

Monitoring human rights in border management

A safe practice guide



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Introduction | 6

1

Monitoring police operations at borders: definitions and characteristics | 9

2

The monitoring framework: structural racism, coloniality and gender | 10

3

What to look out for when monitoring human rights at the border

| 12

What data should I gather when observing police operations?

What evidence is useful if I witness human rights infringements at

borders? | 13

4

How to monitor safely | 19

4.1 Am I required to carry identification? | 20

4.2 Can the police ask me for my ID if I am observing or recording them? | 21

4.3 What happens if the police take my details? | 21

4.4 Can I take photos or videos of police officers? | 22

4.5 Can officers confiscate my mobile phone? | 22

4.6 Can officers delete my images? | 22

4.7 Can officers demand that I delete images? | 23

4.8 What should I do about any possible surveillance footage of human rights infringements I have witnessed? | 23

5

Infrastructure
with special
governance

Ports and
airports | 24

6

Border
perimeters
and
fences | 26

6.1 Ceuta and Melilla
border perimeter:
a security zone? |
26

6.2 Taking photos
and recording
images in areas
surrounding the
border | 27

6.3 How can I request
permission to
take photographs
at and around
borders? | 28

6.4 Where am I not
allowed to take
photos or
record without
permission? |
28

7

Other spaces
Involved in border
management:

Migration
centres and
CATEs | 29



Introduction

In 2022, the United Nations High Commissioner for Refugees made public their concern about the increase in violence and human rights violations in the EU and the spread of "dehumanising tactics" in migration governance¹. **Human rights infringements have become a constant feature** at the EU's borders, including Spain's. As such, **investigation into and reporting on the matter are a fundamental feature of human rights defence work**².

In a recent report, the then-United Nations Special Rapporteur on the Human Rights of Migrants stated that "the full range of violations is often unknown due to attempts by States to deny allegations of violations or cover them up"³. **It is the States themselves who infringe the rights of migrants** and, moreover, demonstrate their scant interest in operating transparently. Indeed, **the information** provided by Spanish authorities on the situation of migrants, migration policy and the management of recent arrivals **is manifestly insufficient**⁴.

Consequently, a range of agencies have highlighted **the need for human rights monitoring mechanisms at borders**. For the time being, **no mechanism of this nature appears to be operative neither on a European scale**

¹ UNHCR (2022). News Comment: UNHCR warns of increasing violence and human rights violations at European borders [News Comment: UNHCR warns of increasing violence and human rights violations at European borders | UNHCR](#)

² Irídia and Novact (2023). *Vulneraciones de derechos humanos en la Frontera Sur del Estado español (2021-2022). Racismo institucional, fronteras y política migratoria* [CAST-informe-FS.pdf \(iridia.cat\)](#)

³ OHCHR, 22 April 2022. Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales, Human rights violations at borders. [A/HRC/50/31: Human rights violations at international borders: trends, prevention and accountability – Report of the Special Rapporteur on the human rights of migrants, Felipe González Morales | OHCHR](#)

⁴ See Irídia and Novact (2023). *Vulneraciones de derechos humanos en la Frontera Sur del Estado español*. <https://iridia.cat/wp-content/uploads/2023/05/CAST-informe-FS.pdf>

nor on a national level within Spain. Grassroots activists have worked extensively on developing ways to monitor human rights infringements during acts of protest and demonstrations. However, **with regard to human rights monitoring at borders, work remains to be done to overcome difficulties in accessing information and to offset the lack of clarity that exists in oversight.**

Defining what a border is depends on who defines it and what their outlook is. The dictionary definition of a border is the "line that marks the outer limit of the territory of a state, understood as the terrestrial, maritime and airspace over which it exercises its sovereignty, which allows us to speak of terrestrial, maritime and air borders depending on the physical nature of the delimited space". To this effect, **Spanish law establishes two clearly delimited areas: national territory and border posts** (for example, Article 21 of the Asylum Act)⁵. It also delimits as border areas both **Immigrant Detention Centres (CIE) and airport facilities** prior to accessing Spanish territory. Nevertheless, there are many ways in which borders can be understood, making it both difficult to define them⁶ and to delimit the content of this document. Within the EU, internal borders had theoretically begun to blur; however, in recent years, internal border controls have been reactivated. In Spain's case, the border with France has become a focal point of human rights infringements⁷.

For the purposes of this guide, **we refer to borders⁸ as any and all areas where specific border legislation applies, with additional consideration of Temporary Reception Centres (CATEs)⁹ and other migration centres¹⁰, including Temporary Stay Centres for Immigrants (CETIs).** We include the latter two since, despite not being defined in current legislation as "border" areas, both CATEs¹¹ and other migration centres are strongly linked to the broader border management practices by way of which the human rights of migrants are infringed.

⁵ [Law 12/2009, of 30 October, regulating the right of asylum and subsidiary protection. \(boe.es\)](#)

⁶ For further consideration of a non-judicial definition of borders, see the introduction to Lo Coco, D. (2023). The externalisation of the EU's migration policies and the contradiction between protection and negation of life exception, deportation and racism at the Spanish-Moroccan border [doctoral thesis]. <https://repositorio.deusto.es/items/d2c1ab28-e957-4f13-9112-0c7080ba348f>

⁷ See e.g. Barber, I. (2023). Arquitectura jurídica, procedimientos de retorno y derechos fundamentales en la frontera pirenaica oriental. *Revista Catalana de Dret Públic*, 66, 135-154. <https://doi.org/10.58992/rcdp.i66.2023.3884>

⁸ For specific monitoring of sea borders, we recommend consulting the work carried out by the Andalusian Human Rights Association (APDHA) and Caminando Fronteras.

⁹ CATEs are point-of-arrival processing centres for migrants who arrive by sea. According to the Ministry of the Interior, these centres are intended to provide food, medical assistance or transfer to hospital for those who require it, as well as for their identification and other administrative procedures. They tend to be located in fenced-off prefabricated buildings and complexes, usually in port areas or near ports or police stations, where those arriving by non-regular means are detained for 72 hours in order for police to carry out background checks and for humanitarian aid to be provided to them. These centres are not required by law nor is mention made of them in the Immigration Act. https://www.interior.gob.es/opencms/documentacion/Portal-deTransparencia/ResolucionesDenegatori-as_2023/001-077606.pdf

¹⁰ Migration centres make up a public network created by the Ministries of Employment and Immigration to carry out information gathering and processing, care provision, social intervention, training, detection of trafficking and, where appropriate, referral to other bodies. This network includes refugee reception centres, the CETIs in Ceuta and Melilla, as well as newly created centres. For more information, see Chapter 2 of Iridia and Novact 2022 <https://iridia.cat/wp-content/uploads/2023/05/CAST-informe-FS.pdf>

¹¹ See e.g. Barber, I. (2021). Los Centros de Atención Temporal de Extranjeros como nuevo modelo de gestión migratorio: Situación actual, (des)regulación jurídica y mecanismos de control de derechos y garantías. *Derechos y Libertades*, 45.

In addition, **borders are associated with questions of security and sovereignty – the *raison d'être* of the nation state – and are governed by specific rules and regulations to this effect.** The relationship between borders and security tends to be deployed by authorities as **the main argument for denying requests for information, resulting in a lack of transparency and making it more difficult to monitor the human rights situation there. This in turn creates a climate of ignorance and fear,** stymieing efforts to gather evidence of human rights infringements and speak out against them. It is difficult to access information regarding the legislation that applies in each area and what is done to uphold human rights there. This being the case, it is important **to recall that no act of law explicitly prevents monitoring the actions of public officials,** including police or other officers of the law, in public spaces and facilities, including train stations and any other areas accessible to the public.

