NEEDLESS SUFFERING

IN 2017, THE CIES FUNCTIONED AS NEW LAZARETTOS, IN WHICH THOUSANDS OF MIGRANTS RECENTLY ARRIVED IN SPAIN SUFFERED NEEDLESSLY IN DETENTION CENTRES BEFORE MOSTLY WERE FREED.
The *Servicio Jesuita a Migrantes* or *SJM* (Jesuit Migrant Service) is a network of organisations in Spain that work to defend the rights of migrants and their inclusion in the community, by:

- Providing accompaniment to migrants, individually and collectively, for their integration into society, personal empowerment, and social and community participation.
- Providing services that reinforce this accompaniment: training, orientation, helping to strengthen other organisations, etc.
- Engaging in advocacy to promote legislation, policies and practices that guarantee and respect the human rights of migrants.
- The promotion of a culture of hospitality and inclusion: spaces for meeting, welcoming and friendship in the personal and community sphere, and tools for the positive management of diversity.
- The analysis of situations in which the rights of migrants are violated, seeking their causes and possible alternatives.

The *SJM* is a project of the Society of Jesus. It is an expression of the Society’s apostolic priority of working in the field of migration, internationally and in the Jesuit Province of Spain. The members of the SJM are those organisations linked to the Jesuit Province of Spain that work with and for migrants. The network is organized around the association *Servicio Jesuita a Migrantes España*, which has offices in Madrid (*Centro Pueblos Unidos*, San Juan del Castillo Foundation), Barcelona (*Fundación Migra Studium*), Seville, (*Asociación Claver*), Bilbao (*Fundación Ellacuría*), Valencia (*SJM-Valencia*) and Melilla.

[info@sjme.org](mailto:info@sjme.org)

[www.sjme.org](http://www.sjme.org)

**Author:** Josep Buades Fuster SJ

**Contributor:** Antonio Bohórquez Colombo SJ

**Members of the teams visiting the detention centres in 2017:**

Pueblos Unidos (Madrid): Brígida, Ángel, Teresa, Ashton, Juan Carlos, Ana Maria, Isabel, Louise, Patrick, Tomasz, Marta, Santiago, Ane, Concepción, Nieves, Alberto, Mariana and Lucía.

Migra Studium (Barcelona): Susanna, Montse, Rosa, Sara, Juan Carlos, Irina, Mireia, Pablo, Sebastián, María del Carmen, José Javier, Luis, Joicelyne, Victoria, Vicky, Miguel Inés and Margarita.

SJM-Valencia: Blanca, María, Cristina, Javier, Javier, Jorge, María Josefa, Isabel, Ignacio, Dolores, Jesús, Juan and Alberto.

Claver (Algeciras-Tarifa): Ana, Mavi, Mella, Pilar, Mercedes, Armando and Pep.
The title of the SJM’s 2017 report on detention centres is “Sufrimiento Inútil” (on in English, “Needless Suffering”). In 2017, thousands of migrants who had recently entered Spain irregularly were subjected to needless suffering in detention centres (called Centros de Internamiento de Extranjeros -CIEs- in Spanish).

This document is a shortened English edition of the original report. It includes the following:

- The executive summary of the report.
- A reflection on detention centres as centres of suffering, by retired judge Ramiro García de Dios Ferreiro, who controlled the detention centre of Aluche (Madrid).
- A reflection on the needless suffering in detention centres, as shown by figures provided by the Ministry of the Interior. The introduction also discusses the Spanish government’s plans to build more detention centres.
- SJM’s conclusions and recommendations.

The SJM is publishing this document in order to invite an international readership, who may not speak Spanish, to reflect on and discuss the issues raised in the report.

These following sections, which were included in the original report, are not included in this document:

- A section offering a reasoned interpretation of the numbers of expulsions, returns and detentions (within a broader framework of the figures on migratory movements).
- A critical reflection on the provisional detention centre in Archidona (in Andalusia), opened in facilities that were originally build as a prison (in spite of the fact that keeping detained migrants in a prison is against Spanish law).
- A critical reflection on detention centres based on the direct knowledge acquired by SJM staff in their programme of visits to detention centres in Madrid, Barcelona, Valencia, Algeciras and Tarifa.
- A summary of various court orders and Ombudsman reports issued by the Spanish judiciary and Ombudsman in relation to detention centres. These express concerns about the state of the facilities, the detainees’ health needs, the detainees’ access to legal representation and legal orientation, security, visits by NGOs, and various other issues.

