

Report

**to the Spanish Government
on the visit to Spain
carried out by the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment (CPT)**

from 14 to 18 July 2014

The Spanish Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2015) 20.

Strasbourg, 9 April 2015

CONTENTS

Copy of the letter transmitting the CPT's report 3

EXECUTIVE SUMMARY..... 4

I. INTRODUCTION 6

A. Dates of the visit and composition of the delegation..... 6

B. Context of the visit and establishments visited 6

C. Consultations held by the delegation and co-operation encountered 7

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED 8

A. Foreign nationals held under aliens legislation..... 8

 1. Preliminary remarks 8

 2. Ill-treatment..... 9

 3. Conditions of detention 11

 4. Health care 12

 5. Contact with the outside world 15

 6. Other issues 15

 7. Deportation of foreign nationals 17

B. The particular situation in Melilla 19

APPENDIX:

List of the national authorities and organisations met by the CPT's delegation..... 25

Copy of the letter transmitting the CPT's report

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Strasbourg, 2 December 2014

Dear Mr Puigserver Martinez,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I have the honour to enclose herewith the report drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Spain from 14 to 18 July 2014. The report was adopted by the CPT at its 85th meeting, held from 3 to 7 November 2014.

The various recommendations, comments and requests for information formulated by the CPT are highlighted in bold in the body of the report. As regards more particularly the CPT's recommendations, having regard to Article 10, paragraph 1, of the Convention, the Committee requests the Spanish authorities to provide **within three months** a response giving a full account of action taken to implement them.

The CPT trusts that it will also be possible for the Spanish authorities to provide, in the above-mentioned response, reactions to the comments and requests for information formulated in this report.

I am at your entire disposal if you have any questions concerning either the CPT's report or the future procedure.

Yours sincerely,

Latif Hüseyinov
President of the European Committee for the
Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

EXECUTIVE SUMMARY

The purpose of the ad hoc visit to Spain was to examine certain aspects of the treatment of foreign nationals in Melilla, as well as to assess the implementation of the recommendations formulated by the CPT in its report on the 2011 visit in relation to the detention centres for foreigners (*Centros de Internamiento de Extranjeros*) in Barcelona (Zona Franca) and Madrid (Aluche). The CPT's delegation also visited the holding facilities of the Immigration Service at Adolfo Suárez Madrid-Barajas Airport to assess the treatment of foreign nationals during forced return procedures. The co-operation received by the CPT's delegation was of an excellent standard. Nevertheless, the principle of co-operation also requires that decisive action be taken to improve the situation in the light of the CPT's recommendations. The findings of the 2014 visit show that hardly any progress has been made in relation to the material conditions of detention in both centres.

Centros de Internamiento de Extranjeros (CIEs)

As regards the functioning of the CIEs, the CPT welcomes the adoption of Royal Decree 162/2014 of 14 March 2014, which introduces a number of positive changes.

At the Zona Franca CIE, allegations of both physical ill-treatment and verbal abuse were received, in particular with respect to specific police officers, while at the Aluche Centre allegations of insults by police officers were heard. The Spanish authorities should implement appropriate measures to eradicate physical ill-treatment at the Zona Franca CIE and remind all staff at both centres that foreign nationals should be treated with respect. In the light of the frequent acts of violence and intimidation among detainees at the Zona Franca CIE, the CPT urges the Spanish authorities to establish and implement an anti-violence strategy. By contrast, at Aluche violence among detainees was appropriately managed.

The two CIEs continue to display a carceral environment which is inappropriate for persons detained under aliens legislation. Recommendations are made to address this situation as well as to ensure that detainees held in multi-occupancy cells at the Aluche CIE are provided with at least 4m² of living space per person. In terms of the regime in place, the report notes that detainees had access to outdoor exercise for four hours per day at both centres and that leisure activities and Spanish languages courses were offered. Nevertheless, more should be done to improve the range of activities on offer. Further, the practice in both CIEs of addressing detainees by their detention number rather than by their name should be ended. Steps should also be taken to enable detainees in all CIEs to receive visits without physical separation, except in individual cases where there is a clear security concern. Further, visits should not be limited to 30 minutes.

In general, the health-care services in both CIEs were sufficiently resourced, and detainees had rapid access to a doctor. However, regular consultations with a dentist and a psychiatrist should be available at both centres. Measures should be taken at the Zona Franca CIE to ensure that confidentiality is respected during all medical examinations, and health-care staff should have access to qualified interpreters. The Committee was pleased to learn of a new system at the Aluche CIE for the recording of traumatic injuries in accordance with the Istanbul Protocol and urges the Spanish authorities to establish similar practices in all CIEs.

As regards staff, all police officers assigned to work in CIEs should receive training in inter-cultural communication, physical techniques of restraint and prevention of ill-treatment. Further, the practice of police officers openly carrying truncheons within the detention areas at both CIEs should be abandoned as it is prejudicial to the fostering of good relations between staff and inmates.

Deportation procedures

The CPT invites the Spanish authorities to take the necessary measures to ensure that foreign nationals are informed in advance of their deportation and that contact with their lawyer up to the moment of departure is facilitated.

At the Central Unit for Expulsion and Repatriation at Madrid-Barajas Airport, where foreign nationals are held for a few hours prior to an operation of forced return or expulsion, a special register should be established to record all cases of recourse to means of restraint. Further, in light of the allegations received, all law enforcement officials should be reminded regularly that any form of ill-treatment including threats and psychological ill-treatment is unacceptable, and police officers taking part in expulsion or repatriation procedures should always wear an identification number or name tag.

Melilla

In Melilla, the CPT's delegation examined aspects of the treatment of foreign nationals in the border fence area with Morocco. At the outset, the CPT recalls that on the basis of the principle of *non-refoulement*, the jurisprudence of the European Court of Human Rights and the CPT standards, States are obliged to screen intercepted migrants with a view to identifying persons in need of protection, assessing those needs and taking appropriate action. In order to prevent persons from being exposed to the risk of ill-treatment, the CPT recommends that adequate guarantees to this effect be provided in national legislation and that Spanish law enforcement officials be instructed accordingly.

