

Universal Periodic Review
Joint Submission for Review of Spain
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Submitted by:



VIVAT International is a Non-Governmental Organization with a membership of more than 25,000 from 12 Catholic Religious Congregations, working in 120 countries to promote human rights through advocacy at international and local levels. VIVAT International addresses human rights issues with particular focus on the rights of children, women, and eradication of poverty, sustainable development and the culture of peace. It has Special Consultative Status with the Economic and Social Council of the United Nations (ECOSOC) and is associated with the United Nations Department of Global Communications (DGC).



The Company of the Daughters of Charity of Charity of St. Vincent de Paul was founded in 1633 by St. Vincent de Paul and St. Louise de Marillac. Recent survey of 2021 confirms that there are nearly 13 thousand Sister living and working in 97 countries and five continents of the world. They engage in ministries with people who live in poverty and accompany them to work for their own transformation through education, social, health and pastoral ministries. Through these ministries, they advocate for justice and human rights and bring the voices of those who are poor to the global conversation through their representation at the United Nations in Geneva and New York. They see the Sustainable Development Goals as part of the core Vincentian values and use it as a means to build international cooperation and solidarity among the Sisters in their mission with those who are poor.



ESPAÑA

VIVAT International Espana is the local branch of VIVAT International in Spain. Since 2015, VIVAT International Spain, formed by 7 religious congregations, is constituted as a collaborative platform for the realization of the network's common mission with migrants.

INTRODUCTION

1. This joint submission to the Universal Periodic Review of Spain is prepared by VIVAT International, The Company of the Daughters of Charity of Charity of St. Vincent de Paul and VIVAT Espana. The coalition worked in collaboration with Jesuit Migrant Service in Spain and other participating NGOs to raise the concerns in this submission. We are a faith-based NGOs with ECOSOC special consultative status.
2. The coalition acknowledges the progress made by Spain in fostering human rights in the country as well as commitments towards implementation of the previous UPR cycles though areas requiring further attention exists.

EXECUTIVE SUMMARY

3. This Universal Periodic Review (UPR) submission addresses a critical human rights issue as it pertains to the protection of human rights of migrants in government-operated **Foreigners' Internment Centers (CIE)** in Spain.
4. Regarding the abuse of the rights of migrants interned at CIEs, reports compiled by collaborating NGOs and other pressure groups which VIVAT International in Spain collaborated with raised two key concerns about the CIEs run by the Spanish government:
 1. **Abuse of migrants' human rights by Police authorities in the internment centers and lack of access to NGOs to the detention facilities**
 2. **Insufficient access to health care services migrant detainees**
5. This submission will address these areas by proposing specific recommendations geared towards improving the human rights conditions of the inmates of the CIE internment facilities across Spain.
6. The data collected and analyzed for this submission is gathered first hand by concerned NGOs who collaborated in conducting the research that produced this submission and from which it derives its credibility. The research spans across the last two previous UPR cycles of Spain.

A. ABUSE OF MIGRANTS' HUMAN RIGHTS BY POLICE AUTHORITIES AND LACK OF ACCESS TO NGOs AT THE INTERNMENT FACILITIES.

Legal Framework

7. Since the 3rd UPR cycle of Spain, the country continues to upgrade its human rights protection mechanisms. The state engages in the negotiation process of the Common European Asylum System targeted at the stronger safeguards for seekers of international protection.

8. The amendment enshrined in the Organic Act No. 4/2015 paves way for a special regime for the autonomous cities of Ceuta and Melilla.¹
9. Organic Act No. 5/2015⁹⁰ domesticated Directives 2010/64/EU and 2012/13/EU into national law. This legal safe net is to guarantee that "persons subject to repatriation proceedings receive legal aid and as well as access to the services of an interpreter".²
10. There were amendments to the legislations on incommunicado detention or imprisonment pursuant to Organic Act No. 13/2015, which made them compliant with Directive 2013/48/EU.³
11. Prior to these amendments, the previous rules suspended the fundamental rights of detainees during incommunicado detention but the new amendments nullified the suspension of those fundamental rights.⁴
12. The Act additionally guaranteed the right to have a third party informed upon deprivation of liberty thereby ensuring a detainee's right to communicate with third parties, including consular authorities, while deprived of liberty.