Full original version in Spanish accessible online at:

https://sjme.org/gallery/informe-cie-2017-de-sjm/

EXECUTIVE SUMMARY

1. Throughout 2017, 28,572 people entered Spain irregularly: 21,971 people by sea and 6,293 by land. 20,672 return orders were issued, of which 5,272 were carried out: 4,249 for illegal entry, 1,022 for breach of the entry ban and an obligatory exit alternative for expulsion. 18,794 people were arrested for their irregular situation in Spain. 21,834 expulsion proceedings were filed: 18,081 for irregular stay and 2,062 for prior conviction. There were issued 4,917 expulsion orders, of which 4,054 were carried out: 3,041 from a detention centre (75.01%) and 1,013 without a prior detention measure. 8,814 people were detained in a detention centre: 7,559 in return procedures (86.76%), 1,203 in administrative expulsion (13.65%) and 57 in judicial expulsion (0.65%). There were 396 women and 48 minors officially identified. Within the CIE, the three common nationalities were: Algerian (2,775, 31.48%), Moroccan (1,608, 18.24%) and Ivorian (1,215, 13.78%). 1,381 applications for international protection were submitted, of which 395 were accepted for processing. There were 4,284 people released for lack of identification: the first cause of exit from the detention centre. The second cause was forced repatriation, suffered by 3,287 people, 37.23% of those detained.

2. The Ministry of the Interior authorized the use of a prison in Archidona as an interim detention centre, contrary to the provisions of the law and constitutional jurisprudence. The judges who authorized the detention of 576 Algerians and one Moroccan in the interim detention centre had not been informed of the illegal way in which the centre had been established. The facilities were put into operation in haste, did not guarantee adequate living conditions, and were completely inadequate for the custody of people who, by law, are only supposed to be deprived of freedom of movement, and are not supposed to be subject to a punitive prison regime. Hence, situations such as the tragic incident in which detainee Mohamed Bouderbala committed suicide. It should be noted, however, that the Bar Association of Antequera provided migrants with an excellent legal advice service.

3. SJM staff visited the detention centres in Madrid, Barcelona, Valencia, Algeciras and Tarifa. Some restrictions imposed on SJM staff by the directors of the detention centres in Madrid and Barcelona forced the SJM to reflect on the meaning of these visits.

4. Throughout 2017, the Ombudsman, after the visits of his staff to the detention centres, published his concerns about the following: the state of the facilities; healthcare services; legal advice services; socio-cultural assistance; security and information.

5. Court orders issued in 2017 dealt with the visiting rights of NGOs, the state of the facilities, the right to legal defence, the right of detainees to use mobile telephones, the right of visitors to take photographs of detainees who consent, and various other issues.
NEEDLESS SUFFERING

CENTRES OF SUFFERING

Ramiro García de Dios, Judge responsible for the Aluche (Madrid) detention centre between 15 December 2009 and 3 February 2018.

It is on the basis of more than eight years of judicial experience with detention centres — after many interviews with detainees, lawyers and NGO staff, after spending much time resolving petitions and complaints, and after many inspection visits — that I am able to describe the detention centres as centres of suffering and spaces of police impunity.

The Police’s model for detention centres, emanating from authoritarian and repressive legislation, not only involves the deprivation of liberty for persons who have not committed any crime, but also involves confinement in establishments of worse material conditions than prisons, under intense and afflictive police control, where detainees are subject to arbitrary authority.

This established model forgets that, legally speaking, detainees are supposed to be deprived only of their freedom of movement, and that they retain all other rights and freedoms recognized by the legal system. It forgets, above all, that the vast majority of detainees are people who have tried to exercise the basic human right to survival, escaping poverty, armed conflicts or catastrophes of various kinds.

Thus, the Police’s detention regime ignores basic principles of humanitarian management, such as proportionality between the means used and the objectives pursued, using the least restrictive intervention possible, specialized care for vulnerable people, and comprehensive respect for dignity.