The delegation received several allegations of excessive use of force by members of the *Guardia Civil* when apprehending irregular migrants at the border. Reference is made to the incident of 15 October 2014 during which an irregular migrant was subjected to repeated baton blows and totally inappropriate treatment. The CPT requests that a prompt and effective inquiry be carried out into this specific incident. Further, members of the *Guardia Civil* should receive appropriate training in professional techniques which minimise harm to any individual whom they are seeking to apprehend.

Foreign nationals also alleged that they were subjected to ill-treatment, at times of a severe nature, by members of the Moroccan Auxiliary Forces (MAF) after they had been apprehended by the MAF at the fence border, within Spanish territory, or once they had been returned to Morocco. The CPT recommends that the Spanish authorities take the necessary steps to ensure that MAF officials do not enter Spanish territory to apprehend and forcibly return irregular migrants to Morocco, outside any legal framework, and also that no foreign national is handed over to these forces in light of the risk of ill-treatment.

The CPT also encourages the Spanish authorities to tackle conditions in the severely overcrowded *Centro de Estancia Temporal de Inmigrantes*.

I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention"), a delegation of the CPT carried out a visit to Spain from 14 to 18 July 2014. The visit was one which appeared to the Committee "to be required in the circumstances" (cf. Article 7, paragraph 1, of the Convention).

2. The visit was carried out by the following members of the CPT:

- Celso DAS NEVES MANATA, Head of delegation
- Ivona TODOROVSKA
- Anton VAN KALMTHOUT
- Olivera VULIĆ.

They were supported by Julien ATTUIL-KAYSER and Christian LODA of the CPT's Secretariat, and assisted by Marija DEFINIS-GOJANOVIĆ, Forensic Medicine Doctor, Split, Croatia (expert) as well as by the following interpreters:

- Loreto BRAVO DE URQUIA
- Ines CARAVIA
- Beatriz LEBoulLEUX DEL CASTILLO
- Jorges RAYESS.

B. Context of the visit and establishments visited

3. On several occasions, in the course of 2013, the CPT received reports concerning mass arrivals of irregular migrants in Melilla, a Spanish autonomous city on the north coast of Africa. At times, these reports were supplemented by video footage of hundreds of persons attempting to clamber over the border fences into Spanish territory. One objective of the visit was to examine certain aspects of the treatment of foreign nationals in Melilla.

The second main purpose of the visit was to assess the implementation of the recommendations formulated by the CPT in its report on the 2011 visit in respect of the detention centres for foreigners (*Centros de Internamiento de Extranjeros*, CIEs) in Barcelona (Zona Franca) and Madrid (Aluche). The delegation also visited the Holding facilities of the Immigration Service at Adolfo Suárez Madrid-Barajas Airport to assess the treatment of foreign nationals during forced return procedures.

C. Consultations held by the delegation and co-operation encountered

4. The delegation held consultations with Francisco MARTÍNEZ VÁZQUEZ, Secretary of State for Security and senior officials from the Ministry of the Interior. It also had meetings with Rafael RIBO I MASSO, the Catalan Ombudsman, a representative of the Spanish Ombudsman, and with members of non-governmental organisations active in the migration field.¹

5. The co-operation received by the CPT's delegation throughout the visit, from both the national authorities and staff at the establishments visited was of an excellent standard. In this respect, the CPT wishes to express its appreciation for the efforts of Pia ARACAMA, liaison officer for this visit and Ambrosio MARTÍN VILLASEÑOR, Head of the Guardia Civil in Melilla, in facilitating the delegation's work.

That said, the CPT regrets that the Spanish authorities have still not provided the Committee with information on the use of the 1992 Bilateral Agreement on the movement of persons, transit and readmission of foreign nationals who entered illegally concluded with the Kingdom of Morocco (see paragraph 41).

Further, the CPT has repeatedly stressed that the principle of co-operation as set out in Article 3 of the Convention is not limited to facilitating the work of visiting delegations, but also requires that recommendations made by the Committee are effectively implemented in practice. The delegation observed that hardly any progress has been made in relation to the material conditions of detention in the CIEs of Aluche and Zona Franca (see paragraphs 15 and 16).

The CPT trusts that the Spanish authorities will take resolute action to improve the situation in these centres in the light of the recommendations contained in this report.

¹ A list of the national authorities and organisations met by the delegation is set out in the Appendix to this report.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Foreign nationals held under aliens legislation

1. Preliminary remarks

6. The legislative framework regarding administrative detention of foreign nationals has remained unchanged since the CPT's previous visit in 2011. The deprivation of liberty is regulated by the Organic Law 4/2000 on the rights and obligations of aliens in Spain and their social integration and cannot be longer than 60 days.²

The vast majority of detained foreign nationals interviewed by the delegation indicated that they had access to a lawyer as well as to an interpreter in the course of their deprivation of liberty by the police.

However, several foreign nationals stated that they were asked by the police, notably in Melilla, to sign documents without being informed of their contents or were not provided with an interpreter of a language they spoke.³

The CPT recommends that measures be taken to ensure that persons deprived of their liberty under aliens legislation be entitled, as from the outset of their deprivation of liberty and to have access to a lawyer, as well as to benefit from the service of an interpreter, if necessary.

7. As to the norms regulating the functioning of the CIEs, the CPT welcomes the adoption of Royal Decree 162/2014 of 14 March 2014 that approves the new regulation of the internal functioning and regime of CIEs.⁴ The Decree introduces a number of changes which will be analysed further below.

8. The CIEs are managed by the National Police and staffed mainly by police officers. At the time of the visit, two of the CIEs were closed⁵ and the remaining CIEs were holding a total of 645 foreign nationals, including 37 women.

The *Aluche Centre* was holding 136 foreign nationals including four women for a capacity of 280 places.

The *Zona Franca Centre* held 94 male foreign nationals for a total capacity of 226; the Centre no longer accommodated female foreign nationals.

² For further details, see CPT/Inf (2013)16, paragraph 78.

³ As an example, Malians who did not speak French were offered interpretation in this language.

⁴ *Real Decreto 162/2014 por el que se aprueba el reglamento de funcionamiento y régimen interior de los centros de internamiento de extranjeros*, published in the Spanish Official Gazette No. 64, 14 March 2014.

