

IMMIGRATION DETENTION IN SPAIN

REPORT 2013



Fundación San Juan del Castillo

Pueblos Unidos



SUMMARY

- 1 NEARLY 3,000 PEOPLE HAVE BEEN HELD AT THE CIEs (“CENTRO DE INTERNAMIENTO DE EXTRANJEROS” OR “IMMIGRATION DETENTION CENTRE”) OF MADRID IN 2013 AND 1,584 IN THE CIEs LOCATED IN BARCELONA.** In 2013, Pueblos Unidos visited 300 people in the CIEs of Madrid, with a total of 1,240 visits, representing an average of 4 visits per person attended. Visits take place relatively normally in Madrid and with great difficulty in Barcelona.
- 2** The people we have visited come from 53 different countries. Nigeria, Ecuador, Colombia, and Morocco are the most common nationalities. 78% of the people we have visited were men and 22% women. **THE NATIONALITIES OF WOMEN IN THE CIEs ARE VERY DIFFERENT FROM THE MEN.** This can be explained, at least partially, by situations of sexual exploitation.
- 3 THE CIEs ARE POINTS OF ARRIVAL AND DEPARTURE IN SPAIN.** 23% of our visits were with individuals who had recently arrived in Spain, mostly from Africa. For many recent arrivals, Spain is only the gateway to Europe, because their goal is to continue their journey to other European countries where they have family and friends. **Among the new arrivals there are possible refugees, minors, and women who are victims of human trafficking.**
- 4** Many people end up in the CIEs because they lack a residence permit despite having lived for many years in Spain. They are **INDIVIDUALS WITH DEEP TIES IN OUR COUNTRY BUT WHO HAVE BEEN OFFICIALLY ORDERED TO LEAVE THE COUNTRY;** they have failed to regularize their situation or have not been able to renew their residence permits, often because they have lost their jobs. Many detainees tell us that their request for regularization has been denied, one or more times, after being unable to include with their residence request an employment contract, despite having worked for many years without being offered this legal contract. **Beyond the lack of papers, we have often found people in situations of poverty and exclusion,** with problems of alcoholism or drug addiction, or mental illness. **They are poor, but they are not criminals.** Immigrants continue to be detained in large part through identification processes in the streets or on public transportation.
- 5** In other occasions, the irregularity of one's situation is justified on the grounds of a **CRIMINAL RECORD.** In Barcelona in 2013, 44% of people admitted to the CIEs had no criminal history of any kind. In the absence of official data, in Madrid, 55% (154 people) of the detainees visited in 2013 had no criminal history. Among those with criminal records, most were for minor crimes. Of the 154 people with no criminal history, 29 had criminal proceedings pending, and of the rest, many people merely had a police record. These 154 cases include 52 people who had recently arrived in Spain, were detained at the border and have return proceedings pending, and obviously they have no criminal record.

6 DETENTION IS OVERUSED BECAUSE THE PARTICULARITIES OF EACH CASE ARE NOT ANALYZED AND EVALUATED. The police request admission into the CIEs when an individual has a prior removal order, but ignoring or neglecting other circumstances of the case. Of particular concern is the detention of individuals who are in the process of requesting residency. Many courts authorize the detention of immigrants for mere irregular stay although detention should be the last measure adopted, and when it is established or authorized, each individual case should be evaluated.

7 DETENTION IS OVERUSED ALSO BECAUSE IN MANY CASES THERE ARE NO REASONABLE PROSPECTS THAT THE DEPORTATION WILL BE CARRIED OUT. The difference between the number of detentions and deportations demonstrates that in a high percentage, the use of detention is ineffective to implement a deportation order. In Barcelona, 54% of detainees were released and 46% were deported in 2013. In Madrid, there are no official figures, but the percentage of detainees that we visited that we know have been released is also the majority. The Management of the CIEs refuses to offer NGOs information about the final destination of the detainees who we visit, even if we have the written consent from the detainee. For this reason, we do not know the final outcome of detention for many people we have visited. Detention is especially ineffective with individuals who have recently arrived in Spain. Of the 54 recent arrivals we visited in 2013, we are only aware of 6 deportations¹.

8 THE HUMAN COST OF DETENTION IS TOO HIGH, regardless of the achievement of its goals. We have been able to confirm the strong psychological impact of detention. We have also noted its damaging effects on families, both for the families themselves and for society in general. Detention increases the vulnerability of children and families who lose a parent, frequently the one who was sustaining the fragile family economy.

¹ According to data collected in the *Attorney General's Annual Report in 2013*, "during 2012 a total of 5,924 foreigners were effectively deported or returned and 3,217 were released due to the inability to document them. Certainly, it would seem desirable to avoid these situations and the unnecessary occupation of spaces in the CIEs –some of which are highly saturated– that the request for detention be studied once the government authority has made at least an initial assessment that the record is in order, taking into account considerations such as the country of origin where it is intended to return the immigrant and the background on the degree to which the consular authorities sought to document the foreigner".

9 There are individuals who reach the CIEs whose personal circumstances place in question why they were ever detained from the outset. In 2013, we visited 25 individuals in the CIEs who were married or their relationship was civilly registered and 30 persons who had Spanish minors in their care. We also find that in the CIEs, there are individuals with severe mental and physical illnesses, possible minors or pregnant women. In these cases, **DEPORTATION COMES INTO CONFLICT WITH HUMANITY, AS WELL AS RIGHTS SUCH AS THE BEST INTERESTS OF THE CHILD, FAMILY LIFE AND THE RIGHT TO HEALTH.**

We ask the police, the trial courts and lawyers to analyze and assess the personal, legal and family circumstances of each person for whom detention in the CIEs is requested.

10 The State should use other less coercive measures, such as **VOLUNTARY RETURN, WHICH SHOULD BE INFORMED AND ASSISTED.** Even in cases where voluntary return does not occur, detention is not the only existing precautionary measure. There are other non-coercive measures that represent an **alternative to detention and whose practice should be developed.**

11 Deporting EU citizens and family members is only possible when there is a current, real and serious threat to public order, which must be justified. However, the practice is that **THE MERE EXISTENCE OF A CRIMINAL OFFENCE IS USED BY THE POLICE TO AUTOMATICALLY ORDER THEIR DEPORTATION. LONG-TERM RESIDENTS FIND THEMSELVES IN A SIMILAR SITUATION.**

12 **THE SPANISH LEGAL FRAMEWORK HAS MANY GUARANTEES,** providing free legal assistance during the immigration proceedings and establishing judicial review prior to detention. **The evil lies in the practical application of the legal framework.**

13 **THE JUDICIAL REVIEW OF DETENTION CASES IS OF UTMOST IMPORTANCE.** However, **too often, judicial authorization prior to the detention is de facto, a mere formal ratification of the police request.** On other occasions, the immigrant is required to show documentary proof of their personal circumstances, but often their legal counsel assisting in the hearing has not gone to the police station beforehand, making it impossible to acquire such documentation.

14 Of special concern are the **COLLECTIVE DETENTION RULINGS** of some southern Spanish courts, which resolve the detention of dozens of people at the same time. In these cases, no evaluation is made of each individual case.

15 **THE QUALITY OF LEGAL REPRESENTATION FOR INDIVIDUALS WHO REACH THE CIEs IS OFTEN VERY LOW.** A greater effort is needed on behalf of the Bar associations in guaranteeing the excellence of the public service they provide.



© Archivo Pueblos Unidos

- 16** **VERY BASIC NEEDS ARE UNMET IN THE SPANISH CIEs.** The deficiencies are not only based on the infrastructure but, above all, the living conditions and the **total lack of freedom within the CIEs, where the general attitude is one of prohibition and suspicion.** The level of health and social care in the CIEs continues to have huge gaps.
- 17** **THE OPERATING REGULATION OF THE CIEs IGNORES JURISPRUDENCE FROM THE SUPERVISORY COURTS** which would significantly improve and unify the conditions in the different CIEs and the guarantees of the rights of detainees.
- 18** **POSSIBLE ASSAULT AND HUMILIATING TREATMENT** by some police could be tackled primarily through preventive measures, which are not included in the draft Regulation.
- 19** **NGOs THAT VISIT DETAINEES DO NOT HAVE ACCESS TO INFORMATION** about their legal status or any other aspect of their record, although they have their express consent.

RECOMMENDATIONS

TO THE MINISTRY
OF INTERIOR



In what concerns the Regulation of detention

1. That a set of Regulations be approved for the CIEs that, in effect, entails a change of model in the system of detention, overcoming the current dominant policing model.
2. That the CIEs be adapted, both in their infrastructure and operations, so that the enforcement of these Regulations entails an effective improvement, with guarantees, of the rights of detainees.
3. That the resolutions by the Supervisory Courts be complied with and that the said guarantees be extended to all the CIEs.

In what concerns the use of detention

1. Better identifications by border agents of possible minors, asylum seekers and victims of trafficking.
2. That mechanisms of identification in the CIEs be strengthened in order to identify foreign persons who might be in need of protection because of their being:
 - a. Likely victims of specific crimes (victims of trafficking, gender violence, sexual violence...) –greater collaboration between State security forces and NGOs in identifying these victims–,
 - b. Asylum seekers,
 - c. Minors,
 - d. Sick persons,
 - e. Persons in charge of their children.

That formation be given to personnel of the CIEs on how to identify victims of trafficking and other persons in vulnerable situations and how to give attention to them.

3. That as a general rule, ordinary procedures be used to sanction persons without residence permits. Use a fine as sanction for those in situation of simple irregular stay.
4. That measures for voluntary return prior in nature to the order of expulsion be promoted and facilitated.

5. That the concept of order and public safety be assessed in conformity with current jurisprudence in regards to expulsion proceedings for EU citizens, their relatives and long-term residents and other cases as per art. 57.5 of the LOEX.
6. That police criteria to request detention be clarified. That a protocol prior to request detention by police authorities be developed, in order to assess new circumstances of the persons for whom this cautionary measure has been requested as well as to carry out expulsions in 72 hours.
7. That persons not be expelled when there are humanitarian reasons or reasons of social-family ties, and that persons in vulnerable situations not be detained.
8. That other cautionary measures, less severe than detention, be applied in expulsion proceedings carried out by police authorities.

In what concerns conditions of detention

1. That guarantee of access to administrative dossiers and information by the detainees and those social entities authorised by them be ensured.
2. That measures to prevent and control possible police abuses in the CIEs be strengthened.

TO THE COURTS AND TO THE COUNCIL GENERAL OF THE JUDICIARY



1. That a study be undertaken to assess the transfer of the competencies regarding detention from the Criminal Courts to the Courts of Administrative Litigation.
2. That the training of judges on immigration matters be strengthened through the magistrate education program and other appropriate means.
3. That the judges ensure that lawyers have been able to meet their clients before the hearing, to ensure the effective protection of their rights.
4. That the judges check the reasonable prospects of removal before authorizing any detention.
5. That the judges refrain from issuing collective resolutions of detention of newly arrived persons to our country, but instead that they always do it according to a case by case analysis of the situation.
6. That the judges make available possible effective channels to present pleas.
7. That the role of the Supervisory Courts be strengthened, assigning them appropriate resources so as to adequately perform their functions, which are of the highest importance.
8. That there be communication between the judges that authorize detention and the Supervisory Courts regarding vulnerable persons.
9. That meetings be facilitated between the various Supervisory Courts to exchange experiences, share resolutions and publish results.

TO THE BAR ASSOCIATIONS AND TO LAWYERS



1. That the National Police Force be requested to notify always to a lawyer when a detention in a police station takes place and that legal assistance at the police station be ensured prior to detention or to deportation in 72 hours, in all provinces.
2. That duty counsel be appointed in expulsion proceedings commenced in prison.
3. That a legal assistance service be promoted in every detention centre.
4. That permanent continuous training in immigration law be strengthened.

5. That legal assistance protocols be established by the Bar Associations to guarantee the right to legal defence.
6. That mechanisms be put into practice to guarantee proper and adequate legal assistance service delivery.
7. That mechanisms of supervision of results be put into place in order to improve the effective protection of rights.
8. That the same duty lawyer be assigned for the expulsion proceedings and for the authorisation of detention.
9. That Bar Associations clarify that the lawyer who assists in a sanctioning proceeding has faculty to appeal the expulsion and that whoever assists in a hearing for detention must appeal the detention resolution.

TO THE ATTORNEY GENERAL



1. That the Attorney General has a greater role at the border, for the purposes of identifying possible minors and victims of trafficking.
2. That forensic examination for age determination be established according to the recommendations given by the Ombudsman.

TO SOCIETY AS A WHOLE AND TO THE NGOs



1. That they undertake all possible efforts to make publicly known the reality of the CIEs.
2. That they place their trust on the value of hospitality, incarnating it in their every day practices.
3. That NGOs drive an initiative for the creation of a pilot project to gather a collection of good practices as alternatives to detention, through a joint committee made up of different social actors.

CHAPTER 1. VISITS PERFORMED IN 2013

- 1.1. Origin, gender and length of stay in Spain
- 1.2. Why do we lock up migrants?
- 1.3. Duration and end of detention
- 1.4. Situations of vulnerability

1.1. Origin, gender and length of stay in Spain

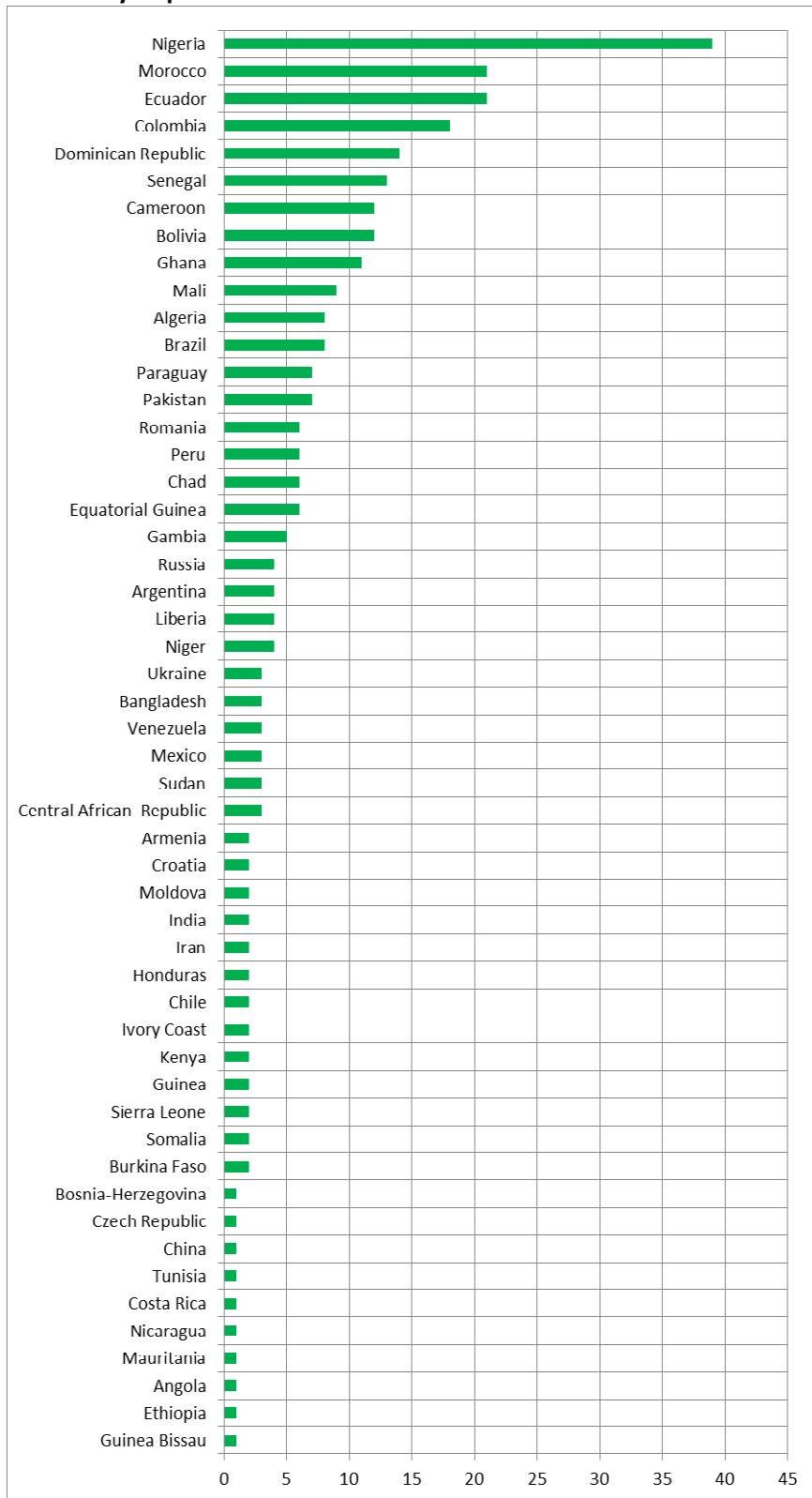
There has been a small decline in the number of persons detained in the CIE of Madrid: fewer than 3000 in 2013 compared to more than 3,050 the previous year. In the CIE of Barcelona the decline was slightly higher (-18%) down to 1,584 persons.