Our Findings

13. The foregoing notwithstanding, our findings point to ongoing records of contentious practices in the CIEs. Pueblos Unidos reports that 29.73% of the 3,091 expulsions carried out were from CIE (919); 33.67% of the 597 were forced returns while departures stood at 201. A total of 54.82% of the departures from CIE were due to forced repatriation (1,120), with 42.58% of the total 870 due to release while 2.59% for other causes (53).
14. The proportion of interned persons tagged with expulsion files which the Ministry of the Interior rigidly classified as "qualified" is increasing and is presented as a justification for the internment practices. The Ministry of the Interior claimed only one out of three persons detained for refoulement are returned. This renders the detention practice questionable and risks breaching the Refugee Convention as pertains to non-refoulement which Spain is a signatory to.
15. The Ombudsman released elaborate recommendations, suggestions and reminders of legal duties of the CIE of Algeciras and in the other CIEs. Regardless, the CIEs serially show no restraint in the mental and physical pain and torture meted out to inmates at internment centers. Envisaged in the articulations of the Organic Law 4/2000 of 11 January 2000⁵ as the last of the precautionary measures, this practice has become the most harmful and often disproportionately resorted to.
16. VIVAT Espana and collaborators reports there are CIEs that continue to obstruct visits by civil society organizations and legal aids by the Immigration Department. Lack of privacy during medical consultations and visits are regular experiences.
17. VIVAT Espana, the Jesuit Migrant Service (SJM) and collaborating partners who accompany the detainees testify to the CIEs recurrent and unresolved shortfalls in the

condition of the internment facilities. There are also inadequacies in critical services delivery as well as constant situations of violence in detention centres. This marks out these centers as breeding grounds for perennial hostile treatment and human rights violations by the administration. This position is buttressed by the apparent reluctance of the police administration in providing credible information on the management of these facilities thereby giving way to administrative impunity.

18. The Jesuit Migrant Service, one of VIVAT Espana partners, reported that in 2023, internment was practically absent from the public debate, in the legislative exercises of the Commission of Interior of the Congress and in the electoral programs. It appears the situation of the CIEs is of little concern to the legislative bodies, as well as to the political parties. Whatever momentum that is generated in the denunciation of this precarious situation is only largely sustained through the efforts of concerned NGOs and citizen platforms. The non-committal posture of the greater Spanish society, the media and the political establishment is easily perceptible.
19. In 2023 the SJM visiting teams to the CIE verified that amongst those interned were citizens of Bulgarian, Croatian and Romanian nationalities. The fact that the incarceration of nationals from European Community is allowed to go on in these centres is indicative of the level of impunity and illegality of the CIEs. This also calls into question the legitimacy, proportionality, appropriateness and effectiveness of the internment process, as well as the expulsion procedures itself.

20. RECOMMENDATIONS

We recommend that the government of Spain:

- a) Discontinue the practice of internment of European nationals in these facilities.*
- b) Remove all illegal barriers obstructing migrant detainees from reporting human rights abuses.*
- c) Ensure greater transparency on how the facilities are being administered.*
- d) Create spaces and encourage public debates on the entire internment procedures*
- e) Respect the Refugee Convention on treatment of migrants which the country a signatory to.*
- f) Ensure authorities concerned provide adequate privacy during medical consultations and visits.*
- g) Work towards definitive suppression of CIEs and of any such model of deprivation of liberty in the context of migration on account of CIE's dehumanizing policy.*

B. LACK OF ADEQUATE HEALTH CARE DELIVERY

Legal Framework

21. The leading judges of the CIE of Madrid adopted a new agreement requiring the adoption of seven⁶ measures for the improvement of health care in internment centers for foreigners.

22. The Control Courts of the CIE of Madrid acknowledges in the **text of the agreement**⁷ the shortcomings and problems of the health care provided in the CIE, directing the Directorate General of Police to adopt certain measures for its improvement. The agreement admits that in providing the services that have been in practice so far, the current regulations are being violated, both those related to health issues and those regulating the operation of the internment centers for foreigners (Royal Decree 162/2014)⁸.
23. The agreement therefore requests the Directorate General of the Police, responsible for the coordination and management of CIEs, to modify the technical specifications for contracting examinations and health care services in CIEs. The scope of this modification would affect all centers in Spanish territory.
24. After the meeting held almost a year ago at the judicial headquarters, the examining courts with surveillance and control functions of the CIE of Madrid requested a report from the head of the Medical Service (part of the administration), where the condition of services provided by Clínicas Madrid S.A, the company awarded the contract since 2012, was detailed. This request was motivated by the health proposals⁹ presented by the social entities that denounced constant deficiencies of the services in view of the high number of complaints from the inmates. On November 16, 2022, the notification was received with the agreement signed by the three judges who acknowledged the serious deficiencies in health care.

Our Findings

25. Civil society organizations celebrate the meagre progress made towards the improvement of health care services in the CIE. However, this submission advocates for the involvement of public administrations in holding to account those responsible for the constant deficiencies with a view to ending the outsourcing of health services to private companies.
26. Encouraged by the silence of the Prosecutor's Office, Clínicas Madrid S.A. denies any irregularities in the provision of health care. For their part, the management of the CIE of Madrid and the General Commissariat of Foreigners and Borders are in agreement with the need to make changes in the current technical specifications¹⁰ for the contracting of medical examinations and health care in the internment centers for foreigners in order to correct and improve the services.
27. However, it is our position that the authorities mentioned above should assume responsibility for the disregard of the court orders and recommendations of the Ombudsman, thereby perpetuating a failure to comply with current regulations and significant deficiencies in the service. The governmental agreement issued in May 2023¹¹ by the same judges already mentioned addressed the violation of several rights, such as patients' privacy arising from continuous police presence in consultations, lack of medical examination prior to repatriation and the delivery of health reports to patients, as well as obstacles to the correct issuance and sending of injury reports.

