



DEFENSOR DEL PUEBLO

ANNUAL REPORT 2010
Spain's National
Preventive Mechanism



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Presentation

Like other European democracies, Spain has made a great effort in recent years to eradicate all violations of fundamental rights in places of deprivation of liberty. The ratification by our country of the OPCAT and the subsequent designation via a public general act of the Ombudsman of Spain as the NPM are clear evidence of this.

When the Ombudsman of Spain became the NPM, a process of internal reorganisation was set in motion to ensure proper performance of the tasks that this entailed. A unit was set up whose main purpose is to increase the number of inspection visits made. This report is tangible proof of how diligently it has fulfilled its remit. We have also worked on designing the remaining elements that are to make up the final structure of the Mechanism, especially the Advisory Council, on extending our capabilities for normative analysis and on developing a training and dissemination programme.

Our Office has a long track record of defending fundamental rights that has resulted in its visiting many places of detention over its almost thirty years of operations. Designation as NPM is an acknowledgement of that fact, but it also poses the challenge of extending and raising the profile of our activities in this field, strengthening preventive aspects.

With budgetary constraints in mind, all this has been done through the reallocation of in-house personnel. This has required extra efforts by all the services in our institution, which I should like to publically acknowledge here.

The Ombudsman of Spain must combine two tasks in the defence of the rights of detainees: a reactive task, arising from its competences in the processing of complaints and *ex officio* investigations, and a preventive task, seeking direct, truthful and accurate information on the conditions and procedures that prevail in places of detention of all types, whatever the term of imprisonment involved, with a view to promoting measures to prevent torture, mistreatment and abuse. In this preventive task it is essential to analyse risk factors and impunity, and offer guidance to public administrations through frequent, constructive dialogue. In any event, this is precisely the way in which our institution goes about its everyday business.

This report tackles a great many issues and covers a great many inspection visits, but we are fully aware that this is just a part of the enormous, exciting task that lies before us. Our objective is to assure a state under the rule of law for everyone, especially for those who are most vulnerable because they are in prison.



M.ª Luisa Cava de Llano y Carrió
ACTING OMBUDSMAN OF SPAIN

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Acronyms & Abbreviations Used

ABP	Basic Policing Area
AENA	Spanish Airport & Air Traffic Authority
AP	Provincial Court of Appeal [<i>Audiencia Provincial</i>]
APT	Association for the Prevention of Torture
BPP	Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment (adopted by the General Assembly of the United Nations in Resolution 43/173 of December 9, 1988)
CAT	UN Committee Against Torture
CCTV	Closed Circuit Television
CETI	Temporary Holding Facilities for Immigrants
CGC	Civil Guard Barracks
CIE	Centres for Foreign Nationals
CIS	Halfway House
CM	Centre for Young Offenders
CNP	National Police Force
Convention	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted by the General Assembly of the United Nations in Resolution 39/46 of December 10, 1984)
CP	Prison
CPT	European Committee for the Prevention of Torture (Council of Europe)
DGPGC	Directorate General for the Police and Civil Guard (Ministry of the Interior)
DUE	Holder of a (short-course) University Degree in Nursing
EDM	Military Detention Centre
EMUME	Women and Juveniles Units (Civil Guard)
ETZ	Ertzaintza (Basque Autonomous Police)
FCSE	State Security Forces
FIES	Files on Inmates subject to Special Monitoring
GC	Civil Guard
GR	General Report of the CPT
GRUME	Juveniles Unit (National Police Force)
HIV	Human Immunodeficiency Virus

ICRC	International Committee of the Red Cross
INE	Spanish National Statistics Office [<i>Instituto Nacional de Estadística</i>]
IVML	Basque Institute of Forensic Medicine [<i>Instituto Vasco de Medicina Legal</i>]
JJI	Magistrates' Courts [<i>Juzgados de Instrucción</i>]
JVP	Parole Court [<i>Juzgado de Vigilancia Penitenciaria</i>]
LECrim	Criminal Procedures Act [<i>Ley de Enjuiciamiento Criminal</i>]
LODP	Public General Act on the Ombudsman [<i>Ley Orgánica del Defensor del Pueblo</i>]
LORPM	Public General Act on the Criminal Liability of Juveniles [<i>Ley Orgánica reguladora de la Responsabilidad Penal de los Menores</i>]
Mossos	Catalan Autonomous Police (Mossos d'Esquadra)
NPM	National Preventive Mechanism
OAR	Asylum & Refugee Office [<i>Oficina de Asilo y Refugio</i>]
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. (Adopted by the UN General Assembly in Resolution 77/199 of December 18, 2002)
PAIEM	Framework Programme for the Integrated Care of the Mentally Ill
REPM	Regulations Governing Military Detention Centres
ROFDP	Regulations for the Organisation and Workings of the Office of the Ombudsman
RP	Prison Regulations
RPJDL	UN Rules for the protection of Juveniles Deprived of their Liberty (adopted by the General Assembly in resolution 45/113 of December 14, 1990)
SAMU	Spanish Emergency Medical Care Service
SAMUR	Municipal Emergency Healthcare & Rescue Service of Madrid
SES	Office of the Secretary of State for Security (Ministry of the Interior)
SGIP	Office of the Secretary General for Prisons (Ministry of the Interior)
SISDE	IT system for information on and monitoring of detainees
SPT	UN Subcommittee on Prevention of Torture
UCER	Central Expulsion & Repatriation Unit (National Police Force)
UCH	Secure Hospital Unit
UIP	Police Intervention Unit
UNED	Spanish National Distance-Learning University
UNHCR	United Nations High Commission for Refugees

The Prevention of Torture Through a National Mechanism

- I. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment §1 – §7
- II. Designation of the Ombudsman of Spain as the National Preventive Mechanism §8 – §11
- III. Brief Introduction to the Office of the Ombudsman of Spain §12 – §17
- IV. Structure & Competences of an NPM §18 – §25
- V. Operational procedure for inspection visits §26 – §30

I. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

1. The prohibition of torture and other forms of mistreatment is universally recognized and included in the main international and regional documents concerned with human rights as an absolute, irrevocable provision that applies in all places and at all times, in peacetime and in wartime. It is also considered as an established rule of international law which is binding on all states, regardless of whether or not they are parties to the aforesaid human rights instruments. To enforce the prohibition more effectively, specific mechanisms have been set up to combat torture, among them the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted by the General Assembly of the United Nations on December 10, 1984 and came into force on June 26, 1987. 147 states are now party to this Convention, including Spain, which ratified it on October 19, 1987 (Official Journal issue 268, dated November 9, 1987).

2. Article 1 of the Convention defines “torture” as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”. So for there to be “torture” three elements must be present: the inflicting of severe physical or mental suffering; association by any means with a public official; and the intention of inflicting punishment or coercion.

3. In defining other prohibited treatment, pro-human rights organisations draw a distinction between the ideas of “torture”, “inhuman treatment” and “degrading treatment” which has been delimited by international jurisprudence, so that “torture” tops the hierarchy of unlawful behaviour, with “inhuman treatment” in second place and “degrading treatment” in third place.

4. The Convention was a great step forward, in that it reinforced the commitment of the States Parties and called on them to enact legislative, administrative and judicial measures, among others, to prevent, suppress and make reparation for torture, such as penalising and pursuing torture as a criminal offence and prohibiting the use in evidence of any information obtained under torture.

The Convention helped to effectively enforce the universal recognition of the ban on torture and other forms of mistreatment

Torture is understood to mean the intentional inflicting of severe suffering for the purposes of punishment or coercion, associated with a public official

Delimitation of a hierarchy of unlawful acts topped by torture, followed by inhuman treatment and degrading treatment

The Convention reinforced the commitment of States Parties

*The Committee Against
Torture monitors
compliance with the
Convention*

*Approval of OPCAT in 2002.
Based on two pillars: UN
Subcommittee on
Prevention of Torture and
National Preventive
Mechanism against torture*

*Deprivation of liberty
understood as detention
in which a person is not
permitted to leave at will*

Models of NPMs

5. The job of monitoring compliance with the Convention is entrusted to a general body — the Committee against Torture (CAT) — which regularly assesses the progress made by each state (Art. 19 of the Convention), has the power to conduct investigations *ex officio* when it believes there is evidence of the systematic use of torture in any State Party to the Convention (Art. 20), and the power to hear reports from private individuals and states regarding the infringement of any provision of the Convention by a State Party (Art. 21 & 22).

6. Following a long process promoted by civil society, gradually joined by numerous Latin American and European countries, on December 18, 2002 the UN General Assembly adopted the Optional Protocol to the Convention (OPCAT), intended to prevent torture and other forms of mistreatment by means of a system of regular inspection visits to places of deprivation of liberty of all types. Precedents can be found in the inspection visits made by the International Committee of the Red Cross (ICRC) and in the scope of the Council of Europe through the actions of the European Committee for the Prevention of Torture. What was new about the OPCAT was that it created a new structure for action based on two pillars: an international body — the UN Subcommittee on the Prevention of Torture (SPT) — supplemented by a national body: the National Preventive Mechanism against torture (NPM). Spain ratified the OPCAT on March 3, 2006, on receiving the 20th instrument of accession or ratification (Art. 28.1 of the Convention). At the time of writing this document the OPCAT has 57 States Parties, 34 of which have designated their NPMs.

7. For the purposes of this report, “deprivation of liberty” is understood in accordance with the criteria laid down by the APT, i.e. as any form of detention or imprisonment or the placement of a person (inmates, detainees, juvenile internees, patients of secure psychiatric hospitals, foreign nationals, etc.) in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

II. Designation of the Ombudsman of Spain as the National Preventive Mechanism

8. The ratification of the OPCAT by Spain was followed by a period of reflection on how best to establish an NPM, as provided for in the Protocol itself (particularly in Article 3). In this regard the OPCAT establishes certain basic requirements for the establishment of NPMs, but each state is given the flexibility to set up its own NPM in line with its own constitutional rules and regulations. Some states have designated pre-existing organisations (e.g. Mexico, Costa Rica, Albania, the Czech Republic, Denmark, Estonia, Moldavia

and Poland, among others) while others (e.g. Senegal and France) have decided to set up a new institution.

9. Following a process of consultation involving various public bodies, institutions and representatives of civil society in which various options were considered, the Spanish Parliament designated the Ombudsman as its NPM via Public General Act [*Ley Orgánica*] 1/2009 of November 3, which introduced a single final provision into the Public General Act on the Ombudsman (LODP) [*Ley Orgánica del Defensor del Pueblo*]. This reformulation of the Act took effect on November 5, 2009. The said final provision reads as follows:

“One. The Ombudsman of Spain shall carry out the role of National Preventive Mechanism against Torture pursuant to the Constitution, to this Act and to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Two. An Advisory Council is established as a technical and legal co-operation body for the exercising of the functions of the National Preventive Mechanism. The said Council shall be chaired by an Assistant to the Ombudsman to whom the latter shall delegate the functions established in this provision. Its structure, make-up and workings shall be determined by the relevant regulations”.

10. So the legislators opted to appoint an already consolidated organisation as their NPM, with a clear constitutional mandate that covers all public administrations, authorities and public employees. Provision has also been made for the direct application insofar as may prove necessary of the provisions of the OPCAT itself, i.e. for it to be possible to activate the Protocol at privately-owned centres where persons deprived of their liberty may be held by the decision of a public authority. Precisely because it had a sufficient regulatory framework *ab initio* the NPM has been able to take up its remit immediately. All that remains to complete the provisions regarding the general structure of the NPM is for the Advisory Council to be formed. To that end the current Ombudsman has submitted a proposal to the relevant body of the Spanish Parliament, through which it is intended to establish an ongoing channel for dialogue and co-operation with civil society and accredited experts in matters of interest to the NPM in order to enrich the perspectives within which the Spanish mechanism works.

11. On February 5, 2010 the Permanent Representative of Spain to the United Nations Office at Geneva and to Other International Organisations informed the High Commissioner of Human Rights of the designation of the Ombudsman as Spain’s NPM, in line with internal constitutional rules and regulations and in compliance with the country’s international obligations.

The Spanish Parliament passed Public General Act 1/2009, formalising the designation of the Ombudsman as NPM

A consolidated organisation has been appointed as NPM

The designation was reported to the High Commissioner of Human Rights on February 5, 2010



III. Brief Introduction to the Office of Ombudsman of Spain

Framework of competences of the Ombudsman

12. Since this first report to the SPT by Spain's NPM is aimed largely at the international community, it is perhaps advisable to provide a brief outline of the competences and functions of the Office of the Ombudsman.

High commissioner of the Spanish parliament: introduced into Spanish law in the Constitution of 1978

13. The figure of the Ombudsman [*Defensor del Pueblo* in Spanish] was introduced into the body of law in Spain in the Constitution of 1978, Article 54 of which defines his/her role as a "high commissioner of the Spanish parliament charged with defending the fundamental freedoms and rights enshrined in Chapter One of the Constitution". To that end the Ombudsman is charged with monitoring the activities of the public administration. The Constitutional Court [*Tribunal Constitucional*] has since established that the concept of "administration" as used in the Constitution extends to all public administrations in Spain.

Non-judicial guarantor of fundamental freedoms

14. Spain's constitutional structure establishes a complex judicial system that provides two main types of guarantee: on the one hand judicial guarantees regulated (with the exception of supranational matters regulated for instance within the scope of the UN, the Council of Europe and the European Union) within the scope of internal jurisdiction via appeals to the Constitutional Court or by the corresponding procedures in the ordinary courts of law; and on the other hand non-judicial guarantees, prominent among which are those provided by the Office of the Ombudsman through its day-to-day work.

It can bring habeas corpus proceedings and file appeals with the Constitutional Court

The Office of the Ombudsman is also empowered to request judicial control of deprivation of liberty through *habeas corpus* proceedings and also to file appeals with the Constitutional Court on grounds of unconstitutionality and appeals for the protection of constitutional rights.

Its capital characteristics are autonomy and independence

15. All issues related to the make-up, organisation and workings of the Office of the Ombudsman are subordinated to two capital characteristics: its autonomy and its independence. Thus, Article 6.1 of the LODP states that "The Ombudsman shall not be subject to any imperative mandate, shall not receive instructions from any authority and shall perform his/her tasks autonomously and according to his/her own criteria".

The Ombudsman's independence is guaranteed by law, and is compliant with Art. 18.1 of the OPCAT

As an institutional assurance of the independent status of the Office of the Ombudsman, the legislators have established a number of legal measures such as the special majority required for the appointment of the holder of the Office (three-fifths of the members of the upper and lower houses of parliament); a specific mandate deliberately established to be different from and longer than a parliamentary legislature; the provision of a

jurisdictional scope to cover the Ombudsman and his/her Assistants; their inviolability for the opinions that they formulate and the acts that they perform in the course of their duties; and a strict system of incompatibility with the holding of other positions or the membership of the political party to which they are subject. They have secure tenure in their positions during the five years of their mandate and can only be dismissed for clearly defined causes. In regard to the role of the Ombudsman as NPM, it must be pointed out that this independence complies with the provisions of Art. 18.1 of the OPCAT.

16. The legislators were also concerned to assure that the Ombudsman could carry out his/her remit effectively. To that end, a preferential, urgent duty to co-operate and assist the Ombudsman was established, applicable to all public authorities under Article 19 of the LODP. This duty is so strong that failure to comply with it is listed as an offence under Article 502.2 of the Criminal Code, together with other offences against the institutions of the state. Along the same lines, Article 11 of the LODP safeguards the Ombudsman's entitlement to act in all circumstances, including states of emergency or of siege. A system is also established whereby an interim Ombudsman is appointed should the office be vacant (as it is at the time of writing this report), thus assuring that full capacity for institutional action is maintained (Art. 5.4 LODP).

17. In 2010 no cases of failure to co-operate were detected among the authorities responsible for the places of deprivation of liberty inspected. Any such failure, e.g. any attempt to prevent or limit access to the said places or to restrict access to documentation, to personnel or to detainees, would have been met by an immediate attempt to solve the problem. If it had persisted, then the disciplinary and criminal-law actions entailed by failure to co-operate with the Ombudsman would have been brought.

IV. Structure & Powers of an NPM

18. With the entry into force of the reformulated LODP including the designation of the Ombudsman as NPM, The Office of the Ombudsman took on this task in full. Thus, as from November 5, 2009 inspection visits by the Ombudsman have included a more specific preventive component. The first inspection visits made revealed the need to establish a dedicated operational structure. This was also in line with the indications of the SPT, whose third annual report (2010, § 51) states that: "Where existing institutions such as the Ombudsman or the national human rights institution are designated as national preventive mechanisms, a clear distinction should be made between such

The LODP assures full capability for institutional action. This is reinforced by the provisions of the Spanish Criminal Code

Co-operation on the part of the authorities responsible

Preventive component of inspection visits



bodies, which generally act in response to specific situations, and national preventive mechanisms, which have preventive functions”.

Considerations of the SPT concerning the concept of “preventive action”

The 4th Annual Report (2011), published while the present document was being prepared, considers a number of points to establish the concept of preventive action. Paragraph 67 states that “The NPM should complement rather than replace existing systems of oversight and its establishment should not preclude the creation or operation of other such complementary systems”; paragraph 105 stresses that “the prevention of torture and ill-treatment embraces — or should embrace — as many as possible of those things which in a given situation can contribute towards the lessening of the likelihood or risk of torture or ill-treatment occurring”; and subsection (c) of paragraph 107 alludes to the guiding principles of prevention, indicating that “[p]revention will include ensuring that a wide variety of procedural safeguards exist for those deprived of their liberty [...]. Since the purpose of such safeguards is to reduce the likelihood or rise of torture or ill-treatment occurring, they are of relevance irrespective of whether there is any evidence of torture or ill-treatment actually taking place”.

This report lists weaknesses detected in terms of failure to meet prevention criteria, which must be corrected

Applying this doctrine to the case of Spain, attempts have been made to set up a working method aimed at detecting structural and procedural problems that might help torture or mistreatment to go unpunished, either by circumventing control systems or by hindering the thorough investigation and punishment of such behaviour. This explains the importance attributed below to issues such as CCTV surveillance, rigorous observance of the chain of custody, the examination of living conditions in different custodial areas, the provision of proper sanitation, proper identification of personnel, etc. This report lists various weaknesses detected in systems for dealing with persons in custody, which fail to meet the criteria for prevention and must therefore be corrected. Beyond this scope, determining whether torture or mistreatment exists in individual cases is a task for judges and courts of law.

Complaints of mistreatment and preventive action

Also in line with the doctrine drawn up by the SPT, the Ombudsman draws a distinction in the processing of complaints received concerning torture and mistreatment, which are dealt with by the competent areas depending on the matters involved in each case and are reported in the general reports published each year. The engagement of the NPM is not directly linked to individual cases but to the need to ensure proper monitoring of the overall system for deprivation of liberty. As mentioned in the SPT’s 4th Annual Report (2010, § 55) “The Optional Protocol does not establish a “complaints mechanism”, nor are the preventive inspection visits provided for thereunder intended to offer opportunities to investigate, examine and address the situation of particular individuals”.

19. The Office of the Ombudsman then had to make an important decision: whether to delay commencement of its programme of inspection visits until its complete structure was in place in compliance with the most stringent SBT standards or to deploy in stages, thus visiting a large number of places of deprivation of liberty as soon as possible. In the spirit of the OPCAT and pursuant to the mandate received, it was decided to do the latter and set up an operational unit immediately.

20. On January 19, 2010, in line with the report by the Co-ordination and Internal Framework Board [*Junta de Coordinación y Régimen Interior*], the task of overseeing the Office's work as an NPM was delegated to the First Assistant to the Ombudsman. A unit with its own organisational structure was also set up under the name "National Preventive Mechanism against Torture (NPM) Unit". Apart from the personnel assigned exclusively to this unit, it was decided that various specialist areas dealing with investigations of different types of places of deprivation of liberty (the Security and Justice, Health and Social Policy and Migration and Equal Treatment units) should provide backup personnel on the programme of inspection visits. The overall design of the NPM involves setting up an Advisory Council, establishing links with specialists in numerous scientific disciplines with a view to obtaining a more in-depth analysis of certain aspects of the treatment of persons deprived of their liberty and strengthening capabilities for normative analysis. Work on all these issues was undertaken in 2010; some of them are linked to changes in the ROFDP and thus clearly take priority in the future.

21. With a view to substantially increasing the operational capabilities of the NPM, at the 25th Seminar for the Co-ordination of Ombudsman, held in the province of La Rioja, the acting Ombudsman outlined to her regional counterparts a proposal for a co-operation agreement to involve all their offices in the fulfilment of the remit of the NPM. With this she strove to fulfil the mandate conferred by legislators, which established a single NPM with general competences covering all territories and all types of places of deprivation of liberty, while at the same time increasing the potential number of inspection visits through an advanced co-operation system. The implications of this system for the regional ombudsman are many and varied, and as a result no final decision has yet been made in this regard.

22. The Ombudsman also envisages that co-operation agreements will be signed with professional institutions and other significant organisations to establish a formal framework of external technical expert assistance in the tasks of the NPM. The top priority in this regard is to set up a stable framework of co-operation with specialists in forensic medicine, psychiatry and psychology.

Gradual deployment of the institution

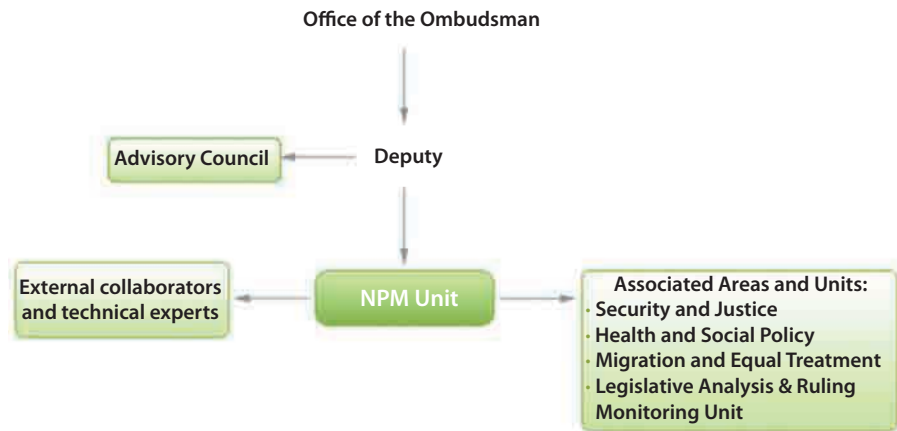
Structure of the NPM

Co-operation with regional ombudsmen has been proposed

Links with specialists in scientific disciplines

Basic organisation
structure

Graphic 1. Basic structure of the NPM



Better information in real time on persons deprived of their liberty

23. Similarly, it is considered essential to establish agreements for the provision by the authorities responsible of information in real time on persons deprived of their liberty in unusual circumstances (persons held incommunicado, compulsory psychiatric internees, stowaways, persons quarantined for health reasons, etc.).

The following tasks are established for the fulfilment of the mandate:

24. The main objective of the NPM is to “to establish a system of regular inspection visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment” (Art. 1 OPCAT). The OPCAT sets national preventive mechanisms the following tasks:

- To make unannounced inspection visits
- Annual reports
- Recommendations
- Proposals and observations on legislation
- Contact with the SPT
- Disclosure & awareness

- To make regular, unannounced inspections of places of deprivation of liberty [Art. 1 & 19.(a) OPCAT].
- To prepare and publish annual reports as per Art. 23 of the OPCAT, in which the “States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms”.
- To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations [Art. 19.(b) OPCAT].
- To submit proposals and observations concerning existing or draft legislation on relevant matters [Art. 19.(c) OPCAT].
- Maintain direct and, if necessary, confidential contact with the SPT [Art. 11.(b) OPCAT].
- Promote dissemination, disclosure and awareness activities in regard to issues concerned with the remit of the NPM.

The free access to places, persons and documents

25. The Ombudsman seeks to check that the parties responsible for deprivation of liberty comply with current domestic and international regulations, and

observe the parameters for proper action and management accepted by Spain on its signing of the Convention and the OPCAT. To that end the Ombudsman is granted broad powers of investigation, including free access to such places, persons and documentation as he/she may consider relevant (Art. 19.2 & 22 of the LODP). This is also a basic requirement for national preventive mechanisms (Art. 20 OPCAT).

V. Operational procedure for inspection visits

26. In broad terms the objective of inspections by the NPM is to examine the general conditions in which persons deprived of their liberty are held, and to check on how their fundamental rights are guaranteed. This is done via an essentially preventive approach that enables a constructive dialogue to be established with the authorities and other parties involved in deprivation of liberty, with a view to improving their situation and making good any shortcomings observed. The Spanish NPM takes on board the indications of the SPT in its third annual report (2010; § 18): “Whether or not torture or other cruel, inhuman or degrading treatment or punishment occurs in practice in a given State, there is always a need for States to be vigilant in order to guard against the risk of it occurring and to put in place and maintain effective and comprehensive safeguards to protect persons deprived of their liberty. It is the role of preventive mechanisms to ensure that such safeguards are actually in place and operating effectively and to make recommendations to improve the system of safeguards, both in law and in practice, and thereby the situation of persons deprived of their liberty”.

27. In line with the various authorities and public administrations that may be involved in the deprivation of the liberty of persons in Spain, the NPM takes an interest in places of the following types:

- Holding cells and other short-term facilities of the state security forces and of regional and local police forces.
- Holding cells in courthouses.
- Army, navy and air-force bases, military training centres.
- Detention Centres for foreign nationals.
- Military detention centre.
- Civil and military prisons.
- Centres for young offenders.
- Hospitals and other establishments prepared for the control or compulsory detention of persons for reasons of physical or mental health.
- Special schools and training centres housing juveniles admitted by their guardians with the authorisation of the courts.

granted to the Ombudsman meets a basic requirement for NPMs

A preventive approach is taken in inspections which enables a constructive dialogue to be established with the authorities

List of types of places of interest for inspection visits by the NPM



- Vehicles for transporting of persons in custody.
- Holding facilities for stowaways.
- Spanish-flagged vessels and aircraft on which measures to constrain the liberty of any person have been implemented.

In line with each specific case, inspection visits analyse the location and physical conditions of establishments, the legal status of each form of deprivation of liberty, living conditions and access to medical, psychological and social care

28. With this broad objective in mind, it must be maintained as an initial premise that persons deprived of their liberty still have a wide range of rights that should not be undermined except in those points intrinsically associated with the specific situation analysed. In this context, inspection visits are made with a number of specific objectives, including the examination of the location and structure of the establishments in question, the living conditions of the persons deprived of their liberty, the legal status of each form of deprivation of liberty with special attention to the practical effectiveness of the assurances in place and access to medical, psychological and, if necessary, social care. Thus, when the scope of each visit is established the main issues to be examined are specified according to the type of place inspected, taking into account potential risk situations and areas and their specific characteristics. To ensure maximum effectiveness of these inspections, they may be limited in scope in some cases or focused on particular issues which are considered to have priority.

Common inspection parameters

29. Fulfilment of these objectives is checked via a list of points of interest, structured as shown below. This is a minimum checklist common to all types of places of deprivation of liberty: it is, of course, adapted and individualised for each visit in line with numerous quantitative and qualitative parameters:

– Location: location & access

A) Location

- Location of the centre visited and analysis of the surrounding area.
- Public transport and frequency of services.
- Checking that there is sufficient parking for staff and visitors.

– Habitability: upkeep, compliance with ratios, access to goods & services, measures to facilitate the right to worship

B) Habitability

- Analysis of general conditions and assessment of the potential need for refurbishment.
- Detailed inspection (size, cleanliness, upkeep, lighting, ventilation, etc.) of establishments, with the rooms intended for persons deprived of their liberty, isolation units, sanitary facilities, recreation areas, visiting rooms and other communication rooms, dining rooms, kitchens, sports facilities and yards, places of worship, libraries and staff areas.
- Assessment of theoretical capacity, staffing levels and compliance of staff/inmate ratios, and examination of trends in these figures.
- Detailed checks on the availability of goods and services such as food (with particular attention to the availability of special diets and on quality assurance



and control), communications with the outside world, access to occupational tasks and training and access to culture.

- Examination of the objects with which persons deprived of their liberty are provided, such as clothing, mattresses, sheets, blankets, personal toiletries kits, etc. to assess their suitability, sufficiency and condition.
- Determination of measures adopted to facilitate respect for religious freedom and worship.

C) Security

- Analysis of interior surveillance systems and any protocols in place concerning the making, storing, handling, custody of and access to recordings.
- Examination of firefighting systems and systems covering other situations of risk, accessibility, emergency and evacuation protocols and the training on these matters provided to staff at the establishment and, as the case may be, to the persons deprived of their liberty.
- Checks to ensure that there are systems in place for communication with custodial officers.
- Checks on the suitability of the security equipment and infrastructures available.

D) Sanitation and social conditions

- Inspection of sanitation facilities and determination of the associated human and material resources.
- Determination of ordinary intervention protocols and the *modus operandi* in case of emergencies or referrals to allocated centres.
- Checks on the availability of pharmaceuticals and the protocols in place for prescribing and dispensing them.
- Examination of provisions for the vaccination of staff and persons deprived of their liberty, and health education programmes.

E) Living conditions

- Examination of timetables and activities programmed at the centre.
- Examination of disciplinary regimes and the rights and assurances associated with them.
- Analysis of provisions for communication face-to-face and by technical means.

F) Compliance with the requirements of law

- Examination of official record books as established for each type of place of deprivation of liberty.

– *Security: protocols for surveillance, emergencies, evacuation and communication and suitability of infrastructures and materials*

– *Sanitation and social conditions: human and material resources, intervention protocols, pharmaceutical care, health education*

– *Living conditions: timetables and programmes of activities, disciplinary regimes, personal communication*

– *Requirements of law: compliance and extent of actual application, internal regime and claims and complaints procedures*



- Determination of applicable regulations and the extent to which they are applied in practice, with special reference to the framework of rights and freedoms compatible with each specific legal situation.
- Examination of internal rules and regulations, if any, at each place of deprivation of liberty, to assess whether they meet the required standards for the prevention of torture and mistreatment.
- Step-by-step examination of the procedure for admission of inmates to centres and detailed analysis of the process of searching inmates.
- Analysis of complaints and claims procedures, with special emphasis on any mechanisms in place to ensure prompt, impartial examination of complaints and the safeguards established for persons deprived of their liberty who file a complaint.

– Other issues: list of violent incidents, check on inspection visits by authorities, interviews with persons deprived of their liberty and with the officer in charge


G) Other issues

- List of any violent incidents recorded at the place of deprivation of liberty prior to the inspection visit.
- Checks for inspection visits by the administration and by other authorities (judges, public prosecutors, etc.).
- Interviews with any persons deprived of their liberty held at the time.
- Interview with the officer in charge of the place visited, and with staff on duty, if any.

The scope of inspection visits is determined by the Ombudsman. Each visit is considered as an ex-officio action

30. The scope of inspection visits is determined by the Ombudsman on the basis of a number of criteria (importance in quantitative terms, time since the last inspection, introduction of any relevant changes in regulations or organisation, following up of previous visits, weighted balance between the different forms of deprivation of liberty and the organisations responsible for them, the opportunity to promote horizontal actions conducive to a consistent vision of comparable places, the rate of complaints on grounds of mistreatment or of disciplinary proceedings brought against custodial officers at a given place), and recorded in the credentials provided to members of the inspection team. Each visit is an ex-officio action, carried out pursuant to Article 9.1 of the LODP. The assessors in each inspection team prepare for the visit, assessing all relevant circumstances to establish the level of intensity to be applied in the inspection. When circumstances make it advisable, the inspection visits may be extended to or focused on particular issues not initially considered as priorities. A report on each inspection visit is drawn up.

**Inspection Visits
in 2010
§ 31 - § 33**



31. From the range of different types of places of deprivation of liberty listed in the previous chapter, establishments of the following types were visited in 2010:

- National Police Force headquarters, district stations and central registries.
- Civil Guard headquarters and barracks.
- Establishments of the Regional Police Force of Navarre.
- Stations and other establishments of the Ertzaintza.
- Stations of the Mossos d’Esquadra.
- Municipal holding cells for detainees and other local police force establishments.
- Courthouse holding cells.
- Waiting areas for persons denied access and asylum seekers at border control posts.
- Military detention centres.
- Detention Centres for Foreign Nationals.
- Prisons.
- Centres for young offenders.
- Secure hospital Units.
- Vehicles for the transporting persons in custody.
- Procedure for the repatriating foreign nationals.

32. Places of deprivation of liberty in all 17 of Spain’s regional autonomous communities and in the autonomous cities of Ceuta and Melilla were visited. In this first year of inspections, emphasis was placed on carrying out a large number of inspection visits, so as to enable a preliminary picture to be drawn up of the situation as regards deprivation of liberty in Spain as a whole. In all, 231 inspection visits were made, including the exercise carried out at the Madrid V prison (Soto del Real) in the context of the *European NPM Project* under the auspices of the Council of Europe.