The aim of this guide is to bridge the knowledge gap by providing information for human rights monitoring in border areas, including the border fences in Ceuta and Melilla, airports and ports, and any other key areas linked to border management where human rights infringements occur, including CETIs, CATEs and other migration centres. More specifically, it should serve as a **tool for organisations and individuals seeking to monitor human rights at borders, with a particular focus on applicable legislation and jurisprudence.** To this end, it offers **practical advice for informed decision-making** as a means of strengthening the fight for respect for human rights on Spain's borders.

This guide (1) presents a definition of human rights monitoring, (2) appraises our framework of understanding of the work of monitoring at borders, (3) summarises the key spaces and concepts for human rights monitoring in different border areas of Spain, (4) provides guidance on how to monitor safely, (5) offers a specific overview of ports and airports, (6) analyses issues concerning the border perimeter in Ceuta and Melilla and, lastly, (7) presents information regarding CATEs and other migration centres (7).



1 - Monitoring police operations at borders: definitions and characteristics

Monitoring is a means of defending human rights at borders through both systematically recording and raising awareness about incidents: in order to highlight human rights infringements, we must be aware of what is happening on our borders and be able to systematically gather evidence to support our claims. As such, we need to be able to observe in a methodical manner and at regular intervals the conduct and outcome of the operations carried out by the relevant authorities in terms of **respecting, upholding and ensuring the effective realisation of human rights**¹².

Monitoring allows information and evidence on the human rights situation to be gathered through **the recording of images and audio, the taking of notes, the collection of witness statements and any other available means**. Monitoring involves collecting a large amount of information which then enables us to examine patterns of conduct and any progress, setbacks or stagnation in respect for human rights. Information must be correctly stored, crosschecked and backed up by evidence in order to back up official complaints and prevent infringements from being repeated. The presence of activists, researchers and defenders at borders not only serves for monitoring but also **for deterring any abuse**, insofar as **it can help prevent certain practices, acts and criminal conduct from occurring**.

In short, **monitoring is a form of comprehensive advocacy, especially in political and legal terms**. The systematic observation and **regular gathering of information for assessing the human rights situation at borders contributes to broader advocacy work** and helps identify cases for strategic litigation. The latter seek to highlight continual, systematic infringements through individual cases. In turn, *ad hoc* observation carried out by witnesses and activists can complement broader monitoring work as long as they follow similar parameters.

It is important to systematise, organise and analyse the evidence collected through monitoring to spot patterns in the conduct which underpins human rights infringements at borders, in order to ensure a stronger case against them can be built. Once systematised and analysed, this **evidence can provide the basis for subsequent political and legal advocacy**. This evidence can be collected in the form of notes, videos, interviews, photographs, audios or any other available means that serve to document human rights abuses.

Evidence collected by witnesses and/or activists at borders can prove essential in bringing infringements to the attention of the authorities in the event of litigation and to support

¹² UN Women (2011). What is human rights monitoring? <https://www.endvawnow.org/>

Monitoring human rights in border management

[es/articulos/994-qu-es-el-monitoreo-de-los-derechos-humanos.html#:~:text=El%20monitoreo%20de%20los%20derechos%20humanos%20busca%20reunir%20informaci%C3%B3n%20sobre%20violaciones%20de%20los%20derechos%20humanos.](https://www.es/articulos/994-qu-es-el-monitoreo-de-los-derechos-humanos.html#:~:text=El%20monitoreo%20de%20los%20derechos%20humanos%20busca%20reunir%20informaci%C3%B3n%20sobre%20violaciones%20de%20los%20derechos%20humanos.)

advocacy work. However, **we must remember that our actions can also have a negative impact on those crossing the border.** Our efforts to observe and gather statements, and the way in which we carry these out, **can cause harm and revictimisation to the people with whom we come into contact.** As such, **it is essential that, whenever we think we may be causing a negative impact, we must stop our observation. The protection of those involved must always take priority over any monitoring objectives.**

2 - The monitoring framework: structural racism, coloniality and gender

Human rights monitoring is part of a broader investigative framework. The perspective and approach of the organisations and individuals who carry it out is key in shaping the focus of observers' work on certain types of evidence over others, and the subsequent analysis of the information gathered. It is therefore important to be clear about how we understand borders, policy and migration management in order to know what data to collect and where to look for it.

In what follows, we look at some key points underpinning this guide which we think are essential for good human rights monitoring at borders.

- **Migration policy is based on a racist, (post)colonial and discriminatory framework** of managing access to cross-border movement.
- Borders do not affect all people equally¹³. On the contrary, they are open to and enable the movement of groups from the Global North while, simultaneously, they hinder the movement of groups from countries historically subject to colonial domination.
- **People racialised as non-white are exposed to higher levels of violence** when they cross borders due to restrictions on freedom of movement and international protection.
- Images of violence at borders are often a reflection of the violence, by action or omission, perpetrated against those racialised as non-white. Broadcasting them can contribute to the normalisation of violence against non-white people, and specifically black people. We must therefore differentiate between the gathering of evidence and images as part of human rights defence work and their wider publication. **Any sharing or publication of images must be carried out carefully** and subject to prior reflection.
- Those affected by migration policies are also key witnesses of violence at borders and, therefore,

¹³ See e.g. Barber, I. (2022). Racismo(s), prácticas policiales discriminatorias y los 'contrôles au faciès' en Francia. In Ángeles Solanes-Corella (Ed.), *Dinámicas racistas y prácticas discriminatorias: La realidad en España, Francia, Italia, Dinamarca y Finlandia* (pp. 1171-1196). Aranzadi.

it is important **to prioritise their outlook and demands** as both political actors and the primary parties affected by migration policies.

- Both Spain and the EU's migration policies are intended to prevent the arrival of migrants from countries historically subject to colonial rule **by way of the outsourcing of border control**. To this end, they hinder and prevent access to legal recourse and international protection. Indeed, Dunja Mijatović, then-Commissioner for Human Rights of the Council of Europe, indicated as much in a [recent report](#).

- **Immigration legislation** and broader migration policy – both at a national and a European level – **are at the root of the infringements of migrants' rights**. It is important that we maintain a broad outlook to fully understand how these fit into the wider context of migration management.

- It is important to analyse borders according to local circumstances as they relate to national, regional and international factors. Intervention by officers of the law and events on the ground provide information on how migration flows are being managed by the authorities.

- It is important to detail what happens at different points along the border in order to obtain a holistic vision and identify existing trends and, thereupon, know where to focus subsequent advocacy work.

- It is likewise essential that **a gender perspective be included in order to broaden our scope** and identify the problems which affect specific groups such as children, women, LGBTQI+ people, women responsible for childrearing, accompanied and unaccompanied adolescents, the elderly, the disabled and other disadvantaged groups. Sexual orientation and gender identity may give way to specific violence, coercion or other difficulties. Without a perspective capable of identifying these variables, those most at-risk may slip under the radar.

- Any monitoring framework should include a transnational perspective. This requires **communication with those on the other side of the border**. Such an approach can prove essential in gathering key evidence of human rights infringements and in protecting those affected. Accordingly, building communication networks with other organisations allows us to broaden our horizons, and sharing information offers significant advantages. A transnational perspective is also important in terms of the protection and safety of both migrants and monitoring teams.

- Any action we undertake must include a consideration of protection in psychosocial terms¹⁴, especially for those crossing borders and the teams that come into contact with them. We should **consult with organisations which specialise in psychosocial support in order to avoid revictimising** those who have suffered violence at borders during monitoring, and especially when we plan to interview them.

- When communicating with affected people, it is important to identify yourself by explaining what your role is and why you are there. In doing so, you help to **avoid creating false expectations**. Moreover,

¹⁴ GAC (2022). El limbo de la frontera: impactos de las condiciones de la acogida en la frontera sur española. <https://www.psicosocial.net/sira/frontera-sur/>

it is important to share the information you gather with them and explain what you are gathering it for. You should also provide contact details in case the affected person would like to follow up or participate in the monitoring or reporting process.

