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National Prevention Mechanism

## 2023 Annual Report National Prevention Mechanism (NPM) Spain



DEFENSOR  
DEL PUEBLO

mnp

Mecanismo Nacional de  
Prevención de la tortura



# **2023 Annual Report National Prevention Mechanism (NPM) Spain**

**Supervision of Spain's deprivation of liberty facilities in compliance  
with the Optional Protocol to the United Nations Convention against  
Torture and other Cruel, Inhuman or Degrading Treatment or  
Punishment (OPCAT)**



This Mecanismo Nacional de Prevención [National Preventive Mechanism-NPM] report was first published as part of the Defensor del Pueblo [Spanish Ombudsman] Annual Report for 2023.

[The digital version of this NPM report can be consulted or downloaded from the Spanish Ombudsman website:](#)

Full report

Resolutions formulated by NPM (Spanish content)

1. Recommendations
2. Suggestions
3. Reminders of Legal Duties

Digital links to the annexes can be accessed from this version.

[From the NPM tab of this website](#) (Spanish content), you can consult the visitation files and updated responses given by the Public Administration to the resolutions received.

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## INTRODUCTION

The Defensor del Pueblo [Ombudsman] fulfils the obligations contained in the Optional Protocol to the Convention against Torture (OPCAT), through the Mecanismo Nacional de Prevención [National Preventive Mechanism-NPM], in accordance with Ley Orgánica 1/2009 [Fundamental Act 1/2009] of 3 November. Regular visits to places where persons are or may be deprived of their liberty constitute one of its basic functions. The term deprivation of liberty is understood here to mean any form of detention, imprisonment or custody.

This is the second report to be published simultaneously with the Informe anual del Defensor del Pueblo [Ombudsman's general report], as a digital annex thereto.

The structure is similar to that of the 2022 report. At the beginning, a short chapter compiles general data on two of the three core NPM activities: visits carried out in 2023 and the resolutions generated as a result.

Next, in section one of the second chapter, this year also highlights measures that should be adopted by the public authorities and which, in NPM's opinion, reduce the possibility of mistreatment. These measures are articulated around cornerstones of preferential attention which, based on international standards, guide the Mechanism's actions. These cornerstones are characteristically shared by various forms of deprivation of liberty in Spain. Some of these measures, in addition to being cross-cutting, are far-reaching and their implementation is not always easy, whether for budgetary reasons, a regulatory vacuum on the matter or other reasons that will be specified throughout the report.

Section two of the second chapter covers some of the progress made in the prevention of risk situations during the reported period. These are situations that were previously detected as improvable and which have been effectively tackled during that period.

The third chapter describes the findings, conclusions and subsequent resolutions derived from the visits made to specific deprivation of liberty facilities:

- Centros de internamiento de menores infractores (CIMI) [Detention centres for juvenile offenders] (3.1)
- Prisons (3.2)

- Places and facilities for the detention of foreign nationals (3.3)
- Police and judicial cells (3.4)

The fourth chapter explains actions related to specific follow-ups, with a cross-cutting approach:

- Programme for the prevention of gender discrimination in deprivation of liberty facilities.
- Programme on mental health at deprivation of liberty facilities.
- Programme on intellectual disabilities in deprivation of liberty facilities.

The final sections are devoted to the investigation of alleged torture and other cruel, inhuman and degrading treatment and NPM's activity in educational, cooperation and dissemination matters.

As in previous editions, the report is complemented by fact sheets, one for each visit, accessible through the links to the digital text (likewise available through the Ombudsman's website, selecting the NPM tab). These sheets, which are constantly updated, compile all of the Mechanism's work in these fourteen years of activity. They provide a detailed account of the situations detected that have generated resolutions, describing the response given by the Administration, their future acceptance and materialisation (in each case).

*Periodic reports* are cyclical and dynamic processes conducted every five years, allowing the Committee Against Torture, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), to comprehensively review the human rights situation of states that are signatories to the UN Convention Against Torture. States, their institutions and civil society organisations all participate in the process. Spain completed one of these cycles in 2023.

The present report therefore pays special and extensive attention to the *Concluding observations on the seventh periodic report of Spain* ([CAT/C/ESP/CO/7](#)) issued by the Committee Against Torture, at its 2026<sup>th</sup> and 2028<sup>th</sup> meetings, held on 20 and 21 July 2023, and adopted at its 2034<sup>th</sup> meeting, held on 27 July 2023, thereby complying with the Committee's request that Spain widely disseminate the contents of the report.

The Spanish NPM is directly implicated in collaborating to the best of its ability, in order to ensure compliance with the recommendations contained in the aforementioned Final Observations.

## 1 GENERAL INFORMATION ON VISITS

The National Preventive Mechanism (NPM) carried out various actions in 2023, with a total of 51 reports of visits to deprivation of liberty facilities, which generated the following resolutions:

Actions at deprivation of liberty facilities	51
Resolutions issued	618
Recommendations	317
Suggestions	283
Reminders of Legal Duties	18

The NPM's website provides access to updated data on its activity (<https://www.defensordelpueblo.es/mnp/actividad/>). The information available includes the resolutions made and sent to the competent authorities and an interactive map with all visits completed since NPM began its activity. Each visit generates a sheet containing the conclusions and resolutions derived from the corresponding inspection report, its follow-up and resolutions.

In turn, the NPM's resolutions, formulated throughout the year, can be accessed through the following links (Spanish content):

- [Recomendaciones](#) [Recommendations]
- [Sugerencias](#) [Suggestions]
- [Recordatorios de deberes legales](#) [Reminders of Legal Duties]

### **Data collection**

In order to adequately implement the mandate established in the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), materialising as visits to deprivation of liberty facilities, information must first be collected in order to provide objective indicators for priority when scheduling such visits.

To that end, NPM collects information from various sources: the Fiscalía General del Estado [Public Prosecutor's Office]; the Secretaría de Estado de Justicia [Secretary of State for Justice]; the Ministerio de Defensa [Ministry of Defence]; the Dirección General de la Policía [General Police Directorate]; the Secretaría General de Instituciones Penitenciarias [Secretary General of Penitentiary Institutions]; the Dirección General de la Guardia Civil [Directorate General of the Civil Guard]; the



Secretaría de Estado de Seguridad [Secretary of State for Security]; the Comisaría General de Extranjería y Fronteras [General Police Unit for Foreigners and Borders]; the departments of Justice and the Interior of the Generalitat de Catalunya [Regional Government of Catalonia]; Department of Justice of the País Vasco [Regional Government of Basque Country]; regional administrations responsible for juvenile offender centres; regional administrations responsible for mental health units; the Centro de Apoyo a la Seguridad [Security Support Centre]; and autonomous police forces. All of these institutions and administrations have been assigned responsibilities in NPM's work.

### **Visits to deprivation of liberty facilities**

According to the OPCAT, deprivation of liberty means any form of detention or imprisonment or custody of a person, ordered by a judicial, administrative or other public authority, in a public or private institution, where such person is denied the freedom of movement.

The following table reflects data on the actions carried out and places visited.

<b>Actions carried out at deprivation of liberty facilities</b>	
Court cells	3
Centro de Apoyo a la Seguridad [Security Support Centre]	1
Centres for juvenile offenders	9
Detention centres for foreigners	1
First aid and detention centres for foreigners	1
Prisons	16
Policía Foral de Navarra Stations	2
Police Stations and other places of custody of the Policía Nacional	6
Guardia Civil headquarters and other places of custody	3
Prison psychiatric hospitals	1
Repatriation operations (Frontex and UCER)	2
Hospital Custody Units	2
Mental health units*	4
<b>TOTAL</b>	<b>51</b>

\* Visits liaised with the Health and Social Policy Area of Defensor del Pueblo (Ombudsman)

The table below shows data on these actions by comunidades y ciudades autónomas [Regional Communities and Cities]. For more information, the follow-up

sheet for each centre mentioned in this report can be accessed through links (digital format only).

Regional communities and cities, provinces and actions carried out	
<b>Andalucía</b>	<b>11</b>
<b>Cádiz</b>	<b>4</b>
<a href="#">Centro de Atención Temporal de Extranjeros de Crinavis (Puerto de Algeciras, San Roque)</a> [Crinavis Temporary Foreigners Assistance Centre (Puerto de Algeciras, San Roque)] <a href="#">Centro Penitenciario Puerto II</a> [Puerto II Penitentiary] <a href="#">Centro de Internamiento de Extranjeros de Algeciras</a> [Algeciras Detention Centre for Foreigners] <a href="#">Comisaría Local de Algeciras</a> [Algeciras Local Police Station]	
<b>Córdoba</b>	<b>3</b>
<a href="#">Centro de Internamiento de Menores Sierra Morena (CIMI)</a> [Sierra Morena Detention Centre for Minors] (Gender Programme and Intellectual Disability Programme)	
<b>Málaga</b>	<b>3</b>
<a href="#">Comisaría Provincial del CNP de Málaga</a> [CNP Provincial Police Station in Málaga] (Gender Programme and Intellectual Disability Programme)	
<b>Sevilla</b>	<b>1</b>
<a href="#">Hospital Psiquiátrico Penitenciario de Sevilla</a> [Sevilla Psychiatric Prison Hospital] (Mental Health Programme)	
<b>Castilla y León</b>	<b>6</b>
<b>Ávila</b>	<b>1</b>
<a href="#">Centro Residencial de Salud Mental Mentalia Arévalo</a> [Mentalia Arévalo Mental Health Residential Centre] (Mental Health Programme)	
<b>Soria</b>	<b>5</b>
<a href="#">Centro Penitenciario de Soria</a> [Soria Penitentiary] <a href="#">Comandancia de la Guardia Civil de Soria</a> [Civil Guard Head Station in Soria] <a href="#">Comisaría Provincial de Soria</a> [Soria Provincial Police Station] <a href="#">Palacio de Justicia de Soria</a> [Soria Courthouse] <a href="#">Puesto de la Guardia Civil de Burgo de Osma</a> [Civil Guard Station in Burgo de Osma]	
<b>Castilla-La Mancha</b>	<b>2</b>
<b>Ciudad Real</b>	<b>1</b>
<a href="#">Centro Penitenciario de Alcázar de San Juan</a> [Alcázar de San Juan Penitentiary] (Senior Citizens Project)	
<b>Toledo</b>	<b>1</b>
<a href="#">Unidad de Medidas Especiales del Complejo Hospitalario de Toledo</a> [Special Measures Unit of the Toledo Hospital Complex]	

<b>Comunidad de Madrid</b>	<b>9</b>
<b>Madrid</b>	<b>9</b>
<p>Centro de Apoyo a la Seguridad del Ayuntamiento de Madrid [Security Support Centre, Madrid City Council]</p> <p>Centro de Inserción Social Josefina Aldecoa [Josefina Aldecoa Social Insertion Centre] (Long-term Imprisonment Project)</p> <p>Centro Penitenciario Madrid I [Madrid I Penitentiary] (Long-term Imprisonment Project)</p> <p>Centro Penitenciario Madrid III [Madrid III Penitentiary] (Long-term Imprisonment Project)</p> <p>Centro Penitenciario Madrid IV [Madrid IV Penitentiary] (Long-term Imprisonment Project)</p> <p>Centro Penitenciario Madrid VII [Madrid VII Penitentiary] (Inmate Deaths Project and Mental Health Programme)</p> <p>Comisaría de distrito Madrid Fuencarral-El Pardo [Madrid Fuencarral-El Pardo District Police Station]</p> <p>Juzgados Plaza Castilla [Plaza Castilla Courts]</p>	
<b>Comunidad Foral de Navarra</b>	<b>4</b>
<b>Navarra</b>	<b>4</b>
<p>Comandancia de la Guardia Civil de Navarra [Civil Guard Headquarters in Navarra]</p> <p>Comisaría Central de la Policía Foral de Navarra [Central Police Station of the Navarra Regional Police]</p> <p>Comisaría Local de la Policía Foral de Tudela [Local Police Station of the Regional Police of Tudela]</p> <p>Palacio de Justicia de Pamplona [Pamplona Courthouse]</p>	
<b>Comunitat Valenciana</b>	<b>3</b>
<b>Valencia</b>	<b>3</b>
<p>Residencia Socioeducativa Mariano Ribera (CIMI) [Mariano Ribera Socio-educational Home] (Gender Programme and Intellectual Disability Programme)</p>	
<b>Extremadura</b>	<b>3</b>
<b>Badajoz</b>	<b>3</b>
<p>Centro de Cumplimiento de Medidas Judiciales Vicente Marcelo Nessi (CIMI) [Vicente Marcelo Nessi Centre for the Enforcement of Court Orders] (Gender Programme and Intellectual Disability Programme)</p>	
<b>Illes Balears</b>	<b>5</b>
<b>Palma de Mallorca</b>	<b>5</b>
<p>Centro Penitenciario de Palma de Mallorca [Palma de Mallorca Penitentiary] (Mental Health Programme and Senior Citizens Project)</p> <p>Hospital Universitario Son Espases [University Hospital Son Espases] (Mental Health Programme)</p> <p>Unidad de Custodia Hospitalaria del Hospital Universitario Son Espases [Hospital Custody Unit, University Hospital Son Espases]</p>	
<b>País Vasco</b>	<b>3</b>

<b>Araba/Álava</b>	<b>2</b>
Centro Penitenciario de Araba/Álava [Araba/Álava Penitentiary] (Mental Health Programme)	
<b>Gipuzkoa</b>	<b>1</b>
Unidad de psiquiatría legal y Unidad de cuidados especiales del Hospital Aita Menni [Legal Psychiatric Unit and Special Care Unit, Aita Menni Hospital] (Mental Health Programme)	
<b>Principado de Asturias</b>	<b>3</b>
<b>Asturias</b>	<b>3</b>
Centro Penitenciario Asturias (Villabona) [Asturias Penitentiary (Villabona)] (Senior Citizens Project and Mental Health Programme) Unidad de Custodia Hospitalaria del Hospital Universitario Central de Asturias [Hospital Custody Unit, University Central Hospital Asturias]	
<b>Otros lugares</b>	<b>2</b>
Operativo de repatriación Frontex: Santo Domingo y Bogotá [Frontex repatriation operations: Santo Domingo and Bogotá] Operativo de repatriación UCER: El Aaiún (Marruecos) [UCER repatriation operations: Laayoune (Morocco)]	
<b>TOTAL</b>	<b>51</b>

The following table shows data on visiting team members.

<b>COMPOSITION OF THE ACTION TEAMS</b>
<b>34 multidisciplinary actions</b>
Centro de Apoyo a la Seguridad (1), centres for juvenile offenders (9), detention centres for foreigners (1), first aid and detention centres for foreigners (1), penitentiary centres (16), police stations and other places of custody of the Policía Nacional (2), penitentiary psychiatric hospitals (1), hospital custody units (1), mental health units (2)
<b>13 actions with members of the NPM Advisory Board</b>
Centres for Juvenile offenders (3), prisons (8), hospital custody units (1), mental health units (1)
<b>8 actions with autonomous parliamentary commissioners</b>
Centre for juvenile offenders (3), penitentiary centres (2), court cells (1), penitentiary psychiatric hospitals (1), mental health units (1)
<b>26 actions with technicians from other Ombudsman departments</b>
Court cells (2), Centro de Apoyo a la Seguridad (1), penitentiary centres (13), police stations and other places of custody of the Policía Nacional (2), headquarters and other places of custody of the Guardia Civil (2), penitentiary psychiatric hospitals (1), repatriation operations-UCER (1), hospital custody units (1), mental health units (3)

Essential to the understanding of preventive measures is the content of detained citizen complaints addressed to the Ombudsman, which may refer to many issues examined by NPM.

As indicated in the table above, several technicians from processing departments of Ombudsman complaints also participate in certain visits arranged by the Mechanism.

### ***Visits with specific cross-cutting approaches***

The National Preventive Mechanism (NPM) carries out visits integrated into the following projects or programmes with a cross-cutting approach: gender discrimination prevention programme, disability programme and mental health programme. In addition to these programmes, NPM also carries out visits further to specific projects: deaths in prison, imprisoned senior citizens and the impact and effects of long-term imprisonment in detention surroundings for people with long sentences. These initiatives, albeit at varying stages of development, are progressing and, as a whole, are being consolidated as an innovative and necessary way of tackling NPM's future work. Chapter 4 discusses these cross-cutting programmes in detail.

### ***NPM Advisory Board and staff***

The Consejo Asesor [Advisory Board] acts as a technical and legal cooperation body for the National Preventive Mechanism (NPM), chaired by the Ombudsman and composed of Ombudsman Attachés, as well as a maximum of ten members (currently eight), who are appointed by experts with a renowned track record in the defence of human rights or in the treatment of detained persons. The members of this council met twice in 2023.

The duties of the Advisory Board include proposals on visits to places where persons are deprived of their liberty; suggested improvements in visitation protocols and follow-up; reports requested by the Ombudsman on applicable regulations to detained persons; educational programmes and specialised courses on the prevention of torture and cruel, inhuman or degrading treatment or punishment, and a follow-up on reports prepared by NPM and the Subcommittee on Prevention of Torture (SPT). Four seats on the Consejo Asesor were renewed in 2023.

The NPM Unit had ten members in 2023: the manager, six technicians and three administrative assistants.

## 2 PREVENTIVE MEASURES AND PROGRESS

### ***Measures for increased prevention of potential torture and mistreatment***

The monitoring activity of the National Preventive Mechanism (NPM) is structured around the following main cornerstones, affecting deprivation of liberty in its various forms.

- **Prevention of arbitrary and unjustified discrimination.** NPM's projects to prevent discrimination seek to detect these situations in contexts of deprivation of liberty and to propose corrective measures through continuous and constructive dialogue with the competent public authorities.
- **Material conditions in which deprivation of liberty takes place.** NPM checks for inadequate facilities or overcrowding.
- **Availability of sufficient and adequately trained personnel for the provision of various deprivation of liberty tasks and services.** NPM needs to disclose any public authorities that do not protect the life and health of detainees, by not assigning the necessary health personnel at their facilities or failing to execute -or incorrectly implementing- intervention programmes, or if required evaluations are lacking.
- **Video-surveillance systems.** The design and location of these systems must allow images to be collected and retrieved along with their sound for the observation of areas and situations that may become violent due to the use of force. NPM also checks and, where appropriate, promotes rules to extract, preserve and facilitate all this material. At the same time, it should be vigilant about the possible combined use of video-surveillance systems and generative artificial intelligence algorithms, which analyse emotions through facial recognition and biometric data. The use of these tools must be preceded by specific regulations, in order to ensure due respect for human rights.
- **Identification of authoritative persons interacting in deprivation of liberty contexts.** Permanent, adequate and sufficient identification is recommended to avoid missing or illegible identification due to size or font, which still persist.
- **Information.** Detainees must be able to fully exercise the rights they are legally entitled to, and this requires that the authorities fully inform them. NPM's view is that the provision of such information is not a mere

bureaucratic formality, but is sometimes a necessary condition for the exercise of these rights.

- **Reducing the use of force.** NPM's objective, in line with international standards, is to encourage the competent authorities to design policies in order to reduce the use of force and restraint.
- **Data recording.** Systems to record relevant itemised data in order to detect and, if necessary, design and implement actions to reduce the risk of mistreatment.
- **Legal assistance, counselling and advocacy,** as adequately provided services, are essential for prevention.

### ***Developments in various fields***

The following progress has been detected this year by the National Preventive Mechanism (NPM) in various Administrations that have taken into account NPM Recommendations and Suggestions issued over recent years.

- **Data collection.**
  - Acceptance of the Recommendation to establish a register in detention centres for juvenile offenders, documenting any type of disability of minors, in order to implement treatment from a gender perspective.
  - The pilot project launched by the Secretaría General de Instituciones Penitenciarias [General Secretariat of Penitentiary Institutions] at several penitentiary centres, for incorporation of data on internal security measures (frisking, confiscation and other controls) into its computerised management platform.
  - The penitentiary Administration of the Generalitat de Catalunya [Regional Government of Catalonia] has a project called "¡Vive en digital!" ["Life in Digital Form!"], which is about to be implemented in Catalunya's penitentiary centres. Its implementation constitutes acceptance of many NPM Recommendations, with innovations and potential progress in various areas. This platform includes a specific section for inmates to confidentially address complaints and reports of alleged ill-treatment to the prison management or to the Dirección General de Asuntos Penitenciarios [Directorate General of Prison Affairs].
- **Information during detention.** The Policía Foral de Navarra ensures accessibility by detainees to informative leaflets on their rights and conditions of

detention in all cell windows. This is a significant step forward in the Mechanism's opinion.

- **Recruitment of staff.** NPM noted the improvement brought about by the recruitment of social workers and cultural mediators, who play a particularly relevant role when facilitating social integration and maintaining family ties in detention centres for juvenile offenders.
- **Preventing potential self-injury.** NPM approved the progress made in some centres for juvenile offenders to prevent the risk of self-injury, including a log of discharge and admittance and a psychological and psychiatric assessment for new patients of variables such as nationality, knowledge of Spanish, or a possible migratory process. Another step forward is the fact that they are not accommodated in the same unit as new detainees, ordered to be separated from the group or are provisionally isolated.
- **Strip searches and training of security staff.** The competent administrations have agreed to reinforce the exceptional use of these searches and to provide a gown to the person being searched.
- **Improvements in facilities.** Artificial and natural light inside the rooms have been improved, to facilitate studying and reading in detention centres for juvenile offenders. In 2023, the Secretaría General de Instituciones Penitenciarias began refurbishments to ensure that adequate facilities in the Canarias are able to cover the needs of pregnant detainees or who have given birth, avoiding any existing alienation.
- **Complaints channel.** The system was improved at detention centres for juvenile offenders, with the competent authorities allowing complaints to be submitted in sealed envelopes, making it easier to keep a copy and avoid the risk of hindering security and confidentiality.
- **Internal regulations and protocols.** The Cataluña Prison Administration announced an upcoming instruction with guidance on objectives, limits and controls that all inmate monitoring and security procedures must comply with. It also reported on a programme for prevention and intervention in long-term isolation. To note, also, is the ongoing design of a procedure for the early detection of the effects of solitary confinement or loneliness.

