TEN YEARS LOOKING THE OTHER WAY

For ten years the Ministry of the Interior has looked the other way while civil society, the ombudsman and the supervisory courts have been facing an unsustainable reality.
The Servicio Jesuita a Migrantes or SJM (Jesuit Service to Migrants) 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, and by helping to strengthen other organisations;
- Engaging in advocacy to promote legislation, policies and practices that guarantee and respect the human rights of migrants;
- Promoting a culture of hospitality and inclusion by creating spaces for meeting, welcoming and friendship in the personal and community sphere, and providing tools for the positive management of diversity; and
- Analysing situations in which the rights of migrants are violated, examining their causes and possible solutions.

The members of SJM are the social entities linked to the Spanish Province of the Society of Jesus that work with migrants. The network is organized around the civil association Servicio Jesuita a Migrantes España, with offices in Madrid (Centro Pueblos Unidos and Centro P. Rubio of the Fundación San Juan del Castillo), Barcelona (Fundación Migra Studium), Seville (Asociación Claver), Bilbao (Fundación Ellacuría), Valencia (SJM-Valencia) and Melilla. Asociación Atalaya Intercultural (Burgos), the Fundación Red Íncola (Valladolid), the Centro Lasa (Tudela) and the Instituto Universitario de Estudios sobre Migraciones de la Universidad Pontificia Comillas (Madrid) participate in SJM network.

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ABOUT THIS DOCUMENT

The title of the Immigrants Detention Centres (CIE, after Centros de Internamiento de Extranjeros) 2019 Report of the SJM is *Ten years looking the other way*. It is the tenth report, counting the first three signed only by Pueblos Unidos, a member of SJM. It refers to the attitude of political actors who, despite electoral programs and speeches, look the other way when talking about detention of immigrants. In 2014, five years after the last reform of the Aliens Law, the Regulations for the functioning and internal regime of the CIE were published. It seemed a step forward for the protection of the rights of detainees, but their implementation has been insufficient. In short: we are disappointed.

This document is a concise version of the original report. It includes:

- The executive summary.
- *Ten years of CIE reports*: a few introductory words by Ivan Lendrino, coordinator of the SJM CIE team; a retrospective from the beginning of the reports to Samba Martine's death by Cristina Manzanedo, who volunteered at the CIE programme of Pueblos Unidos; some notes on the exercise of rigorous and gut-feeling reflection in the reports, by Santiago Yerga, now Director General of Migration in the Government of Spain, who also worked in the CIE program of Pueblos Unidos; finally, the critical look at a hostile reality by Elisa García España, member of the Christian Life Community (CLC) and professor of Criminal Law at the University of Málaga.
- The conclusions and recommendations of the SJM, this time under the title: *Looking straight ahead*.

SJM publishes this summary to facilitate reflection and debate on the questions raised in the report. It does not include the following sections of the original report:

- An analysis of the detention statistics.
- A critical reflection based on the visits to the CIEs of the SJM teams in Madrid, Barcelona, Valencia and Algeciras-Tarifa.
- Monitoring of violations of rights in CIEs.
- The five-year assessment of an unfulfilled regulation.
- And the assessment of the political and administrative world, which continues to look the other way.

Full version in Spanish is accessible online at: [bit.ly/informecie2019cast](bit.ly/informecie2019cast)
EXECUTIVE SUMMARY

1. The SJM teams visit the CIEs in Madrid, Barcelona, Valencia and Algeciras-Tarifa. The main purpose of the visits is listening and accompanying the detainee and detecting situations of vulnerability and possible violations of rights. Some teams are still facing difficulties in accessing the detainees due to limited space or not being provided with a list of detainees (so that they only can see people who requested to communicate with the NGO) or due to circumstantial impediments.

