HOSTILE TERRITORY Different Kinds of Hostility in Detention Centres
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: Centros Pueblos Unidos y Padre Rubio de la Fundación San Juan del Castillo (Madrid), Fundació Migra Studium (Barcelona), Asociación Claver (Sevilla), Fundación Ellacuría (Bilbao), SJM Valencia, la 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 re-migration situations 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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EXECUTIVE SUMMARY

- **In 2021, fewer foreign nationals were detained** due to three factors: the capacity reduction of places of the Detention Centres in application of the **COVID-19 prevention protocols**, the **refurbishment work** undertaken in some centres, and the **impossibility of carrying out expulsions and returns** to States whose external borders were closed.

- In their visits, the SJM entities noted that **the proportion of persons detained with expulsion orders**, including for mere irregular stay, which resolved proceedings initiated during the first period of confinement in 2020, **increased**.

- **COVID-19 infections occurred** despite the application of prevention protocols. The **prolonged isolation** imposed as a result of the infections had an impact on the mental health of the detainees, and its management caused deep **labour unrest among the police staff at the Hoya Fria Detention Centre** in Tenerife.

- SJM fixes its gaze in **three forms of hostility** observed in detention centres in 2021: obstacles to report and investigate police aggressions, deficiencies in medical and health care, and obstacles to visits by social organisations.

- **The Directorate General of the Police once again displayed opacity** by failing to reply to SJM’s request of data on irregular entries into the Spanish territory, arrests of foreigners in the framework of the sanctioning law on aliens, return agreements, expulsion orders, and foreigners in detention centres and in humanitarian aid.

- Prisoners who wish to report **police ill-treatment** encounter obstacles such as: being placed in solitary confinement, police presence during the medical examination, acceleration of forced repatriation, obstacles to accessing the channels for reporting the events that took place, harassment of those who do report, difficulties in identifying the persons responsible, etc.

- **The most notable shortcomings of the medical-health services** are the lack of inter-administrative coordination to know the clinical history of detainees referred from other institutions; medical-health care in the presence of police officers, care without an interpreter; the isolation regime in COVID-19 cases; the lack of attention to problems related to mental health; as well as the failure to issue and send injury reports to the corresponding judicial authority.

- When the supervisory judges of the **Barcelona Detention Centre** reinstated the **visits of civil society organisations** subject to the evolution of the pandemic, the director subjected them to **extremely restrictive conditions**.

- In 2021 there are **relevant rulings** on: criminal liability in cases of suicide of detainees, sufficient documentation to determine the age of a detainee without resorting to evidence, when the request for judicial authorisation of detention is inappropriate, the sanction of mere irregular stay or the duty to give reasons for expulsion orders issued under art. 57.2 LO 4/2000.

- **The political discourse fantasises about the new model of Detention Centre** that guarantees respect for the dignity and human rights of detainees: but the reality reveals the gap between the functioning of the Detention Centres and the regulations that govern them.
FOREWORD: FROM HOSTILITY TO HOPE

P. Stanko Perica SJ, director of JRS-South-eastern Europe.

We live in an era where real facts are difficult to present. Spin doctors use deceptive and manipulative tactics to emphasize misleading facts. Fake news invents alternatives to the reality to support conspiracy theories and deceptive speculations. Nudge units use indirect suggestions as ways to influence the behaviour and decision-making of groups or individuals. Public campaigns are often used to reframe or modify the perception of an issue according to the client’s interests. Politicians regularly use so called ‘cherry picking’, a practice of using selective facts to present to the public. These practices are not successful when they consist in merely telling lies. A simple lie or falsehood is easy to prove wrong. One can fact-check the assertions and denounce the deceiver. The falsity becomes convincing when it is a symbiont with human emotions. This symbiosis gives it persuasiveness and strength.

Our reasoning is not well equipped to cope with this mechanism of construction of reality. Our mind as fact-checker is accustomed to be attentive to simple deceives and to reveal physical inconsistencies. But when it comes to those that involve emotions, we’re at the blind spot. Beauty in mathematics is seeing the truth without effort, a famous mathematician once said. But majority of truths are not of purely mathematical nature. That is why love is blind, but so is hatred. A flammable combination of ignorance and bias has an explosive power. This is the force that can justify any kind of radicalism, and even the human rights restrictions. How easily and how subtly we become uninterested and oblivious.

Our power of understanding reality is an ability that must be trained. Obviously, we cannot become computers that have no emotions and therefore are not biased. But we can and must became more mature and self-conscious, as invited by the Delphic maxim γνώθι σε αυτόν (know yourself). We also can and must be well informed in order to recognize false facts. But even a perfectly emotionally balanced and informed person will remain just an observer, maybe critical and cynical, but just a bystander. What we need to do, to put it in the famous words of pope Francis, is to ‘get our hands dirty’. We need to get involved, we need to touch the painful reality with our hands, in order not only to get to know it but also to change it.