Authorities in the autonomous communities of Andalucía, Galicia and Murcia drew up a detailed protocol for the detection of gender violence and sexual aggression before juvenile offenders are admitted for detention. The authorities of the Region of Valencia are working along the same lines. The Secretaría General de Instituciones Penitenciarias has recognised the need to



have a protocol to care for pregnant women, as well as female under-representation in the Comprehensive Care Programme for the Mentally Ill, where the inclusion of women is necessary from a clinical point of view. This Administration also agreed that the use of coercive measures, including solitary confinement, must follow a gender perspective.

- **Improved access to financial aid at Cataluña prisons.** In 2023, work began on the drafting of a new instruction to expand access to financial aid and to broaden its scope, particularly for vulnerable applicants.

Also significant is that most Suggestions and Recommendations were followed, received both through the cross-cutting mental health and disability programmes. This is considered a huge step forward and a statement of intent, as it represents a joint effort to improve living conditions and to guarantee and safeguard the fundamental rights of people with mental health problems and intellectual disabilities.

### 3 VISITS. FINDINGS AND PROPOSALS

#### 3.1 DETENTION CENTRES FOR JUVENILE OFFENDERS

In 2023, the National Preventive Mechanism (NPM) carried out three visits: to the Centro de Reeducción de Menores Mariano Ribera (Burjasot, Valencia) ([visit 2/2023](#)); to the Centro de Internamiento de Menores Infractores Sierra Morena (Córdoba) ([visit 12/2023](#)), and to the Centro de Cumplimiento de Medidas Judiciales Vicente Marcelo Nessi (Badajoz) ([visit 34/2023](#)). These last two visits were follow-up visits.

The three centres were also visited as part of gender and intellectual disability programmes (the conclusions reached are specifically discussed herein).

Title and responsibility for all these centres is entrusted to each respective autonomous community, although two are privately managed: the Centro Mariano Ribera by the Diagrama Foundation and the Centro Sierra Morena by Meridianos<sup>1</sup>.

The minutes drawn up by NPM following these visits contain 145 conclusions, which led to the formulation of 38 Recommendations, of which 30 were addressed to the Consejería de Salud y Servicios Sociales de la Junta de Extremadura [Department of Health and Social Services of the Regional Government of Extremadura], 25 were Suggestions and 10 were Reminders of Legal Duties. See Annex B hereto for further details on these resolutions.

##### 3.1.1 Supervision cornerstones. Challenges and progress

These are the main cornerstones of NPM's supervision of detention centres for juvenile offenders:

- Restraining measures.
- Welcoming process.
- Temporary isolation and separation from the group.
- Security personnel.
- Self-injury.
- Privacy in communications and visits.
- Complaints channel.
- Structure.

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<sup>1</sup> Fundación Diagrama is a non-profit organisation that manages 22 internment centres in different autonomous communities, and Meridianos is another non-profit organisation that manages two centres in the autonomous communities of Andalucía.

### ***Progress made in various supervision cornerstones***

- **Data collection.** NPM values the progress made in incorporating variables into systematic data collection, such as intervention in the child protection system prior to admission, or in relation to the Roma population, in order to provide measures focusing on the special needs of these social groups.
- **Recruitment of staff.** NPM took a positive view of the fact that in some centres social workers and cultural mediators have been hired, who are particularly important to facilitate social integration and the maintenance of family ties. However, a Recommendation to increase the presence of medical staff was dismissed; this staff is only present at each centre for four hours, one day a week, which is insufficient to provide adequate medical care to cover minor detainees' needs.
- **Confidentiality and privacy in medical consultations.** With regard to the presence of staff during a medical examination of inmates, NPM's Recommendations and Suggestions were accepted. There will be more guarantees from now on to ensure that medical examinations are conducted with confidentiality and privacy (avoiding risks arising from a lack of privacy).
- **Suicide prevention protocol.** NPM endorsed the progress made in some centres to prevent the risk of inflicting self-injury. The suicide prevention protocol has been adapted to include variables such as nationality, knowledge of Spanish, or whether the person has undergone a migration process. Another step forward is the fact that people who have activated the protocol to prevent self-injury are not accommodated in the same ward as people serving punishment as separation from their group or temporary isolation.

Likewise, NPM is in favour of having a register of persons who entered and left the suicide prevention protocol and if and when it is withdrawn. And it continues to insist that all persons admitted to a centre be evaluated by psychologists and psychiatrists, in order to quickly detect minors posing potential danger to themselves.

- **Control measures and body searches.** With regard to body searches, which involve inmates stripping naked and performing squats, these have been established as exceptional, assessing in each case whether the measure is appropriate.

However, The Centro Educativo La Zarza (Murcia) (visited the previous year, 3/2022) still considers as ordinary a search that involves inmates removing their clothes in parts, where underwear is removed once a

dressing gown is provided. At this same centre, full strip searches fully display each child's naked body. These issues are still under examination by NPM.

- **Staff training in restraint techniques.** NPM considered it necessary to further the training of security staff functions, both for painless restraint and control techniques, and de-escalation.
- **Privacy in communications.** Progress in this area has been ascertained. According to the information received, family visits take place in closed rooms, where physical contact is possible. Otherwise, the Administration agreed to issue instructions in order for telephone calls placed by detainees to take place in suitable, noise-free surroundings.
- **Conditions of the facilities.** A constant lack of natural light and outside views may deteriorate a minor's mental health. A decision to have the blinds permanently raised during the day constitutes progress in the matter, to guarantee better conditions. Improvements have also been made in indoor artificial light, which favours conditions for studying and reading, guaranteeing privacy with shower curtains. One of these centres has refurbished its observation area so that natural light and ventilation are now available, although the ward has not lost its prison-like appearance.
- **Complaints channel.** The channel for submitting complaints has been improved by allowing sealed envelopes; this prevents content access by recipient educational staff. A copy is also provided to the complainant, to ensure that the channel is secure and confidential.

### 3.1.2 Risk situations detected in the visits

#### ***New inmates***

The National Preventive Mechanism (NPM) found that all the centres visited in 2023 have a specific ward to welcome first-time offenders, which is also used for observation purposes for minors serving a sentence or who are subject to some kind of restraint.

In the Centro Mariano Ribera and Centro Vicente Marcelo Nessi, facilities in the admission and observation wards are significantly inadequate and have a markedly prison-like appearance. The rooms have barred windows, hardly any natural light, no table, chair or space to store clothes and, furthermore, the courtyards assigned to these wards are small and surrounded by barbed wire and concertinas.

In the Centro Mariano Ribera, rooms in the admissions ward were dirty and in a bad state of repair.

NPM recommended that the competent Administration assign a different area for new admissions to this centre, with similar conditions to the rest of the residential units, and that the courtyards of admission wards not be used either, due to failing to meet minimum conditions. The competent Department has dismissed this Suggestion.

In the Centro Sierra Morena, the admissions ward resembles the rest of the centre's residential areas. Even so, on some occasions, new admissions can end up staying there for up to two months. Moreover, during this time, they are not allowed to wear their own clothes and must wear a common uniform for all minor detainees. NPM suggested that the Consejería de Justicia, Administración Local y Función Pública [Department of Justice, Local Administration and Public Function] ensure that minors remain in the admissions ward for the minimum time necessary, in order to start the re-education process as soon as possible. It also suggested that detainees be allowed to wear their own clothes, as a form of differentiation and individualisation that is essential for individual development.

#### ***Use of containment measures***

The reform carried out by Ley Orgánica 8/2021, de 4 de junio, de protección integral a la infancia y la adolescencia frente a la violencia [Fundamental Act 8/2021, of 4 June, on the comprehensive protection of children and adolescents against violence], provides that restraint measures must be governed by guiding principles of exceptionality, the least possible force, and for the time that is strictly necessary. Due respect for the dignity, privacy and rights of minors should be upheld, with greater restrictions on the use of security measures.

During the visit to the Centro Vicente Marcelo Nessi, NPM found that the use of restraints remains high: 200 in 2021, 152 in 2022 and 189 until June 2023 (at the time of the visit). NPM examined several recordings from the video-surveillance system, which showed disproportionate use of force by security guards, which was witnessed by teaching staff and caregivers without any intervention or mediation. It therefore recommended ensuring that all staff be made aware that disproportionate use of force is not permissible as a form of ill-treatment.

NPM reminded the Administration responsible for the centre of the importance of ensuring that any physical intervention by security staff handling children be strictly necessary and proportionate. It therefore recommended that the centre's management view all recordings where restraint was used, and to issue a report on the appropriateness, correct application and duration of each individual measure of restraint, in order to reinforce the supervision of security staff personnel and avoid the risk inherent to any coercive measure.

The Centro Vicente Marcelo Nessi has a protocol for dealing with violent behaviour, whereby its teaching staff is essentially accountable. However, in practice, these situations are left in the hands of security staff, which poses an unnecessary risk to the physical integrity of restrained detainees. NPM considers that the centre's malfunctioning is generating potentially dangerous situations that ought to be prevented. Therefore, it recommended that in situations of tension or violence, the teaching staff should be in charge of any intervention, applying non-invasive techniques to successfully deal with extreme situations without hindering the physical integrity of minors.

NPM analysed the restraint measures protocol of the Centro Sierra Morena, noting that it refers to mechanical restraint by means of approved bed straps. This type of action, as already noted, is forbidden by Article 59 of Ley Orgánica 5/2000, de 12 de enero, reguladora de la responsabilidad penal de los menores [Fundamental Act 5/2000, of 12 January, regulating the criminal liability of minors], which was amended by the eleventh additional provision of aforementioned Fundamental Act 8/2021. It therefore formulated a Reminder of Legal Duty.

NPM also found that the centre's restraint logbook identifies restraining staff with initials only. In order to ensure that these means of restraint are adequately used, it was recommended to always fully identify everyone involved in the restraint.

At the Centro Mariano Ribera, when a restraint measure is used, it is entered into the disciplinary logbook, but there is no specific log to record the use of restraint. NPM considers that all centres should have a logbook of restraint measures describing the same, whether mechanical, personal/physical restraint, rubber bumpers or provisional confinement, the duration of these measures and the reasons why they have been used. This allows complete disclosure to the competent public body, the courts and the juvenile prosecutor's office.

### ***Personal injury reports***

At the Centro Mariano Ribera, no personal injury reports are drawn up, which is why NPM formulated a Suggestion in this regard. NPM considers that these reports are essential for prevention and an indispensable tool when investigating complaints and allegations of ill-treatment. The Administration accepted the Suggestion, which will be followed up.

At the Centro Sierra Morena, personal injury reports are not always drawn up, and NPM formulated a Suggestion in this regard. In turn, both here and at Vicente Marcelo Nessi, NPM found that some personal injury reports fail to include items indicated in the Ombudsman's Study of *Injury reports on people deprived of their liberty*, omitting the

way in which the injuries occurred (as described) and without the possibility of attaching photographs.

In these two centres, NPM highlighted the difficulty in understanding each doctor's opinion, which is always handwritten. As this issue has been observed in other juvenile detention centres run by the Junta de Andalucía, NPM recommended that personal injury reports be computerised. It also made a Recommendation to the same effect to the competent department of the Junta de Extremadura.

Similarly, at the Centro Sierra Morena and Centro Vicente Marcelo Nessi, NPM discovered that injured persons are not given a copy of the report, and recommended that a copy always be provided.

During its visit to the Centro Vicente Marcelo Nessi, the management reported that in injury cases the corresponding personal injury reports drawn up by external doctors in charge of this service are not sent to the court or to the juvenile prosecutor, contrary to the provisions of Article 262 of the Ley de Enjuiciamiento Criminal [Criminal Procedure Act]. As a result, NPM made the necessary Recommendation.

### ***Healthcare***

At the Centro Mariano Ribera, a doctor visits the centre once a week and a nurse visits twice a week. In turn, NPM obtained statements during all group interviews indicating a feeling of neglect and inadequate response to health problems. For this reason, NPM formulated a Suggestion, which was dismissed, on the grounds that the centre's healthcare staff is determined by the specifications of each administrative tender.

In the Centro Vicente Marcelo Nessi and Centro Mariano Ribera, in order to be seen by a doctor, an application form must be filled in, but no receipt is provided. NPM consequently recommended that such receipt be issued.

Healthcare is not usually administered in such a way as to uphold the privacy of minors and adolescents. Thus, during a medical or psychological examination, the office door remains open and security staff is present, which violates the right to privacy and makes it difficult to establish any bond of trust between doctor and patient. NPM therefore made Recommendations to the competent administrations.

### ***Security staff***

At the Centro Mariano Ribera, internal security in all residential areas is entrusted to assistant teaching staff, who are responsible for applying any restraint. These supervisors are not dressed as police officers, as is usually the case of security guards. Moreover, they do not wear rubber bumpers, which are usually kept under lock and key, and their shackles are usually kept in a case and out of the minor's view. NPM

considers that the presence of such staff in residential areas, instead of security guards, is more in line with the purpose underlying this type of centre.

Instead, at the Vicente Marcelo Nessi and Sierra Morena, the centre's surveillance is entrusted to security staff both at entrances and in residential areas for minors. This means that a security guard is a permanent presence in their day-to-day life, with the negative implications that entails. At the Centro Vicente Marcelo Nessi, security guards were even present inside the classrooms, hardly creating an atmosphere that was conducive to studying.

In order to avoid risky situations, NPM considers that the presence of security guards should be limited as much as possible, in order to generate a safe educational environment, where the social reintegration of children and adolescents is facilitated.

### ***Body searches***

At the Centro Vicente Marcelo Nessi, NPM found that all body searches involved a full stripping. Of 90 of these, 84 were incident-free or had no further developments, leading to the conclusion that these searches were possibly indiscriminate. Searches are governed by principles of appropriateness, necessity and proportionality, and can only be carried out for specific and concrete reasons. NPM therefore issued a Reminder of Legal Duty, in accordance with the provisions of Article 54.5 letter d) of Real Decreto 1774/2004, of 30 July 2004, approving the Regulations of Ley Orgánica 5/2000, reguladora de la responsabilidad penal de los menores.

NPM also formulated this Reminder of Legal Duty to the Centro Mariano Ribera, after examining several reports from minors claiming that when they return to the centre, or after receiving a visit, they are forced to strip and cover themselves with a towel, and to even squat. The Administration replied that this is an ordinary part of any search. NPM treats these cases as a full-body search, which requires authorisation from the centre manager and prior notification to the juvenile judge and public prosecutor on duty, explaining the reasons and forwarding any results. This is still an ongoing issue.

### ***Situations involving the isolation of minors***

At the Centro Vicente Marcelo Nessi, NPM noted that temporary solitary confinement was frequently applied: 61 in 2021, 61 in 2022 too and 62 in 2023 (up to 13 June, the date of the visit). A disciplinary sanction separating the minor from his/her group for three to seven days was applied 34 times in 2021, 39 in 2022 and 42 in 2023 (up to the date indicated).



As stated in the Mechanism's previous reports, this high-risk situation may have negative effects on the physical and mental health of minors. It is necessary to reconsider the matter in order to prioritise the use of alternative measures to solitary confinement.

According to the information received, solitary confinement had not been used at the Centro Sierra Morena in recent years, something that NPM approves. This evidences that any juvenile detention centre may waive the use of solitary confinement and use less aggressive methods instead, which is more appropriate for a centre that ultimately has an educational purpose.

### ***Self-inflicted injuries***

The Centro Sierra Morena has no system in place to keep a log of self-injuries. A failure to register these incidents and their circumstances, which seriously affect the health of minors, makes them invisible and obstructs any prevention or examination. NPM recommended that a self-injury logbook be kept in order to analyse the causes and provide an appropriate therapeutic and educational response.

The Centro Vicente Marcelo Nessi provided data reflecting a significant number of self-inflicted injuries, but lacks any specific intervention in this key issue for the mental and emotional health of children and adolescents. NPM consequently recommended an action plan focusing on prevention and measures foreseen for self-injury cases.

In its visits carried out in 2023, NPM did not detect any undesirable punishment of self-inflicted injuries, either through a disciplinary offence or means of restraint.

### ***Care for minors***

Since the approval of Ley Orgánica 8/2021, de 4 de junio, de protección integral a la infancia y la adolescencia frente a la violencia, it is compulsory for all centres to have a Protocol in place for the prevention, detention and care of gender violence and other types of abuse occurring inside and outside juvenile detention centres.

Although the Centro Sierra Morena has this protocol, it does not meet all the requirements established in the aforementioned law. For this reason, NPM issued a Reminder of Legal Duty, to ensure that the protocol includes health, psychological and social care for victims, as well as facilitating ongoing training, information and participatory actions for all staff in relation to gender-based and sexual violence.

NPM issued an identical Reminder of Legal Duty to the Centro Vicente Marcelo centre and another reminder to appoint a welfare and protection coordinator to ensure the proper implementation of legal protocols. Their duties include training plans on

prevention, early detection and protection of minors, arranged for both the staff and students.

NPM found that, at the time of the visit, 9.7% and 18% of all resident minors at the Sierra Morena and Mariano Ribera, respectively, belonged to the Roma population. No professional mediator was assigned. NPM recommended that the Administration review its educational and therapeutic response, as well as the effectiveness of any intervention with these minors, assigning a professional cultural mediator, in view of the high number of Roma minors and their particularly vulnerable circumstances.

At the Centro Vicente Marcelo Nessi, it was ascertained that there were no itemised data for the Roma inmate population, which does not encourage intervention to disclose and overcome their specific discrimination. NPM recommended that the relevant department of the Junta de Extremadura incorporate the Roma population variable into the centre's management, in order to design better targeted and more effective programmes.

### ***Structure and living conditions***

As mentioned above, the facilities of admission wards in the Mariano Ribera and Vicente Marcelo Nessi have a markedly prison-like appearance. NPM recommended that suitable areas be assigned for minors. The competent Department did not accept its Recommendation, arguing that the use of these facilities is necessary for security and protection. NPM considers that there are less aggressive ways to ensure the safety of minors at these centres.

At the Centro Vicente Marcelo Nessi, NPM found that rooms lack any tables and chairs, that some rooms overlook a building next door, without curtains to ensure occupant privacy. It was therefore recommended that rooms be fitted with tables and chairs to encourage reading, writing or studying, and that curtains be installed to protect privacy.

At the Mariano Ribera, all windows have translucent glass for light to pass through, but there is no view of the outside; they are also permanently closed, which prevents room ventilation. The Administration did not accept our Suggestion, citing security and privacy concerns. NPM considers that the protection of privacy and security can be achieved whilst upholding the right and need to have a window view, as children spend long periods of time in their room and in other indoor residential units. The Administration should assess on a case-by-case basis which rooms in the centre should have greater privacy.

Rooms at the Mariano Ribera and Vicente Marcelo Nessi do not have indoor toilets. In the second one, there is no call button either, which is why any night-time use of the

bathroom requires knocking on the door. In addition, toilets have no doors and there are no shower curtains. NPM recommended that call buttons be fitted in the rooms, in order for the staff to respond to minor inmate needs, particularly for use of the toilet or emergency situations. It also recommended that toilets be fitted with doors and the installation of shower curtains to ensure privacy.

### ***Disciplinary regime***

At the Centro Sierra Morena, 43% of all sanctions in 2021, 47% in 2022 and 50% in 2023 were applied to minors serving a therapeutic detention measure. On 24 occasions, the sanction resulted in group separation of up to seven days from the therapeutic unit. NPM issued a Reminder of Legal Duty not to apply disciplinary punishment to minors in therapeutic detention as a result of mental abnormality or alteration, or altered perception preventing them from understanding the wrongfulness of their acts, or from acting accordingly, for as long as they remain in that state.

At the Centro Vicente Marcelo Nessi, NPM observed that minors who are separated from the group are assigned to a tiny courtyard in the admissions ward. Occasionally, psychologists suggest a more appropriate courtyard, something that NPM strongly agrees with.

The Centro Mariano Ribera indicated that, for some time now, separation from the group has not been used as punishment. However, when there is an educational setback, minor inmates are sent to the admissions ward. NPM considers that this facility does not meet the minimum conditions to uphold their dignity, and also that an educational setback should not generate an extra disciplinary measure beyond established procedures.

### ***Complaints channel***

It should be possible to lodge a complaint without requiring any intervention or mediation by the centre's educational staff. Otherwise, confidentiality is not guaranteed. This is the case at the Centro Mariano Ribera and Centro Vicente Marcelo Nessi, where a form must be requested from the educational staff, which is returned to them for delivery to the management. From our analysis of the centre's complaints logbook, NPM found that several complaints were generated by this educational staff. Moreover, no receipt is provided when the complaint is filed. For this reason, NPM recommended that a system be established to lodge and collect complaints in order to ensure confidentiality, in a sealed envelope, and that a receipt be provided. NPM considers that the possibility of lodging complaints is essential for any prevention of ill-treatment.

***Privacy in communications and visits***

At the Sierra Morena and Mariano Ribera, telephone communications and face-to-face visits are arranged in private surroundings. However, at the Centro Vicente Marcelo Nessi, NPM detected situations where privacy and confidentiality were hindered. Family meetings take place in open rooms with uncomfortable furniture, in the presence of security guards and care assistants. This is the case for all visits and for all inmates, without such a degree of supervision being justified on any educational or risk grounds. In such circumstances, affective and private communications between children and adolescents and their families are limited. NPM recommended that visits with family members take place in confidential and private surroundings, in a closed room.

**3.2 PENITENTIARY CENTRES****3.2.1 NPM actions**

Throughout 2023, in relation to the matter<sup>2</sup>, the Ombudsman acting as the National Preventive Mechanism (NPM) visited eleven prisons in person, ten of which are ascribed to the Secretaría General de Instituciones Penitenciarias of the Ministerio del Interior, and one is ascribed to the Consejería de Igualdad, Justicia y Políticas Sociales del Gobierno Vasco [Department of Equality, Justice and Social Policies of the Basque Government].

In most of its visits, NPM examined particular issues or furthered specific projects that were initiated in 2022. It also followed up on the monitoring cornerstones that the Mechanism considers key to preventing the risk of torture or ill-treatment.

The prisons visited are listed below, indicating the type of visit.