- Consideration should also be made of **which images to broadcast and how, not only on account of their potential dehumanising effect** on those racialised as non-white but also in terms of any psychosocial consequences. It is important to keep in mind that seeing images of traumatic situations can harm those who have been affected by them.

- Lastly, when conducting interviews, it is important to assess whether this could have potentially negative effects on those people whose rights have been infringed. Should this be the case, we must stop immediately. **The most important thing is the wellbeing of the person or people affected.**

3 - What to look out for when monitoring human rights at the border

Circumstances on the ground at Spain's borders vary greatly depending on their location, as well as the broader sociopolitical situation at any given time. Arrival by sea, entry via borders with perimeter fences, the internal European border with France or via airports all have distinct features. This section aims **to provide an overview of the main issues at Spain's borders which merit observation, taking into account the political context and the most common examples of human rights infringements as highlighted in reporting into the matter.** Of course, these may change in line with any new legislation, practices or circumstances. It is therefore **important to appreciate and understand the context in which events occur in order to ensure comprehensive human rights monitoring** and to stay informed of any new developments. This will help us sharpen the focus of our observations.

The specific practices underpinning human rights infringements on Spain's borders tend to vary between territorial and maritime borders. The cities of Ceuta and Melilla are outliers both in legal terms and due to their geographical situation and status. Neither are part of the Schengen area; in addition, both have a colonial history¹⁵ which renders them border areas in and of themselves.

In both locations, express deportations – including of children or those in need of international protection – are carried out systematically. The regularity with which these occur has contributed to their normalisation. It is worth bearing in mind that, **while express deportations are an everyday occurrence at land borders, they remain illegal and constitute a serious violation of human rights, of European legislation, of international law and of the principle of**

¹⁵ There is a relationship between historical colonial domination and violent border control and exceptionalism. See for example Lo Coco, D (2023). Colonialidad y racismo en el sistema de deportación

non-refoulement¹⁶. Consequently, far from observing them as standard practice, those monitoring human rights at borders must be aware of their illegal nature. Furthermore, the fencing-off of these cities has set the scene for excessive use of force and unnecessary deployment of riot police by the authorities and inhuman and degrading treatment, among other issues.

Despite the specific characteristics of each location, as well as the different units deployed at the border¹⁷, many broader issues of relevance in monitoring will likely coincide. **Where human rights infringements occur during border management operations, these tend to involve racial profiling, discriminatory or other non-statutory conduct by police officers, excessive use of force, express deportation, non-provision of legal aid or interpreters, interrogations without the presence of lawyers or interpreters, non-individual provision of legal representation and interpretation, lack of or unsatisfactory health care facilities and services, shortcomings in identifying at-risk individuals, obstacles to applications for international protection, lack of personnel specialised in working with children, detention of children, unsatisfactory conditions and lack of transparency in detention centres**, etc.

In order to know where to start looking during observation, we must be aware of current events and developments in terms of human rights. It is therefore important **to be aware of the most common infringements or practices in any given area** before engaging in monitoring there. This knowledge will help focus your search for useful evidence and, by extension, help you to systematise it. It is also crucial to read the reports published by expert organisations and be alert to emerging practices that result in human rights infringements in a variety of different circumstances.

It is also advisable that you **inform yourself of any possible legal consequences of witnessing and monitoring police operations**¹⁸. If you engage in observation of the police, you should keep hold of a lawyer's contact details or those of any other legal advice body, in case you need to seek legal representation or guidance.

What data should I gather when observing police operations?

What evidence is useful if I witness human rights infringements taking place at borders?

General considerations:

- The **clothing/uniform worn and equipment carried by officers** during operations. For example, take note of whether they carry shields, batons or less than lethal weapons such as pepper spray, tear gas, rubber or foam bullets and tasers. It is also important **to detail the full riot control equipment carried by officers, indicating if it is used or not and - in the event of its use - which of it is used**. If these materials are used, try **to gather and preserve any parts** found in and around the immediate border area.

¹⁶ For further analysis, see CEAR <https://www.cea.es/wp-content/uploads/2021/02/Devoluciones-en-caliente.pdf>

¹⁷ Including CATEs, CETIs, CIEs and other migration centres, border fences and asylum offices, among others.

¹⁸ This issue will be addressed in section 4 *How to monitor safely* .

- **Location** of police deployment and the **number and type of police vehicles**. Take note of the position, type, licence number and name of the police unit that appears on the sides or on top of them.
- Pay special attention to the **different police uniforms, badges and credentials**, in order to identify the force to which they belong and the units present on the ground.
- **Officer identification numbers** and the items they are displayed on – their helmets, the front and/or the back of their uniforms or other sections – whether they are visible or not, and the distance from which they can be made out. In the event that officers fail to identify themselves completely, or do so incorrectly, this must be recorded. Memorandum 13/2007¹⁹ concerning the use of the personal identification number displayed on police uniforms states that **all members of the Civil Guard and the National Police Corps who wear a uniform and/or carry equipment must clearly display their personal identity number - known as a TIP number - on their uniform, and that this should be legible at a distance of 1.2 metres**²⁰. This Memorandum also recognises as a "**public right**" the "identification at all times, and without the need for prior request, of officers carrying out their duties and in the interest thereof"²¹. Failure to display a badge or visible identification number constitutes grounds for internal disciplinary action against the officer in question. The matter cannot be taken to the courts, but you can report it to the Ombudsman, who will investigate the case. In any case, you can request that the officer shows you his professional identification card, but you must bear in mind that this request may lead to the officer taking action against you (if police suspect that you will file a complaint, they may file a counter-complaint). It is essential that you carefully assess the situation for this reason.
- Riot police officers must display their police officer number (NOP) on the back of their uniform, including their body armour. For riot police units belonging to the National Police Corps: "UIP officers' body armour must be fitted with an identification number which corresponds to each officer's specific number within their unit...allowing for their correct identification in any and all circumstances"²². We have been unable to find specific guidelines for Civil Guard and GRS officers who provide support to territorial units in public order and safety operations.
- **Police brutality and/or non-statutory conduct by police officers**. Any and all use of force, and particularly excessive and aggressive use of force, must be reported. It is particularly important that observers take note of any use of force or acts of violence

¹⁹ Memorandum 13/2007 relating to the use of the personal identification number on the uniforms of State Security Bodies and Forces. <https://fuera depalacio.wordpress.com/wp-content/uploads/2011/07/instruccic3b3n-13-2007-secretarc3ada-de-estado-de-seguridad1.pdf>

²⁰ Novact and Irídia. Transparencia y rendición de cuentas de los cuerpos policiales en el Estado español. https://novact.org/wp-content/uploads/2023/07/Transparencia_Cuentas_Cuerpospoliciales.pdf

²¹ Articles 1 and 2 of Memorandum 13/2007 relating to the use of the personal identification number on the uniforms of State Security Bodies and Forces. https://seguridadpublicasite.files.wordpress.com/2017/11/instruccion-13_2007.pdf

²² By order of the General Directorate of the Police, dated April 2013, which establishes the identification number to be worn on the uniform and accessories of police operations units. [RESUMEN DE ACTUACIONES YA REALIZADAS \(red-juridica.com\)](https://red-juridica.com/RESUMEN_DE_ACTUACIONES_YA_REALIZADAS)

by police officers and evaluate the necessity, proportionality and legality of such action. For example:

