Coord.), *Detención, internamiento y expulsión administrativa de personas extranjeras*, 2015, <http://eprints.sim.ucm.es/34492/1/FINAL.%20DIC%202015%20LIBRO%20CGPJ.pdf>.

⁵¹ Pleno del Tribunal Supremo (Sala I) Núm. 452/2014, de 24 de septiembre y Núm. 453/2014, de 23 de septiembre.

⁵² http://www.eldiario.es/desalambre/desproteccion-menores-migrantes-solos-Espana_0_485401785.html.

⁵³ Unidad de Extranjería de la Fiscalía General del Estado, *Memoria*, 2014, https://www.fiscal.es/fiscal/PA_WebApp_SGNTJ_NFIS/descarga/Memoria%20Fiscalia%20de%20Extranjeria%202014.pdf?idFile=97f45264-7f55-4c6e-a75c-13a56da9e020.

See Pleno Tribunal Supremo (Sala I) number 452/2014 (Sept. 24) and number 453/2014 (Sept. 23); See Protocol Marco on proceedings regarding unaccompanied foreign minors (MENA).

⁵⁴ "Preocupación" en la Oficina de Derechos Humanos de la ONU por el trato que España da a los niños migrantes, *La Vanguardia*, 17 February 2016, <http://www.lavanguardia.com/vida/20160217/302231869152/preocupacion-en-la-oficina-de-derechos-humanos-de-la-onu-por-el-trato-que-espana-da-a-los-ninos-migrantes.html>.

with EU directive 2008/115 on returns, according to which states must provide separate family spaces in CIEs for the detention of minors with their parents .⁵⁵

c. Asylum Seekers. Persons in asylum proceedings are not detained. Persons who apply for asylum after being placed in detention remain detained pending the outcome of their asylum application. The procedure for asylum requests submitted from inside CIEs is the “asylum at the border process”, which is a fast procedure (Asylum Law, Article 25.2). The maximum time an asylum seeker can stay in a CIE is 8 days, the time needed for the procedures at the border to conclude.⁵⁶ The Ministry of Interior has not provided figures on asylum seekers who applied for asylum from detention during 2015, though this information has been requested by the Asylum Information Database (AIDA).⁵⁷ In 2014, 587 asylum applications were lodged from detention; almost double the 306 applications of 2013 and 761 were lodged in 2015.⁵⁸

Lack of information on the right to seek asylum and the short timeframe of the fast procedure applied to asylum claims made in detention are the most frequent complaints.⁵⁹ The National Mechanism for the Prevention of Torture observed in 2012 and 2013 that the brochure containing information on international protection in different languages - elaborated by the Office for Asylum and Refuge (OAR) - was missing in the CIEs.⁶⁰ In December 2014, a complaint was filed for the expulsion of 20 Malians who were not informed about their right to seek asylum or the procedure for doing so.⁶¹

d. Victims of trafficking. The competent authorities have to adopt the necessary measures to identify victims of human trafficking (Aliens Act Article 59 bis). The 2011 Framework Protocol for Protection of Victims of Human Trafficking contains various provisions for identification and protection of victims of trafficking but fails to clearly provide for the release of victims identified while in detention. External observers have recommended that Spain ensure that “victims who do not testify against perpetrators are not detained or deported.”⁶² In practice, identification of victims in CIEs depends upon

⁵⁵ Asylum Information Database (AIDA), *Country Report: Spain*, 2016, http://www.asylumineurope.org/sites/default/files/report-download/aida_es_0.pdf; Servicio Jesuita a Migrantes de España, “Vulnerables Vulnerabilizados – Informe Anual 2015,” 8 September 2016, <http://www.sjme.org/sjme/item/815-2016-09-18-07-03-41>.

⁵⁶ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Response of the Spanish Government to the report 2014, 2015, <http://www.cpt.coe.int/documents/esp/2015-20-inf-eng.pdf>.

⁵⁷ Asylum Information Database (AIDA), *Country Report: Spain*, 2016, http://www.asylumineurope.org/sites/default/files/report-download/aida_es_0.pdf.

⁵⁸ Defensor del Pueblo, “El Asilo en España -La protección internacional y los recursos del sistema de acogida” June 2016.

http://www.asylumineurope.org/sites/default/files/resources/asilo_en_espana_2016.pdf.