Numerous different types of places of deprivation of liberty were visited at national, regional and local levels

A total of 231 places of deprivation of liberty were visited, to enable an overall picture of the situation to be drawn up

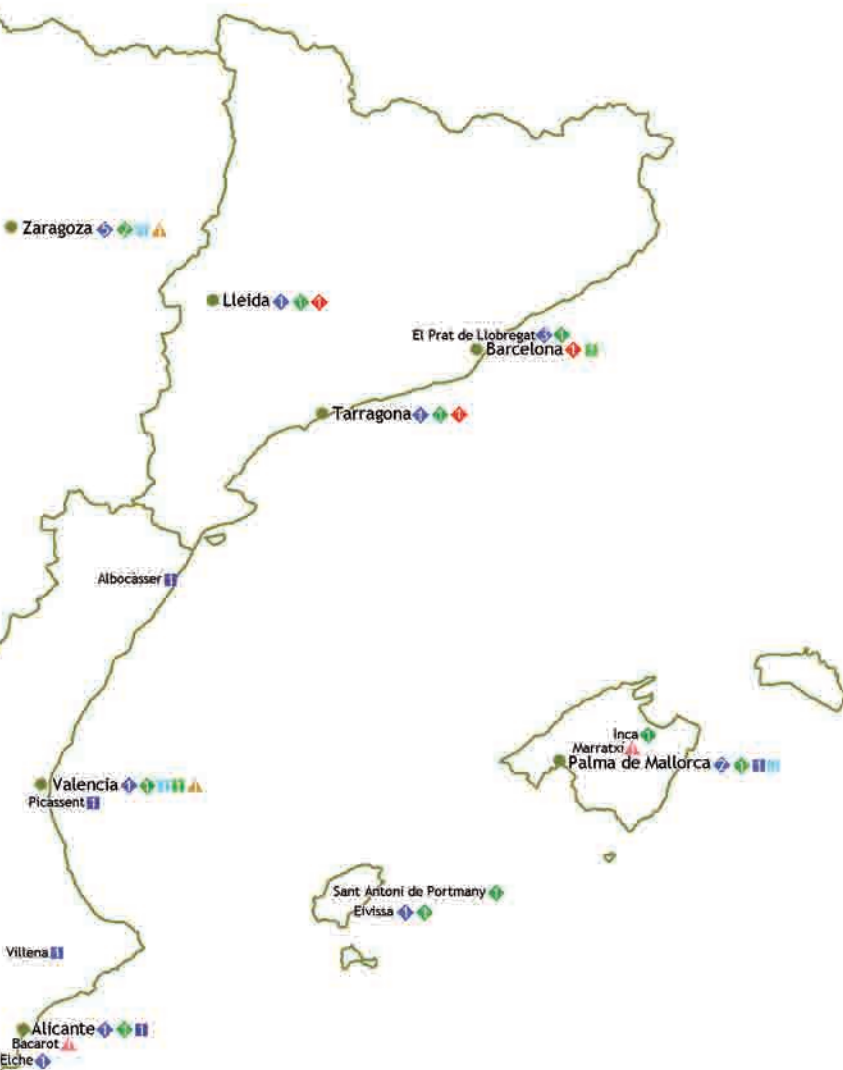
Table 1. Number of places visited per regional autonomous community

Places visited per regional autonomous community	
Andalusia	31
Aragon	9
Principality of Asturias	13
Canary Islands	7
Cantabria	11
Castilla-La Mancha	9
Castilla y Leon	20
Catalonia	2
Extremadura	6
Galicia	10
Balearic Islands	12
A. Community of Madrid	21
Region of Murcia	5
A. Community of Navarre	13
Basque Country	22
La Rioja	8
A. Community of Valencia	13
Autonomous City of Ceuta	4
Autonomous City of Melilla	5
Total	231

Number of places visited, broken down by regional autonomous communities

Graphic 2. Geographical locations of the establishments visited in 2010





Places of deprivation of liberty visited in 2010

◆ National Police Force (CNP)	60
◆ Civil Guard	56
◆ Erzaintza	11
◆ Mossos d'Esquadra	3
◆ Regional Police Force of Navarre	5
■ Municipal holding cells	10
■ Courthouse holding cells	28
■ Military detention centres	5
■ Detention centres for foreign nationals (CIE)	7
■ Prisons	22
▲ Centres for Young Offenders	8
▲ Secure hospital units	13
▲ Vehicles for transporting persons in custody	2
▲ Procedure for repatriating foreign nationals	1
TOTAL	231



Table 2. National Police Force Headquarters, District Stations & Central Registries

POLICE HEADQUARTERS		
No. in order	Location	Province
1	Badajoz	Badajoz
2	Ceuta	Ceuta
3	Las Palmas de Gran Canaria	Las Palmas
4	Logroño	La Rioja
5	Melilla	Melilla
6	Murcia	Murcia
7	Oviedo	Asturias
8	Oviedo, Buenavista facilities	Asturias
9	Palma de Mallorca	Balearic Islands
10	Pamplona	Navarra
11	Santander	Cantabria
12	Seville	Seville
13	Toledo	Toledo
14	Vitoria	Alava
15	Zaragoza	Zaragoza
DISTRICT POLICE STATIONS		
No. in order	Location	Province
16	A Coruña-Lonzas	A Coruña
17	Alicante	Alicante
18	Ávila	Ávila
19	Aviles	Asturias
20	Bilbao	Vizcaya
21	Caceres	Caceres
22	Cadiz	Cadiz
23	Cartagena	Murcia
24	Ciudad Real	Ciudad Real
25	Córdoba	Córdoba
26	Ibiza	Balearic Islands
27	El Prat de Llobregat, airport	Barcelona
28	Elche	Alicante
29	Gijon	Asturias
30	Jerez de la Frontera	Cadiz
31	Leon	Leon
32	Lleida	Lleida



DISTRICT POLICE STATIONS		
No. in order	Location	Province
33	Lugo	Lugo
34	Madrid, Barajas airport	Madrid
35	Madrid, City Centre district	Madrid
36	Madrid-Chamartín	Madrid
37	Madrid-San Blas-Vicálvaro	Madrid
38	Málaga	Málaga
39	Málaga, aeropuerto	Málaga
40	Maspalomas	Las Palmas
41	Playa de Palma de Mallorca	Balearic Islands
42	San Sebastian	Guipúzcoa
43	Segovia	Segovia
44	Tarragona	Tarragona
45	Torrelavega	Cantabria
46	Torremolinos	Málaga
47	Tudela	Navarra
48	Valladolid, Delicias district	Valladolid
49	Zaragoza, Actur-Rey Fernando district	Zaragoza
50	Zaragoza, Arrabal district	Zaragoza
51	Zaragoza, Delicias district	Zaragoza
52	Zaragoza, San José district	Zaragoza
OTHER ESTABLISHMENTS		
No. in order	Location	Province
53	Madrid, Central Registry of Detainees (visited twice, once at night)	Madrid
54	Valencia, Duty Central Inspectorate. Central Registry of Detainees	Valencia

Table 3. Civil Guard Headquarters and Barracks

HEADQUARTERS		
No. in order	Location	Province
1	A Coruña	A Coruña
2	Alicante	Alicante
3	Ávila	Ávila
4	Badajoz	Badajoz
5	Bilbao	Vizcaya
6	Caceres	Caceres
7	Cadiz	Cadiz
8	Ceuta	Ceuta
9	Ciudad Real	Ciudad Real
10	Córdoba	Córdoba
11	Gijon	Asturias
12	Las Palmas de Gran Canaria	Las Palmas
13	Leon	Leon
14	Lleida	Lleida
15	Logroño	Logroño
16	Lugo	Lugo
17	Málaga	Málaga
18	Melilla	Melilla
19	Murcia	Murcia
20	Oviedo	Asturias
21	Palma de Mallorca	Balearic Islands
22	Pamplona	Navarra
23	San Sebastian	Guipúzcoa
24	Santander	Cantabria
25	Segovia	Segovia
26	Sevilla	Sevilla
27	Tarragona	Tarragona
28	Toledo	Toledo
29	Tres Cantos	Madrid
30	Valencia	Valencia
31	Valladolid	Valladolid
32	Vitoria	Alava
33	Zaragoza	Zaragoza



BARRACKS		
No. in order	Location	Province
34	Alsasua	Navarra
35	Arguineguin	Las Palmas
36	Arnedo	La Rioja
37	Aviles	Asturias
38	Cabezón de Pisuerga	Valladolid
39	Cartagena	Murcia
40	Ibiza	Balearic Islands
41	El Astillero	Cantabria
42	El Prat de Llobregat, aeropuerto de	Barcelona
43	Haro	La Rioja
44	Inca	Balearic Islands
45	Jerez de la Frontera	Cadiz
46	Madrid, Barajas airport	Madrid
47	Madrid, Guzmán el Bueno	Madrid
48	Sant Antoni de Portmany	Balearic Islands
49	Santiago de Compostela	A Coruña
50	Tafalla	Navarra
51	Torrelavega	Cantabria
52	Vecindario	Las Palmas
53	Villaviciosa	Asturias
54	Zaragoza, Casablanca district	Zaragoza

Table 4. Basque Autonomous Police Stations & Other Establishments

ERTZAINZA		
No. in order	Location	Province
1	Bilbao	Vizcaya
2	Durango	Vizcaya
3	Erandio	Vizcaya
4	Getxo	Vizcaya
5	Hernani	Guipúzcoa
6	Llodio	Alava
7	San Sebastian-Donostia	Guipúzcoa
8	Sestao	Vizcaya
9	Vitoria-Gasteiz	Alava
10	Zarautz	Guipúzcoa
11	Arcaute: Territorial Office of the Anti-terrorism & Information Division	Alava

Table 5. Stations of the Catalan Autonomous Police

MOSSOS D'ESQUADRA		
No. in order	Location	Province
1	Barcelona-Les Corts	Barcelona
2	Lleida	Lleida
3	Tarragona	Tarragona

Table 6. Stations of the Regional Police Force of Navarre

No. in order	Location	Province
1	Alsasua	Navarre
2	Pamplona	Navarre
3	Sangüesa	Navarre
4	Tafalla	Navarre
5	Tudela	Navarre

Table 7. Local Police Forces

No. in order	Location	Province
1	Calahorra	La Rioja
2	Ciudad Real	Ciudad Real
3	Córdoba	Córdoba
4	Haro	La Rioja
5	Lebrija	Seville
6	Marchena	Seville
7	Palma de Mallorca	Balearic Islands
8	Pamplona	Navarra
9	San Sebastian	Guipúzcoa
10	Santander	Cantabria


Table 8. Courthouse Holding Cells

No. in order	Location	Building
1	A Coruña	JJI, Court of First Instance & Criminal Court
2	Ávila	Courthouse
3	Aviles (Asturias)	Courthouse
4	Ciudad Real	JJI & Court of First Instance
5	Cordoba	JJI, Court of First Instance & AP
6	Cordoba	Juvenile Court
7	Cordoba	Gender Violence Court
8	Gijon (Asturias)	Courthouse [<i>Palacio de Justicia</i>]
9	Las Palmas	JJI, Court of First Instance, Criminal Court & Gender Violence Court
10	Leon	JJI, Court of First Instance Criminal Court, Juvenile Court & Gender Violence Court
11	Logroño	Courthouse
12	Madrid	JJI & Court of First Instance
13	Malaga	Courthouse Complex [<i>Ciudad de la Justicia</i>]
14	Maspalomas (Las Palmas)	JJI, Court of First Instance & Gender Violence Court
15	Melilla	Courthouse
16	Oviedo	Courthouse [<i>Palacio de Justicia</i>]
17	Palma de Mallorca (Balearic Islands)	JJI & Court of First Instance
18	Palma de Mallorca (Balearic Islands)	AP & High Court of Justice
19	Palma de Mallorca (Balearic Islands)	Juvenile Court
20	Pamplona	Courthouse [<i>Palacio de Justicia</i>]
21	Santander	JJI & Court of First Instance
22	Santander	Criminal Court
23	Seville	AP & Police Court
24	Seville	Criminal Court
25	Valencia	Courthouse Complex [<i>Ciudad de la Justicia</i>]
26	Valladolid	JJI & Court of First Instance
27	Valladolid	AP
28	Zaragoza	JJI, Court of First Instance & Criminal Court

Table 9. Police Establishments at Border Control Posts

No. in order	Location	Province	Establishment
1	El Prat de Llobregat	Barcelona	Waiting area for asylum seekers at the airport
2	El Prat de Llobregat	Barcelona	Waiting area for persons denied entry at the airport
3	Madrid	Madrid	CNP Waiting area for asylum seekers & persons denied entry at Barajas airport
4	Madrid	Madrid	CNP Room 4, UCER at Barajas airport
5	Málaga	Málaga	CGC at the airport
6	Málaga	Málaga	CGC in the port
7	Málaga	Málaga	Waiting area for asylum seekers & persons denied entry at the airport
8	Melilla	Melilla	Beni Enzar border post

Table 10. Military Detention Centres

No. in order	Location	Province
1	Ceuta	Ceuta
2	Colmenar Viejo (Centro)	Madrid
3	Leon (North)	Leon
4	Melilla	Melilla
5	San Fernando (South)	Cadiz

Table 11. Detention Centres for Foreign Nationals

No. in order	Location	Province
1	Algeciras	Cadiz
2	Barcelona	Barcelona
3	Madrid	Madrid
4	Málaga	Málaga
5	Murcia	Murcia
6	Valencia	Valencia
7	Tarifa: detention facility for foreign nationals	Cadiz

**Table 12. Prisons**

No. in order	Location	Province
1	Albacete	Albacete
2	Albocàsser	Castellón
3	Alcalá de Henares (men), Madrid II	Madrid
4	Alcalá de Henares (military)	Madrid
5	Alcalá de Henares (women) Madrid I	Madrid
6	Alcázar de San Juan	Ciudad Real
7	Alicante cumplimiento	Alicante
8	Basauri	Vizcaya
9	Dueñas	Palencia
10	El Dueso	Cantabria
11	Estremera (Madrid VII)	Madrid
12	Martutene	Guipuzcoa
13	Monterroso	Lugo
14	Morón de la Frontera	Seville
15	Nanclares de la Oca	Alava
16	Pereiro de Aguiar	Ourense
17	Picassent Cumplimiento	Valencia
18	Soria	Soria
19	Villabona	Asturias
20	Villanubla	Valladolid
21	Villena (Alicante II)	Alicante
22	Soto del Real (Madrid V) (on-site exercise)	Madrid

Table 13. Centres for Young Offenders

No. in order	Centre	Location	Province
1	El Pinar II	Colmenar Viejo	Madrid
2	Els Reiets	Bacarot	Alicante
3	Es Pinaret	Marratxí	Balearic Islands
4	Ilundáin	Ilundáin	Navarre
5	La Jara	Alcalá de Guadaira	Seville
6	Maliaño	Maliaño	Cantabria
7	Punta Blanca	Ceuta	Ceuta
8	Vicente Marcelo Nessi	Badajoz	Badajoz

Table 14. Secure hospital Units

No. in order	Hospital	Location	Province
1	Clínico	Valladolid	Valladolid
2	General	Ciudad Real	Ciudad Real
3	General	Segovia	Segovia
4	General	Valencia	Valencia
5	Marqués de Valdecilla	Santander	Cantabria
6	Miguel Servet	Zaragoza	Zaragoza
7	N.ª S.ª de Sonsoles	Ávila	Ávila
8	Provincial	Cordoba	Cordoba
9	San Millán-San Pedro	Logroño	La Rioja
10	Txagorritxu	Vitoria	Alava
11	Universitario	A Coruña	A Coruña
12	Universitario	Oviedo	Asturias
13	Virgen de la Montaña	Caceres	Caceres

Table 15. Vehicles for Transporting Persons in Custody

No. in order	Vehicle service provider
1	Civil Guard headquarters, Lugo
2	Civil Guard Central Services (Madrid)

Table 16. Procedure for Repatriating Foreign Nationals

No. in order	Vehicle service provider
1	UCER, 25/11/2010: Madrid-Jerez de la Frontera-Algeciras-Ceuta-Moroccan border


The OPCAT lays down no criteria on the structure and content of the annual reports required of NPMs

33. As indicated, Article 23 of the OPCAT calls on NPMs to prepare annual reports on their activities. However it does not lay down any criteria concerning the structure and content of those reports. This has resulted in a wide variety of report types, as can be seen on the website of the Office of the UN High Commissioner for Human Rights on this issue: <http://www2.ohchr.org/english/bodies/cat/opcat/annualreports.htm> . Some of the reports there are organised by areas of interest, some by forms of deprivation of liberty, some by stand-out issues, some by types of centre and some by the authorities involved in the NPM, while others mix different methodologies.

The Ombudsman opted to structure the annual NPM

Given the nationwide competences of the Office of the Ombudsman and the fact that its actions cover all public authorities, it was decided that this report should

group the inspection visits carried out according to the maximum duration in law of each type of deprivation of liberty. This variable was considered to be determinant in establishing the minimum standards applicable in each case. This also makes it easier to compare places intended to hold persons for comparable periods of time. Within each major chapter a distinction is drawn between the various authorities responsible, which also facilitates an across-the-board analysis of the situations found. When necessary a distinction is also drawn by types of places examined within the scope of each authority.



report according to the maximum duration in law of each type of deprivation of liberty

Places of Short-Term Deprivation of Liberty

I. National Police Force Establishments

§40 – §89

II. Civil Guard Establishments

§90 – §117

III. Regional Police Force Establishments

§118 – §201

IV. Local Police Force Establishments

§202 – §224

V. Courthouse Holding Cells

§225 – §248

34. This chapter covers inspection visits to places of deprivation of liberty where the maximum time for which persons are held is counted in days. The most common cases of such deprivation of liberty the holding of persons for identification under the Public General Act for Public Safety, criminal arrests, detentions under legislation governing foreign nationals, military arrests for minor offences, holding at border posts on denial of entry or while requests for asylum are processed and the confinement of stowaways. Places of detention and other establishments at border posts were visited in 2010.

35. In line with the objectives set for the Ombudsman's activities as the NPM, inspection visits were made to 173 places of short-term deprivation of liberty run by various police forces and organisations. The total number of detentions resulting in persons being held in custody in the whole of Spain in 2010 was over 470,000. When selecting which places to visit in this forest here of activity, special emphasis was given to visiting those promises with the highest throughput of detainees: in all, the places visited housed 60% of all persons detained and held in cells.

36. The rules governing deprivation of liberty in the Constitution can be found in Article 17, which recognizes the fundamental right of liberty and establishes the principle of legality in dealing with cases and forms of deprivation of liberty. Detention is envisaged as a precautionary measure that must be administered on the basis of the minimum essential duration, lasting no more than 72 hours, by which time detainees must be released or brought before the courts. In this context, the first issue to be considered is criminal arrest, as regulated by Articles 489-501 and 520-527 of the LECRIM. Article 520.2 of the LECRIM is of particular importance, since it establishes the core rights of all detainees, in implementation of paragraph 3 of the aforesaid Article 17 of the Constitution. Detainees must be informed of these core rights immediately upon their detention, in line with Article 9.2. of the International Covenant on Civil and Political Rights, and with principles 10-13 and 17 of the BPP. Police forces are issued with forms that contain the relevant information in various languages — it has been observed at various forces that these forms are available via their corporate intranet — which are presented to the detainee for his/her signature. If the detainee refuses to sign or is illiterate, a procedural note from the officer in charge is issued.

37. Spanish regulations establish that criminal liability may be applied to juveniles as from the age of 14. Particular requirements applicable to criminal arrests of juveniles are regulated in Art. 17 of the LORPM, which adjusts the procedures applied according to the age and degree of maturity of the juveniles involved. The arrest must be reported immediately to the parents, tutors or guardians of the juvenile, who must be informed of their right to appoint a lawyer,

Visits to places of deprivation of liberty where persons are held for periods measured in days

The 173 establishments visited housed 60 % of all the detainees held in cells in 2010

Art. 17 of the Constitution recognises the fundamental right to liberty and establishes the principle of legality in dealing with cases and forms of deprivation of liberty, as implemented by Art. 502.2 of the LECRIM

Detention is seen as a precautionary measure that must be applied on the basis of the minimum essential duration, lasting no more than 72 hours

Juvenile detainees must be released or handed over to the public prosecutor within no more than 24 hours



to the public prosecutor's office and, as the case may be, to the relevant consular office. In such cases the detainee must be released or brought before the public prosecutor's office within 24 hours. It is also envisaged that the guardian or person with parental responsibility should be present when the statement of the juvenile under arrest is taken (with the child protection officer acting in their stead when those persons cannot be located). The detainee must be held in custody in suitable establishments separate from those used for adults, and must "receive such care, protection and social, psychological, medical and physical care as may be required".

Passive extradition is another form of criminal arrest

38. The particular type of criminal arrest envisaged in Article 8 of Act 4/1985 of March 21 on Passive Extradition must be highlighted: it stipulates that persons must be detained and brought before the courts within 24 hours when requested, in line with certain requirements, by the state that requests extradition.

Art. 55.2 of the Constitution limits rights involving maximum detention time and secrecy of communications in cases of membership of armed groups and terrorism. Art. 520.2 and 527 of the LECRIM regulate specific aspects of this type of arrest.

Article 55.2 of the Constitution also establishes the possibility that certain constitutional rights may be limited, which is relevant here insofar as refers to the maximum period of detention (Art. 17.2) and secrecy of communications (Art. 18.2) for persons linked to the investigation of actions by armed groups and terrorists. Articles 520 bis and 527 of the LECRIM contain special features of this form of arrest and stipulate that incommunicado detention must be ratified by the courts, specifically by the central investigating magistrates of the National High Court [*Audiencia Nacional*]; any request for extension of detention periods and incommunicado detention involving juveniles aged under 14 must be filed by the Juveniles Section of the Public Prosecutor's Office at the National High Court and ruled on by the Central Juvenile Court Judge [*Juez Central de Menores*] (Art. 17.4 LORPM).

Other forms of detention include those affecting the status of foreign nationals

39. Another important form of detention is that covered by Article 61.1.(d) of the Foreign Nationals Act [*Ley de Extranjería*], as a precautionary measure in the context of sanctions procedures that may entail expulsion. Deprivation of liberty may also be considered for foreign nationals who are deemed not to meet the requirements for admission (Art. 26.2 & 60 of the Aliens Act) with a view to ensuring that they are returned as soon as possible. Similarly, Article 22 of Act 12/2009 of October 30, dealing with the right of asylum and subsidiary protection, establishes that asylum seekers must be held in facilities provided for that purpose while requests filed at the border undergo the process of admission.

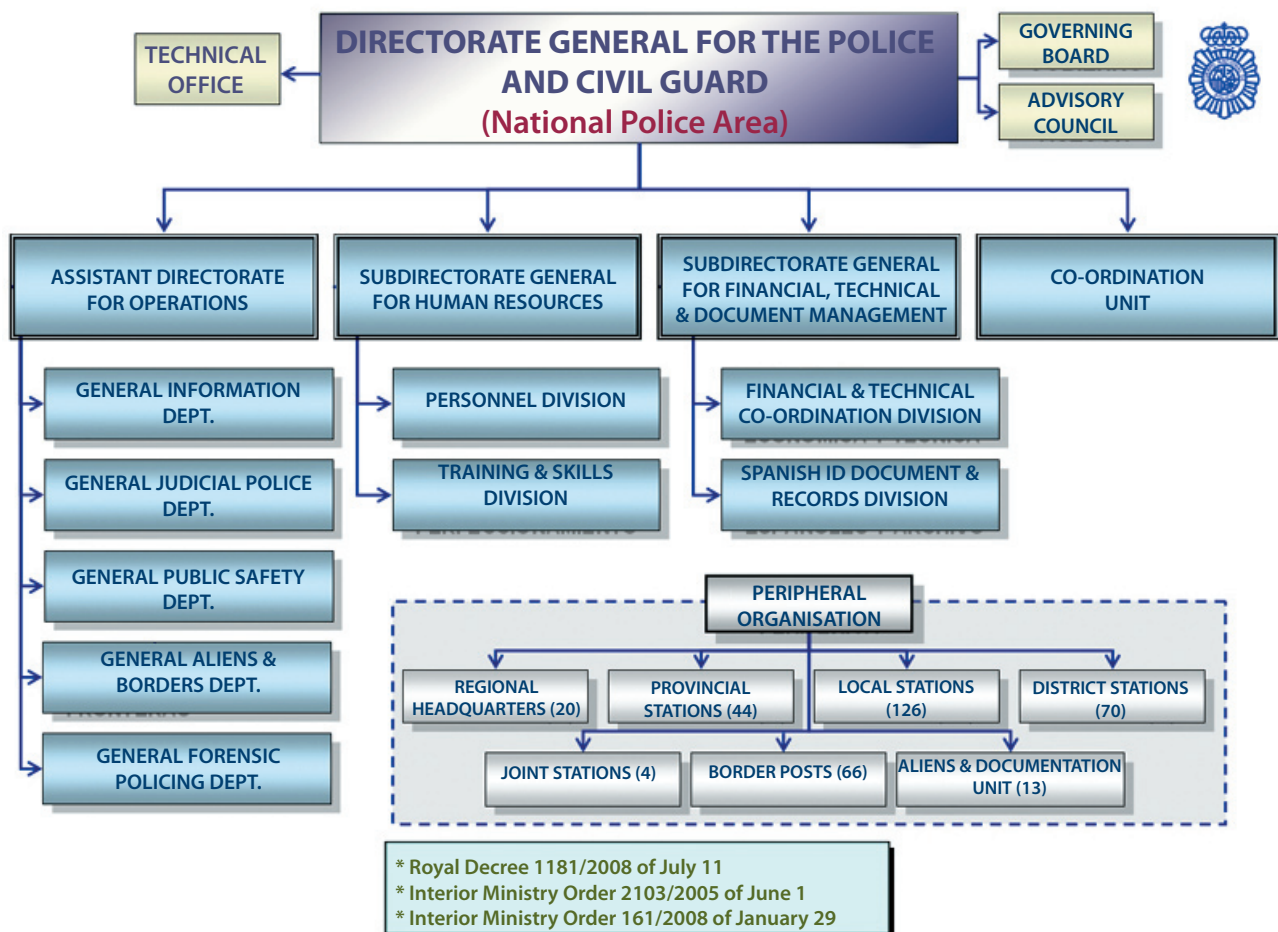
I. National Police Force Establishments

40. Public General Act 2/1986 of March 13 on Security Forces defines the National Police Force (CNP) as “an armed civilian law enforcement agency answerable to the Ministry of the Interior” with a mainly urban remit (Arts. 9 & 11 of PGA 2/1986). Its basic functions and organisation are established by Articles 11, 12.1.A and 16-28 of the said Act. The disciplinary framework applicable to the CNP is regulated specifically by Public General Act 4/2010 of May 20, which also sets out the procedure for its enforcement. The two national level police forces are led by the same person: the Director General of the Police and Civil Guard. The CNP comprises 63,215 officers. The graphic below shows the basic central and peripheral organisation structure of the force at the time of writing of this report.

An armed civilian law enforcement agency with a mainly urban remit. The CNP has 63,215 officers

Graphic 3. General Structure of the National Police Force

Organisation structure of the CNP



Source: Directorate Gen. for the CNP (<http://www.policia.es/cnp/cnp.html>).

In 2010 the CNP made 306,431 arrests resulting in detainees being held in cells

Table 17. Arrests by the CNP resulting in holding in cells per regional autonomous community, autonomous city and province in 2010

41. In 2010 the CNP made a total of 306,431 arrests resulting in detainees being held in cells, as a result of actions to handle criminal offences and administrative offences concerned with the legislation governing foreign nationals. The table below breaks down these figures by regional autonomous communities, autonomous cities and provinces.

Table 17. Arrests by the CNP resulting in holding in cells per regional autonomous community, autonomous city and province in 2010

Regional Autonomous Community	Province	No. arrests
Andalusia		59.102
	Almería	5.648
	Cádiz	10.151
	Córdoba	2.776
	Granada	5.572
	Huelva	2.345
	Jaén	2.600
	Málaga	19.211
	Seville	10.799
Aragon		8.994
	Huesca	879
	Teruel	222
	Zaragoza	7.893
Principality of Asturias		6.531
Balearic Islands		7.270
Canary Islands		11.821
	Las Palmas	6.718
	Santa Cruz de Tenerife	5.103
Cantabria		3.000
Castilla-La Mancha		10.044
	Albacete	3.202
	Ciudad Real	2.442
	Cuenca	628
	Guadalajara	974
	Toledo	2.798
Castilla y Leon		10.877
	Ávila	535
	Burgos	2.015
	Leon	2.174

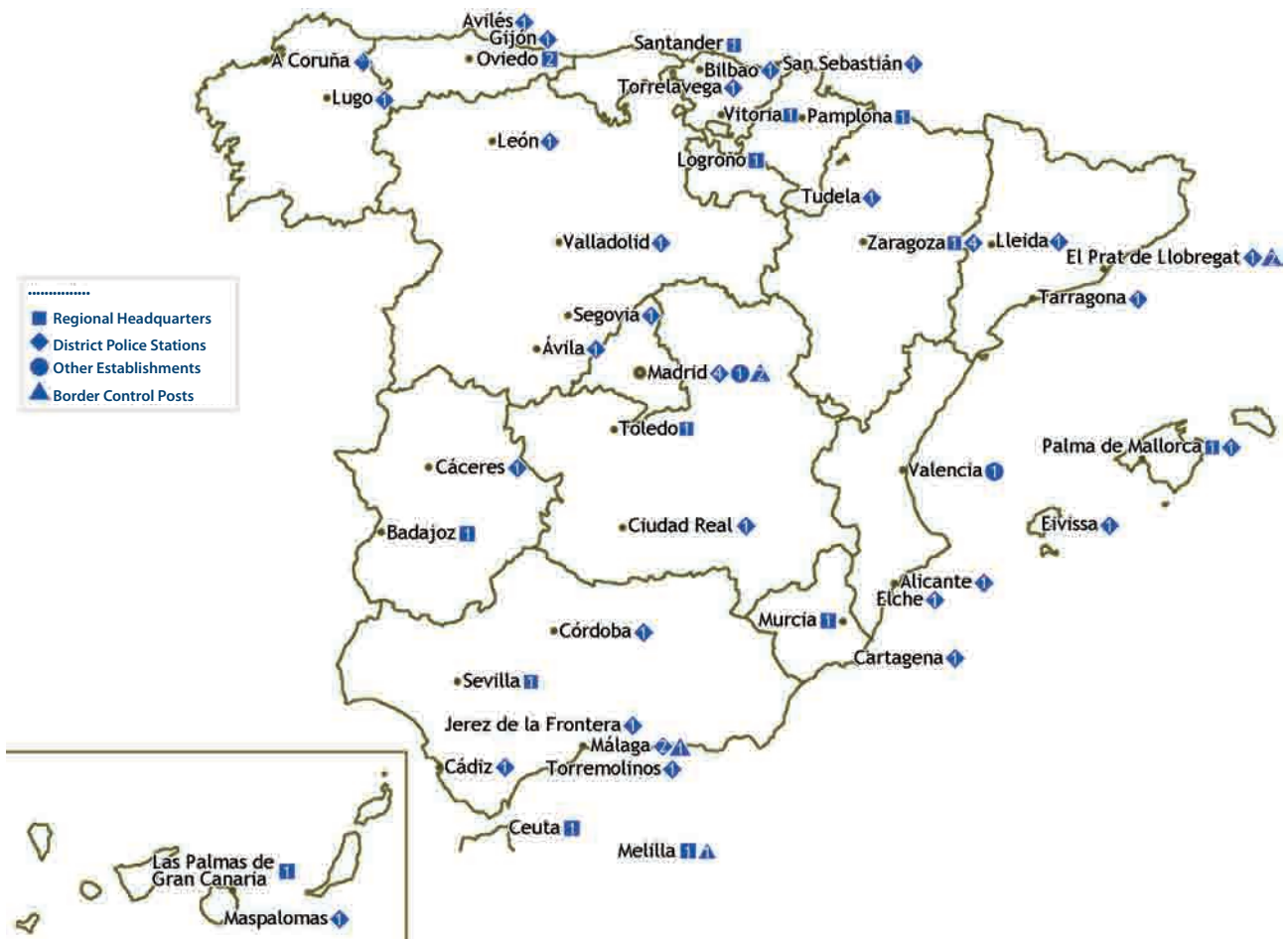
Regional Autonomous Community	Province	No. arrests
	Palencia	804
	Salamanca	1.397
	Segovia	524
	Soria	365
	Valladolid	2.630
	Zamora	433
Catalonia		13.368
	Barcelona	9.966
	Girona	1.853
	Lleida	429
	Tarragona	1.120
Ceuta		5.219
Community of Valencia		41.290
	Alicante	16.591
	Castellón	3.166
	Valencia	21.533
Extremadura		4.127
	Badajoz	3.027
	Caceres	1.100
Galicia		9.657
	A Coruña	4.040
	Lugo	1.036
	Ourense	930
	Pontevedra	3.651
La Rioja		2.155
Community of Madrid		92.261
Melilla		5.023
Region of Murcia		11.043
Navarre		1.595
Basque Country		2.525
	Alava	442
	Guipúzcoa	1.355
	Vizcaya	728
Central Bodies		529
SUM TOTAL		306.431

Source: Own work based on data from the Directorate General for the CNP.

The establishments visited accounted for 63% of the arrests resulting in holding in cells

42. As can be seen in Tables 2-9 above, in 2010 the NPM visited sixty places of short-term deprivation of liberty run by the CNP. The establishments visited accounted for 63% of the arrests resulting in holding in cells made in the year.

Graphic 4. Location of CNP-run places of deprivation of liberty visited in 2010



I.1. Police headquarters, district stations and central registries

On the visits made, cases were observed of persons held for longer than strictly necessary to complete the required procedures

43. The average detainee holding time observed in establishments of this type was less than 24 hours, well below the 72 hour maximum indicated above. However, cases were observed of persons held in police custody for longer than was strictly necessary to complete the required procedures, e.g. when it was not possible to bring them immediately before the courts because it was the weekend or a public holiday, or because arraignments were only held in the mornings.

On some occasions the delay was due to logistical and organisational problems of the CNP, e.g. in the case of the district station in Ibiza (Ibiza), where it was reported that not enough vehicles were always available to take detainees to the courthouse when necessary.

44. The general conditions at the establishments visited varied widely. Some buildings were of recent construction, had proper access for persons of reduced mobility and were in good condition, but others were obsolete and inadequate. Particular cause for concern was given by the situation of the police station in Madrid's Central District (Leganitos), in regard to which a request for urgent, thorough refurbishment or transfer elsewhere was submitted to the Ministry of the Interior, in view of the unacceptable conditions of conservation and upkeep and the heavy workload at this station.

45. In regard to facilities for personnel, those of the said Central District police station in Madrid stand out as particularly poor: the almost 600 staff have no showers; also, the Central Registry of Detainees in Madrid has no toilet or shower facilities in the women's changing rooms.

46. In most cases holding cells are located in the basements of the buildings, so it is not always possible to establish a suitably private direct route to them from police vehicles. This has implications in terms of both security and the exposure to view of detainees who, although they have been deprived of liberty, still maintain their fundamental rights to their honour and their image. It was observed that in some district stations, such as those of Cadiz, Ibiza (Balearic Islands), the San Blas-Vicálvaro District of Madrid and Torrelavega (Cantabria), detainees were taken to the cells via the main entrances even though there was direct access via the garage. In the stations in A Coruña, the Central district of Madrid and Lugo the holding cell area is accessed directly from the street. However, at the police headquarters in Murcia — where the situation could easily be improved, since there is sufficient space available — and in the Basque Country, and in the police stations of Bilbao, Cartagena (Murcia) and San Sebastian (Guipúzcoa) there is no direct access to the holding cell area. There is an evident need for refurbishment, and for changes in operational methods to guarantee security and safeguard the aforementioned rights.