In 2013, **Pueblos Unidos visited 300 persons** detained in the CIE in Madrid, carrying out a total of 1,240 visits, which averages to about 4 visits per each person visited.

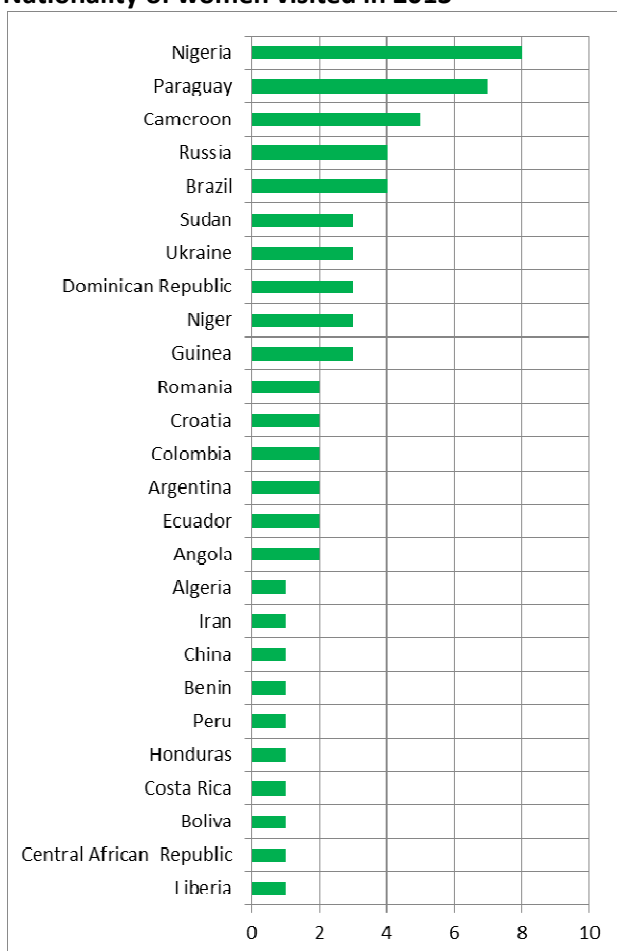
Geographical analysis

The persons we visited come from 53 different countries. Nigeria, Ecuador, Morocco and Colombia were the countries of the most common nationalities. Of those we have visited, 78% were men and 22% women.

Nationality of persons visited in 2013



Nationality of women visited in 2013



The geographical zone with the highest number of persons detained is Sub-Saharan Africa (38%), and within this region the more prominent countries are Nigeria, Senegal and Cameroon. Latin America follows closely (36%) with a majority of immigrants coming from Ecuador, Colombia and Bolivia. The Maghreb is in third place (12%) with the majority of persons detained coming from Morocco.

The nationalities of the women in the CIE show significant differences with respect to the men's. Among the women there is a higher percentage of women (40%) coming from Sub-Saharan Africa. 38% come from Latin America, and here the high percentage of women from Paraguay and Brazil stands out, greatly superior to the number of detained men from these countries and also much higher than the percentage of foreigners in Spain with these nationalities. Among the women, Eastern Europe takes third place in regards to the number of detainees; notably, we have only visited one Moroccan woman. **We believe that the significant difference in nationalities between men and women points to the need of an analysis of this phenomenon in the Spanish CIE and its causes.** We are greatly concerned that part of the explanation might have to do with situations of sexual exploitation.

Region of origin	nº	%
Sub-Saharan Africa	113	38%
Latin America	109	36%
Maghreb	35	12%
Eastern Europe	24	8%
Asia	19	6%
Total persons	300	100%

Region of origin of women	n ^o	%
Sub-Saharan Africa	26	40%
Latin America	25	38%
Maghreb	11	15%
Eastern Europe	3	5%
Asia	1	2%
Total women	66	100%

The detention centres: entry door, exit door

Immigrants from all over the Spanish territory come to the CIE in Madrid. **Predominantly it has to do with a population who has strong social ties to our country.** Of those visited, 43% had lived in Spain over four years.

Time in Spain	Total	%
< 1 year	64	23%
1 - 3,9 years	35	13%
4 - 6,9 years	58	21%
7 - 9,9 years	51	18%
> 10 years	71	25%
Total	279	100%

23% are persons who have recently arrived in Spain, either by Ceuta and Melilla or by small boats to the south of the peninsula. Frequently, Spain is for them simply an entry door into Europe and they want to continue their journey to other countries where they have family and friends who can help them.

Among newly arrived women is a striking number who claim to have arrived on their own without knowing anyone or having any other contacts, but who disappear once they are released from detention. We believe that in many cases these very young women require protection because they are victims of trafficking who will end up being sexually exploited in Spain and other countries in Europe.

Another group that calls for protection among the newly arrived are minors. Frequently, no more than 24 hours elapse between the time of their arrival by small boats and the request for their detention. During this short period of time, they are under police custody, and they themselves usually fail to mention that they are minors for fear, for ignorance of their situation, etc. When they do mention it, this is communicated to the District Attorney which orders that an x-ray be performed in the local hospital and, depending on its result, a provisional decision is made concerning their age status.

A third group among the newly arrived are possible refugees. There is no mechanism at the border to identify asylum seekers among the migrants. They usually arrive at the CIE with a deportation order and it is there that they request asylum. It is very difficult that their request be admitted for processing because the request is processed in emergency mode, and therefore it is very difficult to prepare and analyse them with the care and attention that each case deserves.

The situation of possible minors, victims of trafficking and asylum seekers is analysed in the following chapter of this report.

1.2.1 Why do we lock up migrants?

Most detainees have spent time in Spain and have received a prior order of expulsion which justifies their detention, although this is not always the case. They are persons who either have not been able to obtain residence permits or have not been able to renew them, frequently as a result of having lost their jobs. They have been productive and have been welcomed during the years of economic growth, to which they have contributed, but now that they are no longer needed they are expelled. In certain occasions, the irregularity in their situation is justified because of having incurred a criminal history.

In a high number of cases, the detainee has told us that his or her request of a residence permit has been rejected, once or several times, because of not having been able to provide a job contract with their request, even if they had been working—otherwise, how could they have survived?—for many years without having been offered a contract.

Reasons for detention:

Prior return order for irregular stay	221
Procedure of return initiated due to irregular stay	5
Return following withdrawal of legal residence	1
Judicial return: substitution of criminal conviction for return	14
Return order of persons newly arrived	54
Not known	5
Total	300

For the most part, **migrants are still being detained upon request of identification in the street or in different means of public transport.** Only in 37 cases detention resulted from a complaint that was made, a police raid or during their stay in prison.

Place of detention for persons with administrative expulsion (cases 1, 2 and 3 previously mentioned)

Request of documents in the street	109
Request of documents in the metro, bus or train	12
Detention as a result of a police raid	6
Detention as a result of a complaint	24
Period of stay in prison	7
Upon leaving jail once a conviction has been served	25
Others	44

Criminalisation of irregular migrants

“Many people end up in the CIE because they do not have residency papers, even though they have lived in Spain many years. Behind this absence of papers we frequently discover people in situations of poverty, exclusion, with alcohol or drug problems, or with mental illness. They are poor, but they are not criminals” (Group of Visitors from Pueblos Unidos)

Persons newly arrived in Spain and transferred to a CIE obviously have no criminal history in our country. This is the case as well for many who have spent years with us and for whom the CIE becomes the end of their life in Spain. However, the discourse of the Police and of the Minister of the Interior criminalises migrants detained in the CIE to establish among public opinion the idea that only illegal and very dangerous delinquents are expelled. Moreover, this justifies the focus on control and security measures used during detention. The police inflate the figures of removals of criminals, including among them persons with mere police records, judicial procedures in process over which judgment has not yet been passed and misdemeanours related to poverty and social exclusion, more frequent in these times of economic crisis.

The Minister of the Interior has made public that **44% of the persons detained in the CIE of Barcelona in 2013 had no criminal history or records of any kind**. In other words, they were deprived of their freedom for the mere fact of not having residency papers in our country.

While we still await for official data for the CIE in Madrid to be published, our records show that 55% of the people we visited (154 persons) had no criminal history:

- Among those with criminal records, most of these were for misdemeanours. In fact, only 12% of those visited had criminal records with prison sentences of over two years.
- Among the 154 persons without criminal history, 29 were involved in penal proceedings in process, and among the rest, many of them had only police records that never led to penal proceedings or that, if started, were absolved or the proceeding was overturned.
- These 154 cases include 52 persons newly arrived in Spain with order of return, detained at the border, and obviously without criminal history in our country.

Weak judicial control of detention

Detention should only be used as a last measure and it should be assessed taking into account each specific case and possible alternatives to detention. However, the practice is a “cattle approach” that abuses of detention. We deal with this topic in more detail in the next Chapter.

Detention is requested by the police to the penal Judge on duty in the locality where the migrant is detained. The police make this request based on the existence of a prior order of expulsion but ignoring or discounting other circumstances of the particular case. And many Courts authorise detention for a mere situation of irregular stay.

1.2.2 Duration and end of detention

For 36% of the cases for which we have information, the detention extends beyond 40 days.

Duration of detention	Number	%
Less than 20 days	67	23%
Between 20 and 40 days	121	41%
More than 40 days	104	36%
Total	292	100%
Not known	8	

The Management of the CIE denies NGO information concerning the final destination of the detainees we visit (released or expelled), claiming to uphold the Privacy Information Law, even when we have a written authorisation by the detainee. For this reason, we are unaware of the reason for ending the detention of 84 persons, approximately a fourth of the total number of people we have visited.

Despite this, we know that a large number of the detainees we have visited (37%) have been released, while 35% have been removed. At the time of writing this report there is no official data by the CIE of Madrid. In Barcelona 54% were released and 46% were removed in 2013.

Both our figures for Madrid and the data for Barcelona show, once again, that detention is **overused**, even in cases where there are few reasonable prospects that such removal will take place.

Reason for end of detention

Removed	104	35%
Released	112	37%
Completed maximum period of detention	28	25%
Before completing maximum period	84	75%
Judicial review	38	45%
Undocumented	26	31%
Minor	4	5%
Illness	2	2%
Not known	14	17%
Not known	84	28%
Total	300	100%

In the case of new arrivals to Spain, detention is inefficient. For the 54 newly arrived persons we visited in 2013, we only have evidence of six removals. **Almost two thirds (33) have been released, and among them more than half because they could not be documented.** In spite of this, all of them, with the exception of one, stayed in the CIE more than 20 days. And the majority more than 40 days. What is the sense of their detention if it will not be possible to remove them? What is the sense of this waste of money and the suffering of this people?

Results of detention

			Length of detention		
			20 days	20-40 d	>40 days
Expelled		6	1	3	2
Released		33	2	12	22
Impossible to document	18		1	6	11
Minors	4		1	2	1
Grant processing of asylum	3		-	3	-
Estimation of appeal	4		-	1	3
Illness	1		-	-	1
Not known	3		-	-	-
Not known		15			
Total		54			

1.3 Situations of vulnerability

We visit detainees who request us to do so, either directly or through relatives, friends or others detainees or through social entities who tended to them before arrival at the CIE.

The detention conditions themselves place detainees in situations of vulnerability that increases as the time period of detention endures, and we can give **evidence to the heavy psychological impact of detention**. Furthermore, there are people who come to the CIEs whose personal circumstances question the appropriateness of their detention from the outset.

The following table collects those situations which generate the greatest anguish and vulnerability to the persons detained. They are arranged in descending order by the number of persons visited who find themselves in those situations, although some, despite appearing less frequently, might represent greater suffering. On occasions, several circumstances concur in one same person:

Indicators of vulnerability

Has no one to visit him	140
Need and absence of interpreter	59
Detainee has a foreign child (minor)	37
Detainee has a Spanish child (minor)	30
Spouse or registered de-facto partner	25
Possible victim of trafficking	17
Risk of abuse/ill-treatment at origin	14
Victim of sexual violence	11
Physical illness	9
Exploitation at work	9
Mental illness	8
Victim of gender violence	8
Possible minor	7
Issues of gender identity	3
Pregnant woman	2

Perhaps what is most harmful about the CIE is the ravaging effect on families, both for the families themselves and also for society in general, as a consequence of an increase in vulnerability created for children and families left without one of the parents who, in many cases, was also the one who supported the fragile economy of the family. In 2013 we visited in the CIE 30 persons who had Spanish children (minors) under their care. These figures are too high. We can also give evidence of the fact that in the CIE there are persons with serious mental and physical illnesses, possible under-age minors and pregnant women. In these cases, we believe that removal comes into conflict with humanity as well as of rights, such as the greater concern that is due to the wellbeing of children, family life, the right to health (even more so when serious illnesses cannot be treated in countries of origin), etc.

We request that the actors involved in detention (the Police in the first place but also Magistrates Courts and attorneys) analyse and assess the legal, family and personal situation of each person. Chapter 2 of this report analyses in detail what is taking place and the reasons behind it and formulates some recommendations.