2. Throughout 2019, 6,473 immigrants were put in immigration detention. 3,871 were forcefully repatriated from a CIE (59.80% of the total number of detainees), 2,513 were released and 89 left the CIEs due to other circumstances (transfer, death). The number of immigrants deported from the CIEs decreased in absolute terms from 4,582 in 2018. In 2019, 2,164 immigrants (33.43%) applied for asylum in the CIEs. About 10 per cent of the applications were accepted for further examination.

3. The monitoring of the supervisory courts, the Ombudsman and the civil society organizations that visit the CIEs identify extensive areas of improvement in living conditions and guarantee of rights, such as: the infrastructural shortcomings of the CIEs, the identification of minors in detention, the treatment of persons with health problems, the difficulties and obstacles while applying for international protection, restrictions in interpretation and in the use of mobile telephones, obstacles to the access of NGOs, deficiencies in socio-cultural and legal assistance and the management of crisis. The constant call for improvement does not erase the fundamental demand: the end of detention and the closure of CIEs.

4. Five years after the Regulation of the CIEs, the police model with which they were conceived has not changed, there is still lack of transparency concerning the internal regulations of each centre, the serious infrastructural problems of most of the facilities have not been solved and many services do not comply with the regulatory provisions. Not all rights recognised by the law and regulations are guaranteed in practice.

5. The political debate on the CIEs is in a deadlock. Despite statements by subsequent Ministers of the Interior, construction projects such as Algeciras aim to maintain the police model. The political class, the Ministry of the Interior, the public prosecutor’s office and the judges responsible for authorising detention measures are looking the other way without paying attention to the contradictions between detention in practice and its regulations, or to the profound injustice of a measure whose application still too often happens arbitrarily.
All seven CIEs are empty as a result of the COVID-19 health crisis. An unexpected, but very symbolic situation to start with the tenth CIE report. SJM’s critical analysis of detention is not just the point of view of the dozens of NGOs that visit CIEs in Spain. It is also shared by so many volunteer citizens who have been entering the CIEs for much more than a decade to accompany the detainees: a simple demonstration of Hospitality. The report includes some of their testimonies together with the words of the detainees. It does not surprise that civil society is ahead of the Administration in social change. The reports published by the SJM throughout a decade want to add consistent elements to the voices of the civil society that denounce the detention after a reflected experience. The reports support their questioning with a detailed analysis of documents from the Ombudsman, figures provided by the Ministry of the Interior, as well as judgments and court orders.

Three people who are part of that active citizenship write the Preface of this report: two of them (Cristina Manzanedo and Santiago Yerga) used to be collaborators of SJM and contributed to previous reports; and the third (Elisa García) from the university and social commitment.

**From the beginnings to the death of Samba Martine**

Cristina Manzanedo Negueruela. Lawyer, volunteer at Entreculturas, she was a volunteer at Pueblos Unidos.

In 2009 Pueblos Unidos started visiting people detained in the Immigrants Detention Centre (CIE) in Madrid. It was not easy. We entered with private ID cards because at that time the Ministry of the Interior did not allow NGOs to visit the CIEs. Back then, they were non-transparent spaces where civil society had no capacity to intervene.

**Accompany and advocate.** From the beginning we wanted to combine a regular presence and direct help to people, with the monitor of those spaces managed by the National Police where everything was banned, where it was very difficult to obtain information and to guarantee individual rights. The first CIE report was published in 2010. It was followed by annual reports that were successfully disseminated and were very useful to keep a stable dialogue with relevant actors from the executive, legislative and judicial branches. Other strategic components of the programme were the collaboration with some media and alliances with other entities and social movements to build a stronger and more expressive social body.

I would highlight **three milestones** from the six years I worked for the CIE program. The first is an order from the CIE’s supervisory court in Madrid which, in 2011, forced the CIE to admit NGO visits despite strong resistance from the Ministry of the Interior. This order encouraged other supervisory courts to issue similar orders in the following years, opening up the possibilities of monitoring of the CIEs by the civil society. The second milestone was the approval of the CIE Regulations in 2014, after decades of operating without a specific legal framework. Pueblos Unidos put a lot of energy in advocating for this. Our assessment was that, although it was not fully the Regulation we wanted, it represented nevertheless an important step forward.