- Centro Penitenciario Puerto II, in Cádiz ([visit 10/2023](#)). The visit focused on pre-trial detainees. This centre was chosen because of the large proportion of such detainees, representing 68% of the total at the time of the visit.
- Centro Penitenciario de Soria ([visit 15/2023](#)). This was the first visit paid by NPM to this centre, which opened in June 2021. At the time of the visit, 70% of the prison population were remunerated employees, so issues related to the working conditions of employee inmates were also examined.
- Centro Penitenciario Alcázar de San Juan (Ciudad Real) ([visit 20/2023](#)). Visit as part of the project on senior citizen inmates.

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<sup>2</sup> NPM's prison visits as part of gender discrimination prevention and mental health programmes are discussed in Chapter 4 of this report.

- Centro Penitenciario Madrid VII-Estremera ([visit 23/2023](#)). Visit as part of the Project on inmate deaths.
- Centro Penitenciario Villabona (Asturias) ([visit 25/2023](#)). Visit as part of the project on senior citizen inmates.
- Centro Penitenciario de Mallorca. Follow-up visit on the implementation of previously formulated Suggestions and the latest Recommendations addressed to the Secretaría General de Instituciones Penitenciarias ([visit 29/2023](#)). The Senior Citizens Inmates Project was also developed ([visit 30/2023](#)).
- Centros Penitenciarios Madrid I, Madrid III, Madrid V and the Centro de Inserción Social Josefina Aldecoa in Navalcarnero (Madrid) (visits joined into [visit 42/2023](#)). Visits as part of the Project on the impact and effects of long-term imprisonment.
- Centro Penitenciario Araba/Álava ([visit 43/2023](#)). Follow-up visit where special attention was paid to the effects derived from decentralised competencies in penitentiary matters assigned to an autonomous community.

During 2023, NPM also visited two hospital custody units: the Hospital Custody Unit of Hospital Universitario Central de Asturias ([visit 27/2023](#)) and the Hospital Custody Unit of Hospital Universitari Son Espases (Palma de Mallorca) ([visit 32/2023](#)).

### 3.2.2 Supervision cornerstones. Challenges and progress

#### **Facilities and video-surveillance**

NPM's monitoring visits make it possible to check whether areas for improvement have been corrected, especially those relating to facilities. The fact that no progress has been made is becoming more and more common. Thus, in the 2023 visit to the Centro Penitenciario de Mallorca, Suggestions regarding improvements in facilities of the solitary confinement area, already made after its 2017 visit, were reiterated. In the case of the Centro Penitenciario de Araba/Álava, the Mechanism found that the observation cells of the closed ward did not meet the minimum conditions of habitability and respect for human dignity required by national and international regulations (among others, Article 19.2 of the Reglamento Penitenciario, Nelson Mandela Rule 13 and European Prison Rule 18), as facilities only had a squatting pan and water tap fitted in a hole in the wall for personal hygiene. Nor did detention cells comply with the parameters indicated in the *Guía de buenas practicas en contenciones mecánicas del MNP* [NPM

Guide to Good Practice in Mechanical Restraint], as not all of them had an adjustable bed and none of them had a non-slip floor.

As NPM usually states in its annual reports, video-surveillance in a custodial context is an essential management and prevention measure. In its 2022 report, NPM highlighted the entry into force of Instruction 4/2022 on video-surveillance, issued by the Secretaría General de Instituciones Penitenciarias, since it was aware that its implementation would be difficult.

Please note that the entry into force of this Instruction has had little practical effect, even in matters not dependent on a budgetary assignment. Among the visits carried out by NPM in 2023, special reference should be made to the Centro Penitenciario Mallorca, where images taken from the video-surveillance circuit were not being recorded; furthermore, there were signs that images of serious incidents were not even being recorded, as specifically required by the Instruction itself. The Mechanism recommended that the Secretaría General de Instituciones Penitenciarias accordingly instruct penitentiary centres in order to ensure that a log is kept of all images gathered, and that such logs be forwarded to central services for proper supervision. Likewise, it recommended that Instruction 4/2022 indicate the need for an ex officio extraction of images related to inmate deaths; although these clearly constitute a very serious incident, in practice pictures are only extracted if ordered by a court, as verified during our visit to Centro Penitenciario Madrid VII.

A process to implement video-surveillance regulations in Cataluña prisons—Circular 1/2021 of 1 March—is also waiting to be tendered.

As far as the prisons in the País Vasco are concerned, coverage of the video-surveillance system at the Centro Penitenciario de Araba/Álava had been extended after our last visit.

Throughout 2023, there was an increase in allegations of ill-treatment in unsupervised areas which, according to data protection regulations, would not be covered by a video-surveillance system, such as inmate cells. Of interest in the matter is the pilot project carried out during the summer at two penitentiary centres in Cataluña, using single-person cameras by surveillance staff, in order to test the benefits that this practice could bring in terms of reducing incidents and malpractice, as well as improving prison management. Its effective implementation depends on the results evaluation report that is still ongoing, which will be followed up on.

### **Staff**

Adequate staffing of a prison is an essential requirement for its proper management and operation. Without sufficient staff, the social reintegration of inmates cannot be

achieved, nor can their custody be carried out in secure and organised terms, whilst upholding fundamental rights. Resorting to part-time contracts in order to cover vacancies is not a long-term solution, as it requires constant change in a centre's operations, with a negative impact on permanent staff and detainees.

Most of the facilities of the Centro Penitenciario de Soria were practically inoperative at the time of the visit, due to short-staffing in all areas. NPM stressed the importance of adopting measures to render the centre operative with modern and larger facilities and reintegration potential. In the case of prisons in the País Vasco, staffing problems were aggravated by a decentralised transfer of penitentiary competencies to the local authorities, and a new report on work positions is pending approval; this matter should be prioritized given the negative repercussions it is having on the transfer of local inmates.

### ***Healthcare staff in penitentiary institutions***

The lack of doctors in prisons ascribed to the Administración General del Estado [General State Administration] continues to worsen. Prison supervision judges have expressed their concern about the various consequences of insufficient medical staff. This issue was also mentioned in the latest report of the Committee Against Torture (CAT) addressed to Spain [[CAT/C/ESP/CO/7](#), observations 23 and 24].

Following its visits in 2023, NPM found that the Centro Penitenciario Madrid VII had three less doctors than in 2019, and that the Centro Penitenciario Mallorca had five less than in 2017. As a result, both scheduled and on-demand appointments had been eliminated and only emergency consultations were possible. At Centro Penitenciario Madrid VII, it was found that 12% of all requests had not been processed, despite being classified as urgent. During periods of illness or leave, these centres did not replace their medical staff. Medical records of Centro Penitenciario Mallorca reflected undocumented injuries due to a lack of medical services and medical referrals from the nursing staff that had not been completed. Work overload on nursing staff had a negative impact on their own performance.

A transfer of prison healthcare to the public healthcare service (contemplated in Ley 16/2003, de 28 de mayo, de cohesión y calidad del Sistema Nacional de Salud [National Health System]) is the only way to guarantee equity for inmate healthcare (Article 208 of the Reglamento Penitenciario [Prison Regulation]). A clear example of this is the Centro Penitenciario Araba/Álava, where healthcare staff and the organisational system evidenced higher quality in primary care from a technical point of view.

### **Registration systems**

- **Interconnection and improvement of computer systems.** Previous reports have pointed out the defects of each prison administration having its own computerised record-keeping system, with no interconnection. NPM made a Recommendation to hold conversations with prison administrations in order to unify or interconnect their computerised registration systems. We consider that there is willingness to implement this Recommendation. The Mechanism will monitor any agreements adopted in this regard.

Another issue of importance for the NPM is improving the penitentiary computer system in order to enable specific data to be recorded and statistically used. To note is that the Secretaría General de Instituciones Penitenciarias reported a pilot project underway at various centres, to incorporate data on internal security measures (body searches, confiscations and other controls) into the penitentiary computer system (SIP). An example of this is Centro Penitenciario de Soria, where in just over a year a total of 194 full body searches were carried out, for an average population of 180 inmates; of these, only three yielded positive results, i.e. an effective rate of 1.5%. In addition, the Juzgado de Vigilancia Penitenciaria [Prison Supervision Court] was being notified late of such searches. The Recommendation to incorporate this type of search into the computer system was addressed in 2023 to the Administration of the País Vasco, due to lacking a register of full body searches.

On the other hand, although the Secretaría General de Instituciones Penitenciarias said that it shared the positive aspects that would ensue from including a log of alleged ill-treatment into the penitentiary computer system (SIP), it indicated that no action would be taken in this regard for the time being.

- **Register, documentation and protocol to handle allegations of ill-treatment.** NPM considers that the inclusion of this register in the penitentiary computer system (SIP) should be a priority. During its visits in 2023 it was ascertained that often the register of penitentiary centres does not coincide with the one kept by central services. NPM found documentary evidence of inconsistent data in the registers for alleged ill-treatment in 2022, during visits to the centros penitenciarios Puerto II, Soria, Mallorca and Araba/Álava.

At the Centro Penitenciario Puerto II, allegations of ill-treatment submitted by an inmate who was subjected to mechanical restraint were not



recorded, even though there was a personal injury report which also included a statement to that effect.

With regard to the Centro Penitenciario Madrid VII, our visit in 2023 disclosed 58 complaints; this raised the issue of whether preventive measures had been adopted. Nor was there any improvement in the investigation of alleged ill-treatment of inmates. In recent cases of alleged ill-treatment, there was no evidence that objective evidence —such as recordings of the event or the statement of the alleged victim— had been forwarded to the court. The administrative investigation conducted was not sufficiently objective, as it was based on reports issued by the staff involved and even included value judgements that differed from the content of other evidence such as the personal injury report. As a result, there is still a risk that a subsequent court investigation will not succeed or will not guarantee a due process.

Following the visit to Centro Penitenciario Puerto II (Cádiz), NPM recommended increasing the information given in the official form to register alleged ill-treatment (regulated in Order 1/2018 of the Secretaría General de Instituciones Penitenciarias), with details of the means of evidence submitted to the courts.

As for protection of alleged victims of ill-treatment, NPM ascertained that the measures focus on the inmate and that, in no case, decisions are taken on prison staff. An inmate's transfer may be detrimental to his/her reintegration. However, the Secretaría General de Instituciones Penitenciarias has the power to make organisational changes in dependent staff and, likewise, this is a possibility available to the penitentiary centre's management (Article 280.4 of the Reglamento Penitenciario)<sup>3</sup>.

- **Personal injury reports.** On the importance of personal injury reports in documenting ill-treatment, the Committee for the Prevention of Torture

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<sup>3</sup> The Committee Against Torture in its *Concluding observations on Spain's 2023 periodic report* [[CAT/C/ESP/CO/7](#), observation 14(c)] noted that the State should ensure that the alleged perpetrators of acts of torture or ill-treatment are suspended from office immediately and throughout the investigation, in particular if there is a risk that they may otherwise reiterate the acts under investigation, retaliate against the alleged victim or obstruct the investigation.

In similar terms, the CPT in conclusion 80 of its report [[CPT/Inf\(2013\)29-part](#)] noted that the reporting of medical evidence of ill-treatment to the competent authority should be accompanied by effective measures to protect the victim, as well as other detainees. For example, prison officers allegedly involved in ill-treatment should be relocated to posts that do not require daily prisoner contact, pending the outcome of the investigation.

(CPT), in its 23<sup>rd</sup> General Report published in 2013<sup>4</sup>, stated that the situation regarding documentation and reporting of evidence of ill-treatment was far from satisfactory in many States. The procedures in place do not always ensure the timely recording of injuries and, even when such recording does take place, it is often done in a cursory manner. Moreover, there is often no guarantee that such evidence is brought to the attention of the competent authorities for investigation.

In all the penitentiary centres of the Administración General del Estado [General State Administration] visited in 2023, NPM detected deficiencies in the documentation of personal injuries that were potentially indicative of ill-treatment, including the Centro Penitenciario Araba/Álava, despite the fact that medical staff at penitentiary centres in the País Vasco are not organically dependent on penitentiary institutions. In order to facilitate monitoring and regulatory compliance, NPM recommended that both prison administrations design a model for the registration of personal injury reports, including important data such as the issue date and referral to the court.

The Centro Penitenciario Mallorca indicated that a total of 127 reports had been submitted in the last three years. However, the medical services plan reflected a total of 688 injuries during the same period of time. The absence of documentation on all types of injuries and the failure to report them to the court was also noted in the centros penitenciarios of Soria and Madrid VII. NPM therefore recommended that the Subdirección de Sanidad Penitenciaria [Subdirectorate of Prison Healthcare] regularly inspect the issue.

- **Records of application of coercive measures.** Proper documentation of actions carried out during deprivation of liberty is an important way to prevent risks. During its visits, NPM placed special emphasis on the records of any coercive measures applied. Currently, the Cataluña Prison Administration is the only one that does not keep a double (tangible and electronic) register, recommended by NPM because it ensures guaranteed supervision. In its follow-up visit to the Centro Penitenciario de Araba/Álava, NPM found that these registers on the application of coercive measures were still inconsistent, and therefore reiterated its previous Suggestions. New defects were disclosed at Centro Penitenciario de Mallorca, since the penitentiary computer system (SIP) had no record of incidents occurring in the last few days; these, however, were reflected in the logbook of incidents

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<sup>4</sup> [\[CPT/Inf\(2013\)29-part\]](#). Documentation and reporting of medical evidence of ill-treatment.

in the solitary confinement unit and the services management logbook. At Centro Penitenciario de Soria, the register of incidents reflected the application of coercive measures that were not documented in specific logbooks.

### ***Solitary confinement and application of coercive measures***

The National Preventive Mechanism (NPM) has often expressed concern about the use of coercive measures. In practice, they generate segregation and solitary confinement in the absence of guarantees, identified as a possible consequence of lacking clear and guiding regulations. For this reason, it recommended carrying out an inspection of the living conditions existing at the centres ascribed to the Secretaría General de Instituciones Penitenciarias and the Penitentiary Administration of the País Vasco.

At the time of our visit to Centro Penitenciario de Soria, two inmates who were subjected to limitations under Article 75.2 of the Penitentiary Regulations had gone from a regularly overcrowded unit to being deprived of any significant human contact. Their physical and psychological condition showed that this effect was precisely the opposite of what was intended: their "self-integrity". This notwithstanding, persons subjected to these limitations do not receive regular visits by a doctor, which is directly related to the absence of an effective protocol on mandatory medical examination in solitary confinement situations.

Although there has been a reduction in the number of mechanical restraints used in prisons managed by the Secretaría General de Instituciones Penitenciarias, during its visits NPM still detected insufficiently trained staff and excessive duration beyond the intended purpose. The fact that the penitentiary inspectorate does not supervise all detention centres demands indications on how to complete suitability reports. Following the visit to Centro Penitenciario Puerto II (Cádiz), NPM made a Recommendation in this regard.

With regard to solitary confinement in a cell, NPM found that, despite the content of the report submitted by the Secretaría General de Instituciones Penitenciarias, no measures have been put in place to halt any sanctions exceeding fourteen days of solitary confinement.

During the visit to Centro Penitenciario de Soria, excessive stringency was observed in the sanctioning procedure, resulting in a disproportionate number of cases and very serious sanctions.

At Centro Penitenciario Puerto II, NPM attended a disciplinary commission and found that there were no clear criteria on how to apply the sanctioning regime. It

therefore recommended issuing an instruction on this matter to unify penitentiary centre criteria and to incorporate general legislative provisions in sanctioning matters.

A study on application of the disciplinary regime is being carried out in Cataluña prisons, including an analysis of the use of Article 243 of the Reglamento Penitenciario, as requested by NPM in its 2022 visits.

### ***Exercise of rights essential to inmate reintegration***

During its visit to Centro Penitenciario Araba/Álava, NPM noted that the adaptation processes required by a decentralisation of penitentiary competencies in favour of the autonomous community had affected the exercise of inmates' rights, with insufficient information on prison rules, their rights or how to exercise them. An informative leaflet and internal rules are still in the process of being edited and printed, and self-completed forms are no longer provided, making it impossible for inmates to obtain copies of their applications.

- **Access to financial aid and productive work.** The acceptance of NPM's Recommendation to modify Instruction 1/2013, of 29 July, regulating access to financial aid in Cataluña prisons, formulated by NPM in 2022, represents a significant step forward. In 2023, this Administration reported that a new instruction was being drawn up to ensure flexible and encompassing access to aid, particularly for vulnerable applicants.

Work activity contributes to the smooth running of prisons, strengthens inmate self-esteem, helps them cover their basic needs and prepares them for reintegration into the job market. The interaction of prison work with re-socialisation is inevitably productive.

During our visit to Centro Penitenciario de Soria, almost 70% of all inmates were remunerated employees. NPM found that there is no objective way of effectively controlling working hours and no clear and transparent system with which to calculate remuneration based on time/yield<sup>5</sup>, beyond the supervision of workshop staff and a computing system. Recommendations were therefore made for improvement. In turn, on various occasions, the Ombudsman has repeatedly exposed the irregular payment of certain inmates for auxiliary assignments while others are not, a

<sup>5</sup> To note is judgment handed down on 14/11/2023, by Juzgado de lo Social of A Coruña No. 6 [SJSO 4338/2023], which addressed issues of particular interest in this area. The judgment confirms that inmates are paid for actual hours worked in prison as opposed to a performance-based system claimed by Instituciones Penitenciarias [Penitentiary Institutions], which was why the Administration was ordered to pay the inmate a difference of 1,688.86 euros.

matter on which further information has been requested in order to verify whether measures have been taken in this respect.

### 3.2.3 Specific projects launched by the National Preventive Mechanism (NPM) in prisons

Although the idea is for some of these projects to be deployed in forthcoming years to other detention centres, in 2023 they were limited to prisons.

#### **Specific project on inmate deaths**

Recommendations made by the National Preventive Mechanism (NPM) were aimed at improving the registration, documentation and investigation of all inmate deaths.

NPM takes into account the Ministerio de Justicia's [Ministry of Justice] *Guía de buenas prácticas para la actuación medico-forense en situaciones de muerte en custodia* [Guide to Good Practice for forensic medical examiners in situations of death in custody]<sup>6</sup>, published in 2023. This document, which sets out guidelines for forensic action in the form of Recommendations, was drawn up taking into account the Minnesota Protocol on the Investigation of Potentially Wrongful Deaths, to ensure that inmate deaths are investigated.

An outline of the inmate deaths project is provided below:

- **Registration of inmate deaths.** A number of international bodies have identified the need to improve the record kept of inmate deaths, due to there being a critical gap in understanding the circumstances and causes of death and, ultimately, in reducing the number of deaths<sup>7</sup>. NPM considers that it is inadequate practice to have duplicate registration systems that do not coincide, as well as insufficient data.

With respect to the Secretaría General de Instituciones Penitenciarias, prisons use the penitentiary computer system (SIP). The SIP does not identify the cause or specific place of death, only whether it occurred inside

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<sup>6</sup> The development of this guide is highlighted as good practice in the Special Rapporteur's report on extrajudicial, summary or arbitrary enforcements by the Human Rights Council of 18 April 2023 [[A/HRC/53/29](#), page 14, conclusion 61].

<sup>7</sup> In its 2023 observations report, the Committee Against Torture states that the Spanish Government has failed to provide complete and itemised statistical information on inmate deaths ([CAT/C/ESP/CO/7](#), observations 25 and 26). In the same vein, the International Penal Reform, in its "Investigating deaths in prison" guide (2023), after analysing the policies and practices of 19 countries, including Spain, on inmate death investigations, reached the conclusion that, although the frequency, modalities and outcome of prison investigations vary significantly worldwide, itemised information on who dies in prison —and why— is still generally scarce.

or outside the penitentiary centre. Another centralised register is kept by the central services, which collects data on deaths occurring in all prisons supervised by the General Secretariat, generating an annual epidemiological report on mortality in penitentiary institutions.

- **Investigation of inmate deaths.** Since 2014, NPM has insisted on the importance of the prison Administration safekeeping all autopsies of dead inmates. The fact that death occurs whilst the Administration is exercising custodial functions entitles it to uphold a legitimate interest in obtaining the autopsy report (Article 140 of the Ley de Enjuiciamiento Criminal and Article 235 of the Ley Orgánica del Poder Judicial). However, some courts refuse to grant access to prison administrations to autopsies and interim reports, due to not being a procedural party.

Although the Ombudsman carries out detailed monitoring of inmate deaths at prisons, in order to safeguard documentation and supervision of the investigation process, in 2023 NPM urged prison Administrations to report all inmate deaths to the Ombudsman *ex officio*. In addition, NPM requested that data be itemised by age, nationality or sex. It also requested data on the deaths of persons on parole, specifying when this was decided for humanitarian reasons (Articles 104.4 or 196.2 of the Reglamento Penitenciario).

- **Preventing prisoner deaths.** The World Health Organisation (WHO) has repeatedly highlighted that the prison population has multiple risk factors explaining why it has a higher suicide rate than the general population. In 2022, NPM had recommended that the Secretaría General de Instituciones Penitenciarias review the Suicide Prevention Protocol regulated in Instruction 4/2015, including improvements in documentary control and in the suicide risk detection system, assessing the possibility of including new preventive measures in line with recent World Health Organisation recommendations. This Recommendation was accepted, with the Secretaría General de Instituciones Penitenciarias announcing that a suicide prevention assessment and intervention procedure was planned for 2023. However, NPM was not informed of any new developments on the matter, which explains why deficiencies persisted following its visits in 2023. Thus, after analysing the individual files of the persons who were under this Protocol at the time of the visit to Centro Penitenciario Madrid VII, NPM found that the follow-ups contemplated therein were not being carried out or, at least, were not being documented. The programme was not working either in terms of detecting suicidal risk, given that someone not included in

the programme committed suicide, although his file had multiple red flags, such as mental health problems, many situations of self-inflicted harm in the previous months, as well as requests for medical attention to handle anxiety attacks suffered on the same day as the event.