47. In most establishments run by the CNP, holding areas comprise cells and an adjacent room where police officers handle the various procedures concerned with the custody and surveillance of detainees. A barred door usually separates this room from the cells themselves, whose number varies considerably from one building to another. In almost all cases collective cells are used, normally with doors fitted with vertical bars and built-in stone plinths that serve as beds. Toilet

A request was submitted for a thorough refurbishment or for the transfer elsewhere of the Madrid Central District (Leganitos) police station

Staff facilities at this station and at the Central Registry of Detainees in Madrid are especially poor

There is not always direct access from police vehicles to custody areas, which is detrimental to security and to the privacy of detainees

Collective cells are the norm, with vertical bars on the doors and built-in stone plinths as beds. Toilets are usually outside the cells

Individual cells are used to hold juveniles or persons with special needs

facilities are usually outside the cells themselves, though frequently there are also individual cells with toilets, for use by juveniles or persons with special needs. Individual cells usually have metal plate doors with a small opening to facilitate surveillance. Inspection of doors on the remaining cells revealed the existence of horizontal bars at district stations in Lleida, San Blas-Vicálvaro (Madrid), Segovia and Torrelavega (Cantabria). Their replacement was requested, in view of the potential risk that they entail. At the police headquarters in Melilla it was recommended that the door of the holding cell for juveniles should be changed, since the bars on the opening could be used by detainees to injure themselves or to attempt suicide. Indeed, a female detainee inflicted injuries on herself here in September 2009 and died three months later.

Generally poor conditions as regards conservation & upkeep of holding facilities per se (cells & adjacent service areas) except in newly-constructed or refurbished buildings

48. In the holding facilities *per se* visited (i.e. cells and adjacent service areas) the general standard of conservation and upkeep was observed to be poor, with the exception of certain recently constructed or refurbished establishments such as the Central Inspectorate for Detainees [*Inspección Central de Detenidos*] in Valencia and the stations in Alicante and the Delicias district of Valladolid. A case in point is the district station at Campo de Madre de Dios in Cordoba, where the condition of the cells was generally inadequate. In the San Blas-Vicálvaro district police station in Madrid there was damp and water filtering into the corridors and pooling on the floor. Other examples of substandard establishments are the Extremadura Police Headquarters in Badajoz and the Central District police station in Madrid.

The size of cells is adequate in general, in view of the average number of detainees observed on each visit

49. As indicated above, most cells are collective. Their size can be considered in general as sufficient for the average number of detainees observed on each visit. Problems in this regard were however detected at the Murcia Police Headquarters and at Ibiza district police station in the Balearic Islands. Given the many different factors that need to be considered, it was decided to take as a benchmark the criteria set out in the 2nd GR of the CPT (1991, para. 43), i.e. that the desirable size for cells intended for single occupancy is around 7 m², with at least 2 m between walls and 2.5 between floor and ceiling. On the basis of this figure and other pronouncements by the CPT, a general proportion of 5 m per person was taken as acceptable (*Monitoring of Places of Detention: A Practical Guide*, APT, p. 162) for collective cells. It was also recommended that the materials used to clad the walls of some cells — e.g. at the Murcia Police Headquarters and the district station in Ciudad Real — be changed as they are easily removable and could entail risks for the safety of detainees.

50. On the inspection visits carried out the separation criteria laid down in Art. 521 of the LECRIM were observed to be met. However the strict application of these criteria may lead to overcrowding at some establishments and at some times. This occurred at the Melilla Police Headquarters, where the separation of detainees in the cells by gender, nationality, form of arrest and the nature of their alleged offences resulted in six people being held in one cell, with some of them having to sleep on the floor, while in others there were only one or two detainees. In such cases the available space needs to be optimised so that detainees are distributed without overcrowding. This Office considers this unacceptable even when, as indicated on the visit, it was the detainees themselves who asked to be kept together for reasons of affinity.

51. The lighting in cells was also checked. Although these are short-term holding facilities the poor levels of lighting found in some of the cells visited cannot be deemed acceptable, as they are considered unnecessarily upsetting. Special attention must be paid to ensuring acceptable levels of lighting. Fused lamps were observed in some of the cells in the police headquarters in Seville and Melilla, and it was recommended that systems for controlling the switching on and off of lights should be installed and protocols for their use introduced. The ability to view the images recorded in places of deprivation of liberty is considered essential in determining whether good practices are being implemented.

52. The inspection of ventilation conditions during visits revealed the presence of bad smells in some cells. Requests were made for the improvement or replacement of the extractor fans at various establishments, including the police headquarters in Ceuta and Murcia and the police stations of the Central District of Madrid, the Delicias district of Zaragoza, Cordoba, Ibiza, Gijon (Asturias), Malaga, Seville, Torrelavega (Cantabria) and the Central Registry of Detainees in Madrid, all on grounds of unpleasant smells.

53. It would be advisable to monitor the temperature in holding cells all year round, as it was found that most had neither air conditioning nor heating, thus resulting in excessive temperature fluctuations. A case in point is Cordoba, where on a visit to the cells it was reported that temperatures in the city in 2010 had ranged from -2 to +44°C. Attention also needs to be paid to temperature regulation at the police headquarters in Asturias and Melilla, and at the district stations of A Coruña, Jerez de la Frontera (Cadiz) and the San Blas-Vicálvaro district of Madrid.

The separation criteria laid down in Art. 521 of the LECRIM were observed to be met. However, applying these criteria to the letter may result in overcrowding

Some cells were found to be poorly lit

Unpleasant smells were also noted in some cases

Most cells have no air conditioning or heating, so their temperature should be monitored all year round

The standard of cleanliness of cells was satisfactory in most cases, but clearly unacceptable in some facilities

54. The standards of cleanliness found in cells were satisfactory in most cases, though with room for improvement. However they were clearly unacceptable in some establishments, including the stations in Cordoba and the Central District of Madrid, where it was requested that measures be taken to improve cleanliness. In some cases, e.g. the police station of Leon, it was recommended that the contracts for cell cleaning should be changed to ensure that cleaning services are available at weekends when necessary. The standard of upkeep and hygiene of the toilet facilities inspected was in general acceptable, though there were exceptions, e.g. the Central District police station in Madrid and the Western Andalusia Police Headquarters [*Jefatura Superior de Policía de Andalucía Occidental*] in Seville, where there were two blocked urinals filled with urine, and the station in Tarragona, where one of the urinals was unusable due to the level of the septic tank. Those cells inspected that had internal toilets were generally in good condition.

Some establishments have modern CCTV surveillance equipment and others have obsolete equipment

55. It was observed that CCTV surveillance at establishments run by the CNP generally covered the entrance and corridors of holding cell areas but not the interior of the cells. Some were equipped with modern recording equipment while at others the equipment was obsolete and the images obtained were not sharp. The need for improvements in technical equipment was indicated at the police headquarters in Asturias and Murcia, and at the district police stations of Cartagena (Murcia), Elche (Alicante), Jerez de la Frontera (Cadiz), Lleida and Playa de Palma de Mallorca (Balearic Islands). To improve surveillance of detainees while they are in the cells, it was also requested that CCTV cameras be installed in the custody areas of the district stations of A Coruña, Aviles and Gijon (Asturias), Caceres, Cadiz, Elche and Leon and the police headquarters in Asturias, Extremadura (in Badajoz) and Melilla.

Cells have no mixed or mechanical opening system to evacuate detainees in an emergency

56. Most of the establishments visited were observed to have extinguishers, fire hoses and smoke detectors, though the cells have no mixed or mechanical opening systems for emergency evacuation of detainees. This Office requested that evacuation routes be signposted urgently and that suitable emergency measures be set in place at the police headquarters in Ceuta and Castilla-La Mancha (Toledo) and the city police stations in Cadiz, Jerez de Frontera, Ibiza, Lugo, the Central District (where it was deemed necessary to re-evaluate the entire evacuation plan), Chamartín District and San Blas-Vicálvaro District stations in Madrid, and in Torrelavega (Cantabria), Torremolinos (Málaga) and Tudela (Navarre).

When direct voice communication with detainees is not possible,

57. In holding areas whose size or layout means that the detainees cannot talk directly to staff, intercom or other call systems need to be installed. This

shortcoming was observed at various establishments, e.g. the Western Andalusia police headquarters in Seville and the district station in Alicante. At most of the establishments visited there was at least one member of staff present in the holding area while the cells were occupied. However, at several (the stations in Ciudad Real, Jerez de la Frontera (Cadiz), Lleida, Lugo, the San Blas-Vicálvaro district of Madrid, Segovia and Torrelavega (Cantabria), and the Extremadura Police Headquarters in Badajoz) it was recommended that an officer be stationed in the area adjacent to the cells, as the intercom and CCTV surveillance systems in place were considered insufficient should immediate assistance be required.

58. Point 3 of SES Instruction 12/2007 concerning the behaviour required of security forces in order to safeguard the rights of persons arrested or in police custody establishes that “should the detainee have any injury, attributable to the arrest or otherwise, or declare himself/herself to be injured, he/she must be moved immediately to a medical facility for assessment”. On the inspection visits made, health care was observed to be available, but detainees were not observed to undergo medical examinations at the commencement or end of their deprivation of liberty except in emergency situations. Detainees must themselves inform custodial officers of any problems so that they can be attended to or, as the case may be, moved to a medical facility belonging to the public health service. Most of the establishments visited were equipped with prophylactic measures (e.g. face masks and latex gloves) for cases in which any evidence of infectious or contagious disease was observed, and medical recommendations concerning isolation were followed, including the recommendation that detainees be moved under custody to a hospital or other suitable facility. At some establishments, such as the police station of Playa de Palma (Palma de Mallorca) and the Central Registry of Detainees in Madrid, this Office instructed that suitable prophylactic measures be provided. A general protocol needs to be set in place to cover this type of risk situation and to establish specific guidelines for the treatment of pregnant women. Such treatment would not be classed as discrimination under principal 5.2 BPP.

59. Food for detainees held by the CNP is supplied by the DGPGC in the form of ready-meals to be heated in a microwave oven. It would seem to be necessary for custodial officers to ask detainees specifically whether they suffer any food allergies (e.g. to gluten) or any health problems that require special guidelines as regards food. It was reported that “the contract to provide food for detainees includes special menus for special requirements, such as medical reasons, religious beliefs, etc. However, should the need arise, the officers in charge of each police station may directly acquire such food as may be necessary should none of the menus available be suitable due to medical circumstances”.

call systems need to be installed. In cases when such systems were deemed insufficient, it was recommended that an officer be stationed in the adjacent area

Health care provisions were observed to be available, but no medical examinations were conducted at the commencement or end of deprivation of liberty except in emergencies.

A general protocol needs to be set up for action and to establish specific treatment guidelines for pregnant women

It would seem to be necessary to ask detainees specifically whether they suffer any food allergies or health problems that require special guidelines as regards food



However, this system was observed not to be used at some of the establishments visited, e.g. the Western Andalusia Police Headquarters in Seville and the police stations of Cordoba and Ibiza (Balearic Islands), where police officers had to purchase food for detainees from shops near the holding facilities. In these cases this Office requested that the general system for the purchase and supply of foodstuffs be implemented there. A ban on third parties bringing food to detainees is considered appropriate, given the liabilities that might be incurred should any food safety issues arise.

A waste collection system should be implemented

60. Except in the case of single-person cells, detainees must call on custodial officers to access toilet facilities. Subsection 11, paragraph 3 of SES Instruction 12/2007 indicates that “special care must be taken to ensure that detainees can use toilet facilities with the proper degree of privacy and hygiene”. During the inspections made, no complaints were received on this issue. Nor were any problems detected in accessing soap, toilet paper or feminine hygiene products, though a waste collection system should be implemented.

It was requested that detainees be provided with fresh blankets

61. Each detainee is provided with a mattress and blanket, both fireproof. Sufficient supplies of both were available at all the establishments visited, though using them several times before having them cleaned was observed to be common practice. Cases in point include, among others, the police headquarters for the regions of Asturias (in Oviedo), Cantabria (in Santander), Extremadura (in Badajoz), the Balearic Islands (in Palma de Mallorca) and Murcia, the Central Registry of Detainees in Madrid and the district police stations of A Coruña, Alicante, Aviles (Asturias), Caceres, Cartagena (Murcia), Leon, San Sebastian (Guipuzcoa) and Torrelavega (Cantabria). This Office requested that all detainees be provided with fresh blankets, because providing used blankets, even if they are not dirty, is unacceptable on grounds of hygiene.

It is essential for measures to be taken to allow detainees held in cells for more than 24 hours to exercise outside

62. Except in exceptional circumstances, there is no provision for detainees held in the cells for more than 24 hours to be taken out for exercise. Given the small size of the cells and the fact that they are mostly shared, it seems essential for measures to be taken to allow detainees to stretch their legs. It would also be advisable for police establishments to have an area where detainees can take physical exercise or spend a short time outdoors.

Visits can be received from legal counsel and from consular staff in the case of foreign nationals

63. Detainees can receive visits from their legal counsel and from consular staff in the case of foreign nationals. Visits from family and friends require authorisation pursuant to Article 523 of the LECRIM. Rule 11.7 of SES Instruction 12/2007 indicates that such authorisation must be sought from the examining magistrate handling the case.

Detainees were observed to be handcuffed on entering and leaving holding areas

64. Article 525 of the LECRIM establishes that “no extraordinary security measures should be taken except in cases of disobedience” or refusal to follow the

orders of officers of the law during the arrest. It is also indicated that any extraordinary measures must be short-term, and applied only for so long as is strictly necessary. The LECRIM sets out the principles covering exceptional cases and proportionality. These are listed in greater detail in rules 7 and 9 of SES Instruction 12/2007. These rules indicate that handcuffs in particular should be included among the extraordinary measures envisaged in the said article of the LECRIM, and indicate a number of precautions for ensuring that they are used appropriately in each individual case. However, in the course of the inspections carried out it was observed that detainees were handcuffed on entering and leaving holding areas. The CNP has other methods of restraint at its disposal, some of which may be used in situations of disobedience, violence or attempted escape. No such incidents were observed during the inspection visits carried out or in the recordings viewed. Nor were complaints received from the detainees interviewed on grounds of excessive or improper use of such measures.

65. The bearing of firearms in holding areas is another point of concern. It was observed that there were no consistent guidelines in place in this regard, and that common practice varied according to the criteria of those in charge of each establishment. In most establishments officers either do not wear their regulation handgun or wear it with the magazine removed. Indeed, cases were observed in which both these situations occurred in the same facility, with the choice apparently left up to each officer. Inconsistencies in criteria were found within the area covered by a single headquarters, e.g. Asturias: in the headquarters building itself in Oviedo and in the district police station in Gijon firearms are not carried in the holding areas, but in the station in Aviles they are carried without the magazine. The same goes for the Western Andalusia Police Headquarters in Seville, where both situations occur at the same facility. At the station in Cadiz firearms are worn without the magazine, but in that of Cordoba they are not worn. Finally, there are a few establishments where the wearing of loaded firearms in the holding areas was observed, e.g. in the Police Headquarters for the Basque Country in Vitoria, the police station at Malaga airport and the Central Registry of Detainees in Madrid. For the sake of the safety of detainees and officers alike, firearms should not be worn in holding areas, and instructions should be issued accordingly.

66. It was observed that custodial officers did not always wear their identification numbers in plain sight. This situation was detected, among other establishments, at the district police stations in Aviles and Gijon (Asturias), Cartagena (Murcia), Ibiza and Playa de Palma (Balearic Islands) and Valladolid, the police headquarters for Aragon (in Zaragoza), Asturias (in Oviedo) and the Canary Islands (in Las Palmas de Gran Canaria), and the Central Registry of Detainees in Madrid. This is a breach of SES Instruction 13/2007 concerning the use of personal identification

For the sake of safety, firearms should not be worn in holding areas

A system must be set in place to ensure compliance with the duty of custodial officers to identify themselves at all times



numbers on the uniforms of members of the state security forces (subsection 2.2), which specifies that numbers must be visible because it is “the right of citizens at all times and with no need for positive action or request on their part to identify the officers who are providing the relevant service or function, and the duty of such officers to facilitate this”. The badge numbers on the uniforms and work clothes of CNP officers are removable (they currently comprise a rectangular plastic badge-holder attached with two clips). A more suitable system should be established for ensuring compliance with this duty to identify oneself, which the regulations require be met at all times. It was also observed that badge numbers were printed in lettering that was not easily readable, particularly at the so-called “courtesy distance” (120 cm). The font should be changed to make the numbers easier to read.

Belongings confiscated in the exhaustive search prior to admission are stored and logged in the Detainee Registration and Custody Log, with the signature of the detainee affixed in acknowledgement.

67. Arresting officers conduct an initial, superficial search of each detainee. Subsequently, at police establishments, detainees are subjected to a more exhaustive search before they are admitted to the cells. At this time their personal belongings and any items of clothing with which they might injure themselves or cause harm to other detainees or to police officers (chains, belts, scarves, shoelaces, watches, rings, lighters, matches, etc) are confiscated and stored in a plastic bag which is heat-sealed to prevent anyone from accessing the contents. At some police stations, e.g. Segovia, no official bags were available and ordinary plastic bags or envelopes were used. The belongings confiscated are logged in the Detainee Registration and Custody Log, and the signature of the detainee is affixed in acknowledgement. Objects are stored in cupboards or lockers in the holding area itself, with more valuable objects being kept in safes.

Reminders were issued of the obligation to record in the Detainee Registration and Custody Log the reasons for searches requiring detainees to strip naked, and to report such searches to the courts

68. Police searches in which detainees are required to strip fully naked to determine whether they are carrying any dangerous objects or incriminating evidence in the folds or other parts of their bodies are regulated by SES Instructions 7/1996 and 19/2005, the latter of which was drawn up in response to various reports and recommendations made by this Office. On the inspection visits to some establishments [the headquarters of Asturias (in Oviedo), the Canary Islands (in Las Palmas de Gran Canaria) and Cantabria (in Santander) and the district police stations of Aviles and Gijon (Asturias), Barcelona-El Prat airport, the Central District of Madrid, Jerez de la Frontera (Cadiz), Málaga, San Sebastian (Guipúzcoa) and Segovia], reminders had to be given of the obligation to record such searches in the Detainee Registration and Custody Log, detailing the reasons why they were carried out and informing the courts accordingly.

Women must be searched by female officers. The utmost respect is required in the case of transsexuals

69. Female detainees must be searched by female police officers, though SES Instruction 12/2007 makes allowances for emergency situations. If no female officers are available at the establishment in question, female officers from other

police forces must be called in. Under the relevant instruction (rule 8) the general criterion applicable is “the utmost respect for the sexual identity of the person searched, particularly in the case of transsexuals”.

70. Although it is not expressly mentioned in Article 520.2 of the LECRIM, rule 3 of SES Instruction 12/2007 establishes that detainees must be informed of their constitutional right to request habeas corpus if they consider that their arrest is not justified in law or has taken place unlawfully, and must be provided with the relevant form for this purpose. However, personnel at some of the establishments visited reported that no written notice of this possibility was given. A written record of the information provided must be kept.

71. Police stations and other places of short-term deprivation of liberty are required to keep the following record books: a log of presentation for identification in line with Article 20.3 of Public General Act 1/1992 on the protection and security of citizens; a log of juvenile detainees (regulated by SES Instruction 7/2005); a log of actions involving homeless personas sheltered at police establishments (regulated by SES Instruction 1/2001); a log of telephone telegrams, a log of complaints and suggestions and the Detainee Registration and Custody Log. SES Instruction 12/2009 establishes that this last book must be used to record all incidents concerned with adult detainees (reason for arrest, any incidents during the arrest and transfer, identity of the officer in charge of the detainee at all times, belongings confiscated, personal details, etc.) along with any other relevant incidents (searches conducted, meals, visits, legal counsel, medical assistance, bringing before courts, etc). This is considered to be in line with principle 12 of the BPP. Use of this log was phased in at police establishments during 2010. However, it was observed during the inspection visits made that at those establishments which handle large numbers of detainees (e.g. the Central Registry of Detainees in Madrid and the Central District police station in Madrid) the log was not always properly kept up. Cases were also found in which the log was not being properly filled in: sections were being left blank and events that should have been recorded were omitted, e.g. meals and searches. The need to correct these failings was pointed out.

72. Particular points concerned with the treatment of juveniles by the CNP are covered by SES instruction 11/2007. Actions which may entail deprivation of liberty must be carried out by specialist juvenile units (GRUMEs). Juveniles must be held in separate police facilities and their holding in cells must be avoided so far as possible. They must be allowed visits from their families, guardians or legal representatives and suitable measures must be taken to prevent this from affecting police investigations, except in those cases envisaged in Article 520 bis of the LECRIM or when considered unadvisable (Art. 17.2 LORPM). Insofar as possible, juveniles must be transported in unmarked vehicles by officers in plain clothes.

There must be a written record of the information provided to detainees concerning their constitutional right to request habeas corpus

The need to properly maintain the Detainee Registration and Custody Log was pointed out in those cases where this was not being done

The treatment of juveniles by the CNP is regulated by SES Instruction 11/2007



I.2. Waiting Areas for Persons Denied Entry and Asylum Seekers

Facilities at border posts are run by the CNP

Waiting areas for persons denied access are not penitentiary in nature and must be provided with social, legal, cultural and health services

Waiting areas for asylum seekers are intended to hold foreign nationals who request international protection from Spain

The Constitutional Court rejected an appeal filed by the Ombudsman in 1994, and ruled that the 72 hour limit was not applicable

73. The waiting areas at border posts for persons denied entry and asylum seekers are run by the National Police Force. The facilities for persons denied entry were established under Article 60 of Public General Act 4/2000 January 11 regulating the rights and liberties of foreign nationals in Spain and their integration into society. The said article establishes that at border posts there should be facilities (referred to generically as “places of detention”) which are not of a penitentiary nature and which must be provided with social, legal, cultural and health services. Should it not prove possible to process the return of a traveller to his/her country of origin within 72 hours, authorisation must be sought from the courts for the person in question to remain at the said facilities. The maximum stay in these waiting areas for persons denied access depends on the frequency of flights by the carriers responsible for returning them to their point of departure.

Waiting areas for asylum seekers provide accommodation at the border for those persons who request international protection from Spain when they are deemed not to meet the requirements for access to Spanish territory under the regulations governing foreign nationals. These facilities are regulated basically under Article 22 (with referral to Article 21.1) of Act 12/2009 of October 30 regulating the right to asylum and subsidiary protection. Persons seeking international protection may stay at these facilities while their applications are being examined. This usually entails a stay of up to four days, but it may be extended to 10 days upon request from the UNHCR when cases of exclusion or direct denial are being substantiated. In both cases a further two days can be added if the applicant submits a request for re-examination or an appeal for reconsideration of judgement [Art. 21.3 & 25.1.f) of the Asylum Act (*Ley de Asilo*)], so the maximum stay in these facilities is usually six days but may exceptionally be as long as 12 days. Under Article 21.5 of the aforesaid act, should the periods indicated be exceeded without the applicants being notified of a ruling, they must be allowed to enter Spanish territory and their application must then be processed through ordinary channels.

74. In 1994 the Office of the Ombudsman filed an appeal on grounds of unconstitutionality against Subsection 8 of the single article that comprises Act 9/1994 of May 19 amending the 1984 Asylum Act, which establishes that applicants must remain at the border post while the process of admission for consideration of their applications is carried out. This appeal was rejected under Ruling 53/2002. Prior to the entry into force of the said amendment asylum seekers were allowed provisional entry into Spanish territory while their requests



were being processed, though the relevant authorities were empowered to oblige them to maintain a fixed address. Under the amendment the entry of asylum seekers into Spain was linked to the admission for consideration of their applications, and applicants were obliged to remain in waiting areas at the border post while that process was ongoing. The Ombudsman considered that holding foreign nationals at the border in such cases was a true deprivation of liberty, and that the assurances laid down in Article 17 of the Constitution should apply. The court ruled that the 72 hour limit established in the Constitution was not necessarily applicable when the deprivation of liberty was enforced for radically different purposes, which in the case in question meant the protection of persons who claimed to have suffered persecution, while at the same time ensuring that the entry of foreign nationals and their presence in Spain were handled in an entirely lawful manner.

when the deprivation of liberty was intended to protect persons who claimed to have suffered persecution

75. These measures cover border posts at airports (34), seaports (34) and terrestrial border crossings (4). Data published by the Ministry of the Interior indicate that between all these posts there were 9,453 denials of entry in 2010.

9,453 denials of entry at border posts in 2010

The data available at the time of writing this report indicate that 300 applications for international protection were filed at border posts in 2010 (295 at airports and five at seaports). This figure is 10.93% of the total number of 2,744 applications received by Spain. The table below gives a breakdown of applications for international protection filed at border posts.

300 applications for international protection at border posts (10.93% of the total number received)

Table 18. Applications for international protection filed at border posts in 2010

Province	Airport	Seaport
Barcelona	35	1
Castellón		1
Las Palmas	7	1
Madrid	252	
Malaga	1	1
Murcia		1
Total	295	5

Table 18: Applications for international protection filed at border posts in 2010

Source: Subdirectorate General for Asylum.

The waiting areas for persons denied entry and asylum seekers at the border posts at Madrid-Barajas, Malaga and El Prat de Llobregat (Barcelona) airports were visited. These particular facilities (especially those in Madrid and Barcelona) were selected due to the large number of flights originating outside the so-called “Schengen Area” that they handle. Between them they account for 96% of the applications received at border posts.

The facilities at the border posts at the airports with most flights originating outside the Schengen Area were visited

The facilities for asylum seekers must be separate from those for persons undergoing procedures concerned with legislation on foreign nationals

76. All the facilities in question are located in buildings owned by AENA. The waiting areas for persons undergoing procedures concerned with legislation on foreign nationals are separate from those for persons applying for international protection, though their structure is similar. However, at Malaga airport it was indicated that although two separate facilities existed the better equipped of the two was generally used in both cases, due to the small number of persons handled, to make their stay more comfortable. Although this explanation is understandable, the need to protect the safety and privacy of asylum seekers and of their family members still living in their country of origin makes it inadvisable for them to share accommodation with persons in other administrative circumstances, who may even be of their same nationality.

Access to the facilities is usually controlled by security guards

77. Access to the facilities is usually controlled by security guards rather than by CNP officers. There are no custodial officers on duty within the facilities themselves. Some facilities have social workers on staff. The inspection visits conducted reveal that communication between custodial officers and the occupants of the facilities did not pose a problem.

At the time of the inspection visits the general upkeep and conservation of the facilities was satisfactory

78. At the time of the inspection visits the general upkeep and conservation of the facilities was satisfactory. The layout of the facilities visited usually comprised a living area furnished with tables and chairs and equipped with a TV set and public telephones. The bedrooms, furnished with several bunk beds, were located off this area. Bedroom doors were usually kept open, though in some cases (the facility in Terminal 1 of Madrid-Barajas airport) access to bedrooms was restricted during the daytime. It was reported that verbal instructions had been given for this practice to be discontinued, but from what was observed during the visit this was insufficient, and instructions need to be given in writing. The facilities are climate controlled, but the air is refreshed mechanically as there are no windows which can be opened.

Need to arrange ways of allowing access to the open air for at least one hour a day

79. The artificial lighting at the facilities is sufficient. However, the lack of any additional source of natural lighting may result in some occupants losing their sense of time as jetlag may be compounded by the absence of light as a reference for telling the time. The only facility with an open-air enclosure and children's play area is that in Terminal 1 of Madrid-Barajas airport. Information received from AENA and the DGPGC indicates that the general layout of the facilities prevents any restructuring of the waiting areas. However, it must be stressed that there is a need to arrange ways of allowing people held at these facilities to spend at least one hour a day in the open air.

There is a wide variety of CCTV surveillance arrangements. Recording

80. There is a wide variety of CCTV surveillance arrangements at these facilities: in Malaga there is no CCTV surveillance at all inside the facilities; in Madrid there are CCTV cameras in the living area, in the internal corridors, in

the vestibule and in the external access corridor; and in Barcelona there are cameras only in the living areas, but the images cannot be viewed from the post where the security guards are stationed. Recordings are not made at any of the facilities visited.

81. The persons held in these facilities have health care available 24 hours a day from AENA medical staff. The persons deprived of their liberty do not undergo any medical examination unless the need arises. They may be referred to hospitals by medical recommendation.

82. Food is provided by the airlines, usually through AENA, and tends to consist of menus similar to those served in flight.

83. The waiting areas have separate toilet and washroom facilities for men and women, equipped with toilets, washbasins and showers. These facilities were found to be clean, in good condition and provided with hot water. They are accessible 24 hours a day, with no restrictions. At the facilities visited it was observed that users were provided with basic toiletries, though the specific items available varied from one facility to another. Towels, sheets and blankets were generally in sufficient supply at the time of the inspection visits, and their standards of hygiene and conservation were satisfactory except at Madrid-Barajas airport, where the persons held were using mattress covers because there were not enough shower and bath towels. This was reported to AENA, and it has since been reported that the problem has been solved.

84. At Madrid-Barajas airport the persons held at these facilities were unable to access the luggage that they had checked in. A report received from AENA indicated that travellers had access only to their hand luggage, and justified this restriction on the grounds that luggage checked in remained in the hands of the airline and if travellers reclaimed it they would then have to check it in again and pay the relevant charges. It was also reported that in special cases travellers can be escorted to collect items from their luggage such as medicines or documents. This Office finds these explanations to be insufficient, as such measures are not taken at other airports, where the objections stated here are not considered as obstacles.

85. The telephone numbers for consular assistance from all those states with consular representation in Spain are available at the waiting areas for persons denied access, normally in the form of signs posted on the walls of the living areas. Persons denied access can be visited at these facilities by consular staff.

86. Legal counsel is guaranteed through the legal aid duty rota at the relevant bar associations for all persons denied entry and those who apply for international protection. The latter may choose between council provided through bar associations

are not made at any of the facilities visited

24 hour a day health care is available

The airlines provide food

Separate toilet and washroom facilities in good condition. Sufficient towels, sheets and blankets were available at the time of the inspection visits

At Madrid-Barajas airport access to luggage checked in is not permitted

Telephone numbers for consular assistance are available

Legal counsel is guaranteed



and the services offered by specialist non-governmental organisations, for which public funding is available.

No receipts are given for belongings confiscated

87. Once a superficial search of the persons held and of their belongings has been conducted, objects liable to cause injuries, cameras and mobile phones equipped with cameras are confiscated. No receipts are given for these belongings, which are held under the responsibility of the surveillance staff. This is a shortcoming that should be corrected.

The restraints available to the CNP are used in case of resistance or violent behaviour

88. In cases of resistance or violent behaviour (e.g. resistance at the time of embarkation on the return journey), the general measures of restraint and coercion available to the CNP are employed. It was indicated that if any injuries occur an evaluation by the medical service must be carried out, and a record must be kept on the relevant individual file. At Madrid-Barajas airport there is an isolation room. A request has been filed for this room to be provided with CCTV surveillance and recording equipment.

Information forms and interpreting services are available

89. There are forms available in several languages containing information on specific rights according to the type of administrative procedure applicable (denial of entry or international protection). Asylum proceedings at Madrid-Barajas airport are handled directly by the Asylum & Refugee Office (OAR), and at the other posts they are handled by CNP officers, who are required to send the relevant documents via the fastest possible channels to the said office. If interpreters are needed they are called in from a company under contract, which guarantees the availability of a wide range of languages.

II. Civil Guard Establishments

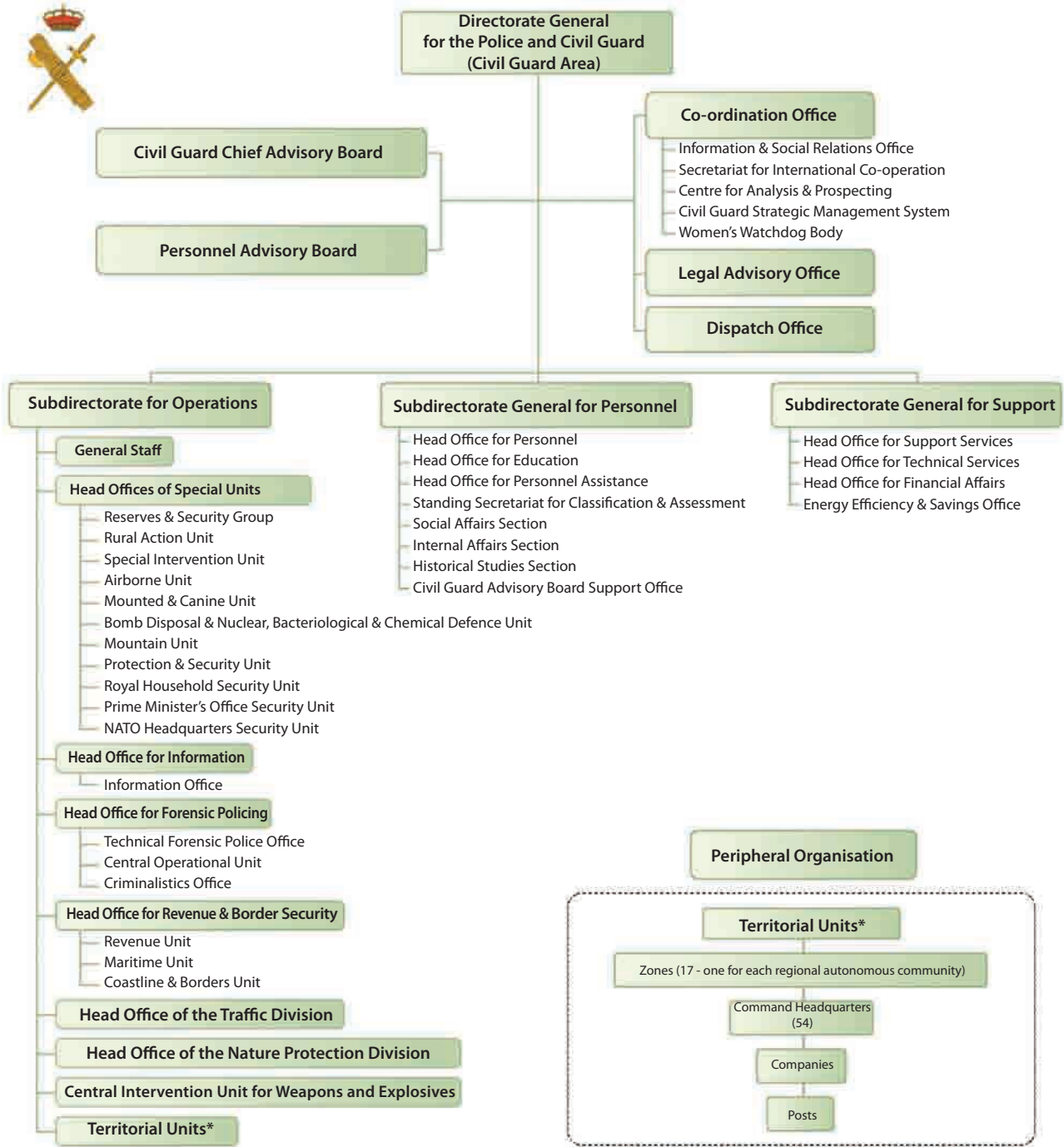
An armed military law enforcement agency with a mainly rural remit and 79,586 members

90. Art. 9.b of the Public General Act 12/2007 of October 22 on Security Forces establishes that the Civil Guard is an armed military law enforcement agency with a mixed command structure: it is answerable to the Ministry of the Interior in its role as a police force, under the legislation on the security forces of the state, and to the Ministry of Defence in its military missions. In times of war and states of emergency it is answerable exclusively to the Ministry of Defence. The Director General for the Police and Civil Guard is the joint head of both national-level law enforcement agencies. Under the distribution of areas of authority established in Article 11.2 of the aforesaid Act, the remit of the Civil Guard covers mainly rural areas and territorial waters. The tasks allocated to it are specified in Articles 11, 12.1.B) and 13-15 of the Act, which also sets out the disciplinary framework applicable to its 79,586 members. The central and peripheral organisation structure of the Civil Guard at the time of writing this report is shown in the graphic below:



Graphic 5. General Structure of the Civil Guard

Organisation structure of the Civil Guard



Source: own work based on data provided by the DGPGC.