CHAPTER 2: WHO ENTERS DETENTION? ENTRY CRITERIA

Introduction: The exceptionality of detention

1. The abuse of detention. There are alternatives.
2. The detention of irregular migrants. When the exception becomes the norm.
3. The detention of vulnerable persons.
 - 3.1 Unaccompanied minors
 - 3.2 Victims of trafficking or sexual violence
 - 3.3 Asylum-seekers
 - 3.4 Individuals who are sick and pregnant women
4. The deportation of EU citizens, their families and long-term residents.
5. The detention and deportation of foreigners with children.
6. The deportation of individuals with no ties to their country of origin.
7. Individuals who are not able to be deported.
8. Judicial review of detention and the right to a defence.

INTRODUCTION: The exceptionality of detention

The detention centres (CIE) are “non-penitentiary public establishments”¹ where migrants are deprived of freedom. The deprivation of liberty is only for deportation purposes. The reason for deportation, in the majority of the cases, is being in irregular situation, i.e. people who do not have a residency permit. Detention is proposed by the police and adopted by a judge. The maximum period of detention in the CIEs is 60 days.

Detention is an extraordinary measure which should be evaluated and justified on a case by case basis in the administrative record:

Detention should be the **last resort** in order to carry out deportation, once other less grievous measures have been tried.²

1 Article 62b of the Organic Law 4/2000, 11 January, on the rights and liberties of foreigners in Spain.

2 Preamble of the Directive 2008/115/CE, 16 December, (hereinafter, Return Directive): “Where there are no reasons to believe that this would undermine the purpose of a return procedure, voluntary return should be preferred over forced return and a period for voluntary departure should be granted” (Paragraph 10) and that “The use of coercive measures should be expressly subject to the principles of proportionality and effectiveness with regard to the means used and objectives pursued” (paragraph 13).

The EU Directive 2008/115/CE, known as the "Return Directive", provides that detention is justified only **when other adequate, less coercive measures cannot be applied effectively, and only with the goal of preparing the return or carrying out the deportation**, especially in two cases: if there exists the risk of flight or if the migrant avoids or hampers the preparation of the return or deportation process.³

Detention should be **necessary, reasonable and proportionate to the objectives to be achieved** and can only be imposed for the **shortest possible time**, after having made an **individual assessment of each case** and respecting all procedural safeguards.⁴

The Law 4/2000 of January 11 on the rights and freedoms of foreigners in Spain (hereinafter "LOEX") provides that detention is appropriate only if **there exists a risk of absconding, if there are indications that the individual may hinder or prevent deportation or if the person supposes a risk to public order, national security or public safety**.⁵

The Spanish Constitutional Court has established that detention "**must be guided by the principle of exceptionality**", which means that **freedom must be respected unless the deprivation of liberty is deemed essential**, which must be assessed by the judge.⁶

Detention and deportations

	Number of migrants in detention	Returned	%
2009	16.590	8.935	(53,86 %)
2010	-	-	-
2011	11.456	6.825	(59,57%)
2012	11.325	5.924	(52,30%)

Source: Ombudsman Annual Report 2013 and General Attorney Annual report 2013.

The big difference between the number of detentions and deportations from the CIE evidence that detention is overused.

Moreover, the **human cost of detention is too high**, regardless of the achievement of its goals. Several European studies⁷ have highlighted its disproportionate, negative effects on the lives of irregular migrants.

Finally, the **high economic costs** of detention must also be considered.

Costs of detention⁸

2010	+ 6.000.000 €	534 euros per detainee
2011	8.300.000 €	727 euros per detainee

Source.: Official Bulletin of the Congress D-344 de 17/10/2013 pg.: 380

3 Article 15.1 of the Directive 2008/115/CE

4 2012 report of the Special Rapporteur on the human rights of migrants.

5 Article 63.1 of the LOEX.

6 STC 115/1987, 7 of July.

7 JRS Europe (2010), *Becoming Vulnerable in Detention*.

⁸ Excluye sueldos y salarios policiales

Costs of returns

Costs of returns	
2008	33.873.126,29 €
2009	24.528.616,88 €
2010	19.572.239,79 €
2011	21.543.414,84 €
2012	17.396.190,51 €
2013*	4.247.480,00 €

Source.: *Official Bulletin of the Congress* D-344 de 17/10/2013 pg.: 380

* Data as of March 2013

Despite the legal configuration of detention as a last resort and its high human and economic costs, the practice in Spain is that the detention of migrants is set up *de facto* as the primary measure in the procedure of deportation.

1. DETENTION IS OVERUSED DURING THE PROCESS OF DEPORTATION. ALTERNATIVES EXIST.

Informed and assisted voluntary return measures should be extended. **All the individuals we have visited in the CIE had deportation orders that were directly enforced; at no time did they have the option, information and assistance for voluntary return.**

Moreover, it is possible to develop other alternatives to detention. The Spanish Immigration Law includes the following: regular reporting to the authorities, compulsory residence in a particular place, removal of passport, as well as any other measure that the judge deems adequate and appropriate. These alternative measures are usually not applied, neither by the police nor by the judges which authorize the detentions.

It is necessary to **reduce the number of people in detention in the medium-term**. To this end, we propose the importance of addressing the following situations:

- a) Prioritize the use of voluntary return rather than forced deportation.
- b) Do not detain people who have reasonable prospects of obtaining residence permits.
- c) Do not detain people who have appealed their deportation and no resolution has yet been adopted.
- d) Do not detain people who have low prospects that they will be deported in the end.
- e) Explore and develop alternatives to detention.
- f) Do not detain people for mere irregular stay.
- g) Do not detain vulnerable people.
- h) Significantly improve the conditions of detention.

An individual analysis of the cases by the Police is needed. To do so, it would be advisable to adopt some guidelines for conduct aimed at carrying out an individual analysis of each case prior to requesting detention, as well as greater judicial control over this measure. In this regard, the Spanish Ombudsman issued in 2012 the following recommendation to the Police: "*The Brigade that proposes deportation or requests detention shall check the personal and*

family situation of the migrant. To this end, they shall fill out a form that should be attached to the request for detention in order to be verified by the judicial body. This document should reflect the date that the check was carried out and the databases consulted, as well as proof of the lack of request of a residence permit pending resolution by the administrative body”.⁹

2. THE DETENTION OF MIGRANTS FOR IRREGULAR STAY. WHEN THE EXCEPTION BECOMES THE RULE.

Pedro (Nicaragua, 35 years old)

Pedro arrived in Spain in May 2010. He had worked at a horse stable and as an assistant at a construction site. He does not have a criminal or a police record. His deportation was not appealed. His partner has her legal residence and works as a domestic worker. He obtained a work contract that contributes to the appeal against his detention. He was deported after 11 days in the CIE.

Immigration Law provides that administrative proceedings for illegal stay should be processed using the **standard procedure**. In exceptional circumstances, a **fast track procedure** can be used, if the following is shown:¹⁰

- a) A risk of absconding;
- b) The person avoids or hinders deportation ;
- c) The person represents a risk to public order, public security or national security.

That the Police use one procedure or another is not at all irrelevant. Using the fast track procedure always leads to deportation, significantly reduces the possibility of defence and ignores voluntary return. It also allows detention in a CIE with the simple opening of an administrative file. However, all of the individuals in the CIE have **deportation orders processed through the fast track procedure, many of them only for irregular stay and with social, family or work ties.**

We have also found **deportations where the fast track procedure has been used on the grounds of criminal allegations that have been dismissed.**

Abdelhakam (Morocco, 25 years old)

He arrived in Spain nine years ago when he was 16 years old. He had a residency permit that he lost when he became a legal adult. In 2012, he was granted residency through “arraigo” or social ties, but he lost this because his employer did not register him in the Social Security. As he had strong social ties, various social and religious organizations were interested in his detention. He had received an allegation of theft for which he was acquitted, but this gave rise to a deportation order, which his lawyer did not appeal. He was deported after 12 days in the CIE.

Joyce (Ghana, 21 years old)

He arrived in Spain five years ago at the age of 16. He lived in a center run by Caritas and in programs for minors until the age of 18. He could not maintain his residency permit because he lacked a job offer. He has been a recipient of social assistance from the Basque Government. He has certificates from various training courses. In Santander, he taught training courses to other immigrants and worked as a social mediator in an organization. He has also shown that he collaborated in organizing the patron saint festivities of the town where he lived. He is in the process of registering a civil partnership with his girlfriend, of Spanish nationality, with whom he lives. He was detained when he recorded the arrest of another immigrant with his cell phone and his

9 Recommendation of the Ombudsmen on 17 September 2012.

10 Article 63.1 of the LOEX.

deportation was ordered. He was released after 10 days in the CIE having favorably resolved the appeal against his detention filed by his lawyer.

The proceedings to sanction irregular stay could result in a fine¹¹ or in a deportation order when there are aggravations. However, police **practice has converted what ought to be an exceptionality into the rule, making deportation the rule and a fine the exception.**

Moustapha (Senegal, 32 years old)

He has lived in Spain since 2009, and has family living in Spain (an uncle and a cousin) with whom he lives. He does not have a criminal or police record. He has accredited ties in the town where he resides and he participates in a variety of organizations and activities in his municipality. He has a deportation order from 2010, which was never appealed by an attorney, and of which he was never informed. He was arrested in August 2013 on the streets and was deported to Senegal after 54 days in the CIE.

Special concern merits **the detention of persons who are in the process of applying for residency for exceptional circumstances:**

Spanish Immigration Law provides that, if the foreigner has requested a residence permit, the police should suspend the deportation until the application for residence is resolved.¹² Similarly, the Return Directive mentions the case when the migrant, despite being in an irregular situation, has pending the renewal for residence or any other procedure that entitles one to residency.¹³

Also, the criteria of the Ministry of Immigration is that deportations be revoked when the conditions for granting a requested residency permit are present.¹⁴ Despite these criteria, certain provinces not only do not suspend the deportation while the application is being resolved, but the request is denied for the sole reason that a previous deportation order exists.

Imran (Pakistan, 37 years old)

He has been living in Spain for seven years, and registered civilly for six years, with a lease in his name. He does not have criminal records. He was detained at an internet café in 2011, and a deportation order was issued for illegal residence. He filed an application for residency days before he was detained in June 2013. He showed police the proof of his residence application and they kept it. Despite showing proof that he was in the process of regularizing his situation, the police requested his detention and did not provide the judge with this information. The judge authorized the detention as the residency application that he claimed could not be accredited with documentation. He was released after 60 days. His residency application was later denied solely because of the existence of a deportation order.

3. THE DETENTION OF VULNERABLE PERSONS

“The vulnerability of migrants is another major obstacle; [...] inadequate training in the area of human rights for officials can be counted as an institutional barrier.” *Special Rapporteur, Ms. Gabriela Rodríguez Pizarro, in accordance with Resolution 1999/44 of the Commission on Human Rights (6 January 2000, paragraph 78).*

11 Art. 55.1.b of the LOEX.

12 Art. 63.6 of the LOEX.

13 Art. 6.5 of the Directive 2008/115/CE.

14 Communication of 21 September 2011 of the Secretary General of Immigration. Secretary of State of Immigration and Emigration.

3.1 Unaccompanied Minors.

During 2013, we visited 10 possible minors in the CIE, all of them young Africans, who recently arrived in Spain in *pateras*, or small boats. We have found two situations:

- There is no ordinance to determine their age and they been registered as adults by the police (usually, they have not said that they are minors upon arriving nor have they been asked).
- They have said that they are minors, but the District Attorney has declared them of age based on an x-ray test, which is fully insufficient for the reasons described below.

Mohamed (Algeria, 16 years old)

He had no forensic examination on arrival, despite his appearance as a child. While in the CIE, he was recognized as a minor and his age was determined to be 16. He was taken to a Center for Unaccompanied Minors after three days in the CIE.

Kemo (Mali, 17 years old)

He arrived at Algeciras, where he was detained in order to carry out his return. Since his arrival at the CIE and until his letter of complaint to the Supervisory Court, he claims to have written three letters to the director explaining that he was 16 years old. Following his complaint at the Supervisory Court, they performed tests at the Hospital de la Paz, where it was determined that he was 17 years old. He was released after spending 42 days in the CIE.

Bada (Senegal, 17 years old)

He was rescued from a small boat, arrived at the CIE of Madrid in August 2013 and was detained with an order for his return. On our first visit, he had been in the CIE for 35 days, and did not speak Spanish or know anyone in Spain. With the help of a fellow detainee, he stated that he was a minor who was 17 years old and had written a letter to director of the CIE, but had received no response. He forwarded the letter to the Supervisory Court, and a forensic examination determined his status as a minor. The prosecutor favourably resolved his case and the minor was sent to a shelter after having spent 38 days in the CIE.

Spanish law provides that minors cannot be detained, which forces the authorities to pay special attention to the identification and age determination procedures, both at the border as well as in the CIE. When the police locate a foreigner without documentation whose minority status cannot be established with certainty, they should be given protection through the social services for minors and the facts shall be reported to the District Attorney, who should then determine their age by performing the necessary medical tests.¹⁵ The District Attorney is responsible for determining the age of the prospective minor, as well as to guarantee their protection.

To assess the age of a minor, the following considerations should be taken into account¹⁶:

- a) An evaluation based on the physical appearance of the minor as well as their psychological maturity;
- b) In the scientific procedures to determine the age of the minor, a margin of error should be considered;
- c) The benefit of the doubt should be given to the minor in the case that there is uncertainty about their exact age.

15 Art. 62.4 and 35.3 of the LOEX and art. 190 of the Royal Decree 557/2011.
16 UNHCR, 1997. *Children or adults? Age Assessment Practices.*

The Spanish Institute of Legal Medicine has outlined the best practices to determine the age of a potential minor: anamnesis, evaluation based on the physical appearance, a radiographic study of the left hand, analysis of the oral cavity and a dental radiographic study.¹⁷

As the Ombudsman's report¹⁸ on the determination of age outlines, in these tests, there is room for doubt which should be resolved for the benefit of the minor.

The Attorney General includes among the tests that should be carried out, an x-ray of the left wrist and a dental x-ray, indicating the approximate age of the person, while recommending complementary research and testing.¹⁹

Of the 10 children identified during our visits to the CIE, 6 were recognized as minors, and therefore, were released and referred to shelters. In 2 other cases, the forensic report determined their age to be 18, without establishing an age range, though indicating that the evidence left room for doubt. These individuals were recognized as adults by the District Attorney. The other 2 were recognized as adults without forensic examination, using only the assessment of an x-ray on their left wrist carried out in hospital emergency services.

In the case of sub-Saharan women who are potential minors, we find that they are not only possible minors, but also potential victims of human trafficking.

FATIMA (Niger, 16 years old)

She arrived in a patera together with other young people. She showed signs of having been trafficked. She was five weeks pregnant from a rape in Morocco. She said she was 16 years old. In Madrid, a medical-forensic examination was performed on her after an x-ray analysis and general and dental examinations. Her age was determined to be 17. The Attorney General's office reports that she had already been declared of age in Almeria. This assessment was based solely on an x-ray report carried out on her left hand in hospital emergency services. She was released after spending 18 days in the CIE. An organization specialized in caring for trafficking victims offers their support, which she accepts. She leaves the shelter without saying anything the same day as another potential victim of trafficking who was on the same boat.