The prescription and dispensing of psychoactive medication is essential to prevent deaths from overdose. Implementation of directly observed treatment at prisons in the País Vasco has had significant consequences, which became evident during our visit to Centro Penitenciario Araba/Álava in 2023. These include an increase in the number of medical staff, greater patient monitoring and caution when prescribing psychotropic drugs and, as far as the prevention of deaths is concerned, the absence of intoxication-induced deaths at this prison since 2020. In prisons ascribed to the Secretaría General de Instituciones Penitenciarias, no progress has been made in this regard and implementation is becoming increasingly complicated due to the shortage of medical staff.

Medical attention is essential to prevent deaths, especially when there are risk factors such as serious chronic illnesses or old age. Reglamento Penitenciario contemplate legal formulae that would help prevent such deaths.

During 2023, NPM requested information on proposals to grant parole on humanitarian grounds (Articles 104.4 and 196.2 of the Reglamento Penitenciario), concluding that this is practically never used. Thus, at Centro Penitenciario Madrid VII, its medical services kept a register of persons at short and medium-term risk. However, there was no record of any measures being taken in this regard. At Centro Penitenciario Alcázar de San Juan (Ciudad Real), there were no proposals to apply this type of measures in the last three years, although the prison accommodates a significant percentage of elderly persons with chronic pathologies.

NPM recommended that all prisons be urged to keep a register similar to the one managed by the medical services of Centro Penitenciario Madrid VII, on inmates at risk due to illness or age, to complement Recommendations made further to a specific project for senior citizen inmates. In the framework of this project, NPM recommended the use of legal formulae to serve a deprivation of liberty sentence in more social surroundings.

### ***Specific project on senior citizen inmates***

This project has so far only been launched by the Secretaría General de Instituciones Penitenciarias (SGIP). Three visits were made in 2023: to the centros penitenciarios of Alcázar de San Juan (Ciudad Real), Villabona (Asturias) and Mallorca.

These visits sought to identify the specific needs of senior citizens due to the ageing process, aggravated by the living conditions of imprisonment<sup>8</sup>, as well as to supervise the application of Instruction 8/2011, on comprehensive care for elderly inmates. NPM considers as an asset the fact that the Secretaría General de Instituciones Penitenciarias keeps a register of prison actions taken to improve care for these inmates.

Spain is among Europe's five countries with the highest average inmate age (40 years), compared to an average of 38 years, according to the latest statistics published by the Council of Europe.<sup>9</sup>

- **Register of elderly people.** A register of older persons foreseen in the above-mentioned Instruction helps define prison policies and focused interventions. In 2011, data were collected on persons over 70 years of age; however, starting in late 2021, all persons over 60 years of age will be included in the register. This lower registered age for statistical purposes, promoted by NPM, is relevant, given that detention is associated to accelerated ageing<sup>10</sup>. NPM welcomed the fact that the register of Alcázar de Centro Penitenciario Alcázar de San Juan (Ciudad Real) is more comprehensive than the one that is regulatorily foreseen, as it incorporates age brackets and vulnerability variables. Consequently, the Mechanism recommended changing the official register model followed by the Secretaría General de Instituciones Penitenciarias in order to cover these issues.
- **Accessibility of facilities and accommodation the elderly.** During its visit to Centro Penitenciario Alcázar de San Juan, NPM noted that progress had been made in making facilities more accessible, such as the installation of a lift and showers in all cells.

<sup>8</sup> For reference purposes, of interest for NPM is the 2022 *Report of the Independent Expert on the enjoyment of all human rights by older persons* [[A/HRC/51/27](#)].

<sup>9</sup> Council of Europe, *Prisons and Prisoners in Europe 2022: Key Findings of the SPACE I survey, 2023*, page 5.

<sup>10</sup> The conclusions of the recent *Prisons and Health* report, issued by the European Regional Office of the World Health Organisation (WHO), show that detainees are more likely to experience accelerated ageing, develop chronic diseases and disability approximately 10 to 15 years earlier than the rest of the population.



Regarding the accommodation of older persons, NPM noted that there was a tendency to place them in the infirmary or in special units (outside regular wards), as a protective measure without assessing other individual needs. NPM found that a decision to internally separate the elderly is of utmost importance in preventing ill-treatment and age-related discrimination, without entailing automatic segregation.

- **Development of general and socio-educational intervention aimed at senior citizens.** There are valuable benefits in having specific activities and workshops for older persons deprived of their liberty. NPM has repeatedly pointed out the risk involved in having activities carried out by third sector personnel, as it is impossible to guarantee their continuity over time, which particularly affects older persons. This is an issue that was noted in all three centres visited. NPM recommended that measures be adopted to guarantee a continuous intervention with older persons and thus ensure that physical, psychological and cognitive progress is not affected by programme interruption. NPM has also been stressing the importance of motivating persons deprived of their liberty to participate in these programmes, without prejudice to their voluntary nature. Since a lack of initiative is greater amongst the elderly, NPM also recommended encouraging their participation.

### ***Specific project on the impact and effects of long-term imprisonment in the penitentiary system***

As stated in the 2022 report, this is a project that focuses on two types of prisoners: (i) those whose stay in prison has been prolonged as a result of incidents that have occurred during their sentence and, (ii) those sentenced to life imprisonment subject to review, in whose case long-term imprisonment is a result of serving the highest sentence under Spanish law.

The Ombudsman, in its capacity as the National Preventive Mechanism (NPM), considers it essential to design public policies aimed at preventing the psychosocial effects of imprisonment, such as institutionalisation and stigmatisation<sup>11</sup>. The project began as part of the Secretaría General de Instituciones Penitenciarias' activities, with a visit to four different kinds of prisons located in Madrid.

As of 31 August 2023, 3.27% of the inmate population in Madrid prisons had been serving their sentence for more than 15 years without interruption; of these, 32.22%

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<sup>11</sup> [\[CPT/Inf\(2001\)16](#), paragraph 33.]

had been in prison for the first time more than 30 years ago<sup>12</sup>. To note is that, according to Council of Europe statistics for 2022, Spain is one of the countries with the longest average length of detention, at 20.5 months, compared to the European average of 11 months<sup>13</sup>.

NPM requested information from the Secretaría General de Instituciones Penitenciarias for access to all data records available, their format and technical conditions. It also formulated Recommendations aimed at improving the filing and organisation of documentation held in each inmate's physical file and their due diligence in the penitentiary computer system (SIP).

In general, it was observed that a significant percentage of those who have been in prison the longest have had their sentences extended due to committing crimes in unsuccessful attempts to re-enter society<sup>14</sup>. Access to release or parole, without adequately addressing the problem of drug addiction, is counterproductive. The fact that there is no shared database on the implementation of therapeutic programmes, their performance and results, as well as the constant relocation of inmates, typical of this kind of prisoner, result in inaction in any treatment initiated.

NPM recommended that the computer system include an alert mechanism to facilitate the identification of eligible cases, as well as registration in this same system of studies and proposals made in each case, thus guaranteeing their due documentation, consultation by competent legal staff and supervision by the central services.

The Ombudsman considers that ill-treatment is also prevented by duly informing prisoners of their sentence, which is of the utmost importance when dealing with persons with supervening convictions. Following our visit to the Centro Penitenciario Puerto II (Cádiz), where prisoners in pre-trial detention was examined, NPM recommended coordinating the provision of a file to each inmate, not only upon request, but also when there is evidence of a change in dates with an impact on imprisonment, processing its delivery. Although the Secretaría General de Instituciones

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<sup>12</sup> These data were extracted from the request for information made to the Secretaría General de Instituciones Penitenciarias in the file associated with visits to penitentiary centres in the Autonomous Community of Madrid.

<sup>13</sup> Council of Europe, *Prisons and Prisoners in Europe 2022: Key Findings of the SPACE I survey*, page 7.

<sup>14</sup> It is worth highlighting the *Study of prison recidivism referring to the period 2009-2019*, carried out by the General Penitentiary Administration, published in 2023. Nevertheless, progress is still necessary when analysing variables that may be interconnected with recidivism (such as the completion of previous intervention programmes, the type of criminal offence, the influence of social support, etc.).

Penitenciarias considers this Recommendation unnecessary, witness statements render it advisable.

With regard to prisoners serving a life sentence subject to review, as of 10 August 2023, there were 35 persons in prisons ascribed to the Secretaría General de Instituciones Penitenciarias. In 2022, this General Secretariat reported that it had given instructions to the prisons to correct the shortcomings reported by NPM in relation to the spreadsheets applicable to these prisoners, and that it was in the process of adapting the computer system to their inherent specialities. However, during its visits carried out in 2023, NPM noted that the criminal, procedural and penitentiary report, often used as a technical file, did not reflect new sentencing dates, and that the spreadsheets were inaccurate, as they failed to take regulatory provisions into account.

This penalty is undefined as far as final release is concerned, but other dates of sentencing value may be determined in accordance with the law (Articles 36.1, 78 bis and 92 of the Código Penal).

Persons sentenced to this penalty constitute a particularly vulnerable group due to multi-causal factors. For this reason, NPM recommended a specific action protocol for persons sentenced to life imprisonment subject to review, with the aim of adapting their penitentiary treatment and sentencing regime, as well as devising preventive strategies to deal with situations of suicide risk, derived from the seriousness of the crime committed and the specialities inherent to this penalty.

#### **Other particularly vulnerable groups**

- **Foreign prisoners.** Deprivation of liberty and migration are intersecting and mutually dependent factors, placing foreign prisoners at a greater risk of discrimination, mistreatment and violation of their rights. To note, in 2023, is the *Memoria de la Fiscalía General del Estado*, which expressly referred to this issue, taking up what was stated by some territorial prosecutor's offices in their reports regarding the specific vulnerability of foreign prisoners<sup>15</sup>.

A language barrier continues to hinder the effectiveness of their rights, insofar as there is even no guarantee that all prisons have an information leaflet on inmate rights in the languages most widely used. Where it exists, there is no way of verifying that this reaches each inmate. This extremely important issue can no longer be left to each prison's devices. For this reason, in 2023, NPM insisted to the Secretaría General de Instituciones

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<sup>15</sup> *Memoria de la Fiscalía General del Estado* [General Public Prosecutor's Office Annual Report], chapter V. Some issues of interest subject to specific treatment, Point 6. Penitentiary surveillance, page 1,182.

Penitenciarias on the need to address this issue, in particular by devising a way to verify delivery to inmates, as is the case at the Centro Penitenciario Alcázar de San Juan (Ciudad Real).

In Cataluña prisons, although the Administration has stated that it will work on this issue to ensure that foreign inmates receive information, this matter is still pending since the Committee for the Prevention of Torture visited these prisons in 2018<sup>16</sup>.

During its 2022 visits, NPM found that simultaneous interpretation by phone, a system it had been insisting on for years, was already available in prisons ascribed to the Secretaría General de Instituciones Penitenciarias. The problem that remained was its infrequent use since prison staff and inmates were unaware that it was available, or where the system was specifically installed.

During the visits, especially to prisons in Cataluña, it was noted that there was a high percentage of illegal foreign inmates imprisoned without parole. In this regard, NPM's 2022 report noted the high percentage of mechanical restraints applied to young Moroccans, and therefore requested information on the measures proposed to reduce this practice in persons who were more likely to receive such treatment.

The cultural factor must be taken into account in any treatment programmes. On this issue, the Fiscalía Superior de Andalucía [Public Prosecutor's Office], in its annual report, emphasised that the vulnerability of foreign inmates was addressed from two essential cornerstones: education and socio-occupational integration. It stated the need to intensify educational intervention with foreigners, highlighting the importance of counselling and accompaniment for their reintegration, which is currently being carried out by the third sector.

One obstacle is usually the difficulty that foreigners encounter in legalising their status in Spain, which increases when they are in prison and prevents their re-education and social reintegration. Their illegal status conditions the granting of prison permits or benefits and, on many occasions, also prevents their expulsion. In this line, the Fiscalía Superior de Murcia [Public Prosecutor's Office] explained in its report that it was difficult to access treatment and reintegration options, foreseen in Spanish law.

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<sup>16</sup> Response of the Spanish Government to the CPT's report following its 2018 visit [[CPT/Inf \(2020\)6](#), page 45].

- **Persons in pre-trial detention.** Pre-trial detention in Spain is regulated in the Ley de Enjuiciamiento Criminal, Title VI, Chapter III (Articles 502 to 519). At present, this legislative framework needs to be improved in accordance with the case-law laid down by the European Court of Human Rights and the Tribunal Constitucional.

The European Commission issued a recommendation in late 2022 on the procedural rights of suspects or accused persons held in pre-trial detention and on the material conditions of their detention<sup>17</sup>. It called on Member States to reduce the use of pre-trial detention and to ensure that persons are brought to trial within a reasonable period of time. NPM will monitor developments in the implementation of a Recommendation issued by the European Commission.

According to the latest statistics published by the General Council of the Judiciary, at 31 December 2022, there were 9,025 persons in pre-trial detention in Spanish prisons. The Ombudsman, acting as NPM, focused on this issue during its visit to the Puerto II Penitentiary Centre (Cádiz), where pre-trial detainees account for around 70% of the total prison population.

Following this visit, proceedings were initiated with the Fiscalía General del Estado. The latter has endorsed the suitability of some of the provisions of the Draft Bill of the Ley de Enjuiciamiento Criminal (ALECrim), such as periodic ex officio control of pre-trial detention, a national commission to monitor pre-trial detention, and mitigated detention in some exceptional circumstances (advanced age, pregnancy or illness, among others), where the detainee requires less stringent conditions.

The files examined during our visit to Centro Penitenciario Puerto II (Cádiz) showed that in a significant number of cases pre-trial detention had been exceeded beyond the initial maximum provided for by law, inevitably due to backlog in the courts. The conclusions that NPM addressed to the Secretaría General de Instituciones Penitenciarias, following its visit to this prison, were aimed at improving the situation of pre-trial detainees in prison, as well as coordination with the courts to ensure respect for their legal rights and guarantees. In these Recommendations, NPM emphasised the importance of welcoming units and specialised professionals at the detention and treatment office, highlighted in Rule 13 of the aforementioned European Commission Recommendation.

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<sup>17</sup> Commission Recommendation (EU) 2023/681 of 8 December 2022 on procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions.

The link between degrees of punishment and prisoner status may be detrimental for someone being held on remand, as it prevents or paralyses his/her access to legal institutions for treatment and social reintegration. During our visit to the Centro Penitenciario Puerto II, NPM detected cases of inmates who, after serving more than half of their sentence, had not had any contact with the outside world due to extended pre-trial detention. The Fiscalía General del Estado policy is to assess the appropriateness of pre-trial detention in the new lawsuit, depending on the specific circumstances of the case, which include being in prison for another conviction<sup>18</sup>.

Although the close relationship between pre-trial detention and poverty is unquestionable, prison regulations prioritise prisoner status over that of pre-trial detainees for prison employability. It is also more difficult to access occupational and therapeutic activities inside the prison, which the law deems compatible with pre-trial detention status. The "Survey on health and drug use in the inmate population in Penitentiary Institutions in Spain", published in 2022, concludes that drug use is higher amongst pre-trial detainees than in convicted prisoners. During our visit to Centro Penitenciario Puerto II, NPM examined 14 individualised intervention models for pre-trial detainees, of which 12 reflected the need for a detoxification plan. There are therapeutic-educational units at 24 prisons, in three the percentage of pre-trial detainees in this area is zero and in five the percentage is less than 5%.

### 3.3 PLACES AND CENTRES FOR THE DETENTION OF FOREIGNERS

To start, please note that the information reported in this chapter may be complemented with other headings of the Ombudsman's annual report. Specifically, these refer to facilities for rejected applicants and those seeking international protection, temporary care centres and detention centres for foreigners (chapter 4 of section III), and human trafficking (chapter 6 of section III). These issues are addressed from a reactive and necessarily complementary perspective.

#### 3.3.1 Facilities for rejected applicants and those seeking international protection at Madrid-Barajas Adolfo Suárez Airport

Throughout 2023, the National Preventive Mechanism (NPM) continued its actions initiated in 2022 ([visits 36/2022](#) and [38/2022](#)) with the Dirección General de la Policía and Aeropuertos Españoles y Navegación Aérea (AENA) [Spanish Airports and Air

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<sup>18</sup> Current conclusions of meetings of prison supervision prosecutors 2011-2023, point 74.

Navigation], mainly seeking proper maintenance of their facilities, the assignment of new lounges and ensured communication, as well as adequate information on rights. All of these aspects are essential to guarantee basic rights and to prevent incidents.

However, this year has witnessed a unique emergency situation at border facilities, due to progressively increasing arrivals of persons seeking international protection. This situation, which began in June and continued throughout the year, led the Ombudsman to prioritise its reactive intervention briefly reported here.

In the two visits carried out in July and December, serious problems were disclosed due to defective habitability in these premises. Worth noting were inadequate mattresses and the lack of sufficient bunk beds. Several safety features for evacuation, such as emergency lights, appeared to be inoperable and there was no evidence of an evacuation plan. Finally, the toilets were found to be badly damaged and in unsanitary conditions.

In December, there were 240 people, including 7 families and 11 minors, in the two lounges set up for applicants of international protection and rejected applicants. At that time, 72 persons were awaiting an interview to formalise their application, after indicating their wish to apply for international protection in Spain. Occupants were overcrowded and the poor condition of the lounges —noted in July— had not improved.

In addition, overcrowding of the facilities led to the use of communal areas for overnight stays, to the detriment of privacy and family life, a matter of particular concern in the case of minors.

The provisions of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection apply to all these persons, who must be guaranteed dignified and adequate conditions, as well as protection for their physical and mental health and family life.

As a result, the Ombudsman formulated various Suggestions. In early 2024, a personal visit was paid to the lounges, where once again concerns were raised to the different competent authorities, formulating new [Resolutions](#).

At the date of this report, the situation has improved, but proceedings are still ongoing. The outcome will be reported in the next annual report.

### 3.3.2 Temporary care centres for foreigners

In 2023, the competent Administration did not pass any regulations for these centres, despite the fact that the National Preventive Mechanism (NPM) insisted on the need for such regulation. From the actions carried out with the Administration, it is clear that

there are no plans to address this issue right away. In this regard, the Dirección General de la Policía [General Police Directorate] considers Instruction 4/2018 sufficient, issued by the Secretaría de Estado de Seguridad [Secretary of State for Security], on the Protocol for action in custody areas of detainees to be followed by Fuerzas y Cuerpos de Seguridad del Estado [Law Enforcement Agencies].

NPM has been demanding an adequate regulation of these centres given the special circumstances of accommodated migrants, and recommended the creation of a liaison officer at each one. The Dirección General de la Policía stated that this task is assigned to the Operational Section of the Brigada Provincial de Extranjería y Fronteras [Provincial Brigade for Foreigners and Borders]. However, the Mechanism found that there is no defined liaison officer and that different brigades are involved.

The situation in the Autonomous Community of the Canarias, with the arrival of almost 40,000 illegal immigrants during the year, gave rise to actions by the Ombudsman and visits to the Tenerife and El Hierro centres, which are described in section 4.1 of the annual report.

NPM visited Centro de Atención Temporal de Extranjeros de Crinavis [temporary foreigners centre] in San Roque, Cadiz ([visit 47/2023](#)) and continued with the processing of files initiated further to visits carried out in 2022 ([visits 39/2022](#), [40/2022](#), [41/2022](#), [42/2022](#), [56/2022](#), [61/2022](#)).

The supervisory cornerstones analysed are highlighted under the following headings.

### **Facilities**

Centre facilities are heterogeneous and, in some cases, lack basic furniture for people to sit or sleep in dignified conditions. For this reason, the National Preventive Mechanism (NPM) made a Recommendation to the Administration to design a prototype temporary care centre for foreigners, to meet the conditions of detention required by the European Committee for the Prevention of Torture (CPT). These conditions include furnished accommodation; adequate lighting (including daylight); ventilation and heating; a clean bed, mattress and blankets; and access to a shower and hot water.

The Mechanism formulated Suggestions to adapt the Centro de Atención Temporal de Extranjeros in Cartagena [temporary foreigners centre] to the material and detention conditions required by the Committee for the Prevention of Torture, ensuring that cell ceilings cannot be used to inflict self-harm.

The Centro de Atención Temporal de Extranjeros de Crinavis, in San Roque (Cádiz), is made up of warehouses assigned by the port authority. Adjacent



prefabricated modules have been installed for the housing of migrants. However, these facilities have not been used to date due to inadequate fire extinguishing systems. A commissioning date is yet pending.

NPM found that in these centres there is no intercom system to communicate with police officers and no multi-purpose room. The partitioning of men's and women's areas is fragile and there is no space outside for migrants to relax. It therefore recommended to the Dirección General de la Policía that measures be taken to enable migrants to exercise outdoors and that these areas be appropriately equipped.

The response of the Dirección General de la Policía to NPM's Recommendation to install sound call systems and an automatic cell door opening system in all centres was favourably received, although it is subject to budgetary restrictions.

### ***Registration, complaints and suggestions logs***

For years, NPM has been pointing out the need for these centres to have register books and complaint and suggestion logs. The latter should be made available in different languages. This year, Recommendations in this regard have again been made.

### ***Withdrawal of personal phones***

NPM considered that migrants admitted to these centres should be allowed to use mobile devices. The Dirección General de la Policía, in the context of proceedings related to the Centro de Atención Temporal de Extranjeros de Málaga [temporary foreigners centre], stated that at this centre the use of mobile phones and chargers is allowed upon admission. However, the Recommendation made to this effect—that this decision be implemented in all centres—was not accepted for security reasons.

### ***Storage of food***

The Dirección General de la Policía did not accept a Recommendation to install a proper storage and preservation system for food. It claimed that food is kept in a unit and well preserved. The Recommendation was made after the NPM visiting team directly confirmed that preservation was inadequate.

### ***Lawyers and interpreters***

NPM highlighted the importance of interviewing migrants upon arrival in order to detect the potential need for international protection and possible victims of human trafficking. The Mechanism formulated a Recommendation to the Dirección General de la Policía to correct the shortcomings detected in legal counsel provided to migrants, establishing

a system that ensures an adequate number of male and female interpreters, in order to avoid discrimination based on gender and language of origin.