⁵⁹ Asylum Information Database (AIDA), *Country Report: Spain*, 2016,

http://www.asylumineurope.org/sites/default/files/report-download/aida_es_0.pdf.

⁶⁰ Servicio Jesuita a Migrantes-España, *CIE y Expulsiones Exprés, Informe anual 2014*, 2014, <http://www.sjme.org/sjme/item/794-cie-y-expulsiones-expres>.

⁶¹ Servicio Jesuita a Migrantes-España, *CIE y Expulsiones Exprés, Informe anual 2014*, 2014, <http://www.sjme.org/sjme/item/794-cie-y-expulsiones-expres>.

⁶² U.S. Department of State, “Trafficking in Persons Report 2016,” <http://www.state.gov/j/tip/rls/tiprpt/2016/>.

NGOs and social organizations, as staff in the centres are reportedly not well prepared for the task.⁶³

e. People with health problems. The Aliens Law states that in case of serious illness the judge should assess the risk of detention to both public health and the foreigner (Article 62.1). Circular 6/2014 also refers to the need for judges to take into consideration the physical and psychical condition of the foreigner before deciding on detention. Finally, Royal Decree 162/2014 establishes a medical procedure to identify people with health problems and make arrangements for medical treatment.⁶⁴

Medical assistance in CIEs has been considered insufficient in many cases. The death of Samba Martinez in CIE Madrid in 2011 led the Ombudsman to urge the government to draft a referral protocol for transfers from CETIs (Centres for temporary stay) to CIEs. By 2015, this recommendation had not been implemented.⁶⁵

Alternatives to detention. The regulations for the Aliens Act (LOEX) does not explicitly provide “alternatives to detention.” It does however provide a series of non-custodial or “precautionary” measures for people who may be subject to deportation. These include: withdrawal of passport or proof of nationality; reporting requirements; compulsory residence in a particular place; and any other injunction that the judge considers appropriate and sufficient (RLOEX Article 235.6). The GDP has been unable to find information about implementation of these measures. The current wording does not clarify who and how often the “precautionary measures” would be reviewed. Circular 6-2014 also refers other cautionary measures, according to article 61.1 of the Aliens Law. According to civil society groups, in practice these measures do not appear to be regularly contemplated for asylum seekers.⁶⁶

Criminalisation. Sanctions for unauthorized stay range from €501 to €10,000 fines (Aliens Act Articles 53 and 55).

Cost of detention and related border controls. In 2013, the National Mechanism for the Prevention of Torture estimated the cost of maintaining the CIEs was 8.8 million Euros annually.⁶⁷ In the ensuing reports (2014 and 2015) information about the cost was not provided. The costs of immigration detention are closely embedded in other related costs. For instance in 2013, the Spanish companies EU LEN Seguridad and Serramar

⁶³ Cristina Manzanedo, “Las calamitosas condiciones de internamiento en los CIE españoles,” in Margarita Martínez Escamilla (Coord.), *Detención, internamiento y expulsión administrativa de personas extranjeras*, 2015, <http://eprints.sim.ucm.es/34492/1/FINAL.%20DIC%202015%20LIBRO%20CGPJ.pdf>.

⁶⁴ Servicio Jesuita a Migrantes-España, *CIE y Expulsiones Exprés, Informe anual 2014*, 2014, <http://www.sjme.org/sjme/item/794-cie-y-expulsiones-expres>.

⁶⁵ Pueblos Unidos, *Situación actual de los centros de internamiento de extranjeros en España y su adecuación al marco legal vigente*, 2015, http://www.icade.upcomillas.es/images/Clinica_Juridica_ICADE/Informe_situacion_actual_CIE_junio_15.pdf.

⁶⁶ Asylum Information Database (AIDA), Country Report: Spain, 2016, http://www.asylumineurope.org/sites/default/files/report-download/aida_es_0.pdf.

⁶⁷ Mecanismo Nacional de Prevención de la Tortura, *Informe Anual 2013*, 2014, http://www.ohchr.org/Documents/HRBodies/OPCAT/NPM/InformeAnual_Spain_2013.pdf.