The detention of two of the potential minors identified in the CIE was authorized collectively together with the collective authorization of 50 other people who arrived together on the same boat. Their adulthood was previously determined through tests that did not take into account an age range.

3.2 Victims of trafficking and sexual violence

"Migrants who have recourse to the services of smugglers may find themselves in a position of extreme vulnerability owing to their irregular situation, the debt they may incur in their countries of origin and the impunity with which trafficking and smuggling networks often operate. At times their undocumented status puts them in a situation where contracts are changed, or they are forced into degrading and humiliating jobs, often in conditions amounting to slavery. As a result, they go from being irregular migrants to being victims of trafficking." *Special Rapporteur of the Commission for Human Rights, in accordance with Resolution 57/218 of the General Assembly and Resolution 2003/46 of the Commission for Human Rights (A/58/275, 10 November 2003)*

17 "Recomendaciones sobre métodos de estimación forense de la edad de los menores extranjeros no acompañados. Documento de consenso de buenas prácticas entre los Institutos de Medicina Legal de España", *Revista Española de Medicina Legal* N°37 (2011).

18 *Children or adults? Age Assessment Practices*, Spanish Ombudsmen.

19 *Circulation 2/2006*, Fiscalía General del Estado (Attorney General).

An anonymous caller warned that an inflatable boat had left Al Hoceima that morning. The police launched a rescue operation and the *patera* was located in the afternoon and its occupants were taken to the port. The *patera* held 53 people, including 16 young women, two of the women with babies and one was pregnant, the rest were men. The young women with babies and the pregnant woman were sent to a shelter, and the other women were taken to the Madrid CIE.

The circumstances and the stories of many of the women who reach the CIE are similar. Their behaviour and their testimonies indicate that they could be victims of human trafficking:

They are Sub-Saharan African girls from West Africa, and the majority of them are very young. They come from the forest in Morocco and a few say that they have arrived from the forest in Algeria. All but one says that they have come alone (without a partner). They say they did not know each other until they boarded the *patera*. They say they did not pay anything for the trip.²⁰

All of them are very reluctant to talk. Unlike these women, those in the CIE are usually perfectly able to explain where they come from, their trip and why they have come to Spain.

None of them provides specific information about their family, where they have been during their trip or with whom. They do not specify information about their time in the forest, how they organized themselves, or who led the group.

All but one say they that they do not have family in Spain or Europe nor a contact number to call, none of them have a plan when they leave the CIE, they do not know where they will go, and they just say they want to study. The vast majority of people who recently arrive have family or contacts in Spain or in other European countries. Most of them come with a contact that can help them to settle in Spain/Europe.

Almost all of the women mention family violence and neglect in their home countries, all of them share that, being alone, they found a man in their country that delivered them to an "Arab", who took them to Morocco or Algeria, where many say they have been serving and have been abused by men in their homes. And at a certain point, the men took them to the forest, where they remained for a short period of time.

In mid-October, we sent the general and specific information we had about the women at that time to the Spanish Border Agency, the Ombudsman, and Project Hope, an NGO specialized in supporting victims of trafficking, so that the police could investigate the case and so that Project Hope could visit the women. The police in Madrid proceeded to conduct formal interviews with all of the women but only two of them were offered protection.

Joy (Niger, 16 years old)

She is the youngest of the women, and seems physically and mentally like a child. The police carried out a first formal interview shortly after she arrived at the CIE and she said she did not want protection. Later, she reported that she did not understand the interview.

²⁰ A few of them mention 100-200 euros but, according to the Ministry of Interior, the cost of crossing the Straits is between 1,000 and 1,200 Euros if it is in a small conventional boat.

http://politica.elpais.com/politica/2014/02/16/actualidad/1392576581_845257.html

She shares that she escaped from her village. That a man picked her up and took her into his home and gave her up to an Arab man. This man drove her in his car, traveling for several days, to his home. She was made to do the chores for him and he frequently raped her. She was there for a long period of time, she says for a year. She gave birth to a child recently, but the baby died. One day, the Arab man took her to the forest and delivered her to a Senegalese man. She slept several days in the forest (she has many scars) and one night she was told to run with the others. She asked where they were going, as she did not want to go because she did not know where they were going, but she was beaten and yelled at, and they took them to the zodiac. She says she does not know what country she was in, whether it was Morocco or another country. She did not pay anything. She has symptoms of having experienced immense emotional trauma.

She was recognized as a minor by the medical examiner, the report reflects her “state of distress, with a tendency to cry, silence and distrust.” She was sent under child protection services after 18 days in the CIE. She wanted to return to have an interview with the police, but she disappeared a few days beforehand during a field trip organized by the Centre.

Akorede (Benin, 16 years old)

She had her first interview shortly after entering the CIE, together with Fatima, and like her, she said she did not want protection. Later, she reported that she did not understand the interview. She left Benin when she was 14. She begged in the markets. A Christian lady picked her up at the market one day and offered her salvation as well as education. She went with her in a large truck with many others, and during the day they stopped. They must have been people without papers, as they were traveling at night. They travelled many days to Tamanrasset, in southern Algeria. The lady lived there. When they arrived, the woman told her that first she had to pay for her help and for the trip by working as a prostitute. She refused and ran away, she begged, and an Arab man offered to take her to his home to do household work in exchange for room and board. He abused her. She was there a long time. His wife did not like blacks and the man ended up taking her to the woods and delivering her to an African, telling her that there she would be safe. She was in the forest about three months, and one night she was told to take her things and that they were leaving.

They ran, crossed the woods and climbed into a small boat. She says she did not pay for the trip. She says she does not know anyone in Spain. She starts to talk more, gaining confidence and she says that she would like to ask for protection. She is interviewed again and granted protection. She left the CIE after 34 days. Later, she left the shelter without saying anything.

Salma (Niger, age unknown)

She is very distrusting and reluctant to talk. Someone paid for her trip and she does not know who they are or how to repay them, or when. She says that a man offered to help her come to Spain and paid her ticket. She promised to return the money once she had the amount.

She had no name or address of a person in Spain to return the money to or a job offer. Regarding these issues, she answered in monosyllables, clearly she did not want to talk. She did not know any of the other girls before getting on the boat. She was asked if she had any reason to be afraid of leaving the CIE, she remained silent. A formal interview was conducted and protection was denied. She was released and referred to a shelter. She disappeared from the Center without saying goodbye or saying anything, not even asking for the help that is usually offered to facilitate the transfer period.

The protection granted to potential victims of trafficking who are in an irregular situation is an important step forward for the protection of victims. Once potential victims are identified, a period of resettlement is established of at least 30 days, which seeks to ensure their recovery, as well as to distance them from the trafficking network, so that without pressure they can make the decision to cooperate or not with the police to prosecute the crime.

The early identification of potential victims is crucial for both their protection and in order to prevent impunity for these types of crimes. We have found persons who may be victims of trafficking at the CIE. There is a need to strengthen the identification procedures at the border and in the CIE itself. There are certain patterns that are recurring in the case of Sub-Saharan women regarding their journey to the Spanish border.

Mechanisms for the identification of victims within the CIE itself are also needed, and social organizations could collaborate in the identification of potential victims who have been detained. The work of these entities is currently hindered due to the lack of sufficient quiet, intimate spaces in the CIE to accompany victims in sharing the process of domination and subjugation calmly and confidentially. Training of the CIE staff regarding the identification of victims of trafficking is also necessary.

It is a good practice in the CIE that once the existence of signs of trafficking are made known, an interview is conducted by the Police for the purpose of identifying the victim and activating the protection mechanisms.

Nevertheless, we find that the CIE, despite being a closed institution does not separate the women from the sphere of influence and control that the network maintains over them either through telephone conversations and visits or through the possibility that one of the women in the group is a member of the network. This could influence their testimonies and provide information about the institutions where they are referred once released.

Furthermore, the identification procedure²¹ should ensure that the context is comfortable and safe for the victim, taking into account elements that could adversely affect the interview such as: gender difference between the interviewer and the victim, fear of retaliation, cultural differences or the availability of an interpreter. The CIE is not a suitable space for such an interview to be performed. Some interviews are conducted in offices where other National Policies officials are working or talking on the phone, most of them are males. Therefore, even if the interviewer is a woman, the setting is not ideal to ensure an atmosphere of safety and trust.

Sometimes, the interview seems a police investigation and the situation of administrative irregularity could have an effect on whether the authority believes in the credibility of the testimony. Resettlement should not have conditions connected to the possibilities of a subsequent formal complaint by the victim.

The Attorney General's Office considers that a proactive investigation by the authorities is necessary, that they should not rely solely on the testimony of the person who has been trafficked.²² Also, we believe that greater collaboration between NGOs and the Police is necessary in the process of identification and protection.

The Police has offered protection to 655 victims of trafficking, of which only 81 have taken advantage of this protection (12.4%). This demonstrates the complexity of the problem and the need to continue strengthening the identification and protection mechanisms.

21 Instruction 1/2010 of the *Secretaría de Estado de Seguridad* (Ministry of Security) on the application of article 59b of the Organic Law 4/2000, 11 January.

22 *Annual Report of the Attorney General (Fiscal General del Estado) 2013*, p. 346.

The 2011 reform of the Spanish Immigration Law extends the suspension of the deportation procedure to the identification phase of the victims, that is, to the moment prior to granting protection, which is when the suspension of deportation is currently processed. Considering the difficulties in identifying victims of trafficking and the risks of continuing under the control of the network during their stay in the CIE, when there are indications that someone could be a victim, it is advisable to suspend the deportation prior to the interview, ensuring that person is truly distanced from the network.

3.3 Asylum-seekers

Zoe (Ivory Coast, 25 years old)

He was rescued at the Straits when he arrived in a children's inflatable boat, together with his wife who was seven months pregnant. He sought asylum, which was accepted for processing. He was released after 13 days in the CIE.

Yaka (Mali, 21 years old)

He left his country due to the war. His request for asylum was accepted for processing. He was released after 20 days in the CIE.

Sidi (Timbuktu-Mali, 28 years old)

His father works for the government. The rebels killed his brother in front of him. He managed to escape through Algeria. Nothing is known of his family. His request for asylum was accepted for processing. He was released after 26 days in the CIE.

Another profile of vulnerable people we encounter in the CIE includes those who are possible refugees, recently arriving to Spain, and who were not given information at the border regarding asylum. Only their return was processed. Therefore, or they have prior knowledge about the ability to ask for asylum, which is unusual, or it is not until they reach the CIE when this information is partially offered by the social entities who visit the CIE.

Information on asylum should be guaranteed for potential asylum-seekers, both at the border as well as during detention.²³ Information should be provided in a language that is understandable. Here, it is important to highlight the apparent collision between the return procedure and the procedure for asylum.

It would be advisable that unaccompanied minors, as well as other people who are eligible to be beneficiaries of international protection do not reach the CIE.

We have observed that the processing of the asylum applications with speed and efficiency is a good practice within the CIE.

3.4 Ill persons and pregnant women

“Detention can be particularly damaging to vulnerable categories of migrants, including victims of torture, unaccompanied older persons, persons with a mental or physical disability and persons with HIV/AIDS”. Special Rapporteur on the Human Rights of Immigrants, D. François Crépeau (2012)

23 Annex to the guidelines given by the General Direction of Domestic Policy(2005)

In the CIE, we have met women who are pregnant as well as people who are chronically or seriously ill, often without access to treatment in their country of origin. Their particular situation was not evaluated either in the procedures for their deportation or for their detention. We ask that people who are seriously ill or women who are pregnant not be detained.

The Return Directive provides that when applying this directive Member States should take into account “the state of health of the third-country national concerned”²⁴ and that the States may offer migrants in an irregular situation the right to stay for humanitarian reasons.²⁵

Spanish immigration law establishes that “deportation cannot be carried out when it would challenge the principle of non-refoulement, or affects pregnant women, where the measure may pose a risk to the pregnancy or the health of the mother”.²⁶

The law also contemplates the possibility of regularizing the situation of those people who suffer a serious disease which require specialized health care not accessible in their country of origin.²⁷

The CIE is no place for pregnant women due the situation of anxiety and distress that the mother suffers in detention. Furthermore, the conditions of detention in the CIE in Madrid are unsuitable for pregnant women. For example, it is obligatory to follow the schedule marked by CIE, there is no freedom of movement within the centre, the room where women stay is too small to house all the detained women, the patio is also very small and dark, there are recurring complaints of problems with hot water in the women’s quarters and gynecological care that is provided depends on the timely referral to hospital emergency services.

Reyes (Colombia, age unknown)

She had been living in Spain for ten years. She lived with her partner, who is Spanish. She has no criminal or police records. She is pregnant, which was confirmed through the pregnancy test performed by the medical service and the ultrasound carried out at the hospital. She was deported after 13 days in the CIE.

Vivian (Nigeria, 28 years old)

After she entered the CIE, a pregnancy test was performed, which was confirmed by the hospital services. She was five weeks pregnant, of which the detention judge was informed, as well as the stressful situation that she was experiencing and that the women’s quarters had been nearly 20 days with hot water problems. Her detention order was lifted by the judge after 35 days in the CIE.

Especially dramatic are cases of detainees with serious physical or mental illnesses. In some cases, detention has led to the discontinuation of their treatment, to missing appointments with specialists, or even surgeries. Along with these issues, we highlight the limitations of medical services in the CIE. The deportation of these individuals supposes leaving them without treatment, which is very difficult or impossible to access in their countries of origin. These facts adversely affect the right to health. Judicial follow-up for these individuals in detention is not carried out.

Lilian (Nigeria, 29 years old)

Female, nine years in Spain. She had been a legal resident. She is married to a long-term resident. During detention, she was sent to hospital due to severe abdominal pain and vaginal

24 Art.5.1 of the 2008/115/CE.

25 Art. 6.4 of the Directive 2008/115/CE.

26 Art.57.6 of the LOEX.

27 Art. 31.3 of the LOEX and 126.2 of the Royal Decree 557/2011.

bleeding. She had two uterine fibroids (myomas) that were 95 and 83 mm. The report speaks of a giant myoma, which had caused her anemia. Back to detention, her pains were treated with painkillers. She was sent again to hospital. The fibroid had grown more than 5 cm. They carried out pre-surgical testing and she was given an appointment to assess the tests and set the date for a surgical intervention, but her appointment is after the date scheduled for her removal. Her situation is made known to the judge who authorized her detention and a request is presented to suspend the deportation order before the Court of Administrative Litigation, where her situation as the partner of a long term resident is pointed out and the risk for her life if her deportation is carried out. Both appeals are upheld and Lilian was released after 33 days in the CIE, just a few days before her deportation. She was operated soon after.

Andrés (Dominican Republic, 45 years old)

He arrived in Spain nine years ago. He has always lived in Zaragoza. He had legal residence from 2004 to 2012, when his residence was not renewed due to a criminal record. He has two Spanish sons, ages 8 and 3 years old. The children live with and depend on him.

