



Analysis

Irregular migration to Spain: a state of exception

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In late 2017, a prison-to-be was converted into a detention centre by Spain's interior ministry, and used to hold some 500 Algerian nationals travelling to the country by dinghy. One of them subsequently died, isolated in his cell. The majority of detainees have now been deported, and an official investigation into the death remains open, despite a preliminary verdict of suicide. The penitentiary centre, meanwhile, has now officially opened as a prison, but the episode highlights how the treatment of such situations as 'emergencies' – despite the fact that they have been ongoing for decades – leads to numerous and serious human rights violations.

Introduction: large-scale arrivals and minimal human rights protection

In the last days of 2017, a detainee in the Archidona penitentiary complex near Malaga in southern Spain died in his cell. He was called Mohammed Bouderbala and he was 36 years old. He had arrived in Spain on 19 November, when some 500 Algerian nationals travelling in 44 boats were intercepted by a Spanish Maritime Rescue vessel, an army frigate, two helicopters and two planes.

In Murcia, where the Algerians were brought ashore, the representative of Spain's ruling Popular Party described the arrival as "a coordinated attack against our border and, as such, against the borders of the European Union." All those who arrived that day were taken to Archidona – a prison-to-be that was converted into a temporary detention centre by the authorities – and placed in the custody of riot police. At its height, the population of Archidona reached 577 people.

There was no running potable water in the centre. Neither was there hot water for washing, clean clothing for the detainees, nor decent food or heating. It was not at that point considered fit to be opened as a prison, yet it was considered appropriate for people who had arrived on the coasts of Europe in desperate circumstances. As one article put it: "it lacked practically everything apart from the walls and the bars on the cells." According to the director of the centre, there were daily protests and mutinies by the detainees, two of which were "large".

Spain's interior minister, Juan Ignacio Zoido, declared that the conditions were better than in official detention centres.

Mohammed Bouderbala died at some point between 15:27 on 28 December and 9:25 on 29 December. Along with 11 other people, he had been placed in isolation for reasons that remain unclear. Surveillance camera footage showed that no-one – police officers, doctors, Red Cross workers or translators, all of whom were present in the centre at the time – had checked on him for 18 hours.

Mohammed's family said that his death was surrounded by "opaque circumstances". His brother, Ahmed, said that the last time he had been to visit his brother "they had him in handcuffs," and that he was told physical aggression was commonplace in Archidona. His family has said that the night prior to his death there had been an altercation in which Mohammed had sustained injuries inflicted by the riot police in charge of the centre. In video footage recorded on a mobile phone, one detainee claimed that Mohammed had been killed by police officers. Another video, broadcast on Algerian television, showed riot police violently beating detainees.

After Mohammed's death, his family filed legal proceedings that were dismissed just days later, on 4 January 2018, when a court in Malaga ruled that the presumable cause of death was suicide by hanging. A "popular accusation" was filed by local campaign groups and a political party, *Izquierda Unida* (United Left), but those proceedings were also turned down.

A lawyer for the popular accusation pointed out that although Mohammed had been held in isolation, those held in the cells next to him may well have heard something. Yet the judge refused to take statements from two people who were put forward as potential witnesses in this regard. He also refused to take statements from the police officers that took Mohammed to the cell, and dismissed the need to undertake an inspection of the centre or to request documentation that would explain why Mohammed had been put in isolation.

At this point the family had not even seen the video surveillance footage from inside Archidona. "We have not had access to the security camera footage, yet the proceedings contain a provisional report that indicates the cause of death is likely to be suicide by hanging," said Amanda Romero, the family's lawyer. The speed and substance of the court's decision were "in no way justified," she added.

The legal proceedings had demanded that detainees be called to give witness statements and that expulsions be stopped. The lawyer of a local campaign group, Archidona Citizens' Platform Against the CIE (Centro de Internamiento de Extranjeros, foreigners' detention centre), whose lawyer said that "all the detainees are potential witnesses to the facts". The judge's decision reportedly declared such procedures to be "unnecessary".

Deportations of detainees in Archidona had already begun on 11 December. According to a European parliamentary question by Spanish MEP Marina Albiol Guzmán, seven courts were set up "for the sole purpose of processing the accelerated deportation of these migrants." On 24 January the Spanish interior minister, Juan Ignacio Zoido, told a parliamentary committee that of the 577 Algerian citizens that had been held in Archidona, 488 had been expelled to Algeria (all from Almeria) and 89 had been set free. Of those, 63 had requested asylum; 11 were children; 11 were freed based on humanitarian reasons; three under protective

measures; and one because their nationality could not be proven. Zoido had previously denied there had been any children held in the makeshift detention centre.