- * Use of force or aggressive conduct during arrests and/or searches.
- * Abusive stop and searches (note the state of the person searched, if they are injured, if they are strip searched, etc.).
- * The verbal communication of officers with the affected individual(s): What do they say to them? Who are they communicating with? In what way? What kind of information are they relaying?
- * Coercion, intimidation and/or threats.
- * Blows to the head or other sensitive parts of the body, especially the upper body.
- * Vertical, downward blows to parts of the upper body using a baton.
- * Detention of injured persons and health care provision.
- * The posture in which people are held (kneeling, lying on the ground, face down, etc.).
- * It is important to document any **evidence of any injuries, wounds and marks on the body, at the same time as taking into account the following considerations:**
 - In anticipation of any legal action being taken in light of alleged criminal conduct, the identity of any individual(s) appearing in photographs must be clearly identifiable from them. Full-body photographs aid in identifying and recording each injury. This is important if the photographs in question are to be presented as evidence²³.
 - In order to appreciate their physical extent, injuries should be photographed next to an object such as a pen.
 - Some mobile applications such as [eyeWitness](#) allow photos to be taken with geolocation data and coding systems that enable them to be accepted as truthful representations in court²⁴.
- * Note whether there are any cameras that may be recording the events taking place.
- * If you see any actions which may constitute a criminal offence, it is crucial – especially if legal action is brought as a result – to **request the preservation of footage taken on public roads and streets, detention centres, CIEs and even private property**. See Annex II for more information on how to request the preservation of footage. **Footage is usually held for 30 days**. It is therefore important to request conservation before this period elapses; otherwise, it may no longer be available.

23

It is especially important to obtain consent when photographing or recording images of injured people.

During express deportations

- **Express deportations can be carried out at sea or at land borders.** For obvious reasons, those which occur at sea are more difficult to document. They are more easily observed in Ceuta and Melilla than the Canary Islands or on the high seas.
- Any deportations must be carried out in compliance with international human rights law regarding the rights of deportees. This means the authorities are obliged to ensure their right to seek asylum or protection, that their application be treated on an individual basis and that a personal risk assessment be carried out. In order for this to be done, the presence of an interpreter is key. Children cannot be deported, and under no circumstances can anyone be deported to a country where they may suffer ill-treatment or torture. It is crucial to record the time of events, whether officers speak through a translator/interpreter or not as well as any information they request, how long questioning is carried out for, whether any children or victims of trafficking are present, whether cases are treated on an individual basis, whether people are deported in groups, etc.
- Deporting a person to a country where they may suffer ill-treatment or torture goes against the principle of non-refoulement and constitutes a very serious violation of their rights. It is important to keep an eye out for violence on the other side of the border. This often occurs at the land border in Ceuta and Melilla, where the Moroccan authorities use disproportionate force against migrants.
- Observe whether the **infrastructure of the fence – including any barbed wire, blades or ditches** – has resulted in injuries to people, and document them.
- Try to **identify witnesses**, either among those directly affected or other people present during events. Ask them to provide their details for further contact. Their testimony could prove useful as evidence if any legal action is brought.

In CATEs

- **Detainees are subject to Article 520.2 of the Criminal Procedure Act²⁵.** Detainees in CATEs are held in police custody equivalent to standard arrest, and therefore have the right to legal representation and interpretation, to effective judicial protection and to release within 72 hours. Furthermore, detainees may not, under any circumstances, be interrogated without the presence of a lawyer and an interpreter.
- **Both legal representation and an interpreter must be assigned on an individual basis. In no case can the police indicate what can or cannot be translated²⁶.**
- The above also applies upon arrival at ports where Frontex agents and the National Police

²⁵ Criminal Procedure Act. https://www.boe.es/biblioteca_juridica/abrir_pdf.php?id=- PUB-DP-2023-145

²⁶ A number of translators and interpreters present in CATEs have, on occasion, been instructed not to translate certain parts of the information provided to recent arrivals. See Irídia and Novact (2023). *Llegadas marítimas a Canarias: excepcionalidad y racismo* <https://iridia.cat/es/publicaciones/informe-llegadas-maritimas-a-canarias-excepcionalidad-y-racismo/>

conduct interrogations that are subsequently used as evidence in criminal proceedings²⁷.

- Detainees have the right to visitation from the consular authorities of their country, and to communicate and correspond with them²⁸. It is very important that detainees are able to avail of this right at their own choosing²⁹.
- They also have the right to communicate by telephone, without undue delay, with a third party of their choice. The Ombudsman has repeatedly recommended that CATE detainees have regular access to a telephone service or to their own mobile phones, which they should be able to charge³⁰.
- They also have the right to inform a family member or person without undue delay of their detention and the place of custody where they are being held. Foreign nationals have the right to communicate the above to the consular office of their country (except if they apply for international protection).
- Everyone has the right to apply for asylum. Expulsion orders affecting CATE detainees should be suspended immediately upon their notification of willingness to request asylum.

In CIEs³¹

The new European Pact on Migration and Asylum has deepened the drift within migration management towards outsourcing, detention and deportation. This has led to a projected increase in detainee numbers in CIEs throughout Spain. Indeed, construction of the largest immigration detention centre in the entire EU will be completed in the city of Algeciras (province of Cadiz) this year³². The centre is expected to have a capacity of over 500, providing for the internment of entire families including accompanied children. Should any human rights infringement be detected during any visits to CIEs, observers are strongly advised to get in touch with local specialist organisations³³ who can provide guidance and support. More broadly, and in addition to the above, monitoring in CIEs should centre on the following specific issues:

- If any detainee held in the CIE was identified by authorities as a result of racial profiling during raids³⁴.

²⁷ See the section covering interrogations by Frontex in ports on the Canary Islands in Iridia and Novact (2023). *Llegadas marítimas a Canarias: excepcionalidad y racismo* <https://iridia.cat/es/publicaciones/informe-llegadas-maritimas-a-canarias-excepcionalidad-y-racismo/>

²⁸ Systematic consultation with consular authorities has been detected which, especially in the case of asylum seekers, constitutes a serious violation of their human rights, as highlighted by the National Mechanism for the Prevention of Torture (MNPT). MNPT Report (2021). https://www.defensordelpueblo.es/wp-content/uploads/2022/05/Informe_2021_MNP.pdf (p. 61)

²⁹ Monitoring framework of the National Mechanism for the Prevention of Torture at CATE Málaga, published on 12 April 2024. <https://www.defensordelpueblo.es/gestionDocumentalWS/rest/matrizSeguimientoMNP/20019046>

³⁰ Monitoring framework of the National Mechanism for the Prevention of Torture at CATE Málaga, published on 12 April 2024. <https://www.defensordelpueblo.es/gestionDocumentalWS/rest/matrizSeguimientoMNP/20019046>

³¹ See e.g. Barber, I. (2017). El acceso a los centros de internamiento para extranjeros como control y garantía de derechos. *Derechos y Libertades*, 37(2), 233-256. <https://doi.org/10.14679/1054>

³² ElCorreoWeb, 2 March 2024, "Diez años y 22 millones de euros después, Algeciras tendrá el CIE más grande de España." <https://www.elcorreoweb.es/andalucia/2024/03/02/europa-frontera-cie-algeciras-98716983.html>

³³ Within Spain, these include: Tanquem els CIE, Campaña Estatal por el Cierre de los CIE, Campaña CIE no, Servicio Jesuita a Migrantes, CIE no Valencia, CIE no Madrid, CIE no Valencia, Mundo en Movimiento, CIE no Algeciras, Plataforma CIE no del Campo de Gibraltar, APDHA, Convivir sin Racismo, Observatorio RAIN, Sos Racismo, Canarias libre de CIE, CIE no Granada y Murcia, etc.