Medical reports attest to his chronic heart disease (two acute strokes in 2009 and 2010), nonspecific urethritis, bacterial pneumonia and chronic partial paralysis of certain limbs. He needs pharmacological therapy and chronic treatment with very frequent medical follow-up.

His lawyer communicated these facts to the judge that had to authorize detention. The Judge requested a forensic examination confirming his condition but these were definitely overlooked. His detention led to a discontinuation of his treatment. Later on he was visited by the Medical Service and he was receiving medication (it is unknown what kind). Andrés was deported after 27 days in the CIE.

Halid (Algeria, 31 years old)

He has been living in Barcelona for sixteen years; he arrived as an unaccompanied minor and has lived in several juvenile shelters. He was diagnosed with epilepsy with multiple seizure episodes and hospital admissions. At 21, he was sent to prison, where he was provided with continual treatment. After finishing his conviction, he was detained upon release from prison and taken to the CIE, where his treatment was interrupted and he was provided with medications that were contraindicated for his condition. After spending 48 days in the CIE, he was released.

Leo (Nigeria, 43 years old)

He has lived in Spain for 16 years, is married to a Spanish woman in Malaga. He had a long-term residency permit. He has been sick with diabetes since he was 14 years old, and has been receiving insulin treatment. During his detention, his machine for sugar control was taken away. He was deported after 58 days in the CIE. In conversations with him and with his wife, they report that he is having trouble accessing insulin in his country.

We have observed the detention of individuals with severe mental illness, despite being previously diagnosed and medicated. This situation is especially serious due to both the lack of psychological care in the CIE, as well as for the risk this may pose to the safety of other inmates. This collective risk also arises when we encounter people with infectious diseases.

Abdoul (Algeria, 39 years old)

He has paranoid schizophrenia and was under treatment at the time of his detention. He had been in Spain for sixteen years, as a child he lived in France and Belgium with his parents. He does not have a residency permit or a criminal record. When he entered the CIE his treatment was halted, and so he asked the medical service at the CIE to assess his status. He was regularly provided with his medication, but they did not carry out any psychiatric examinations during his detention. After 47 days in the CIE, he was deported to Algeria, where emigrating illegally is a crime. He may be in jail.

As the Special Rapporteur on the human rights of migrants states, “In the event that individuals falling within these categories are detained, it is advisable that this should only be on the certification of a qualified medical practitioner that detention will not adversely affect their health and well-being. In addition, there must be regular follow up and support by skilled personnel. They must also have access to adequate health services, medication and counseling”.²⁸

The Human Rights Committee notes that “The deportation of a person to a country where it is unlikely that he will receive the treatment necessary for his illness [...] would amount to a violation of article 7 of the Covenant”.²⁹

4. THE DEPORTATION OF EU CITIZENS, THEIR FAMILIES AND LONG-TERM RESIDENTS

Leo (Nigeria, 43 years old)

Ten years in Spain. Married to a Spanish woman and with permanent residency issued by an Administrative Court judge in March 2013. He was convicted for a crime against public health. In May 2013, he requested EU residency, which was denied due to his criminal record. He has diabetes and is dependent on insulin.

Although the granting of long-term residency (2013) took place after the deportation order was issued during his imprisonment (2010), the judge upheld that the deportation revoked the residency. The judge also ignored his status as the spouse of an EU citizen and his long period of residency in Spain: 10 years. He was deported after 58 days in the CIE and currently has difficulty accessing insulin treatment in his country.

Emili (Nigeria, 29 years old)

He has been in Spain for nine years. He had legal residency for three years. He is married to a long-term resident. He does not have a criminal record. He was arrested and detained in the CIE. The appeal and the precautionary suspension of deportation were upheld by the Court. He was released after 33 days in the CIE.

Andrew (Cameroon, 30 years old)

He has been in Spain for more than 10 years. His relationship with a Spanish woman is civilly registered, and they have a 4 year old daughter, who is Spanish. He received government benefits, integration income and housing assistance from the Basque government. With this aid, his family has been surviving. He was convicted of fraud and received a sentence of one year and three months, of which he served 28 days until the sentence was suspended. He has not gotten into trouble since and was a few months from being able to remove his criminal record. Following his arrest a deportation order was issued, his lawyer was notified but he neither informed him nor appealed the deportation. He requested the deportation to be revoked at the Local Government offices, which refused to do so. He was released after 32 days by the judge.

Royal Decree 240/2007 regulates the entry, movement and residence in Spain of citizens from European Union Member States and their family members.³⁰ This regulation applies to **EU citizens and to the foreign relatives of Spaniards**. In these cases, it is only possible to deport

28 2012 Report of the UN Special Rapporteur on the human rights of migrants, paragraph 43.

29 UN Committee of Human Rights, Communication 900/1999, paragraph 8.5.

30 The development of article 1.3 of the LOEX and which has been transposed into our legislation from the Directive 2004/38/CE on the right of EU citizens and their families to circulate and live freely in the territory of the Member States.

EU citizens and family members when there is a real and serious threat to public order, which must be justified.³¹ However, the practice is very different. The mere existence of a criminal sanction is used by the police to automatically order their deportation³², in spite of abundant European case law to the contrary:

“The existence of a previous criminal conviction can therefore only be taken into account in so far as the circumstances which gave rise to that conviction are evidence of personal conduct constituting a present threat to public policy.”³³

“Reliance by a national authority on the concept of public policy presupposes, in any event, the existence, in addition to the perturbation of the social order which any infringement of the law involves, of a genuine and sufficiently serious threat to one of the fundamental interests of society.”³⁴ “Even the existence of several criminal convictions has no relevance to this effect on its own.”³⁵

In a similar situation **are long-term residents**. Article 57.2 of the Spanish Immigration Law provides for the deportation of foreigners who have been convicted of an offense punished by the deprivation of liberty for more than one year, unless their criminal record has been cancelled. This article is applied in practice disregarding the provisions of the law³⁶ about long-term residents. Deportation of a long term resident requires under the Law prior assessment of their residency in Spain and the links created, their age, the consequences for the individual and for their family members and their links to the country where they are to be deported. However, the Police³⁷ interprets that automatic deportation is appropriate for long-term residents with a criminal record. This interpretation is questioned by the courts³⁸ and is contrary to the provisions of the Directive 2003/109/EC³⁹, which states:⁴⁰

Member States may take a decision to expel a long-term resident solely when he/she constitutes an actual and sufficiently serious threat to public policy or public security.

Before taking a decision to expel a long-term resident, Member States shall have regard to the following factors:

- a) the duration of residence in their territory;*
- b) the age of the person concerned;*
- c) the consequences for the person concerned and family members;*
- d) links with the country of residence or the absence of links with the country of origin.*

31 Art. 15.7 of RD 240/2007

32 EU Court of Justice, 22 December 2010, Bozkurt: “The exception is a derogation from the fundamental principle of freedom of movement for persons [...] which must be interpreted strictly, and that its scope cannot be determined unilaterally by the Member States”.

33 EU Court of Justice, 27 October 1977, Bouchereau, 30/77, Rec. p. 1999, paragraph 28; 19 January 1999, Calfa, C- 348/96, Rec. p. I- 11, paragraph 24, and 7 July 2007, Commission/Netherlands, C-50/06, Rec. p. I-0000, paragraph 41.

34 EU Court of Justice Rutili, paragraph 27; 29 April 2004, Orfanopoulos and Oliveri, C-482/01 and C-493/01, Rec. p. I-5257, paragraph 66, and Commission/Germany, paragraph 35.

35 EU Court of Justice 4-10-2007, num. C-349/2006, Murat Polat.

36 Art.57.5 of the LOEX.

37 Guidelines from 12 December 2009, General Direction of the Police and the National Guard, (paragraph XIII.3): “The General Commissioner continues to hold the criteria that paragraph 5 does not come into affect when the deportation is applicable through article 57.2 »

38 Sentence from the High Court of Justice(STSJ) in Castilla y León, Section 1.a. Court for contentious administrative proceedings of 15 October 2012 and 16 December 2011; and STSJ of Cantabria, Section 1.a. of 23 December 2011.

39 Directive 2003/109/CE, of the Council, 25 November 2003, regarding the state of third country nationals as long term residents.

40 Art.12 of the Directive 2003/109/CE.

Therefore, neither deportations nor detentions in the CIE should be authorized without evaluating the individual circumstances and justifying the existence of a “genuine, present and serious threat”⁴¹ to public policy, public security or public health.

5. THE DETENTION AND DEPORTATION OF MIGRANTS WITH CHILDREN

We have also encountered 35 detainees in the CIE who are parents with children in school and who are with or without legal residence, as well as parents of children with Spanish nationality. In these cases, the deportation is in conflict with the protection of families and children.

Charles (Nigeria, 38 years old)

His request for asylum was declared admissible on his arrival in Spain, but was later dismissed. He is married with two children born in Spain who are 4 and 6 years old, both are in school, and they form a very stable family unit. He has been in Spain for 12 years. He has applied for a residency permit several times without success. The police opened immigration disciplinary proceedings and ordered his deportation. He has a strong bond with his wife and children. He was deported after 29 days in the CIE.

Carlos Alberto (Ecuador, 30 years old)

He has been living in Murcia for four years. His wife and daughter have legal residence. He had a residency permit, which he could not renew because he was not able to pay the monthly contributions to Social Security. In 2011, his deportation order was issued for illegal residence. He has no criminal record. His lawyer did not appeal the expulsion order and Carlos lost contact with him. Facing detention, he could not show that he had links in Spain and that he had a daughter who was one year old because his counsel was not advised to go to the police station the day before. His counsel only saw him at the hearing before the judge. Despite not having his residency, he had a contract, his paychecks and both he and his employer reported that he continued to be registered in Social Security. His family was financially dependent on him. He was released after 15 days as ordered by a judge.

Luis Fernando (Ecuador, 33 years old)

He has been in Spain for 11 years. He was a legal resident and had contributed for several years to Social Security. He has a son who is 5 years old, of Spanish nationality and schooled in Madrid. He had a previous deportation order which was revoked because he had a child of Spanish nationality. At his detention hearing, his lawyer argued that he had a son of Spanish nationality but could not prove this because he did not have any documents to show and the counsel was not advised to go to police station the day before, but went directly to the hearing. Luis was expelled after 20 days.

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) enshrines the right and respect for family life.⁴² Moreover, the European Court of Human Rights has repeatedly held that article 8.1 of the ECHR may act as a limit to expulsion.⁴³

The Return Directive states that its implementation shall be carried out with special attention to the interests of the child and family life⁴⁴ and expressly provides that States should extend the period for voluntary departure “taking into account the specific circumstances of the

⁴¹ EU Court of Justice, Rutili, cited above, paragraph 27; 29 April 2004, Orfanopoulos and Oliveri, C-482/01 and C-493/01, Rec. p. I-5257, paragraph 66, and Commission/Germany, paragraph 35.

⁴² Article 8.1 of the European Court of Human Rights.

⁴³ Among many others, the judgment of the European Court of Human Rights, Dalia Case, of 19 February 1988, articles 39-45, 52-54.

⁴⁴ Art. 5.1.a and b of the Directive 2008/115/CE.

individual case, such as the length of stay, the existence of children attending school and the existence of other family and social links.”⁴⁵

And recently, the Supreme Court interpreted the right to family life “Judges should verify whether, given the circumstances of the specific case, the deportation is proportionate to the sacrifice it means for family life.”⁴⁶

On the other hand, the immigration law itself contemplates the existence of Spanish children as a means of regularizing one’s situation. Therefore, the authorities should not expel or detain individuals who can regularize their situation having children who are Spanish under their care.

Therefore, the family situation must be especially analyzed and evaluated, both in deportation proceedings as in the authorization for detention.

Patience (Nigeria, 32 years old)

She has been in Spain for 12 years. She has a 10 year old son who was born in Morocco, where she lived for two years prior to her trip to Spain. She lives in a room with her son. Her deportation is merely for irregular stay, she has no criminal background. She has tried to regularize her situation; she has a favourable social inclusion report. Her child is enrolled in school and regularly attends, as the principal of the school certified. At the time of her detention, her child was in school. In our first interview, she was very anxious about who would pick up the child from school and who would take care of him.

She could not demonstrate the documents needed to prove her social links during the detention hearing. Once she gains access to her documentation, her lawyer proposes precautionary measures requesting the suspension of the expulsion to the Administrative Court, which was granted. She was released after 14 anxiety-filled days in the CIE.

When children are in foster care, the removal of their parents could definitely lead to the breaking of the parent-child bond.

María Fernanda (Colombia)

She has been in Spain for nine years. Her request for asylum was dismissed. She has two children, who are 3 years old and 6 months, both under the protection of the Community of Madrid because of her economic situation. Her deportation was ordered due to mere irregular stay, she has no criminal record. She applied for precautionary suspension of the deportation order, which was initially upheld. After the hearing, the judge revoked the measure and she was removed.

6. THE DEPORTATION OF INDIVIDUALS WITH NO LINKS TO THEIR COUNTRY OF ORIGIN

Amezyan (Morocco, 24 years old)

He arrived in Spain when he was 10 years old. He arrived in Melilla, where he was in a shelter for children up until the age of 18. When he left the centre, he came to Madrid, where he participated in a youth employment program. He was in prison for armed robbery. He was repatriated but when he arrived in Morocco he was not recognized by the authorities and so he was returned to the CIE. He was finally released because he could not be deported.

Rubén (Ecuador, 28 years old)

He arrived in Spain when he was 13 years old for family reunification. His mother and sisters have Spanish nationality. He has contributed to Social Security for six years. He has a criminal background due to a fight some years ago. He had long-term residency, which was cancelled by

45 Art. 7.2 of the Directive 2008/115/CE.

46 Judgement of the Supreme Court 186/2013, Sala 2ª, on the 4 November 2013.

the police due to his criminal record. He had appealed his deportation and he had a hearing to suspend the deportation the same day that he was removed.

There are situations which are extremely inhumane. Such is the case of those who came for family reunification, which have their entire family here and, after losing their residency permit, find themselves in deportation proceedings. These people have lost their links with their country of origin, to which they will be expelled.

Equally dramatic is the situation of unaccompanied minors, who have spent much of their childhood in Spanish shelters and after many years, and already of age, are expelled to their country of origin.

Youssef (Morocco, 21 years old)

He arrived as an unaccompanied minor at the age of 12 and lived in shelters for minors in Granada until he was 18. He completed several training courses. He moved to Tarragona in search of work. He worked sporadically as a gardener, but without a contract, so he was unable to renew his documentation. He was arrested at an identification checkpoint and transferred to a CIE due his lack of documentation. He was deported after 22 days in the CIE.

7. NON RETURNABLE PERSONS IN DETENTION

Siad (Somalia, 20 years old)

An orphan. He arrived at Melilla after jumping over the wall. His whole body is covered with cuts and wounds. He cannot read or write. He has never been to school. He was released after 52 days in the CIE due to the inability to document him.