The third milestone was the creation of a team of Migra Studium to visit people detained in the CIE in Barcelona. Both Pueblos Unidos and Migra Studium belong to the Jesuit Service to Migrants in Spain. The step forward of our “cousins” in Barcelona laid the foundations for extending the framework of the CIE program to the whole of the SJM.
These were years of struggle, and a lot of collective work. I remember a very united, diverse and enthusiastic team. The program was improving year after year and we felt that we could help people. With a lot of effort, we also opened up some channels to introduce changes in immigration control policies.

The case of Samba Martine was a turning point in those years of struggle. Mrs. Martine was a Congolese woman who arrived in Spain in 2011 through Melilla. She was transferred to the CIE in Madrid after spending some time at the Centre for Temporary Stay of Immigrants in Melilla (CETI, After Centro de Estancia Temporal de Inmigrantes). Despite going to the medical services on up to ten occasions for numerous diseases she suffered from, no specific tests were performed on her case, nor was anything recommended for her disease, beyond prescribing her some generic medication. Mrs. Martine died on 19 December 2011 at the CIE in Madrid. Her death became a symbol of the public debate on the CIEs thanks to the work of civil society in different fields and the media. During these years Pueblos Unidos-SJM has collaborated in supporting the legal strategy around this case with other actors on three fronts:

**Criminal procedure**

C. D., mother of Ms. Martine, filed a complaint for possible manslaughter. After a lengthy procedure, the criminal proceedings ended in June 2019 with a final judgement by Madrid Criminal Court N. º 21. Although the sentence acquitted the only remaining defendant, it was very harsh against the CIEs:

(...) the defendant’s activity was one of the factors that led to Ms Martine's death, but it was neither the sole nor the most relevant factor.

(...) if the CETI report from Melilla had been received stating that she was HIV-positive, the importance of the disease and the need for immediate admission to a hospital would have been clear...

(...) after the last visit made by the defendant on 30 November, and until the day before she was transferred to hospital, Ms. Martine went to the centre’s doctor with various symptoms, sometimes stating that she had severe headaches that prevented her from sleeping, and she was treated up to seven more times by different doctors and nurses who could see the previous visits in the medical record and none of them agreed to either transfer to hospital or carry out any analyses. It would be unfair, in the end, to place the burden of Ms. Martine’s death on the defendant alone, and both the omissions of others and bureaucratic deficiencies played a significant role in the detainee not receiving proper treatment.

**Ombudsman**

In early 2012 a complaint was submitted to the Ombudsman about the death of Ms. Martine. In 2019, the Ombudsman announced that he was closing his proceedings in disagreement with the Secretariat of State for Migration. He criticized the fact that there had been no progress in the establishment of a referral protocol between centres, even though “the arguments for which the setting up of a health referral protocol between CETI and CIE is considered essential have been repeatedly transferred to the latter”.

**Claim of patrimonial responsibility**

By the end of 2012 C. D. and B. M., (mother and daughter of the deceased) filed a claim of patrimonial responsibility with the General State Administration for the causal link between the actions of the Administration and the death of Ms. Martine. In 2014, the Administration suspended the procedure until the criminal court proceedings were resolved. In July 2019, after the criminal judgment was pronounced, the administration resumed the administrative
procedure. Motions for resolution were again requested from the Ministries of Interior, Migration and Health. On 4 March 2020, the Presidency of the Government sent the file on asset liability to the Council of State for its mandatory opinion. Following the opinion of the Council of State, the Presidency of the Government will issue the final resolution, which we hope will be favourable to the claim of Ms. Martine’s mother and daughter.