The annual report on immigration detention centres in Spain is a fruit of this kind of approach. It was compiled by the people who dived into an awkward reality of these un-convicted convicts. One can read it as the collection of information, or as an invitation to revolt. But maybe the deepest and the most efficient reading is the one that allows this report to affect us, i.e., our emotions. When the JRS volunteers arrive in Bosnia and see the migrants stranded there, the first impression they share is the feeling like being in an alternate reality, a world so much different than the one of abundance and prosperity that they are used to. Then they share how the encounter with the suffering people changed their perspective, the importance of their life priorities, the burden of their problems. It is walking the path from harshness to gentleness, from stiffness to compassion, from hostility to hope. When we do this emotional shift, we’re one step closer to restoring dignity of the detainees.
DETENTION OUTLOOK IN 2021

My first thought was that it was just like a prison, exactly the same, except for the difference that visitors do not have the same access impediments as inside a prison. I see the Piñera Detention Centre as an old and dilapidated prison, and the future Botafuegos Detention Centre as another prison, more modern and adapted, but a prison.

If you ask me what a Detention Centre is, I would explain the theory: a place where they lock up people who are caught crossing the border irregularly or in the street without documentation -and some aggravating circumstances-, until they decide whether to remove them from the country, although sometimes they get confused and do not expel them; and I would explain the practice: as prisons where they lock up people who have done nothing.

[Erika. Trainee student visiting Algeciras Detention Centre.]

2021 was a unique year, with Detention Centres empty or with reduced occupancy for varying lengths of time. The Detention Centres in Madrid and Barcelona operated practically throughout the year, only limiting the numbers of persons detained due to the following combination of factors:

The first is the application of the COVID-19 prevention protocols designed by the management of each detention centre and endorsed by the control judges throughout 2020 (it is striking that, one year later, there is no common protocol adaptable to the architectural peculiarities of each centre and that some detention centres have not published their own).

The second was the futility of detention during the months when other states refused to readmit persons returned or expelled for health reasons, notably Algeria and Morocco. Until March Morocco readmitted its nationals on Royal Air Maroc aircraft landing in El Ayoun. Algeria readmitted its nationals on a few occasions, mostly by sea.

The third was the refurbishment work at the Valencia and Murcia Detention Centres: once the work at Valencia was completed in June, the detainees were transferred from Murcia so that the work could begin there. The Algeciras Detention Centre resumed operations in January, also with limited numbers, once the renovation work was completed. On the other hand, it remained empty between July and December, except for a few days in September when there were a few detainees. Detention was also interrupted at the Las Palmas and Tenerife Centres between the end of June and the beginning of July, remaining empty until the end of the year.

Visitors to the Detention Centres in Madrid, Barcelona and Valencia noted a greater balance between the numbers of detainees on expulsion and refoulement grounds than had been observed in the last five years, when around 90% of the detainees had been on refoulement grounds. The Pueblos Unidos visiting team at the Madrid Detention Centre observed that quite a number of the detainees with an expulsion cause for mere irregular stay had orders issued in 2020, specifically during the first period of confinement. The most common pattern was detention and documentary checks on journeys to work, in the same town or not, even between several provinces in the case of seasonal agricultural workers. At the time, and for quite some time, the closure of the external borders prevented the enforcement of expulsion orders: it was a kind of retaliation once
they were no longer effectively non-removable. The visitors also perceived higher proportions of people with nationalities other than Moroccan and Algerian: Colombian, Albanian, Georgian... On the other hand, while there were inmates in Las Palmas and Tenerife, their Moroccan, Mauritanian, Senegalese... nationalities reflected well the migratory dynamics towards the archipelago. In Algeciras, a few Moroccans with expulsion orders stayed for about a week in January to be expelled via Madrid, the rest being Algerians who stayed for about sixty days before being released and replaced by others: as if in an attempt to keep a hold in case Algeria decided to readmit some of them at some point.

The application of prevention protocols did not prevent outbreaks in Murcia and Tenerife at the end of January and in Madrid in August. The Tenerife outbreak affected some thirty inmates, one of whom had to be hospitalised. The Spanish Confederation of Police denounced the lack of protective equipment for staff, the inadequacy of prevention protocols and the poor structural and material conditions of the detention centre. In Murcia, four detainees tested positive on 31 January and had to suffer isolation in the Detention Centre. Three detainees released from detention tested positive and had to undergo isolation in care facilities in the region.

Health problems other than the coronavirus should be noted: for example, in February, the attempted suicide of a detainee suffering from depression and other mental health problems, who was surprisingly subjected to solitary confinement. The testimonies of various shortcomings in medical and health care are worrying and reveal other forms of hostility: lack of interpreters, care in the presence of police officers after violent episodes, lack of coordination with other health care institutions, disrespect, etc.