Idí (Kenya, 24 years old)

He arrived in Libya from Kenya, where he fled from the war. He went to Melilla in a truck. He was released after 52 days in the CIE due to the inability to document him.

Diogo (Central African Republic, 19 years old)

He began his journey in 2008. In October 2012, he was able to jump over the wall at Melilla. After two months in the CETI, he was transferred to the CIE. He was released after 47 days in the CIE due to the inability to document him.

Idriss (Chad, 18 years old)

An orphan, he is very good at playing soccer, he has come to Spain with the hope to be a soccer player on a team. He did not have any problems in his home country, he only wanted an opportunity. He was released after 34 days in the CIE due to the inability to document him.

The Return Directive requires that detention be used only if necessary to ensure removal, otherwise the person concerned should be released.⁴⁷ However, we have met people in the CIE who cannot be deported because:

- They cannot be documented,
- They are not recognized by their countries of origin because there is no repatriation agreement between either the European Union or Spain and that country.

⁴⁷ Articles 15.4 and 15.5 of the Directive 2008/115/CE

These individuals are often detained unnecessarily with high human and economic costs. Many of them are in a situation of high vulnerability, which means that detention, beyond being ineffective in ensuring deportation, has an enormous human cost.

It is advisable that prior to the request for detention, the police assess the reasonable possibilities for deportation and that the judge that authorizes detention asks for explanations from the Police on this matter prior to authorizing detention.

It is advisable to explore the possibility that these youngsters from Africa spend the time needed to confirm their documentation in open centres and not in the CIE. According to the Attorney general,⁴⁸ of the total 8,807 detainees in 2012, 3,217 could not be documented and had to be released.

The Special Rapporteur on the human rights of migrants and the UN Working Group on Arbitrary Detention highlight that the detention of individuals who are unable to be removed can become arbitrary detention "*When it is impossible to remove a migrant due to reasons which are beyond his or her control, the migrant should not be detained. [...] Detention requires a legitimate aim, which does not exist if there is no longer a real and tangible prospect of removal.*"⁴⁹

8. JUDICIAL REVIEW AND THE RIGHT TO A DEFENSE

8.1 Is Judicial Review effective?

According to the Spanish Constitutional Court, deprivation of liberty for migratory purposes is constitutional because there is judicial control over detention. Every detention has to be authorized by a judge. The judicial control cannot be a mere formal ratification of the administrative request for detention, but it is a real guarantee of the right to freedom of the immigrant.

However, we find that, too often, the judges merely ratify the request of the police for detention.

We have also observed a very low level of knowledge regarding immigration procedures and the detention process by the Judges. They are criminal judges.

Here follows some of the recurring practices that exemplify these shortcomings in the judicial review of detention:

- Little motivation of the court orders.
- The reason of the deportation is not recorded in the court ruling.
- Lack of assessment of the personal circumstances of the immigrant: their social ties, whether they have a known home address, have dependent children, or if they are registered as a partner of an EU national, etc.
- The court does not request additional information from the police or make any inquiries concerning the personal situation of the detainee.

⁴⁸ Annual Report 2013, p.355.

⁴⁹ 2012 report of the Special Rapporteur on human rights of migrants, paragraph 24.

- The immigrant is required to show documentary evidence of his claim, but in many cases the arrest in the police office makes it impossible to obtain such documentation and to talk in advance with the lawyer.
- It is unusual that the judge asks the police about reasonable possibilities and plan of removal.
- Cases where detention was agreed without a hearing of the defence counsel.
- Alternatives to detention are never assessed.
- Collective detention rulings of Motril Judges, where the detention of up to 50 people was ordered, with no attention to the individual circumstances of any of the cases.

The role of judicial review of detention is of utmost importance. An **effective judicial review** requires the analysis of the following:

- The personal circumstances of the immigrant,
- Assessment of the reasons why detention is advisable,
- Guarantees that the deportation will be implemented,
- Alternatives to detention

In order to facilitate judicial review prior to detention, we believe that the judge should obviously have all of the specific information of the case that is presented. To do so, we recommend that the request for detention be accompanied by the complete record of the immigrant, including:

- a) The deportation order or the administrative status of the deportation procedure ;
- b) History of attempts to regularize their situation;
- c) Personal circumstances, especially considering their social ties in Spain, the existence of a known address, family situation and possible vulnerabilities;
- d) Circumstances of their detention;
- e) Whether previous requests for detention exist, and the result and the motivation behind these;
- f) The administrative procedures necessary to carry out their deportation and the estimated time that this would require;
- g) The means to carry out the expulsion, the existence of transport and the feasibility of repatriation to the country of origin.

Based on what is described in the Return Directive and in order to not prolong the detention beyond the time strictly necessary, it is advisable that the court adopts review mechanisms of the detention measure within a reasonable time frame in order to ensure that the detention is as short as possible.⁵⁰

⁵⁰ Article 15 of the Directive 2008/115/CE.

For vulnerable persons, it would be important to uphold this vulnerability as a cause for not proceeding with detention, and the establishment of non-coercive measures should follow. In the case that the detention of these individuals is deemed necessary, there should be greater communication between the Detention Courts and the Supervisory Courts with the CIE.

8.2 Lawyers: a poor legal assistance for the poor

Spanish Law provides free legal assistance in immigration proceedings⁵¹. The way in which legal assistance is provided for immigrants in deportation or detention proceedings is of utmost importance to safeguard their rights and guarantees.

The judicial authorization of detention allows the person concerned to present his or her defence with the assistance of a lawyer, in order to prevent arbitrary detention (STC 115/1987). Therefore if a detainee does not have a lawyer to exercise their right to a defence, judicial intervention cannot be understood as a genuine guarantee.⁵²

However, the quality of legal assistance for people who reach the CIE is often very poor:

- Lawyers fail to appeal the deportation order or the detention ruling without even informing their clients, leaving them without a defence.
- Either due to a lack of will or knowledge, some lawyers limit themselves to using “model” allegations without analyzing the particular circumstances of each case. This approach is ineffective to challenge the deportation or the detention.
- Not informing their client of the notifications of resolution that arrive at the offices of the lawyer.
- Lack of identification: many lawyers fail to provide a card with their name and phone number to their clients.
- Lack of information: many lawyers do not explain their clients their legal situation.
- Private lawyers who later ask for higher payments from their clients.

Cultural and language barriers also undermine the right to a defence. The legal counsel should use, whenever possible, translation services to ensure that his client properly understands his/her legal status and the rights throughout the process.

Sometimes the immigration attorney is not notified or fails to appear at the police station, only attending to their client directly at the Court hearing, without time to access the necessary documentation and sometimes conducting the preliminary interview in the hallway of the courthouse. Sometimes, they even enter the court room without a prior interview.

Given the complexity of immigration law, it is advisable that there be lawyers at the different Bar Associations specialized in immigration that can attend to both deportation procedures as well as the authorizations for detention. In many localities, the arrest or the hearing for detention is covered by criminal lawyers on duty, who have little knowledge of immigration law.

⁵¹ The initiation of deportation proceedings without legal representation in prisons limits the exercise of the right to a defense and access to resources.

⁵² Women in detention, 2013. Margarita Martínez Escamilla (Coord).

The designation of different lawyers during the procedure of deportation and detention considerably decreases the right to a defence of the detainees. The legal counsel appointed for the detention is often unaware of the procedure for deportation, and therefore the personal circumstances that are involved.

Greater efforts on behalf of legal professional associations are needed in guaranteeing the excellence of the public service they provide, through requirements for continuing education in legal aid and for minimum protocols, as well as information and accessible mechanisms regarding professional ethics that can serve to correct errors that may occur in the provision of legal aid to migrants.

The difficulties in accessing the administrative records of people who are detained by their lawyers, the immigrants themselves, or the NGO that visit them, greatly weakens the right to a defence.

CHAPTER 3. CONDITIONS OF DETENTION

3.1 Resolutions of the Supervisory Courts

3.2 Complaints during 2013

1. Resolutions of the Supervisory Courts

In general terms, the conditions of detention have not improved in the past few years and the same complaints have been repeated over time. However, in the CIE of Madrid there have been some positive developments: NGO access, access to toilets at night, complaints procedure, telephone for attorneys, advance notice of expulsion. In other CIE there has also been some concrete improvements. These improvements are fruit of Court Orders dictated by the Supervisory Courts.

Organic Law 2/2009 of 11 December wisely brought in the involvement of Supervisory Courts into those localities where there is a CIE. These Courts were introduced to separate the powers of the judge who authorises detention (who will be of the locality where the detention takes place) and the judge who supervises conditions of detention (who will be one of the place where the CIE is), and which significantly contributed to uphold the rights of the detainees. Their function is to control the conditions of detention and guarantee the rights of the detainees.

The Supervisory Courts began operating in 2010, so they were created only recently (some were not designated until 2012). But the function that has been entrusted to them to ensure that the rights of the foreigners who have been interned are respected is of utmost importance and necessity.

In the exercise of their supervisory role, the Courts issue individual resolutions (that affect one particular individual) and general resolutions (that affect all detainees in a CIE as a whole). The following Table shows the main resolutions issued by these courts in previous years. A look at them demonstrates that **there are still many basic needs that are not provided for in the CIE in Spain.**

The Ministry of Interior is finalising a Regulation for the CIE. Surprisingly, this Regulation discards the jurisprudence derived from these courts and does not incorporate it into the Regulations, which would improve and unify the conditions of detention in all the CIE and the guarantees of rights of the detainees.

General Resolutions by the Supervisory Courts of CIE, 2010-2013

Juzgados de control	Issue	Date
Right to information		
Madrid	Information sheets about rights and obligations and the possibility of complaint to the supervisory court, translated into all the languages used by the detainees	28/1/10
Madrid	Right to receive, upon entry, a manual containing policies regarding organisation, operation, discipline and possibility to formulate complaints or requests	4/4/11
Murcia	Include in the information bulletin given to the detainees the possibility of presenting complaints and requests to the supervisory courts and the mailing address for such purpose	14/3/12
Murcia	Include in the information bulletin given to the detainees the possibility of requesting asylum and/or protection as victims of trafficking	16/7/13

Madrid	Obligation to translate the Manual of rights and policies of the detainees into Arabic, Turkish, Kurdish, Farsi, Woloj, Mandingo, Swanit , Mandarin, Cantonese, Tagalog, Bangla and Urdu.	4/4/11
Madrid	Right to know the telephone number of the lawyer that is assisting them, or otherwise, their right to raise a complaint	28/1/10
Right to be informed of departure date and time		
Las Palmas	Communication to the detainees of their expulsion or departure from the CIE should be made with a minimum of 12 hours in advance, never counted between 20:00 and 8:00, in order to guarantee that the detainee is able to notify his/her family and lawyers. During this period the detainee should be guaranteed access to telephone communication, including international calls	30/3/12
Madrid	Right to being notified of their expulsion 12 hours in advance, notifying them of the flight number, time of arrival and city of destination. They will be provided with the necessary means to notify by telephone this information to their relatives and acquaintances in Spain or in the country of destination	27/2/12
Valencia	Notify the place, day and time of departure and the place of destination and time of arrival as soon as there is knowledge of this information.	21/11/12
Organisation of the Centre		
Madrid	Guarantee a dignified treatment as well as the fundamental rights to personal and family intimacy and privacy of communications.	28/1/10
Murcia	All police staff assigned to the CIE will visibly display their identification number on their uniform	14/3/12
Madrid	Police staff in charge of surveillance and control of the CIE ought to carry and visibly display their identification tag.	14/1/10
Valencia	Obligation to provide social services in the centre.	26/4/11
Madrid	Obligation to provide recreational, cultural, social and sporting materials (books, games, sporting equipment, etc.) for activities coordinated by persons with technical knowledge in these activities	28/1/10
Madrid	Obligation to provide shower gel (liquid soap), shampoo and toothpaste when requested	5/4/11
Facilities		
Madrid	Existence of toilets in all dormitories, accessible at night without requiring intervention of police.	28/1/10
Madrid	Guarantee access to toilets at night within 3 minutes of request for such use, at any time of night and whenever it is required.	25/11/11
Madrid	Existence of doors or curtains in the toilets	28/1/10
Barcelona	Need to install a system of showers that permits adjusting the hot water without having to restrict the duration of use Need to install a urinal in each dormitory	15/1/14
Communication and visits		
Murcia	Right to use their mobile phones inside the facilities during the scheduled periods of stay in the common areas. Right to use telephone facilities belonging to the Centre at least every three days and always when there is an urgent need	16/7/13

Las Palmas	Access to mobile phones or to the telephone facilities of the Centre during visiting hours, without control and restriction of the calls.	30/3/12
Madrid	Access to mobile phones and phone chargers at least four hours a day	28/1/10
Las Palmas	Visits by family and friends: allow these visits to those persons who identify themselves by DNI, NIE or passport, during visiting hours in the morning and afternoon, allow direct contact among them.	30/3/12
Madrid	Visits by family and friends: at least during 4 hours in the morning and 4 additional hours in the afternoon, guaranteeing privacy	28/1/10
Murcia	Increase the schedule of visits by family and friends to include also morning hours, from 10 to 13h, every day of the week	16/7/13
Madrid	Access of lawyers should be allowed at any time of day, without need of prior request	22/4/10
Las Palmas	Access of lawyers and procurators should be allowed, identifying themselves with their professional identity card.	30/3/12
Barcelona	Meetings or interviews with family, friends, lawyers or NGO should take place in a room without screens, bars, grills or any other obstacle that prevents physical contact. Control measures of the visits need to be notified to the Judge. Confidentiality of the conversations must be respected. The actual schedule of family visits will be increased in the afternoons between 17 :00 and 19:00h	15/1/14
Access by NGO		
Barcelona	Management cannot arbitrarily limit the right of visit to detainees by NGO. He cannot demand each NGO a closed list of persons that need be previously accredited for such visits.	15/1/14
Murcia	NGO who defend the rights of migrants have the right to contact detainees without need of prior designation. They can talk to detainees directly without use of telephones and glass screens. NGO may visit detainees every day of the year, six hours a day, 3 hours in the morning and 3 in the afternoon, without limit in their number. The management of the CIE of Murcia will provide the detainees with a mailbox for complaints and suggestions addressed to NGO.	15/7/13
Barcelona	NGO who defend the rights of migrants have the right to contact detainees without need of prior designation. They can visit every day of the year, with a broad enough schedule and without special restrictions. They can visit Individually or in a group, with a maximum of 10 persons per visit. They can make as many visits as they wish. If the Director wants to restrict a particular visit as a matter of public order, he/she will have to request judicial authorisation. NGO can install in the centre a mailbox for suggestions and complaints, with each NGO having a right to its own mailbox.	27/6/13