In 2010 there were 87,471 arrests resulting in persons being held in cells

Table 19. Arrests by the Civil Guard resulting in holding in cells per regional autonomous community, autonomous city and command headquarters

91. According to data from the force itself, in 2010 the Civil Guard made 87,471 arrests that resulted in persons being held in cells. The table below shows a breakdown of these arrests by regional communities and autonomous cities, and by command headquarters.

Table 19. Arrests in 2010 by the Civil Guard resulting in holding in cells per regional autonomous community, autonomous city and command headquarters

Regional Autonomous Community	Command Headquarters	No. of Detainees Held in Cells
Andalusia		20,800
	Algeciras	1,594
	Almería	4,368
	Cádiz	2,162
	Córdoba	1,298
	Granada	2,981
	Huelva	1,779
	Jaén	1,365
	Málaga	2,229
	Sevilla	3,024
Aragón		1,841
	Huesca	573
	Teruel	191
	Zaragoza	1,077
Asturias		2,017
	Gijón	1,088
	Oviedo	929
Balearic Islands		4,413
Canary Islands		8,809
	Las Palmas	5,376
	Santa Cruz Tenerife	3,433
Cantabria		1,133
Castilla-La Mancha		5,359
	Albacete	812
	Ciudad Real	1,371
	Cuenca	622
	Guadalajara	764
	Toledo	1,790
Castilla y León		3,579
	Ávila	415

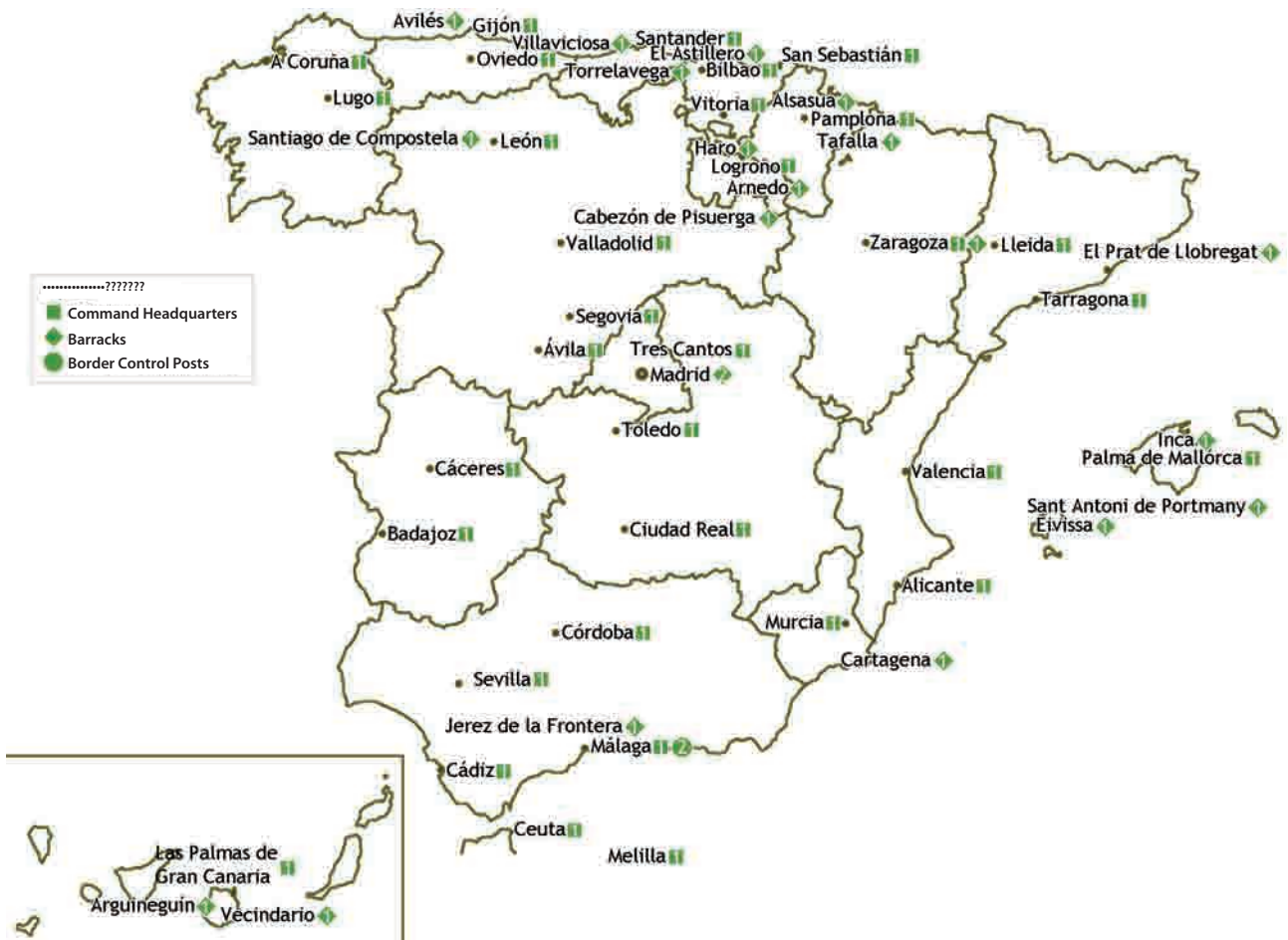
Regional Autonomous Community	Command Headquarters	No. of Detainees Held in Cells
	Burgos	431
	Leon	806
	Palencia	253
	Salamanca	324
	Segovia	316
	Soria	133
	Valladolid	529
	Zamora	372
Catalonia		758
	Barcelona	404
	Girona	167
	Lleida	45
	Tarragona	142
Ceuta		1,028
Comunitat Valenciana		15,960
	Alicante	5,894
	Castellón de la Plana	2,495
	Valencia	7,571
Extremadura		1,301
	Badajoz	788
	Caceres	513
Galicia		4,952
	A Coruña	1,844
	Lugo	505
	Ourense	593
	Pontevedra	2,010
La Rioja		644
Community of Madrid		9,065
Melilla		483
Murcia		4,424
Navarra		746
Basque Country		159
	Alava	38
	Guipúzcoa	70
	Vizcaya	51
Sum Total		87,471

Source: own work based on data provided by the GDPCG.

There are 584 establishments with cells, of which 32 are out of service, as they have been ruled unfit. The 56 visited account for 70% of all arrests resulting in holding in cells

92. As a result of its mainly rural deployment, the Civil Guard has a great many establishments of many different types: in all there are 2,691. However, this Office is informed by the Secretary of State for Security that holding cells exist at only 584 of these establishments, and those at 32 of them are out of service because they have been ruled unfit by the Inspectorate General for Security Forces and Personnel [*Inspección General de Personal y Servicios de Seguridad*], a body answerable to the said Secretary of State. As can be seen from Tables 3 and 9 in paragraph 32 above, 56 Civil Guard-run establishments with holding cells were visited in 2010. At several of these establishments detainees may be held incommunicado, though there was no-one in that situation at the time of the inspection visits made. To make this report easier to understand the generic term “barracks” [in Spanish *cuartel*] is used for all the establishments visited except those classed as command headquarters. As indicated above, in this first

Graphic 6. Geographical locations of the GC-run places of deprivation of liberty visited



Source: own work.

year of activity efforts were made to visit those establishments that handled the largest numbers of detainees. The Civil Guard establishments visited accounted for 70% of all arrests by this force that resulted in holding in cells.

93. The officers interviewed reported that the average holding time in cells was usually less than 24 hours. On the inspection visits carried out no cases were detected in which the maximum time established by law was exceeded.

The average holding time is usually less than 24 hours

94. The condition of the establishments varies widely, though most of them are old and at many both the holding cells and the residential quarters for officers and their family stationed there (known as “barrack blocks” [*pabellones*] and numbering over 35,000 throughout Spain) are in poor condition. Conditions were observed to be particularly bad at the Arguineguin barracks in Las Palmas, where it was recommended that a new block be constructed urgently. Recommendations for improvements in establishments and living conditions were also made at the establishments visited in Bilbao (Vizcaya), Cartagena (Murcia) and Toledo. At the said establishments, the standard of conservation and upkeep of the holding cell areas was also found to be poor. The cells at the Guzmán el Bueno barracks in Madrid were found to be in a strikingly poor condition and in need of urgent refurbishment.

Most establishments are old, and many are in poor condition

95. At most of the establishments visited the cells were on the ground floor, either in an area adjacent to the checkpoint at the entrance or in an adjoining building accessed via the central courtyard. In the latter case, detainees usually access the cells directly from the vehicle in which they are transported. Establishments were also found at which the holding cells were on the ground floor of the buildings in which officers and their families lived, e.g. at the barracks in Aviles (Asturias), Arnedo (La Rioja) and Inca (Balearic Islands). For the sake of security, to safeguard privacy, ensure respect for the honour of detainees and establish the necessary reasonable separation between places of deprivation of liberty and residential areas, it is advisable that these holding cells be transferred to more suitable locations. Moreover, the access of detainees to the holding area should not be via the main entrance to the building, where they may coincide with other visitors. In this regard, the Civil Guard argue that it would be difficult to implement widespread changes for both architectural and budgetary reasons. However, they consider that the criteria requested can be applied at new-built establishments and establishments which are refurbished. They further consider that changes could be made in their conventional *modus operandi* in line with the possibilities at each facility (access routes via garages or underground basements, opening up of additional doors, etc.) to improve matters in this regard.

At most of the establishments visited the cells are on the ground floor. For the sake of security, privacy and respect for the honour of detainees, places of deprivation of liberty should be separated from residential areas

Most establishments have 2 or 3 single-occupancy cells and separate toilet facilities

Cell doors are made of metal plate with small openings. The use of padlocks and chains in locking & unlocking systems must be avoided

Cells are designed for individual use. It would be advisable for agreements to be reached with the CNP for when cells reach saturation point

The poor lighting in some of the cells visited is a cause for concern

96. In most cases the places of deprivation of liberty comprise small areas with an average of two or three small, single-occupancy cells together with independent toilet facilities. In some cases there is also a room for custodial officers on duty. Command headquarters and barracks in provincial capitals (e.g. the Guzmán el Bueno barracks in Madrid) usually have larger facilities.

Cell doors are made of metal plate and fitted with small openings to facilitate monitoring from the outside. Repairs were recommended at several establishments where doors were found to be in poor condition, e.g. at the barracks in Aviles (Asturias), Cartagena (Murcia), Ibiza and San Antoni de Portmany (Balearic Islands). Door locking and unlocking systems unsuitable for emergencies or evacuation procedures were observed at the command headquarters in Gijón (Asturias) and the barracks in Aviles, Sant Antoni de Portmany, Aviles and the Port of Malaga. The current system needs to be replaced by a mechanical opening system or at least a manually operated lock, so that padlocks and chains secured by padlocks are not used.

97. Cells are usually designed for individual use, and measure between 4 and 5 m² on average. This makes them somewhat smaller than recommended in the guidelines laid down in paragraph 49 of this report. In spite of reports indicating that the entry into operation of the holding cells had not been authorised (September 2010), and that the cells installed complied with the usual criteria for size and individual use it was deduced from an examination of the Detainee Registration and Custody Log in Ibiza (Balearic Islands) that a worrying level of overcrowding existed, and that on several occasions up to eight people had been held overnight in the four cells, some of which had no lighting, no mattress and broken doors. Without prejudice to the need to enlarge the holding area in the barracks on the island of Ibiza so that it can cope with the number of detainees that it must handle, it would be advisable for an agreement to be reached with the CNP for the transfer of detainees to the establishments of the latter when GC establishments reach saturation point. The same goes for other establishments visited, such as the barracks in Santiago de Compostela (A Coruña) and Vecindario (Las Palmas), where the size of the cells means that it is not reasonable for detainees to share them.

98. The poor lighting found in some of the cells visited is a cause for concern. A systematic assessment of lighting conditions at these establishments is required. Special attention must be paid to this issue at the command headquarters in Alava (Vitoria), Las Palmas (Las Palmas de Gran Canaria), Leon, Madrid, Malaga (particularly in regard to the cell for juveniles), Valladolid and Zaragoza, and the barracks of Alsasua and Tafalla (Navarre), Arguineguin (Las Palmas), Casablanca in Zaragoza, the Port of Malaga, El Prat airport in Barcelona, Sant Antoni de Portmany (Balearic Islands), Santiago de Compostela (A Coruña) and Vecindario (Las Palmas). At the time of the inspection visits, the lights in some of the cells at

the barracks of Aviles (Asturias), Ibiza and Inca (Balearic Islands) were fused. In the Aviles barracks a metal plate in front of the bulb severely reduces the amount of light. At the command headquarters in A Coruña provision should be made to ensure that spare bulbs are available.

99. One of the most frequent problems detected is a lack of proper ventilation in holding areas. Detainees interviewed complained of this at several establishments. On several inspection visits unpleasant odours were detected, so the installation or replacement of extractor systems was requested at the command headquarters and barrack in A Coruña, Ciudad Real, Arguineguin (Las Palmas), Arnedo (La Rioja), Aviles, Gijon and Villaviciosa (Asturias), Cartagena (Murcia), Inca and Sant Antoni de Portmany (Balearic Islands), Guzmán el Bueno in Madrid, Malaga airport, Santiago de Compostela (A Coruña), Tafalla (Navarre), Torrelavega (Cantabria) and Vecindario (Las Palmas).

100. Most holding areas have no climate control systems so they are affected by changes in temperature. At establishments in some regions such changes may be considerable, e.g. at the command headquarters in Ávila, Ceuta, Oviedo (Asturias), Seville and Tarragona and in a great many barracks. This issue should be addressed in the construction and refurbishment of establishments.

101. The general standard of cleanliness and disinfection at the holding cells visited was satisfactory. However, recommendations for improvements in cleaning were made at the cells of the command headquarters in Gijon (Asturias) and Toledo, and at the barracks of Arguineguin (Las Palmas), Aviles (Asturias), Cartagena (Murcia) and El Astillero (Cantabria). It was also recommended that cleaning procedures in holding areas be reviewed, especially when the cells are in use at weekends [e.g. at the barracks in Inca and Sant Antoni de Portmany (Balearic Islands) and Torrelavega (Cantabria)].

102. CCTV surveillance of holding areas covers the interior of the cells but in many establishments does not extend to the adjoining areas and corridors. Of all the establishments visited, only the Arguineguin barracks in Las Palmas had no CCTV surveillance. Most establishments are equipped with up-to-date image capture equipment, though at the barracks in Inca and Sant Antoni de Portmany (Balearic Islands) the equipment available was found to be obsolete and the images obtained were of poor quality. Establishments must strive to maintain their cameras in proper working order. To improve surveillance of detainees, it was requested that monitors displaying CCTV surveillance images should be installed in the areas adjacent to the holding cells at the command headquarters in Cadiz and the Guzmán el Bueno barracks in Madrid. A general protocol on CCTV recording should also be drawn up so as to regulate where cameras may be installed, what activation systems may be used and how images

The lack of proper ventilation is one of the most frequent problems detected

Most establishments are affected by changes in temperature

The standard of cleanliness and disinfection was satisfactory. Cleaning procedures should be reviewed when cells are in use at weekends

A general CCTV surveillance protocol needs to be established, along with stricter regulations covering incommunicado detention



may be accessed, filed and stored. In particular, stricter regulations in this regard need to be drawn up in regard to incommunicado detention, and suitable permanent equipment needs to be installed throughout holding areas. Recordings may be stored at the disposal of those authorities entitled to request them for a period long enough to guarantee the possibility of comprehensive external supervision of the holding process.

Evacuation plans in case of fire need to be established urgently

103. In regard to firefighting measures in holding areas, it was urgently recommended that evacuation plans be drawn up and that adequate firefighting equipment be installed to remedy shortcomings detected at the command headquarters of A Coruña, Alicante, Ceuta, Gijon (Asturias), Lleida, Malaga, Murcia, Santander (Cantabria), Toledo, Tres Cantos (Madrid) and Valladolid, and at the barracks in Alsasua and Tafalla (Navarre), Aviles (Asturias), Cartagena, El Astillero and Torrelavega (Cantabria), Guzmán el Bueno in Madrid, Ibiza, Inca and Sant Antoni de Portmany (Balearic Islands), Jerez de la Frontera (Cadiz) and Santiago de Compostela (A Coruña). It must also be stressed that the access corridor to the holding cells at the command headquarters in Toledo is too narrow for all three doors to stand open at the same time in case of emergency.

Detainees usually establish communication with officers guarding them by intercom

104. Detainees usually establish communication with the officers guarding them by means of buzzers or intercoms. Exceptions to this rule were found among the establishments visited: no such system was available at the barracks in Aviles (Asturias), and the system in the Guzmán el Bueno barracks in Madrid was in need of repair. At most of the establishments visited it was found that guards were not stationed permanently in the holding area while the cells were occupied. At those establishments where the intercom and CCTV surveillance systems were considered to be insufficient, it was requested that an officer be stationed in the area adjoining the holding cells while they were occupied (the command headquarters of A Coruña, Balearic Islands (Palma de Mallorca), Lleida, Madrid (Tres Cantos), Malaga, Seville and Tarragona and the barracks in the towns of Aviles (Asturias), Cartagena (Murcia), Santiago de Compostela (A Coruña) and the airports of El Prat de Llobregat (Barcelona) and Malaga. However, it was observed that there was not always a suitable space available in the holding area for a guard to be stationed there. A surveillance room or a checkpoint should therefore be set up accordingly.

Healthcare procedures and the associated shortcomings are similar to those listed for CNP-run establishments. Medication is prescribed and dispensed by the medical service and handed over by guards

105. The procedures for providing detainees with health care, and the shortcomings detected in this regards on the inspection visits made, do not differ substantially from those listed for CNP-run establishments in paragraph 55. The command headquarters for Madrid (Tres Cantos) and the barracks at Sant Antoni de Portmany (Balearic Islands) were found not to be supplied with prophylactic measures for use with detainees who showed signs of infectious or contagious diseases. Medication is prescribed and dispensed by the relevant medical services and handed over to detainees by the officers guarding them. At the command

headquarters for Leon it was observed that detainees were given medicaments provided by their families or friends and that there was no system in place for checking their suitability. The need to change this practice was pointed out.

106. Food for detainees is acquired by GC officers at the cafeterias on the establishments or from nearby catering establishments. It usually consists of sweet bakery products and coffee for breakfast and sandwiches for the remaining meals. Detainees with medical conditions or religious dietary restrictions are provided with suitable food. This was confirmed by several of the detainees interviewed in the course of the inspection visits. This procedure entails an additional workload for GC personnel and is not the most suitable solution in terms of a healthy diet, especially in cases when prolonged deprivation of liberty is involved. In this regard the GC explains that it has “584 detention establishments, many of them located in small towns where there are few detainees. This wide dispersal makes it difficult to arrange to have food delivered by specialist firms”. It must be stressed in regard to the GC that for the sake of food safety and in view of potential liability of the force in regard to persons held in custody, it is not considered appropriate that third parties be permitted to bring in food for detainees. This point was made on the occasion of the inspection visits to the command headquarters in Ceuta and Tarragona and the barracks in Jerez de la Frontera (Cadiz).

107. Like the CNP, the Civil Guard must act according to the rules concerning detainee access to toilet facilities laid down in SES Instruction 12/2007, as mentioned in paragraph 60 above. Most of the holding facilities visited have one or more toilets, and in a few cases there are toilet facilities in the cells themselves. However in general detainees must call a guard if they wish to use the toilet. The standard of hygiene and upkeep of the toilets visited was not satisfactory in the barracks in Alsasua (Navarre) and Cartagena (Murcia), or in the command headquarters in Cadiz. The need to improve access to toiletries supplies was pointed out at the command headquarters in Lleida and Seville and at the barracks in Cartagena, Ibiza, Inca and Sant Antoni de Portmany (Balearic Islands), Malaga airport and Torrelavega (Cantabria). In general, the same can be said as for the CNP in regard to the advisability of establishing a more suitable waste collection system.

108. Detainees sleep on plinths built into the cell walls. On the inspection visits carried out there was observed to be a sufficient supply of mattresses [except at the barracks in Ibiza (Balearic Islands)] and blankets. At most establishments, blankets are laundered after every use, though at the command headquarters in Ávila, Ceuta, Leon, Lleida, Malaga and Tres Cantos (Madrid) and at the barracks in Cartagena (Murcia), El Astillero and Torrelavega (Cantabria), Inca and Sant Antoni de Portmany (Balearic Islands), the port of Malaga and El Prat de Llobregat airport (Barcelona) blankets are usually used several times before they are washed, which is not acceptable practice.

Food is acquired from the cafeteria in the establishment or from nearby catering establishments. Religious beliefs are catered for

Access to toilet facilities is regulated according to SES Instruction 12/2007

A sufficient supply of mattresses and blankets was observed on the inspection visits carried out

Detainees held for longer than 24 hours should be allowed out of their cells for exercise

109. In cases when detainees need to remain in holding areas for longer than 24 hours, and when advisable for medical reasons, they should be allowed out of their cells for exercise, but this is only done in exceptional cases. In the private interviews conducted during the inspection visits, several detainees mentioned this shortcoming. The points made in paragraph 62 above also apply here.

Visits by legal counsel and consular staff (when relevant) are permitted

110. It was reported that the only visitors permitted to see detainees were their legal counsel and consular staff in the case of foreign nationals. Visits from family and friends are permitted only with the authorisation of the investigating magistrate, in accordance with Article 523 LECRIM, implemented as per SES Instruction 12/2007.

The GC employs the means of restraint generally used by the security forces of the state

111. Civil Guard officers employ the means of restraint generally used by security forces, as regulated by Article 525 LECRIM, implemented as per SES Instruction 12/2007 (rules 7 and 9). These regulations stress the principles of exceptional circumstances and proportionality. In the course of the inspection visits carried out it was not possible to establish a general criterion concerning the handcuffing of detainees and the circumstances in which this is done.

In holding areas GC officers either do not wear their firearms or remove the magazines

112. GC officers usually take off their regulation firearms when they are in a holding area, or at least remove the magazine. However, these precautions are not taken at the command headquarters in Ávila or at the barracks in Alsasua (Navarre) and El Prat de Llobregat airport (Barcelona). As mentioned above, in some cases detainees are guarded by the same officers who guard the main entrance to the establishments, who are of course armed. These two tasks should therefore be separated.

Guards are not always properly identified

113. On several inspection visits it was observed that officers on guard duty were not always properly identified, in breach of SES Instruction 13/2007. Cases in point include the command headquarters in Gijón and Oviedo (Asturias), Palma de Mallorca (Balearic Islands) and Santander (Cantabria) and the barracks in Inca.

The situation as regards searches, strip searches and the confiscation and storage of belongings is similar to that indicated for the CNP

114. The situation as regards searches, strip searches and the confiscation and storage of belongings is basically similar to that indicated for the CNP in paragraphs 67 to 69 above. In the course of the inspection visits it was observed that the regulation heat-sealable bags were unavailable at the command headquarters in Tarragona or at the barracks in El Astillero and Torrelavega (Cantabria), Inca and Sant Antoni de Portmany (Balearic Islands), Jerez de la Frontera (Cadiz) Malaga and El Prat de Llobregat (Barcelona) airports. It was requested that bags to be provided in order to guarantee proper storage of belongings. After the inspection visits to the command headquarters for Guipuzcoa (San Sebastian), Las Palmas (Las Palmas de Gran Canaria), Vizcaya (Bilbao) and Zaragoza and the barracks in Alsasua (Navarre), Casablanca (Zaragoza) and Guzmán el Bueno in Madrid it

was requested that the fact of and reason for any searches requiring detainees to strip naked be recorded in the Detainee Registration and Custody Log, and that the courts be duly informed of this measure in all cases, whatever the results. Following the visit to the barracks in Tafalla (Navarre) it was stressed that all searches of female detainees, including superficial searches, must be performed by female officers of the law, and that such officers must be brought in from other forces if necessary.

115. The situation regarding the possibility of detainees requesting habeas corpus is similar to that indicated for the CNP in paragraph 70. It must be said that at most of the establishments visited the telephone call to request legal counsel is made only after all police procedures have been completed and a statement from the detainee is to be taken.

116. All the establishments visited were provided with the Detainee Registration and Custody Log required as per SES Instruction 12/2009. In some cases it was found that this log was not being completed correctly: sections were being left blank and circumstances specifically listed as requiring registration, such as meals and searches, were not being entered. Indications in this regard were made following the inspection visits to the command headquarters in Lleida and the barracks of Sant Antoni de Portmany (Balearic Islands) and Torrelavega (Cantabria).

117. The protocols for the holding of juveniles are those laid down in SES Instruction 11/2007, already mentioned in paragraph 72 in regard to the CNP. The specialist Civil Guard teams working in this area are known as EMUMEs (Women and Juveniles Units).

III. Regional Police Force Establishments

118. Article 149.1.29 of the Spanish Constitution establishes that the state has exclusive competence over “[p]ublic safety, without prejudice to the possibility of creation of police forces by the Autonomous Communities, in the manner to be provided for in their respective Statutes of Autonomy and within the framework to be laid down by a Public General Act”. Eleven statutes of autonomy (Andalusia, Aragon, the Canary Islands, Castilla y Leon, Catalonia, the Community of Valencia, Extremadura, Galicia, Balearic Islands, Navarre and the Basque Country) have provided for this possibility. The public general act referred to here by the Constitution is PGA 2/1986 of March 13 on Security Forces. Chapters III and IV of this Act (Arts. 37-50) set out the basic framework for action of these forces. Pursuant to these provisions, four regional police forces have been set up: the Ertzaintza in the Basque Country, the Mossos d’Esquadra in Catalonia, the

Requests for habeas corpus are handled similarly to the CNP

The establishments visited all had Detainee Registration and Custody Logs

The holding of juveniles is governed by the same protocols as apply to the CNP

In 2010 three of the four regional police forces were visited: the Ertzaintza (Basque Country), the Mossos d’Esquadra (Catalonia) and the Regional Police Force of Navarre

Regional Police [*Policía Foral*] in Navarre and the General Police Force [*Cuerpo General de la Policía*] in the Canary Islands. In 2010 inspection visits were made to establishments run by the first three of these forces. The Canary Islands force was not visited because it was still in the early stages of deployment as regulated by Regional Act 2/2008 of May 28. The Autonomous Community of Galicia also approved the establishment of a regional police force under Act 8/2007 of June 13, but it has not yet been deployed.

III.1. Ertzaintza Establishments

An armed civilian law enforcement agency whose remit is similar to that of national police forces, but within the scope of the Basque Country

119. The Basque Autonomous Police — the Ertzaintza — was first set up in 1982, pursuant to Article 17 of the Statute of Autonomy of the Basque Country (PGA 3/1979 of December 18) and is regulated by Basque Regional Act 4/1992 of July 17 on the Basque Police. It is defined as an armed civilian law enforcement agency in the framework of the competences devolved to the relevant Autonomous

Graphic 7. Structure of the Ertzaintza

Graphic 7. General Structure of the Ertzaintza



Community, and its general remit is similar to that entrusted to national police forces under Articles 25 and 26 of the PGA on Security Forces. It is answerable to the Department of the Interior of the Basque Government. It comprises almost 8000 officers, 10.19% of whom are women. Its general organisation structure is as shown in the following graphic.

120. It operates in the provinces of Alava, Guipuzcoa and Vizcaya, covering a territory measuring 7,235.13 km². Its forces are organised into various central units and 25 territorial stations. The table below outlines the arrests made in 2010 that resulted in detainees being held in cells.

It operates in an area of 7,235.13 km² and is organised into central units and 25 territorial stations

Table 20. Arrests by the Ertzaintza resulting in holding in cells per province and station

Province	Station	No. Detainees
ALAVA		1,251
	La Guardia	56
	Llodio	99
	Vitoria-Gasteiz	1,096
VIZCAYA		4,109
	Balmaseda	73
	Basauri	127
	Bilbao	2,042
	Durango	280
	Erandio	179
	Galdakao	98
	Gernika	199
	Getxo	177
	Muskiz	273
	Ondarroa	63
	Sestao	598
GUIPÚZCOA		3,002
	Azkoitia	75
	Beasain	202
	Bergara	214
	Donostia-San Sebastian	690
	Eibar	213
	Errenteria	371
	Hernani	445
	Irun	423
	Tolosa	159
	Zarautz	152
	Zumarraga	58
		263
	Central Units	39
	Traffic Units	224
Total no. of detainees		8,625

Table 20. No. of arrests made by the Ertzaintza resulting in detainees being held in cells

Source: Own work based on data provided by the Basque Govt. Dept. of the Interior.

11 establishments with holding cells were visited in 2010

121. As detailed in Table 4 and paragraph 32 of this report, 11 Ertzaintza-run establishments with holding cells were visited. They included the Territorial Headquarters of the Anti-terrorist and Information Division in Arcaute (Alava) at a time when two detainees were being held there incommunicado. The establishments visited account for 66.75% of the arrests by the Ertzaintza in 2010 that resulted in detainees being held in cells. It was found that detainees were held for an average time of between 12 and 24 hours.

Graphic 8: Ertzaintza-run places of deprivation of liberty visited

Graphic 8. Geographical location of the Ertzaintza-run places of deprivation of liberty visited in 2010



Establishments built in the 1990s and in good condition. Holding areas are usually in the basement

122. Almost all the establishments visited were built in the 1990s and are in good condition. The holding areas are usually in the basements, with direct access from the outdoor or underground parking areas, thus making movement through police establishments more secure and also protecting the privacy of detainees. The work areas of the staff in charge of guarding and dealing with detainees were also found to be satisfactory and the standard of conservation and cleanliness was good.

Cells with polished cement walls, metal doors with glazed openings. Large enough

123. Cell walls are all of polished, painted cement, with built-in plinths that serve as beds. The doors are mostly metal, with an observation hatch, though in some larger cells (for collective occupancy) observed at the stations in Erandio, Getxo and Sestao (Vizcaya) and in Vitoria-Gasteiz (Alava) vertical bars protected with vandal-proof glass were observed. It was reported that these cells were used

to house juveniles and persons in a state of anxiety. Cell sizes were observed to meet the criteria indicated in paragraph 49 above.

124. The condition of the cells as regards ventilation and temperature was satisfactory. There were centralised air conditioning and heating systems. It would be advisable for technical improvements to be made so that the temperature inside the cells is suitable for persons at rest or with little mobility, while elsewhere — especially in the common areas where the guards are stationed — it can be set differently. Holding areas are cleaned daily and disinfected at regular intervals or whenever circumstances make it advisable.

Ventilation & temperature are satisfactory

125. Most establishments visited were lit with artificial light only, but it can be considered as satisfactory, especially in view of the short holding times reported here. Each cell has a dimmer switch that can be adjusted by the guards, though no formal criteria were observed concerning lighting levels at different hours.

Lighting satisfactory although artificial only

126. CCTV cameras are installed in the corridors, in the interrogation room, at the entrance to the cells and at the entrance from the parking areas. The recordings made are generally held for 7 days. Images can be viewed from the control room at each facility. The officers stationed there are in direct communication with those on guard in the holding areas.

Recordings are made and generally held for 7 days

127. In regard to fire-fighting and other emergency systems in holding areas, most of the establishments visited were observed to have extinguishers, alarm buttons, smoke detectors and emergency exits. Evacuation plans were also observed to be in place. Cells are not fitted with mixed or mechanical opening systems.

Extinguishers, alarm buttons, smoke detectors and emergency exits were observed

128. Detainees have direct voice communication with the officers guarding them, as when there is a detainee in the holding area there is always at least one officer stationed there, who must patrol the adjacent corridor. When there are female detainees, female officers are assigned to the holding area.

Detainees have direct voice communication with guards

129. No medical examination is carried out on admission, though detainees can request one if they wish. In general medical assistance protocols are activated when a request is made by the detainee. The officer in charge of the holding area assesses whether the detainee should be moved to the appropriate medical facility or other actions should be taken. The usual process is for detainees to be transferred to a hospital. During the inspection visits it was reported that each detainee was asked on admission to the holding area about his/her health background, and that the information provided was included in the detainee custody log. It would be useful for this report to be made in writing and signed by the interested parties.

No medical examination is conducted at the time of admission

If signs of infectious or contagious diseases are found, prophylactic measures are set in place and the cell is disinfected

If a detainee is found to show signs of infectious or contagious diseases, prophylactic measures are taken, he/she is isolated as a precautionary measure and the cell is disinfected. There is a special protocol for pregnant female detainees. The officers in charge of the stations visited indicated that every effort was made to avoid confining them in the cells. It was reported that the force has been issued with guidelines for action in such cases. The NPM has asked to be shown these guidelines for analysis.

Food supplies vary: at some establishments it is acquired from nearby establishments and at others there are machines that dispense hot dishes

130. The food supply system varied from one facility to another. In some cases food was purchased from establishments near the station, while at others there were machines that dispensed hot dishes, with two types of menu available. These machines were also used by the officers stationed at the relevant establishments for their own meals. Detainees are not permitted to have food brought in or to order and pay for food from outside. Constraints arising from religious beliefs are taken into account in the food provided to detainees in the cells, but it may not be suitable for persons who suffer from certain medical conditions.