Vigilancia Seguridad signed a contract for 6.5 million euros with the Spanish state for the surveillance of CETIs in the Spanish enclaves of Ceuta and Melilla in Morocco.⁶⁸

Spain initially spent around €1.5 million to strengthen border controls as far back as 1998 through Plan Sur and another €300 million for the SIVE (integrated surveillance system) combining mobile videos and infrared cameras to spot boats in the early 2000. Amnesty International reports that “Between 2007 and 2010, Spain made the largest expenditure under the External Borders Fund of the European Union, with over 120 million euros.” By 2011, the country had spent more than € 30 million to reinforce and build a barrage of fences around the enclaves of Ceuta and Melilla.⁶⁹ In addition, according to press reports, “Between 2011 and 2015, the Spanish authorities spent at least €26 million on deporting 4,674 illegal immigrants, averaging €5,629 per person.”⁷⁰

Privatization. Private companies do not operate immigration detention centres in Spain and the Interior Ministry is responsible for the provision of health and social care in the centres. However, according to the law such service can be arranged with other ministries or public and private entities.⁷¹ Regarding medical assistance, the national government has concluded agreements with the private entities Sermedes and then Clínicas Madrid.⁷² Interpreters are also provided by a private company.⁷³ NGOs have denounced the political party Ciudadanos’ dual proposal to privatise management and security inside detention centres to “modernise” them and to re-open closed wings in prisons for immigration detention.⁷⁴

Mass apprehensions. Activists, scholars, and lawyers denounced pressure put on police forces to carry out mass identification controls resulting from the Interior Ministry

⁶⁸ Migrant detention in the European Union: a thriving business. Outsourcing and privatisation of migrant detention, Study carried out by Lydie Arbogast on behalf of Migreurop with the support of the Rosa-Luxemburg-Stiftung (Brussels Office), November 2016, <http://www.migreurop.org/article2762.html?lang=fr>.

⁶⁹ Amnesty International, “Fear and Fences: Europe’s Approach to Keeping Refugees at Bay,” EUR 03/2544/2015, 2015. <https://www.amnesty.org/en/documents/eur03/2544/2015/en/> EUR 03/2544/2015 English; Aamna Mohdin & Keith Collins, “This is what happens when we build walls and fences to keep people out,2, Quartz, 10 October . <http://qz.com/783678/this-is-what-happens-when-we-build-walls-and-fences-to-keep-people-out/>.

⁷⁰ Denise Zani, Joana Oliveira, Antonia Laborde and Hugo Gutiérrez, “Are Spain’s immigrant detention centres in breach of human rights law?” El País, 31 October 2016, http://elpais.com/elpais/2016/10/31/inenglish/1477905065_156869.html .

⁷¹ Asylum Information Database (AIDA), Country Report: Spain, 2016, http://www.asylumineurope.org/sites/default/files/report-download/aida_es_0.pdf.

⁷² Cristina Manzanedo, “Las calamitosas condiciones de internamiento en los CIE españoles,” in Margarita Martínez Escamilla (Coord.), *Detención, internamiento y expulsión administrativa de personas extranjerías*, 2015, <http://eprints.sim.ucm.es/34492/1/FINAL.%20DIC%202015%20LIBRO%20CGPJ.pdf>.

⁷³ Mecanismo Nacional de Prevención de la Tortura, *Informe Anual 2015*, 2016, https://www.defensordelpueblo.es/wp-content/uploads/2016/07/Informe_Anual_MNP_2015.pdf.

⁷⁴ “los DDHH no se privatizan. NO a la propuesta de Ciudadanos de privatizar los CIES, 4 October 2016, <https://ciesno.wordpress.com/2016/10/04/los-ddhh-no-se-privatizan-no-a-la-propuesta-de-ciudadanos-de-privatizar-los-cie/>.