Madrid	NGO can visit the centre morning and afternoon, whether they be lawyers or not, and communicate with and assist the person who request such service, or visit those persons requested by the NGO NGO need not wait in the waiting queues for families and friends, and their visits cannot be restricted to time limits NGO can talk to detainees without using telephones and glass screens.	13/1/11
Las Palmas	NGO can visit mornings and afternoons, whether they be lawyers or not, and communicate with and assist the persons who request such service, or those persons requested by the NGO	30/3/12
Valencia	NGO can visit, without coinciding with family visits, and without other restrictions save for night rest and mealtimes, and the detainees will be informed of the NGO existence, goals and contact details.	26/4/11
Right to legal assistance		
Madrid	Guarantee communications with their lawyers without time restrictions, save for night hours, with total privacy in the communication	28/1/10
Valencia	No restrictions in the interview between the detainee and the lawyer, save for those requested by the attorney; no policeman shall be present during the interview	26/4/11
Complaints and petitions to the Court		
Murcia	It is possible to present complaints and petitions in writing by the detainees, a relative, lawyer, NGO or any other legitimate concerned party. A mailbox will be installed at reception, duly signposted, giving the Court's information details. Complaints and petitions should be delivered from the CIE to the Court within a maximum period of 24 hours following their submission, using any of the following means: a) by writing, placed in the aforementioned mailbox; b) by regular post, delivered in a sealed envelope, with the CIE having to inform the Court by fax about the day of submission and the identity of the detainee; or c) by fax, giving the detainee proof/confirmation of delivery/reception Information about their right to submit complaints and petitions that affect their fundamental rights should be included in the information bulletin on rights and duties of the detainees, given at the time of entry	14/3/12
Madrid	Complaints and petitions will be submitted in writing to the supervisory courts, by the detainee, a relative, lawyer, NGO or any other legitimate concerned party Complaints and petitions should be delivered from the CIE to the Court within a maximum period of 24 hours following their submission; the detainee will have the option to make the submission either by regular post or by fax. The detainee has the right to be given a copy of the proof/confirmation of reception of the document	30/9/11
Madrid	A complaints mailbox will have to be provided for complaints directed to the supervisory courts	28/1/10
Madrid	Complaints submitted in sealed envelopes need to be delivered by express official post; and that mailboxes be opened at least twice a day to ensure urgent delivery of	6/7/11

	such complaints	
Medical Assistance		
Murcia	<p>Guarantee assistance by interpreters in the examinations conducted by the doctors, and in particular for the examination at the time of entry.</p> <p>A medical report will be provided when requested by the detainee and, in any case, at the time of end of detention.</p> <p>The Medical Services must deliver to the Judge, immediately and in all cases, medical reports concerning injuries suffered by the detainees in the CIE, due to aggression or any other etiology.</p>	16/7/13
Valencia	The health staff must provide to the detainee who request it the same information and in the same manner as it is done in the public health system	26/4/11
Madrid	The Director must make available the necessary means to guarantee immediate medical assistance to the detainees at any time of day	23/12/09
Madrid	<p>Provide always to every detainee who has been assisted, a medical assistance report indicating the name of the detainee, the date, the diagnosis and the prescribed treatment.</p> <p>In case of injuries caused by another detainee or by a police officer, all verified wounds and all the referred symptoms will have to be included in the report. A complete unabridged copy of the report must be submitted to the Judge.</p> <p>The Director has no authority to demand from detainees that the report of medical assistance be first requested to him.</p> <p>There must be total medical autonomy for the transfer of the detainee to a hospital or health centre when the detainee is undergoing specialised medical treatment.</p> <p>Special care must be given to pregnant women; persons suffering from chronic illness must be given special medical follow-up;</p> <p>Possible cases of flu outbreaks or of other contagious diseases should be informed immediately to the Judge.</p>	3/11/11
Madrid	The Medical Service is obliged to provide the detainee with a copy of his medical information, without there being a need to request previous authorisation from the Director of the CIE	26/12/13
Barcelona	Obligation to refer to the Judge all reports of medical assistance to detainees assisted because of injuries of a traumatic nature, regardless of their etiology.	15/1/14
Food		
Madrid	<p>All utensils such as trays, cutleries, etc. should be clean and dry.</p> <p>All food should be in perfect hygienic condition, adequately cooked and in good quality. Food should be nutritiously adequate and of sufficient quantities.</p> <p>Those persons in need of a special diet because of medical prescription should be able to receive it, taking into account in particular the special care of pregnant women and the sick.</p>	4/11/11

Disciplinary measures		
Madrid	All disciplinary measures will be reported to the Judge, as well as all details concerned with the use of the isolation room .	28/1/10
Madrid	<p>Detainees will not be secluded in the isolation room for more than 24 hours.</p> <p>Its use will be a preventive measure and not a sanctioning one.</p> <p>In case it is deemed necessary to extend the period of confinement beyond 24 hours, the procedure will require to initiate a sanction report, in the presence of the detainee and including written allegations by him/her; the Director will then communicate with the Court by fax, explaining the reasons for the prolongation of the confinement</p>	11/2/10
Madrid	When a detainee is put in the isolation room, he/she has the right to be given immediately the possibility to appeal to the Judge. He/she has the right to be informed and to be assisted by an interpreter.	20/12/10
Murcia	Personal physical containment and isolation of the detainee will be communicated to the Judge by fax immediately, attaching a written explanatory report.	14/3/12
Barcelona	The CIE must inform the Judge within 4 hours since the beginning of the problem at hand, of the relevant incidents that have taken place, and likewise inform the Judge about the entry into the centre of the Police Intervention Unit, so that the Judge can investigate the causes of the disturbances.	15/1/14

2. Complaints in 2013

We only focus on the more serious o recurring complaints we have received throughout this year:

1. **Lack of information. Legal defencelessness.**
2. **Absence of photocopiers.**
3. **Health service**
4. **Dramatic situations caused by detention and expulsion**
5. **Aggressions**
6. **Disciplinary measures and police interventions**
7. **Expulsion without forewarning**
8. **List of complaints 2013**

A simple reading of this table of contents reflects injuries to rights that go well beyond the deprivation of liberty. They are not new things. They have been denounced repeatedly over the last four or more years without their having been solved, which shows the apathy and

indolence of the Ministry of the Interior and its exclusive concern for aspects of control and security.

2.1 Lack of information. Legal defencelessness

- Difficulty experienced by the detainees to get access to their legal dossiers and to the resolutions that affect them
- Denial of access to NGO, even when possessing written authorisation by the detainee.
- Denial of information to the NGO and to families concerning the release or expulsion of the detainees

No information is provided to detainees about their juridical situation, the reasons why they are in detention and the procedures and formalities that the Police will carry out during their detention. In addition, it is very difficult for the detainee to get access to their legal dossiers and NGO have no access to this information, even with a written authorisation by the detainee.

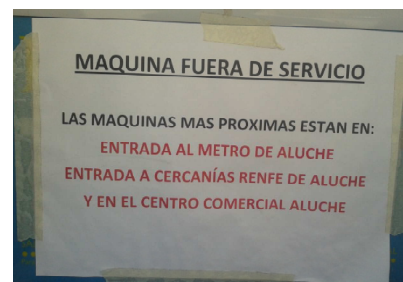
All of this significantly limits their ability to defend themselves.

Further examples of the gratuitous difficulties placed on NGO that visit detainees are, for instance, the denial by the CIE to inform whether a person has been deported, released, or transferred to hospital, to the Court, or to another CIE. The Law of Protection of Information is cited for this denial. The NGO have requested written authorisation by detainees to be able to gain access to this information, but in spite of this, it is still denied.

2.2 Absence of photocopiers

Photocopiers are needed so that the detainees, their families, lawyers or NGO that visit them, are able to obtain copies of their dossiers or documents, and thus be able to exercise their right of defence or prove their particular circumstances.

Up until now, although it was not the optimum solution, visitors would utilise the existing photocopiers in the courtyard of the commissariat, outside of the CIE facilities which, at a very expensive price, allowed them to make the photocopies. However, in July 2013, the machines were unplugged and signs were placed that referred to the 'nearest' photocopiers located at a return distance of more of a kilometre from the CIE.



We placed a complaint before the supervisory court, which requested the director of the CIE to give an account of the situation of the photocopiers. The director limited response was that the unplugged photocopiers were not his responsibility, since the CIE has no photocopiers.

The photocopiers in the courtyard became operational again, but only after 5 months, and the CIE still remains without photocopiers for the use of the detainees, their lawyers or the NGO.

2.3 Health services

"[...] we cannot forget the extremely special situation of those who are deprived of their liberty in a CIE. They cannot have access to medical services other than those of the Centre itself or those to which they refer them, if they deem it appropriate. [...] particularly relevant is the

position of guarantor that appertains its personnel, with respect to persons who are deprived of their liberty and who cannot provide alternative medical attention for themselves”.

The paragraph cited above appears in Writ 13/2014, of 23rd January, by which the Provincial Court of Madrid orders the reopening of the criminal case for the death of Ms. Samba Martine, deceased on 19 December 2011 in the CIE of Madrid. The Court points to insufficient medical examination upon entry and deficiencies in the medical services of the CIE provided by private companies.

When the State deprives a person of his/her liberty, it becomes guarantor of his/her rights, prominently in regards to his/her life and health. The case of Ms. Samba Martine, far from being an exception, demonstrates that the State is not guaranteeing the rights of these persons. And unfortunately, hardly any changes have taken place since Samba’s death, more than two and half years ago.

We have observed the following deficiencies:

- Detainees are examined behind a **line on the floor** in order to keep the “security” distance with the physician or nurse.
- Absence of health assessment and diagnosis of the persons that come into the CIE. There is a very superficial medical examination upon arrival, which does not include any blood tests or other analyses, at least among the newly arrived to Spain.
- Absence of diagnosis and treatment of psychiatric illnesses. **There is no psychological attention** during detention.
- **Absence of an infirmary** for isolating and treating persons with illnesses and to separate them from their companions.
- **Absence of translators/interpreters.**
- **There is no identification of vulnerable persons**, possible victims of aggressions or vexations, possible victims of trafficking.
- Symptomatic medication is administered during the stay, consisting primarily of anxiolytics and analgesics. There are suspicions of over medication with anxiolytics to tranquilise some persons.
- Difficulties to continue treatments provided prior to detention.
- In cases of presumed police aggressions, medical reports and medical history are not given to the person. They are told that they need prior authorisation from the director.
- In cases of ill-treatment and **injuries** in the CIE or at the airport, **medical reports are not sent to the Judge.**

Since 2009 there are no fewer than 6 writs dictated by the supervisory courts related to the healthcare in the CIE. The reiteration in the contents of the said writs demonstrates the non-compliance to what has been regulated by them.

Mumba (Nigeria, 30 years): three weeks complaining so that she be taken to hospital.

Upon her arrival at the CIE, she expresses that she is not well, suffering from vomiting, dizziness and headaches. She is given a pregnancy test, but is found not to be pregnant. She is given some pills whose name or function are unknown to her; she says that they make her feel very weak.

Three days later she requests to see the doctor, who gives her more pills without giving her an examination. She requests to be transferred to a hospital because she is not well. They tell her that they will do so. After 24 hours without receiving a response, she writes a letter to the director of the CIE requesting to be seen by a medical specialist

because she is not well. The following day she receives a call from the Director, who questions her and then promises her help. A month and a half after her arrival at the CIE, Mumba is transferred to Hospital, where medical tests and x-rays are conducted. She is diagnosed with anaemia but without determining its cause. She is informed that it is not possible to carry out further tests because of her irregular situation. Mumba is deported a week later.

Manuel María (Dominican Republic, 45 years); chronic heart disease; both scheduled check-up and surgery suspended

He arrived in Spain nine years ago. Has had legal residence for many years. He has two children born in Spain, 8 and 3 years old. The children live with him and his current partner. Manuel has chronic heart disease (had two acute heart attacks in 2009 and 2010), suffers of nonspecific urethritis, bacterial pneumonia and chronic partial paralysis of limbs . He receives pharmacotherapy and needs therapy of a chronic nature, with frequent check-ups. He has scheduled heart check-up and surgery for 18/7. Due to his medical history and scheduled appointments, the Judge requests a forensic report which determines that Manuel needs medical control and chronic therapy, with more specific intervention in cases of crisis. Still, the Judge authorizes detention. He misses his appointments.

Manuel hands over the originals of his medical reports to the CIE, but is not subjected to any heart examination or check-up. He is not given the medication he had been taking, but only anxiolytics which he claims make him drowsy. His physical condition deteriorates during detention, with the numbness in his members also aggravating. During detention, Manuel requests his medical reports, previous and current, but without success. A complaint is presented before the supervisory court on 7/8 requesting that a heart check-up be carried out in a hospital to determine whether Manuel is in conditions to be deported and also demanding that his medication be administered to him. There is no time to receive a response. Manuel is deported on 14 August. He was given his medical history and reports the day of his expulsion.

2.4 Dramatic situations in detention

Detention and expulsion of seriously ill persons to countries where they will not be able to continue treatment, placing them in life-threatening situations

Leo (Nigeria, 43 years)

Fifteen years in Spain, married to a Spanish woman, with long term residency in Spain. Suffering from diabetes since he was 14 years old, he decided to come to Europe because in Nigeria he was not able to get treatment and had gone into coma on several occasions.

He has difficulty to control the levels. He goes into coma if he lacks insulin or food when the level goes below 100. He has to inject himself with insulin three times a day. At the CIE he is given the test once a day and injected with insulin (delayed) only in the mornings, which causes him severe ups and downs throughout the day, with the aggravating situation that he is not able to take food outside of meal times to regulate himself. During each visit, he manifests to be unwell, with many tremors and difficulties to see well. He has complained to the physician of the CIE about the lack of an appropriate diet for diabetes in the CIE.

Leo was deported to Nigeria after 58 days of detention.

We have no information about his current health condition.

Lilian (Nigeria, 29 years): two myomas growing and with bleeding/haemorrhage
She had legal residency in Spain, but lost it because she was not able to renew her work contract. She is married to a citizen who has long term residency. Severe abdominal pains and vaginal haemorrhages led to Lilian's being admitted, three days after her arrival at the CIE, at the Emergency Room in a hospital, where she was diagnosed with having two myomas, of 9.5cm and 8.3cm, as well as having severe anaemia produced by the constant haemorrhaging. That same day, carrying the diagnosis report with her and with her uterus swollen to a size equivalent to four months of pregnancy, she is returned to the CIE. Two weeks later she is again transferred to hospital. The tumours have grown considerably and are now 13.8 and 8.6 cm and the swelling of her uterus is now equivalent to five months of pregnancy. She suffers severe pains. The operation cannot wait more than 30 days. She stays in hospital several days and is given an appointment for preoperative assessment on 15 October, where the day of the operation will be set. She returns to detention and the physician at the centre is informed of her situation. Lilian is given notice of her flight to Nigeria for 4 October, so she will not be able to have the operation. On 3 October, a day before her scheduled expulsion and after countless efforts following recourses and appeals, the Court orders that she be released. Lilian was finally operated on in Madrid and has returned to Canarias with her husband.