Moreover, the Ministry of the Interior and the Police’s sub-system of detention managements routinely fail to comply with most of the provisions of Royal Decree 162/2014 of 14 March, which sets out the operating regulations and internal regulations for detention centres.

Since December 2009, judges have had to issue numerous court orders ordering measures aimed at guaranteeing the effectiveness of the rights of detainees, and at compelling the public bodies responsible to repair the deficiencies detected.

However, the public bodies responsible have repeatedly relied on the excuse of budgetary deficiencies, turning court orders into dead letter.

By way of conclusion, I find it necessary to highlight, as a result of direct experience, the importance of the various tasks of accompaniment, assistance, advice and advocacy carried out by the staff of the Jesuit Migrant Service. This is confirmed by the work shown in this report.

Much of my work of guaranteeing detainees’ rights would not have been possible without the rigorous and methodical work developed by the Jesuit Migrant Service, which has helped detainees to present complaints and petitions.

SJM staff have operated on the basis of the law, with a knowledge of the law, in a struggle to enforce the law, and I recognise them as my legitimate partners in my judicial functions.

Now that I am retired from my judicial functions, I am hopeful that together we will put an end to the barbarity involved in the existence of detention centres.
NEEDLESS SUFFERING

Miguel González Martín, Coordinator of SJM
Iván Lendrino Tejerina, coordinator of the SJM detention centre team

IN SOME SEAPORTS THERE ARE STILL OLD LAZARETTOS: FORTIFIED CONSTRUCTIONS IN WHICH SAILORS WERE HELD IN QUARANTINE.

IN 2017, DETENTION CENTRES FOR MIGRANTS COULD BE SEEN AS NEW LAZARETTOS: PLACES WHERE A THIRD OF THE PEOPLE WHO ARRIVED IRREGULARLY IN SPAIN BY SEA WERE DETAINED. TWO THIRDS WERE EVENTUALLY RELEASED, AND THE OTHER ONE THIRD WERE RETURNED.

There is less and less recourse to detention as a precautionary measure in expulsion proceedings, probably due to the significant increase in irregular entries (more by sea, rather than by land to Ceuta and Melilla), which has meant that the Spanish authorities have come to use the return procedure more often than the expulsion procedure. In 2017, 86% of detentions were for return and only 14% for expulsion. While the law allows the administration to seek judicial authorization for detention as a precautionary measure in cases of expulsion, in return proceedings the administration must seek judicial authorization for detention if the person concerned has not been returned after 72 hours after irregular entry, or has been apprehended after having violated an entry ban. In practice, one quarter of the people who entered Spain irregularly in 2017 were detained — one third, if we consider only those who entered Spain irregularly by sea. Among those who were not detained were people who requested international protection at the border, minors, people who showed signs of being victims of trafficking, and people whose health situation made it most advisable to send them to special humanitarian reception centres. But there was also some degree of arbitrariness in determining whom to detain, which calls into question the justice of the detention system.

Detention, as a rule, inflicts suffering on those whom it affects: random suffering, needless suffering, considering the percentages of detainees among people who have entered Spain irregularly, and the percentage of detainees eventually returned.

Throughout the year, there were several occasions when the Ministry of the Interior announced the construction of new detention centres with the purpose of increasing capacity, linking the construction project to a change of model that would allow detention in conditions of greater dignity both for the detainees and for the officials responsible for them. There are plans to build new detention centres in three places: Madrid, Malaga and Algeciras. Although the Ministry did not specify the location in Madrid, it is speculated that the new detention centre will be near the Adolfo Suárez de Barajas airport. The mention of Malaga provoked a unanimous protest from the political groups represented on the Malaga city council. It is speculated that, rather than build the detention centre in Malaga itself, the Ministry may build it somewhere nearby on the Andalusian coast — although this has not yet been determined.

The only construction project that is definitive is that of constructing a new detention centre in Algeciras (also on the Andalusian coast). On 1 June 2017, the Official State Gazette published a collaboration agreement between the Infrastructure and Equipment of State Security Management and the City of Algeciras, about infrastructures, which includes the domanial mutation, between the Ministry of the Interior and the City Council of Algeciras, of the current
facilities of the CIE de la Piñera and a plot of ten thousand square meters near the Botafuegos prison. There is considerable irony in the fact that this new detention centre, which the Ministry of the Interior had announced would be less prison-like than the existing detention centres, is being built next to a prison.