Circular 1/2010 ([See GDP profile 2013](#)).⁷⁵ Organic Law 4/2015, on the Protection of citizens' security, now expressly prohibits discriminatory identity checks (Article 16.1). The number of persons placed in immigration detention has been reduced by half since 2011. According to the National Police, this drop is due to better criteria to assess the need for detention and to police cooperation with countries of origin and transit. The police also point to new instructions that have been issued to counter mass arrests policies, which had come under severe criticism by civil society criminal law professionals and the UN Committee for the Elimination of Racial Discrimination (see GDP Spain Immigration Detention Profile of 2013). As a result mass identification controls dropped from 90,406 in 2011 to 30,306 in 2015.⁷⁶ However, according to the Jesuit Migrants Service-Spain, 36 percent of persons placed in detention in 2015 were identified as part of random controls by security and police forces.⁷⁷

Extraterritorial detention. Spain has worked with countries in Africa to bolster the detention of migrants and asylum seekers and coordinate border and interdiction measures, which has had numerous unintended consequences and forced Spain to repeatedly extend its interdiction efforts across the region.⁷⁸

A case in point is Spain's involvement in detaining migrants and asylum seekers in the West African country of Mauritania.⁷⁹ When the route through Morocco was initially shutdown in the early 2000s, this caused a chain reaction that eventually led to Spain's involvement in establishing a detention centre in Mauritania in 2006 as part of a larger effort to stem the flow of migrants to the Canary Islands.⁸⁰ Mauritania's first dedicated detention centre for irregular migrants, sometimes referred to as "El Guantanamito," was established inside a former school located in the port city of Nouadhibou with assistance provided by the Spanish Agency for International Development Cooperation. Before 2006, on the rare occasions migrants were picked up by the police they were held at police stations.⁸¹

⁷⁵ Grupo Inmigración y Sistema Penal (GISP), *Informe jurídico: Controles de identificación y detenciones de inmigrantes: Prácticas ilegales*, Grupo Inmigración y Sistema Penal. *Redadas y detenciones*, Undated, <http://www.inmigrapenal.com/>.

⁷⁶ Policía Nacional, "España recibió en 2015 menos del 1% de la inmigración irregular que llegó a la Unión Europea," 21 July 2016, http://www.policia.es/prensa/20160721_2.html.

⁷⁷ Servicio Jesuita a Migrantes de España, "Vulnerables Vulnerabilizados – Informe Anual 2015," 8 September 2016, <http://www.sjme.org/sjme/item/815-2016-09-18-07-03-41>.

⁷⁸ See: Michael Flynn, "There and Back Again: On the Diffusion of Immigration Detention," *Journal on Migration and Human Security*, 2013, <http://jmhs.cmsny.org/index.php/jmhs/article/view/31>. See also: De Witte, Nynke, and Zapata-Barrero, Ricard. 2007. "The Spanish Governance of EU borders: Normative Questions." *Mediterranean Politics*. 12(1): 85-90.

⁷⁹ The case in described in Michael Flynn, "There and Back Again: On the Diffusion of Immigration Detention," *Journal on Migration and Human Security*, 2013, <http://jmhs.cmsny.org/index.php/jmhs/article/view/31>

⁸⁰ Flynn, Michael. 2006. "Europe: On Its Borders, New Problems." *Bulletin of the Atomic Scientists*. November/December 2006. http://www.globaldetentionproject.org/fileadmin/publications/Flynn_Europe_Migration.pdf

⁸¹ Amnesty International (AI). 2008. "Mauritania: Nobody Wants to Have Anything to Do With Us." *AFR* 38/001/2008. 1 July 2008.

Amnesty International (AI). 2010. "Spain: Follow-Up Information to the Concluding Observations of the Committee against Tortur

Spain's involvement in establishing the detention centre led to questions over who controlled the facility and guaranteed the rights of the detainees. While the Mauritanian National Security Service appears to have managed the facility, Mauritanian officials "clearly and emphatically" stated to a Spanish human rights organization in October 2008 that Mauritanian authorities performed their jobs at the express request of the Spanish government.⁸²

Jurisdictional questions regarding Spain's activities in Mauritania were addressed in the "Marine I Case" (Committee against Torture, *J.H.A. v. Spain*, 21 Nov. 2008, no. 323/2007), which involved a different ad hoc detention facility—this one located in an abandoned fish-processing facility in Nouadhibou—used by Spain after it aided passengers aboard a smuggling boat that had lost power in international waters off the coast of West Africa in 2007. While the UN Committee against Torture (CAT) ultimately ruled that the case itself was inadmissible because the complainant—a Spanish citizen working for a human rights NGO—did not have standing, it nevertheless rejected claims by Spain that the incidents covered in the case occurred outside Spanish territory. Citing its general comment No. 2, which provides that a state's jurisdiction includes any territory where it exercises effective control, the Committee found that Spain "maintained control over the persons on board the *Marine I* from the time the vessel was rescued and throughout the identification and repatriation process that took place at Nouadhibou. In particular, the State party exercised, by virtue of a diplomatic agreement concluded with Mauritania, constant de facto control over the alleged victims during their detention in Nouadhibou. Consequently, the Committee considers that the alleged victims are subject to Spanish jurisdiction insofar as the complaint that forms the subject of the present communication is concerned" (para 8.2).