Toilet facilities are outside the cells

131. All the holding areas have toilet facilities outside the cells for men and women, each with a washbasin, toilet and shower. The standards of hygiene, upkeep and ventilation were good. At the station in Bilbao there is another toilet with a washbasin and a toilet bowl fitted with a grille, used for detainees suspected of carrying narcotics inside their bodies. Showers stalls are separated by a medium-height wall, and the perimeter bars are fitted with translucent panels that allow indirect monitoring by guards while safeguarding privacy. To use the toilet, detainees must ask the officers guarding them. At several of the establishments visited incontinence pads and feminine hygiene products were found to be stocked.

Large supplies of clothing are available, which detainees can use if they wish

132. Large supplies of cotton clothing (underwear, t-shirts, trousers, loose shirts and slippers) were found to be stocked at all establishments. These items are used once only. Detainees may wear their own clothes or use these items, at their own free will. If they decide to use the clothing provided, their clothes are kept in individual lockers, of which there is one for each cell.

There are fireproof blankets & mats but they are unsuitable for sleeping

133. Detainees sleep on built-in plinths. They are provided with fireproof blankets and mats, all of which are used once only, but there are no mattresses. The mats may be adequate for a stay of a few hours, but are unsuitable if detainees must sleep in the cells.

Only visits from legal counsel and consular staff, if relevant, are authorised

134. Detainees can receive visits only from their legal counsel and from consular staff in the case of foreign nationals. No complaints of foreign nationals having problems contacting their diplomatic or consular representatives were reported

during the inspection visits. Visits from family and friends require authorisation from the examining magistrate handling the case.

135. At some establishments it was reported that detainees held for more than 24 hours were allowed out of their cells for exercise. This should be extended to all the establishments run by the force. On some inspection visits it was observed that when there were medical recommendations on mobility those recommendations were followed.

136. Detainees are usually handcuffed when admitted to and removed from cells. It was observed in several recordings that they were not handcuffed during movements within the holding area, but more guards than detainees were present. The restraint and coercion measures employed in case of resistance of those usually used by police forces. Their use and each specific incident recorded in the detainee registration database and reported to superior officers and courts. Assessment from medical services is requested when considered necessary.

137. On the inspection visits carried out it was observed that officers on guard duty were not properly identified, i.e. they were not wearing their identification numbers in plain sight. This is not compulsory in this force. This shortcoming must be remedied: identification via a badge number is a widely applied system that ensures the correct balance between the safety of officers and the right of citizens to identify persons acting as officers of the law.

138. The modus operandi for searching detainees consists of an initial, superficial search at the time of arrest, followed by a more thorough search prior to admission to the cells. During this second search any personal belongings and items of clothing that detainees might use to inflict injuries upon themselves are confiscated. These items are put into bags, itemised on a form that the detainee is required to sign and entered in the custody registration log. Female Ertzaintza officers are called upon to search female detainees. If necessary female officers can be temporarily drafted in from other forces.

139. Any strip searches required are carried out in parts, so that only half the body of the detainee is naked at any time. It was not possible to determine whether all such searches were duly recorded in the registration log. Not only the fact that a search is carried out but also the time, the place, the reasons put forward by the police for taking such a measure, the identification numbers of the officers involved and the results obtained must be logged. All these data must be reported to the courts when the case is handed over to them.

Detainees held for more than 24 hours are allowed to take exercise at some facilities

Detainees are not handcuffed during movements within the holding area, but more guards than detainees are present

Officers on guard duty were not properly identified

Belongings confiscated during searches are listed on a form and entered in the custody registration log. Female detainees are searched by female officers

Strip searches are carried out in parts. It was not possible to determine whether all such searches were duly logged

Atxilo: computerised detainee custody log, comprising highly detailed individual files. The truthfulness and accuracy of records is checked via external audits

No information on the possibility of requesting habeas corpus

Efforts are made to avoid juveniles being held in cell

17 persons detained in 2010 were held incommunicado

A visit was arranged to the territorial headquarters in Arcaute (Alava) when it was learned that there were two detainees being held there incommunicado

In theory the facilities can hold up to 6 incommunicado detainees

140. The detainee custody log is computerised, and uses individual files known as *Atxilo*. These files contain detailed information on and the precise times of all events during the period of detention. It was observed on the inspection visits that the system was located outside the holding areas and was handled by staff other than those in direct contact with detainees. Custodial officers report any events that require registration to their control centre by means of audio alerts. The accuracy and truthfulness of the entries recorded are checked regularly by means of external audits in which the details logged are compared with surveillance camera recordings.

141. The officers in charge of the establishments visited indicated that detainees were not informed either in writing or verbally of the possibility of requesting habeas corpus.

142. As a general rule every effort is made to avoid juvenile detainees being held in cells or handcuffed unless the situation is deemed to require such measures.

143. According to the data reported to this Office by the Department of the Interior of the Basque Government, in 2010 the Anti-Terrorist and Information Division of the Ertzaintza made 17 arrests in which detainees were held incommunicado. The regime applied was that indicated in the basic regulations alluded to in paragraph 38 above. This regime was applied to around 0.2% of the persons detained by the Basque autonomous police force and held in cells that year, according to the data shown in the table adjoining paragraph 120 above.

A visit was arranged to the Territorial Headquarters of the said Division in Arcaute (Alava) when it was learned that there were two detainees being held incommunicado there. This facility is based in a complex that houses the force's training academy among other services. The visit included individual, private interviews with both the detainees held incommunicado, a meeting with the forensic specialists in charge of examining their physical and mental state, a detailed examination of the installations, a check on detainee treatment procedures and an inspection of recordings from various cameras installed in the holding area.

144. The holding area there comprises twelve cells arranged along two parallel corridors, one used by the Traffic Division and the other by the Anti-Terrorist and Information Division. The six cells used by the latter division all have secure pre-cell areas and double doors. In theory the facilities are capable of holding 6 persons incommunicado, as the cells used by the two divisions are not used simultaneously. At the time of the visit it felt cold in the cell area, but since custodial officers are required to cover their entire bodies (including their heads,

eyes and hands) while dealing with detainees, higher temperatures would be hard for them to bear. It was checked that detainees were provided with extra blankets on request.

145. CCTV surveillance and recording cameras should be set up in all those areas that may potentially be used by detainees while they are held incommunicado and not only in the common areas, as was the case at the facility visited. There was no video recording equipment in two of the four areas used as visiting rooms. In one the absence of cameras was explained on the grounds that the room was used for forensic searches. The recording of audio should also be envisaged.

146. While they are held incommunicado, detainees undergo searches that include their removing their outer clothing and their bodies and clothes are patted down after every contact with anyone not belonging to the force. These searches are conducted in the pre-cell area, with the detainees standing with their backs to the wall, in the presence of two officers. The recordings observed showed that when detainees were moved within the holding area the officers guarding them took measures to ensure that their movements were under control, but without using mechanical restraints.

All incidents in the area are entered by the custodial officers in individual, hand-written records for each detainee. At the same time, the information is passed on to the registration database that manages the *Atxilo* files. It would be advisable for the original hand-written records to be kept for comparison should the authorities require them, regardless of whether the data is transcribed in other formats.

147. The protocol for action by the Ertzaintza in cases of incommunicado detention envisages forensic searches of detainees with intervals of no more than 24 hours. In the case examined, the relevant central judge ruled that two searches per day be conducted by teams made up of two forensic specialists. As indicated above, in the course of the visit the inspection team had the opportunity to interview these forensic specialists just after they had conducted the second search of the day on the detainees. They draw up an initial detailed report — for which detainees are usually transferred to the local Institute of Forensic Medicine — in which special emphasis is placed on checking for any external signs of aggression or injuries, their probable causes and approximate timing. All detainees are given the opportunity to provide a urine sample to rule out the presence of psychotropic drugs that may affect the central nervous system. Tests are made with the clerk of the court bearing witness. The test is repeated at the end of the isolation period. The specialists indicated that only non invasive tests were conducted, and the specific authorisation of the courts was required before they could take place (e.g.

CCTV surveillance and recording equipment should be set up in all areas that may be used by detainees held incommunicado

Detainees held incommunicado are searched after every contact with persons not belonging to the force. Mechanical restraints are not used

The hand-written reports recording incidents prior to their inclusion in the Atxilo should be kept

The protocol for action in cases of incommunicado detention envisages forensic examinations at intervals of no more than 24 hours. Forensic specialists draw up an initial detailed report. All detainees are offered the chance to provide urine samples to rule out the presence of psychotropic drugs.

Court authorisation is required before non invasive tests can be made



the taking of blood or tissue samples, TACs and X-rays). In the subsequent examinations they monitor the vital signs of the detainees and check for any changes in their physical, mental or psychological condition. If any illnesses or intolerance of foods or medicaments are detected, or should it be deemed necessary to continue providing medical treatment, the custodial officers are informed accordingly. If necessary, it can be recommended that detainees be moved to appropriate hospital facilities to monitor the progress of their illnesses and any preliminary treatment. A report is drawn up on each such visit and handed over to the relevant duty court (that of Vitoria in the cases examined here), from where it is passed on to the central magistrates' court in charge of investigating the case.

Medicaments are dispensed in line with criteria laid down by forensic specialists. Channels are provided for families to supply medicaments

Medicaments are dispensed to detainees in line with criteria laid down by the forensic specialists, though the Ertzaintza protocol for co-ordination of assistance for persons held incommunicado envisages channels for families to supply any medicaments habitually used by detainees. In such cases a certificate from a primary care physician is required indicating the guidelines for each patient. Such medicaments can be handed in at any Ertzaintza police station. It was observed that these medicaments were stored in their original packaging in the locker assigned to each detainee. No evidence of written rules was found, nor of sachets containing ready-prepared individual doses. Nor was any evidence found of healthcare personnel being involved in preparing the relevant doses. In the case examined the type and dose of the medication to be dispensed during incommunicado detention varied. It would be advisable for prescription drugs to be prepared in individual sachets for each dose by healthcare personnel. In any event, the doses dispensed, the times when they are given and any associated incident must be recorded on the reports drawn up by the custodial officers.

Forensic specialists recommend what measures should be taken in case of pre-existing illness

Examination of the reports drawn up by the forensic specialists revealed that they made recommendations on what measures should be adopted to prevent any pre-existing illnesses from getting worse. On the visit it was found that these recommendations had been passed on to the officers in charge of the facility by the forensic specialists a few minutes previously.

Guidelines on the timing of meals and dispensing of medicaments should be observed

Unless otherwise indicated by a doctor, meals and the dispensing of medicaments should be timed to fit in as closely as possible with the normal timetables at the facility.

Families are informed of the fact of the arrest and that incommunicado detention has been applied

148. Article 510.3 LECRIM indicates that no incoming or outgoing communications at all are to be allowed unless expressly authorised by the relevant court. Article 527.b) of the same Act establishes that detainees do not have the right to have the fact and place of their detention notified to a person of their

choice. However, family members do receive some information concerning the fact of the arrest and the fact that incommunicado detention has been applied. This information is provided through the channels and on the terms indicated in the aforesaid protocol for co-ordination of assistance for persons held incommunicado applied by the Ertzaintza.

Legal counsel are present only when formal statements are taken. They may not freely visit detainees. According to Article 527.a) of the LECRIM they must in all cases be legal aid lawyers on duty as per a specific rota for counselling of detainees held incommunicado of the corresponding bar association. Statements are taken in rooms fitted with cameras. Nor do detainees have the right to private meetings after their statements are taken [Art. 527.c) LECRIM].

149. The stations visited are subject to regular internal inspections and detention process quality audits, during which questionnaires are given out, completion of which is voluntary. The Ertzaintza holds an AENOR quality certificate (1752/2002 ER) under quality management standard UNE-EN ISO 9001:2008 for the force's detention and custody procedures.

III.2. Mossos d'Esquadra Establishments

150. The Statute of Autonomy of Catalonia (PGA 6/2006 of July 19) establishes that the *Generalitat* (Autonomous Regional Government of Catalonia) is responsible for "the creation and organisation of the *Policia de la Generalitat-Mossos d'Esquadra* [Autonomous Police]" [Art. 164.1.b)]. Article 164.5 of the Statute establishes the remit of this force, which is described as an armed civilian law enforcement agency. Its structure and hierarchical organisation are laid down in Article 10.1 of Act 10/1994 of July 11 on the regulation of the force. Its basic principles for action and its functions are set down in Articles 11 and 12 of the said Act. Its disciplinary regime is regulated by Article 66-78 of the same Act. The force is answerable to the Department of the Interior of the Regional Government of Catalonia. It has over 14,000 officers grouped into nine "policing regions". The graphic below shows its organisation structure.

151. The Mossos d'Esquadra operate in all four provinces of Catalonia, in a territory measuring 32,113,41 km². The data provided by the Department of the Interior of the Regional Government of Catalonia on the number of detainees held in cells run by the Mossos d'Esquadra in 2010 refer to persons detained by the autonomous police force itself and by local police forces, plus persons admitted to holding cells in courthouses. The total for all three types of detainee was 64,666, distributed as per the table below.

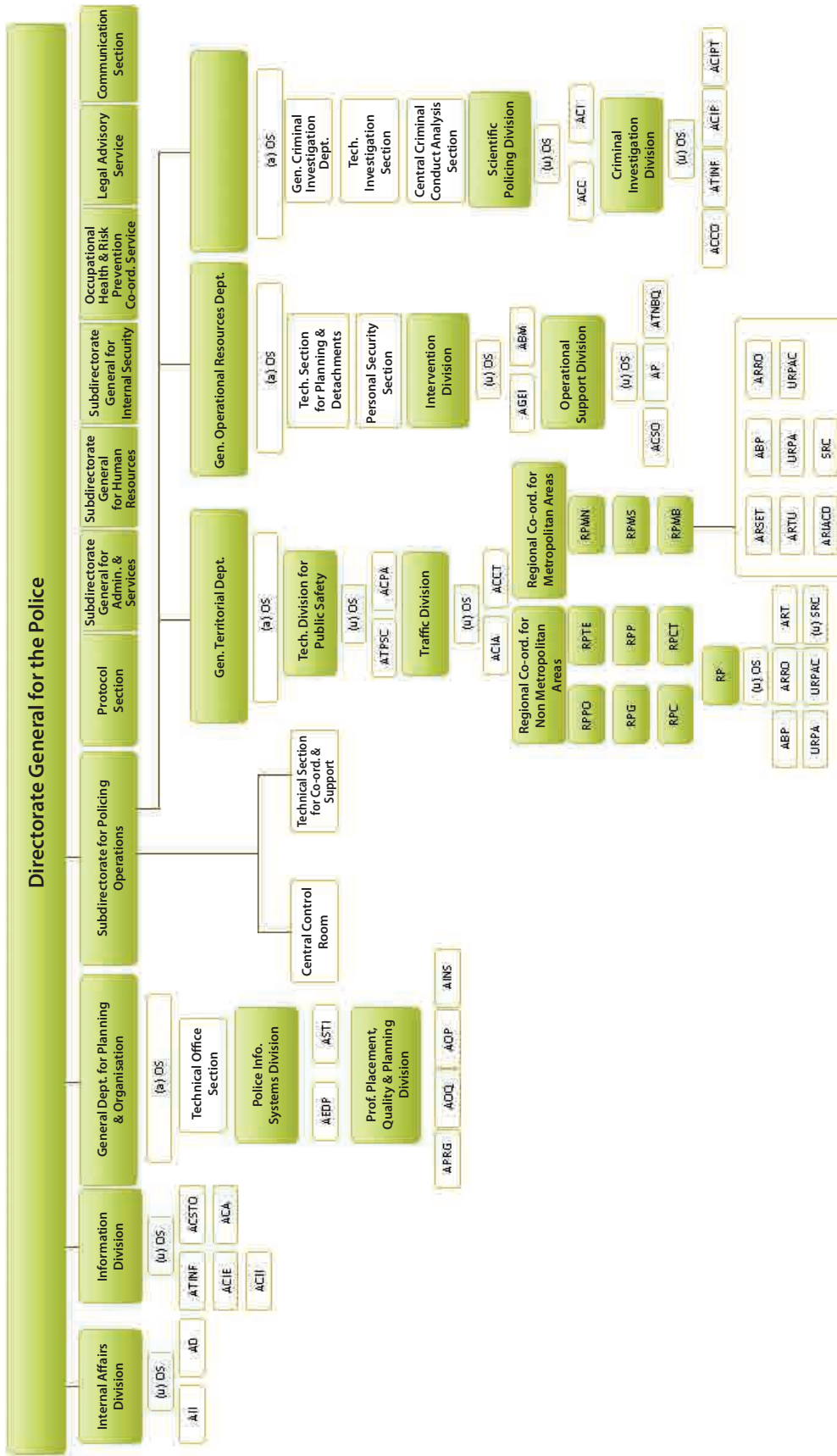
Legal counsel are present only when formal statements are taken. They have no right to subsequent private meetings

The Ertzaintza holds a quality certificate under standard UNE-EN ISO 9001:2008

An armed civilian law enforcement agency with over 14,000 officers

The force operates in an area of 32,113. 41 km². In all there were 64,666 arrests with admission to cells

Graphic 9. General organisational structure of the Mossos d'Esquadra



Abbreviations used in the main bodies of the Directorate General for the Police

ABP = Basic Policing Section; ABRIMO = Mobile Unit Section; AC = Communication Section; ACA = Central Analysis Section; ACAC = Central Criminal Conduct Analysis Section; ACCO = Central Organised Crime Section; ACCT = Central Traffic & Transport Section; ACI = Central Identification Section; ACIE = Central Accident Investigation Section; ACII = Central Internal Information Section; ACII = Central Internal Information Section; ACIP = Central Section for the Investigation of Persons; ACIPT = Central Section for the Investigation of Property; ACMTSO = Central Technical Operational Support & Resources Section; ACPA = Central Administrative Policing Section; ACSO = Central Operational Support Section; ACSTO = Central Operational Technical Support Section; AD = Disciplinary Section; AEDP = Police Data Preparation Section; AGEI = Special Intervention Group Section; AII = Internal Investigation Section; AINS = Instructors' Section; AOP = Professional Placement Section; AO = Organisation & Quality Section; AE = Personal Security Section; AEP = Police Data Preparation Section; AGEI = Special Intervention Group Section; AII = Internal Investigation Section; AINS = Instructors' Section; APTG = Professional Placement Section; ARRO = Regional Operational Resource Section; ARSET = Regional Building & Transfer Security Section; ART = Regional Traffic Section; ARTU = Regional Urban Transport Section; ASTI = Information Technology Section; ATCS = Technical Section for Co-ordination & Support; ATMBQ = Bomb Disposal Section; ATINF = Technical Investigation Section; ATPO = General Territorial Section; CRIM = Metropolitan Area Regional Co-ordinator; CRNM = Non Metropolitan Area Regional Co-ordinator; DAI = Internal Affairs Division; DGP = Directorate General for the Police; DI = Intervention Division; DINF = Information Division; DPC = Scientific Policing Division; DPE = Professional Placement, Quality & Planning Division; DSIP = Police Information Systems Division; DSO = Operational Systems Division; DT = Technical Division for Public Safety; DS = Support Office; RP = Policing Region; SAJ = Legal Advisory Service; SCC = Central Control Room; SCSLPR = Occupational Health & Risk Prevention Co-ordination Service; SGAS = Subdirectorate General for Administration & Services; SGRH = Subdirectorate General for Human Resources; SGSI = Subdirectorate General for Internal Security; SOP = Subdirectorate for Policing Operations; SRCA = Regional Control Centre; URPA = Regional Administrative Police Unit; URPAAC = Regional Proximity & Citizens' Attention Unit.

Source: own work based on data from the Mossos d'Esquadra website [http://www.gencat.cat/mossos/cm/e/organizacio/index.htm].



Table 21. Arrests by the Mossos and local police forces resulting in holding in cells run by the Mossos in 2010, broken down by policing regions, basic policing areas (ABPs) and regional sections

ESTABLISHMENTS RUN BY THE CATALAN AUTONOMOUS POLICE	No, DETAINEES
GIRONA POLICING REGION	6,446
ABP Alt Empordà-Figuères	979
ABP Alt Empordà-Roses	432
ABP Baix Empordà-La Bisbal	631
ABP Baix Empordà-Sant Feliu de Guixols	358
ABP Garrotxa	205
ABP Gironès-Pla de l'Estany	2,129
ABP Ripollès	98
ABP Selva Interior	527
ABP Selva Litoral	1,087
CENTRAL POLICING REGION	2,501
ABP Anoia	577
ABP Bages	1,069
ABP Berguedà	161
ABP Osona	647
ABP Solsonès	47
PONENT POLICING REGION	2,504
ABP Noguera	213
ABP Segarra-Urgell	314
ABP Segrià-Garrigues-Pla d'Urgell	1,977
PIRINEU OCCIDENTAL POLICING REGION	444
ABP Alt Urgell	147
ABP Cerdanya	147
ABP Palars Jussà-Pallars Sobirà	82
ABP Val d'Aran-Alta Ribagorça	68
CAMP DE TARRAGONA POLICING REGION	5,460
ABP Alt Camp-Conca de Barberà	396
ABP Baix Camp-Priorat	1,530
ABP Baix Penedès	1,126
ABP Tarragonès	2,408
TERRES DE L'EBRE POLICING REGION	1,750
ABP Baix Ebre	1,070
ABP Montsià	492

Table 21: arrests by the Mossos and local police forces that resulted in detainees being held in cells run by the Mossos in 2010 per policing region, basic policing area (ABP) and regional section

ESTABLISHMENTS RUN BY THE CATALAN AUTONOMOUS POLICE	No, DETAINEES
ABP Terra Alta-Ribera d'Ebre	188
NORTHERN METROPOLITAN POLICING REGION	13,177
ABP Arenys de Mar	1,009
ABP Badalona	2,570
ABP Cerdanyola del Vallès	1,093
ABP Granollers	1,468
ABP Mataró	1,123
ABP Mollet del Vallès	574
ABP Premià de Mar	474
ABP Rubí	764
ABP Sabadell	1,765
ABP Santa Coloma de Gramanet	1,043
ABP Terrassa	1,290
BARCELONA METROPOLITAN POLICING REGION	23,018
ABP Ciutat Vella	141
Regional Detainee Custody & Report-taking Section	18,893
Regional Building & Transfer Security Section (Courthouses)	3,927
ABP Sants-Montjuïc	57
SOUTHERN METROPOLITAN POLICING REGION	9,370
ABP Alt Penedès	617
ABP Cornellà de Llobregat	744
ABP El Prat de Llobregat	789
ABP Esplugues de Llobregat	301
ABP Gavà	1,161
ABP Garraf	1,124
ABP Hospitalet de Llobregat	2,669
ABP Martorell	886
ABP Sant Boi de Llobregat	426
ABP Sant Feliu de Llobregat	653
TOTAL	64,666

Source: own work based on data provided by the Dept. of the Interior of the Regional Government of Catalonia.

The stations of Barcelona-Les Corts, Lleida and Tarragona were visited in 2010

152. Inspection visits were made in 2010 to the Mossos d'Esquadra police stations of Barcelona-Les Corts, Lleida and Tarragona. The data provided by the Dept. of the Interior are not broken down station by station, so it is not possible to work out what proportion of the total number of detainees held in cells is accounted for by these establishments.

Graphic 10. Location of the Mossos d'Esquadra-run places of deprivation of liberty visited in 2010



153. The average time spent by detainees in police holding cells is less than 24 hours. It was observed that detainees were normally brought before the courts in the mornings, even at weekends, except at the station in Lleida, where there are no arraignments on Sundays.

Average holding time is less than 24 hours

154. All the buildings visited were of recent construction, with the oldest of them dating from 1999. The general standards of conservation and upkeep observed were good in both the personnel work areas and the detainee holding areas. In all the establishments visited the holding cells were located in the basement, and there was direct access from the underground garage. The size of both the single-occupancy and collective cells observed seemed to meet the criteria indicated in paragraph 49 above.

Recently constructed buildings in good condition. Direct access from underground garages to basement holding facilities

155. In all the establishments visited there was an area adjacent to the holding cells which housed the rooms used for interrogation, searches, making record entries and check-ups. The number of cells varies from one station to another: at Les Corts (Barcelona), the station to which all persons detained in Barcelona are brought, there are 35 cells with a total capacity of 100 detainees. All single-occupancy and collective cells have built-in plinths which serve as beds, and have doors fitted with vertical bars. At Les Corts the structure of the cell doors needs to be changed, as the hatch through which food and drink is provided has horizontal bars and could be used by detainees to inflict injury upon themselves. Indeed, several incidents involving cell doors were observed on the video recordings viewed.

The number of cells varies. At Les Corts station the structure of the cell doors must be changed

The distribution criteria laid down in Article 521 LECRIM are met

156. The criteria for the distribution of detainees in facilities with collective cells are compliant with Article 521 LECRIM, with men and women, adults and juveniles and persons detained for the same offence being held separately. No overcrowding was observed on any of the inspection visits carried out.

Ventilation, temperature and artificial lighting are satisfactory

157. The conditions in the cells as regards ventilation, temperature and artificial lighting can be considered as satisfactory. At the time of the visits the cells were clean. They are cleaned daily and disinfected at regular intervals or whenever circumstances so require.

Cameras are installed and recordings are made. Access to them is restricted

158. During the inspection visits it was observed that the CCTV cameras in the holding areas covered the entrance to the cells, the interior of the cells themselves, the corridors, the room used for searches (which also had an audio system) and the entrance from the garage. Special mention must be made of the station at Les Corts (Barcelona), where over 100 CCTV cameras are installed. Recordings are made and all sections of those recordings running from 10 seconds prior to each movement detected by the sensors to 10 seconds after each movement has ceased are stored for 30 days. Images are displayed in the control rooms, where an officer is stationed permanently to monitor them, except for those from the room used for searches, which are displayed in the offices of the officers in charge of the station. Access to recordings is restricted, and there is a security system in place to prevent tampering.

Evacuation plans and signposted routes are in place

159. The detainee holding areas are fitted with extinguishers, smoke detectors and alarm buttons and they all have evacuation plans in place with routes signposted for use in case of fire or other emergencies. The locks on the cell doors can only be opened manually.

Communication between detainees and staff is by voice and CCTV surveillance

160. Detainees communicate with the officers guarding them directly by voice, or via the CCTV surveillance system. At all the establishments visited at least two officers were observed to be on surveillance duty while holding cells were occupied.

No incoming or outgoing detainee medical examinations are conducted, but a questionnaire on the state of health of each detainee is filled in

161. Detainees do not undergo any medical examination on entering or leaving the holding cells, but health care is provided if necessary. At the establishments visited it was observed that a questionnaire was filled in for each detainee concerning his/her state of health, with a view to detecting problems such as diabetes, epilepsy or infectious/contagious diseases. Any detainees who feel unwell or wish to be seen by a doctor inform staff at the facility accordingly, and it is the staff who decide whether to take them to the allocated hospital. Barcelona-Les Corts station is an exception in this regard, as it has its own medical service from Monday to Saturday, and the duty doctor decides whether or not to move detainees.

Specific rules are in place for cases of infectious and

When signs of infectious or contagious disease are observed in a detainee, prophylactic precautionary measures are taken, the relevant area is disinfected

and the potentially sick person is separated from other detainees pending a decision whether or not to move him/her to the allocated medical facilities. Specific written instructions are provided on how to act in this case, and how to act in regard to pregnant female detainees. In regard to the system for monitoring medicaments to be supplied to detainees and the relevant dosages, special mention must be made of the system in place at the police station at Les Corts, Barcelona, where the dispensing of medicaments is managed via an IT application that advises personnel on guard of when each dose must be given.

162. At the establishments visited meals are supplied by an externally contracted company and served directly to detainees in the cells, always in the presence of a police officer. Hot sandwiches are provided for midday and evening meals. During the visit the food was observed to be of good quality, though some detainees complained in this regard. However, a more varied menu should be provided, especially to cater for the needs of persons who may have medical conditions that entail dietary restrictions. In some cases it was reported that detainees could ask police officers to provide food, at the detainee's expense, or have food brought in from outside. This practice is considered unsuitable in view of the security risks and potential liabilities involved.

163. All cells have squat toilets separated from the rest of the room by a waist-high wall. However detainees must ask permission from custodial officers to use the washbasins and shower facilities, as these are located outside the cells themselves. The standard of hygiene, maintenance and ventilation in all the toilets was good at the time of the inspection visits. Detainees have access to a minimum of toiletries and to clothing if necessary. Women are provided with feminine hygiene products on request. The waste collection system should be improved to ensure the utmost hygiene in detention conditions.

164. Detainees sleep on built-in plinths on which mattresses are placed. At the establishments inspected fireproof blankets and mattresses were available in sufficient numbers. It was reported that the blankets provided were already used and were changed once a month. It was requested that each detainee be provided with a clean blanket, as even if the used blankets are not very dirty this practice is not hygienically acceptable.

165. According to the information obtained, detainees are not allowed out of the cells to take exercise during their detention. It would be advisable, at least in cases of persons detained for more than 24 hours and persons whose medical background makes immobility a risk factor, for the establishments to have an area prepared for detainees to do physical exercise or spend some time in the open air.

contagious diseases and for the treatment of pregnant female detainees

Meals are supplied by an external firm. The practice of having food supplied by police officers or brought in from outside at the detainee's expense is deemed unsuitable

All cells have squat toilets. Washbasins & showers are outside the cells. Their standard of upkeep, hygiene & ventilation was good

Sufficient fireproof blankets and mattresses were available. It was requested that each detainee be given a clean blanket

Areas for physical exercise should be available for use when detention lasts longer than 24 hours

*Visits from legal counsel
and consular staff are
permitted*

166. Detainees can receive visits from their legal counsel and from consular staff in the case of foreign nationals. Visits from family and friends require authorisation from the examining magistrate handling the case.

*Detainees are handcuffed
from entering the cells until
leaving. The protocol
followed in a case of
resistance was observed*

167. During inspection visits it was observed that detainees were handcuffed from the time of admission to the time when they left the cells. Other means of restraint were available at all the establishments visited. Examination of the recordings made at Les Corts station in Barcelona revealed the protocol followed in dealing with a detainee who resisted and displayed violent behaviour: he was fitted with a protective helmet to prevent him injuring himself, then restraining straps were applied and the detainee was placed under permanent surveillance. These measures were lifted when the custodial officers considered that he had calmed down.

*Officers placed their
firearms in a weapons
locker before entering the
holding area*

168. It was observed on the inspection visits made that both the custodial officers and the officers who escorted the detainee to the police station placed their firearms in a weapons locker before entering the holding area. This is considered a good practice that enhances the safety of detainees and custodial officers alike.

*Custodial officers were
properly identified*

169. At the establishments visited the custodial officers were observed to be properly identified and wearing their badge numbers in plain sight, as provided for in Decree 217/2008 of November 4 of the *Generalitat* [Autonomous Regional Government of Catalonia] concerning the use of identity numbers.

*Searches are recorded on
CCTV. Female detainees are
searched by female officers.
Transsexuals are searched
by officers of the gender
that they manifest*

170. Detainees undergo an initial, superficial search at the time of arrest, followed by a more thorough search prior to admission to the cells. In this second search (an example was observed during the visit to the station of Les Corts in Barcelona) the detainee's clothing is removed item by item and any valuables or objects which could be used to cause self-inflicted injuries are confiscated. These searches are usually conducted by the officers on duty, assisted by one of the officers from the patrol that made the arrest, in a specific room located at the entrance to the holding area. Searches are recorded on CCTV. There is also an audio recording system, though it is not activated automatically. Female detainees are searched by female officers. Transsexuals are searched by officers of the gender that they manifest unless they refuse to co-operate, in which case they are searched by officers of the gender that appears on their national identity documents.

*Strip searches must be
noted in the custody log.
They are also recorded*

Strip searches require the authorisation of the officer in charge of the shift on duty, and the fact of and reason for such searches must be recorded in the custody log and reported to superior officers. These searches are also recorded, using the same system described above. Audio recordings are activated from the search room itself, with detainees being informed that an audio recording is to be made.

171. The objects confiscated from each detainee are placed in a plastic bag in the presence of the detainee and noted in the detainee custody log. Detainees are asked to sign in proof of agreement with the list recorded. The bags containing confiscated objects are stored in specific cabinets.

172. At the establishments visited it was reported that detainees were not informed in any way of their constitutional right to request habeas corpus.

173. Juvenile detainees are held in cells prepared especially for them. It was reported that whether or not they were handcuffed depended on how aggressive they were.

174. A detainee information and monitoring IT system called SISDE is in place. All incidents concerned with each detainee are logged on this system, including personal details, details of interest to the police, the reason for the arrest, any incidents during the arrest or transfer of the detainee, the identity of the officer in charge of the detainee at all times, belongings confiscated, searches conducted, meals, visits, legal counsel assigned, any medical assistance given, details of the bringing of the detainee before the courts, etc.

175. The establishments visited undergo regular internal inspections and external audits with a view to obtaining ISO certification.