On 26 February, the Archidona penitentiary centre was opened as a prison – its intended official use. It has over 1,000 cells, including 50 on the solitary confinement wing. Prisoners will be sent there as of the first weeks of March. Meanwhile, an investigation into the death of Mohammed Bouderbala by Francisco Marugán, the Human Rights Ombudsman (*Defensor del Pueblo*) is ongoing. Appearing before a parliamentary committee in mid-February, Marugán said:

“We do not have the least doubt that this was a suicide and we received the pertinent explanations from the Interior Ministry... We knew that this gentleman participated in an altercation and that the authorities in the CIE determined he should be held in isolation for 16 hours. He was not seen by the healthcare personnel of the centre, nor were there periodic visits to his cell, something that to us seems totally incomprehensible.”

Indeed, the entire episode – the arrival of 500 people and their interception by military vessels, their transfer to a prison-to-be in appalling conditions, the death of Mohammed Bouderbala and the circumstances surrounding it – seemed totally incomprehensible to many of those observing and denouncing the situation.

During his appearance before the committee, Marugán said that Spain should be capable of offering dignified conditions to those that arrive on the country’s territory in an irregular fashion – particularly given that the first dinghies arrived some 30 years ago, after Spain’s accession to the Schengen convention. This view has been echoed numerous times over the years by national and European parliamentarians, campaigners, journalists, lawyers, and regional and international human rights bodies. Yet as the case of Archidona makes all too clear, the infrastructure in Spain is not currently geared towards providing a ‘politics of welcome’ – or in many cases, towards providing even the most minimal human rights standards.

The article that follows was originally published in the Spanish magazine *El Salto* in late December, just before Mohammed Bouderbala was found dead in his cell. Nevertheless, and despite the fact that the centre is now a prison rather than a migrant detention centre, it merits reproduction for the way in which it shows how the situation in Archidona developed and affected the people locked inside, their families, and local residents and others who campaigned against the incarceration of 500 people who had committed no crime.

Archidona, permanent state of exception¹

On 19 November 2017, Frontex detected the departure of 44 boats from the coast of Algeria. A deployment consisting of an army frigate, a *Salvamento Marítimo* [Maritime Rescue] boat, two helicopters and two planes intercepted the boats, which had a total of 476 people on board. The government’s representative in Murcia, Francisco Bernabé, described the arrival

¹ By Larissa Saud, Carlos López, Paco Aguaza, *El Salto* Córdoba. Originally published in *El Salto*, 30 December 2018, original version available at <https://www.elsaltodiario.com/cie/archidona-estado-de-excepcion-permanente>

as “a coordinated attack against our borders and, as such, against the borders of the European Union.”

Taken to the port of Cartagena, the arrivals were then transported to the Malaga II Penitentiary Centre [commonly referred to as Archidona], a recently-constructed penal enclosure awaiting its official inauguration. Voices swiftly arose denouncing the irregularity of the move and the use of the prison as a provisional CIE [*Centro de internamiento de extranjeros*, detention centre]. “The law and the constitutional court are clear that the CIEs cannot have a penitentiary character and the Archidona centre does,” declared the president of *Málaga Acoge* [Malaga Welcomes], Arantxa Triguero.

At an hour and a half’s distance from the nearest village, getting to Archidona on foot or by public transport is something of an odyssey. Nadia Bouamama came from the north of France to search for her son in Archidona. Not having enough money to pay for lodgings, she slept in her car for three days with one objective: “I just wanted to see him for a minute. I only want to know that he is well.”

People involved in the newly-formed *Plataforma Ciudadana Contra el CIE de Archidona* [Citizens’ Platform Against the Archidona detention centre] organised the first demonstration outside the prison on the 26 of November. There they met Nadia. After various discussions with the mayor and the local police, it was agreed that Nadia and other people could make use of a hostel in the area so that they could see their families. The same evening, separated by a screen and through a telephone, she managed to see him, “escorted by police and in handcuffs.” Just after, Nadia left to return to France.

In subsequent days almost one hundred more people arrived at the penitentiary centre. Alarm bells began sounding about the potentially permanent character of a CIE module within the future Malaga II prison. At its gate the demonstrations have been constant. In one month there have been three demonstrations, a march and a camp at the front of the prison. “You are welcome,” Rubén Quirante, professor at the Archidona college, cried in French during one of the demonstrations at the front of the centre. He came to “denounce a procedure that is totally illegal because there is no right to lock people in a prison for migrating.”

“There are no avalanches”

The interior minister, Juan Ignacio Zoido, defended the imprisonment of people at Archidona as a measure forced by the “wave” of migrants arriving on Spain’s coasts. In his statements to *Onda Cero* [a radio station], Zoido spoke of a “pull effect” because “the discourse that Europe is exiting the crisis is spreading” and warned that the increase in the movement of persons would come above all from Algeria and Libya.