⁵ The Fuerteventura Centre was not being used at the time of the visit due to the decrease in arrivals of foreign nationals and the Malaga Centre was closed for refurbishment.

As was the case during the 2011 visit, a large proportion of the persons held in both centres had either been transferred from prison, after having completed their sentences, with a view to deportation or had had their prison sentence commuted into a deportation order.

9. Spanish legislation permits foreign nationals detained in the CIEs to seek asylum⁶ and, in the course of the visit, the delegation was informed that several foreign nationals held in the centres had an asylum claim still pending before the competent authorities. The CPT considers that asylum seekers should only be detained as a last resort, for the shortest possible duration, and after other, less coercive, measures have proven insufficient to ensure their presence.⁷ Further, in those instances where there are exceptional reasons for depriving a person of his/her liberty while awaiting an outcome of his/her asylum application, such reasons should be fully documented. When asylum seekers are deprived of their liberty as an exceptional measure, they should be kept separately from foreign nationals who have not lodged an application for international protection. **The CPT invites the Spanish authorities to take the necessary steps to comply with the above-mentioned precepts.**

2. Ill-treatment

10. The CPT recalls that a number of allegations of ill-treatment by police officers were received in both establishments during the previous visit in 2011.

In the course of the 2014 visit to the *Aluche Centre*, no allegations of physical ill-treatment by police officers were received. However, a number of foreign nationals alleged that some police officers insulted them from time to time.

At the *Zona Franca Centre*, the delegation did receive a few allegations of physical ill-treatment of foreign nationals by police officers, consisting of slaps and punches, as well as verbal abuse, primarily in relation to one specific team of police officers.

The CPT recommends that the Spanish authorities take the necessary steps to stamp out ill-treatment at the Zona Franca CIE, including appropriate investigations and holding the officers concerned responsible. Further, staff at both centres should be regularly reminded that foreign nationals should be treated with respect and that any form of ill-treatment – including verbal abuse – is illegal and will be sanctioned accordingly.

⁶ See Section 25 of the Law 12/2009 of 30 October 2009 regulating the right to seek asylum and the subsidiary protection.

⁷ The principles highlighted above are in line with the letter and spirit of guiding international instruments in this context, such as the Revised UNHCR Guidelines of 1999 on the Applicable Criteria and Standards relating to the Detention of Asylum Seekers, and, the Council of Europe Committee of Ministers' Recommendation (2003) 5 on measures of detention of asylum seekers, adopted on 16 April 2003.

11. The situation regarding the violence among detainees was very different in the two centres visited.

At the *Aluche Centre*, a specific protocol on tackling violence was in place; it consisted of separating the detainees involved in a fight, having them examined by a doctor and placed in separated cells for a few minutes to calm down. The temporary isolation procedure was only used for the most serious incidents (see paragraph 28). Detainees indicated that fights could happen on occasion. However, the delegation gained the impression that, notably due to an effective allocation policy, violence within the Centre was not an issue of concern and, when incidents did occur, they were appropriately handled by staff.

12. On the other hand, the delegation found that acts of violence and intimidation among detainees at the *Zona Franca CIE* were frequent, notably between persons of Sub-Saharan and Arab origin. According to the information gathered, confrontations usually took place in the outdoor yard and communal areas, starting with verbal altercations and often escalating to physical confrontations.

Police officers appeared to take a rather passive and disengaged approach and staff took no preventive steps to avoid the escalation of such incidents. Detainees claimed that, on occasion, they were even advised by staff to respond to physical intimidation with violence.

One group of Sub-Saharan detainees was concerned for their physical safety as rudimentary weapons had apparently been fabricated by members of another group. They had informed the Director accordingly, but no concrete steps were apparently taken by the management of the establishment to de-escalate the situation or to guarantee their safety.

The CPT wishes to emphasise that the duty of care which is owed by the authorities to detained foreign nationals in their charge includes the responsibility to protect them from others who might wish to cause them harm. The management of the centre must act in a proactive manner to prevent violence by detainees against other detainees.

The CPT urges the Spanish authorities to ensure the physical integrity of every foreign national detained at the Zona Franca Centre, through the establishment and implementation of an anti-violence strategy.

13. Further, the CPT considers that addressing the persistent phenomenon of violence among detainees and intimidation requires that police staff be alert to signs of trouble and both resolved and properly trained to intervene when necessary. The existence of positive relations between staff and detainees, based on the notions of dynamic security and care, is a decisive factor in this context; this will depend in large measure on staff possessing appropriate interpersonal communication skills. Both initial and ongoing training programmes for staff of all grades must address the issue of managing inter-detainee violence. It is also obvious that an effective strategy to tackle intimidation/violence should seek to ensure that police officers are placed in a position to exercise their authority in an appropriate manner. At the time of the visit, police officers at both CIEs indicated that they had not received any specific training on how to work with immigration detainees from different cultures.

The CPT recommends that the Spanish authorities ensure that security staff working at the CIEs receive the necessary training in order to prevent and tackle violence among detained foreign nationals (see also paragraph 26).

14. The delegation noted, at both establishments, that police officers continued to call detainees by their detention number rather than by their name, including over the internal interphone system. This practice was felt by many detainees to be humiliating and, as the CPT has stressed in the past, it is certainly not conducive to the establishment of positive staff/detainee relations.

The CPT recommends once again that the Spanish authorities put an end to this practice; staff in CIEs should address detainees by their names.

3. Conditions of detention

15. Regarding material conditions, Section 60 of the Organic Law specifically states that the CIEs should not function like prisons. In the report following the 2011 visit to Aluche and Zona Franca CIEs, the CPT stated that the layout and design of both centres displayed a rather carceral environment, with barred windows, gated corridors and cells. Regrettably, the Committee's recommendations were not implemented as material conditions remained unchanged.

In both centres,⁸ the shutters on the windows prevented detainees from having access to sufficient natural light. The CPT considers that these shutters are neither necessary nor appropriate for the detention of persons.

