



DETENTION REPORT 2020

LEGAL SENSE AND POLITICAL NONSENSE

EMPTYING AND REACTIVATION
OF IMMIGRATION DETENTION
CENTRES IN A PANDEMIC THAT
AGGRAVATES THEIR SOCIO-
SANITARY DEFICIT

sjm

SERVICIO JESUITA
A MIGRANTES
España

The [Jesuit Service to Migrants \(SJM\) Spain](#) is a network that advocates for the rights of migrants and their full access to citizenship. The SJM is promoted by the Society of Jesus.

The SJM is made up of Jesuit social entities that work in Spain with/for migrants: [Centro Pueblos Unidos Fundación San Juan del Castillo](#) (Madrid), [Centro Santo Padre Rubio](#) (Madrid) [Fundació Migra Studium](#) (Barcelona), [Asociación Claver](#) (Sevilla), [Fundación Ellacuría](#) (Bilbao), [SJM Valencia](#), [Fundación Red Íncola](#) (Valladolid), Asociación [Atalaya Intercultural](#) (Burgos), [Centro Padre Lasa](#) (Tudela) and [Asociación Loiola Etxea](#) (San Sebastián).

There is a technical office in Madrid and a [SJM office in Melilla](#) providing legal assistance and monitoring Human Rights. The SJM also collaborates with the [Instituto Universitario de Estudios sobre Migraciones \(IUEM\)](#) of the Comillas Pontifical University and the [Diocesan Delegation on Migration in Nador](#) (Morocco).

SJM wishes to work for justice in all its dimensions. It accompanies and defends migrants at all stages of their migration process. SJM works in partnership with other organisations to prevent the causes of forced migration at the point of origin. It welcomes migrants in the Spanish Southern Border since their arrival in the territory. Through hospitality, it accompanies the processes of reception, integration, and citizenship; the processes of social inclusion, access to rights, full participation in society, the strengthening of associations, the management of cultural and religious diversity, the visibility of migrant women who work in domestic service, etc. SJM also works on the processes of exclusion: detention, the need to emigrate again and return. It is present in migrants' Detention Centres to ensure compliance with human rights standards. It accompanies people in return processes, also from other EU Member States due to the application of the Dublin Regulation. Furthermore, it raises public awareness and advocates for migration policies, integration, social coexistence, and cooperation. In this, it seeks the coherence of political measures.

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The title of the Immigrants Detention Centres (CIE, acronym for Centros de Internamiento de Extranjeros) 2020 Report of the SJM is **LEGAL SENSE AND POLITICAL NONSENSE**. It refers to the contradictory policy of the Spanish government on Immigration Detention Centres in 2020. Spain stood out in the European arena for its decision to **empty the detention centres** during the first state of alarm: this decision, full of good sense, had a **solid legal basis**, since the closure of international borders made it impossible to carry out returns. Instead, the government decided to **reactivate the detention** of migrants when the second wave of contagions was on the rise and the opening of borders remained highly uncertain. The government did so to demonstrate its alignment with the new EU immigration and asylum pact on the very day it was presented. It was a **senseless political decision**.

This document is a concise version of the original report:

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This concise translation omits the four main chapters of the report:

The first chapter reviews Immigration **Detention in times of coronavirus**. This section divides the year 2020 into three periods: the initial stages of the pandemic before the declaration of the first state of alarm; the process of emptying Detention Centres and the months in which Spain “survived” without immigration detention; and the problems caused by the reactivation of detention in the last quarter of the year.

The second chapter shows the development of the judicial and administrative processes that led to the **State assuming financial responsibility** for the mother and daughter of a Congolese **immigrant who tragically died in the Detention Centre of Madrid in 2011**: a case of medical negligence and lack of coordination between Administrations responsible for people in their legal custody.

The third chapter reviews other **rights of detained immigrants that are protected** by the courts, often following the initiative of Civil Society and the Ombudsman: how to investigate a complaint of torture or inhuman or degrading treatment; age determination (the detention of immigrants under 18 is prohibited); access to international protection before detention and in the detention centre; whether it is appropriate to punish with a fine or return for simple irregular stay in Spain...