The Mauritania situation arguably reflects a broader trend of core countries attempting to deflect migratory pressures by externalizing immigration controls to states that are not considered main destinations of migrants and where the rule of law is often weak. This raises questions about the responsibility of liberal democracies in the abuses detainees suffer when they are interdicted before reaching their destinations.

Sources reported that the detention centres in Nouadhibou were closed by May 2012.⁸³ However, more recently, in late 2016, sources told journalists at the German newspaper *Tageszeitung* that a facility in Nouadhibou remained open but that there are practically no arrests in Nouadhibou any longer. When people are arrested they are typically sent directly to the capital Nouakchott, where transport is arranged to take them to the border with Senegal. The reported facility in Nouadhibou is only used when there are large-scale arrests. It is unclear what, if any, role Spain continues to play at it.⁸⁴

⁸² European Social Watch (ESW). 2009. "Spain: The Externalisation of Migration and Asylum Policies: The Nouadhibou Detention Center." <http://www.socialwatch.eu/wcm/Spain.html>

⁸³ Stephan Dünwald, "Europe's Global approach to migration management," in Ruben Zaiotti (ed), *Externalizing Migration Management: Europe, North Africa and the spread of "remote control" practices*, Routledge, 2016.

⁸⁴ Christian Jakob (*Tageszeitung*), email to Michael Flynn (Global Detention Project), 29 November 2016.

According to Frontex, as of 2015 the numbers of people transiting the Western African Route remained “negligible”: “This low number is attributed to the Memorandum of Understanding between Spain, Senegal and Mauritania, that includes joint surveillance activities and effective return of those detected crossing the border illegally. The low number of departures resulted in relatively few casualties. Still, at least 12 people died in March 2015 in two separate incidents involving boats that departed from Morocco.”⁸⁵

DETENTION INFRASTRUCTURE

Under the Aliens Act, non-citizens are to be placed in “centres of internment for foreigners” (centros de internamiento (CIEs)) which should not have prison features and in which detainees should only be deprived of their right to free movement (Article 60.2, Article 62).

As of November 2016, Spain operated a network of eight such dedicated facilities, with a total capacity of 1,472 (1,300 for men and 172 for women).⁸⁶ Facilities are located in Algeciras, Barcelona, Gran Canaria, Fuerteventura, Madrid, Murcia, Tenerife, and Valencia. There are plans for three new centres: one in Algeciras to replace the existing building, which has been the subject of numerous complaints because of its poor conditions; one in Malaga to replace one that had been closed; and a second CIE in Madrid, near the airport.⁸⁷

Spain also makes use of “ad hoc” facilities typically used only during the annual immigration surges in the Canary Islands and the North African enclaves of Melilla and Ceuta. These “ad hoc” CETIs (Centros de Estancia Temporal de Inmigrantes) are designed as places of first reception providing basic services to immigrants and asylum seekers that have entered illegally. People hosted in these centres are free to leave the centres.⁸⁸ However, both facilities are understaffed with severe overcrowding in Melilla which hosted more than double its capacity in 2015, as reported by Amnesty International.⁸⁹

Lastly, Spain operates transit facilities (also known as *sala de asilos*) at key airports, including the Lanzarote Airport on the Canary Islands and Madrid’s Barajas Airport. Outside a few exceptional cases, there is no evidence indicating that these facilities are used systematically to confine migrants for periods exceeding 24 hours, and thus they

⁸⁵ Frontex, “Risk Analysis for 2016,” <http://frontex.europa.eu/news/frontex-publishes-risk-analysis-for-2016-NQuBFv>.

⁸⁶ Policia Nacional, “España recibió en 2015 menos del 1% de la inmigración irregular que llegó a la Unión Europea,” 21 July 2016, http://www.policia.es/prensa/20160721_2.html.