Further, the multi-occupancy cells were still not equipped with a table and chairs and detainees had no ready access to toilets from midnight to 7 a.m. as the cells, which were locked during this period, were not equipped with toilets.⁹ Several detainees indicated that they had to use plastic bottles to comply with the needs of nature as staff would not open the cell door at night. Further, none of the cells possessed a call system. At *the Aluche Centre*, the washbasins in the cells where women were held were not functioning.

The delegation also received complaints regarding the lack of variety and cultural specificity of the food in both centres.

The CPT recommends once again that the Spanish authorities take the necessary steps to avoid detaining persons under aliens legislation in a carceral environment. In this context, it recommends that steps be taken at both centres, and if appropriate in all the CIEs, to:

- **remove the shutters from the windows in order to ensure access to sufficient natural light;**
- **provide each multi-occupancy cells with a call system, table and chairs and ensure the functioning of the washbasins;**
- **ensure that detainees have ready access to a proper toilet facility at all times, including at night;**
- **review the diversity of the food offered.**

⁸ For a detailed description of the detention facilities, see CPT/Inf (2013) 6, paragraphs 86 and 87.

⁹ The delegation was informed that it was intended to remedy this problem at the Zona Franca Centre in the coming months.

16. At the *Aluche Centre*, despite the fact that the Centre was half empty and a number of cells unoccupied, many detainees were held in multi-occupancy cells which did not provide for 4 m² of living space per person; for example, six persons were held in cells of 20 m² and eight persons in cells of 24 m².

The CPT calls upon the Spanish authorities to revise the official occupancy level to ensure that every person has at least 4 m² of living space, any space taken up by in-cell sanitary facilities should not be included in this calculation. Further, the allocation policy at the Aluche Centre should be immediately revised in the light of the above recommendation.

17. At the *Zona Franca Centre*, the delegation received several complaints from detainees regarding the presence of bed bugs and a doctor at the Centre confirmed that it was a recurrent problem. **The CPT invites the authorities to take the necessary measures in order to properly resolve this problem.**

18. Regarding the regime, the CPT notes that, detainees had access to outdoor exercise for four hours per day at both centres. Further, partnerships with civil society organisations and social welfare institutions had been developed. The Spanish Red Cross operated in both centres and offered regular leisure activities and Spanish language courses to detainees.

However, the number of activities on offer was still limited. Detainees spent most of their day idling around in the common areas or in the exercise yard due to the closed door policy; they were not given access to their cells during the periods of communal activities/outdoor exercise. **The CPT recommends that the Spanish authorities pursue their efforts to offer activities of a constructive nature. Further, the closed door policy should be reviewed.**

4. Health care

19. As was the case in 2011, health care in both CIEs was contracted out to a private company. Outsourcing of health-care can lead to cost-efficiency gains but may also have a negative impact in the provision of health-care. The CPT considers that a robust oversight and audit mechanism should be established to ensure that private contractor(s) provide a quality service to the standards required. **The Committee would like to receive the comments of the Spanish authorities on this matter.**

20. At the *Aluche Centre*, a doctor and a nurse were present every day of the week (including at weekends and on public holidays). At the *Zona Franca Centre*, a doctor was present from 8 a.m. to 2 p.m. and a nurse from 8 a.m. to 10 p.m. on weekdays.¹⁰ Medication was distributed by nurses. The health-care services in both centres were sufficiently resourced and detainees could have rapid access to a doctor. The delegation found that the work of the medical doctors at the Aluche Centre was of a high-standard.

¹⁰ On weekends and public holidays, only a nurse was present from 8 a.m. to 3 p.m..

At both centres, health-care staff indicated to the delegation that there was a lack of regular consultations by specialists, such as dentists, psychiatrists or gynaecologists (at the Aluche Centre). The delegation noted that a number of detainees had dental problems or required psychiatric support which were not being addressed.

The CPT recommends that steps be taken at both Centres to ensure regular consultations with a dentist and a psychiatrist and, at the Aluche Centre, with a gynaecologist for foreign national women.

21. Medical confidentiality during examinations was respected at the Aluche Centre, but at the Zona Franca Centre, all medical examinations took place in the presence of a police officer “for security reasons”.

The CPT recommends that measures be taken at the Zona Franca Centre to ensure that all medical examinations be conducted out of the hearing and - unless the doctor concerned expressly requests otherwise in a given case - out of the sight of police staff.

22. At both centres, newly arrived detainees were normally examined by a doctor within 24 hours.¹¹ At the Aluche Centre, professional interpretation was available for medical consultations but health-care staff acknowledged that, on occasion, translation was provided by other detainees. At the Zona Franca Centre, no interpretation service appeared to be available for the health-care staff who relied solely on the assistance of other detainees or Spanish Red Cross personnel.

Whenever members of the medical and/or nursing staff are unable to make a proper diagnosis because of language problems, they should be able to benefit without delay from the services of a qualified interpreter. A number of detained persons complained to the delegation that they did not feel comfortable conveying personal information (for example, about health problems) through another detained person. The CPT considers this situation inadequate.

The CPT recommends that steps be taken to ensure that health-care staff have access to qualified interpreters, when necessary.

23. At the Aluche Centre, the CPT notes positively that a new practice to record traumatic injuries, in accordance with the Istanbul Protocol, had recently been established. A form was introduced containing a body chart and separated parts to record the objective medical findings and a statement from the person concerned. An injury report was systematically drawn up whenever a person displayed injuries and a copy of the report was sent to the director of the institution and the competent judge. Further, a specific register recording all the injuries was kept in the health-care unit. The CPT notes that doctors were not obliged to give their professional opinion about the level of consistency between the objective medical findings and the statement made.

¹¹ Except at the Zona Franca Centre, where persons admitted on a Friday or a Saturday were only seen by a doctor on the following Monday.

Regrettably, the new practice established at the Aluche Centre was not in force at the *Zona Franca Centre*. At this Centre, the medical files consulted by the delegation demonstrated that no systematic and detailed recording of body injuries was made in individual medical files. Further, there was no dedicated injury register.