³⁴ See SOS Racisme <https://www.pareudepararme.org/inicio/>

- Guaranteed access to international protection procedure.
- Material conditions such as access to bathrooms, meals (quantity, temperature, nutritional score and adaptation to religious beliefs), volume of the public address system, lighting conditions, access to activities.
- In CIEs where there is a women's wing, access to essential menstrual hygiene products and common spaces is essential.
- Communication with the outside: visits by family and friends during the scheduled times established by the centre, access to telephone calls for those who do not have a telephone, request forms to receive visits from NGOs or other organisations.
- It is also key to enquire about the medical services available at the CIE. These services are still externalised and, consequently, difficulties in accessing thorough medical reports prepared by the centre's health service which include the identification of the professional responsible are frequent. This is important in order to ensure uninterrupted access to treatment prescribed prior to detention. This includes hormone treatment for trans people and treatments for people with chronic diseases.
- For those suffering mental health problems, it is important to be attentive to the possibility of their transfer to specific health services outside of the centre.
- Existence of fit-for-purpose spaces used for isolation as per international regulations.
- Access to legal representation and interpreters. This includes legal services jointly provided by bar associations and the CIE as well as those provided by external lawyers selected by detainees.
- As part of the prevention of torture and ill-treatment, it is important to check that staff are correctly identified, that video surveillance cameras are correctly positioned and used, and that detainees' privacy and intimacy are upheld in interview booths during meetings with lawyers³⁵.
- If violence or ill-treatment is reported, it is essential to check that those affected are able to file a corresponding complaint. It has been observed that those who report misconduct of this nature have been subjected to swifter deportation, rendering their complaint ineffective.
- Deportees must be informed of the flight on which they will be deported with a minimum notice of 12 hours.
- If the person scheduled to be deported has family ties in Spain, for example, dependent children. In the event of their deportation, this could constitute an attack on the rights of the child(ren).

At airports:

- During deportation flights: on any commercial flight

³⁵ Iridia (2022). *Obstáculos en la denuncia de maltrato en el CIE de Barcelona*. <https://iridia.cat/es/publicaciones/dossier-obstaculos-en-la-denuncia-de-maltractaments-al-centre-dinternament-destran-gers-de-barcelona/>

one or more deportees may be admitted as passengers. Those deported on commercial flights are often handcuffed with cable ties and accompanied by police (two National Police Corps officers per deportee). You can support the person being deported by refusing to take your seat until the person forced to travel against their will is taken off the plane. In these situations, collective action is especially useful.

- If you see that someone is being forbidden from travelling despite having the correct documentation, take note of who denied them access to the plane and the reasons given for this, keep in touch with the affected party and the airline, and get in touch with a specialist organisation or group³⁶. Racial profiling of this nature tends to affect racialised people with foreign residency and/or passports the most.

4 - How to monitor safely³⁷

The right to monitor – to take notes, enquire, gather evidence, photograph or record footage of police actions in public space³⁸ – is provided for by the international human rights standards which safeguard freedom of expression and the right to information³⁹. The right to information (to inform and be informed) is a fundamental right set out in Article 20.1.d of the Spanish Constitution, and is also recognised in Article 11 of the Charter of Fundamental Rights of the European Union (EUCFR), Article 10 of the European Convention on Human Rights (ECHR), and in Article 19 of the International Covenant on Civil and Political Rights (ICCPR). The right to information does not pertain to any specific group such as journalists, but rather to all citizens. This is also recognised in Article 19 of the International Covenant on Civil and Political Rights (ICCPR) and in Article 19 of the International Covenant on Civil and Political Rights (ICCPR). In addition, on twenty occasions, Spain's Constitutional Court has upheld appeals in cases in which a thorough and effective investigation was not carried out into complaints of torture and/or ill-treatment committed by law enforcement officers⁴⁰.

Monitoring human rights infringements can put both observers and those affected by the actions of law enforcement officers at risk. The most significant legislation in this regard

³⁶ The nationwide campaign for the closure of the CIEs and the end of deportations is made up of organisations with a decades-long involvement in the issue, and they will be able to provide you with more information.

³⁷ In preparing this section, reference has been made to The Protester's Handbook (Manual de la Manifestante) published by Comisión Legal Sol in collaboration with Defensor A Quién Defende, which offers information on how to safely monitor during protests and demonstrations. See: <http://defendera-quiendefiende.org/wp-content/uploads/2019/01/MANUAL-MANIFESTANTE-ONLINE.pdf>

³⁸ Public space refers to any space which is public property, in the public domain and for public use. This includes anywhere where one has the right to move freely, and where passage cannot be restricted on the grounds of private property. Public space also includes stations and means of public transport such as metros, trains or buses.

³⁹ Documenta A.C. and Witness, Derecho a Grabar Actuaciones de Agentes del Estado: Estándares Internacionales, https://es.witness.org/portfolio_page/derechoagrabar-actuaciones-de-agentes-del-estado-estandares-internacionales/.

⁴⁰ For example, Judgment of the Constitutional Court 124/2022, October 10 <https://www.boe.es>.

is the Citizens' Security Act 4/2015⁴², 30 March⁴². Being aware of our rights and the duties of the police can help us monitor safely and make informed decisions about how to do so. Observers can also suffer emotionally during or after monitoring. **It is important, therefore, to be adequately prepared, organised and protected in order to avoid, or at least offset, any possible emotional effects.** As such, it is important to take into account:

- **Self-care and team care.** Various emotional reactions can appear following tense situations. Paralysis or impulsive behaviour are common reactions. Although these can be unpredictable, preventive work on self-awareness can prove useful. Understanding how we tend to react under pressure can help us to recognise early warning signs and to make decisions that enable us to continue our work in a sustainable way. In addition, it is important to stay organised and ensure clear and constant communication with the rest of our team. This helps us to ensure that needs are expressed, actions agreed upon and, where possible, distress avoided.
- After witnessing violent or tense incidents, it is advisable to take a break. Sharing emotions and experiences with the rest of the team of observers who have witnessed the same situation can help in the initial processing of any psychological effects. Mutual support spaces are crucial for emotional wellbeing.
- Getting in touch with organisations which specialise in care is also key in ensuring support for those affected. We must ensure that those affected are accompanied until someone they trust is available to support them, or that we accompany them to an area where they feel safe.

4.1 Am I required to carry identification?

Spanish nationals⁴³ are not required by law to carry their identity documents. However, **if you are carrying your identification, it is mandatory to show it** to any law enforcement officers who ask you for it. If not, you could be sanctioned for "refusal to provide identification at the request of the authorities or officers of the law, or the provision of false or inaccurate data in identification processes" (Article 36.6, Citizens' Security Act⁴⁴).

If the police ask for your ID and you do not have it with you, **you may be taken to a police station** for identification purposes. Should this occur, you will not be placed under arrest, although you will be held for identification purposes while the police carry out

⁴¹ Insofar as it pertains to border areas, this legislation led to the introduction of a tenth additional provision to the Special Regime of Ceuta and Melilla, as provided for in Act 4/2000, 11 January, on the rights and freedoms of foreign nationals and their social integration in Spain. This provision separated immigration control from the true geographic border, in an attempt to provide legal grounds for express deportations at the territorial borders in Ceuta and Melilla. Analysis of the data obtained during research for this guide reveals that, from 2015 – the year in which the Citizens' Security Act 4/2015 was passed – reported cases of repression and legal action against journalists at land borders have decreased. This may be due to the normalisation of express deportations in Ceuta and Melilla. Indeed, the 470 deportations that occurred during the events in Melilla on 24 June 2022 were captured on film, with the lack of legal consequences or official accountability condemned by the Spanish Ombudsman.

⁴² Citizens' Security Act 4/2015, 30 March.
<https://www.boe.es/eli/es/lo/2015/03/30/4/con>

⁴³ [NO TÉ RELLEVANCIA EN ANGLÈS, EN L'ORIGINAL, ES PARLA DE L'ÚS DE GÈNERE EN CATALÀ]

⁴⁴ Citizens' Security Act 4/2015, 30 March. <https://www.boe.es/eli/es/lo/2015/03/30/4/con>

this task as swiftly as possible, in a period no greater than six hours (Article 16.2, Citizens' Security Act). If you find yourself in this situation, you have the right to use your mobile device to communicate with third parties.