An exercise of rigorous and gut-feeling reflection

Santiago Yerga Cobos. Lawyer, General Director of Migrations, he was responsible for the legal department of Pueblos Unidos.

With a certain irony, I cannot hide it, my colleagues of Pueblos Unidos and SJM have always repeated a phrase that I probably say more than I should: “From the rigour and not from the guts”. When I began to work in Pueblos Unidos in February 2016, and I found that I had to combine both the attention to the detainees in the CIE of Madrid and, at the same time, collaborate in the writing of a report that had already been of relevance in the field of immigration law, I thought that I had to try to combine both elements: rigour and gut-feeling. Gut-feeling, emotions, for the painful situations that I saw and felt, which I already dragged from previous professional stages. Rigour, because I believe that the way to improve the law is to use its own instruments, along the lines of what was already recommended in 1977 by the so-called Alternative Project drawn up by a group of German professors: to implode the system with its own tools.

For that we had to know. We did not know then, nor do we know now everything that happens to a detainee in the CIE. I had to go beyond the specific name of a person (and his/her pain): we had to broaden the knowledge if we wanted our contributions to go beyond the constant complaint, which of course I share, and to be able to raise, not only the awareness of the Administration, but also the awareness of society, which is so far from that space of suffering. This objective has been my humble contribution to the reports on CIEs of the SJM.

Today I am pleased that the SJM reports on CIEs are a national and international reference in the field for several reasons. First, because they make such painful situations of people deprived of their liberty visible. Secondly, because they give a voice to people who did not have one. Thirdly, because they are a necessary instrument for achieving respect for the human rights of all persons, beyond their legal status. The fourth, among others that remain hidden in this computer, because it addresses an appeal to society as a whole.

I quoted the German Alternative Project earlier. I want to say goodbye by paraphrasing one of its main proponents, which refers to criminal law: This society must not aspire to better CIEs, but to something better than CIE. The society of the future will appreciate this.

A critical look at a hostile reality

Elisa García España. Member of CLC and professor at the University of Malaga.

Immigration Detention Centres (CIEs) do not guarantee respect for human rights, often fail to comply with internal operating regulations and are ineffective for their purpose. After more than 30 years of CIEs we can affirm that these detentions are disproportionate and illegitimate, and these centres unnecessary and ineffective. The CIEs are an example of Europe’s hostile attitude towards the most disadvantaged migrants who are locked up for up to 60 days without this deprivation of freedom being really justified.
The judicial process of detention in an CIE cannot guarantee the protection of the most vulnerable people. To detain a migrant in a CIE, the police must explicitly ask for a court order. In the court system, the public prosecutor’s office which is the guarantor of rights (especially those of minors) also intervenes and it is possible for the detainees to have the assistance of a lawyer to defend their rights. Finally, the judge decides whether or not to authorise the detention. In spite of all these filters (police, public prosecutor’s office, lawyers and the judge), SJM and other organisations still identify detainees who are minors, physically and mentally ill people, victims of human trafficking, people with minors in their care and possible beneficiaries of asylum. As a result, the CIEs do not guarantee respect for human rights.

The CIE’s Regulation is not respected. The governments of Spain, whatever their political views, have shown very little interest in ensuring the respect of detainee’s rights. The reforms carried out, as a result of longstanding advocacy from the civil society, including SJM, are not fully implemented in all the CIEs. Some centres still do not have permanent medical assistance or the social and legal services as established by the regulation, nor do they have an Administrator. This report gives a good account of these and other failures and allows us to conclude that the CIEs do not comply with the requirements of internal functioning foreseen by the regulations.

Although the purpose of the CIEs is to ensure expulsions and returns, the percentage of people expelled or returned from these cells is low. From the total number of persons suffering from prolonged police detention in an CIE, only a few are expelled or returned. If the only function of an CIE is to guard foreigners in order to carry out removal from the territory, and this is only done in a few cases it is clear that people are suffering unnecessarily from this deprivation of liberty. This shows that the CIEs are ineffective in their work. Thanks to the efforts of SJM over the years, many of these unjust situations have been alleviated.