According to *Caminando Fronteras* [Walking Borders], a collective that keeps watch on human rights at the southern border, the increase in the flow of people towards Spanish territory from Morocco and Algeria is a response to the high danger of the route via Libya, a country immersed in war since 2014.

Carlos Arce, migration coordinator for *Asociación Pro Derechos Humanos de Andalucía* [Andalusian Association for Human Rights, APDHA], recognises an increase in the migratory flow, with “almost 30,000 people that have entered Spain by sea during this year, almost

double that of last year.” The organisation publishes an annual report about the southern border and tracks these figures, that Arce puts in context: “There is a need to take into account that Europe’s western border remains a residual route with respect to other entry routes to European territory. There is a significant increase, but one cannot speak of avalanches or uncontrollable flows.” What seems more worrying to him is the number of deaths: 300 in the past year, almost 6,000 in the last twenty years.

Some institutional voices, like the *Defensor del Pueblo Andaluz* [Ombudsman of Andalusia], Jesús Maeztu, have a posture closer to that of APDHA than to the Spanish government. At the conference ‘A vision of immigration on a human rights basis’, his central state counterpart, Francisco Fernández Marugán, was also present. Marugán quoted the professor Javier de Lucas: “The migratory politics that Europe is enacting are comparable to the acts of a doctor that wants to cure measles outbreaks with tippex.”

Questioning

The interior minister’s decision of 20 November [to use Archidona as a detention centre] and its legality are being called into question. On 30 November, court number two of Vega (in Almeria) admitted to its proceedings a complaint from the prison functionaries’ trade union (ACAIP) alleging crimes of falsifying public documents and disobeying judicial authority. The court requested reports from the secretary of state for security on “the possible existence of a criminal offence,” according to the ruling.

For Ernesto G. Maleno, the spokesperson for *Caminando Fronteras*, this is nothing more than a new offensive of the government to stretch national and international legality. “The case of Archidona, just as with the legalisation of ‘hot returns’ through the *Ley Mordaza* [Gag Law, official the 2015 Law on Citizen Security], conveys repressive capacities against people in a migratory situation beyond the law itself and international agreements,” he says. He also notes that the agreements established by Spain with third countries, such as Morocco, externalise human rights violations and repression.

It should be noted that one member of *Caminando Fronteras* is Helena Maleno, accused before the Moroccan courts of a suspected relation with “people trafficking networks,” based on her warnings to Maritime Rescue of departing boats, to avoid them disappearing in the Mediterranean. In 2016 the *Audencia Nacional* [National High Court] dismissed a Spanish police investigation that made similar accusations.²

The Andalusian Ombudsman himself has insisted that “there is a need to end hot returns and other violations of human rights, including ill-treatment and the excessive use of force,” and has described the current model for controlling migratory flows as one “based on containment, repression and discrimination, with that which has built ‘non-politics’, centred on responding to fears and not to the principles of equality and respect for the dignity of people.”

Riot police as custody officers

² Editor’s note: It has emerged during proceedings that the Spanish police investigation forms much of the substance of the case she is now fighting in Morocco.

Another of the facts that demonstrates the centre's hasty character, denounced from various quarters, is that custody is undertaken by the riot squad of the *Policía Nacional*. The function of this unit is to intervene in situations of shock and containment. "They do not have adequate training for dealing with people in circumstances such as this," points out Amanda Romero, a lawyer specialised in immigration law who advises people held in Archidona. "We have seen that the majority of agents carry out their work in their riot gear, which generates a climate of strong hostility," she adds.

This is another of the facts denounced by ACAIP [the prison functionaries' union]. According to the law, state security bodies and forces "cannot enter the interior of penitentiary centres, except in legal conditions that foresee such acts," and the union argues that Archidona will never meet these requirements. They also highlight the lack of personnel for carrying out daily functions. During the first days that the centre was open, only Red Cross personnel were able to enter the centre to guarantee the detainees' needs for leisure, hygiene and legal support.

Families and collectives are challenging the lack of provision of visiting hours and legal assistance and the discretion with which such hours are organised. "It was not until almost two weeks had passed that visiting hours were established," declares Carmen Delgado, part of the citizens' platform against the detention centre.

For the platform's legal team, the level of improvisation on the part of the interior ministry has "meant that the whole process is laden with irregularities, some of them very serious, like the weeks-long confinement of minors in the centre."

Imprisoned children

One of the examples of the level of social and political pressure that has consistently called for the authorities to correct abuses concerns children detained in Archidona. By 23 November, *Red Andalucía de Inmigración y Ayuda al Refugiado* [Andalusian Network of Immigration and Refugee Support] warned of the presence of minors within the prison and requested that the Ombudsman intervene. Citizens' collectives, NGOs and some politicians have also denounced this situation.