Identification may be possible by other means (oral declaration, provision of personal details, or using other types of documentation), although this depends on the willingness of the officer(s) requesting your identification.

On the contrary, foreign nationals are obliged to carry an official document proving their identity and permission to reside in Spain at all times (Article 13.1, Citizens' Security Act).

It is important to note:

- If you do not hold or are unable to prove your documented legal residence status, any identification by police may pose a risk to you.
- Carrying your ID card with you can save you a trip to the police station.

42 Can the police ask me for my ID if I am observing or recording them?

The police may ask for your identification if they reasonably suspect you of having committed an offence (either civil or criminal), or if they consider this necessary to prevent an offence from being committed.⁴⁵ These two pretexts are so broad that they allow the police to require your identification with little specific justification. Therefore, they may ask you for identification if you are observing or recording their actions. This notwithstanding, you have the right to ask the reason for their request.

If you are recording footage and a police officer believes you are doing so without justification, they may seek to identify you for possible misuse of the footage.

43 What happens if the police take my details?

Being identified by an officer of the law does not mean that any action or charges will be brought against you. On occasion, identification may be arbitrary, something which can disincentivise those who, in the legitimate exercise of their rights, provide oversight of police actions.

PRACTICAL TIPS:

- Carry your ID at all times and show it to officers if they ask for it.
- Keep calm and collaborate with officers in order to avoid being charged for disrespect⁴⁶ or disobeying officers of the law⁴⁷.
- If possible, try to covertly record audio of the interaction with officers and explain to them in a respectful way that you are carrying out human rights observation work. Ask them why they are identifying you, and try to find out if they are doing so

⁴⁵ Citizens' Security Act 4/2015, 30 March. <https://www.boe.es/eli/es/lo/2015/03/30/4/con>

⁴⁶ Article 37.4 of the Citizens' Security Act 4/2015, 30 March. <https://www.boe.es/eli/es/lo/2015/03/30/4/con>

⁴⁷ Article 36.6 Citizens' Security Act 4/2015, 30 March. <https://www.boe.es/eli/es/lo/2015/03/30/4/con>

to prevent the misuse of images, and if this will lead to any charges being made against you. If the officers tell you that this is not the case, but charges are subsequently brought against you or you are otherwise fined, you can appeal on the grounds that you were told that you were not committing any offence.

- If you are fined, consult the [Manual de Sanciones Administrativas](#) prepared by the Comisión Legal Sol.

44 Can I take photos or videos of police officers?

Yes. There is a misconception that you cannot photograph or record footage of officers.

Police officers can be photographed and video recordings made of them in the exercise of their duties in public spaces. The capture, reproduction or publication by any means of the resulting material in the case of persons holding a public office or in places open to the public does not imply an illegitimate interference in their personal privacy or publicity rights or those of their families (Article 8.2 Act 1/1982, 5 May, as per STC 72/2007, 16 April). To this end, the United Nations Human Rights Council recalls that States must respect, and if necessary, take steps to strengthen the right to record public activities, including the actions of law enforcement agencies, as well as to record in kind any interactions with officers of the law engaged in photographing or recording footage of members of the public.⁴⁸

This notwithstanding, and as established in Article 36.23 of the Citizens' Security Act, this right is limited by the **prohibition on sharing images or videos for the purpose of committing criminal acts against officers of the law or police facilities, or with the intention of defaming them.** In practice, this means that you must not endanger their wellbeing or that of their family members, or otherwise undermine their right to honour, privacy and publicity, nor pose a risk to ongoing police operations.

Officers are empowered to identify those who record their image should they deem it necessary for action to be taken against the illegal use of said recordings.

45 Can officers confiscate my mobile phone?

Yes, but only if they believe that there are indications that your videos or photos may be used for the commission of an offence or any act which endangers the safety of officers or police facilities. In this case – and only in this case – police may "seize" the camera or mobile phone, **issuing a statement** which will be provided to the Investigating Courts, to whom they must also provide the "seized item".

In practice, this can occur when officers consider, with a view to any potential charges, that it may be necessary – subject to judicial authorisation – to access the contents of the device. This practice has not been detected in recent years by those who have shared their experiences for the production of this guide.

46 Can officers delete my images?

No. **Under no circumstances may officers of the law access the contents of a mobile device or any other digital device** (computer, camera, etc.). They can only access these contents by

order of the courts.

⁴⁸ Human Rights Council (2015). Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: Use of information and communications technologies to secure the right to life. [q1508237.pdf \(Review\) – Adobe cloud storage](#)

4.7 Can officers demand that I delete images?

They can ask you – but not order you – to delete images and recordings, and you have the right to refuse. Such content is private property, and ordering the destruction of private property is illegal. Confiscated property can only be destroyed by court order after a criminal offence has been proven and the danger or possible misuse of the images has been demonstrated.⁴⁹

PRACTICAL TIPS:

- If you see no other option than erasure – and if there are witnesses who can refute any subsequent statement to the contrary by the police – hand over your camera to the requesting officer(s), and let them be the one to press the erase button (even though they should not do this). If you delete any images, the police will always be able to claim that you did so voluntarily.

4.8 What should I do about any possible surveillance footage of human rights infringements I have witnessed?

If you witness events during border monitoring that could involve the commission of a criminal offence and you have detected video surveillance cameras in the immediate area, it is important to request that the competent authorities hold onto footage as a preventive measure. You can do this in two ways:

1. By contacting organisations involved in strategic litigation on border issues which have the experience and resources to do this for you.
2. By submitting the form included in ANNEX II of this guide. If the body responsible for the camera has an online request form, this must be filled out with the same information along with any written document, which should be attached. If the body or company has an e-mail address, request may be made by e-mail. If no official form or e-mail address is available, written request must be posted to the company's postal address and proof of delivery ensured (i.e. certified mail with acknowledgement of receipt, *buropax*, or a sealed copy of the request).



⁴⁹ Comisión Legal Sol, Manual de la Manifestante. <http://defenderaquiendefiende.org/wp-content/uploads/2019/01/MANUAL-MANIFESTANTE-ONLINE.pdf>

5 - Infrastructure with special governance: ports and airports

Certain border areas are governed by specific regulations, which also provide the framework for the actions of law enforcement officers there.

In Spain, the Citizens' Security Act covers offences committed in "infrastructural areas and facilities in which basic services are provided for the community", including **ports, airports and other transport facilities**⁵⁰.

The Citizens' Security Act refers to two specific serious offences in this regard: in **Article 36.9**, the **serious offence** of "intrusion upon infrastructure or facilities in which basic services are provided for the public, including overflight areas, causing serious interference with their operation", and in Article 35.1, the **indictable offence** of "unannounced or prohibited gatherings or demonstrations in infrastructural areas or facilities in which basic services are provided for the public, or in their vicinity, as well as the intrusion upon premises, including overflight areas, should the above entail a risk to the lives or physical wellbeing of the public".

In order for these offences to be deemed punishable, any serious interference in the operation of the facility or risk to the life or physical wellbeing of the public must be proven. In practice, monitoring work focused on human rights infringements in border areas should not be subject to such sanctions. This notwithstanding, there are **other specific regulations** that affect monitoring work more directly.

Airports

Access to spaces in which deportations, refusal of entry, assault or unnecessary use of force may occur is most likely to be restricted to those with boarding passes. This limitation notwithstanding, it should be borne in mind that Aena⁵¹ **applies specific regulations** by way of which **the recording of images or video footage is prohibited in certain areas**⁵² (except with the express authorisation of the airport authority):

"It is forbidden to: Take photographs or record film of any kind in high-security areas, including: carriageways, site access points, passenger, crew and

⁵⁰ Citizens' Security Act 4/2015, 30 March. - (Sixth additional provision) <https://www.boe.es/eli/es/lo/2015/03/30/4/con>

⁵¹ State-owned operator of Spain's national airports.