These professionals should be specifically trained in assisting vulnerable groups, with a gender focus and adaptation to children and adolescents.

### **Medical assistance**

The Dirección General de la Policía did not accept NPM's Recommendation that the protocol for medical care upon the arrival of migrants should include a thorough medical examination to detect risks of self-harm and transmitted diseases. The Dirección General de la Policía considered that the assistance provided by the Red Cross upon disembarkation is sufficient. However, it did accept the Suggestion to provide the Centro de Atención Temporal de Extranjeros de Cartagena with a first-aid kit. Nor did it accept the NPM's Recommendation to guarantee a face-to-face telephone or telematic translation service to facilitate communication between healthcare staff and migrants. The Dirección General de la Policía claimed that it has outsourced a company for this purpose.

In addition, NPM made a Recommendation to the Consejería de Salud de la Region of Murcia [Department of Health] to instruct medical staff on the completion of personal injury reports.

### **3.3.3 Detention centres for foreigners**

Throughout 2023, 2,087 foreign nationals were admitted at the six centres that remained open. The Tenerife centre was closed for construction work, as was the Madrid centre, albeit temporarily, and the Valencia centre was partially closed.

The National Preventive Mechanism (NPM) has noted a lack of uniformity in centre operation. Its supervision has led to the conclusion that some issues directly affecting inmates are dealt with differently, depending on the centre where they are detained, which, in the Ombudsman's opinion, should be corrected as soon as possible.

### **Installations and video-surveillance**

The Dirección General de la Policía reported, in response to the NPM Recommendation, that it had taken steps to install video-surveillance cameras and a video and audio recording system in the locker room at the pre-admission area of the Centro de Internamiento de Extranjeros de Murcia [detention centre for foreigners] ([visit 55/2022](#)).

Video-surveillance systems are used to uphold guarantees for both persons deprived of their liberty and civil servants. Therefore, NPM considers that images of

video-surveillance systems should be kept for three months. This criterion was not accepted by the Administration, which applies the period contained in Instruction 4/2018.

### ***Inmate security***

During our visit to the Centro de Internamiento de Extranjeros de Algeciras (Cádiz) [detention centre for foreigners], the National Preventive Mechanism (NPM) team was informed that an inmate (already expelled at the time) had been mistreated by a group of people of another nationality. The assaulted citizen, who suffered injuries, expressed his willingness to report the aggression to the court, but the custody officers did not transfer him to do so. According to the information available to NPM, the police officers instructed him to submit a written report describing the facts to the judge, which he did, but the outcome of the complaint is not yet known. The case is still being processed in order to know which protocol is being applied by the police in these cases.

The difficulty of ascertaining ill-treatment is reflected in actions taken by the Ombudsman in two complaints of ill-treatment at the internment centres for foreigners in Madrid (in January, shortly before their closure) and Murcia.

### ***Protocol for complaints and police reports of abuse***

The National Preventive Mechanism (NPM) informed the Dirección General de la Policía that the protocol for handling complaints and police reports of abuse should be applicable to all detention centres for foreigners, establishing channels for effective investigation and accountability.

In the above-mentioned *Concluding observations on the seventh periodic report of Spain*, the Committee Against Torture was also concerned about reports on the limited processing by the Ombudsman's of complaints concerning police actions.

The Committee considers that the State should ensure that Fuerzas y Cuerpos de Seguridad del Estado [law enforcement agencies] continue to receive training on the absolute prohibition of torture, on the detection and effective investigation of cases of torture and ill-treatment and on bringing them to the attention of the courts.

For all these reasons, the NPM insisted once again on the Recommendation that a protocol for handling complaints be drawn up, including an unalterable register of allegations, complaints and reports of ill-treatment.

### ***Communications***

The National Preventive Mechanism (NPM) has on several occasions suggested that visiting rooms remain open to enable contact between the prisoner and his/her visitor.

In some cases, such as at Murcia and Algeciras (Cádiz) centres, there is a slit in one or two of the visiting rooms to allow an exchange of documents. The files requesting fully-open rooms are currently being processed.

The Committee for the Prevention of Torture considers that visiting rooms should allow detained migrants to meet in open conditions with family and friends (paragraph 5, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment [[CPT/Inf\(2017\)3](#)]).

There is no uniform approach to telephone communications. Thus, at some prisons, inmates are allowed to use mobile telephones only whilst outside in the courtyards, while in others they are allowed inside the establishment, although their use is prohibited in prison cells. Not all centres have a public telephone, which prompted the Ombudsman's intervention, and the installation of a public telephone is pending at the Centro de Internamiento de Extranjeros de Las Palmas [detention centre for foreigners].

Likewise, and after NPM verified during its visit to the Centro de Internamiento de Extranjeros de Algeciras that inmates are not informed of the possibility of forwarding their complaints to the Ombudsman, as established in Article 19.1 of Real Decreto 162/2014, of 14 March, it issued a Reminder of Legal Duty to the Dirección General de la Policía to ensure compliance with this precept.

### ***Medical assistance***

At the Centro de Internamiento de Extranjeros de Algeciras, the National Preventive Mechanism (NPM) found that the system used for requesting medical care was inadequate, without the possibility of determining the number of requests or of those actually assisted, due to the absence of records. The NPM therefore made a Recommendation for a detailed registration system of requests for medical care, made accessible to custodial and medical staff.

NPM has not been able to ascertain that the centre's health service completes the medical examination required by law on foreign nationals to be repatriated, in order to check whether they are fit to travel (fit to travel certificate). For this reason, it issued a Reminder of Legal Duty to ensure not only issuance of the certificate, but also completion of this medical examination.

### ***Personal injury reports and lack of doctor-patient confidentiality and medical records***

There was still a language barrier in communications between medical staff and inmates. At the Centro de Internamiento de Extranjeros de Valencia [detention centre

for foreigners], other detainees provide assistance during medical consultations. NPM verified the use of automatic translation systems in some medical records. At the Centro de Internamiento de Extranjeros de Algeciras (Cádiz) [detention centre for foreigners], however, there are two Arabic interpreters in the mornings and one English interpreter once a week. It was reported that external telephone translation services are used when necessary.

With regard to confidentiality, the Dirección General de la Policía stated that in the Centro de Internamiento de Extranjeros de Valencia, a medical consultation is carried out with the door open or closed, as decided by the doctor. At the Algeciras centre, it is not even possible to close the door (currently broken), which prompted NPM to formulate a Suggestion in this regard.

Regarding personal injury reports, the Dirección General de la Policía stated that the medical service of the Valencia centre forwards these reports to the Juzgado de Guardia [Duty Court] and to Juzgado de Instrucción [Examining Magistrate's Court] Nº 3 in Valencia, in charge of supervising the inmate's stay, and gives a copy to the person concerned. During our visit, the information received by NPM did not match. Medical staff demanded improvements in computer resources, a printer to guarantee report confidentiality, better internet connection, a secure email account and a systematic analysis of all inmates to rule out infectious and contagious diseases.

Following a review of the clinical documentation kept at Centro de Internamiento de Extranjeros de Algeciras (Cádiz) and interviews with medical staff, NPM found that the way in which to draw up injury reports had been misinterpreted. Thus, when injuries are not attributed to an (accidental) assault, they are included in the medical file, but no report is issued. Nor is a report issued if there is no physical injury, even if the inmate reports that he/she has been the victim of an assault.

NPM issued a Reminder of Legal Duty to the Dirección General de la Policía, emphasising that a personal injury report must be drawn up whenever the prison's medical service assists an injured person or processes a referral (even if there are no injuries). All these cases must be forwarded to the duty court, not just those constituting a potential criminal offence in the doctor's opinion.

Medical records at the Centro de Internamiento de Extranjeros de Algeciras are not digitalised, without the possibility of printing out lists or logs on specific issues. This seriously hinders both staff work and any inspection service.

NPM detected the same problem at the Valencia centre, leading to a Suggestion that the digitisation of medical records be an essential requirement included as a contractual clause. The new contract signed with an outsourced company has resolved the matter.

**Personal inmate identification**

In response to the Recommendation made to avoid treating inmates exclusively by prison number assigned, the Dirección General de la Policía replied that the Security Service of the Centro de Internamiento de Extranjeros de Valencia (which was following this practice) has been instructed to address people by name. However, in specific cases where names are difficult to pronounce, the prison number assigned is used.

**Information on rights and identification of agents**

The Dirección General de la Policía reported in response to the Suggestion made by the Mechanism, that the Valencia Detention Centre for Foreigners already had informative leaflets on prisoner rights and duties in several languages. It also reported that security service staff are aware of the need to display their identification badge. However, the prison management issued instructions to ensure compliance with this obligation, reminding officers of possible disciplinary action in the event of non-compliance.

**3.3.4 Forced repatriation by air****Frontex funded flights**

In 2023, the National Preventive Mechanism (NPM) monitored Frontex repatriation operations ([visit 21/2023](#)), between 28 and 31 March, bound for Colombia and the Dominican Republic. A total of 72 Colombian and 13 Dominican nationals were repatriated.

During the documentation review, NPM found that 43 citizens did not have a fit to travel document, as they had just completed a 72-hour arrest, i.e. without imprisonment. The Mechanism has repeatedly highlighted the need to establish supervisory measures in order to ensure that travellers are fit to fly. However, no progress has been made on the matter.

NPM found, once again, that custody records were not on file for all repatriated persons. This matter, nonetheless, appears to be resolved as instructions were issued in compliance with NPM's Recommendations. Therefore, it again recommended that effective measures be adopted to ensure that all custody forms are filled in until citizens are handed over to the destination authorities. The Dirección General de la Policía will reiterate instructions in this regard.

Complaints collected during interviews with repatriated persons indicated two main issues: (i) difficulties in performing their bodily functions during the expatriation trip, and (ii) the precarious conditions encountered when dropped off at a strange city. The

Dirección General de la Policía affirms that during transfers, travellers are treated with dignity and respect, but the dangerousness of the expelled foreigner is also a factor when deciding whether or not to make stops.

The Recommendation made in 2020 and reiterated in 2023 —the medical team assisting each team should have a template injury report— was not accepted. NPM recommended this measure after noting that injuries sometimes occur if force is used by officers to get an incident under control.

***Flights chartered by the Unidad Central de Expulsiones y Repatriaciones (UCER) [Central Unit for Expulsions and Repatriations], funded by the Spanish State.***

In 2023, the National Preventive Mechanism (NPM) received information on completed flights, which is an improvement on previous years.

NPM was on board in one of these flights ([visit 28/2023](#)). The operation was carried out in two phases: the first was departure from Madrid-Barajas airport to Gran Canaria, after a stopover in Murcia, and the second was completed on a commercial flight. Officers from the Policía Nacional Corps took part in this second stage. As part of its involvement, facilities and activity in the premises used by the UCER at Madrid, Murcia and Las Palmas airports were supervised.

Fourteen persons were repatriated to Morocco, all of them male, eight from the Centro de Internamiento de Extranjeros de Murcia [detention centre for foreigners], one from the Centro de Internamiento de Extranjeros de Valencia, one from prison and four who had completed a 72-hour arrest. The usual reason for expulsion indicated in the forms was their illegal resident status.

Since the expelled persons were not advised of informative leaflets indicating their right to report any violation of fundamental rights, a Recommendation was made to this effect indicating that the leaflet be placed on the seats of the aircraft.

NPM found that police officers were not wearing identification badges on their reflective waistcoats at all times, and a Reminder of Legal Duty was issued to the Dirección General de la Policía to ensure compliance with the provisions of Instruction 13/2007 of the Secretaría de Estado de Seguridad [Secretary of State for Security], regarding the use of personal identification numbers on uniforms of Law Enforcement officers.

## 3.4 POLICE AND COURT CELLS

### 3.4.1 NPM actions

The National Preventive Mechanism (NPM) visited a total of thirteen premises: four pertaining to the Policía Nacional, three to the Guardia Civil, two to the Policía Foral de Navarra (in charge of supervising the Central in Pamplona and Tudela) and three court cells (in Plaza Castilla in Madrid, the Palacio de Justicia de Pamplona and Soria).

NPM also carried out a follow-up visit to the Centro de Apoyo a la Seguridad (CAS) ([visit 37/2023](#)), pertaining to the Madrid-Salud municipal administration, where it monitored the conditions in which healthcare and medication were provided to detainees, mostly arrested by the Policía Nacional.

The following are details of the premises visited:

#### Policía Nacional:

- Comisaría de Algeciras, in Cádiz ([visit 48/2023](#)): Incidental visit
- Comisaría Distrito Madrid Fuencarral-El Pardo ([visit 11/2023](#)): First visit
- Comisaría Provincial de Málaga ([visit 5/2023](#)): Incidental visit
- Comisaría Provincial de Soria ([visit 17/2023](#)): Follow-up visit

#### Guardia Civil:

- Comandancia de Navarra, Pamplona ([visit 40/2023](#)): Follow-up visit
- Comandancia de Soria ([visit 18/2023](#)): Follow-up visit
- Puesto de El Burgo de Osma, Soria ([visit 19/2023](#)): First visit

#### Calabozos judiciales [Court cells]:

- Juzgados de Plaza Castilla, in Madrid ([visit 1/2023](#)): Follow-up visit
- Palacio de Justicia de Soria ([visit 16/2023](#)): First visit
- Palacio de Justicia de Pamplona ([visit 41/2023](#)): Follow-up visit

#### Policía Foral de Navarra:

- Comisaría Central de la Policía Foral de Navarra ([visit 38/2023](#)): Follow-up visit
- Comisaría Local de la Policía Foral de Tudela ([visit 39/2023](#)): Follow-up visit.



### 3.4.2 Supervision cornerstones. Challenges and progress

#### ***Police facilities and vehicles used to carry detainees***

The conditions of custody tasks at the facilities visited is an essential risk factor that the National Preventive Mechanism (NPM) has been monitoring since it began its activities.

On previous visits, NPM found that the cells' condition made it advisable to recommend their closure, due to failing to meet the necessary minimum material conditions. The Policía Local de Almansa (Albacete), visited in 2022, accepted their recommended closure. The Policía Local de Santiago de Compostela (A Coruña) is awaiting an assessment of its closure by the city council, given that adjustment works are not feasible in the short term due to its location inside a specially protected building ([visit 53/2021](#)). The Dirección General de la Policía indicated that planned works for the Comisaría de Distrito Madrid Moncloa-Aravaca are conditioned by the building's architectural layout, which does not allow any alterations unless the building is previously refurbished for this purpose ([visit 28/2022](#)).

NPM made a Recommendation to the Gobierno de Navarra to ensure that the construction of new Comisaría Central de Pamplona contemplate a custody and detention area in line with constantly reminded criteria. These criteria should be taken into account when refurbishing existing facilities, as well as in new constructions.

Lack of adequate lighting, allowing detainees to read, is still the object of resolutions. NPM's policy is that cells have natural lighting, which was endorsed at the Comisaría Foral de Tudela (Navarra) and at the Palacio de Justicia de Soria.

With regard to air conditioning and ventilation systems, NPM verified that these had been improved, although occasionally other measures have been necessary for adequate operation, such as the cells of Plaza Castilla, in Madrid.

The installation of visible clocks in custody areas ensures that detainees are able to keep track of time. The Secretaría de Estado de Seguridad [Secretary of State for Security] replied to the Recommendation made in this regard, arguing that available clocks could compromise security requirements and that the current layout of many facilities does not allow them. NPM made a Recommendation to the Government of Navarra along the same lines, which is pending a response.

NPM continues to check hygienic and sanitary conditions in order to ensure that these are adequate, even if there is shorter deprivation of liberty compared to other types of detention centres.

The Secretaría de Estado de Seguridad accepted the Recommendation made to guarantee that showers are actually used by detainees and the provision of towels and

soap. Likewise, Puesto de El Burgo de Osma (Soria) was fitted with disposable soapy sponges, following the visit made by the Mechanism.

As in previous years, NPM still verifies that clean, single-use blankets are provided, as well as fireproof mats.

The existence of sound bell devices inside the cells, especially in those without video-surveillance, is essential to guarantee communication between detainees and policing staff, in situations compromising their physical integrity.

With regard to vehicles used to carry detainees, NPM's approach is that driving should always be carried out in a safe and secure manner, as set out in the guide published by the Committee for the Prevention of Torture ([CPT/Inf\(2018\)24](#)). NPM made a Recommendation to the Directorate General of the Guardia Civil in this regard, which is pending a response.

### ***Human and material resources***

Adequate staffing has an impact on the efficiency and effectiveness of detention and custodial tasks within the police, as well as on the treatment dispensed to detainees.

For this reason, the number of staff must be proportional to the number of arrests made and the number of people admitted to custody and detention areas, in order to avoid compromising the safety of detainees. In some cases security functions are combined with custodial work, as well as adequate registration of events in the chain of custody, which is particularly important for prevention. Likewise, the presence of female police staff conditions an effective approach to the deprivation of liberty at these facilities.

NPM still ascertained that not all Policía Nacional and Guardia Civil personnel have the necessary means to perform their duties properly and safely.

The availability of anti-theft holsters for weapons is essential for security and retention, in possible incidents, preferably for staff assigned to citizen security services. During the visit to the Comisaría Foral de Pamplona and Tudela, the feedback received was that this principle was being followed.

On the other hand, the Recommendation made to the Secretaría de Estado de Seguridad [Secretary of State for Security] regarding the availability of individual and inalienable bulletproof vests for Law Enforcement Agents ([visit 59/2022](#)) is awaiting a response.

### ***Dignity of detainees***

When it is necessary to carry out searches involving a full body search, detainees should be provided with some form of clothing so that they can cover themselves, as the measure is invasive and potentially degrading.

Most of the facilities visited lack this clothing, as in the case of the Comisaría Provincial de Soria or the Comisaría Foral de Tudela (Navarra).

In turn, according to the aforementioned *Concluding observations on the seventh periodic report of Spain* ([CAT/C/ESP/CO/7](#)) issued by the Committee Against Torture, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, body searches must be limited to what is strictly necessary and must be proportional to the objective pursued, guaranteeing strict control of applicable rules.

Likewise, NPM insists on the obligation to record both frisking and full body searches in the custody sheets of detainees.

The permanent availability of clothing in police facilities for detainees who lack garments or who need them during their stay in the cells, to include in the event of release or a court appearance, continues to be a challenge for NPM.

NPM still observes that detainees continue to be deprived (prior to being placed in custody) of their prescription glasses. The various administrations did not accept the recommendations made in previous years, prioritising security over the guarantee of the perception of integrity, security and dignity of these persons.

All the resolutions formulated regarding the removal of fixed elements (such as shackles) in police stations that allow persons deprived of their liberty to be handcuffed were accepted, which represents progress in guaranteeing the dignity of persons who are held in already secured spaces, where these means are unnecessary.

In turn, collective toilets inside the cells are inadequate. This consideration was made by NPM to the Gobierno de Navarra, following a visit to the Comisaría Central de la Policía Foral, in Pamplona.

### ***Guarantee schemes***

Since Instruction 1/2022 of 10 February issued by the Secretaría de Estado de Seguridad [Secretary of State for Security] was passed, creating the National Human Rights Guarantee Office, integrated into the Inspección de Personal y Servicios de Seguridad (IPSS) [Inspectorate of Security Personnel and Services], the National Preventive Mechanism (NPM) has been monitoring the procedure for collecting and recording the Office's activity, regarding complaints collected through the Computer

Application of the National Human Rights Plan, as a unique statistical repository in the matter.

In line with the content of the oft-repeated *Concluding observations on the seventh periodic report of Spain* ([CAT/C/ESP/CO/7](#)) issued by the Committee Against Torture, Convention Against Torture, NPM has stressed the need for the Administration to reinforce the mandate of this National Human Rights Guarantee Office, so it may independently investigate allegations of police abuse.

Proper completion of a detainee custody sheet is another preventive element that detects risk situations. NPM continued to ascertain that detainees were incorrectly registered at police facilities, from the time of arrest until the person is brought before a judge or released, and made several Recommendations in this regard.

During our visit to the Comisaría Central de la Policía Foral de Navarra in Pamplona, NPM noted that informative leaflets for detainees are displayed in all cell windows, which is a significant step forward. Furthermore, in accordance with the Recommendation made, the need for this procedure is included in its regulations on the custody of detainees (visit 38/2023).

NPM considers it important for these templates —along with those for the handing over and removal of detainees' belongings— to be digitised in police computer applications, to facilitate supervision. Although the Guardia Civil has this digitalisation possibility, the computer system in place in the Policía Nacional is not yet operational.

The Secretaría de Estado de Seguridad [Secretary of State for Security] accepted the Recommendation made —as part of its visit to the Provincial Police Station of Burgos— to ensure that information on the right of detainees to lodge complaints, with information on how to proceed, be made visible and available in the cells.

Following the visit to the premises of the Policía Foral de Navarra, NPM is awaiting a reply to its Recommendation on the matter.

### ***Detention of minors***

The conditions under which minors are deprived of their liberty are subject to special monitoring by the National Preventive Mechanism (NPM).

NPM's opinion is that minors should not be admitted in custody and detention areas and, if strictly necessary, should in any case be kept in separate areas from those used for adult detainees.

The Policía Foral de Navarra has specific regulations in this regard, similar to Instruction 1/2017 issued by the Secretaría de Estado de Seguridad [State Secretariat for Security].

### ***Video-surveillance, audio-surveillance and recordings***

As in previous years, the National Preventive Mechanism (NPM) placed special emphasis on the monitoring of adequate video-surveillance and video recording coverage of police facilities, as a key standard in the prevention of ill-treatment and a guarantee for custodial staff against unfounded accusations.

Other related measures include the fact that the Policía Foral de Navarra incorporated body cameras as a police tool, used to record video and audio images (as part of citizen safety tasks). A protocol drawn up specifically for this purpose contains the rules on how to use and safeguard video recordings.

NPM is particularly in favour of these devices, as they provide police staff with another piece of evidence in committed offences, allowing them to collect relevant recordings related to their own police activity whilst also providing pictures to be included in any court records, as necessary.