The CPT recalls that health-care services can make a significant contribution to the prevention of ill-treatment of detained persons, through the systematic recording of injuries and, when appropriate, the provision of information to the relevant authorities. In this context, the practice developed at the Aluche Centre should serve as a basis for other centres. **The Committee recommends that the necessary measures be taken to ensure that in all CIEs, records drawn up after the medical examination of a detainee - whether newly arrived or following a violent incident in a Centre - contain:**

- i) an account of statements made by the person which are relevant to the medical examination (including his/her description of his/her state of health and any allegations of ill-treatment),**
- ii) a full account of objective medical findings based on a thorough examination, and**
- iii) the doctor's observations in the light of i) and ii), indicating the consistency between any allegations made and the objective medical findings.**

The record should also contain the results of additional examinations carried out, detailed conclusions of specialised consultations and a description of treatment given for injuries and any further procedures performed.

Further, recording of the medical examination in cases of traumatic injuries should be made on a special form provided for this purpose, with body charts for marking traumatic injuries that will be kept in the medical file of the detainee. Further, it would be desirable for photographs to be taken of the injuries, and the photographs should also be placed in the medical file. In addition, a special trauma register should be kept in which all types of injury observed should be recorded.

Finally, steps should be taken to ensure that, whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by the detainee (or which, even in the absence of allegations, are indicative of ill-treatment), the report is immediately and systematically brought to the attention of the relevant prosecutor, regardless of the wishes of the person concerned.

5. Contact with the outside world

24. At both CIEs, detainees could receive and send mail, make phone calls and sometimes receive calls on the public telephone as well as receive visits from family and friends on a daily basis, normally for an hour.¹² The visiting area in both CIEs could accommodate up to 10 visits at a time and there was no system to reserve visit timeslots in advance. A number of detainees indicated that visits often only lasted 30 minutes,¹³ in order to allow other detainees to receive visits. **The CPT invites the Spanish authorities to take the necessary measures to permit longer visits.**

25. The CPT regrets once again that visits, at both Centres, were still taking place via a glass partition, preventing physical contact between detained persons and their visitors. Physical contacts were only allowed at the beginning or at the end of the visit to greet the visitors. However, the delegation was informed that, following a court decision, partitions at the Zona Franca Centre were scheduled to be removed a few weeks after the visit. **The CPT would like to receive confirmation that the partitions at the Zona Franca Centre have been removed.**

Further, the Committee reiterates its recommendation that detainees in all the CIEs be able to receive visits without physical separation, except in individual cases where there may be a clear security concern.

6. Other issues

26. The 2014 Royal Decree provides that security staff working at the CIEs must undergo specific training focusing notably on interaction with detained persons and prevention of ill-treatment. The delegation was informed that staff received training on the legal framework of the aliens legislation before their posting to a CIE. However, the CPT notes that custodial staff were police officers who were neither recruited nor specifically trained to operate in detention centres. In particular, there was no indication that they received training on topics such as inter-cultural communication, physical techniques of restraining detainees or prevention of ill-treatment.

The CPT recommends that steps be taken to ensure that police officers assigned to work in CIEs receive training on the above-mentioned topics.

27. Police officers continued to openly carry truncheons within the detention areas at both CIEs. The open display of such equipment was perceived as intimidating by many detainees. The CPT considers that it is certainly not conducive to the establishment of positive staff/detainee relations.

The visible wearing of truncheons in this setting could well be seen as a sign of weakness rather than one of strength, demonstrating a lack of confidence in the ability of police officers to control a situation without possible recourse to a weapon. On the other hand, staff properly trained in control and restraint techniques (i.e. manual control) are in a position to choose the most appropriate response when confronted by difficult situations, thereby significantly reducing the risk of injuries to both detainees and staff. Moreover, such skills will reinforce the confidence of police officers in interacting with detainees.

¹² During these visits, visitors were allowed to bring clothes and money but not food parcels.

¹³ Section 42 of the 2014 Royal Decree provides that visits cannot be shorter than 30 minutes.

The CPT recommends that police officers no longer carry truncheons openly within the detention area. If it is deemed necessary for staff to possess such equipment, it should be stored in a dedicated area, easily accessible in case of need. Further, police officers should be trained in the application of control and restraint techniques.

28. Regarding the use of temporary isolation, Section 57 of the Royal Decree requires notably a motivated decision by the director regarding any placement in an isolation cell, and an immediate communication, at the beginning and at the end of the placement, to the competent judge as well as the setting up of a dedicated register.

At the *Aluche Centre*, the use of isolation appeared to be limited;¹⁴ most of the cases were related to fights among detainees and usually lasted for less than a day. Supervisory judges were systematically informed of the placement and all persons were seen by health-care staff before and after placement. The dedicated register was appropriately filled out.

At the *Zona Franca Centre*, it appears that there was no specific register to record the use of temporary isolation. The delegation was provided – after its departure from the Centre – with partial information regarding placements in temporary isolation.

Further, the files provided contained incomplete information and the management of the centre was unable to prove that the procedure was being properly observed – at least in one case, the evidence of the communication to the judge was missing. The CPT has misgivings regarding the respect of procedural safeguards in relation to the placement in temporary isolation, in particular the decisions on placement lacked reasoning and supervisory judges were not systematically informed without delay of the measure.

The CPT recommends that placements in temporary isolation at the Zona Franca CIE be always carried out in conformity with the applicable rules and properly recorded in both the individual detainee file and in a specific register.

29. Regarding the internal complaints system, complaint boxes were accessible to detainees in the common areas at both centres. At the Aluche Centre, complaints were recorded in a specific register while at the Zona Franca Centre, the management indicated that a register gathering the complaints would be put in place in the near future. An examination of a sample of complaints indicated that they were responded to within a reasonable time. **The CPT would like to receive confirmation that a complaint register is now in use at the Zona Franca Centre.**

30. As to control and monitoring, the Spanish Ombudsman, in its capacity as National Preventive Mechanism, regularly visits CIEs.¹⁵ Further, the Royal Decree provides for supervisory judges to control CIEs and increases the possibility for non-governmental organisations to visit these centres. **The CPT would like to receive supervisory judges' reports regarding both centres for 2013 and 2014.**

¹⁴ Temporary isolation was used 12 times in 2012, 24 times in 2013 and 11 times in the first semester of 2014.