Objects confiscated are noted in the detainee custody log

*No notification of the possibility of requesting habeas corpus
Juvéniles are held in cells prepared especially for them*

There is a detainee information and monitoring. IT system called SISDE

Inspections with a view to obtaining ISO certification are made

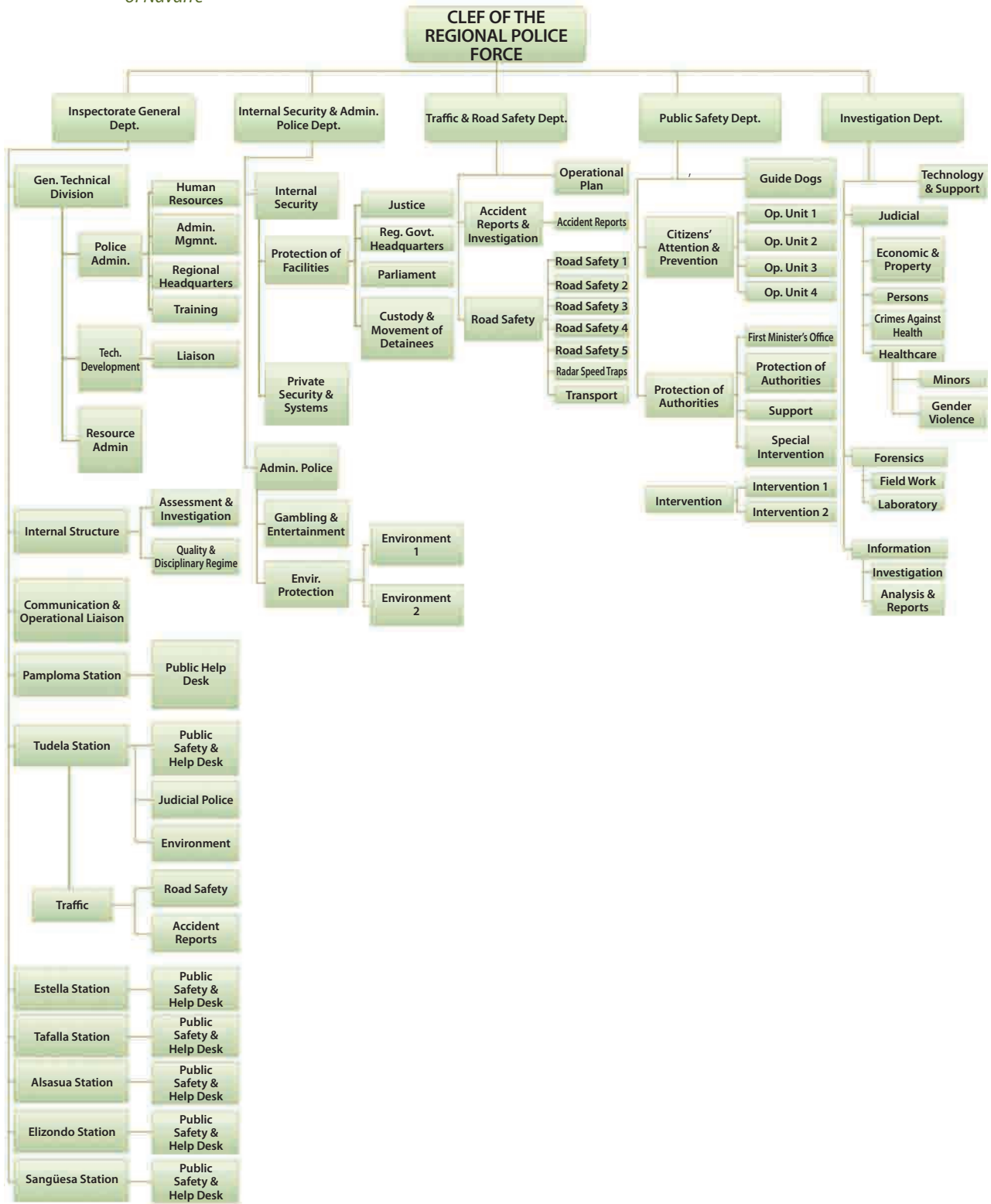
III.3. Establishments of the Police Force of Navarre

176. Article 51.1 of Public General Act 13/1982 of August 10 on the Improvement of the Regional Charter of Navarre [*Amejoramiento del Fuero de Navarra*] establishes that Navarre has the authority to maintain and regulate its own police force. The Regional Police Force [*Policía Foral*] of Navarre is defined in Article 7 of Regional Act 8/2007 of March 23 as an armed civilian law enforcement agency that operates throughout the Regional Autonomous Community of Navarre, without prejudice to the competences attributed by law to local and national law enforcement agencies. Its remit, basic principles for action and functions are laid down in Articles 3, 4 and 9 of the aforesaid Act. Its disciplinary framework is regulated by Article 57-67 of the same Act. The force is answerable to the Directorate General for the Interior of the Department of the Presidency, Justice and the Interior of the Regional Government of Navarre. 2009 figures put the number of officers at around 900. It is organised as shown in the graphic below.

An armed civilian law enforcement agency. Figures from 2009 put the number of officers at around 900

Organisation structure
of the Regional Police Force
of Navarre

Graphic 11. Organisational structure of the Regional Police Force of Navarre



Source: own work based on data published by the Dept. of the Presidency, Justice & the Interior of the Regional Govt. of Navarre



177. Navarre has a surface area of 10,390.36 km². In 2010 the Regional Police Force of Navarre made 1,285 arrests that resulted in detainees being held in cells. A breakdown of these arrests at each of the force’s seven stations in the region follows.

Surface area of 10,390.36 km². 1,285 arrests were made in 2010

Table 22. Arrests by the Regional Police Force of Navarre resulting in holding in cells in 2010, station by station

STATION	No. DETAINEES
Alsasua	83
Elizondo	104
Estella	138
Pamplona	540
Sangüesa	13
Tafalla	144
Tudela	263
Total	1,285

Table 22: Arrests by the Regional Police Force of Navarre resulting in holding in cells in 2010, station by station

Source: own work based on data provided by the Directorate General for the Interior of the Regional Govt. of Navarre.

178. Five of the force’s seven police stations were visited by this Office in 2010. Between them these establishments accounted for just over 81% of all the arrests resulting in detainees being held in cells during the period in question.

5 of the 7 regional police force stations were visited (accounting for 81% of arrests resulting in detainees being held in cells)

Graphic 12. Geographical location of the places of deprivation of liberty run by the Regional Police Force of Navarre visited in 2010



Graphic 12. Places of deprivation of liberty run by the Regional Police Force of Navarre visited in 2010

In many cases detainees are held between 3 and 8 hours. They are brought before the courts in the mornings

Recently-built establishments with good standards of conservation and upkeep

Cells are located in the basement or on the ground floor, with direct access from the garage

Cell doors & front walls are made of security glass. All cells are for single occupancy except at the station in Pamplona (Navarre)

The protocol for separation in collective cells is followed

Satisfactory ventilation, temperature, lighting & cleaning

There is CCTV surveillance, with recordings being kept for 15 days

179. The average time spent by detainees in the cells of the Regional Police Force of Navarre was observed to be less than 24 hours. In many cases it is between three and eight hours. Detainees are brought before the courts in the mornings; though in the town of Tafalla (Navarre) the courthouse is in the same building as the police station, so the time taken to bring detainees admitted there before the courts is minimal.

180. Most establishments were constructed between 2002 and 2007, except for the station in Pamplona (Navarre), which was set up 25 years ago in an older building owned by the Provincial Council. This building was last refurbished 12 years ago. The standard of conservation and upkeep in all these establishments is good.

181. In almost all the establishments visited the holding cells are located in the basement or on the ground floor of the building, and there is direct access from the garage. An exception is the station in Alsasua (Navarre), where detainees are taken to the cells via the same entrance used by the general public. This practice must be changed.

182. In all the establishments visited except the station in Alsasua (Navarre) there is an area adjacent to the cells that has various rooms available for use as interrogation rooms, offices for custodial duty officers and for making record entries. The number of cells varies from one station to another, but all have built-in plinths that serve as beds, and doors and front walls made of security glass. All cells are for single occupancy except at the station in Pamplona (Navarre), where there are two collective cells. Cell size is adequate and meets the criteria set out in paragraph 49 above.

183. In the two collective cells, the internal protocol for separate custody of detainees according to sex, age group, repeat offenders and participants in the same offence (PF 2010-06) is followed.

184. Standards of ventilation, temperature, lighting and cleaning in cells were found to be satisfactory. It was reported that cells were cleaned every day and disinfected at regular intervals or on an extraordinary basis whenever necessary.

185. At all the stations visited CCTV cameras were observed to be in place in the corridors of holding areas and inside the cells. The images were displayed in the control rooms. Recordings were made and kept for 15 days. The authorisation of the Head of the Regional Police Force is required for the extraction of these recordings. On the visit to the station in Pamplona (Navarre) the inspection team viewed recordings which had been kept to document incidents that had occurred

in the cells. These recordings were held in a case file together with the reports by the custodial officers.

186. The fire-fighting systems in place are those usually found in such establishments. Cells cannot be unlocked automatically in an emergency. Not all stations had an emergency evacuation plan in place, though it was reported that this shortcoming was being remedied.

187. Detainees usually communicate with custodial officers directly by voice, or via the monitor displays. At the station in Tudela (Navarre), communication is via an intercom located in the ceiling of each cell, which is always left on.

188. Incoming and outgoing detainees do not undergo a medical examination unless there is urgent reason for one. Any ailments must be reported to the custodial officers, and if necessary the control and command centre arranges for detainees to be taken to the allocated hospital. If any signs of infectious or contagious diseases are detected the usual prophylactic measures are taken, the detainee is isolated if he/she was being held in a collective cell and the cell is disinfected as a precaution. It was indicated that all such cases, and any cases of pregnant women, were reported to the courts, and that a medical opinion was sought. It would be advisable for a written protocol to be drawn up to cover such circumstances.

189. The food served to detainees is usually acquired from a nearby bar. Some of the establishments visited — e.g. the stations in Tafalla and Tudela (Navarre) — had machines that dispensed cold food. It is considered advisable that detainees should be served hot meals. As a general rule detainees may not have their families or friends bring them food; nor may they order food at their own expense via police officers, except at the station in Pamplona, where it was reported that food brought in by visitors was permitted to be served to detainees. This practice is considered unacceptable in view of the food safety risks and potential liabilities arising from the special relationship that exists by reason of the detention.

190. Toilet facilities are outside the cells, except in the two collective cells at the station in Pamplona (Navarre), so detainees have to call a guard when they need to use them. In Sangüesa detainees use the toilet designed for disabled persons. At all the establishments visited, detainees had access to toiletries, including feminine hygiene products. The standards of hygiene, upkeep and ventilation in the cells were acceptable. An integrated waste collection system needs to be introduced.

Cells cannot be unlocked automatically in the event of fire

Detainees communicate directly by voice, or via CCTV surveillance

There is no medical examination of incoming and outgoing detainees. A written protocol should be drawn up for dealing with infectious and contagious diseases and with pregnant women

Food is usually supplied by a nearby bar. Some establishments have machines that dispense cold food

Cell upkeep, cleaning and ventilation are acceptable

Blankets are disposed of after use. Cells need to be provided with enough mattresses

191. Detainees sleep on built-in plinths. Sufficient blankets were available for the number of persons held overnight. Blankets are disposed of after use. Blankets are used as mattresses. Even though (as mentioned in paragraph 179) detainees usually only spend a few hours in the cells, sufficient mattresses should be provided.

Detainees held for more than 24 hours are allowed to take walks

192. It was reported on the inspection visits carried out that when detainees were held in the cells for longer than 24 hours they were allowed out to walk around the holding area. In such cases provision should also be made for an area where they can take exercise or spend some time outdoors.

Visits from legal counsel & consular staff are permitted

193. Detainees can receive visits from their legal counsel and from consular staff in the case of foreign nationals. All other visits require authorisation from the examining magistrate handling the case.

Incoming & outgoing detainees are handcuffed

194. Detainees are handcuffed on admission to and on leaving the cells. The establishments were observed to be equipped with regulation restraints and riot shields, and in some cases helmets were placed on the heads of agitated detainees to prevent injuries.

Firearms should be removed on entering cell areas. It was observed that they are currently worn without the magazine

195. It was observed that custodial officers wore their firearms with the magazines removed while in the holding areas. Although Article 4.1. of Provincial Order [Orden Foral] 85/2008 of February 20 on the uniforms, badges and credentials of the Regional Police Force of Navarre establishes that the regulation firearm with its black gun belt or such other belt as may be provided is a part of the force's uniform, it would be advisable for the sake of general security in custodial circumstances for firearms to be removed on entering cell areas. To that end, the circumstances envisaged in subsection 2 of the said Article 4 could be applied, i.e. "The Head of the Regional Police may exempt uniformed officers from carrying firearms should special circumstances prevail".

Officers were observed to be properly identified

196. During inspection visits custodial officers were observed to be properly identified, with their ID numbers in plain sight, as required under Article 7.3 of Provincial Order 85/2008 of February 20.

Belongings confiscated are noted down in the custody log and the detainee signs a form in proof of agreement. Strip searches are not conducted

197. Detainees undergo an initial superficial search at the hands of the arresting officers. When they reach the holding area they are searched more thoroughly in a separate room or in the cells themselves. During this search any personal belongings are confiscated, with special attention paid to any objects or items of clothing that could be used to cause self-inflicted injuries. Belongings are bagged, stored in a cabinet and noted down in the detainee custody log. Detainees sign a form in proof of agreement with the list recorded. It was reported during the inspection visits carried out that strip searches were not conducted, but that if

they should prove necessary the Command and Co-ordination Centre would be informed and the fact of the search would be recorded in the detainee's file in the log.

198. Female detainees are searched by female officers of the Regional Police Force (who account for around 9% of the total) or by female officers drafted in from other forces if necessary.

Female detainees are searched by female officers

199. The officers in charge of the establishments visited reported that detainees were informed verbally of their right to request habeas corpus, although that right does not appear specifically in Article 520.2 LECrim. No written notification is given, however. This could be added to the forms used so that a proper record is kept of all the information provided.

Verbal notification of the right to habeas corpus is given

200. It was reported that juveniles detained were not usually held in cells or handcuffed unless circumstances made this advisable. Any juveniles held in cells are always placed in single-occupancy cells. Juveniles are moved in unmarked police cars by officers in plain clothes, in line with the force's internal protocol on the transfer of detainees (PF: 2010-05).

Juveniles are held in individual cells and are not handcuffed

201. At the establishments visited it was observed that a registration book and a detainee custody log were kept, in which all occurrences in regard to each detainee were recorded.

A detainee custody log & registration book are kept

IV. Local Police Force Establishments

202. Local police forces are armed civilian law enforcement agencies whose hierarchical organisation and structure are established pursuant to Article 52.1 of Public General Act 2/1986 of March 13 on Security Forces. The same Act establishes that local police forces are part of the security forces of the state, and allocates specific functions to them, along with the job of participating along with other security forces in matters of judicial policing and public safety. Regulatory authority over local police forces lies with the regional autonomous communities, pursuant to the provisions the aforesaid Public General Act 2/1986, without prejudice to such additional structures for local police forces as may be established by each municipal corporation. Their basic remit is laid down in Article 53 of Act 2/1986. The disciplinary regime for local forces is established in their individual regulations in each case. The mayor of each municipality acts as Chief of the Local Police, pursuant to Article 21.1.i) of Act 7/1985 of April 2 on basic regulations for local structures.

Armed civilian law enforcement agencies with a hierarchical organisation & structure. They join with the other security forces of the state in matters of judicial policing and public safety.

Each force has its own disciplinary regime

10 establishments in 7 autonomous communities were visited

203. In 2010 inspection visits were made to 10 establishments run by different local police forces in seven regional autonomous communities (Andalusia, Cantabria, Castilla-La Mancha, the Balearic Islands, La Rioja, Navarre and the Basque Country). No detainees were found at any of these establishments at the time of the visits.

Graphic 13. Geographical location of the local police force establishments visited in 2010



Holding times range from 2 to 48 hours. Detainees are brought before the courts in the mornings every day

204. Average holding times at the establishments visited ranged from 2 to 48 hours. It was observed that detainees were usually brought before the courts in the mornings every day. However in Lebrija (Seville) detainees might be deprived of their liberty for the whole weekend. In this regard, local police in Cordoba also reported that they did not consider their holding facilities to be cells in the strict sense of the term, as they were merely rooms in which detainees were held for the minimum time required before they were moved to establishments run by other, national-level law enforcement agencies.

205. The age of the buildings where these establishments are located varies widely, with some being over 35 years old (e.g. the local police station in Palma de Mallorca (Balearic Islands)) and others being of more recent construction (e.g. the station in Haro (La Rioja), built just 7 years ago). The standard of conservation was found to be acceptable in general, except for the local police stations in Lebrija and Marchena (Seville).

206. The ventilation and temperature conditions in the cells were acceptable at most of the establishments visited, as was the lighting, though it was exclusively artificial. Shortcomings in terms of temperature and lighting need to be remedied in Calahorra (La Rioja), Lebrija and Marchena (Seville) and Palma de Mallorca (Balearic Islands). Problems with areas used by personnel were detected in Lebrija and Marchena, where the officers stationed have repeatedly requested the refurbishment and upgrading of the facilities.

207. At almost all the establishments visited the custody areas are located on the ground floor or in the basement, with direct access from the underground garage. In Lebrija and Marchena (Seville), detainees are taken to the cells via the main door of the Town Hall. This procedure must be discontinued for the sake of general safety and security and to safeguard the privacy of detainees.

208. At some of the establishments visited there were offices next to the cells, used to monitor detainees, conduct searches and make entries in records. In most cases the cells themselves are for single occupancy, and have built-in plinths that serve as beds. Doors are usually made of metal plate, with an observation hatch, though at the establishment in Palma de Mallorca (Balearic Islands) the doors had vertical and horizontal bars, which should be replaced to forestall attempts by detainees to injure themselves.

209. Single-occupancy and collective cells alike were found to meet the criteria established in regard to size, as per paragraph 49 above. It was observed that these holding areas were not extensively used, so compliance with criteria on separation seems unlikely to pose any problems.

210. In most of the establishments visited the cell area is cleaned every day and disinfected at regular intervals or whenever circumstances require. However on the days of the inspection visits the cells at the stations in Calahorra (La Rioja) — where there was a strong smell of urine —, Lebrija and Marchena (Seville) were found to be dirty. Accordingly, it was requested that the necessary measures be taken to improve cleanliness at these facilities.

211. The situation as regards CCTV surveillance varied considerably across the 10 establishments visited. In Santander (Cantabria) and Marchena (Seville) no cameras were observed inside the facilities. At the Local Police Superintendents'

Buildings of various ages. Acceptable standards of conservation except in Lebrija and Marchena (Seville)

Ventilation, temperature & lighting conditions satisfactory. Improvements are needed in personnel areas in Lebrija and Marchena

Custody areas are on the grounds floor or in the basement, with direct access from the garage

Most cells are for single occupancy, and have built-in plinths that serve as beds

Cells were found to be large enough

Daily cleaning & regular disinfection, but on the inspection visits the cells in Calahorra (La Rioja), Lebrija & Marchena (Seville) were dirty

The situation as regards CCTV surveillance varies widely. A standard for CCTV surveillance and recording

needs to be deployed as a necessary part of police custody procedures

Headquarters in Ciudad Real and the station at Lebrija Town Hall there were cameras but they were out of service, though after notice of this situation was given by this Office it was reported at the first of these establishments that a complete renovation of the equipment would take place. In Calahorra (La Rioja) and the Local Police Headquarters in Cordoba there were CCTV cameras in the main corridor, but in the former location it was not possible to make recordings. At the local police station in Pamplona (Navarre) cameras are installed in the common areas but not in the cells, and the recordings made are kept for between 13 and 17 days at the disposal of the Internal Affairs and Investigation Department. At the local police station in San Sebastian (Guipuzcoa) there are CCTV cameras in the custody area, including the cells, and the recordings made are kept for 30 days. A uniform standard for CCTV surveillance and recording should be deployed at all local police forces, and taken on board as a necessary part of police custody procedures.

There is no system for automatically opening cells in an emergency and evacuating detainees

212. Most of the establishments visited were observed to have fire extinguishers and smoke detectors, though none of them had systems for automatically opening the cells in an emergency or for the urgent evacuation of detainees. The establishments in Pamplona (Navarre) and Santander (Cantabria) had no fire-fighting measures at all in place, so a request was made for proper measures to be provided.

Except in Haro (La Rioja) detainees communicate directly by voice

213. Detainees communicate with custodial officers directly by voice, except at the local police establishment in Haro (La Rioja), where there is a call bell in the cell. At most of the establishments visited it was reported that there was always at least one officer on guard duty while the cells were occupied, except in Lebrija and Marchena (Seville), where there was no continuous presence of officers. This needs to be remedied.

Detainees do not undergo medical examinations. Healthcare is available if necessary

214. There is no medical examination of detainees on entering or leaving the cells, though healthcare is available if necessary. Detainees who feel unwell or wish to see a doctor must inform the personnel at the establishment, who decide whether they should be moved to the allocated healthcare facility. If a detainee shows any signs of infectious or contagious disease, the usual prophylactic precautions are applied and the detainee is isolated. It was reported at almost all the establishments visited that there were no special protocols in place for dealing with pregnant female detainees. Protocols should be introduced for both the aforesaid situations.

Food is usually acquired from a nearby bar

215. The food served to detainees is usually acquired from a nearby bar, though some of the establishments visited had machines that dispensed food. As a general

rule food may not be brought in by third parties or ordered from guards at the expense of the detainee.

216. All the cells visited had toilets, usually used by both men and women. At some establishments they are in the cells and at others elsewhere off the corridor. Some also have showers. In Lebrija and Marchena (Seville) there are only squat toilets in the cells, and no other toilet facilities in the holding area. To use toilets not in the cells, detainees must call a custodial officer. The standards of hygiene, upkeep and ventilation were good at most of the establishments visited, with the exception of Calahorra (La Rioja), Lebrija and Marchena (Seville). It was reported that female detainees were provided with feminine hygiene products on request. Waste collection systems should be introduced.

217. Detainees sleep on beds built into the cells, and in most establishments sufficient mattresses and blankets were available for the number of occupants held overnight. Blankets were observed to be generally laundered and disinfected after each use, except in Cordoba and Marchena (Seville), where it was requested that each detainee be provided with a clean blanket, because providing used blankets, even if they are not dirty, is unacceptable on grounds of hygiene.

218. It was observed that at some establishments detainees were allowed out of the cells to take exercise when their detention was prolonged, e.g. in Lebrija and Marchena (Seville) and in San Sebastian (Guipuzcoa). It would be advisable for establishments to have an area prepared for detainees to take physical exercise or spend some time in the open air.

219. It was reported at all the establishments visited that detainees were permitted visits from their legal counsel and from consular staff in the case of foreign nationals; however in most cases visits from family and friends were not permitted. Lebrija and Marchena (Seville) are exceptions.

220. It was reported that detainees were usually handcuffed at the time of admission to the cells and on leaving them. In Cordoba, Haro (La Rioja) and Santander it was observed that custodial officers entered the holding areas wearing their regulation firearms with the magazines loaded. This should be avoided in general. In the wake of this observation the Town Hall at Haro has informed that it is to purchase a weapons cabinet.

221. On the inspection visits carried out it was observed that custodial officers were properly identified, with their badge numbers in plain sight, except in Lebrija (Seville), where it was reported that new uniforms on which ID numbers were printed were expected to arrive shortly.

There were toilets at all the cells visited, sometimes in the cells themselves and sometimes off the corridor. Standards of upkeep & hygiene were good

In Cordoba and Marchena (Seville) it was requested that detainees be provided with clean (unused) blankets

It would be advisable for there to be an area where detainees can exercise or spend time in the open air

Visits from legal counsel and consular staff are permitted

Incoming & outgoing detainees are usually handcuffed. Firearms must not be worn in holding areas

Officers were properly identified

Search procedures are similar to those used by other law enforcement agencies

222. Search procedures are largely similar to those used by other law enforcement agencies: an initial superficial search is conducted at the time of arrest, followed by another, more thorough search on arrival at the police establishment, with a view to confiscating valuables and objects deemed potentially hazardous. These objects are noted and stored until detainees leave the facilities. Female detainees are searched by female officers. If there are no female officers on duty or the local force in question has no female officers — as is the case in Haro (La Rioja) — officers from other forces are asked to assist.

Records of strip searches must be kept in detainee logs and the courts must be informed

In most establishments it was also reported that a record was made of any strip searches conducted and the courts were informed accordingly. The local police forces in Calahorra and Haro (La Rioja), Pamplona (Navarre) and San Sebastian (Guipuzcoa) did not do this, so they were reminded that they must make a record of searches of detainees, must inform the courts of such actions, and must note down both the reason why the search was conducted and its outcome.

In some cases it was reported that detainees were informed of the possibility of requesting habeas corpus. All establishments had detainee custody logs

223. The officers in charge of some of the establishments visited reported that detainees were informed of their right to request habeas corpus as a way of ensuring judicial monitoring of their detention, but only the local police in Cordoba did this in writing, which is considered good practice.

All the establishments visited had detainee custody logs, though the practices observed in this regard varied widely.

Juveniles are not usually held in cells

224. Any juveniles detained are not usually held in cells. The only exception found to this practice was in Santander (Cantabria), where it was reported that juveniles were always placed in cells.

V. Courthouse holding cells

These cells hold prison inmates and detainees brought to appear before the courts. They may depend on the senior judge or the presiding judge of the court. If the mechanisms for justice administration

225. These cells are intended to hold prison inmates and persons detained by members of law enforcement agencies who are taken there from their respective police stations, barracks or prisons to appear before the courts. Being located in courthouse buildings, they may depend on either the senior judge or the presiding judge of the panel or court, depending on whether the court in question operates with a single judge or a panel of judges. Depending on whether or not the mechanisms for running the administration of justice have been devolved to the autonomous community in question, they may be answerable to the Spanish Ministry of Justice or to the Regional Ministry of the region in question. Moreover, in the holding cells in the courthouse at Plaza de Castilla in Madrid the SGIP is in charge of custody, which means that prison



officers seconded to the Ministry of the Interior are used. Everywhere else custodial duty is handled either by officers of the national-level state security forces or by regional autonomous police officers.

226. 29 courthouses in 22 towns and cities belonging to 13 autonomous communities (Andalusia, Aragon, Asturias, the Canary Islands, Cantabria, Castilla-La Mancha, Castilla y Leon, the Community of Valencia, Galicia, Balearic Islands, La Rioja, Madrid and Navarre) and to the Autonomous City of Melilla were visited in 2010.

have been devolved they are answerable to the autonomous communities.

29 courthouses in 22 towns belonging to 13 autonomous communities were visited in 2010

Graphic 14. Geographical location of the courthouse holding cells visited in 2010



227. It was observed on the inspection visits made that detainees were not usually held at these cells for more than 10 hours.

Holding time is no more than 10 hours

228. In general the standards of conservation and upkeep of the facilities visited were good, as most of the buildings were recently built or refurbished

Good standards of conservation and upkeep

except at the Plaza de Castilla courthouse in Madrid

[Ávila, Aviles (Asturias), Ciudad Real, Oviedo (Asturias), Santander, the courthouse complex [*Ciudad de la Justicia*] in Valencia and the criminal court building [*Juzgados de lo Penal*] in Seville were all opened in 2010]. An exception is the courthouse building at Plaza de Castilla in Madrid, which is over 30 years old and has seen heavy use. It is in a poor state of conservation, and a request has been filed for it to be refurbished.

Except at the Magistrate's Court at Plaza de Castilla in Madrid, facilities for personnel are in acceptable condition

229. Conditions in the facilities used by personnel are mostly satisfactory. These facilities usually consist of a single, sparsely furnished office, which means that some officers have to remain standing while they are there. However, the offices and other facilities at the Magistrate's Court [*Juzgados de Instrucción*] at Plaza de Castilla in Madrid are in poor condition, with unsatisfactory temperatures and ventilation levels. There is a room with a bed and a toilet, intended to enable the officer in charge to stay overnight, which is also in an unsatisfactory condition.

Cells are usually in the basement. There is direct access from the garage except in the courthouses in Madrid & Zaragoza

230. In these buildings the cells are usually in the basement, with direct access from the garage. Exceptions to this rule are the courthouses in Madrid and Zaragoza, where the garage entrances are too small for Civil Guard vans to enter. At the courthouse complex in Valencia the cells are on the ground floor, with direct access from the parking area reserved for police vehicles.

Facilities ranging from one cell to 30. Actual occupancy does not exceed capacity except in Melilla and Seville

231. The structure of the cell areas varies considerably, ranging from facilities with just one cell [AP and High Court in Palma de Mallorca (Balearic Islands), the court for cases of domestic violence [*Juzgado de Violencia Doméstica*] in Cordoba and the Magistrate's Court in Maspalomas (Las Palmas)] to facilities with as many as 30 cells, such as those in the courthouse complexes in Malaga and Valencia. Except in the cases of Melilla and Seville, actual occupancy was observed not to exceed capacity.

Cell doors of many types

Cell doors of many types were observed. Those doors with barred openings should be replaced by more secure types. Cells have built-in plinths that serve as beds, except in the magistrates' and criminal courts in A Coruña, where a metal plinth in very poor condition was observed. It was requested that this be replaced so as to forestall injuries.

At the courthouse in Melilla and the JJI in Seville the need for refurbishment was pointed out to avoid overcrowding

232. No problems were observed with the size of cells except at the courthouse in Melilla, where it was recommended that enlargement work be undertaken, especially in view of the high level of occupancy: on the day of the visit there were 18 detainees in a situation of clear overcrowding. The same can be said of the cells at the AP and JJI building in Seville, where there have been as many as 50 detainees in a day, when the theoretical capacity is 25-30.

233. In the cells men are separated from women and convicted prisoners from police detainees, and attempts are made to group detainees by type. The juvenile court buildings in Cordoba and Palma de Mallorca (Balearic Islands) have specific holding areas for juvenile detainees known as “arrest rooms” [*salas de arresto*]. By contrast, at the rest of the courthouse buildings visited juvenile courts share the same building with criminal courts of other types, so there is only one holding area. If there are no specific cells for juveniles they are usually held in other rooms.

234. The temperature in the various establishments depended on whether there was heating and air conditioning or not, so a reminder was issued that it should be kept at between 18 and 25°C throughout the year. Some establishments had no extractor fans and at others they were not working properly, resulting in unpleasant smells in some cells [A Coruña, Cordoba, Gijon (Asturias), Las Palmas de Gran Canaria, Logroño (La Rioja), Madrid, Valladolid and Zaragoza]. Requests for this shortcoming to be remedied were issued. Bearing in mind the short time spent by occupants in these cells, the lighting can be considered in general as acceptable, except in the juvenile court building in Palma de Mallorca (Balearic Islands) and Las Palmas de Gran Canaria (Las Palmas), so it was also requested that this be remedied.

235. The standard of cleanliness in cells at the times of the inspection visits was satisfactory, with cells being cleaned once or twice a day by external contracted firms, and disinfection and pest extermination procedures being taken at regular intervals or whenever required. Once again the JJI at Plaza de Castilla in Madrid stand out in negative terms. A request for substantial improvements was made accordingly.

236. The cell areas visited had CCTV surveillance systems comprising CCTV cameras in corridors and access areas, but no recordings were kept. The courthouse buildings in Gijon and Oviedo (Asturias), Pamplona and Tafalla (Navarre) were the only ones visited that had cameras in the cells and that made recordings. Requests were made for increased cover, including cells, and more generalised use of CCTV recordings.

237. Most of the establishments visited were found to be equipped with fire extinguishers and smoke detectors. Shortcomings in this regard were observed in Logroño (La Rioja), Palma de Mallorca (Balearic Islands), Valladolid and Zaragoza, while in A Coruña, Leon and Madrid there were practically no fire-fighting measures at all. Recommendations were made as to the need to ensure that such measure were available.

Detainees are separated by gender and grouped by type insofar as possible

A reminder was issued that temperatures should be kept at 18-25°C. A request to remedy poor lighting was issued at the juvenile court buildings in Palma de Mallorca (Balearic Islands) and Las Palmas de Gran Canaria (Las Palmas)

In general, cells were acceptably clean. Those at the JJI at Plaza de Castilla (Madrid) stood out negatively

Increased CCTV surveillance cover and generalised use of video recordings were requested

The need to ensure fire fighting measures was indicated in A Coruña, Leon and Madrid

There are no centralised cell opening systems for emergency evacuation

Relevant health information must be passed on to officers in charge of transportation and custody. Proper co-ordination between police forces and prisons is therefore required

Inmates are not provided with meals, nor is there any provision for this.

The lack of a continuous, unlimited drinking water supply at the courthouses in Las Palmas de Gran Canaria and Maspalomas (Las Palmas) must be remedied as a priority

In the courthouse at Plaza de Castilla in Madrid it was requested that blankets and mattresses be hygienised after each use and that old, broken furniture be replaced

Custodial staff need to be called when occupants wish to use the toilet. Hygiene and upkeep were satisfactory in most cases

There were no centralised cell opening systems for emergencies or provisions for urgent evacuation of detainees, except at the cells in the courthouse building in Pamplona (Navarre). This was also the only such building visited that had audio systems for detainees to communicate with custodial officers.

238. The protocol for healthcare applied is that of whichever force is in charge of custody at each establishment. Custodial officers complained repeatedly that they had no knowledge of any infectious and contagious diseases that detainees might be carrying; proper co-ordination is needed between the different police forces and prisons so that any relevant health information is passed on to officers in charge of transportation and custody, along the lines indicated in Instruction 7, Subsection (h) of SES Instruction 8/2009, amending Instruction 5/2009 on the transportation and custody of prison inmates. Pregnant women are dealt with using the same protocols as other detainees, and no information on the existence of written rules for these cases was found.

239. Detainees and prisoners have breakfast at the facilities where they spend the night and, since they are usually held in courthouse cells only in the mornings, are not provided with meals. There is no provision for cases in which the taking of statements by the judge may be delayed. This situation should be remedied on a general level. At the cells in the courthouse at Plaza de Castilla in Madrid any food that needs to be served to the occupants is pre-packaged and pre-prepared by an external contractor, but final preparation is handled by three grade three inmates, who do this as remunerated prison work. At the cells in the courthouse in Las Palmas de Gran Canaria and Maspalomas (Las Palmas), detainees do not have continuous unlimited access to water: bottled water needs to be used, and none is supplied by the regional autonomous authorities responsible for the establishment. Remedying this shortcoming is a priority.

240. Cells are not usually supplied with mattresses or blankets, as detainees do not spend the night there, though at the cells in the courthouse buildings in Navarre disposable blankets are available if necessary. In exceptional cases when detainees have to spend the night in the cells in the courthouse at Plaza de Castilla in Madrid, they sleep in a cell with bunk beds, the mattresses and blankets for which were found to be in a poor state of hygiene and conservation. It was requested that old, broken furniture be replaced and that the blankets and mattresses, which are currently changed every two weeks, be cleaned after each use.

241. Except in the courthouse at Plaza de Castilla in Madrid the toilets are outside the cells, so custodial staff must be called when detainees wish to use

them. At more than half the establishments visited there was only one toilet, though at the courthouse complex in Valencia there are 6, all of which may be used by both men and women (4 in the area for convicted prisoners and 2 in that for police detainees). The standards of hygiene and upkeep were satisfactory in general, though it was requested that the conditions of the toilets be improved in A Coruña and Maspalomas (Las Palmas). Each cell in the courthouse building at Plaza de Castilla in Madrid has its own toilet, with toilet bowl and washbasin, though they were found to be in poor condition as regards upkeep and cleanliness. The fact that there are toilets in the cells themselves makes it easier to handle the occupants, as there is no need to escort them elsewhere every time they need to use the toilet, but the lack of privacy that this entails — especially when several persons are being held — is unacceptable for the user and for the remaining occupants, who have to put up with unpleasant smells. It is considered necessary to change the current system and provide toilet facilities outside cells.