The pressure started to take effect with tests that resulted in the release of children, who were moved to municipal centres under the responsibility of the Council of Andalusia. "Without this pressure it is likely that these children, as well as being locked up in Archidona, would have been deported, a very serious matter," declares Amanda Romero.

The first child left the centre on 13 December after more than 20 days of being locked up. That there are no more children detained at the centre has been affirmed by both the Andalusian Ombudsman and the interior ministry (which in the first place had denied the possibility that such a thing could happen at all). When the state Ombudsman visited the centre they found up to four people who may be minors, of which finally only one was, according to the office of the Andalusian Ombudsman. This minor was immediately put under the guardianship of the children's protection services of the Council of Andalusia. The next day two more cases were confirmed. As this edition went to press, the total number of minors taken to reception centres has increased to 11.

Legal teams from various organisations and lawyers appointed by the Antequera College of Lawyers will continue raising the alarm over further cases of children being put in the prison. They will make use of documents contributed by families as proof against the result of osteometry [bone measurement] tests that fix a child's age at 19 years. According to the platform's legal team, "the prosecutor only recognised the relevance of the radiological scan of the left wrist; it is important to remember that we are speaking of a test with a margin of error of 18 months."

On 14 December, the Ombudsman admitted to its proceedings a complaint from Malaga Welcomes, making clear the deficiencies of these tests. "These reports do not recognise the age brackets within which the examined individual may lie, nor margins of error, nor the conformity of the estimated bone age with chronology," the report says.

N.M. was counting on her cousin's birth certificate, but the osteometry test said that he was a minor: "We had sent all the documentation, including the original, but yesterday they said to me that they had sent him back to Algeria. I don't understand anything." N.M says that their cousin was born in 2001 and they discovered through the internet that they were in Malaga II: "I searched online and saw that it was a penitentiary centre. I was left desperate. I did all I could so that they wouldn't send him back, but I wasn't able to stop it."

Regarding the return of minors, the Red Cross affirms that its work within the Archidona centre is simply to pass on the names of people that request international protection, whether for asylum or due to their age: "We do not question it when a detainee says they're a minor. What we do is to list every day the possible minors that present themselves to us. What I can assure you of is that they do tests and they are working on it. We take the information to the interior ministry and the management of the centre itself, who deal with interviewing them."

For Daniel Machuca, a member of the citizens' platform, "it should not be surprising that we keep talking about children, in fact we know that some of them are being deported." The arrival of minors on Spanish coasts is not an isolated fact. In the inaugural speech of the conferences held in Madrid, Jesús Maeztu, this time in the role of Children's Ombudsman, produced figures collected during the first ten months of 2017, in relation to the arrival of minors on Andalusian coasts: 3,433, a figure double that of 2015.

Returns

On 11 December the deportations began. Since the first ones were announced, vehicles have not stopped entering and exiting the penitentiary centre. There have been days in which, in scarcely an hour, a total of five vans have arrived, including escorted buses, while from outside it was possible to listen to the name of the detainees being called out over a megaphone.

Aisha Toumi came from the north of France and was waiting to see her 23-year-old son. She couldn't contain her nerves. "They've called him. Mohamed lahmar. They've called him. Are they going to deport him?" Aisha was carrying clothes for her son and was trying to communicate, without much success, with the police officers that were at the gate. They said they couldn't locate Mohamed, either by calling his name or in his unit. "If I let her enter without having found him, what's she going to do in there? She's going to go in there for what?" said one of the officers in Spanish. Aisha, sat on the floor with her head in her hands, was saying in French: "It's hard here, it's very hard here."

Like Aisha, dozens of relatives have passed through the doors of the Malaga II Penitentiary Centre. Regardless of whether they have come from cities in the south or the north of France, their quest is the same: to see some of the 500 people locked up inside. Aisha arrived when the visiting hours were already established. Despite that, she has only been able to see her son after waiting for two hours.

The asylum cases have also been one of the black spots in the process. Both court-appointed lawyers and legal teams from NGOs have found themselves faced with the expulsion of asylum seekers before being able to meet with them. This only further highlights the fact that some of the events taking place here seem to give to Archidona the character of being a new milestone in rights violations.

Sonia Castró Martínez lives in Valencia, where she was hoping to receive her brother-in-law and her 23-year-old nephew, who was returned during the first week. The brother-in-law, at the close of this edition, remained in prison. Sonia was able to see each of them for just five minutes. She took food and water, but she was only able to enter with the clothes she had brought for them: trousers and jumpers. "What they are doing to them is very unjust. My brother-in-law requested international protection because he came fleeing the mafias, but until now he has had no reply. They said to me that no matter how many times they are returned, they will keep on trying to enter."

Translation by Statewatch.

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