The fourth chapter analyses the construction projects: one to reform the existing detention centres; the other to build a new detention centre in Algeciras (at the southern tip of the Iberian Peninsula) with capacity for 500 detainees. These **construction projects denote the Spanish government’s political commitment to immigration detention**.

EXECUTIVE SUMMARY

- **SJM teams visited the Immigration Detention Centres in Madrid, Barcelona, Valencia and Algeciras-Tarifa** until the eve of the declaration of the state of alarm. They maintained telephone contact with some of the detainees, the directors of the Detention Centres and some of the control courts during the emptying period. When internment resumed at the end of September, only the Pueblos Unidos visiting team was able to operate (with restrictions) in the Madrid detention centre, as the ones in Valencia and Algeciras were closed for building work, and the accidental director of the Barcelona detention centre had suspended visits.
- Spain stands out in Europe for its decision to **empty immigration detention centres with good legal sense** during the first wave of the pandemic. This contrasts with the **political senselessness of resuming detention** when the second wave of contagion began, and international movement remained restricted.
- The **lack of coordination of prevention protocols and contingency measures in case of contagion** by the General Commissariat for Aliens and Borders, which had to be drawn up by the directors of each centre in dialogue with the supervisory courts, was **regrettable**.
- The prevention protocols did not prevent **contagions in the Immigration Detention Centres**, imposing severe isolation measures amidst a climate of **anxiety and anguish** among the detainees, to the point of verifying **some suicide attempts**.
- **The State was liable to pay compensation for the negligence of the medical services** of the Temporary Stay Centre for Immigrants in Melilla and the Immigration Detention Centre in Madrid that led to the **death of Samba Martine** on 19 December 2011. The criminal and civil proceedings were very long and complicated, and got ahead thanks to networking, but the family and social organisations finally succeeded in getting the administration to acknowledge its responsibility.
- The report highlights several **rights of detainees to be guaranteed**: health care, full investigation of complaints of torture and inhuman or degrading treatment, recognition of minority even when evidence leaves room for doubt and referral to appropriate protection services, information, and processing of applications for international protection.
- The report presents situations that justify the **refusal of authorisation for detention**, namely when: the persons concerned are persons who express their wish to apply for international protection, there is doubt as to whether they are minors, the return order is not based on circumstances that actually aggravate the irregular stay...
- The **projects to reform** the existing immigration detention centres buildings are intended to comply with the **recommendations** of the **Ombudsman** and the **supervisory courts**, but reveal a **political commitment to immigration detention**, as confirmed by the **project to build a new centre** next to the Botafuegos prison in Algeciras.

PEOPLE TO BE RESCUED FROM THE SEA OF INVISIBILITY

Antonio Viera Rodríguez, Chaplain of the Immigration Detention Centre of Gran Canaria.

With regard to migrants, I would ask that legislation on migration be reviewed, so, while respecting reciprocal rights and responsibilities, it can reflect a readiness to welcome migrants and to facilitate their integration. [Pope Francis. Message for the World Day of Peace 2016.]

There is no doubt that the reality of Immigration Detention Centres in 2020 is marked by the COVID-19 health crisis, which was not unrelated to it. The emptying of the centres, with the establishment of alternatives to the detention of migrants, and their reopening once de-escalation has been completed, is the focus of this report by the Jesuit Service to Migrants on the reality and evolution of the detention centres over the past year.

In the Canary Islands, we were already concerned about the increase in arrivals of small boats, as well as the deportation of a large group of Malians despite the UNHCR warnings not to return them to Mali given its instability, in violation of their right to international protection.

We welcome and applaud the decision to vacate the detention centre, taken, at the time, by the supervisory judge for sanitary reasons, giving precedence to the detainees' right to health, put at serious risk by the conditions of "overcrowding" and the "lack of adequate controls". We also applaud his decision to transfer them to another type of accommodation that was closer to what is a dignified and effective reception, respectful of human rights. The open regime of those centres allowed us to accompany the young migrants in a more comprehensive and continuous way.