⁸⁷ Servicio Jesuita a Migrantes-España, *CIE y Expulsiones Exprés, Informe anual 2014*, 2014, <http://www.sjme.org/sjme/item/794-cie-y-expulsiones-expres>.

⁸⁸ European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Response of the Spanish Government to the report 2014, 2015, <http://www.cpt.coe.int/documents/esp/2015-20-inf-eng.pdf>.

⁸⁹ Amnesty International, “Fear and Fences: Europe’s Approach to Keeping Refugees at Bay,” EUR 03/2544/2015, 2015. <https://www.amnesty.org/en/documents/eur03/2544/2015/en/>.

are not included in the GDP's dataset on Spanish detention sites.⁹⁰ However, the National Mechanism on the Prevention of Torture reports that in 2014 a significant number of people were detained at Barajas Airport for more than 72 hours, pending asylum request.⁹¹

CIEs are under the responsibility of the Interior Ministry and managed by the General Police Directorate (Dirección General de Policía). The 2009 reform of the Aliens Law created the figure of the supervisory judge (juez de control) (Article 62.6). The supervisory judge is the first instance criminal Judge of the jurisdiction in which the centre is located and is in charge of monitoring the application of the law and the respect of internees' human rights (RD 162/2014, Article 2). In 2015, three judgments by supervisory judges in Barcelona, Madrid and Las Palmas found that CIEs management arbitrarily deprived detainees of legal rights and guarantees including in relation to removal of private property, the use of mobile phones, time allocated for showers, access to health care, information prior to expulsion and legal assistance.⁹²

Conditions of detention. An active NGO network and the National Ombudsperson in its role of National Mechanism of Prevention of Torture regularly report on conditions in detention centres. The Prosecutor General and the supervisory judges also visit the centres. Although the law guarantees civil society access to places of detention, NGOs are often denied access (LOEX Article 62 bis; BO 2012a; APDHA 2012). At times, NGOs granted access to detention facilities have been denied access to detainees.⁹³ The most common complaint is the absence of a clearly established regime and rules for NGOs visits. As a consequence, the criteria for accessing the centres are different depending on each CIE director.⁹⁴

The long-awaited March 2014 operating regulations for CIEs include a new organizational structure and the recognition of some rights to detainees—such as the right to information, social services, health care, communications and visits, security and privacy, counsel and interpretation and religious practice. However, the regulation has been criticized for keeping a police-oriented model and failing to provide sufficient guarantees for the protection of detainees' rights. The Supreme Tribunal has also criticized the Decree and declared four clauses unconstitutional. According to many NGOs, as of July 2016 many of the provisions of the Decree have not yet been implemented. This context has generated complaints before both institutions of control: the Ombudsman and the first instance criminal judges who have played a key role in urging the authorities to make changes in the management of the CIEs.

⁹⁰ Legalcity, *29 DÍAS 'ENCERRADA' EN BARAJAS*, Legalcity, 2011, <http://legalcity.es/2011/04/29/29-dias-encerrada-en-barajas/>.

⁹¹ Mecanismo Nacional de Prevención de la Tortura, Informe Anual 2014, 2015, https://www.defensordelpueblo.es/wp-content/uploads/2015/06/MNP_2014.pdf.

⁹² Servicio Jesuita a Migrantes de España, "Vulnerables Vulnerabilizados – Informe Anual 2015," 8 September 2016, <http://www.sjme.org/sjme/item/815-2016-09-18-07-03-41>.

⁹³ Migreurop España (Migreurop Spain), *CIE: Derechos Vulnerados. Informe sobre los centros de internamiento de extranjeros en España*, 2011, <http://docuinmigracion.blogspot.ch/2011/12/cie-derechos-vulnerados-migreurop-2011.html>.

⁹⁴ Servicio Jesuita a Migrantes-España, *CIE y Expulsiones Exprés, Informe anual 2014*, 2014, <http://www.sjme.org/sjme/item/794-cie-y-expulsiones-expres>.