¹⁵ The Spanish NPM visited the Aluche and Zona Franca CIEs, among others, in 2013.

7. Deportation of foreign nationals

31. At both centres, the delegation received some allegations that detained foreign nationals did not have the possibility of informing their relatives of their forthcoming deportation. A few of them also stated that they could not contact their lawyer before the deportation, notably because they were only informed of their forced return the night before it took place.

The CPT would like to stress that leaving the person being removed unaware of his/her scheduled removal until the very last moment can do more harm than good. Experience shows that instead of facilitating the process, it increases the risk of the person violently resisting the removal (and, in particular, resisting the application of means of restraint when being put under control in his/her cell). **The CPT invites the Spanish authorities to take the necessary measures to ensure that foreign nationals are informed in advance of their deportation and may maintain contact with their lawyer until the moment of departure.**

32. The delegation visited the Central Unit for Expulsion and Repatriation at Madrid-Barajas Airport where foreign nationals were held for a few hours prior to their forced return. Upon admission to the unit, a security risk assessment was carried out, taking into account the person's criminal record and his/her behaviour while in the detention centre as well as the history of any previous expulsions.

33. Based on this assessment, the police officers working in the Unit decided whether to apply means of restraint such as handcuffs or, for those who were agitated or physically resisting deportation, a "body belt"¹⁶. The use of means of restraint was not recorded in the individual files of the deportee or in a specific register. Internal reports were only drawn up when the "body belt" was applied, and they did not mention the names of the persons concerned or of the police officers who took the decision to apply and/or applied the measure. Further, information was only sent to the judicial authorities when a deportee was injured.

The CPT considers that a special register should be kept to record all cases in which recourse is had to means of restraint; the entry should include the times at which the measure began and ended, the circumstances of the case, the reasons for resorting to the measure, the name of the person who ordered or approved it, and an account of any injuries sustained by the foreign national or staff. **The Committee recommends that steps be taken to establish such a register.**

34. Police officers indicated that they wore plain clothes with a recognisable bright green vest during the expulsion/repatriation procedure but without any visible name or identification number tag. In the CPT's view, it should be ensured that identification of the officers is always possible during the forced return procedure, through not only a clearly distinctive badge but also a prominent identification number or name tag. **The Committee recommends that police officers participating in expulsion/repatriation procedures wear an identification number or name tag.**

¹⁶ The "body belt", also called "French belt", consists of a belt applied around the abdomen area to which the hands are attached in front of the body, thus limiting any arm movement; the belt is linked to fabric straps attached around the legs, above the knees and above the ankles, thus limiting the ability to walk freely.

35. The delegation received several allegations that failed returnees were threatened by police officers, who escorted them back to the CIEs, that during their next forced return they would be treated in a “less pleasant way”. **The CPT recommends that law enforcement officials be reminded regularly and in an appropriate manner that any form of ill-treatment including threats and psychological ill-treatment of foreign nationals is not acceptable and will be punished accordingly.**

36. Regarding the re-admittance to a CIE after a failed deportation, foreign nationals were usually examined by health-care staff upon their return to the *Aluche Centre* and any relevant information was recorded in a specific register.

However, at the *Zona France Centre*, no systematic screening procedure was in place for failed deportees. **The CPT recommends that steps be taken to ensure that foreign nationals returning from a failed deportation be systematically screened by health-care staff.**

B. The particular situation in Melilla

37. The visit to Melilla aimed at examining certain aspects of the treatment of foreign nationals. In this context, the delegation carried out a number of interviews with foreign nationals at the Centre for the Temporary Stay of Migrants (*Centro de Estancia Temporal de Inmigrantes*, CETI) in Melilla and visited the border fence area with Morocco. The delegation also had extensive discussions with the representative of the Spanish authorities in Melilla and with the *Guardia Civil* in Melilla.

38. The CPT acknowledges that a number of European States have to cope with frequent influxes of irregular migrants. It is notably the case for those countries situated at the external frontiers of the European Union which act as the gateway to the rest of Europe. Spain is one of these countries facing such pressures.

39. The autonomous municipality of Melilla is a Spanish exclave of 12 km² located on the northern coast of Africa, surrounded by Moroccan territory. The autonomous municipality lies on the migration route from North and Sub-Saharan Africa towards Europe; it is also used by Syrian migrants. The delegation was informed that the number of foreign nationals trying to cross Melilla's border irregularly has increased drastically over the last year and a half.

The *Guardia Civil* is responsible for patrolling the land border and the coast to prevent clandestine entry. The delegation was informed in Melilla that the *Guardia Civil* has institutionalised co-operation with the Moroccan Gendarmerie but no formal co-operation with the Moroccan Auxiliary Forces ("MAF"), which have the prime responsibility for border surveillance.

40. The Spanish authorities have built a multi-fence barrier along the 13 km land border separating Melilla from Morocco to prevent irregular migrants from accessing Spanish territory. The CPT notes that it was built within Spanish territory and is therefore, on both sides, under the full jurisdiction of Spain.

The barrier consists of a six meter high fence, slightly tilted towards Morocco, a three dimensional tow-line followed by a second three meter high fence and, on the other side of a patrol road, another six meter high fence. At regular intervals, gates have been inserted into the fences to enable access through the barrier from both sides. In addition, a sophisticated CCTV system (including infrared cameras) combined with movement sensors has been installed. Most of the fences are also equipped with anti-climbing grids.¹⁷

¹⁷ The Moroccan authorities were, at the time of the visit, setting up a 3-4 meter high barbed wire fence and a large trench in some areas on their side of the border.

41. On 13 February 1992, Spain concluded a Bilateral Agreement with the Kingdom of Morocco on the movement of persons, transit and readmission of foreign nationals who entered illegally (“the Readmission Agreement”).¹⁸ According to the Readmission Agreement, “following the formal request of the border authorities of the requesting State, border authorities of the requested State shall readmit in its territory the third-country nationals who have illegally entered the territory of the requesting State from the requested State.” The application for readmission shall be submitted within ten days after the illegal entry into the territory of the requesting State.