This fact highlighted the **unnecessary existence of Immigrant Detention Centres**. It is common knowledge that these centres systematically violate the human rights of detainees. Access to basic services such as: health services, hygiene measures, legal advice, translation and interpreter services, psychosocial care, etc., is scarce.

The report analyses this situation in detail, highlighting the fact that **Spain has survived with empty immigration detention centres**. In such a way that what appears in the Aliens Act as an exceptional measure, applicable only when all other avenues have been exhausted, in practice there is a disproportionate use and systematic abuse of detention, "costly, unnecessary and inhumane" facilities, as the SJM report 2019 *Ten years of looking the other way* denounces.

Unfortunately, the so-called "de-escalation" process also had its consequences for immigration detention centres. Towards the end of September, they were reactivated: what the report so rightly sees as the result of **political senselessness**. And, consequently, the violations of rights returned, including the prohibition of the entry of volunteers to some centres for "health reasons"; even, at some point, chaplains. Health reasons are now being used as a pretext for further isolating detainees.

The reopening of immigration detention centres and the return of deportation flights were contested by social platforms and organisations, as they are measures that criminalise forced migrants and violate their most basic rights. This report considers and studies all of this.

Behind the statistics **I invite you to put faces and stories to so many frustrated hopes and broken dreams, rescuing them from the sea of invisibility in which they dwell**. Make them feel that they are not alone, that there are many people who are committed to defending their rights

and dignity. Since there are many of us who open the doors of our hearts. Many, believers and non-believers, men, and women of good will, we are the ones who are ready to open locks, to tear down fences, to move mountains, to close these centres where Human Rights are systematically violated. People who make space in their homes, who wait on the shore to heal wounds of skin and heart, to cover with blankets of warmth and protection, people with open and outstretched hands, hearts that vibrate with the life of those who cry out for freedom, feet ready to serve and with the desire to truly live. There are many people who fight for the lives of those who no longer have the strength to fight, NGOs that make the invisible visible, associations and movements that give a voice to those who have none, who accompany and seek a response to so much incomprehension.

To conclude this prologue, I would like to dedicate a few lines to the acknowledgements: firstly, to the SJM team for their constant, contrasted, rigorous and critical work, pointing out alternatives to detention; and, to all the institutions, organisations and individuals who have contributed to this eleventh report with their vision. To all of them: thank you.

LEGAL SENSE AND POLITICAL NONSENSE

Spain stood out in Europe for **emptying immigration detention centres** during the first state of alarm: a decision taken with **good legal sense**, given that the closure of international borders made it impossible to carry out refoulements and expulsions. This contrasts sharply with the decision to **reactivate detention** when we were entering the second wave of contagions and the opening of borders remained highly uncertain. It was the **political senselessness** of demonstrating Europeanism in the worst possible way: by taking on the most repressive framework of the *New EU Pact on Migration and Asylum*.

The coronavirus entered immigration detention centres: in Las Palmas during the first wave, then in Barcelona and Murcia during the second wave. It could have been avoided with the prudence of not reactivating detention. Given the decision taken, **the General Commissariat for Aliens and Borders should have coordinated the development of COVID-19 prevention protocols and contingency plans in case of contagion**, instead of leaving each director to his or her own fate, with only the guidance of the supervisory judges.

COVID-19 is not the only disease or illness that enters immigration detention centres. Fear of contagion exacerbates the high levels of anxiety and distress suffered during detention. We cannot overlook suicide attempts by detainees, nor can we forget the part suffered by police and service personnel in the centres. Nor can we ignore illnesses such as HIV, tuberculosis, various mental disorders, etc. As every year, it is necessary to draw attention to the **insufficient health care** and the need to improve its diagnostic, treatment, and referral capacities. This report reports on the **patrimonial responsibility of the State towards the daughter and mother of Samba Martine**, who died in the Madrid detention centre on 19 December 2011 because she did not receive the proper health care there and in the Temporary Stay Centre for Immigrants in Melilla, a matter anticipated in the *Detention Report 2019*.