In July 2016, Carmen Velayos, General Secretary of a police trade union in Cadiz described the CIEs in Algeciras and Tarifa as old and obsolete buildings unhealthy for police staff and detainees alike.⁹⁵ On the other hand, Amnesty International observed improved conditions during visits to the CETI in Ceuta in February 2015 in terms of overcrowding.⁹⁶

In most of the CIEs, the closing mechanisms of the cells doors are inadequate for a quick opening in case of emergency.⁹⁷ Some cells do not have toilets. In those cases, during the night, detainees have to call the guards in order to go to the toilet outside. In various instances, people were forced to use bottles or the sink in their cells because guards would refuse to open the cells at night.⁹⁸

According to the Aliens Law and its Regulation, detainees are entitled to social, legal and cultural assistance. However, NGOs have claimed that these services are only available in Madrid y Barcelona.⁹⁹ There is no permanent medical assistance, with deficiencies during weekends and night hours.¹⁰⁰ Detainees' access to their own medical records is difficult. This is especially relevant in cases in which detainees need to follow special treatment.¹⁰¹ NGOs urge for the correct implementation of pre-entry and pre-release medical exams.¹⁰² The need to adopt a protocol for communication of medical records between CETI and CIE, when people are transferred from one to the other, has

⁹⁵ Ana Carbajosa, "Batalla política en las 'cárceles' de extranjeros," El País, 21 July 2016, http://politica.elpais.com/politica/2016/07/20/actualidad/1469040483_890694.html.

⁹⁶ Amnesty International, "Fear and Fences: Europe's Approach to Keeping Refugees at Bay," EUR 03/2544/2015, 2015. <https://www.amnesty.org/en/documents/eur03/2544/2015/en/> EUR 03/2544/2015 English.

⁹⁷ Mecanismo Nacional de Prevención de la Tortura, Informe Anual 2014, 2015, https://www.defensordelpueblo.es/wp-content/uploads/2015/06/MNP_2014.pdf.

⁹⁸ Mecanismo Nacional de Prevención de la Tortura, Informe Anual 2014, 2015, https://www.defensordelpueblo.es/wp-content/uploads/2015/06/MNP_2014.pdf.

⁹⁹ Cristina Manzanedo, "Las calamitosas condiciones de internamiento en los CIE españoles," in Margarita Martínez Escamilla (Coord.), *Detención, internamiento y expulsión administrativa de personas extranjeras*, 2015, <http://eprints.sim.ucm.es/34492/1/FINAL.%20DIC%202015%20LIBRO%20CGPJ.pdf>.

¹⁰⁰ Cristina Manzanedo, "Las calamitosas condiciones de internamiento en los CIE españoles," in Margarita Martínez Escamilla (Coord.), *Detención, internamiento y expulsión administrativa de personas extranjeras*, 2015, <http://eprints.sim.ucm.es/34492/1/FINAL.%20DIC%202015%20LIBRO%20CGPJ.pdf>; Servicio Jesuita a Migrantes-España, CIE y Expulsiones Exprés, Informe anual 2014, 2014, <http://www.sjme.org/sjme/item/794-cie-y-expulsiones-expres>.

¹⁰¹ Cristina Manzanedo, "Las calamitosas condiciones de internamiento en los CIE españoles," in Margarita Martínez Escamilla (Coord.), *Detención, internamiento y expulsión administrativa de personas extranjeras*, 2015, <http://eprints.sim.ucm.es/34492/1/FINAL.%20DIC%202015%20LIBRO%20CGPJ.pdf>; Servicio Jesuita a Migrantes-España, CIE y Expulsiones Exprés, Informe anual 2014, 2014, <http://www.sjme.org/sjme/item/794-cie-y-expulsiones-expres>.

¹⁰² Cristina Manzanedo, "Las calamitosas condiciones de internamiento en los CIE españoles," in Margarita Martínez Escamilla (Coord.), *Detención, internamiento y expulsión administrativa de personas extranjeras*, 2015, <http://eprints.sim.ucm.es/34492/1/FINAL.%20DIC%202015%20LIBRO%20CGPJ.pdf>, Servicio Jesuita a Migrantes-España, CIE y Expulsiones Exprés, Informe anual 2014, 2014, <http://www.sjme.org/sjme/item/794-cie-y-expulsiones-expres>.

also been urged.¹⁰³ NGOs have highlighted the difficulties many internees have had to access medical reports on injuries.¹⁰⁴ These reports are of vital importance in cases of mistreatments. The Ombudsman has recommended handing reports on injuries to detainees and the supervisory judge.¹⁰⁵