### ***Protocols for the prevention of self-harm and suicidal behaviour***

As part of the Recommendations made by the National Preventive Mechanism (NPM) to generate these protocols, the Secretaría de Estado de Seguridad [Secretary of State for Security] reported that a draft comprehensive procedure for police custody is contemplating specific measures for care, protection and security, as well as indicators that can anticipate potential conduct or self-harm by detainees, which must be assessed by custodial staff.

The State Secretariat announced that it will include a specific training clause in this procedure, establishing the need to provide police staff with the necessary knowledge to carry out their actions with full guarantees.

NPM recalled the need for a constant presence of officers in the holding cell area when detainees are held inside, especially in custody and detention facilities without video-surveillance.

Likewise, it is important to carry out rounds to check the situation of persons held in the cells, and to keep a log of any measures and outcome on detainee custody sheets. To note as an asset is good practice observed in the matter during our visit to the Navarra Headquarters, in Pamplona (visit 18/2023).

### ***Training***

Human rights courses arranged for different police forces is another key prevention component.

In this regard, the Mechanism should highlight the Recommendation it made to the Ayuntamiento de Madrid, aimed at providing adequate lifetime training for medical staff in forensic medicine and human rights, particularly addressed to the medical assistance dispensed to detainees and the correct completion of personal injury reports, as well as the content of Real Decreto 650/2023, of 18 July, approving the Protocol for the forensic medical examination of detainees ([visit 37/2023](#)).

In turn, NPM requested information on the training given to members of the Policía Foral de Navarra by the Security and Emergency School of Navarra.

#### 3.4.3 Updated instructions from the Secretary of State for Security and comprehensive police custody procedure

The National Preventive Mechanism (NPM) continued its activity begun in 2021 with the Secretaría de Estado de Seguridad to review the regulations governing detainee detention and custody procedures.

In turn, approval of the II National Human Rights Plan (2023-2027), contemplates—as part of the cornerstone covering the guarantee of human rights—recasting under a comprehensive detention procedure of various instructions issued to guarantee the rights of persons detained or under police custody. This issue was included in the *Concluding observations on the seventh periodic report of Spain* ([CAT/C/ESP/CO/7](#)) issued by the Committee Against Torture, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and will be specifically examined by this Mechanism.

## 4 CROSS-CUTTING PROGRAMMES

### 4.1 PROGRAMME FOR THE PREVENTION OF GENDER DISCRIMINATION IN DEPRIVATION OF LIBERTY FACILITIES

The National Preventive Mechanism (NPM) launched a programme for the prevention of gender-based discrimination in deprivation of liberty facilities in 2018, extending it in 2021 to psychiatric hospitals and centres for juvenile offenders, and in 2022 to police stations.

In 2023, the Committee Against Torture, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ([CAT/C/ESP/CO/7](#)), in its *Concluding observations on the seventh periodic report of Spain*, noted that the State must ensure that the special needs of female detainees are addressed. With this programme, NPM helps ensure that this obligation is fulfilled.

Spain's key laws on gender and deprivation of liberty for the years 2021, 2022 and 2023<sup>19</sup> includes Recommendations made in previous years by NPM, to include: staff training on gender issues; prevention protocol; detection, action and care for victims of sexual assault; suicide prevention protocol; and affective-sexual training.

NPM reports and its Recommendations were expressly cited in the parliamentary initiative passed by the Spanish Parliament, dated 16 June 2020, whereby Parliament urged the Government to draw up a report on the situation of the female prison population in State prisons<sup>20</sup>.

Recommendations were also welcomed in the area of juvenile detention centres. The competent authorities of the Xunta de Galicia [Regional Government of Galicia] ([visit 50/2021](#)), Extremadura ([visit 36/2023](#)), Andalucía ([visits 38/2021](#) and [14/2023](#)) and the Region of Murcia ([visit 4/2022](#)) accepted all the Recommendations formulated on the basis of visits made to the centres under their management.

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<sup>19</sup> Specifically: Ley Orgánica 8/2021, de 4 de junio, de protección integral a la infancia y la adolescencia frente a la violencia; Ley 15/2022, de 12 de julio, integral para la igualdad de trato y la no discriminación; Ley Orgánica 10/2022, de 6 de septiembre, de garantía integral de la libertad sexual; Ley Orgánica 1/2023, de 28 de febrero, de salud sexual y reproductiva y de la interrupción voluntaria del embarazo; Ley Orgánica 4/2023, de 28 de febrero, para la igualdad real y efectiva de las personas trans y para la garantía de los derechos de las personas LGTBI, and Instrucción 1-9-2022 de la Secretaría de Instituciones Penitenciarias [Secretariat of Penitentiary Institutions], on gender perspective when preventing suicides in prison.

<sup>20</sup> *Boletín Oficial de las Cortes Generales*, Congress of Deputies, Series D, nº 110, 24 June 2020, p. 8.

During 2023, NPM analysed the effective implementation of Recommendations made to these last two autonomous communities. The Comunitat Valenciana [Regional Government of Valencia] did not accept two of the sixteen Recommendations (specifically those related to space and pharmacological treatments).

With regard to Recommendations on police station custody, the Secretaria de Estado de Seguridad [Secretary of State for Security] replied that many of the Recommendations made would be taken into account when elaborating a comprehensive procedure for police custody that is currently underway.

#### 4.1.1 Prevention of discrimination

The National Preventive Mechanism (NPM) programme's visits aim to check the treatment of girls, women and LGBTI+ persons, as well as to analyse the root causes of treatment that cause gender-based distinction, exclusion or restriction, potentially resulting in impairing or nullifying the recognition, enjoyment or exercise of rights in deprivation of liberty facilities.

NPM has identified the following shortcomings as a result of its visits in 2023.

##### **Lack of statistics**

- **Girls and women.** In its visits to juvenile detention centres, NPM found that they were preponderantly homogenised, without taking into account gender differences, which overshadows the circumstances and particularities of girls and women. Thus, the data reported annually at centres for juvenile offenders (such as age, type of offence, runaways, attempts at self-harm, minors who are wards of the court), as well as registers and lists (courses, workshops, containment, sanctioning files), are often not broken down by sex. This invisibility makes it impossible to draw conclusions about specific needs and to provide an educational and therapeutic response to cover their needs. For this reason, NPM made a Recommendation to the competent authorities of the Autonomous Communities of Valencia ([visit 4/2023](#)) and Extremadura ([visit 36/2023](#)) that the sex variable be included in data collection and that statistics itemised by sex be generated. It also made a Recommendation that inmates be provided on admission with informative documentation and forms incorporating inclusive language and details of procedures for reporting situations of violence applied in the centre and on the figure of a wellbeing coordinator.

With regard to female prisoners, the prison Administration reported in 2023 that it expects the gender-sensitive and inclusive language file for



admissions to be published in 2024, despite the fact that NPM made the Recommendation years ago ([visit 102/2020](#)).

- **Transsexuals.** Ley 4/2023, de 28 de febrero, para la igualdad real y efectiva de las personas trans y para la garantía de los derechos de las personas LGTBI [Act 4/2023, of 28 February, on the real and effective equality of transsexuals and to guarantee LGTBI+ rights], includes the need for regulatory advances in order to ensure full respect and non-discrimination, especially towards detainee transsexuals (giving the State Security Forces as an example). In turn, Ley 15/2022, de 12 de julio, integral para la igualdad de trato y la no discriminación [Act 15/2022, of 12 July, for comprehensive equal treatment and non-discrimination], establishes the duty of the public authorities to collect and systematise data in order to appraise the real situation and design the most appropriate policies for equal treatment and non-discrimination. Such data are necessary in all deprivation of liberty cases, affecting relevant matters such as frisking.

With regard to prisoners, the prison Administration pointed out that with the entry into force of aforementioned Ley 4/2023, any criteria for data collection and recognition of gender identity will be accordingly adapted.

With regard to detainees, NPM made a Recommendation to the Secretaría de Estado de Seguridad [Secretary of State for Security] in order to collect transgender statistics ([visit 7/2023](#)). This Recommendation is still pending a response.

NPM's police station visits disclosed that the same data were not always available: unlike the Comisaría de Málaga, which only provided one file, the Comisaría Provincial de Burgos had been very efficient in providing statements and chains of custody for transsexuals, as ascertained good practices ([visit 54/2022](#)).

#### ***Lack of female security staff in contact with detainees***

- **Police stations.** Women in police stations have felt intimidated due to being held in areas where the vast majority are men. During our visits, such as the one carried out in 2023 to the Comisaría Provincial de Málaga ([visit 7/2023](#)), NPM noted that brassieres were generally removed, from pregnant women too, and therefore made a Recommendation for a gender-sensitive regulation of when such garment should be removed. Information was also requested on the number of female officers providing custody services in

police cells in the last three years in police stations ascribed to the Secretaría de Estado de Seguridad [Secretary of State for Security].

- **Centres for juvenile offenders.** NPM noted a generalised lack of female security staff ([visit 36/2023](#)), which was sometimes inexistent ([visit 4/2023](#)), and therefore recommended that more be assigned. To note is that one year after our Recommendation was accepted by the competent Administration of the Region of Murcia ([visit 4/2022](#)), the centre visited still had male-only permanent staff. Therefore, NPM requested information on the current percentage of permanent female and male staff at both centres for juvenile offenders run by the Region of Murcia.
- **Prisons.** Insufficient female staff in prison wards causes discrimination towards women prisoners, due to lacking an indoor separation, with respect to visits to the infirmary, or in the admissions department. NPM therefore recommended that the Secretaría General de Instituciones Penitenciarias take positive action to increase the number of female staff. Since our Recommendation was not accepted in 2023 ([visit 29/2022](#)) it was reiterated, by reference to aforementioned Ley 15/2022. This issue will be followed up in future visits, given the many cases and large scope of discrimination against women prisoners that may arise.
- **Hospital Psiquiátrico Penitenciario de Alicante** ([visit 29/2022](#)). NPM requested information on the current percentage of female staff working as nursing assistants and in orderly positions, as well as the percentage of vacancies in these job positions to be filled. The request is still awaiting a response.

#### ***Lack of gender training for staff***

Ley Orgánica 10/2022, de 6 de septiembre, de garantía integral de la libertad sexual [Fundamental Act 10/2022, of 6 September, to comprehensively guarantee sexual freedom], in line with the Recommendations made by the National Preventive Mechanism (NPM) in this area, requires that courses arranged for workers at prisons and centres for juvenile offenders, as well as custody facilities, include a cross-cutting gender perspective, in addition to training on comprehensive protection against sexual violence within their remit<sup>21</sup>.

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<sup>21</sup> This obligation is also stated in paragraph 42 of the *Concluding observations on the seventh periodic report of Spain* ([CAT/C/ESP/CO/7](#)) issued by the Committee Against Torture, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2023.

- **Prisons.** The prison Administration, in view of these regulations, finally agreed in 2023 to arrange relevant training on the subject, which had been recommended by NPM following its visits for years ([visits 11/2021](#) and [104/2019](#)).
- **Centres for juvenile offenders.** During our visit to the Centro de Reeducción de Menores Mariano Ribera, Burjassot (Valencia), interviewed juvenile inmates described disrespectful conduct and homophobic labelling of their sexual diversity on the part of educational staff. The competent authority of the Region of Valencia informed NPM of new formative actions seeking to generate staff awareness about the specific needs of these minors. The Recommendation was also accepted by the competent Administration in the Autonomous Community of Extremadura ([visit 36/2023](#)).
- **Police stations.** The Secretaría de Estado de Seguridad [Secretary of State for Security] reported that no specific requirements or training must be completed in order to be assigned to the custody of police cell detainees. Therefore, NPM recommended that specific training be provided to detention centre staff on the specific circumstances and gender-specific needs of detainees (visits 54/2022 and 51/2022).

### **Missing variables**

In addition to concealing the problem, some variables are missing, some of which are essential for gender purposes, used for effective treatment programmes addressed to women belonging to communities and groups with specific needs.

- **Roma women.** In 2019, NPM ([visit 91/2019](#)), in view of the high number of Roma women in prisons<sup>22</sup>, recommended that a Roma variable be included when collecting data and compiling statistics. The Recommendation was finally accepted by the prison Administration, but four years after our visit such information is still inadequate for statistical purposes. The Secretaría General de Instituciones Penitenciarias alludes to IT reasons in its explanation, but has not scheduled a date for statistical operability. Without

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<sup>22</sup> In a document dated 4 January 2023, the Secretaría General de Instituciones Penitenciarias indicated that there were 557 Roma women and 3,457 Roma men. This means that of the total Roma prison population, 13.87% are women. Other sources state that four out of every ten Spanish women inmates are Roma (data contained in the *Libro Blanco sobre la atención sanitaria a personas con trastornos mentales graves en centros penitenciarios en España* [White Paper on healthcare for people with serious mental disorders in Spanish prisons], published in 2023 by the Spanish Society of Legal Psychiatry).

data, it is not possible to complete any analysis or arrange specific programmes to meet the needs of Roma women.

- **Roma girls.** Since 2021, this same Recommendation was made to the competent authorities of all autonomous communities whose centres for juvenile offenders were visited. It was found that the Roma women variable was not included in data collected and compiled statistics<sup>23</sup>. Our Recommendation was accepted by all the competent administrations. However, during our visit in 2023 to a centre ascribed to the Junta de Andalucía ([visit 14/2023](#)), NPM ascertained that this variable was missing, despite the fact that the Recommendation had been previously accepted by the authorities, which was why it was reiterated.

### ***Women and girls with disabilities***

A gender approach is one of the cross-cutting cornerstones foreseen in the Spanish Strategy on Disability 2022-2030<sup>24</sup>.

- **Women.** The Secretaría General de Instituciones Penitenciarias reported that, in 2022, 9.32% of female prisoners had some kind of disability. That year, it accepted NPM's Recommendation to articulate a gender-sensitive response to disability, following prison visits indicating that women were excluded from the Comprehensive Care Programme for the Mentally Ill, under which prison treatment is provided to persons with mental or intellectual disabilities.

In the Hospital Psiquiátrico de Alicante NPM noted that the processing of an official mental disability certification was very slow and took years, despite the fact that this certification entails eligibility to social and economic benefits and access to guaranteed employment.

- **Girls.** NPM recommended to the competent authorities of the Region de Murcia ([visit 4/2022](#)), the Junta de Andalucía ([visit 14/2023](#)) and the

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<sup>23</sup> In some cases, such as at Concepción Arenal centre (Galicia) ([visit 50/2021](#)), it was found that minors of Roma ethnicity in the last nine years accounted for 43% of all girls who have served their sentence there. Given this over-representation, NPM recommended that any educational or therapeutic project be specifically adjusted to this variable, as well as assignment of a female Roma mediator.

<sup>24</sup> The Report of the Fiscalía General del Estado pointed out that the prevalence of gender violence in any of its forms is higher among women with disabilities (with an officially recognised degree equal to or greater than 33%) than among women without disabilities. According to the 2019 Macro-survey, 20.7% of women with a recognised disability have suffered physical or sexual violence from their partner compared to 13.8% of women without a recognised disability.  
[https://www.fiscal.es/memorias/memoria2023/FISCALIA\\_SITE/index.html](https://www.fiscal.es/memorias/memoria2023/FISCALIA_SITE/index.html)

Comunitat Valenciana ([visit 4/2023](#)) that records be kept of any type of disability amongst minors, to enable a gender-sensitive response. The Recommendation was accepted by these administrations. However, the document submitted by the competent administrations of the Region of Murcia and the Region of Valencia, implementing a response to treat disability, lacks the required gender approach, which was why NPM reiterated its Recommendation.

#### 4.1.2 Health

##### ***Gender-based violence and sexual assault prior to admission***

The National Preventive Mechanism (NPM) has verified in its visits a high rate of gender-based violence and sexual aggression suffered by the inmate population prior to admission.

##### **- Juvenile centres**

- **Protocols. NPM recommended to the competent authorities of the Autonomous Communities of Andalucía (visits [38/2021](#) and [14/2023](#)), Galicia ([visit 50/2021](#)) and the Region of Murcia ([visit 4/2022](#)) that detailed protocols be issued to detect this type of violence, with the objective of providing a therapeutic and protective response. It has been confirmed that all centres in these last two regions already have a protocol in place. It also verified the high incidence of this type of violence and the absence of a specific protocol at the Centro Mariano Ribera<sup>25</sup>, which was why it made a Recommendation in this regard to the competent authorities of the Region of Valencia, which was accepted.**
- **Affective-sexual education.** In all its visits, NPM has been recommending the implementation of health programmes on affective-sexual diversity, prevention and awareness of gender-based violence, positive sexuality and healthy relationships, together with healthcare staff.

During visits to the Centro Mariano Ribera and the Centro Vicente Marcelo Nessi, NPM found that a medical check-up upon admission did not address issues related to sexuality or violence.

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<sup>25</sup> The Centro de Reeducción de Menores Mariano Ribera reported that it has not been necessary to activate its protocols. However, it explained how the centre acted in the case of a minor who was raped prior to admission. In addition to this inconsistency, 75% of the girls interviewed reported being the victims of gender-based violence, and complaints were received about the centre's lack of detection and therapeutic support.

- **Police stations.** During its visit to the Provincial Police Station of the Policía Nacional of Málaga ([visit 7/2023](#)), NPM again verified, with respect to the previous year's visits, that steps are completed in cases of arrest of a partner or ex-partner for alleged domestic violence, such as a police assessment of the risk to which the gender-based victim of violence is exposed or information on victim rights. However, the aggressor is treated the same way as the victim, from the time of arrest until the victim is brought before the court, even when the detainee has violated a restraining order and has a history of physical abuse against the victim/her family.

The adoption of positive discrimination measures during the custody of female detainees who are victims of gender-based violence is necessary to ensure an egalitarian approach. NPM therefore recommended that gender-sensitive measures be adopted in the case of detention and custody of female victims of gender-based violence ([visit 7/2023](#)).

- **Hospital Psiquiátrico de Alicante.** The Secretaría General de Instituciones Penitenciarias just has one psychiatric ward for women, at the Hospital Psiquiátrico de Alicante. There is no gender-based assistance, although the Administration is aware that women are the victims of all kinds of mistreatment and abuse, which is why they have hardly any family ties. NPM recommended a multidisciplinary psychiatric, therapeutic and healthcare response to gender-based violence. Although the Recommendation was accepted by the Secretaría General de Instituciones Penitenciarias, there is still no evidence of its implementation.

#### ***Pregnancy, childbirth, motherhood, parenting and menstruation***

- **Women prisoners.** The Committee Against Torture, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in its *Concluding observations on the seventh periodic report of Spain*, specifically noted the shortcomings in sexual and reproductive health services for women prisoners ([CAT/C/ESP/CO/7](#)).

In 2019, NPM had recommended that a record be kept of all pregnant prisoners. This Recommendation was not accepted by the Secretaría General de Instituciones Penitenciarias, which results in little attention being paid to this extremely relevant circumstance for their physical and mental health. Likewise, the penitentiary Administration lacks information on places available for them in mothers' units.

During our visits, inmates complain about the treatment received in prisons during their pregnancy, such as a lack of attention to their needs (food, physical exercise, etc.) and no preparation for childbirth. Further to our visit to the Alicante Mothers' Unit (Visit 7/2022), one of the two mothers' units ascribed to the Secretaría General de Instituciones Penitenciarias, NPM disclosed a missing protocol for the care of pregnant women and recommended that it be issued. This was accepted in 2023.

Likewise, NPM received numerous complaints during its visits about a lack of privacy due to police presence during childbirth and the emotional distress caused by the impossibility of receiving family support during subsequent hospitalisation. For this reason, it recommended that a protocol be drawn up by the Secretaría General de Instituciones Penitenciarias, in conjunction with the Ministerio del Interior, to guarantee police-free childbirth, which was not accepted by the Office. The Recommendation to guarantee the right of female prisoners to have someone with them during childbirth and the after-birth is still pending a response.

The Balears and Canarias and the autonomous cities of Ceuta and Melilla do not have mothers' units. As a result, if detainees do not want to be separated from their newborn baby, they must be transferred to the mainland, which means being separated from their families, including their young children. NPM had recommended ensuring that inmates at these centres have adequate facilities to serve their sentences in the company of their children under three years of age. The Secretaría General de Instituciones Penitenciarias reported in 2023 that refurbishment work is underway to ensure that adequate facilities are available in the Canarias.

Upbringing of these children at the Irene Villa Mothers' Unit in Centro Penitenciario Alicante II, in Fontcalent, greatly hinders involvement on the father's part. Consequently, NPM recommended that frequent communication and co-living be encouraged to facilitate the father's involvement. The Administration replied that each situation is studied on a case-by-case basis.

- **Women in detention.** The detainee information form relating to Instruction 4/2018 of the Secretaría de Estado de Seguridad [Secretary of State for Security] lacks a gender perspective. It does not include the right to have access to menstrual sanitary products or the possibility of making any statement regarding the possibility of breastfeeding or pregnancy. NPM made a Recommendation to include the foregoing (visit 54/2022 and [7/2023](#)). Another NPM Recommendation was made to that effect.

In 2023, the Secretaría de Estado de Seguridad indicated that both Recommendations will be taken into account when drawing up a comprehensive detention procedure.

- **Girls.** In the three visits carried out in 2023 to the children's centres of Mariano Ribera, Sierra Morena and Marcelo Nessi, NPM found that the informative admission dossier does not include pregnancy, despite its proven occurrence during its visits.

During its visit to the Centro Mariano Ribera, it also learned that at night it is common for the staff to ignore requests to open the door of the rooms in order to go to the bathroom. NPM recommended that the competent authorities adopt measures to guarantee access to minors' right to health, in all respects.

#### ***Mental health: a gender perspective in treatment***

- **Women.** NPM found that women were generally omitted from the Comprehensive Care Programme for the Mentally Ill in 2019 and 2020 at penitentiary centres, although female mental disorders were prevalent. The Secretaría General de Instituciones Penitenciarias accepted our Recommendation in 2023 (visit 29/2022), which has yet to be formally implemented.
- **Girls at centres for juvenile offenders.** In 2023, during its visit to the Centro Vicente Marcelo Nessi, NPM found that all girls had been ordered by the court to complete therapeutic treatment, as opposed to 24% amongst boys. The Psychological Evaluation Protocol lacks a gender perspective, by omitting measures adjusted to the circumstances of adolescent female offenders, and it was therefore recommended that a gender perspective be incorporated into any mental health treatment.