It was on 27 November 2017, in the middle of the controversy over the use of Archidona prison as a detention centre, that the Interior Minister presented the project for the new detention centre in Algeciras, announcing that it would become the largest detention centre in Spain, with capacity for 705 people. Although there is an argument for rationalizing the administrative and economic management of the detention system, it is worrisome that such a large detention centre is being built. **Large institutions can be dehumanizing, generating tension and hostility** (as could be seen in Archidona). The plan for the new detention centre includes the provision of spaces for library, leisure, sport, worship and healthcare, as well as multifunctional rooms for legal counselling, social assistance and NGO visits. However, it is a matter of concern that there are plans to segregate detainees, not only by sex, but also by national origin and religious identity.

The motivation for building new facilities does not only come from a desire to increase the number of people the State can detain. It also comes as a response to the **constant stream of criticism from the judiciary, the Ombudsman and various NGOs about the alarmingly deficient state of the current detention centres, especially the detention centres in Algeciras, Tarifa and Las Palmas**. These detention centres certainly should be closed, as there is no prospect of improving them so as to bring them up to a reasonable standard. And while these are probably the worst detention centres in Spain, conditions in many of the other detention centres are deteriorating.

As SJM is against the detention of migrants, SJM considers the construction of new detention centres to be objectionable as a matter of principle. Given the decrease in the number of cases of detention in expulsion proceedings, and the increase in the use of detention in return proceedings, the Ministry of the Interior should consider constructing open reception centres, rather than the planned detention centres. Ideally, these open reception centres should be smaller than the planned detention centres, although with the same provision of services as is currently planned.

**NO NEW LAZARETTOS ARE NEEDED.**

**A DIFFERENT MIGRATION POLICY IS NEEDED,** in which migrants have the flexibility to obtain residence and work visas, and have time to seek employment and an opportunity to start the process of cultural integration, whether or not they intend to remain in Spain in the long term. A flexible migration policy would reduce the need for migrants to attempt irregular entry into Spain. In the absence of such a policy, more investment is needed in open reception centres, where migrants can obtain legal advice and help with integration.
CONCLUSIONS AND RECOMMENDATIONS

IN 2017, DETENTION WAS USED IN THE FIGHT AGAINST IRREGULAR IMMIGRATION AT THE MARITIME AND LAND BORDERS OF SPAIN.

BUT IT WAS A MEASURE TO WHICH A MIGRANT COULD BE SUBJECTED OR NOT, ACCORDING TO RANDOM FACTORS. Detention was maintained in order to send a message to the Spanish public that the borders were being controlled, even though it did not deter those who felt forced by their circumstances to migrate to Spain irregularly.

Given that the most common reason for releasing detainees from detention centres is the recognition that the migrant cannot be returned because the police failed to document him/her, it is worth reconsidering an alternative to the detention of people who have entered Spain irregularly: their temporary accommodation in open reception centres during the documentation process.

A migration policy is needed in which migrants have the flexibility to obtain residence and work visas, and have opportunities to seek employment and to start the process of cultural integration, whether or not they intend to remain in Spain in the long term. A flexible migration policy would reduce the need for migrants to attempt irregular entry into Spain. In the absence of such a policy, more investment is needed in open reception centres, where migrants can obtain legal advice and help with integration.

The use of penitentiary facilities for the internment of foreigners, even on a temporary basis, as happened with the prison in Archidona, violates Spanish law (Article 62 bis 1 of the Ley de Extranjería) and constitutional jurisprudence.

Given all the issues raised in this report, it is essential to maintain the right of NGOs to visit detention centres. The directors of some detention centres only wish to recognize a limited, residual function for visits by NGOs. According to this restrictive view, NGO visits are acceptable only (for example) as a way of providing legal advice to migrants in the absence of an arrangement with the local Bar Association, or as a way of providing humanitarian assistance to migrants in the absence of an agreement with the Spanish Red Cross.

However, the presence of NGOs in detention centres serves a broader function. In addition to their humanitarian value, NGO visits have a preventive function (preventing violations of human rights), a corrective function (NGOs can help migrants to file complaints), and a systemic function (NGOs act as constructive critics of the system as a whole, calling for critical reflection on the practice of detaining migrants).