⁵² Aena, Rules of use of airports (Item 15). <https://www.aena.es/sites/Satellite?blobcol=urldata&blobkey=id&blobtable=MungoBlobs&blobwhere=1576857604752&ssbinary=true>

and employee security checkpoints, border control cabins and other facilities and other critical security areas including the apron"⁵³.

Aena makes clear that any photographs or film taken in violation of airport security rules will be requisitioned by security personnel, who will proceed to eliminate them immediately, without prejudice to their sanction in accordance with the Aviation Security Act 21/2003, 7 July.⁵⁴

Ports

Ports are key spaces in monitoring the arrival of boats, as well as any inappropriate action carried out in attempts to deal with stowaways in Ceuta and Melilla.

The Ministry of the Interior has issued guidance concerning **arrivals by sea** to the effect that, "in accordance with the Citizens' Security Act 4/2015, 30 March, and in order to ensure priority for emergency healthcare intervention and the correct screening of disembarking foreign nationals – including their identification, the detection of at-risk individuals and clarification of potential offences of trafficking of immigrants and the investigative work required to identify traffickers – **security perimeters are to be established** in the port enclosures where arrivals take place or [which are] otherwise identified as key by maritime rescue services. **Access to the established security perimeter must not be available to persons other than the required emergency healthcare or police personnel.**"⁵⁵

In the remaining port area not affected by this security perimeter, the same basic legislation⁵⁶ applies as in any other public space.⁵⁷

This notwithstanding, if officers see you recording images of any landing or police operations within the port, they may decide to ask **who you are, what you are doing and why you are doing it**. It is advisable **to think in advance about the most strategic way** to answer these questions in terms of the safety and continuity of your work or the work of your group. Officers may also request your identification documents, on the alleged grounds of "your safety". Please refer to section 4 on how to make informed decisions.

You may face difficulties in accessing areas such as docks. For example, the Port Authority of Las Palmas has recently closed passenger access to all docks at the five ports located in the province.⁵⁸ Access to state-owned ports is managed

⁵³ Aena, Rules of use of airports (Item 15). <https://www.aena.es/sites/Satellite?blob-col=urlidata&blobkey=id&blobtable=MungoBlobs&blobwhere=1576857604752&ssbinary=true>

⁵⁴ Aena, Rules of use of airports. <https://www.aena.es/es/pasajeros/viajeros/nor-mas-de-uso-de-los-aeropuertos.html>

⁵⁵ Response by the Ministry of the Interior to freedom of information request file number 001-087598. See Annex III.

⁵⁶ Response by the Ministry of the Interior to freedom of information request file number 001-087598. See Annex III.

⁵⁷ "Notwithstanding that, in certain situations, regulations pertaining to criminal law, the protection of minors and official secrets may be tangentially affected", as per the response by the Ministry of the Interior to freedom of information request file number 001-087598. See Anexo III

⁵⁸ Fernández, S. Canarias 7, 10 May 2024, "El Puerto cierra todos los muelles al público para cumplir con las exigencias europeas". <https://www.canarias7.es/economia/puerto-cierra-muelles-publico-cumplir-exigencias-europeas-20240510231232-nt.html>

by the corresponding Port Authority⁵⁹, while regional ports are subject to specific sectoral legislation. Before organising any observation, inform yourself about the regulations governing access to docks and, if necessary, request permission in advance.

6- Border perimeters and fencing

Although they do not come under the umbrella of Areas of Interest for National Defence⁶⁰, the governance of the areas surrounding the border perimeter and fences in Ceuta and Melilla is notably opaque and ambiguous. For the purposes of ensuring that informed human rights monitoring can be carried out in these areas, a number of requests have been made to the relevant Ministries through the transparency portal, and journalists and teams working there have shared their experiences.

6.1 Ceuta and Melilla border perimeter: a security zone?

En relación con lo interesado, sobre si la totalidad o alguna parte del perímetro del vallado fronterizo en Ceuta y Melilla se considera zona de interés para la Defensa Nacional según lo dispuesto en el RD 689/1978 de 10 de febrero, o zona de seguridad de las instalaciones militares, se comunica que dichas áreas no han sido declaradas zonas de interés para la Defensa Nacional. Por otra parte, en Ceuta ni la totalidad ni parte del perímetro del vallado fronterizo se encuentra en zona de seguridad de Instalaciones Militares, mientras que en Melilla, sólo un punto de una coordenada de la Zona de Seguridad del "Fuerte de la Purísima Concepción", actualmente cedido a la Ciudad Autónoma de Melilla, coincide con el vallado fronterizo.

IMAGE 1. Response by the Ministry of Defence to a request made via the Transparency Portal, 22/03/2024.

According to the Ministry of the Interior, with the exception of the Fuerte de la Purísima Concepción, **the immediate area surrounding the border fences in Ceuta and Melilla is not subject to any specific prohibition in terms of the right to information, observation and/or recording of officers of the law⁶¹**, either by media outlets and professionals or members of the public, beyond the limits established in the Citizens' Security Act 4/2015, 30 March. Nevertheless, **in practice**, the areas surrounding the fence in Ceuta and Melilla are dotted with "security zone" signs, **and it is possible that the authorities take steps to hinder observation on alleged security grounds.**

In Melilla, the road circumventing the fence is a public highway and

⁵⁹ The Spanish state-owned Port System is made up of 46 ports of general interest, managed by 28 separate Port Authorities, the coordination and oversight of which corresponds to the National Public Ports Body, itself part of the Ministry of Transport, Mobility and Urban Agenda. For more information, see: <https://upcommons.upc.edu/bitstream/handle/2117/313/9.%20Rua.pdf>

⁶⁰ Areas of Interest for National Defence include any land, sea or airspace declared as such under the auspices that it constitutes or may constitute a permanent base for effective support of the offensive or defensive actions necessary for this purpose (Article 2 of Act 8/1975, 12 March, concerning areas and facilities of interest for national defence).

⁶¹ Response by the Ministry of the Interior to freedom of information request file number 001-087598. See Annex III.



IMAGE 2. Road at the border in Ceuta. Authors' work, extracted from Google Maps.

If you find yourself in the vicinity of the fence, Civil Guard officers may approach you to ask **who you are, what you are doing and your reasons for doing so**. They will let you know that you are in a restricted security zone, and will likely ask you to leave. It is advisable to **think ahead about the most strategic way** to respond to these requests in terms of the safety and continuity of your work or the work of your group.

6.2 Taking photos and recording images in areas surrounding the border

Given the experiences of photojournalists and teams working in the area, it is advisable to record footage or take photographs discreetly and at a safe distance, so as not to come too close to the fence. Remember that **this is an area in which law enforcement officers operate, and that it is likely that the Civil Guard is monitoring the area and may identify you if you are recording or taking photos or simply loitering near the fence**. If tensions escalate with police during monitoring work, they may make mention of your "physical wellbeing" or "public safety" as grounds for requesting that you leave the area. Should you ignore their warnings, they may apprehend you for "disobeying or resisting officers of the law" (Article 36.6) or "lack of respect" (Article 37.4), as per the Citizens' Security Act. In section 4, you can find some tips on how to act in these situations in order to avoid any escalation or fines being issued against you. **Acting discreetly and a certain distance is advisable** when monitoring and recording images at border fences.

Officers may refer to a press permit required to take photos of the fence. Despite the existence of this permit, recording images in areas immediately surrounding the border is not expressly prohibited. Whether or not you are asked for a permit is often based on a series of random factors, something which is designed to intimidate and deter. To avoid any misunderstandings, you can seek permission to take images of the perimeter (see section 6.3 for more information). This notwithstanding, attempts made to breach the fence or action by police to repel these attempts tend to be unpredictable, **rendering it impossible to request official permission in time, even if this is not strictly necessary**.