During its visit to the Centro Sierra Morena, NPM found that minors were excluded from the therapeutic ward (mental health and addictions), i.e. treatment was being dispensed by sex, not according to their needs. The centre does not offer them facilities in which to deal with their mental health and addiction problems in the same conditions as boys, who are provided with specific wards.

During our visit to the Centro Mariano Ribera, it was found that female inmates are also excluded from the psycho-educational programme on addictions, which lacks a gender approach. NPM made a Recommendation



to that effect, which was accepted by the Administration. From now on, the programme includes this approach.

### ***Suicide and self-harm prevention protocols***

Both the Secretaría General de Instituciones Penitenciarias and the competent authorities of the autonomous communities whose juvenile centres were visited accepted our Recommendation to incorporate a gender perspective into the Suicide Prevention Protocol.

- **Prisons.** The prison Administration implemented the Recommendation two years after it was made by NPM, through Instruction I-9-2022. However, this Instruction does not mention LGTBI+ persons or any inmate mentors (training, retribution, supervision and emotional relief).
- **Centres for juvenile offenders.** After requesting the suicide prevention protocols for all the centres run by the Junta de Andalucía ([visit 38/2021](#)), NPM found in 2023 that the protocols of Bahía de Cádiz, Las Lagunillas, Medina-Zahara, La Jara, Los Alcores, El Limonar, Odiel, Genil and Genil Femenino centres did not include differential indicators among the risk factors, such as maternity, abortions, gender violence, sexual aggression, etc. Furthermore, the protocols of Tierras de Oria and La Marchenilla did not include differential aspects due to diversity in sexual orientation, and the protocols of El Molino and Sierra Morena lacked a gender approach.

With regard to self-harm, in 2023 NPM noted during its visits that there no track record was kept of self-inflicted injuries although several minors referred to it during their interviews. Therefore, a Recommendation was made to the competent authorities of the Junta de Andalucía ([visit 14/2023](#)) and the Region of Valencia ([visit 4/2023](#)) to keep a log of self-inflicted injuries and to review its prevention protocol, incorporating a gender and sexual diversity perspective.

- **Police stations.** The Secretaría de Estado de Seguridad does not have a detainee protocol for suicide and self-harm. During the visit to the Comisaría Provincial de Málaga ([visit 7/2023](#)), it was found that harm self inflicted by minors is not entered into chain of custody records and the possibility of self-harm is not included under "observations" or other sections, and is therefore ignored. NPM recommended that a gender-sensitive protocol on suicide and self-harm be developed by the competent authorities.

#### 4.1.3 Risk of ill-treatment: isolation, coercive measures, frisking and protocols for the prevention of conduct affecting sexual freedom

##### ***Isolation of women prisoners***

In previous years' visits to the Topas (Salamanca) and Antoni Asunción Hernández prisons (Picassent) in Valencia, NPM noted that women are more often subject to isolation and for longer periods of time than men. It therefore recommended reviewing these patterns. For the implementation of this Recommendation, NPM will continue to request annual data and statistics on the use of solitary confinement, itemised by sex, at all prisons.

##### ***Use of coercive measures***

- **Women prisoners.** Prisons continue to lack statistics itemised by sex, on the use of means of restraint. NPM noted a much higher proportion of women than men in its visit to Topas Prison (visit 17/2021), and in 2023 NPM recommended a gender-sensitive review of applicable coercive measures. The Recommendation was accepted.
- **Girls.** Following three visits in 2023 to juvenile detention centres in the Autonomous Communities of Andalucía ([visit 14/2023](#)), Extremadura ([visit 36/2023](#)) and Valencia ([visit 4/2023](#)), NPM recommended a gender-sensitive review of the reasons for applying restraints, as well as the restraining procedure and gender of the executing staff. This Recommendation is particularly relevant, given that at most centres security personnel is male (sometimes male-only), and the physical and psychological uniqueness of women are not taken into account in physical restraint protocols. In the case of the Centro Mariano Ribera ([visit 14/2023](#)), NPM noted a disproportionate use of restraints on girls when compared to boys.

##### ***Frisking***

- **Persons detained at police stations.** In 2022, NPM recommended to the Secretaría de Estado de Seguridad that the sex of the person conducting a body search be recorded in the chain of custody in all cases, along with their professional identification number, and that transgender persons be offered the choice of being searched by a male or female officer (visit 54/2022). The Secretaría de Estado de Seguridad [Secretary of State for Security] replied in 2023 that the content of both Recommendations will be taken into account when drawing up a comprehensive procedure for police custody.

### ***Protocol on conduct against sexual freedom in deprivation of liberty facilities***

The Protocol for action in cases of gender-based violence for the Policía Nacional (Resolution of 15 February 2021 of the Dirección General de la Policía), which covers cases where the alleged perpetrator is a civil servant on active duty in the Policía Nacional, as opposed to other positions, does not include a precautionary measure or termination of employment if assigned to police cells, when the assignment involves regular dealings with victims of gender-based violence and human trafficking. Therefore, NPM recommended the adoption of precautionary measures or termination of employment in cases of gender-based violence for police cell officers ([Visit 7/2023](#)).

At the Centro Vicente Marcelo Nessi, NPM found that the two minors admitted had been ordered by the court to complete therapeutic treatment at a specific ward. However, one of them was serving her sentence in an ordinary ward due to her transfer in response to suffering harassment and sexual assault, reported by the minor through a colleague in the therapeutic ward. The centre did not apply any protocol for dealing with gender-based violence. The minor felt stigmatised and unaccompanied. NPM recommended to the competent authorities of the Junta de Extremadura that a specific protocol be issued to prevent, detect and provide assistance in cases of gender-based violence.

## **4.2 MENTAL HEALTH PROGRAMME**

In 2022, the National Preventive Mechanism (NPM) launched a mental health programme to prevent the ill-treatment of all mental health patients deprived of their liberty in psychiatric facilities.

In 2023, this programme has been extended to prisons, due to the special vulnerability of people with mental health disorders. The two-fold requirement is that the person be deprived of liberty and that he/she also be a psychiatric patient receiving specialised healthcare.

### **4.2.1 Mental health programme in psychiatric facilities**

#### ***Programme objectives***

In 2023, NPM carried out a visit as part of this programme to the Centro Residencial de Salud Mental Mentalia Arévalo (in Ávila) and continued to examine ongoing open files of visits carried out in previous years. Performance in the matter is reported below.

NPM found, through the follow-up of files on its visits, that most Suggestions and Recommendations had been accepted, except for specific cases described elsewhere. This is a very positive factor.

#### 4.2.2 Results achieved and content evaluation

##### **Identifying and preventing situations of abuse in mental health surroundings**

- **Action protocol for ill-treatment.** NPM made a Recommendation to the authorities responsible for all the centres visited to have a protocol in place to prevent, detect, protect and care for possible victims of ill-treatment, abuse or harassment, which has been widely accepted. As part of its visit to the Centro Residencial de Salud Mental Mentalia Arévalo (Ávila) ([visit 8/2023](#)), authorities of the Junta de Castilla y León [Regional Government of Castilla y León] established a compulsory document on this matter as a requirement. Likewise, the authorities of the Autonomous Communities of Madrid ([visit 64/2021](#)), Cantabria ([visit 1/2022](#)), Andalucía ([visits 26/2022](#) and [24/2022](#)) and Aragón ([visit 10/2022](#)) also accepted this Recommendation. Those responsible for the Autonomous Community of Castilla-La Mancha ([visit 22/2022](#)) have yet to implement the Recommendation. In turn, the authorities of the Xunta de Galicia [Regional Government of Galicia] ([visit 51/2021](#)) have not yet replied to our Recommendation. General acceptance of this Recommendation is an important NPM milestone, as it represents a key aspect of its mission.

In turn, the Mechanism noted the need for centres to have a specific action protocol in place to cover injury cases, and to keep a log of these actions, other than a mere entry in clinical records. In the autonomous communities of Cantabria and Madrid, the issue was dismissed.

- **Handling of complaints and claims.** NPM formulated a Suggestion to encourage internal channels to report complaints and suggestions, allowing inmates to address any authority or administrative or judicial body. This Suggestion was accepted in all cases raised by the authorities in the autonomous communities of Madrid, Cantabria and Andalucía.

In addition, the competent authorities in the Autonomous Community of Castilla y León, further to the requirement set out in Decree-Law 5/2020 of 18 June, included as part of their general inspection plans a review and improvement of the complaints procedure. To implement this line of action, the Administration is considering the possibility of an automated and specific administrative procedure to submit and handle complaints and reports, unique due to being available on-line through the Junta de Castilla y León website. The Ombudsman considers that the foregoing constitutes good practice, able to be extrapolated to other autonomous communities.

- **Staffing.** In all the centres visited, NPM made Suggestions to assign sufficient psychologists and psychiatrists in charge of the necessary therapeutic treatment.

The Mechanism does not share the view of the Madrid Regional Ministry, which considers that the care provided by district psychiatric and mental healthcare centres is sufficient. NPM considers that in residential centres for mental health patients, medical and psychiatric care should be provided by their own staff. Otherwise, immediate assistance may be hindered. Finally, NPM trusts that the authorities of the Autonomous Community of Castilla La-Mancha will accept this idea.

- **Need for a therapeutic and rehabilitative context.** NPM made Suggestions to improve the availability of freely accessible open space, as well as therapeutic, recreational and sporting activities.

The Centro Asistencial de Calatayud (Zaragoza) accepted the Suggestion, approving an activity programme aimed at energizing the elderly and improving residents' quality of life. Similarly, at the Centro Residencial de Salud Mental Mentalia Arévalo, appropriate devices are in place implemented through targeted administrative actions.

During its visits, NPM detected a widespread smoking habit in mental health centres, especially at homes. The Recommendation to design a comprehensive plan to quit smoking was well received in all cases. to note is that after our visit to the Centro Asistencial de Calatayud ([visit 10/2022](#)), NPM made a Suggestion to change the layout of the smoking area due to lack of ventilation and its location, which allowed smoke filter into the centre. In response, the centre held a meeting with the patients explaining NPM's Suggestion, and by consensus they decided to relocate the smoking area to the garden. This is an example of good practice that can be extrapolated to other residential mental health centres.

- **Freedoms, family and community contact.** NPM formulated Suggestions on the lack of independence and the need to guarantee the privacy of persons admitted to mental health facilities. They were generally accepted and action was taken at all the centres visited ([visits 22/2022](#), [10/2022](#), [45/2022](#) and [51/2021](#)). At the Centro Residencial de Salud Mental Mentalia Arévalo, the matter was ongoing at the time of this report.
- **Disciplinary regime.** NPM found that non-compliance with the rules and the potential sanctions this entails generates a risk of ill-treatment. It therefore formulated Suggestions to the Autonomous Communities of Castilla-La

Mancha and Andalucía ([visits 22/2022](#), [26/2022](#) and [27/2022](#)). In all cases, regulatory non-compliance protocols were reviewed.

- **Suicide Prevention Protocol.** The NPM's Recommendation on this protocol has been almost fully accepted. In most cases it has been implemented ([visits 26/2022](#), [24/2022](#) and [64/2021](#)) and in other cases its implementation is current ongoing ([visits 22/2022](#) and [10/2022](#)).

### ***The system of safeguards in the context of detention: voluntary admittance***

NPM notes in its visits that a distinction between voluntary and involuntary detention is not always properly made. Consequently, NPM has insisted over time on the importance of encouraging willing detentions, to the possible extent.

NPM made a Recommendation following its visit to the Centro Residencial de Salud Mental Mentalia Arévalo, for the integrated implementation of all action procedures for involuntary admittance, which was accepted, creating a computer tool (REPRISS) to gather all documentation related to this legal situation.

### ***Mechanical and pharmacological restraints and their eradication***

The Annual Report of the Fiscalía General del Estado 2022, presented in September 2023, once again pointed out the absence of specific regulations governing restraint nationwide, as NPM has also been pointing out in its annual reports. Most territorial public prosecutor's offices took action to request information on restraint protocols by sending a summons to each centre. They also initiated intense coordination with the competent administrations with a view to inspecting the centres.

In turn, in relation to this same matter, the Committee Against Torture, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ([CAT/C/ESP/CO/7](#)), in its *Concluding observations on the seventh periodic report for Spain of 24 August 2023*, stated its concern about the use of coercive measures in psychiatric health care, and recommended that the State ensure that coercive measures in psychiatric health care are only exceptionally applied.

- **Mechanical and pharmacological restraints.** Of the Recommendations and Suggestions formulated by NPM, there is great willingness to minimise restraints in mental health centres, although it is true that, in practice, this is not evident in all the measures taken.

In the processing of the case file on the Mental Health Hospitalisation Unit of Hospital Universitario Virgen de la Victoria in Málaga ([visit 26/2022](#)), NPM was given an outline of the restraints used at the centre. However, no data were included on each measure's duration, and their average length

only (10.31 hours), and a request was therefore made for further information.

In turn, following our visit to the Centro Residencial de Salud Mental Mentalia Arévalo (Ávila), NPM was informed by the competent authority about its 2024 General Inspection Plan for Social Services including a specific line of action to ensure comprehensive control of residential centres for the mentally ill. Among other aspects, this line of action will review residential living conditions and the disciplinary regime, cases of involuntary internment, data on restraints used and prevention protocol, the detection and reporting of situations of ill-treatment.

The authorities of the Regional Government of Galicia included fields in the computer management application to record pharmacological restraint and any personal injuries caused prior to any such restraint, thus complying with NPM's Recommendation and Suggestions. Efforts were made to keep a record of restraints and the content of Instruction 15/21 of the Galician Health Service is relevant, which urges to follow the steps set out in the Instruction of the Fiscalía General del Estado, to discourage the application of restraints. The report of registered cases forwarded to the Ombudsman includes restraints lasting between two, three and four days; it even includes a ten-day restraint, classified as "intermittent", which also applied all available points of restraint.

- **Mechanical restraint protocol.** Following its visit to the Mental Health Hospitalisation Unit, Hospital Universitario Virgen de la Victoria, NPM found that its restraint protocol had been last updated in 2015, without referring to the Fiscalía General del Estado instruction or the need to drastically reduce the coercive means referred to. This fact is evidenced by the high number of restraints carried out in this unit.

The authorities of the Regional Government of Galicia ([visit 45/2022](#)), following NPM's Recommendation, urged the Unidad Residencial de Troncoso to adapt the protocol triggered in cases of Agitation, in accordance with the Fiscalía General del Estado's Instruction.

Based on the information available to NPM, the authorities of the autonomous communities of Andalucía and Madrid have failed to adequately review their restraint protocol in light of the Fiscalía General del Estado.

As already mentioned, the authorities of the Regional Government of Castilla y León have included in next year's General Inspection Plan for

Social Services a specific line of action aimed at ensuring comprehensive control of residential centres for the mentally ill, which, among other aspects, will review all data related to restraints.

- **Informed consent.** The 2021-2026 Mental Health Strategy, approved by the Ministerio de Sanidad [Ministry of Health], is focused on ensuring individual care, upholding self-sufficiency and personal rights, with a specific focus on prevention. In line with this strategy, NPM formulated a Recommendation for the model on anticipatory mental health decisions or intent to include informed consent for the application of restraints. This Recommendation was widely accepted by its recipient centres.

The purpose of this Recommendation was to ensure that any record of informed consent specify the type of restraint applied, the reason for it, the signature of the reporting professional, any direct risks derived from physical and psychological restraints, the length of each measure (start, end and time limits), a risk prevention analysis and the consequences of using defined restraints.

- **Recording and reporting.** NPM continued to detect that some centres still lacked an accessible register of applied restraints to ensure their simple supervision.
- **Evaluation of results.** To note is that all centres were receptive to the NPM's Recommendation that "post-incident support" be provided after mechanical restraint is applied. An example of good practice in this regard was the decision taken by the Government of Cantabria, whose Department issued an instruction to the competent psychiatrists in order to systematically assess the possible psychological effect of mechanical restraint on patients.

#### 4.2.3 Programme on inmates' mental health

More than a third of inmates in prisons reported having been diagnosed at some point in their lives with a mental or emotional disorder, and a similar percentage reported suicidal thoughts or attempted suicide<sup>26</sup>. Health care for people with serious mental disorders is very different in autonomous communities transferred decentralised competences by the State, from those without such competencies. These differences are apparent in both organisation and structuring, and service management.

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<sup>26</sup> Survey on Health and Drug Use amongst Prison Inmates, 2022.



Generally speaking, the deficiencies of psychiatric care are due to a shortage of healthcare, structural and human resources.

In 2023, NPM made six visits as part of this Programme to Prisons in Estremera ([22/2023](#)), Asturias ([26/2023](#)), Mallorca ([31/2023](#)) and Zaballa ([44/2023](#)), the Unidad de Psiquiatría Legal del Hospital Aita Menni ([45/2023](#)) and the Hospital Psiquiátrico Penitenciario de Sevilla ([9/2023](#)).

### ***White Paper on healthcare for people with severe mental disorders in Spanish prisons***

In June 2023, the Spanish Society of Legal Psychiatry (SEPL) and the Spanish Society of Penitentiary Health (SESP) presented a *Libro Blanco sobre la atención sanitaria a personas con trastornos mentales graves en centros penitenciarios en España* [White Paper on healthcare for people with serious mental disorders in Spanish prisons].

The following are the main conclusions reached by the White Paper study:

- At least 4-5% of inmates in Spanish prisons have a serious mental disorder, which involves complex socio-demographic, clinical, judicial and penitentiary features that are difficult to diagnose and treat.
- Such persons require assistance from prison doctors and psychiatrists who are familiar with the background of each patient on trial, requiring a large amount of mental health care and the prison assistance.
- In Spain, a traditional model coexists alongside innovative models in different autonomous communities, mainly due to whether or not prison healthcare competencies have been decentralised and transferred to autonomous healthcare systems by the Ministerio del Interior, through the Secretaría General de Instituciones Penitenciarias. Innovative models were implemented, in Cataluña in 2023 (competencies transferred in 1983), in the País Vasco (in 2011) and in the Region of Navarra (in 2021), which assist 17% of Spain's entire prison population. An adequate correct integration of the prison healthcare system into autonomous healthcare systems is essential to uphold the principles of equity, equal opportunities, settlement and quality of care guaranteed by Spanish healthcare.

### ***Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT/C/ESP/CO/7)***

The Committee Against Torture. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ([CAT/C/ESP/CO/7](#)), in its *Concluding observations on the seventh periodic report of Spain*, in paragraph 23, refers to an

issue noted by NPM as a result of its visits. The Committee is concerned about the insufficient number of prison doctors, including psychiatrists and clinical psychologists, as well as the difficulties encountered by the Ministerio del Interior to cover any vacancies. It recommends that Spain take the necessary measures to improve the provision of prison healthcare, including specialised medical care.

### ***Prison Psychiatric Hospitals***

- **General considerations.** The main conclusions drawn by NPM from its visit to the Hospital Psiquiátrico Penitenciario de Sevilla ([visit 9/2023](#)) indicate overmedication, institutionalisation, confined space, lack of individualised patient treatment, confinement with few possibilities for out-of-hospital visits, lack of psychotherapy, uprooting and overcrowding.

NPM made a Recommendation to this hospital (and to the previously visited Hospital Psiquiátrico Penitenciario de Alicante), to integrate the medical services of Instituciones Penitenciarias [Penitentiary Institutions] into the Public Health System, rendering these hospitals equivalent to non-penitentiary assistance, prioritising their healthcare and their greater reintegration potential. It also urged that permanent and effective communication channels be set up amongst the administrations involved. The prison Administration seemed very willing to do this, although the Recommendation has not yet been implemented. It will therefore be monitored by NPM.

- **Health personnel.** There is still a chronic shortage of staff, especially of frontline staff (nursing assistants, cleaners and orderlies).

NPM called for urgent measures to improve the ratio of healthcare staff, pending a transfer of state competencies to the autonomous communities. It also considered it necessary to recommend that the Administration establish a clinical psychology appointments system.

The penitentiary Administration indicated that current problems will be resolved when such transfer of competencies takes place. NPM, whilst sharing this view, pointed out the need for short-term alternatives in order to improve healthcare quality at these facilities. The penitentiary Administration did not accept our Recommendation to assign clinical psychology professionals to prisons.

- **Acute Module and Suicide Prevention Protocol.** NPM suggested that the psychiatric hospitals of Sevilla and Alicante consider an alternative to the

module for acute patients. The narrow stairs that currently exist entail an unnecessary risk, particularly if an agitated patient is being admitted.

NPM also suggested that there should be an alternative to prolonged stay in the module for acute patients, in the case of admittance and imbalanced patients. The structure and operation of this unit does not meet appropriate requirements for extended stays.

- **Complaints of ill-treatment.** During our visit to the Hospital Psiquiátrico Penitenciario de Sevilla, NPM interviewed an inmate about a complaint he had filed against an orderly, in the course of which he alleged that he had been molested. NPM considered it appropriate to refer the matter to the Security and Justice Area, which began proceedings ex officio. The prison Administration reported that the case had been dismissed and shelved by the investigating court. The prison Administration also provided documentation supporting its internal investigations, including a report from the prison psychiatrist, which pointed out the complainant's collaborative attitude, recalling what had happened without any negative bias.
- **Psychopharmacological treatments.** At both centres, NPM detected that it was necessary to resort to the use of multiple drugs, thus avoiding over-medication. The Mechanism made a Suggestion, which was dismissed, since the Secretaría General de Instituciones Penitenciarias is not considering the possibility of ordering prescriptions at the Hospital Psiquiátrico Penitenciario de Alicante, as is in fact the case at other prisons.

In turn, NPM, after analysing the medical records of the Hospital Psiquiátrico Penitenciario de Sevilla, found that patients there are not informed of the possibility of rejecting their pharmacological treatment in whole or in part, and are only informed of this possibility if they disagree. The Secretaría General de Instituciones Penitenciarias accepted the Suggestion made to correct this situation.