Sufficient supplies of feminine hygiene products were found to be available, except at the courthouse cells in Las Palmas de Gran Canaria (Las Palmas), where only paper from the hand drier was provided. This is unacceptable.

242. Legal counsel and consular staff in the case of foreign nationals are allowed to visit detainees but family and friends are not.

243. On many of the inspection visits carried out it was reported that detainees were taken to the various courtrooms in the lifts used by the general public and via public corridors and areas. This must be remedied. At some establishments it was observed that detainees shared the same waiting room as other persons attending the court, which is unacceptable. Special mention must however be made of the courthouse buildings in Ávila and Tafalla (Navarre), and the courthouse complex in Oviedo (Asturias), where detainees are moved via lifts separate from those used by the public. It was reported that on some occasions, when circumstances made it advisable, it was the judge who went to a room adjacent to the cells to avoid detainee movements through the buildings.

244. At half of the establishments visited custodial officers were observed to be wearing their regulation firearms when they entered the cell areas, often with the magazines loaded [e.g. in Las Palmas de Gran Canaria and Maspalomas (Las Palmas), Valladolid and Zaragoza]. Weapons should not be carried on access to holding areas.

245. It was observed on the inspection visits that custodial officers were generally identified by means of their police and other force ID badges, except at the

The lack of feminine hygiene products is unacceptable

Visits from legal counsel & consular staff are allowed

Situations in which detainees are taken to courtrooms via areas used by the general public must be remedied

Weapons should not be carried on access to holding areas

Custodial staff are usually properly identified



courthouses in Gijon and Oviedo (Asturias), Malaga, the two visited in Palma de Mallorca (Balearic Islands) and Santander (Cantabria).

Detainees are searched by custodial officers on admission

246. Although the persons admitted to this type of cell, be they police detainees or convicted prisoners, have already been searched at the establishments from which they are brought, they are searched again on admission by custodial officers. Female detainees are always searched by female officers.

Lack of log books. In some cases the admission/ departure log and the incident log are different books

247. At some establishments there were no registration logs, while at others, such as Ciudad Real, Madrid, Malaga and Valencia, admissions and departures were logged in one book and incidents and occurrences in another.

The CCTV-conferencing system between prisons & judicial bodies should be extended to facilitate some proceedings

248. To reduce the number of people held at these facilities and the number of detainees brought in from prisons, it would be advisable to extend the CCTV-conferencing system that already exists between prisons and judicial bodies via a protocol of the SGIP and the administrations responsible for arranging the material resources for the operation of the justice system, so as to facilitate certain judicial proceedings throughout Spanish territory.

Places of Medium-Term Deprivation of Liberty

- I. Detention Centres for Foreign Nationals
§250 – §284
- II. Military Detention Centres
§285 – §308

249. For the purposes of this report, and on a general basis, medium-term detention or imprisonment is considered to be those instances in which people are detained for no more than two months. The most typical circumstances under this heading are the detention of foreign nationals and military arrest for a serious misdemeanour, which as an exception and through the accumulation of disciplinary measures may extend to a four-month custodial sentence. In both cases, we are dealing with custodial sentences based on administrative procedure. Of the 17 centres of this nature operating in Spain in 2010, an inspection visit has been organised to 12 establishments, belonging to 11 centres.

For the purpose of this report, these centres are where individuals may be detained for up to two months at the most

I. Detention centres for foreign nationals

250. Detention centres for foreign nationals (CIEs) are public establishments of a non-penitentiary nature run by the National Police Force, which provide temporary custody for a maximum period of 60 days, subject to the control and authorisation of the courts, of foreign nationals undergoing proceedings for their expulsion (solely for the reasons provided for in art. 62.1 of PGA 4/2000) on repatriation. The detention measure is of a precautionary and instrumental nature; in other words, it is designed to ensure the successful repatriation of the foreign national that may eventually be ordered. Accordingly, there is a need to monitor the percentage of repatriations made over the total number of foreign nationals subject to detention to verify that this measure, the most rigorous provided for by legislation on foreign nationals, suitably serves the purpose for which it has been designed. Furthermore, detention should be unilaterally terminated immediately by the authorities hearing the proceedings as soon as it is aware that the repatriation cannot be ordered for any reason whatsoever. It likewise befalls the legal authority to establish the specific period of detention with the aforementioned limit, which is final.

Public establishments of a non-penitentiary nature run by the CNP. The detention measure is of a precautionary and instrumental nature, and has to suitably serve the purpose for which it has been designed

The organisation and operation of the CIE, as well as the requirements for being sent there, are governed by Public General Act 4/2000, of 11 January, on the rights and freedoms of foreign nationals in Spain and their social integration, in the draft provided by Public General Act 2/2009, of 11 December, to articles 62, 62.2, 62.3, 62.4, 62.5 and 62.6. During the period covered by this report, the regulatory development of these provisions is to be found in articles 153 to 155 of the Regulations approved by Royal Decree 2393/2004, of 30 December and, regarding those matters that do not contradict the preceding rules, in the Ministerial Order of 22 February 1999, on the rules for the internal regime and operation of Internment centres for foreign nationals. The aforementioned Ministerial Order was partially revoked by the Supreme Court of Appeal for Administrative Decisions (*Sala de lo Contencioso-Administrativo del Tribunal Supremo*), in a

Their organisation and operation are governed by Public General Act 4/2000, in the draft provided by Public General Act 2/2009 to arts. 62, 62.2, 62.3, 62.4, 62.5 and 62.6



judgement issued on 11 May 2005 that affected articles 30, sections 1, 2, 3, 6, 8 and 9 (visits and communications); article 34 (measures for upholding law and order in detention centres) and section 5 of article 33 (seizure). It should be noted that Royal Decree 557/2011 approved a new Regulation for developing Public General Act 4/2000 that dedicates an article to CIEs (art. 258) and defers, in its section 8, to a specific regulation of the detention regime for foreign nationals.

As a result of a recommendation made by the Ombudsman, the figure of detention judge has been created

251. The Ombudsman, when submitting its report on legal support for foreign nationals in Spain to the Spanish Parliament in 2005, recommended the creation of the figure of detention judge, as it was noted that the necessary individual and effective supervision of detention was being hindered, as this befell the judge ordering it in the first place and who did not always coincide with the areas where the foreign national was detained. It should be welcomed that Public General Act 2/2009, which amended Public General Act 4/2000, introduced, in its article 62.6, the figure of judge empowered to supervise the stay of foreign nationals in detention centres and in holding areas for persons refused entry into the country, which corresponds to the examining magistrate where the centres are located.

Of the 9 centres in Spain, 2010 saw inspection visits to the 6 with the highest percentage of occupancy

252. Spain has a total of nine detention centres, with inspection visits being made in 2010 to six of them [Algeciras (Cadiz), Barcelona, Madrid, Malaga, Murcia and Valencia] with seven establishments. This is because the Isla de las Palomas facilities in Tarifa (Cadiz) are formally considered to be an annex to the Algeciras CIE. On this very matter, the Ombudsman has drawn attention to the lack of precision of the legal statute governing these establishments and the ensuing absence or insufficient provisioning of some of the basic services a detention centre should provide to comply with its governing regulations. Priority has been given to the inspection visits to the CIE with the highest percentages of average occupancy (all the centres visited exceeded 55%). Along these lines, note should be made of the sharp drop in internees at the three centres in the Canary Islands [Puerto del Rosario in Fuerteventura and Las Palmas de Gran Canaria (Las Palmas) and Santa Cruz de Tenerife], where the number of inmates has fallen from 21,591 recorded in 2006 to 616 in 2010.

Graphic 15. Geographical location of the CIEs visited in 2010



253. The sum of CIE establishments are of a markedly penitentiary nature, thereby contravening a basic principle for facilities of this nature, as the CPT emphasises in its seventh General Report (1996, paragraph 29). There is a readily apparent tendency to prioritise the centres' security and police control measures, to the clear detriment of the inmates' living conditions and the respect for their rights that are not affected by their ambulatory detention. The main problem lies in the very definition of CIE in the Law, where they are perceived in a negative light; in other words, the model used is a penitentiary one, although it goes on to affirm that the deprivation of liberty should be different to a prison, but it does not specify what this should involve and what its limits are.

In addition, note should be taken of the inappropriate nature of the management model for these centres that basically involves direct custody by members of the CNP over a prolonged period of time of people with extremely diverse origins, a function that does not suitably fit in with the specific role and training the police have. It would be more logical for the police to pursue their custodial role outside the establishments, assigning the management of everyday life inside the centre to staff trained in social care services.

A CIE has a penitentiary nature that contravenes the purpose for which they have been created. They are defined by Law in a negative way, with no regulation of the limits on this privation of liberty

Furthermore, an inappropriate management model is used for these centres

Centres of extremely diverse origin and construction

254. The origin and construction of the buildings housing the CIEs is extremely diverse. We therefore find buildings built specifically for this purpose, such as those in Barcelona and Madrid. In other cases, old establishments have been refurbished, as in the cases of the CIEs in Murcia and Valencia, where, nevertheless, numerous and ongoing alterations have been made along with maintenance tasks. The most recent ones were in 2005 in the case of Valencia and in July 2010 at the CIE in Murcia.

The CIE in Algeciras (Cadiz) is housed on the premises of the former provincial prison and does not fulfil the minimum acceptable requirements. It should therefore be closed immediately

Regarding the CIE in Algeciras (Cadiz), which is housed on the premises of the former provincial prison, it should be noted that it does not fulfil the minimum expected requirements, whereby it should be closed immediately and new facilities provided, especially when no far-reaching refurbishment is planned to palliate its numerous shortcomings and deficiencies. This negative opinion cannot be tempered by the existence of the Isla de las Palomas facilities in Tarifa, given that in practical terms they operate as an independent centre, and the better condition of the premises — which in general terms are better suited to detention than the actual CIE in Algeciras (Cadiz) — does not change the situation of the inmates at the main establishment.

The CIE in Malaga should also be closed

In turn, the CIE in Malaga does not uphold the parameters expected of a centre of its nature. The building has serious structural issues. It is damp and requires endless repair work. In view of this, this CIE should be closed and replaced by a new build. If this is not a feasible option, urgent repair work needs to be carried out on several parts of the premises.

Except in those cases of recommended closure, staff facilities are acceptable

The conditions of the staff facilities are generally acceptable, except in those centres recommended for closure. Nevertheless, the CIE in Valencia was affected by strong, persistent bad odours, due to the poor cleaning of the septic tanks that are underneath the building. This circumstance affected only the administrative areas, and not the part of the building housing the inmates, and it was noted that the problem needed to be solved.

Separation between sexes

255. All the CIEs separate by sexes. Other criteria used for allocating people to dormitories include geographical provenance and, insofar as possible, language affinities.

Sparsely furnished communal cell-rooms

256. The establishments used for accommodating the foreign nationals detained in all the CIEs involve communal cell-rooms that are not provided with their own bathroom facilities containing a toilet and shower, except in the case of certain blocks at the CIE in Algeciras (Cadiz), the CIE facilities in Malaga and those in the Tarifa annex, which have toilets, washbasins and showers inside the rooms. Generally speaking, the furniture is sparse and not all the establishments provide shelves or lockers.



Communal dormitories, furnished with bunks, tend to accommodate between six and twelve people, although in certain centres [Algeciras and the facilities in Tarifa (Cadiz)] there are larger capacity dormitories. Inmates should be accommodated in individual dormitories or, at the most, in twin ones; with the current situation being considered unreasonable, in situations of deprivation of liberty that may last as long as 60 days.

257. The doors on the dormitories are made of a steel grille at the CIEs in Barcelona, Madrid, Malaga and Murcia; of bars in Algeciras and at the annex in Tarifa (Cadiz); and steel with a service hatch at the centre in Valencia. In all cases, they are locked at night.

258. The inmates' areas are lit by both natural lighting — they have outside windows — and artificial lighting, being adequate for carrying out everyday activities, including reading and writing. Nevertheless, the lighting in module C at the annex in Tarifa (Cadiz) was too weak at the time of the visit, so it was mentioned that the lighting conditions of that block needed to be reviewed, as they might be below the minimum requirements enabling inmates to carry out everyday activities.

259. There is adequate ventilation in all the CIEs, with the exception of Algeciras (Cadiz), where it was extremely deficient. The temperature recorded was acceptable at most of the establishments visited, with the exception being the CIE in Barcelona, where despite being fitted with central heating and air conditioning systems the equipment was out of order, and the CIE in Malaga, where although the outside temperature was around 20°C the feeling inside the establishment was one of cold. The latter CIE has no heating or air conditioning arrangements and inmates said that it was extremely cold at night. Accordingly, a request was made for an urgent review of these conditions at the Malaga centre and for the repair of the heating and air conditioning system at the CIE in Barcelona.

260. The state of cleanliness at detention centres was generally acceptable in both communal areas and in the cell-rooms. The visit to the establishment in Algeciras (Cadiz) revealed the deficient hygiene conditions of the inmate areas. Indications were therefore made of the need to extend the cleaning service to guarantee the minimal conditions of cleanliness in toilet facilities and other areas. There are programmes for rodent and pest control and, generally speaking, the waste management process needs to be improved.

261. Note was made of the presence of CCTV cameras, with recordings being made in corridors, interior communal areas on the premises, canteens, recreational areas and outside yards, although these areas were not fully covered in all cases. No viewing or recordings are made inside the cells or toilet facilities. There are no

Inmates should be accommodated in individual dormitories or, at the most, in twin ones

Dormitory doors are closed at night

Natural lighting in inmates' areas

Adequate ventilation and temperature conditions, except in Malaga and Barcelona

The state of cleanliness was generally acceptable

CCTV and recordings, except for inside cells and toilet facilities



uniform criteria regarding the time the recordings are kept or the right to access them, whereby indications have been made on these issues of a both a general nature and regarding each specific centre.

Basic fire-fighting equipment. Uneven situation regarding risk assessment protocols

262. All the CIEs have basic fire-fighting equipment. The situation is more uneven regarding risk assessment protocols; thus, for example, the facilities visited in Valencia had no evacuation procedure, with information on display in communal areas and inside cells. Furthermore, there was no intercom for communicating with the guards, and this deficiency needs to be corrected. Regarding the CIE in Murcia, the information given stated that delivery was pending of the corresponding emergency or evacuation plan. Accordingly, it was mentioned that the aforementioned plan was a requirement, indicating, furthermore, the convenience of holding fire practices with the guards, as these premises were newly built. On the other hand, it should be noted that Barcelona is the only CIE with an automatic cell-door opening system. Given that this system may enable rapid evacuation if and when needed, the authorities have been urged to install it at all the detention centres, especially those with the highest numbers of inmates.

Normal procedure involves a medical check-up upon arrival at the centre

263. Normal procedure involves a medical check-up for each inmate arriving at a CIE. Nevertheless, a special protocol should be arranged to cater for mass influxes in order not to complicate the diagnosis procedures or reduce the thoroughness of the medical examination. Especially, those CIEs that may receive individuals detained whilst trying to enter Spanish territory should have systematic procedures for screening for quarantinable diseases.

Inmates are examined by medical staff whenever they so request or whenever medical circumstances render it expedient. In fact, article 62.3 e) of Public General Act 4/2000, of 11 January, lays down the duty of detained foreign nationals “to submit to a medical examination upon entering and leaving the centre, as well as in those cases in which, for reasons of collective health decided by the medical staff and upon request thereof, it is ordered by the centre’s director”.

All the centres have their own healthcare

All the centres have their own healthcare, provided by contracted staff (doctor and nurse - DUE), in some cases, and by the police’s own medical services in others. If an inmate requires healthcare outside normal working hours, it is provided by the public health system’s emergency services, which are summoned to the centre by the guards. In the event the corresponding medical examination entails the need to transfer a patient, this transfer is to be made by members of the CNP in a police car or directly by ambulance escorted by a police car to the corresponding medical centre.

If any signs of an infectious or contagious disease are detected at a CIE, and given the lack of appropriate isolation facilities, those affected are to be taken to hospital. Nevertheless, there is no written protocol covering this matter.

Medication is prescribed and dispensed by the medical staff, with the exception of those doses to be taken outside the staff's working hours, in which cases the doses are prepared and given to the guards to dispense, normally in single-dose sachets.

During the visit to the CIE in Valencia one of the foreign nationals, who displayed clear symptoms of a mouth complaint in the form of a visible swelling of the gum, complained about not receiving healthcare. The explanation the staff gave was the person in question had not specifically requested such care; so a doctor was called upon to attend to the inmate.

264. Inmates are entitled to receive those vaccines and medication deemed necessary. There are no specific programmes for the treatment and rehabilitation of substance abusers, although there are inmates being treated with methadone. There is a need to introduce protocols or cooperation agreements to make this substitute available in those cases as required, given that its management is currently somewhat complex at times.

265. No special measures are adopted in the case of pregnant women, observing the instructions of the medical services. On the day of the visit to the CIE in Algeciras (Cadiz) there were three pregnant foreign nationals in custody, and they asked for help from the members of the NPM. The latter were informed that those women who are more than five months pregnant are transferred to another centre. Nevertheless, the hygiene and living conditions observed in the women's block cannot be considered acceptable, and even less so for those that are pregnant or, as in the case of a Sub-Saharan woman, those that are ill. On the day of the visit to the CIE in Malaga, there were five pregnant inmates of foreign nationality. On a general basis, a protocol should be established for the case of pregnant women.

266. No information has been forthcoming, either, on the existence of protocols for preventing suicides, with this being a matter that needs to be resolved. Likewise, psychological and psychiatric care for inmates needs to be improved, as it is almost non-existent except in severe cases, when the inmate is referred to the corresponding psychiatric services. Especially, it is essential to ensure the continuity of the treatment during the time spent at a CIE regarding those inmates undergoing psychiatric treatment.

267. The food provided at the CIEs is prepared, handled and served by contracted staff, either on the actual premises or at outside establishments. In the case of the establishment in Tarifa, the food was delivered from the CIE in Algeciras (Cadiz), in isothermal containers. Nevertheless, following the visit we were informed of the installation of a kitchen at the Isla de las Palomas establishment.

There is no written protocol for procedure if any signs of an infectious or contagious disease are detected. Medication is prescribed and dispensed by the medical staff

There is access to those the vaccines and medications deemed necessary. There is no programme for substance abuse

No special measures are adopted in the case of pregnant women. A protocol should be established for such cases

Psychological and psychiatric care needs to be improved. No information has been forthcoming on the existence of protocols for preventing suicides

The food provided is prepared and handled by contracted staff on the actual premises or at outside establishments

*centro o en instalaciones
externas*

The menus are designed by dieticians and the centres prepare them using industrial cooking equipment, fridges, freezers and storage facilities. Food handling and processing complies with current legislation on the matter. On a general basis, samples are kept for a week in order to help identify possible causes of food poisoning.

*Permanent and
unrestricted access to
drinking water*

Food is provided three times a day at breakfast, lunch and supper. Inmates are provided with any special dietary requirements on religious or health grounds, with catering for specific diets. During Ramadan the timetable is adjusted so that those inmates who so wish may eat a single meal. However, for organisational reasons, this meal for breaking the fast involves cold products (sandwiches, juices, milk, etc.). Access to drinking water is permanent and unrestricted at all the CIEs; in addition, the establishments have food and drink vending machines, providing access to food and drinks outside meal times.

*Guards need to be called if
toilet facilities are required
during the night*

268. Due to the lack of toilet facilities inside the cells in certain CIEs, access to them during the night is conditioned by the need to alert the guards, given that the dormitories are locked, thereby restricting the unlimited use of these facilities at any time of the day or night. The 2nd CPT GR (1991, paragraph 49) states that inmates should have sanitary facilities (toilet or equivalent and washbasin) inside their cells or, at least, access to them on an immediate basis at any time of the day or night, with no restrictions whatsoever.

*The temperature of the
water in sanitary facilities
should be acceptable*

It should be ensured that the temperature of the water in washbasins and showers is acceptable, which was not the case in some of the CIEs visited, such as, for example, Algeciras (Cadiz).

*Distribution of a batch of
toiletries upon admission*

When the foreign nationals are admitted to the CIEs visited, they are provided with a very basic batch of toiletries, with the contents differing substantially from one centre to another. For this reason, this matter receives particular attention when visiting the CIEs, as differences detected between establishments are not deemed reasonable.

*Adequate provision of
good quality sheets,
blankets and towels*

269. Generally speaking, the sheets, blankets and towels provided are clean, in good condition and in a sufficient number to cater for the number of places available in each centre. However, these are not provided at the CIE in Algeciras (Cadiz), which is due to reasons of safety and security. This reasoning was not considered sufficient.

*Provision is also made of
clothing and footwear*

Provision is also made of clothing and footwear, normally obtained through donations from NGOs or companies, to cater for the needs of those inmates with no personal belongings. These items are distributed by the centre's own services upon request or when for reasons of hygiene the clothes the inmate was wearing upon admission need to be destroyed.

*A call has been made to
extend the laundry service
to all the CIEs*

270. Regarding the laundry service, it has been noted that at the CIEs in Algeciras (Cadiz), Malaga, Murcia and Valencia no provision is made for inmates to hand

in their clothing for washing during their time at the establishment. This shortcoming means that inmates wash their clothes using the means available to them (they are provided with soap and use sinks, if there are any, or even washbasins), having to dry the clothes in their dormitories, on makeshift laundry lines. Accordingly, a call has been made for all the CIEs to be provided with the same laundry services as those currently available in Barcelona, Madrid and at the establishment in Tarifa (Cadiz). In the case of Malaga, the information provided at the time of the visit was that the CIE would be provided with an industrial washing machine and a dryer.

271. The CIEs have communal recreation areas, whose comfort and state of repair are deficient. They have a television, but there is not enough furniture and recreational equipment, bearing in mind that this is the area where the inmates have to spend almost the entire day. In the case of the CIE in Malaga, the presence of load-bearing walls means they cannot be knocked down to enlarge the communal areas, so the canteens are being used as day rooms.

272. In order to permit inmates to exercise and enjoy the open air, there are yards in all the CIEs, but these do not always have sports facilities or equipment. In most cases, they also lack a covered area enabling the yards to be used on rainy days or in adverse weather conditions. The appropriate indications have been made at each CIE to rectify the situation described. The CIE in Murcia reported that the inmates do not go out into the yards during the afternoons, as there have been several escape attempts, and there are not enough guards to control this. This situation needs to be resolved, as it involves an excessive deprivation of liberty that increases its duress.

273. Inmates may be attended by a minister of their faith, although the CIEs visited do not have a specific area set aside for worship (one was initially foreseen at the CIE in Murcia but it is now used as a storage area). Nevertheless, it was noted that whenever so requested, an area was set aside for these purposes.

274. No communications problems have been detected at the CIEs inspected in terms of public transport. Visits by family members and friends are arranged into different time slots and frequencies depending on each CIE. This matter gives rise to numerous complaints and is monitored by the Ombudsman, being also the focus of attention of the judges overseeing detention in CIEs. Certain CIEs, such as Malaga, find it difficult to comply with the visiting times specified in the regulations due to problems of space. This is an area that very clearly highlights the shortcomings of the infrastructures themselves and even the police force's compliance with the legal standards set out for a centre and the deprivation of liberty that must not be seen as a prison sentence. Generally speaking, the Ombudsman can

Deficient state of repair of communal recreation areas

The CIEs have yards but not all of them have sports facilities and equipment

The CIEs visited do not have a specific area for worship

Each CIE regulates visits by family members and friends. The Ombudsman can see no reason for the use of separating screens that stop any physical contact



see no reason for the widespread use of separating screens that stop any physical contact between inmates and their visitors. Special attention needs to be paid to the need to uphold the privacy of these visits.

The constitutional right to legal counsel is guaranteed

275. Regarding legal counsel for inmates, article 62.2 f) of Public General Act 4/2000, according to the draft provided by Public General Act 2/2009, stipulates that inmates may communicate confidentially with their lawyers, even outside the centre's normal operating hours, whenever the urgency of the case so requires.

The CIEs in Madrid and Malaga have entered into agreements with the corresponding bar associations for the provision of free legal aid services

The CIEs in Madrid and Malaga have entered into agreements with the corresponding bar associations for the provision of free legal aid services. Thus, for illustrative purposes, this service at the CIE in Madrid has been available since 15 January 2010, and involves the presence three times a week of lawyers who provide legal advice and answer any queries the inmates might have. It is important to stress that these lawyers do not provide "legal counsel" in the strictest sense, as this befalls the lawyers appointed in the province in which the expulsion or repatriation proceedings are being heard, which might be anywhere in Spain. For those cases involving an appearance before administrative or judicial bodies located in Madrid, an application is submitted and assignment is made of a legal aid lawyer from the duty roster specialising in the appropriate field (e.g., asylum). This line of action is positively evaluated and it would be convenient to extend it to all the other CIEs.

The information on international protection is insufficient

Until such a time as the legal advisory service becomes of general application, the information provided by CIEs on the possibility of requesting international protection (asylum and subsidiary protection) is insufficient. Effective distribution should be made of the leaflets the Asylum and Refugee Office (OAR) has issued on this matter in different languages.

Inmates should be more speedily informed in writing of any decisions or measures affecting them

276. The interviews held between members of this Institution and inmates have revealed that these people have a general lack of knowledge on their situation in the centre, as well as on the administrative procedure regarding their expulsion or repatriation. It therefore seems necessary to ensure inmates are provided with information on these matters, independently of those actions that may be taken accordingly by the lawyers responsible for their legal counsel, whereby they should be more speedily informed in writing of any decisions or measures affecting them.

The practice of searches varies from one establishment to another. The rules governing such practices need to be substantially improved

277. The practice of searches varies noticeably from one establishment to another and ranges from a brief frisking to more intrusive searches that include the full removal of clothing. In order to carry out these searches, police officers wear slash-resistant latex gloves that are not always regulation equipment. Article 62.5, paragraph one, of Public General Act 4/2000, allows people to be searched, although it omits any reference either as to who should order this or to a system of control and communication by the legal authority responsible for the inmate's

custody. Thus, for example, at the CIE in Algeciras (Cadiz) the standard practice is for strip searches to be ordered by the senior officer on duty; these searches are recorded in the inmate's file, including the reasons for conducting them, but there is no mention of any notification being made to any authority. The rules governing such practices need to be substantially improved.

Notwithstanding the above, all inmates to be admitted are searched upon arrival at the centre. Given that these people are being transferred from police or court premises, where they have already undergone their corresponding searches, and that they have remained at all times in the custody of the CNP, it is not generally reasonable to proceed with thorough searches.

278. Inmates arrive at a centre in very different situations as regards the possession and availability of personal belongings, ranging from those cases in which people have nothing more than the clothes they are wearing to others who have luggage, either right from the start or because it has been provided by friends or family. As already mentioned, the centres tend to have a selection of clothing to meet the needs of those in a more precarious situation. Inmates do not keep their belongings with them, as these are safeguarded in storage areas, although they can access them if necessary under the supervision of the guards. A lack of space, the absence of suitable furniture for storing these items and security considerations mean that inmates cannot keep their belongings with them. Nonetheless, the inmates' access to their personal belongings should be guaranteed, irrespective of organisational and security considerations.

Any cash, over and above that required for the vending machines or phone cards, and valuables are listed and safeguarded.

279. Inmates are not permitted to keep their mobile phones, which are confiscated as soon as they arrive at a CIE, although certain establishments allow access to them to check their agenda or even make calls if they do not have any money to use public phones. As the Ombudsman has been proposing, the authorities should allow inmates unrestricted access to their mobile phones, adopting those security measures as deemed appropriate, as may be the introduction of a system for keeping them in individual lockers. On the other hand, greater care should be taken to maintain the public phones installed in communal areas, where calls can be made and received, as they are often out of order.

280. In spite of the repeated indications and recommendations this Institution has made in recent years, not all the guards at these establishments wear their ID plaques at all times.

A search is performed upon arrival at the centre

Access to personal belongings should be guaranteed irrespective of organisational and security considerations

Cash is safeguarded

The authorities should allow inmates unrestricted access to their mobile phones

Guards at these establishments do not wear their ID plaques at all times

Guards may use measures of personal physical restraint or preventive solitary confinement of the aggressor in an individual room

281. In the event of any disturbance at a CIE, the guards may, pursuant to the provisions of article 62.5 of Public General Act 4/2000, with prior authorisation from the centre’s director, except when this cannot be obtained in cases of emergency, “use measures of personal physical restraint or preventive solitary confinement of the aggressor in an individual room in order to avoid acts of violence or injuries amongst the foreign nationals, prevent escape attempts, damage to the centre’s property or when resisting the staff therein during the legitimate performance of their duties. The use of methods of restraint shall be proportional to the end pursued and may not constitute a hidden reprisal and shall be used solely when there is no other simpler way of achieving the end pursued and for the time strictly necessary”. Under all circumstances, the director is, at their earliest possible convenience, to notify the Examining Magistrate ordering the detention of the adoption and lifting of the measures of personal physical restraint, with a detailed description of the events leading up to their application and of the circumstances that might advise their maintenance.

Guards do not carry firearms

Guards do not carry firearms, although it is common practice to carry handcuffs and, in some CIEs, batons. The restraining equipment is stored in specific cupboards in the director’s office.

The actions for re-establishing order are carried out by outside police units

Several directors have mentioned that in those cases of disturbances involving a significant number of inmates, the actions for re-establishing order are not carried out by the guards normally attached to the CIE but by police units called in from outside. The aim is not to prolong the atmosphere of tension between the inmates and the guards beyond the incident itself.

They do not provide social care services, despite being required to do so by PGA 4/2000

282. Article 62.2.2 of Public General Act 4/2000 stipulates that all CIEs shall provide social care services. However, the staff at these centres are unable to provide these services and, if anything, they sometimes resort to trained personnel on a temporary basis; neither do the CIEs have intercultural mediators. Nevertheless, in 2010 the Ministry of the Interior reached an agreement with the Red Cross to roll out a programme of comprehensive care at the CIE in Madrid (Royal Decree 167/2010, of 19 February, published in Spain’s Official State Gazette (BOE), number 45, of 20 February), in what appears to be the start of a line of action for remedying this shortcoming that dates back to the very introduction of the CIEs.

Unaccompanied minors may not be detained at a CIE. The presence of minors accompanied by their parents is rare

283. Spanish legislation does not permit unaccompanied minors to be detained at a CIE. In turn, article 62.2.1 stipulates that a right befalling foreign nationals detained is “to be accompanied by their underage children”, although this is subject to two compound requirements: a favourable report from the Public Prosecutor’s Office, given its duty to protect minors, and the availability at the centre of modules “that guarantee family unity and privacy”. The presence of minors accompanying their parents at CIEs is rare and in most of the cases that have come to the attention of this Institution they are linked to proceedings for

the repatriation of women who have come ashore along the coastline and are accompanied by babies.

Furthermore, most of the CIEs do not have the family modules referred to as “módulos de convivencia familiar” and, when they do have them, they tend not to use them, as there are no dedicated canteens or yards that cater for the true coexistence of a family unit, and involve additional staff requirements in terms of guards that are difficult to fulfil. The standard practice followed in the few incoming cases of entire families is to send the father to the men’s area and keep the mother and minor together, with the father being allowed, at the most, to spend a few hours with his family.

284. The inspection visit to the CIE in Algeciras (Cadiz) included interviews with several women who indicated that they had yet to reach legal age. A check made of these women’s files provided the result of the corresponding bone-measurement tests that the Attorney General used as the basis for the presumption of legal age of these people. Nevertheless, attention was drawn to the fact that depending on the medical team and the medical centre where these tests were carried out, the results were exactly the same, filled in on a standard form on which exactly the same conclusions were reached for the different people examined, with no personal data or clarifications for each individual case. Thus, for example, the tests conducted at the Hospital Clínico San Cecilio in Granada for two cases on the same day reported that the individuals examined were, in the doctor’s opinion, “aged 18 or over”, and the tests conducted at the Hospital Materno-infantil “Virgen de las Nieves”, in the same city, for four consecutive cases, the result was “over 21”. None of these examples considers the application of the age brackets established by the method used (Greulich and Pyle). Regarding this matter, the State Attorney General is being petitioned to call upon attorneys to require medical reports to be more accurate and comprehensive.

Most of the CIEs do not have family modules

Bone-measurement tests have been conducted to determine the assumption of legal age in the event of any doubt. Nevertheless, the State Attorney General is being petitioned to call upon attorneys to require medical reports to be more accurate and comprehensive

II. Military Detention Centres

285. Public General Act 8/1998, of 2 December, is the legislation governing the Disciplinary Regime of the Spanish Armed Forces. The punishments that officers in the armed forces can impose upon their subordinates following the committing of serious faults, as provided for in article 8 of the aforementioned act, may involve a period of detention ranging from one month and a day to two months, to be served in a Military Detention Centre (EDM) (art. 9.2). Nevertheless, article 69 of the same act provides for concurrent cases of two or more disciplinary measures extending to a maximum of four months of deprivation of liberty. On the other hand, the second paragraph of article 14 of said act permits this detention to be effected in a military establishment other than an EDM in justified cases. Articles

The armed forces’ disciplinary regime is governed by PGA 8/1998, of 2 December. The disciplinary measures for serious faults may involve a period of detention ranging from one month and a day to two months



28 to 30 specify the competent authorities for imposing the disciplinary measures giving rise to detention in an EDM.

These establishments may also be used for remanding people in custody

These establishments may also be used for what is referred to as being remanded in custody, as provided for in article 55.1 of Public General Act 8/1998, which may be ordered by the authority that has initiated the disciplinary proceedings, if it understand that “the nature and circumstances of the misdemeanour require immediate action to maintain discipline”. The prisoner on remand may remain in this situation for up to one month, which is to be computed for the fulfilment of the disciplinary measure that may eventually be imposed.

The interior regime is governed by Ministerial Order 97/1993

The primary legislation governing everyday life in centres of this kind is Ministerial Order 97/1993, of 30 September, approving the Instructions on the Interior Regime of Military detention centres. Furthermore, Additional Provision Two in this Order stipulates that each EDM is to have its own rules governing its internal regime.

Today, Spain has 8 military detention centres

286. Ministerial Order 73/2005, of 11 May, whereby stipulation is made of the territorial deployment and joint use of EDMs, and the Resolution of the Undersecretary for Defence of 4 March 2009, have indicated the present location of 8 EDMs for the whole of Spain, 3 on the mainland (North, Centre and South), one in Ceuta, one in Melilla and 3 in the Canary Islands (2 in Gran Canaria and one in Tenerife). Military personnel, regardless of the force or unit to which they belong, are imprisoned in the EDM that is most appropriate according to their geographical location and their links to their social and family environment. Nonetheless, provision is made for transfer to another establishment. Such a transfer is to be informed by requirements of a disciplinary nature, a lack of available space or for any other special circumstances arising (Ministerial Order 73/2005; 4th point).