The anomalous use of detention is also notorious: as when some Senegalese recently disembarked in the Canary Islands and released had flown to the Peninsula by their own means, being arrested at Barcelona airport and detained in the Zona Franca Detention Centre on the grounds of refoulement for illegal entry, despite the judicial doctrine that does not allow detention for this reason when judicial authorisation has not been requested during the 72-hour period of police custody immediately after illegal entry or in contravention of the entry ban.

A certain degree of conflict was noticeable in the Detention Centres despite the limited detention numbers, which provides a favourable margin for police officers and service personnel to have provided more humane treatment to detainees. However, civil society organisations visiting detainees in the Aluche Centre submitted several complaints to the Ombudsman denouncing physical and verbal aggressions against detainees by police officers of which they have received testimonies and gathered evidence. In addition to these testimonies, the organisations observe the negligence of the medical services when assisting a detainee with injuries, as they do not issue the corresponding reports. They also denounce the acceleration of the repatriation of victims or witnesses of violence, often without prior notification. In addition, there is a lack of diligence in the processing of applications for international protection within the detention centre. In addition to these realities, observed directly by the SJM, there are obstacles to visits of detainees systematically placed by the management of the Barcelona Detention Centre to the Migra Studium Foundation team, religious services and other entities.
The SJM’s perspective focuses on three forms of hostility observed in the detention centres in 2021: police aggression and obstacles to relevant complaints and investigations; chronic deficiencies in medical and health care; and obstacles to visits by civil society organisations. This is not a subjective view, exclusive to SJM and other civil society organisations. The cases of hostility observed in the three fields are corroborated by the Ombudsman, whose recommendations and suggestions are very expressive, as well as by some judicial decisions.

As in previous years, it is interesting to study the main judicial decisions that protect other rights violated in relation to detention (also refoulement and expulsion proceedings of which it is a precautionary measure), which are worth reviewing. Although the selection is normally limited by the publication in 2021, there are two rulings from March 2022 that should be studied so as not to expose a doctrine that was established in 2021 but is now obsolete.

It is also worth doing a brief follow-up of the political treatment of the Detention Centres in the General State Budget Law and in the session diaries of the Interior Commission of the Congress of Deputies, especially regarding the construction of the new Algeciras-Botafuegos Detention Centre and the reform of the suppressed Fuerteventura-Matorral Detention Centre.

It is always necessary to correct the view on detention based on the official figures provided by the Ministry of the Interior through the Transparency Portal. But the Ministry of the Interior shows opacity where transparency is required by law.
CONCLUDING PROPOSALS

The Interior Committee of the Congress of Deputies would not easily endorse the chimera of the "new model that guarantees respect for the dignity and human rights of the persons detained", if it commits to closely and thoroughly observe the reality of the Detention Centres in dialogue with the supervisory judges, the Ombudsman and the civil society organisations that visit the detained persons. The detention centres are still far from complying with the current regulatory framework.

The Ministry of the Interior must explain why it allocates money for the reform of a Detention Centre suppressed by Order of the Minister of the Interior 675/2018, of 25 June, published in the BOE of 26 June as a result of a political initiative of the parliamentary groups that support the Spanish Government, and whose preamble explains why it should be definitively suppressed.

Legal actors (legal defence, prosecution and judiciary) must be extremely diligent to ensure that the following profiles are not detained: teenagers whose age of majority is in doubt; persons whose return agreements have not been executed within ten days of being issued and who have been released; persons with expulsion orders for mere irregular stay, etc.

As long as the institution of detention is maintained, it is necessary to ensure respect for the regulations that govern it, preventing discrimination between centres in which each foreign person is detained. In this sense, it is necessary to have internal rules in each centre accessible to the public, which adapt the Regulation governing the operation and internal regime of the detention centres to the circumstances of the facilities.

Specifically, it is necessary to have a regulation of visits by civil society organisations to persons held in detention centres that extends the best practices currently in place and prevents arbitrary restriction by the management of each centre.

The dignity of foreigners held in detention centres must be guaranteed by accepting and implementing the recommendations and suggestions of the Ombudsman, as well as the rulings of the supervisory judges on:

- The right to physical and mental health of detainees, amending the technical specifications governing the medical-health care contract accordingly.
- The right to the integrity of detainees, by maximising the prevention, detection, investigation and punishment of assaults in detention centres, especially by police officers.

The experience gained during the pandemic with the treatment of foreign detainees who tested positive for COVID-19 calls for a reflection on the conditions of prolonged isolation to which they are subjected to prevent a negative impact on mental health.

The General Directorate of the Police must provide the requested data within the deadline according to article 20.1 of Law 19/2013 on transparency, access to public information and good governance.
HOSTILE TERRITORY