The CPT requested to be provided with information regarding the use of the Readmission Agreement since its provisional entry into force in 1992.¹⁹ However, despite repeated requests made during and after the visit, the Spanish authorities have yet to furnish the said information. **The Committee would like to receive detailed accounts of the use of the Readmission Agreement since 1992 and the number of foreign nationals concerned.**

42. Further, the Spanish legislation provides for the possibility of returning to the border, within 72 hours, irregular migrants based on an administrative individual decision (“devolution procedure”). This procedure is regularly used by the Spanish authorities, notably in Melilla.²⁰ However, the CPT was not informed of any legal grounds that would permit the Spanish authorities to return irregular migrants to Morocco prior to their identification.

43. The prohibition of torture and inhuman or degrading treatment or punishment is a non-derogable, peremptory norm of international law. It entails the obligation not to send a person to a country where there are substantial grounds for believing that he or she would run a real risk of being subjected to torture or other forms of ill-treatment. This obligation is also derived from the principle of *non-refoulement*, which is enshrined in Article 33 of the 1951 Convention on the Status of Refugees (“the 1951 Convention”).²¹

44. The prohibition of *refoulement* under international refugee law is applicable to any form of forcible removal, including deportation, expulsion, extradition, informal transfer or “renditions”, and non-admission at the border. This is evident from the wording of Article 33(1) of the 1951 Convention, which refers to expulsion or return (*refoulement*) “in any manner whatsoever”.

The principle applies not only in respect of return to the country of origin or, in the case of a stateless person, the country of former habitual residence, but also to any other country to which removal is to be effected or any other country to which the person may subsequently be removed. States are, therefore, also obliged to examine whether a relevant risk would be incurred through chain deportation or indirect *refoulement*.

¹⁸ The Agreement was published in the Spanish Official Gazette No. 100, 25 April 1992.

¹⁹ Section 16 provides for its provisional implementation as of the date its signature pending ratification by both countries. The Readmission Agreement officially entered into force on 13 December 2013.

²⁰ The CPT was informed that the procedure was applied 2,736 times in Melilla during the 10 first months of 2014.

²¹ Article 33 states: “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his [or her] life or freedom would be threatened on account of his [or her] race, religion, nationality, membership of a particular social group or political opinion.”

45. As a result of the principle of *non-refoulement*, States are obliged to screen intercepted migrants with a view to identifying persons in need of protection, assessing those needs and taking appropriate action.

46. According to the established case law of the European Court of Human Rights, it would be contrary to Article 3 of the European Convention of Human Rights to return a person to a country where he/she would be exposed to a real risk of torture, inhuman or degrading treatment or punishment.²²

47. The CPT considers that irregular migrants should have ready access to an asylum procedure (or other residence procedure) which guarantees both confidentiality and an objective and independent analysis of the human rights situation in other countries. That procedure should involve an individual assessment of the risk of ill-treatment in case of expulsion of the person concerned to the country of origin or a third country.²³

48. Groups of foreign nationals of varying sizes – from a few persons to a thousand – attempt, on a regular basis, to access Spanish territory. Regarding the attempts to access Spanish territory by sea, the CPT was informed about an incident that took place on 6 February 2014, which was widely reported in the media. Members of the *Guardia Civil* fired rubber bullets from the beach at persons who were attempting to swim from Moroccan territory to Melilla and forced them to head back to Morocco. However, not all the persons were able to swim back and it was reported that 15 foreign nationals drowned.

As regards attempts to access Spanish territory by climbing the border fences, the delegation received consistent allegations, confirmed by video footage, that irregular migrants were stopped within or right after the border by members of the *Guardia Civil*, occasionally handcuffed, before being immediately forcibly returned to Morocco without being identified. Several foreign nationals also stated to the delegation that they had been returned to Morocco after being apprehended by the *Guardia Civil* several hundred meters from the border. It seems that the duty of the *Guardia Civil* was seen as encompassing apprehending irregular migrants on their way to the CETI in Melilla and forcibly returning them to Morocco. Further, foreign nationals were allegedly sometimes returned to Morocco despite the fact that they were injured and could hardly walk (see also paragraph 51).

The CPT considers that such practices of immediately and forcibly returning irregular migrants, without any prior identification or screening of their needs, would be clearly contrary to the principles and standards mentioned above.

²² See, in particular, the Court's decisions in *Soering v. United Kingdom*, 7 July 1989; *Cruz Varas v. Sweden*, 20 March 1991; *Vilvarajah and Others v. United Kingdom*, 30 October 1991; *Chahal v. United Kingdom*, 15 November 1996; *Hirsi Jamaa and Others v. Italy*, 23 February 2012.

²³ See CPT 19th General Report, CPT/Inf (2009) 27, paragraph 93.

49. In this context, the CPT notes that an amendment to the draft law of foreigners was tabled in the Spanish Congress on 22 October 2014. The proposed text states as follows “foreigners who are detected at the border in Ceuta or in Melilla, attempting a non-authorised crossing of the border, in a clandestine, flagrant or violent way, will be rejected in order to avoid their illegal entry in Spain”. If adopted, this provision will allow the automatic return to Morocco of irregular migrants trying to access these two exclaves. The CPT understands from the statements made by the Spanish authorities that this amendment intends to legalise the existing practice described above of forcibly returning irregular migrants without any identification or assessment of their needs. For the Committee, this begs the question whether this practice has currently a legal basis in Spanish law.

50. In order to prevent effectively persons from being exposed to the risk of ill-treatment, **the CPT recommends that:**

- **clear instructions be given to Spanish law enforcement officials to ensure that irregular migrants who have entered Spanish territory will not be forcibly returned to Morocco prior to an individualised screening with a view to identifying persons in need of protection, assessing those needs and taking appropriate action;**
- **adequate guarantees in this respect be provided in national legislation.**

51. In the course of the visit, the delegation received several allegations of excessive use of force by members of the *Guardia Civil* when apprehending irregular migrants at the border (blows with truncheons to foreign nationals who were still clinging on to the border fence or unnecessary use of force after the migrants had already been brought under control). In this context, an incident that took place on 15 October 2014 has been brought to the attention of the CPT. According to video footage, a large group of foreign nationals was intercepted at the Spanish border on the last six meter high fence by members of the *Guardia Civil*. One of the foreign nationals received at least eight truncheon blows from members of the *Guardia Civil* while he was climbing down from the fence. Upon reaching a ladder which was placed against the fence, he appeared to be pulled down by a member of the *Guardia Civil* and fell approximately two meters to the ground. Despite the fact that his body appeared to be inert, he was handcuffed and carried back to Morocco, through the fence, by several Spanish law enforcement officers.