Despite the proven failure, the CIEs are maintained as a proof of the fact that the authorities are fighting against irregular migration. This a symbolic function of the CIEs is kept despite violating the rights of the most vulnerable. For 10 years now, SJM has continued to accompany these migrants and, through the efforts of its volunteers, to bring the suffering that is hidden behind the walls of the CIEs into the open. I believe that many feel grateful to SJM for its work in the CIEs for a decade, and I am also grateful for the invitation to write this prologue in the tenth report of its history. But more gratitude will be felt on the day we celebrate the end of the CIEs.
SJM Conclusions and Recommendations

Looking at the future of immigration detention, we cannot envisage anything else than the closure of the CIEs. At present, the legal system provides for alternative precautionary measures to ensure the enforcement of expulsion orders. According to the law, detention should be reduced to the minimum, a measure applicable only as a last resort.

The current rules requiring a request for judicial authorisation for detention when the return cannot be carried out within 72 hours are partly met: above all, when irregular entries into Spanish territory exceed the capacity of the CIE; also because it is impossible to return many persons of dubious nationality, or from countries with which Spain has not signed bilateral readmission agreements. Detention in the framework of border procedures is completely arbitrary: some people are returned from the police station, others go to the CIE, while others are referred to humanitarian reception centres or released without access to any social support. Moreover, if detention results in a release or in a return also happens randomly. A precautionary measure applied in such a random way is unjust.

The experience during the COVID-19 crisis shows that Spain has been able to live with empty CIEs. The progressive release of foreign detainees has been a good practice for which Spain has stood out in Europe. Its key was that the Ministry of the Interior looked faced the reality as it was: it was impossible to expel or to return migrants with closed borders and the risk involved in forced contact in tiny spaces for detainees and service personnel were too high. The strength of this approach was to base it on a correct interpretation of the legal system, therefore taking the right decisions.

Those people with their own homes or support networks were released first. The Ministries of Interior and Labour, Social Security and Migration then coordinated to relocate the other detainees to humanitarian accommodation centres. The Ombudsman, the competent supervisory courts, and the civil society also all played an important role. But two authorities were key: The Commissioner-General for Aliens and Borders, and the Aliens Public Prosecutor. The Commissioner-General issued instructions for the National Police not to apply for judicial authorisations for detention while the borders were closed. The Aliens Public Prosecutor instructed the aliens’ prosecutors to report unfavourably on any applications for judicial authorisation of detention they might receive.

As the lockdown measures are slowly easing, there is growing concern about the future of immigration detention policy. The Ministry of the Interior points out that future detentions will not depend on the easing of the lockdown in Spain, but on the opening of international borders and the effective possibility of executing expulsion and return procedures at the borders.

In view of the recurring complaints of social organisations, the Ombudsman and the supervisory courts about the poor infrastructural conditions of the CIEs and the deficiencies of their services, a reopening with a set limited occupation and appropriate health measures, would imply a considerable budgetary investment in times of crisis. There are alternatives to detention that are both more respectful of human rights as well as less burdensome for taxpayers.

It should be remembered that these places require an immense economic investment to pay for human resources, maintenance, social care, health care, supplies and other expenses that, during this crisis, have been especially re-evaluated. Allocating these types of resources to other
areas, would help to save lives. Therefore, it is concerning that a possible reopening would lead the authorities to invest such considerable budgets into a failed detention system, instead of addressing the multiple social realities that after the COVID-19 crisis will require an urgent response: reception, handling, health and social care spaces.