The political senselessness of reactivating immigration detention centres during the COVID-19 pandemic aggravates the consequences of the chronic deficit in social and health care. But there are **other rights of detainees that have been subject to judicial protection and that must be guaranteed in practice**, such as: the exhaustive investigation of complaints of torture or inhuman and degrading treatment, the determination of age, the treatment of people with a protection profile even before the detention centre or in the imposition of fines or expulsion when the offence is an irregular stay.

This report concludes with another reference to the **political nonsense of detention by analysing the construction projects to reform the existing immigration detention centres** and, above all, **the project to build a new centre in Algeciras** next to the Botafuegos prison. Written to generate the best impressions, the project does not manage to hide the dehumanisation that the high numbers of detainees will cause, nor the social image projected by a building behind the city's back, with poor communications and the penitentiary stigma.

If there is one lesson from 2020, it is that **Spain survived without immigration detention: the existence of detention centres is unnecessary**.

CONCLUDING PROPOSALS

Given that the reactivation of immigration detention in September 2020 took place in a European political context, the **Spanish government** must influence the **EU institutions**, within the framework of the New European Pact on Immigration and Asylum, to **refrain from adopting any new legislation that introduces or expands the possibilities of detention**, as could be the case with the proposed Regulation on the control of third-country nationals at external borders or the amended proposal for a Regulation on the common procedure for international protection.

As the **pandemic** drags on, **international travel remains restricted** and immigration detention centres are not immune to **contagion** among detainees and police and service personnel, the **Ministry of the Interior must again suspend detentions**.

In the event that immigration detention continues, the **General Commissariat for Aliens and Borders** will have to take a proactive role in **coordinating prevention and contingency protocols for COVID-19 that guarantee the rights to health** of detainees and police and service personnel, **without undermining other rights**, especially the right to receive **visits** from legal counsel, NGO staff, family and friends.

As long as immigration detention continues, the **Ministry of the Interior must improve the quality, services and operating protocols of the medical and health services**: thoroughness of medical examinations, transmission of information with other institutions involved in the reception of immigrants, communication of injuries and other health situations related to the exercise of some type of violence, prevention of self-harm and suicides, etc.

The **investigating courts** should be extremely diligent in **investigating complaints of torture or inhuman and degrading treatment** in immigration detention centres.

The **General Police Directorate** and the **State Prosecutor's Office** will have to consider the person as a **minor** when **medical tests show a margin of doubt, admitting the age marked on the subject's official identity documentation not invalidated or discredited** by the **issuing authorities** and **without evidence of tampering**.

The **General Commissariat for Aliens and Borders** should issue instructions to **detect protection profiles during the first police detention**, refraining from processing the return agreement and from requesting authorisation for detention. The **investigating judges** called upon to authorise detention should **refer to the competent institutions** those detained immigrants who express their willingness to request protection or in whom they detect a protection profile. **Police and Red Cross staff** in the **detention centres should provide information** on international protection and the procedure for applying for it.

The **investigating judges** competent to authorise detention and the lawyers providing **legal defence** have to **verify whether there are truly aggravating circumstances beyond the mere irregular stay** of foreigners with deportation orders, **not authorising detention** when these are weak or doubtful.

The construction of the new immigration detention centre in Algeciras next to the Botafuegos prison must be halted, and the planned investment must be used for open humanitarian reception facilities.

The **Jesuit Service to Migrants (SJM)** has groups visiting detainees in the Immigration Detention Centres in Madrid, Barcelona, Valencia and Algeciras-Tarifa.

SJM acknowledges and thanks all the collaborators who worked accompanying, documenting, and protecting the rights of detainees, for their work during the past year 2020. This report is written from their commitment, availability, and dedication to be close to so many people detained in Immigration Detention Centres.

Members of the teams visiting Immigration Detention Centres in 2020:

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