Abdul (Algeria, 39 years): paranoid schizophrenia and multiple drug-addiction
Diagnosed in November 2013 by the medical service of the prison as suffering of paranoid schizophrenia, personality disorder and multiple drug-addiction. Further, he had been treated for syphilis and tuberculosis in 2006 and 2009. His pharmacotherapy treatment includes six different drugs. He suffers frequent memory losses. Abdul provides this diagnosis upon his arrival at the CIE of Madrid, where the treatment is continued; he requests in writing to the director, without success, that a new medical examination be carried out to determine his present health condition. Because of the seriousness of his medical report, we consult with specialists who tell us that it is very important that Abdul does not skip his present pharmacotherapy treatment a single day, and that they are willing to provide it to him upon his release from the CIE. Abdul is deported back to Algeria in January 2014. As it is well known, it is illegal emigration is a crime in Algeria. We have no knowledge of his present condition or destination: an Algerian jail?

Torn-apart families and shattered lives

Kumba (Nigeria, 35 years): two children and a request for regularization in process

He is married. His wife is also from Nigeria. They have two children, born in Spain, 4 and 6 years old, who are staying with the mother, who at the moment is unemployed and only collecting minimum income. The family needs Kumba's earnings to subsist. Kumba has lived 12 years in Spain. He has tried to regularise his status but has always found some problem with the contract. At the moment, he is waiting for a decision on a new request. Kumba is deported in December and sent back to Nigeria, after one month in detention. His wife stays in Spain, supporting their two children through any means she can, waiting still for the response to the request for regularization. In January 2014, Kumba is granted authorisation of residency ... but he is no longer in the country.

Mario (Nigeria, 33 years): father of a new born; his Spanish wife suffers from mental illness

Mario arrived in Spain in 2004, jumping over the fence at Melilla. He has a registered partner of Spanish citizenship. They have a one-month old son. His wife has been diagnosed with paranoid schizophrenia and habitually smokes marihuana. Mario insists repeatedly that it was him who bathed and took care of the baby, because his partner was sick. A few days ago he had a strong argument with his partner, because Mario reproached her that she was smoking next to the baby and failing to look after him. According to Mario, he insulted her, but did not hit her. She lodged a complaint at the police station and a police report (attestation) was drawn up in the Court for Gender Violence. Because of his situation as an undocumented person, a legal proceeding for his expulsion was initiated. Mario did not have any other penal or police record.

A few days ago his partner was admitted for psychiatric assessment with the diagnosis already mentioned of paranoid schizophrenia. Because the father was in detention, the minor was declared to be in a situation of abandonment and the effective guardianship was withdrawn from the parents, with the Community of Madrid assuming provisional guardianship. The baby was transferred to a Children's Home of the Community of Madrid. The partner gets in touch with us asking us to help Mario so he is not deported. She tells us that Mario is a great father and that the argument over which she denounced him was an involuntary and isolated occurrence and for which she feels mainly responsible. Mario asks us desperately for help and tells us that his partner and his child are all he has in life, and that if he is deported he will lose the guardianship of his son forever and he will not be able to endure it.

Mario is finally released after two months in detention.

Hassan (Morocco, 24 years): arrived in Spain when he was 10 years old; spent eight years in juvenile facilities without obtaining legal residency; is addicted to drugs

Born in Morocco, Hassan arrived in Spain when he was only 10 years old. He says he cannot return to Morocco because he has no one there. In fact, a few days ago there was an attempt to deport him back to Morocco, but when the plane landed he was not allowed entry because they had no documentation on him there, no registered fingerprints or birth certificate.

During his troubled adolescence, he takes up drugs. After serving time in jail, he is brought to the CIE to be deported. Hassan shows symptoms of withdrawal, mixed with the effects of the sedatives that he is given in the CIE; this all makes him very drowsy, and he has clear lapses of attention. He is not able to remember either the names of his roommates.

He does not have with him any medical reports or legal papers. He does not know the name of his lawyers. He only remembers the name of an educator he had in one of the welcome centres where he spent time when he was an adolescent and of a volunteer lady who used to visit him while he was in jail. He tells me that if he is not released soon, he will attempt to escape or will do something so he can 'rest forever'. In the CIE he is controlled but not treated. An organisation, Punto Omega, takes interest in his case and is willing to take care of him if he is released to freedom.

Because of the impossibility to obtain documentation for his expulsion, he is released.

Racist and Xenophobic behaviours

These are behaviours and vexations suffered by the detainees caused by some of the police staff. They are isolated situations, committed only by a reduced number of police staff but that, given its recurrence, similarities among episodes, and the fact that those who have reported them to us have not been necessarily detained together or at the same time, have

led us to believe in their credibility: **“There are many police people here who respect and help us and who favour positive coexistence among us, but there are “a few” who are not as considerate, who abuse their authority and their uniform and whose treatment of us is vexatious and sometimes even provoking. We all know them, and the day they are on duty there is a noticeable atmosphere of tension and frayed nerves among the detainees”.**

Among the behaviours they have mentioned to us are:

- Using the internal PA system (loud speakers) to make mocking, racist and provoking comments.
- Playing blaring music and anthems when waking them up.
- Ignoring, when not recriminating, any small request.
- Delivering “with a smile on the face” any legal writ or document that is detrimental to the case of the person, such as a rejection of a recourse or a request for asylum.
- Searching their rooms without previous warning and in their absence, leaving everything in disorder and all over the floor, without informing them about the cause and outcome of the search.
- Hurling more or less muffled threats at them.
- And also committing aggressions, a topic which we analyse in greater detail later on because of its seriousness.

Psychological impact of detention: vulnerability and desperate actions

Both the personal situations we have related before and the inappropriate police behaviour— isolated though not infrequent—are of course well known and discussed among the detainees. To this is added the lack of trust towards the State because of the lack of information, the tedium due to the many daily hours without any activity and the prolonged periods of coexistence among persons from different origins, characteristics, countries, ethnicities and religions. All of this creates among the detainees generalised feelings of anguish, distrust, discomfort and tension.

On certain occasions, rather few, the persons dare to formulate complaints or grievances but the majority of times they abstain from doing this. This is due to several causes: lack of knowledge of their rights, lack of proof, lack of trust in the effectiveness of the complaint, or thinking that it could cause an even greater toughening up of the conditions of detention.

The absence of effective mechanisms to make themselves heard and be able to formulate their allegations or complaints, generates a greater frustration and indignation among them and, in certain occasions, leads them to adopt desperate measures. Sadly, it is relatively frequently that we hear about hunger strikes, incidents of self-harm, swallowing of batteries or drinking bottles of shampoo or detergent to provoke injuries that will prevent their expulsion, desperate cries, suicide attempts...

Several detainees tell us about another Algerian person who has attempted suicide several times. That same day they have been able to stop him before he set himself on fire, wrapped in a towel soaked in some inflammable liquid. He begs to either be deported back to his country or to be set free, but says that he cannot endure staying any longer there, (April 2013).

They tell us that the police have been very aggressive since one person¹ placed a banner outside his windows asking to be freed. That same night they were all taken outside the dormitories for a search and that they injured one of them who refused to stand against the wall. They filed a complaint to the supervisory court and one of the signatories has been called to declare (March 2013)

There was a special flight to Senegal. One of the young men, to avoid being deported, drank a bottle of shampoo, but they took him to the plane anyway (June 2013).

Yesterday, a person of about 60, who was to be taken to the airport to be deported, went into the toilets and after a while came out totally covered with human excrement. The police pushed him against the wall, threw him to the ground in the courtyard where, holding him down with a foot on his neck, doused him with hoses to half clean him and then took him to the airport.

2.5 Aggressions

Yes, instances of physical aggression are still taking place in the CIE. As we did in our *2012 Report*, **we insist that this is not generalised behaviour among the police staff and that they are isolated instances perpetrated only by a reduced number among them.** But the problem is that, perhaps because of a misunderstood corporatism, or to avoid impact on public opinion, these aggressions are not followed up by other police staff or by their superiors; rather there are attempts to avoid at any cost that the facts be properly investigated and assessed. Thus, the discredit and disgrace falls on the whole of the police force.

The trigger can be something as simple as a response badly given by a person, or because one of the two parties has not been able to ignore a provocation, or because the detainee has not obeyed some order—look out though, because there are many among them who do not speak Spanish—but the majority of the aggressions we are told about, or they themselves denounce, are usually the ones suffered at the airport or on the return trip from the airport, when the interned, man or woman—because we have known of some aggressions to young women—has refused to fly and is returned to the CIE.

A person (Dominican Republic, 38 years old) tells us about an aggression he suffered two weeks ago at the hands of two policemen. According to him, these two police people are renowned and feared among all the detainees because of their aggressiveness. It is enough to hear their voices and their characteristic accent for all the persons to become nervous and for the tension to increase.

He has a report of injuries that was given to him at hospital, where he was taken after the alleged aggression. He does not want to denounce them because he is afraid of reprisals, because he knows he will continue to meet them while on duty at the centre. Perhaps when he gets out...

A young Nigerian woman (no older than 20), quite petite, relates that she was taken to Barajas airport in a van. The police tied both her feet and hands. During the journey she was quiet and the police were as well. When they arrived at Barajas, they took her into the airplane and, once inside she, who still had her feet and hands tied, started to scream and protest that she did not want to be deported. She says that immediately several police people jumped on her and began to cover her mouth with their hands, to grab her by the neck squeezing it tightly, and to threaten her that if she did not quiet down they would kill her. She continued to scream, cry and squirm. They took her out of the airplane and took her to the airport cell, where they hit her with their fists in the face, threw her to the ground and brusquely sat on her stomach, while still squeezing her neck. She remembers to have heard a man's voice telling the police to leave her in peace. Then they put her in a straitjacket, and after four hours they put her again in the van and took her back to the CIE, directly to the isolation cell, where she remained two more hours. All throughout that afternoon/night she was not visited by any doctor, neither at the airport nor in the CIE; she spent the night with severe pain in the head, neck, chest, abdomen, stomach, arms, and

wrists. Yesterday, she asked to see the doctor and he gave her two pills. He did not take x-rays. She has written a letter to the Judge and says that she will place it in the mailbox there in the CIE. She has come up to the visitors' room limping, barely able to walk, half-crying, and with her shirt soaked in water because she had a wet cloth underneath, around the stomach, according to her to help alleviate the severe pain she felt. She was released 54 days of detention.

Baba (Ghana, 34 years old) mentions an incident of police aggression and tells us that he has sent a letter to the Judge denouncing the facts. He gives us a written document with his description of the incident. The police denies the ill treatment and has lodged a complaint against Baba, claiming that Baba was the aggressor. According to Baba's complaint, when he came back to his unit after dinner, another person went to a policeman to ask him for a lighter to light a cigarette. Because the policeman did not heed him, he asked again, and the policeman's reaction was to insult him repeatedly with racist remarks. Baba, who was standing behind and heard the policeman, reproached him verbally about the insults and told him that they deserved respect, and that the policeman himself should also respect the uniform he was wearing. The policeman started to insult him and other persons began to come and gather. The policeman called for reinforcements. They locked Baba in a room, far from view by the rest of the detainees, and hit him in the back, arms, body, kidneys, head, while he was laying there, while they also stood on his neck so he could not move. When they finished hitting him, they handcuffed him and one of the police people grabbed him by the right leg and dragged him to the stairs, pushing him and making him fall until he reached the ground floor. From there, he was taken to the isolation room, where he was locked up until the following day. While there, he asked for water to drink. A policeman who was standing outside laughed at him, insulted him again and told him "you are going to die here".

The same day of the alleged aggression he was taken to the Hospital, where he underwent a medical examination. The Hospital discharged him that same day and gave a written report to the police, diagnosing the suffered injuries and their consequences; Baba was not given the report nor was he allowed to read it. Starting the following day, in the CIE, he was given one daily pill during three days. He continued to complain, for over two weeks, about severe pain all over his body, especially in the hand and the leg. The pain made it almost impossible to sleep. He says that he was not able to succeed in getting the doctor to see him again.

In order to obtain the medical report from the Hospital, it was necessary to lodge a written complaint to the Judge, which gave a ruling demanding and reminding the medical service of the obligation to give all medical reports to the person without the need of a previous authorisation by the director.

In response to the complaint presented by Baba and supported by five witnesses, the Attorney General lodged a formal complaint against the presumed aggressors. The judge in charge of the case took declaration of five witnesses, two of whom retracted of what they had told the Attorney General. The other three maintained that the aggression had taken place. That same day, the judge summoned the three policemen. The judge also requested the video recordings of the cameras of the CIE, but its Management claimed that there were no images for the days of the incident. Afterwards, the judge backed off and changed the indictment against the police staff as possible misdemeanours instead of injuries. This decision has been appealed by the plaintiff.

2.6 Disciplinary measures and extraordinary police interventions

Situations occur with relative frequency which the Police resolves by calling into the Centre Units of Police Intervention or by taking disciplinary measures against one or several detainees, which generally consists in their being placed in the isolation room.

When these special units come into the CIE, it frequently requires the eviction of the detainees to the courtyard for a period of several hours, searching of rooms, blows and bad manners, looking for and punishment of those responsible. Recently, the supervisory courts of Barcelona detention centre have issued an order which, among other things, demands from the CIE that the Judge be informed immediately—within four hours from the beginning of the conflict—of the incidents that have taken place and, in its case, of the arrival into the Centre of the Unit of Police Intervention.

With regards to the use of the isolation room, this measure has been the subject of at least five orders issued by the supervisory courts since 2010. These orders basically deny the sanctioning character of this measure and remind of its preventive aspect; make it compulsory to communicate immediately to the Judge by fax the use of any disciplinary measures; the isolation period is limited to a maximum of 24 hours and the legal guarantees of isolation are defined: right to appeal to such measure before the Judge, translator; and, if the period of isolation must be prolonged, the right to have proceedings commenced in which the person will have a hearing and will be able to appeal before the Court. Unfortunately, judging by the repeated complaints we receive, these judicial resolutions are not being complied with in their entirety.

On 3 December 2013, in the CIE of Barcelona, **a young Armenian man, Aramis Manukyan (Alik) died in an isolation room.** His death reveals the practice of using the isolation cell without any type of protocol to be followed. A judicial investigation is under way.

2.7 Removals without forewarning

There are at least three orders issued by the supervisory courts (Madrid, Las Palmas de Gran Canaria and Valencia) which determine that the person should be given advance notice of the day, time and city of destination of their deportation flights, and that they should be provided with the necessary means to be able to notify their families and lawyers.

Unfortunately, compliance with these orders is partial and irregular. In a large number of cases, there is no advance notice. Or the information provided is quite incomplete.

This simply adds unnecessarily and gratuitously to the anguish of the person who live in a continuous state of anxiety and fear, because they know that they could be removed at any time without prior notification. This also increases their distrust towards the police and the State, seeing that their right to be informed is discounted.

But the irregularities regarding advance notice and the carrying out of the expulsions go beyond this. Some complaints have been lodged in the supervisory courts claiming attempts of deportation to countries different from their own. On 4 September, a Gambian person of 50 years of age reported to the Judge that, with any further advance notice than being told to gather his belongings immediately, and without allowing him to alert his lawyer or family, he was transferred to the airport. The Police tried to embark him on a flight of a Moroccan airline. In response to his objections, he was told not to worry because from Morocco he would be sent to his country. He was only saved from flying because the captain of the plane overheard his objections and refused to embark him.