In 2015 the Supreme Court ruled against Article 55.2(1) of the Regulation of Organic law 4/2000 that allowed naked strip and body searches.¹⁰⁶ Lack of privacy continues to be an issue. There is no special room for ill people, so they have to share the room with other detainees.¹⁰⁷ Communication between detainees and the medical staff is difficult because of the lack of interpreters, leading to situations in which other internees act as interpreters.¹⁰⁸ Regarding the visiting regime, frequent complaints include the time limit¹⁰⁹ and the existence of physical separation between visitors and detainees.¹¹⁰

Segregation of detainees. Convicted criminals awaiting deportation at CIEs are held in the same premises as other detainees who have not been criminally charged or convicted (see above under “Expulsions”).¹¹¹ According to a police trade union, the mix of ex-convicts with administrative detainees is one of the biggest problems in detention centres.¹¹² Academics have criticized this “administrativisation” of penal law whereby foreign prisoners are placed in facilities for administrative detention prior to criminal expulsion.¹¹³

¹⁰³ Recomendación 41/2013, de 12 de abril, formulada a la Secretaría General de Inmigración y Emigración del Ministerio de Empleo y Seguridad Social, para elaborar un protocolo de derivación sanitario (12000281).

¹⁰⁴ Cristina Manzanedo, "Las calamitosas condiciones de internamiento en los CIE españoles," in Margarita Martínez Escamilla (Coord.), *Detención, internamiento y expulsión administrativa de personas extranjeras*, 2015, <http://eprints.sim.ucm.es/34492/1/FINAL.%20DIC%202015%20LIBRO%20CGPJ.pdf>.

¹⁰⁵ Cristina Manzanedo, "Las calamitosas condiciones de internamiento en los CIE españoles," in Margarita Martínez Escamilla (Coord.), *Detención, internamiento y expulsión administrativa de personas extranjeras*, 2015, <http://eprints.sim.ucm.es/34492/1/FINAL.%20DIC%202015%20LIBRO%20CGPJ.pdf>.

¹⁰⁶ Servicio Jesuita a Migrantes de España, "Vulnerables Vulnerabilizados – Informe Anual 2015," 8 September 2016, <http://www.sjme.org/sjme/item/815-2016-09-18-07-03-41>.

¹⁰⁷ Cristina Manzanedo, "Las calamitosas condiciones de internamiento en los CIE españoles," in Margarita Martínez Escamilla (Coord.), *Detención, internamiento y expulsión administrativa de personas extranjeras*, 2015, <http://eprints.sim.ucm.es/34492/1/FINAL.%20DIC%202015%20LIBRO%20CGPJ.pdf>.

¹⁰⁸ Servicio Jesuita a Migrantes-España, *CIE y Expulsiones Exprés, Informe anual 2014*, 2014, <http://www.sjme.org/sjme/item/794-cie-y-expulsiones-expres>.

¹⁰⁹ Pueblos Unidos, *Situación actual de los centros de internamiento de extranjeros en España y su adecuación al marco legal vigente*, 2015, http://www.icade.upcomillas.es/images/Clinica_Juridica_ICADE/Informe_situacion_actual_CIE_junio_15.pdf.

¹¹⁰ Cristina Manzanedo, "Las calamitosas condiciones de internamiento en los CIE españoles," in Margarita Martínez Escamilla (Coord.), *Detención, internamiento y expulsión administrativa de personas extranjeras*, 2015, <http://eprints.sim.ucm.es/34492/1/FINAL.%20DIC%202015%20LIBRO%20CGPJ.pdf>.

¹¹¹ Asylum Information Database (AIDA), Country Report: Spain, 2016, http://www.asylumineurope.org/sites/default/files/report-download/aida_es_0.pdf.

¹¹² Denise Zani, Joana Oliveira, Antonia Laborde and Hugo Gutiérrez, "Are Spain's immigrant detention centres in breach of human rights law?" *El País*, 31 October 2016, http://elpais.com/elpais/2016/10/31/inenglish/1477905065_156869.html.

¹¹³ Centros de internamiento de extranjeros, Observatorio Criminológico del Sistema Penal ante la Inmigración, <https://ocspi.wordpress.com/cies/>.

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