The CPT considers that, in this specific case, the use of force by members of the *Guardia Civil* was unnecessary and disproportionate and their treatment of the individual after the fall was totally inappropriate.

The CPT recommends that members of the *Guardia Civil* be reminded on a regular basis that any excessive use of force is prohibited and will be sanctioned accordingly. Further, they should be trained in preventing and minimising violence in the context of apprehending foreign nationals at the border. For cases in which the use of force nevertheless becomes necessary, *Guardia Civil* officers need to be able to apply professional techniques which minimise any risk of harm to the persons whom they are seeking to apprehend.

Moreover, a prompt and effective inquiry should be carried out regarding the behaviour of the members of the *Guardia Civil* in relation to the specific incident described above as well as into the fate of the foreign national concerned.

52. The delegation received clear indications from foreign nationals interviewed that, on occasion, MAF officials would operate in-between the border fences. According to many testimonies, confirmed by video footage, the Moroccan law enforcement officials escorted irregular migrants out of Spanish territory back into Morocco.

Further, the delegation received credible allegations that members of the MAF used physical violence such as kicks, punches and blows with wooden sticks to forcibly return foreign nationals to Morocco. Further, it was alleged that they actively shook the fence to force any irregular migrants, who were still hanging on, to fall down.

53. A number of foreign nationals interviewed, who claimed that they had been returned to Moroccan territory on one or more occasions after entering Melilla, alleged that they had witnessed or had themselves suffered severe ill-treatment by members of the MAF following their return from Spanish territory. The ill-treatment apparently consisted of slaps and kicks as well as blows with wooden sticks. Allegations were also made that large stones had been thrown at them and that a number of them had suffered broken bones and severe head injuries.

According to the information gathered by the CPT's delegation, the ill-treatment appeared to occur on a random basis, and was only inflicted by members of the MAF. No allegations of ill-treatment were made regarding members of the Moroccan Gendarmerie.

54. The CPT considers that the Spanish authorities have an obligation to ensure that all persons who enter Spanish territory are treated humanely and that the apprehension of such persons should be carried out using the minimum of force to ensure compliance. In no circumstances should Moroccan law enforcement officials be permitted, outside of any legal framework,²⁴ to enter Spanish territory in order to forcibly remove irregular migrants. Further, the information gathered indicates that handing over such persons to the Moroccan Auxiliary Forces, or allowing them to be apprehended by these forces, places them at real risk of ill-treatment.

In the light of the risk of ill-treatment by members of Moroccan Auxiliary Forces of irregular migrants returned to Morocco, the CPT recommends that the Spanish authorities ensure that no person is handed over to them.

Further, the Committee recommends that the Spanish authorities take the necessary steps to ensure that Moroccan Auxiliary Forces officials do not enter Spanish territory to apprehend and forcibly return irregular migrants to Morocco.

²⁴

The delegation was not informed of any international agreement between Spain and Morocco or any national legislation that would allow this practice.

55. The temporary holding centre for immigrants (CETI) in Melilla is a facility closed during the night and guarded, under the responsibility of the Ministry of Employment and Social Security.²⁵ At the time of the visit, the CETI was accommodating 1,062 foreign nationals, including 354 children, for an official capacity of 480 places. As a response to the severe overcrowding, 22 large tents had been built inside the centre. Further, sets of bunk beds had been installed in rooms originally designed for use as offices. Elementary needs (shelter, hygiene facilities, food and basic health care) were provided to all the residents and the centre was clean at the time of the visit. Some efforts were made to offer activities, such as Spanish courses or personal development classes, to adult foreign nationals and to children. Activities for children living in the CETI were also taking place outside the centre.

The Spanish authorities' aim is to provide accommodation for all foreign nationals inside the centre in order to prevent the development of shanty towns. However, this usually results in the centre accommodating numbers of people largely exceeding its official capacity; for example, a month prior to the visit some 2,400 persons were living in the Centre. The CPT expresses its concern that overcrowding within the Centre has persisted for many years with most of the residents accommodated in cramped conditions, particularly those living in tents.²⁶

The CPT encourages the Spanish authorities to take the appropriate measures to tackle the problem of severe overcrowding in the CETI.

²⁵ The CPT already went to this centre in 1997 and 2005.

²⁶ The delegation was informed that in 2012, there were, on average, 600 migrants in the centre; 700 in 2013 and some 1,000 during the six first months of 2014.

APPENDIX

**LIST OF THE NATIONAL AUTHORITIES AND ORGANISATIONS
MET BY THE CPT'S DELEGATION**

A. Ministry of the Interior

Francisco MARTÍNEZ	Secretary of State of Security
Juan Antonio PUIGSERVER	General Technical Secretary of the Ministry of Interior
Emilio BAOS	Commissioner, General Commission for Immigration matters and Borders
Gregorio GUERRA	General, Head of the Prosecutor Office and Borders
Belén ROEL	Private Office Director, Secretariat General for Immigration and Emigration
Pía ARACAMA	Head of Unit, Private Office of the Secretary of State of Security, CPT liaison officer

B. Authorities in Melilla

Abdelmalik EL BARKANI ABDELKADER	Representative of the government of Spain in Melilla
José Ángel GONZÁLEZ JIMÉNEZ	Head of the Police in Melilla
Ambrosio MARTÍN VILLASEÑOR	Head of the Guardia Civil in Melilla
Carlos MONTERO DÍAZ	Director of the CETI

B. Independent authorities

Rafael RIBÓ I MASSÓ	Catalan Ombudsman
Elena ARCE JIMÉNEZ	Head of the Migration and equality of treatment area, Spanish Ombudsman

D. Non-governmental organisations

Coordinator for the Prevention of Torture
CEAR
Prodein