SJM has called on the two key authorities in the process of emptying the CIEs, the Commissioner-General for Aliens and Borders and the Aliens Prosecutor at the Public Prosecutor’s Office, to instruct the police not to apply for judicial authorisations for detention, and the aliens’ prosecutors to report unfavourably on applications for judicial authorisation for detention. Of course, SJM would like all investigating judges to better understand the problematic nature of detention and the CIE as an institution, in other to reflect deeply on whether there are ever cases for which detention should be exceptionally authorized. Of course, given the independence of the judiciary, no authority that instruct judges on what to do: more training is needed on this issue, starting in Law School, as well as within their permanent training schemes.

In the event that the Commissioner-General for Aliens and Borders and the Aliens Public Prosecutor disregard the call not to resume detention, SJM insists that they issue instructions to ensure that certain categories of vulnerable persons are not detained under any circumstances:

- **Young people who are not certainly adults.** When the result of the age test is 18, given the uncertainty of such tests, people should be considered as minors and protected accordingly.
- **Persons who wish to apply for international protection,** who should be given the opportunity to do so as early as possible in the identification process following their entry into Spanish territory.
- **Persons showing signs of physical or mental health problems.**
- **People with family and social relations, own home or support networks.**
- **People who show signs of having been subject to human trafficking.**

During the State of Emergency, the immigration reality has continued its dynamics, with irregular entries. People are still identified when they enter national territory. The administration’s humanitarian aid resources still carry out initial reception work. But, above all, the hospitality of civil society, which is enormous and silent, finally makes it possible to incorporate all the human, cultural, economic and labour contributions that these people offer into Spanish society.

As long as governments keep CIEs open despite all the reasons for closing them, they have to guarantee the quality of life of the detainees: care for dignity and privacy in shared spaces, adequate clothing, balanced meals, availability of toiletries, access to communications, socio-cultural activities, access for visitors, facility for accompaniment provided by NGOs (which implies the availability of appropriate spaces). They also have to ensure legal representation and assistance at the CIE, by providing appropriate spaces. The medical and health service should provide more and better services than at present: it would be more convenient to comply with the provisions of Article 14.1 of the CIEs Regulations that provides that the health care service should be under the responsibility of a doctor belonging to the General Public Administration, assisted in his or her tasks by at least one technical health assistant or university graduate in nursing. Successive governments will have to invest in something as difficult as reducing the anxiety and distress of people who know what they are losing by being expelled or returned.
As long as an institution that is so difficult to justify from a constitutional law perspective is maintained, it is not enough to improve the quality of life of detainees and the professionalism of the police officers responsible for custody and intervention in controversial situations. Its use must be reduced to the minimum, as a last resort in the management of deportation, exceptional also in the management of return procedures at the border. There are detainees who should not be in the CIEs according to the law, since they are entitled to some kind of protection: minors, victims of human trafficking, those with a refugee profile or in need of subsidiary protection, because they suffer from physical or mental health problems, etc. It is therefore necessary to improve the identification procedures, have more accurate means of proof and to have a switch in mentality that puts protection before deportation.

The story of “The Emperor’s New Clothes” helps to understand this dynamic, because the protagonists are determined to build a reality that does not hold up despite maintaining the appearance by repeating words. There is sufficient evidence to denounce that “The Emperor has no clothes”, that the CIE is a costly, useless and unnecessary system of detention and that the opening of new, larger, more impersonal, more dangerous and inhumane centres will come hand in hand with more minors and refugees detained, more suicides, more degrading and inhumane treatment, more isolation and obstacles to visits and less human rights.

The economic crisis caused by the COVID-19 pandemic may have important effects on migratory movements. As the last crisis dragged on, Spain was more of a country of emigration and transit than a country of immigration. It is plausible that the same could happen. The prolongation of unemployment situations among foreigners with temporary residence permits may increase the cases of irregularity. It is time to design and apply policies that soften the impact of the crisis, facilitate regularization processes and prevent future irregularities. It is not time to think about repressive immigration policies and detention as a show of force that only reassures public opinion in the country... because it does not have any deterrent effect on immigration. To new times, new policies.
Ten años de mirar el otro lado