There is a consensus that, during police operations at border fences, the Civil Guard generally coordinates with local police forces to **block the roads** surrounding the area where such events are taking place. As a consequence, activists and journalists monitoring police conduct are forced to find a way around the cordons set up by local police.

Police officers **generally seek to identify those engaged** in this work and order their removal from the **"security zone"**. This area is established *ad hoc* and its **delimitation tends to be discretionary and unclear**. On the basis of longstanding anecdotal evidence, it would appear that, **at present, no one-size-fits-all approach is being taken to deal with those taking photographs or recording footage at the fences in Ceuta and Melilla**. Indeed, no action was taken against the journalists who recorded footage of the 24J massacre. On the contrary, it would appear to be the case that, since the entry into force of the Citizens' Security Act – including an additional provision intended to provide a legal basis for express deportations⁶² through the establishment of the concept of "refusal at the border"⁶³ – there has been a change in police's attitudes towards journalists photographing or recording police operations at and around border fences.

PRACTICAL TIPS:

While police carry out your identification, you will not be able to continue monitoring or recording footage. Therefore, it is advisable to ensure that two or three people are present and available to take photographs and record footage separately during any attempts to breach the fence and/or police operations in response. [See section 4 of the guide for more information on your obligations and rights when asked for identification].

6.3 How can I request a permit to take photographs at and around borders?

It is possible to request official permission to take photographs and record footage, although there is scant clarity regarding which body should be approached in order to do so. Based on the experience of others, any such request would appear limited to press card holders only, and must be made in writing to the Civil Guard in Ceuta or Melilla, as well as the Ministry of the Interior, the local offices of the Government Delegate and the National Police Corps.

- ✓ Contact details: Guardia Civil de Ceuta <ce-cmd-ceuta@guardiacivil.org>, Guardia Civil de Melilla <ml-cmd-melilla@guardiacivil.org>, Policía Nacional de Ceuta <956524749>, Policía Nacional de Melilla <956524749>, Ministerio del Interior <915371278>.

6.4 Where am I not allowed to take photos or record without permission?

Government offices (including border posts, police stations, National Police Corps facilities for asylum seekers, etc.): images cannot be taken inside government offices, including facilities belonging to the Civil Guard or the National Police Corps, either within the city or at border crossings. No specific legislation has been found regarding the photographing or recording of footage from the outside and at a prudential distance.

⁶² Although attempts have been made to legitimise this practice, it is important to remember that express deportations remain illegal. In addition, no protocol has been put in place for the implementation of Constitutional Court Ruling 172/2020, to the effect that "refusal at the border" can only be considered legally sound if three requirements are met: "[their] application to individual attempts at entry, full judicial

oversight and compliance with international obligations in terms of asylum and human rights."

⁶³ The entry into force on 1 April 2015 of the tenth additional provision of Act 4/2000, 11 January – introduced as a consequence of the Citizens' Security Act 4/2015 – provides for immediate deportation is an attempt to decouple border management from the physical border itself.

7-Other spaces involved in border management: migration centres and CATEs

Migration centres

These state-run facilities, including the CETIs in Ceuta and Melilla, are managed under the umbrella of the Ministry of Inclusion and designed for provisional reception and management. Access to them is restricted, and a visitor permit must be requested. In Ceuta and Melilla, this permission can be requested by e-mail to cetimelilla@inclusion.gob.es and ceticeuta@inclusion.gob.es. You should check with CETI management (i.e. the director at the time of writing) whether you can take photographs or record footage there, and under what conditions. The remaining centres are managed by different NGOs to whom requests for visits or meetings must be made directly.

No specific legislation has been found in reference to the photography or record of footage of these centres from the outside. Insofar as they are government buildings, it is to be assumed that photographs and footage can be taken as long as no one can be identified from them, and that the rights to privacy and publicity of those held in these centres are strictly upheld.

Security for these centres tends to be provided by private companies. Security posts are located at the entrance to the centres and, on occasion, in external access points to the enclosure. According to the Private Security Act 5/2014, security **guards may carry out identity checks** and search personal objects, parcels, goods or vehicles. **They are not authorised to retain personal documentation** under any circumstances. The same applies to migration centres in other parts of the country. To monitor activities and events within CETIs and other centres, direct contact with those held there, employees and local partner organisations is key⁶⁴.

CATEs

These centres fall under the jurisdiction of the National Police Corps and, by extension, the Ministry of the Interior. According to the definition provided by the Ministry of Security through the transparency portal (Annex III), CATEs "are custody and detention areas, provided for undocumented arrivals by sea...Foreign nationals are held in detention for the shortest period of time possible, never exceeding 72 hours, so that the National Police may carry out any and all procedures provided for by law for their identification and corresponding immigration and asylum processing, as well for the investigation into any possible criminal activity of trafficking of immigrants and the identification of those responsible, who may be among the arrivals". CATEs "by their nature, are subject to the same restrictions in access and recording provided for all custody and detention facilities

⁶⁴ See, e.g., <https://iridia.cat/es/comunicado-un-grupo-de-personas-residen-tes-en-el-ceti-de-melilla-denuncian-violencia-institucional-por-parte-de-la-seguridad-privada-del-centro/>

by law, as well as Memorandum 12/2015⁶⁵ issued by the Secretary of State for Security for the adoption of the "Protocol of action in the custody of detainees of the State security forces and bodies" (Annex III).

CATEs⁶⁶ are police stations and operate as such. Access to them is therefore restricted⁶⁷ and likely subject to video surveillance. For this reason, if there are signs that someone has suffered abuse within a CATE, the preservation of footage can be requested (Annex II).

Despite the provisions set out in Memorandum 11/2015⁶⁸ issued by the Secretary of State for Security, in many cases these centres do not have any video surveillance system installed.

The Ombudsman has stated that "efforts should be made to uphold the rights of detainees and of the officials and personnel working in these facilities, to proceed with the video surveillance and video recording of all units in which, for whatever reason, detainees are held – including garages and corridors leading to cells – with the logical exception of the bathrooms and bedrooms, within CIEs.". The corridors and rooms which detainees pass through – including Foyers, Waiting Rooms and Lobbies, Control Checkpoints, Corridors between cells, Children's Wings, safe spaces, Recognition and Identification Rooms A and B, Revision Rooms, and Interrogation Rooms 1 and 2 – must be permanently equipped with CCTV cameras and ambient microphones. Vandal-proof CCTV cameras with video surveillance, inaccessible to detainees, should be made installed in all cells and in the Isolation Room" (page 12 of Memorandum 11/2015).

In conclusion, since access to these areas is restricted, it is important that the availability of any images and footage recorded in these areas is ensured should a complaint be brought, and that these areas be monitored in conjunction with CATE staff, specialist organisations, detainees' legal representatives and detainees themselves.



⁶⁵ Memorandum 12/2015, Secretary of State for Security, approving the "Protocol of action in the custody of detainees of the State Security forces and bodies". [Ins- truccion_12_2015.pdf](https://www.defensordelpueblo.es/defensordelpueblo.es/ins-truccion_12_2015.pdf) ([defensordelpueblo.es](https://www.defensordelpueblo.es/))

⁶⁶ For a detailed definition of CATEs, see Iridia and Novact (2023). *Vulneraciones de derechos humanos en la Frontera Sur del Estado español*. <https://iridia.cat/es/publicaciones/vulneracion-de-derechos-humanos-en-la-fs-del-estado-espanol-2021-2022/>

⁶⁷ File number 001-087598.

⁶⁸ Memorandum 11/2015, Secretary of State for Security. https://www.defensordelpueblo.es/wp-content/uploads/2016/03/Instruccion_11_2015.pdf .