### **Prisons**

During 2023, NPM visited the following penitentiary centres as part of its mental health in prison programme: Madrid VII ([visit 22/2023](#)), Palma de Mallorca ([visit 31/2023](#)), Asturias ([visit 26/2023](#)) and Araba/Álava ([visit 44/2023](#)).

These visits assessed a number of strategic issues underlying the backbone of this project.

Given the singularity of the fact that the Autonomous Community of the Gobierno Vasco [Basque Country] has undertaken decentralised penitentiary and healthcare

competencies, the findings related to the Centro Penitenciario Araba/Álava will be examined separately.

- **Transfer of prison healthcare competencies.** At all penitentiary centres visited by NPM, except for Araba/Álava, a Recommendation was made to take the necessary action, nation and regionwide, to guarantee equity/equivalence, quality and efficiency in healthcare for detainees at any penitentiary centre, especially for those with high demands for mental healthcare. This will consequently fulfil the sixth additional provision of Ley 16/2003, de 28 de mayo, de cohesión y calidad del Sistema Nacional de Salud, regarding the transfer of prison healthcare competencies to autonomous Communities.
- **Comprehensive Care Programme for the Mentally Ill in Prisons (PAIEM).** PAIEM is a programme lacking a psychotherapeutic perspective. This is evidenced, for example, by the fact that the term "psychologist" is only mentioned once, when talking about the composition of the multidisciplinary team, and the term "psychotherapy" is absent from the entire document. Nor does it include the participation of clinical psychologists. Instead, the relevance given to psychopharmacological treatment exceeds its capacity to stabilise mentally ill inmates, given the context and absence of other psychotherapeutic resources.

NPM's Recommendation to include clinical psychologists in the treatment of inmates with mental health disorders was reformulated to allow PAIEM to include references and objectives related to psychotherapeutic intervention entrusted to qualified personnel.

As an alternative to PAIEM, the Centro Penitenciario Palma de Mallorca Penitentiary is considering a pilot nursing programme for mental health care. This programme allows nurses to be the professionals assigned —the centre has more nurses than specialised mental health staff— and the layout has taken into account the needs and resources available at the centre.

- **Lack of qualified mental health staff.** As NPM has been pointing out in its previous reports and as recommended by the Committee for the Prevention of Torture, prisons should have at least one full-time psychiatrist and one full-time clinical psychologist.
- **Mechanical restraints.** NPM repeatedly recalled that it was necessary to forbid restraints used on persons with mental health problems or at risk of self-harm.

- **Mentor inmates and potential mental harm.** NPM recommended promoting a broad application of Article 60 of the Código Penal [Spanish Criminal Code], as indicated in Instruction I 2-2020 of the Secretaría General de Instituciones Penitenciarias, in order for mentally ill inmates to be referred to a non-penitentiary community resource. Likewise, in order to improve coordination and provide greater guarantees in its authorised application, as requested by judges of prison vigilance in their principle for action 106, at their 19 meetings held between 1981 and 2021, the text of which was updated in October 2021 ([visit 22/2023](#)).

### ***Aita Menni Hospital Legal Psychiatry Unit***

The purpose of NPM's visit to the Unidad de Psiquiatría Legal del Hospital Aita Menni was to assess the situation of persons sentenced to custodial security, as opposed to other inmates in prison psychiatric hospitals.

In general terms, this centre's deprivation of liberty is very stringent, detainees have little autonomy and there is insufficient comprehensive psychosocial care to address the health and wellbeing of the mentally ill.

NPM made three Recommendations similar to those made to other centres: a protocol to prevent, detect, protect and care for ill-treatment, abuse or harassment; a comprehensive review of internal and disciplinary rules; and an urgent and comprehensive review of its protocol on restraints.

NPM also suggested that personalisation of rooms become a possibility, the ability to turn room lights on and off when required (not allowed at the time) and the installation of doorbells, given that doors are locked at night and also at certain times of the day.

Furthermore, NPM suggested that the competent Administration improve the processing and registration of complaints and claims, to guarantee outdoor visits as part of each treatment, to improve staffing ratios, and to promote individual and group psychotherapeutic work through a Rehabilitation Programme.

## **4.3 PROGRAMME ON INTELLECTUAL DISABILITY IN DEPRIVATION OF LIBERTY FACILITIES**

In 2023, the National Preventive Mechanism continued with its disability programme in the field of detention centres for juvenile offenders and police stations.

This programme takes into account the *Concluding observations on the seventh periodic report of Spain* ([CAT/C/ESP/CO/7](#)) issued by the Committee Against Torture,

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

It also takes into account the criteria established by the International Convention on the Rights of Persons with Disabilities.

#### 4.3.1 Visits

This year, NPM visited the Comisaría Provincial de Policía Nacional en Málaga ([visit 6/2023](#)), the Centro de Reeducción de Menores Mariano Ribera (Burjasot-Valencia) ([visit 3/2023](#)), Sierra Morena (Córdoba) ([visit 13/2023](#)) and Vicente Marcelo Nessi (Badajoz) ([visit 35/2023](#)) as part of its intellectual disabilities programme. Likewise, during the processing of the case file on its visit to Centro La Zarza in 2022 ([visit 5/2022](#)), NPM verified that all its Recommendations had been accepted, although some of them were not formulated during 2023. The competent Administration replied that they appropriate actions would be taken to implement each one.

The Mechanism also requested information on the implementation of these Recommendations in each detention centre for juvenile offenders pertaining to the Region of Murcia.

#### 4.3.2 Supervision cornerstones. Challenges and progress

##### ***Detection of intellectual disability***

- **Police stations:** In relation to the previous year's Recommendation to regulate the detection and care of persons with intellectual disabilities from the moment they are arrested and while they remain in custody ([Visits 53/2022](#) and [50/2022](#)), the Secretaría de Estado de Seguridad already has a *Guía de intervención policial con personas con discapacidad intelectual* [Guide for police intervention with persons with intellectual disabilities], as well as an information leaflet, which is why it considers that no specific regulation is necessary. However, NPM considers that in most cases police staff are insufficiently aware that these documents exist.

Furthermore, during its visit to the Comisaría Provincial de Policía Nacional en Málaga, NPM found that there are no specific regulations to detect persons with intellectual disabilities, which is why this Recommendation has been reformulated.

- **Centres for minors:** In 2022, NPM had made a Recommendation for the Centro La Zarza to establish a log of persons with intellectual disabilities admitted to the centre. The Administration replied that a logbook has been

drawn up reflecting the intellectual disability variable for minors, and a protocol has been implemented.

In none of the centres visited in 2023 were data available on persons with intellectual disabilities who were serving sentence. For this reason, NPM made two recommendations.

### ***Health and psychosocial care***

- **Police stations:** In response to NPM's Recommendation to regulate the procedure for assisting vulnerable persons ([visit 53/2022](#)), the Secretaría de Estado de Seguridad replied that the Recommendation will be taken into account when drawing up a comprehensive procedure for police detention, which is currently underway.
- **Juvenile centres:** In 2022, NPM had recommended that the Consejería de Política Social, Familias e Igualdad de la Comunidad de Madrid [Madrid Department of Social Policy, Families and Equality] provide the necessary psychological and psychiatric care to persons with intellectual disabilities ([visit 5/2022](#)). The autonomous Administration has established a protocol of action for persons with intellectual disabilities in order to efficiently act in these cases.

### ***Conditions of the facilities***

- **Police stations:** During its visits to police stations in Burgos and La Rioja, NPM found that persons with intellectual disabilities, if detained held in cells, are not held separately from other detainees. NPM recommended that in such cases separate cells should be provided. NPM considered that transitional measures should be taken to remedy this discriminatory situation, as nothing had changed since its visit in 2022 up to the closing date of this report. NPM ascertained that the same situation existed during its visit to the Comisaría de Málaga, and therefore made the same Recommendation.
- **Centres for minors:** The inadequate accommodation of minors with intellectual disabilities was ascertained. Thus, when admitted to the centre, the admission/observation module is used. This space promotes inadequate and hostile surroundings, which can have a psychological and emotional impact when admitting minors and persons with intellectual disabilities. For this reason, NPM recommended ensuring that the admission or educational setback of children with intellectual disabilities be handled in areas suited their needs ([Visits 3/2023](#), [13/2023](#) and [35/2023](#)).

One of the centres ([visit 3/2023](#)) has translucent glass in all room windows and in all other residential modules, which lets in light but does not allow views of the outside. This is the same situation in the classroom. This circumstance, together with the few hours they spend outdoors, makes the situation of detainees at the centre more difficult and distressing. NPM also made a Recommendation to resolve this situation.

***Means of constraint***

During visits to juvenile detention centres, NPM noted that inmates with intellectual disabilities or mental health problems have a high probability of being restrained, which is why the competent Administrations should implement measures for an alternative management of stressful situations, with the aim of reducing juvenile restraint to the minimum. NPM formulated Recommendations along these lines.





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## References



## INVESTIGATION INTO ALLEGATIONS OF TORTURE AND OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT

### Situations of risk identified by NPM in the registration and investigation of alleged ill-treatment in administrative proceedings

The Ombudsman, in its capacity as the National Preventive Mechanism (NPM), takes a special interest in complaints, records and investigations of cases of torture and ill-treatment. Although progress is being made in this regard, the reality is that NPM, during its visits to places of deprivation of liberty, has noticed that the competent administrations do not record all allegations of ill-treatment reported by persons in their custody or, even if recorded, there is still no proactive stance in obtaining essential evidence to document these cases. These issues impede or hinder judicial investigation.

In this regard, to note is that the Committee Against Torture, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ([CAT/C/ESP/CO/7](#)), in its *Concluding observations on the seventh periodic report of Spain*, was concerned that a significant number of criminal cases, relating to complaints of alleged *ultra vires* conduct on the part of Law Enforcement Agents, end with a dismissal or shelving of the case and an acquittal of the accused. It also considers that current internal investigation bodies lack the necessary independence as they belong to the same structure as the alleged perpetrators of such crimes.

### ***Special reference to the practice of mechanical restraints***

As noted in this report, the National Preventive Mechanism (NPM) carries out special monitoring on the use of mechanical restraints in deprivation of liberty facilities, been identified as a potential risk of violation of detainee rights.

In 2017, it published its *Guía de buenas prácticas en contenciones mecánicas* [Guide to good practice in mechanical restraints], with the aim of compiling international standards on the subject, highlighting the shortcomings and risks detected by NPM during its visits and formulating Recommendations for improvement.

In the following years, there was progressive awareness of the importance of addressing the use of restraints in deprivation of liberty facilities from a human rights perspective, for their progressive eradication, insofar as possible. This type of practice, which aims to control and avoid dangerous situations, has a direct impact on the physical, psychological and cognitive health of the persons restrained. In this regard, it

is worth highlighting the current regulatory framework on the use of mechanical restraints at different deprivation of liberty facilities:

- Instruction 3/2018, of the Secretaría General de Instituciones Penitenciarias of the Ministerio del Interior, which regulates a Protocol for mechanical restraints in detention cases. The aim of this regulation is to "guide prison staff in carrying out preliminary dialogue or de-escalation manoeuvres and, after exhausting this route, to carry out restraint in a manner that is always respectful of inmate rights".
- Circular 1/2022, of the Dirección General de Asuntos Penitenciarios del Departamento de Justicia de la Generalitat de Cataluña [Directorate General of Penitentiary Affairs of the Department of Justice of the Regional Government of Cataluña], approving a Protocol for coercive means used in provisional solitary confinement and mechanical restraint in prisons in Cataluña. This Circular repeals former Circular 2/2021, with the aim of "moving forward with improvements that help avoid the use of physical restraints, offering safe tools to prison staff in order to get aggressive inmate behaviour under control". The current Circular still seeks to reduce restraints, although it does so from a different point of view, putting a greater focus on staff training in order to control an inmate who is aggressive and agitated in the least harmful way, while guaranteeing order and the safety of both the staff involved and the centre.
- Instruction 1/2022, of 19 January, issued by the Fiscalía General del Estado, on the use of mechanical or pharmacological means of restraint in psychiatric or mental health units and residential and/or socio-sanitary centres for the elderly and/or persons with disabilities. The reasons underlying this rule include the fact that "the objective of zero restraint is still far from being achieved, which is why it is necessary to establish, while they still exist, systems to supervise and control the use of these resources, in order to guarantee respect for the detainee's fundamental rights. This task is also incumbent on the Fiscalía General del Estado".
- Ley Orgánica 8/2021 of 4 June on the comprehensive protection of children and adolescents against violence, the eleventh final provision of which amends Ley Orgánica 5/2000 of 12 January, regulating the criminal responsibility of minors. It amended Article 59, incorporating paragraph 3, which "prohibits mechanical restraint consisting of strapping someone to an adjustable bed or to an object fixed or anchored to the premises or to movable items".

During its visits carried out in 2023, NPM noted a clear lack of compliance with mechanical restraint laws at various types of deprivation of liberty facilities, as specifically discussed in the relevant sections of this report. The Mechanism continued to receive complaints of ill-treatment generated by the use of mechanical restraint. In fact, during the year, three cases should be highlighted in which the Ombudsman, either through NPM or each competent area, has initiated proceedings with the Fiscalía General del Estado to report malpractice in mechanical restraint matters, with a view to encouraging an investigation.

- During its visit to Centro Penitenciario de Asturias in May, NPM had access to the audiovisual material available on its latest mechanical restraints. After viewing the material, it was observed that in one of the restraints, the inmate was hit by an officer with a rubber bumper on the chest, while the rest of the staff adjusted restraining straps. Subsequently, the same officer directed another blow to his genitals.
- During its visit to the Centro de Cumplimiento de Medidas Judiciales Vicente Marcelo Nessi (Badajoz) in June, NPM collected many statements from children about the use of truncheons by security staff during mechanical restraints. After viewing the restraints, NPM was able to confirm that the centre had exceeded an appropriate level of force.
- During its visit to the Unidad de Psiquiatría Legal del Hospital Aita Menni in Arrasate/Mondragón (Gipuzkoa) in October, NPM observed that it was standard practice for persons to remain attached to the bed at five point for prolonged periods of time, upon admission. It also noted cases where persons were restrained in at least two places all day long, with the exception of mealtimes. NPM was particularly concerned about the application of these restraints to under-age patients.

### [Legal regulation and investigation of criminal torture in Spain](#)

#### ***Regulatory legislative framework***

In Spain, criminal torture is regulated in Title VII of Book II of the Código Penal, under the heading "Torture and other crimes against moral integrity" (Articles 173 to 177). The Ombudsman, acting as the National Preventive Mechanism (NPM), is entrusted with making preventive visits to deprivation of liberty facilities in order to detect situations of risk, based on criteria required by Spanish and internationally accepted standards. It is therefore important to check the criminal record of custodial staff related to deprivation of liberty, to particularly include offences torture and ill-treatment. In this regard, the

Código Penal [Spanish Criminal Code] contemplates specific offences, i.e. where the offender is determined, in Articles 174, 175 and 176.

Supreme Court Judgment 3976/2022, dated 3 November, of which point of law four sets out the doctrinal and case-law interpretation of these precepts, concludes that:

the difference between the criminal offence of torture in Article 174 of Código Penal 95 and the residual offence of abuse of moral integrity committed *ultra vires* by an authority or public office, "outside of the cases covered by the previous article", in Article 175 of the Código Penal, does not lie in the seriousness of the affront to the victims' dignity (as both precepts expressly punish both serious and non-serious attacks), but in the absence of teleological significance in the offence foreseen in Article 175 —"in order to obtain a confession or information from someone or to punish him for any actual or suspected conduct, or for any discriminatory reason"— as required by Article 174.

[...]

It is true that these legal rules determine, as legal scholars have pointed out, that the concept of torture in positive criminal law is broader, in terms of the nature of the perpetrating action, than the one foreseen in Article 1 of the Convention Against Torture of 10 December 1984, as it dispenses with the requirement of seriousness, which is contained in such Convention.

In its 2023 report, the Committee Against Torture reiterates its Recommendations regarding the need to review and amend the Spanish legislative framework in order to ensure that all forms of torture are forbidden, as on the grounds that current regulations are not in line with Article 1 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

### ***Documentation and publicity of judicial investigation into alleged ill-treatment of detainees***

Preventing human rights violations must not only avoid risk situations, but must also document and make them visible when they occur, including any law consequences for those held accountable. In its 2022 annual report, NPM already alluded to the importance of indirect or dissuasive prevention and, in this sense, pointed out defects disclosed in the administrative records held by the Fiscalía General del Estado [General Public Prosecutor's Office] and the Secretaría de Estado de Justicia [State Secretariat of Justice], on judicial proceedings related to the use of force. Following a request for information this year, the same conclusion has been reached.

The Fiscalía General del Estado has provided incomplete details, as a response was received from only 24 of the 59 territorial public prosecutor's offices (approximately 40.7%), as a result of difficulties in obtaining the requested data in a timely manner. The Fiscalía General del Estado indicated that, between 1 September 2022 and 31

August 2023, a total of six persons were convicted for an offence of torture under Article 174 of the Código Penal and for personal injury under Article 147 of the Código Penal, and two persons were convicted of a crime against moral integrity under Article 175 of the Código Penal. In the same time period, the Fiscalía General del Estado reported that it received six complaints linked to offences of ill-treatment and torture by authorities and civil servants performing duties in a deprivation of liberty context, two for ill-treatment under Article 173 and four for an offence against moral integrity under Article 175 of the Código Penal.

In the case of the Secretaría de Estado de Justicia, the information submitted does not accurately cover the requested parameters, since its database collects offences as legally foreseen in the Código Penal. The information contained in the System of Administrative Records in Support of the Administration of Justice (SIRAJ) does not include data on the offender's status as an authority or public officer for certain generic offences, if not specifically defined in the Código Penal.

According to the data submitted, between 1 September 2022 and 31 August 2023, four persons were convicted of an offence of torture under Article 174 of the Código Penal, as well as personal injury under Article 147, while two other persons were convicted of an offence against moral integrity under Article 175. The database of this registration system indicates that one authority or public officer was found guilty of a sexual offence committed whilst exercising his duties. However, it has not been possible to confirm whether this is a person working in deprivation of liberty surroundings, although it is expressly regulated in Article 443, paragraph 2, of the Código Penal. The drop-down menus of the System of Administrative Records in support of the Administration of Justice generically list the offence foreseen in Article 443, without any itemised sections.

It is also not possible to find out how many complaints of torture and ill-treatment have ended with a court dismissal or acquittal, an issue that is considered essential.

In view of the composition and functions attributed to the Comisión Nacional de Estadística Judicial (Article 461.3 of the Ley Orgánica del Poder Judicial and Real Decreto 1184/2006 of 13 October), in order to obtain a more accurate picture of available data and potential improvement when recording convictions custodial staff or others entrusted with deprivation of liberty functions, NPM presented this concern to the Consejo General del Poder Judicial, the body in charge of compiling and processing judicial statistics.

The report submitted by the Consejo General del Poder Judicial analyses data available in each database eventually containing information on authorities and officers performing their functions in deprivation of liberty situations, who have been reported,



convicted, acquitted or pardoned for crimes of torture and other cruel, inhuman and degrading treatment. Specifically, it examined the data collected in the Sistema de Registros Administrativos de apoyo a la Administración de Justicia (SIRAJ) [System of Administrative Records in Support of the Administration of Justice], judicial statistics and the Centro de Documentación Judicial [Judicial Documentation Centre], confirming that it was materially and legally impossible to obtain the required data, as it itself pointed out.

Although this constitutional body states that it is not competent to make any progress on this issue, it indicates that there is room for improvement in registration matters, specifically under the Ministerio de Justicia.

The Consejo General del Poder Judicial agrees with NPM that there is an unquestionable need for such data, given Spain's international commitments in the protection of fundamental rights, as well as its judicial relevance to ensure a proper administration of justice.

***Some judicial pronouncements on final convictions for torture, personal injuries and offences against moral integrity delivered in 2023***

- **Judgment of the Criminal Division of the Supreme Court 1255/2023, dated 15 March 2023.** The Supreme Court resolved the cassation appeal lodged by two local police officers against the sentence that convicted them of committing a crime of torture under Article 174 of the Código Penal, taking the form of a serious attack on moral integrity, as well as for aggravated personal injuries, due to seriously and repeatedly assaulting a street vendor, as a target. The appeal was partially upheld, with the sentences being reduced due to excessive duration of the proceedings, although the criminal nature of the facts was confirmed, concluding that the officers acted in this way in retaliation for his activity, in order to intimidate him in the trial against these same officers where he had to testify as a witness.
- **Judgment of the Criminal Chamber of the Supreme Court 4558/2023, dated 26 October 2023.** The Supreme Court dismissed the cassation appeal lodged by policía nacional officer, upholding his conviction for a crime against moral integrity under Article 176 of the Código Penal, for failing to prevent another policía nacional officer from assaulting a detainee for urinating on the floor of the pre-custody unit. The court emphasised the importance of the recordings to verify the proven facts, "ascertained specifically and accurately". It rejected the convicted person's claim that his disqualification be strictly limited to safeguarding and organising detainees

and prisoners. It uphold special disqualification to hold office in any position as a police or security officer.

## **COMMITTEE AGAINST TORTURE (CAT): CONCLUDING OBSERVATIONS ON THE SEVENTH PERIODIC REPORT OF SPAIN IN 2023**

The original report contains an extensive excerpt of the content of the *Concluding observations on the seventh periodic report of Spain* issued by the Committee Against Torture ([CAT/C/ESP/CO/7](#)), which constitute an important reference for the National Preventive Mechanism (NPM) both when scheduling its visits and when formulating and following up on its resolutions.

The main contents of these observations discuss various matters, some of which are recommendations made during the previous reporting cycle, which are currently pending implementation. The latter group includes recommendations on solitary confinement detention and fundamental safeguards, temporary holding centres for immigrants, penitentiary isolation and the excessive use of force by law enforcement agents.

## **SUPERVISION CORNERSTONE HIGHLIGHTS AND RECOMMENDATIONS MADE TO SPAIN**

See *National Preventive Mechanism (NPM) Annual Report 2023*

<https://www.defensordelpueblo.es/informe-mnp/mecanismo-nacional-prevencion-informe-anual-2023/>

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