28. The agreed measures include the extension of the nursing shifts to guarantee a 24 hours a day basic health care, as well as the conclusion of the necessary agreements to provide specialized medical care that cover emergency hospitalization needs. This measure solves the problem of continuity of care during the night and makes possible the referral of inmates to the emergency room under the criterion of qualified health personnel and not the police.
29. Psychological care is presented for the first time as a need to be implemented in the centers, with expert personnel attending to mental health aspects. The expert personnel may assess and refer inmates, if necessary, to a psychiatric specialist.
30. The psychological care also provides guidelines on the storage and dispensing of medication, recognizing that the negligence in management of narcotics and psychotropic drugs which clearly not up to date. Neglect of the needs of those undergoing pharmacological treatment is having harmful repercussions for their health. The agreement calls for a change in the medication supply system and compliance with prescription dispensing regulations.
31. In a report VIVAT International Espana and other participating NGOs (**SJM - Pueblos Unidos, Observatorio de Derechos Humanos Samba Martine, Karibu and Coordinadora de Barrios and Mundo en Movimiento**) co-signed with CIEs in Madrid, the civil society organizations welcomed the agreement aforementioned, but underscored the fact that the modification of health care contracting specifications is insufficient to solve the serious deficiencies and negligence that have been recognized.
32. The NGOs that co-signed the report hold that the signing of agreements or contracts should cover the needs of hospitalization, specialized care, transfer to health centers, creation and custody of medical records and everything related to pharmacy **should be done through the coordination of public health services in which the CIEs are territorially attached**, avoiding an increase in the budget allocation in favor of private companies.
33. This approach we reckon is the appropriate measure that safeguards the quality of care in the space of penitentiary architecture under exclusive police custody. Thousands of people have passed through the various internment centers for foreigners over the years; many of them have been exposed to unnecessary contagions or suffered serious illnesses without the necessary assistance especially in the cases of mental health of inmates. There are even those who have lost their lives inside a CIE. It is urgent that measures be taken to guarantee the protection of the safety, integrity and health of the people detained in CIE.

34. RECOMMENDATIONS

Aligning with all NGOs dedicated to the defense of the rights of persons deprived of liberty in these centers, this coalition recommend that the government of Spain:

- a) *Comply with the provisions of the agreements reached on health proposals by the lead Judges that arbitrated on the CIE of Madrid.*
- b) *Ensure the implementation of agreements or contracts cover the needs for proper medical attention and procedures*
- c) *Ensure as recommended in the 3rd cycle “that all those seeking international protection have access to just and individualized assessment procedures; to protection from return, without discrimination; to an independent mechanism to suspend negative decisions; and in particular, that the practice of summary return of migrants in Ceuta and Melilla be prohibited”¹²*
- d) *Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol*
- e) *Work towards the eventual closure of all CIEs and enforce the current legislation that demands holding to account those responsible for the illegalities committed the facilities*

Notes

¹ See also “Letter from OHCHR on Implementation in 3rd Cycle” (2020) p. 6

² For more information, see Spain’s Interim Report (2018), p. 52.

³ Directive 2013/48/EU of 22 October 2013 on the right to the assistance of a lawyer in criminal proceedings

⁴ This allows a more specific modulation to the circumstances of the case, which will have to be stated in a reasoned and only if there is either an urgent need to avoid serious adverse consequences for a person's life, liberty or physical the life, liberty or physical integrity of a person or an urgent need for immediate action by the investigating authorities to avoid immediate action by the investigating authorities to avoid seriously compromising the criminal proceedings. For more information, see interim report (2018), pp.23-24.

⁵ <https://www.global-regulation.com/translation/spain/1453904/law-organic-4-2000%252c-of-11-january%252c-on-rights-and-freedoms-of-foreigners-in-spain-and-their-social-integration.html>

⁶ <https://www.mundoenmovimiento.org/wp-content/uploads/2022/11/Acuerdo-CIE.pdf>

⁷ Ibid

⁸ <https://www.abogadoextranjeriamadrid.net/en/the-supreme-courts-decision-on-foreigner-internment-center-regulations/>

⁹ https://www.mundoenmovimiento.org/wp-content/uploads/2022/11/211220_PROPUESTA-DE-MEDIDAS-PARA-EL-REFUERZO-DE-LAS-GARANTIAS-EN-CIE.pdf

¹⁰ <https://contrataciondelestado.es/wps/wcm/connect/3ceca5c3-a7cf-4794-92ce-4c3ece9088b0/DOC20181227095742PPT.pdf?MOD=AJPERES>

¹¹ https://www.mundoenmovimiento.org/wp-content/uploads/2022/11/220512_ACUERDO-CONJUNTO-MAGISTRADOS-CONTROL-CIE-.pdf

¹² https://upr-info.org/sites/default/files/documents/202107/letter_for_implementation_3rd_upr_esp_e.pdf