Five of them have been inspected

287. The following five out of the eight EDMs operating in 2010 have been inspected: EDM Norte (North), on the air force base Aeródromo Militar de La Virgen del Camino in Leon and run by the Air Force; EDM Centro (Centre), on the army base at Base Militar de San Pedro, in Colmenar Viejo (Madrid) and run by the Army; EDM Sur (South), at Arsenal de La Carraca, in San Fernando (Cadiz), run by the Navy; EDM in Ceuta, run by the Army; and EDM Melilla, also run by the Army.

Graphic 16. Geographical location of the military detention centres visited in 2010



288. The EDMs visited are centres with a variable capacity: 63 military personnel at the EDM Centro in Colmenar Viejo (Madrid), 54 at the EDM Norte en Leon, 54 at the EDM Sur in San Fernando (Cadiz), 25 at the EDM in Ceuta and 33 at the EDM in Melilla. The average occupancy in all cases was well below the number of places. The EDMs provide facilities for detaining military personnel of both sexes and any rank; however, the detainees are largely male and enlisted soldiers.

They have a variable capacity. The average occupancy of those visited was below the number of places available

289. Like CIEs, the EDMs are not considered to be prisons, but in this case — and as opposed to the detention centres for foreign nationals — the buildings and the everyday living regime do not remind one of a detention centre. In fact, the living conditions are similar to those of a military unit.

Like CIEs, they are not considered penitentiary establishments

290. The establishments visited are in a good condition and well maintained. They usually have two areas, with the first of these containing the administrative facilities and visiting halls and the second have the premises where the military personnel serve their sentence. The latter area has separate male and female quarters for enlisted soldiers, as well as a third sector or block for officers of both

Good state of repair and maintenance of the establishments visited. The area where the sentences

are served has separate areas for the sexes for enlisted soldiers and a single block for officers

Generally speaking, there are group rooms for enlisted soldiers and single ones for officer, of adequate size

The natural and artificial lighting in the detainees' areas was sufficient for performing everyday activities. Review and correct, as appropriate, the air conditioning and heating at the EDMs in Ceuta and Melilla

Fairly limited CCTV systems

Adequate fire-fighting installations

24-hour healthcare

sexes. Each sector has communal areas (television rooms, canteens, etc.) and there are shared sports facilities for the entire EDM, with the exception of the EDM in Ceuta, which has no gym or sports facilities. The possibility should be studied of providing space for these activities within the actual EDM in Ceuta or of facilitating access to the sports facilities in nearby barracks.

291. Regarding the actual quarters housing the military personnel subject to detention, they have rooms that, generally speaking, are for groups in the case of enlisted soldiers and single for officers. The rooms inspected were of a sufficient size for daily and prolonged co-existence, and they were sparsely but adequately furnished. The doors on the rooms had no special security feature, and were always unlocked.

292. Both natural and artificial lighting is used on the premises in the detention areas. An acceptable state of cleanliness was observed; this is the detainees' responsibility in the dormitories, and depending on the centre they may also be required to take it in turns to clean the communal areas. The ventilation of the detainees' rooms and communal areas is deemed to be acceptable and the temperatures prevailing during the inspection visits were likewise acceptable, with adequate air conditioning and heating systems, with the exception of the EDMs in Ceuta and Melilla. In these EDMs, although the prevailing temperature on the day of the visit was acceptable in the detainees' areas, the fact these establishments do not have air conditioning and heating installations may lead to unacceptable temperatures at other times of the year, so this should be reviewed and, as appropriate, corrected.

293. It has been noted that the EDMs are fitted with fairly limited CCTV systems, focused normally on the surveillance of indoor corridors and yards. Recordings are made, but no information was provided on how long they are kept. With a view to upholding the rights of detainees and the military personnel in custody, it would be convenient to extend this CCTV surveillance and recording to the communal areas.

294. Regarding fire-fighting measures, it should be noted that the EDMs visited have smoke detectors, alarm systems, fire extinguishers and evacuation procedures, with information displayed in communal areas. Given that the doors to the rooms are always unlocked, these measures are deemed to be adequate.

295. Detainees at an EDM have 24-hour healthcare. This is provided either by members of the Army Medical Corps (Cuerpo Militar de Sanidad) posted at the base or barracks housing the establishment, with the corresponding medical facilities, or by doctors from public or private hospitals or medical centres.

Within a maximum period of 24 hours after their arrival at the EDM, all detainees undergo a medical check-up and, during their time there, whenever they so request or medical circumstances render it advisable. Regarding standard healthcare protocol, those detainees who are feeling unwell or wish to be seen by a doctor inform the staff present, who will summon medical personnel or arrange for the detainee to be transferred to the medical facilities. The doctor will decide, as appropriate, whether the detainee can be treated at the EDM itself or needs to be transferred to a medical centre.

Whenever an EDM detects some form of infectious or contagious disease, the patient is taken to hospital and basic preventive measures are adopted for both the other detainees and the guards. The information provided was that in such cases the patient remains at the EDM for the shortest possible time.

Although there are no specific procedural protocols for the case of pregnant women, application is made of the instructions given by the medical services, which may even involve lifting the detention at the EDM by suspending the sentence.

296. The food at all the EDMs is prepared and served by personnel at the bases or barracks housing the establishment, being the same as that provided to all personnel. Detainees are provided with any special diet required on religious or health grounds. Access to drinking water is permanent and unrestricted.

297. In general, all the officers' rooms, and many of those accommodating enlisted soldiers, have their own sanitary facilities with a toilet, washbasin and shower, with a hot water supply. When there are no sanitary facilities attached, there are sufficient communal ones on the premises, with unrestricted access throughout the day and night.

Upon arrival at the EDM, there is no arrangement for providing detainees with personal toiletries, which have to be purchased by each individual. Pursuant to the regulations in these centres, detainees may purchase authorised products at the allocated place inside the establishment. However, given that these personnel have been deprived of their liberty, the military authorities should provide these products free of charge.

298. All the EDMs visited provided sheets, blankets and towels in good condition and in a sufficient amount for the number of places available. Bed linen is washed weekly by the laundry service, which also washes the military detainees' uniforms (those corresponding to their service and unit).

299. The recreational areas visited, where detainees may remain throughout almost the entire day, are furnished with a television set, armchairs and tables. They are in a good state of repair and are comfortable. Free games equipment is

A medical check-up is performed upon arrival

In the event of an infectious or contagious disease, the patient is taken to hospital

In the case of pregnant women, detention at the EDM may even be lifted

Food is prepared and served by on-site personnel

Attached sanitary facilities, with toilet, washbasin and shower in many of those accommodating enlisted soldiers

A batch of personal toiletries should be provided free of charge upon arrival

Bed linen and sanitary facilities are clean and in good conditions. Laundry service for uniforms

Recreational areas furnished with TV sets, armchairs and tables



available. Detainees have access, at different times to those corresponding to the personnel posted at the barracks housing the EDM, to the general sports and culture facilities (library). All the establishments visited, with the exception of the one in Ceuta, have sports facilities.

Detainees are not allowed to use mobile phones

300. There are telephones in the communal areas, which detainees can use to make and receive calls. The regime governing the use of these phones is contained in article 10 of Ministerial Order 97/1993, which lays down a system for authorising calls. Detainees are not allowed to use mobile phones, which are confiscated upon arrival. Given the administrative nature of the deprivation of liberty analysed here, it does not seem reasonable that the actual state of deprivation of liberty should be compounded by additional punitive measures, such as the restriction of calls.

They are located at military facilities outside the city limits, except in Ceuta and Melilla, which hinders visits by family members and friends

301. Visits from family members and friends are allowed within an ample array of timetables and durations. With the exception of the cases of Ceuta and Melilla, the EDMs visited are located within military facilities, which are outside the city limits, so there are limited options for accessing them by public transport, although there is sufficient parking space for possible visitors. Visitors may give the detainees personal items but not food.

No provision is made for intimate visits

The regulations stipulate that the privacy of communications, which are made in dedicated rooms, should be upheld. No provision is made for intimate visits, a matter that should be included in the everyday regime of EDMs.

Special permissions are granted for leave

302. The regulations at EDMs stipulate that in the event of the death or serious illness of a spouse or equivalent partner, parents, children or siblings, birth of the partner's child or other circumstances of an equally important nature, and duly verified, special permission may be granted for leave of up to 72 hours, which may be extended by the authority that imposed the custodial sentence.

They may receive visits from ministers of their own religious faith

303. The EDMs do not have specific areas set aside for religious worship. Detained military personnel may be visited by a minister of their faith and, within the possibilities provided by each centre, take part in the religious ceremonies held at the barracks or base, if they so wish.

The timetable for visits from legal counsels is from 8 a.m. to 6 p.m., although they may be authorised at any other time

304. Pursuant to article 53.1 of Public General Act 8/1998, all military personnel disciplined have the right throughout their proceedings to receive the counsel of the lawyer or member of the military appointed accordingly. Given that disciplinary measures of this nature are enforced immediately (art. 67 in PGA 8/1998) and that an individual may be remanded in custody, there is a need to ensure the detainee can contact the person providing counsel in order to orchestrate their defence and appeal processes. Visits by legal counsels may be made throughout the day from 8 a.m. to 6 p.m., although they may be authorised

at any other time (art. 9 in Ministerial Order 97/1993, of 30 September). This communication is held in dedicated rooms.

305. When detainees arrive at an EDM they are subject to a brief frisking by security personnel. This search allows confiscating any potentially harmful or dangerous items, as well as those belongings whose use is forbidden at the establishment (e.g., mobile phones). Generally speaking, there are no strip searches, and if there are, they are conducted in stages. The regulations governing the interior regime at these establishments do not consider this matter. They should be regulated at the appropriate level, the authority responsible for ordering these searches, for the provision of a written record of the search and notification to the immediate superior of the person responsible at the EDM, for purposes of supervision and control.

Women are always searched by female personnel. According to the information provided by those in charge of the various EDMs visited, whenever there is a female member of the military in custody, there is always a female guard on duty.

306. There is no specific disciplinary regime for remediating and sanctioning the behaviour of detainees during their time at an EDM, with application made in all cases of the general Military Disciplinary Regime. According to the information provided, in the event of situations of violent behaviour or resistance, application would be made of the standard restraining methods used by the military police. The inspection visits made revealed that the guards are suitably identified and did not carry arms of any kind in any way, being equipped solely with batons and handcuffs. It was also indicated that no detainees are isolated, with no facilities set aside for this purpose.

307. Article 14 of Ministerial Order 97/1993, of 30 September, stipulates that whilst serving their sentence at an EDM detainees are to receive general military training, tactical and technical instruction and take part in physical-sports activities.

308. An ordinary appeal against the decisions of the director of the EDM may be lodged before the military authorities in the region to which the barracks housing the establishment is accountable.

A brief frisking is made upon arrival. There are no strip searches. Provision should be made for their regulation at the appropriate level

Women are searched by female personnel

In the event of situations of violent behaviour or resistance, application is made of the standard restraining methods used by the military police. No detainees are isolated

During their sentence they are to receive general military training

An ordinary appeal may be lodged against the decisions of the director of the EDM

Places of Long-Term Deprivation of Liberty

I. Prisons §310 – §382

II. Centres for Young Offenders §383 – §412

309. Long-term deprivation of liberty is understood to be that extending beyond three months; in fact, in the majority of cases, the most common timeframe for this deprivation of liberty can be measured in years. Within this chapter, consideration should be given to an extremely wide range of legal circumstances. Firstly, reference can be made to custodial sentences — prison, permanent localisation and personal liability for the non-payment of a fine — (arts. 35 to 37 of the Spanish Criminal Code), the security measures provided for in criminal legislation — detention at psychiatric or drug rehabilitation facilities or at special education centres — (arts. 96.2 and 101 to 104 of the Criminal Code). In parallel, amongst the main sentences stipulated in article 24 of Spain’s Military Criminal Code, of interest for the purposes of this report are those involving imprisonment and detention. In addition, article 7 of the LORPM provides for a wide array of detention measures under different regimes (closed, semi-open and open) that include the so-called periods of therapeutic detention (*internamientos terapéuticos*), as well as weekend detention.

In addition to the deprivation of liberty as a result of a criminal sentence, it should also be noted that a long-term deprivation of liberty may be the result of the adoption by the courts of a precautionary individual measure within the framework of legal proceedings. Such is the case of the preventive detention governed by articles 502 to 519 of the LECrim; of the different kinds of preventive detention provided for in articles 215 to 229 of Public General Act 2/1989, of 13 April, on military proceedings; and of detention as a precautionary measure laid down in article 28 of the LORPM.

From another perspective, inclusion should also be made within this ambit of the instances of non-voluntary detention due to psychiatric disorders as provided for in article 763 of the Civil Procedures Act. This matter is also regulated by articles 212.4 to 212.6 of the Catalan Civil Code, according to Catalonia’s Act 25/2010, of 29 July, which also refers to those disorders that may affect an individual’s cognitive abilities; as well as by article 33 of Aragon’s Act 13/2006, of 27 December, on personal rights (at the time of writing, enactment has just been made of Aragon’s Legislative Decree 1/2011, of 22 March, approving the region’s legal code (*Código de Derecho Foral de Aragon*) by virtue of which the aforementioned provision has now become an article in said code). In its judgement 132/2010, Spain’s Constitutional Court has ruled that two paragraphs of section one of the aforesaid article 763 of the Civil Proceedings Act are unconstitutional, considering that the regulation of a measure on the deprivation of liberty such as that examined needs to be approved by a public general act. Nevertheless, in this case the Constitutional Court clarifies that “this declaration of unconstitutionality does not imply a statement of nullity, as this latter circumstance would create an unwanted vacuum in the legal system, especially when its material content has not been questioned”.

Visits have been made in 2010 to civil prisons, Spain’s only military prison and centres for young offenders.

Detention extending more than three months. In most cases it can be measured in years. It involves a wide range of legal circumstances. As a result of a criminal sentence

As a precautionary individual measure within the framework of criminal proceedings. For example, being remanded in custody

Non-voluntary detentions for reasons of psychiatric disorder. The Constitutional Court considers that the regulation of a detention measure within this ambit needs to be approved by a public general act

I. Prisons

Spain's prison system is regulated by the LOGP

These establishments include: ordinary and remand prisons; halfway houses; open sections; units for inmate mothers and attached units; and correctional psychiatric hospitals

Spain has a total of 94 correctional facilities

At 31 December 2010 the total number of inmates in Spanish prisons amounted to 73,849, with a drop in the number of remand inmates

In 2009, there were 133,777 prison sentences (21.90% of the custodial sentences imposed). Not all actually involved spending time in prison

310. In its development of article 25.2 of the Spanish Constitution, the LOGP lays down the basic regulation of Spain's prison system, enshrining the principle of legality in the imposition of the sentence, encouragement for an open system, the implementation of a parole court (JVP) and, in short, the consolidation of a prison system based on the sentence as a measure of social prevention designed for the re-education and social re-integration of offenders. This legislation is, in turn, developed by the prison regulations (RP).

311. Prison establishments include the following: ordinary and remand prisons; halfway houses (CIS), prisons designed for serving custodial sentences in an open regime and for the supervision of non-custodial sentences, which may be supervised by a prison or managed independently; open sections, located in a prison but playing a similar role to CIS; units for inmate mothers and attached units, for female prisoners with children under the age of three; and correctional psychiatric hospitals, for people subject to one of the security measures provided for in the Criminal Code, or else inmates who were already in prison and for one reason or another are transferred here by a decision of the courts.

312. Official figures provided by the Ministry of the Interior reveal that Spain has a total of 94 correctional facilities: 14 run by the Department of Justice of the Regional Government, the Generalitat, of Catalonia, 79 run by the Office of the Secretary General for Prisoners (SGIP), and a single military prison run by the Ministry of Defence. This military establishment is not governed by the same regulations as civil prisons, but instead has a specific arrangement, with the civil regulations being applied with subsidiary effect.

313. As regards the prison population, at 31 December 2010 the total number of inmates in Spanish prisons amounted to 73,849, slightly down on prior years. The population consisted of 7.87% women and 92.13% men, with 85.67% (63,314) serving in prisons run by the SGIP, as opposed to 14.33% (10,535) imprisoned in establishments run by the Generalitat of Catalonia. Furthermore, it should be noted that throughout 2010 there has been a drop in the percentage of remand inmates, falling from 20.80% at the beginning of the year to 18.98% at the end.

For reference purposes, it should be noted that according to data provided by the Spanish National Statistics Office (INE) corresponding to 2009, the custodial sentences imposed in Spain over that period amounted to around 145,000, 23.40% of the total number of sentences imposed, of which 133,777 (21.90% of the total) were prison sentences, although not all of them actually involved spending time in prison, as application was made of the provisions for arrangements other than the deprivation of liberty referred to in articles 80 to 93 of the Criminal Code. 71.60% of those imprisoned were Spanish nationals; nevertheless, the percentage

of foreign nationals in prison was slightly higher than that corresponding to the overall number of sentences.

314. In 2010, inspection visits have been made to 22 prisons, whose overall prison population is approaching 20,000 inmates, which accounts for around 30% of the prison population under the responsibility of the General State Administration. The prisons visited are a third of all the ordinary correctional facilities; that is, those equipped to imprison inmates on a closed basis or preventive inmates under the same regime.

Specifically, inspection visits have been made to 21 prisons run by the SGIP: Albacete, Albocásser (Castellon), Alcázar de San Juan (Ciudad Real), Alicante-Cumplimiento, Alicante II in Villena, Basauri (Bizkaia), Dueñas (Palencia), El Dueso (Cantabria), Madrid I in Alcalá de Henares, Madrid II in Alcalá de Henares, Madrid VII in Estremera, Martutene (Gipuzkoa), Monterroso (Lugo), Morón de la Frontera (Seville), Nanclares de la Oca (Alava), Pereiro de Aguiar (Ourense), Picassent-Cumplimiento (Valencia), Soria, Villabona (Asturias), and Villanubla (Valladolid); as well as Madrid V in Soto del Real, as part of the European Council's programme of in situ training; and the military prison in Alcalá de Henares (Madrid). All the above establishments accommodate both inmates serving sentences and people in preventive custody awaiting trial.

Visits have been made to 22 prisons. They accommodate an approximate total of 20,000 inmates (30% of the prison population under the responsibility of the General State Administration)

They all accommodate both inmates serving sentences and people in preventive custody awaiting trial

Graphic 17. Geographical location of prisons visited in 2010



I.1. Prisons run by the Office of the Secretary General for Prisoners (SGIP)

Upon arrival, new inmates are identified, their personal file is opened and they are informed of their rights and responsibilities

In the first 24 hours they undergo a medical check-up. They are allocated an accommodation block

Remand inmates are not classified in prison. Following final sentencing, they are grouped into one of the three prison degrees.

In December 2010, 1.76% of inmates were first degree, 72.20% second degree, 15.53% third degree, with the remainder pending classification. An ex-officio review is made of each inmate every 6 months

315. When new inmates enter a prison, they are identified and a personal file is opened, and they are also informed of the rights and responsibilities they have pursuant to the provisions of articles 3 and 4 of the LOGP. Inmates may at any time request information on the status of their legal proceedings and imprisonment, as well as access the data recorded in their electronic file. Transsexuals may, upon arrival, inform the staff of their condition in order to receive information of the options and rights to which they are entitled, as regards their accommodation at the centre.

316. Over the course of the first 24 hours, inmates undergo a medical check-up in order to verify their state of health, and then they are interviewed by various specialist members of staff (social worker, educator, jurist, psychologist and teacher), with a view to understanding their social and family circumstances and allocating them their block (inmates' accommodation unit) where they are to live, and other concurrent circumstances of their imprisonment and the security measures that are to be adopted as appropriate.

317. Remand inmates are not classified in prison, applying the orders given by the courts holding them in prison. Once sentence has actually been passed, all inmates are grouped into one of the three legally determined prison degrees, depending on their character, their individual prison record, their family, social and criminal record, the length of the sentence imposed, as well as other factors specified in prison legislation. All this informs a regime of security and control measures, which are gradually eased until attaining what is referred to as the third degree, which is the moment when the inmates are transferred either to an open section or to a halfway house (CIS), where the general idea is that they are required solely to spend the night from Monday to Thursday.

In December 2010, of the 63,403 inmates in prisons run by the SGIP, 50,737 of them had been sentenced, of whom 1.76% were grouped into the first degree, 72.20% into the second degree, and 15.53% into the third degree; the remaining 10.50% were pending classification, in a living regime that in practice was akin to the second degree, which is also the most common initial grouping for those given custodial sentences. The prison classification is regularly reviewed based on a proposal by the Processing Board (*Junta de Tratamiento*) at the prison holding the inmate, with the final decision being made by the SGIP. An inmate may appeal against this decision before the parole court (JVP), as well as request a review of their prison degree. Every six months, the prison authorities are required to proceed to an *ex-officio* review of each inmate's degree.

Insofar as human resources are concerned, at the end of 2009, and according to official sources, the SGIP employed 24,432 public sector workers, including 482 in the non-departmental public body dealing with prison facilities and labour - *Trabajo y Prestaciones Penitenciarias*.

318. The occupancy of the prisons visited ranges from around 100 inmates at Alcázar de San Juan (Ciudad Real) or 200 at Soria, to the almost 1,600 at Albocásser (Castellon), Dueñas (Palencia), Morón de la Frontera (Seville) and Villabona (Asturias). Amongst the prisons visited, the fullest was the prison complex at Picassent (Valencia), with more than 2,400 inmates. Along these lines, emphasis needs to be placed on the serious problem of overcrowding in many Spanish prisons, which means an almost general breach of the legal mandate of the so-called principle of individual cellular confinement (one prisoner per cell); whereby with just a handful of exceptions the cells have two, three or even four occupants — as at Alcázar de San Juan, Morón de la Frontera, Picassent and Soria —, or even five, as at Albacete. Likewise, there is also a clear need to suitably staff the prisons to avoid any worsening of the conditions caused by overcrowding due to a lack of personnel for the real needs of guarding and caring for inmates.

319. Regarding the breakdown of the prison population at the establishments visited, it should be noted that although only one of them was specifically for women, Madrid I in Alcalá de Henares, 14 prisons had at least one women's block and some of these also had a specific block for mothers with dependent children up to the age of three.

320. Almost none of the prisons make a strict segregation between prisoners on remand and those serving sentences, thereby contravening the provisions of articles 8 and 10 of the LOGP. At the interviews held during the inspection visits, prison staff explained that when allocating an inmate to a specific module the preferred method was to study their criminal profile rather than consider the state of their court proceedings, which does not always work in practice or uphold their rights, particularly in those prisons that do not have enough units for inmate segregation.

321. Most of the prisons are situated outside cities, which may sometimes make it difficult for family members to visit. Nevertheless, some of the older establishments have managed to arrange a bus service, whereas at the more modern prisons the current economic climate has made it difficult for local authorities to afford the outlay required for introducing a new service or extending an existing one for this purpose. Regarding access to the prisons, note should be taken of the precarious state of the road leading to Madrid II in Alcalá de Henares (Madrid), which is very dangerous for anyone making their way there on foot, and so a request for action has been submitted to the corresponding road authorities at the Dirección General de Carreteras of the Community of Madrid.

322. Regarding the facilities at the prisons visited, four of them are “standard models” Albocásser (Castellon), Alicante II in Villena (Alicante), Dueñas (Palencia) and Madrid V in Soto del Real (Madrid); in other words, prisons built within the

Emphasis needs to be placed on the serious problem of overcrowding in Spanish prisons

Of the establishments visited, only Madrid I in Alcalá de Henares is specifically for women

There is almost no strict segregation between prisoners on remand and those sentenced

Most are situated outside cities, which may make visiting difficult

Four of the prisons visited are the so-called “standard models”. Most of the others were built around the 1980s



past twenty years according to a standard building model, designed to accommodate a large number of inmates (just these four prisons house approximately 6,000 inmates), which involve a complex with a land area of more than 7 hectares. Most of the other prisons were built in the 1980s and the oldest establishments are Martutene (Gipuzkoa), dating from 1948, and El Dueso (Cantabria), from 1907.

The inside layout of the prisons differs greatly. The standard models have a wide range of modules and buildings, allowing a more satisfactory distribution of inmates

Most of the prisons visited are in an acceptable state of repair and maintenance. There are still, however, certain specific shortcomings

Staff quarters are acceptable in the modern prisons

Generally speaking, there is insufficient space and furnishing in second-degree cells

At the older prisons, the locking and unlocking of the cells is not centralised

323. Regarding the interior layout of the prisons visited, the “standard models” have a wide range of separate interior units, which ensures a more acceptable distribution of inmates (around 14 ordinary residential models, a block for receptions, departures and transfers, a healthcare building, an solitary confinement facility, a communications building, a sports centre, a socio-cultural area, kitchen, laundry, workshops and storerooms). The structure of the other prisons corresponds to very different eras, being highly diverse and difficult to define systematically. The Alicante-Cumplimiento prison, for example, is very little suited to custodial purposes given the numerous areas with reduced visibility, which may hinder appropriate surveillance by the guards and the inmates’ safety.

324. Although the current economic crisis has meant a sharp reduction in prison budgets and, therefore, in the funds available for repair work, the overall state of the upkeep and maintenance of most of the establishments visited is satisfactory, albeit there are still specific and ongoing shortcomings, such as the unpleasant effects of the power generating units at Madrid II in Alcalá de Henares (Madrid), the damp patches in the arts and crafts workshops at Monterroso (Lugo), the cracks in the façade at Pereiro de Aguiar (Ourense), or the problems of damp in the infirmary at Soria. At the prison in Nanclares de la Oca (Alava), the scheduled building of a new prison has put a stop to several planned instances of maintenance and repair work, with the exception of those deemed essential.

As regards the state of repair of the staff quarters, it can be considered acceptable in the modern prisons, but not so in the older ones, such as Madrid II in Alcalá de Henares, Martutene (Gipuzkoa) or Nanclares de la Oca (Alava).

325. Bearing in mind that, as noted earlier, most second-degree inmates have to share a cell, the space and furnishings provided are generally insufficient to cater for the needs of the inmates occupying them. Furthermore, there is a problem, as the bunks, which have up to three tiers, tend not to have any guardrails to protect against falls, which in certain cases have involved serious injuries, as noted during some of the inspection visits.

326. At the more modern establishments, the cells have central locking and unlocking, but this is not the case at the older ones. Some of the spy holes in the

cell doors are a safety hazard as they are simply hollow holes, and this should be corrected, although special mention should be made of Pereiro de Aguiar (Ourense) where the windows are made of reinforced glass, which gives a much less oppressive feeling than in a standard cell.

327. The ventilation of the cells can generally be considered satisfactory, as they are fitted with windows that can be opened. The attachment of perforated steel shutters on some of the cell windows at certain prisons for reasons of security is now the exception. The Ombudsman has been informed that this follows a commitment undertaken accordingly in cases such as Morón de la Frontera (Seville) and Nanclares de la Oca (Alava). At Albacete and Alicante-Cumplimiento, the Ombudsman was informed that a technical solution is being sought for their definitive removal.

328. Regarding the temperature on site, the more modern prisons and a large number of the older ones have central heating systems, but no air conditioning. The Alicante-Cumplimiento prison has neither central heating nor air conditioning, although the staff did say that permission is given to have portable heaters and fans. In spite of this, during some of the inspection visits the inmates complained of being either too hot or too cold during more severe weather conditions.

329. The cells are lit by both artificial and natural lighting, which is generally acceptable, and in those cases in which more specific lighting is required inmates are allowed to have table lamps. The point also reiterates the comments made in paragraph 327 about perforated steel shutters.

330. During the inspection visits made, it has been observed that those cells occupied by several inmates are more difficult to keep clean, which is also the case when the same area is used for recreational activities and as a canteen. Whilst the cells are cleaned by the inmates, as part of their mandatory personal duties, all the other areas are cleaned by inmates who may receive a reward, even in cash (this is referred to as paid duties, or “*destinos remunerados*”). The disinfection and rodent control of the premises is undertaken as per the regulations, or whenever deemed necessary for whatever circumstance.

331. Inmates have permanent access to sanitary facilities, with the cells being fitted with their own toilet and washbasin, with a shower only in the more modern prisons. In addition, there are external toilets available during those times when the cells are locked. Inmates are required to look after and care for their personal hygiene, although there are no specific timetables or rules. Upon arrival at a prison, and at regular intervals, inmates are provided with batches of personal toiletries. Furthermore, inmates can purchase other toiletries from the prison shop.

The ventilation of the cells can be considered satisfactory and the perforated steel shutters on the windows are now the exception

The majority of the prisons visited have central heating systems but no air conditioning

The artificial and natural lighting conditions in the cells are generally acceptable

It is difficult to maintain satisfactory levels of cleanliness in shared cells. Disinfection and rodent control are performed

There is permanent access to toilets

Satisfactory state of cleanliness and condition of bed linen and towels. Own clothes may be worn

The day areas at the more modern centres are in a better state of repair

CCTV should permanently cover the entire premises housing the inmates, except inside sanitary facilities and cells. Images should be continuously recorded

All the centres visited have an emergency protocol. The more modern centres have visible evacuation information

Many of the prisons visited have an intercom or call system inside the cells

332. In other matters, and generally speaking, the prisons have an adequate provision of mattresses, sheets, blankets and towels that are suitably clean and in good condition, and in a sufficient number to cater for all the inmates. The bed linen and personal laundry of inmates, who may wear their own clothes, are washed weekly through a laundry service.

333. The day areas in the more modern prisons are in a better state of repair and are equipped with a television and sufficient chairs and tables. At the older establishments, as it is general practice to use the same area for recreational use and as a canteen, the conditions tend to be more deficient, which sometimes leads to minor incidents because, for example, there are not enough chairs to go round.

334. Regarding CCTV surveillance, modern prisons have this system in the canteens, recreational areas, yards, general corridors, corridors in the blocks, workshops, sports centre and socio-cultural area, but not in the cells, visiting rooms or facilities for conducting personal searches and taking down particulars; the older ones are more diverse in this respect and with a smaller presence of devices of this nature — excluding perimeter areas —, which sometimes have obsolete systems that, moreover, are not always fully operational. Furthermore, the modern prisons can make recordings, either as requested or permanently, which is rare in the older ones. Accordingly, CCTV should permanently cover the entire premises housing the inmates, with the exception of the inside of sanitary facilities and cells, and the images should be continuously recorded and kept for a pre-established time that is long enough to allow subsequent monitoring by the competent authority.

335. Regarding fire-fighting measures, it should be noted that certain facilities at the prisons have smoke detectors and alarm systems, and all those visited have hoses, fire extinguishers and an emergency protocol. According to the prison staff, there are rules for practising evacuation, in addition to the training the guards have already received when they joined the prison service. The more modern centres also have evacuation information displayed in communal areas.

336. The cells in many of the prisons are fitted with an intercom or call system for notifying staff of any incident. As reported during the inspection visits, the authorities are committed to installing such a system at those prisons that are still without one, such as Alicante-Cumplimiento, Madrid II and in the cells on the ground-floor row at Martutene. Accordingly, the Ombudsman is monitoring the pace at which this commitment is fulfilled.

337. The kitchen facilities are inspected regularly by senior staff from the health departments of the corresponding autonomous communities, with their state being satisfactory in general terms.

The menus at the centres visited are prepared by the personnel contracted accordingly and assisted by inmates, who carry out this prison work as a paid duty; the food consists of hot and varied meals, and this menu is renewed each season, and at the El Dueso prison (Cantabria) there is even the possibility of choosing between several menus, and in several prisons the inmates are allowed to take part in drawing up the menu. It should be noted that recent budget cuts have not affected the amounts spent on this item. In addition, inmates are provided with the special food they require for religious or health reasons, catering for specific diets (Muslim, vegetarian, for diabetics, bland, etc.). Along these lines, it has been noted during the inspection visits that the religious precepts regarding the intake of food during Ramadan are respected. There is also a prison shop, where inmates can buy food and drink outside meal times.

On some inspection visits, the inmates complained about the food, either regarding its quality or because it was served cold, so the delegates from this Office were present when the food was served and then suggested a number of possible remedies, which often involve no more than the repair of the faulty food trolleys responsible for the loss of temperature.

338. Prison healthcare distinguishes between a routine request, in which case at the modern prisons the doctor goes to the block housing the inmate, whereas in the older ones the inmate is the one who goes to the infirmary; an urgent request, whereby the inmate can be attended 24 hours a day for emergency reasons; and scheduled care, in those cases in which the medical staff wish to monitor chronic complaints and summon the patient to the surgery for this purpose, or when a request has been made for the presence of a specialist from the public health system, who attends the patient at the prison itself. Furthermore, whenever necessary the public health service is used for emergencies or scheduled appointments at certain hospitals in the public network that have a UCH secure unit (For illustrative purposes, see chapter 6.1 in this report).

In addition, a medical check-up is conducted whenever there is an incident leading to some form of injury, which is duly reported to the competent court.

339. On a general basis, all the prisons have a medical team consisting of doctors, registered nurses and junior nurses, and at those centres with women inmates and children, gynaecologists and paediatricians; nevertheless, most specialist healthcare is provided by the general public health service. The SGIP's

The kitchens are in a satisfactory condition

The menus are prepared by contracted personnel assisted by inmates

At some inspection visits, there have been complaints about the quality or temperature of the food

Healthcare is provided in response to a routine or urgent request and on a scheduled basis. Whenever necessary, the public health service is used

A medical check-up is conducted following an incident with a possible injury

Own healthcare team. The general public health network is used for specialist care



human resources include 377 doctors, 583 registered nurses (DUEs) and 440 junior nurses, as well as 114 health professionals from different fields (pharmacists, laboratory and X-ray technicians, orderlies and physiotherapists).

It is considered important to develop a remote medical care service

At present, the only prisons visited that provide remote healthcare services are Albocásser (Castellon), Madrid II in Alcalá de Henares and Morón de la Frontera (Seville), whereas at Villabona (Asturias) the SGIP is holding talks on this matter with the health department of the Principality of Asturias. Along these lines, it is deemed important to develop these services in order to partially alleviate the difficulties that often arise when transferring inmates to hospitals and when summoning health service specialists to the prisons. According to the information provided, the SGIP has organised several working sessions to boost these services and has set up a working party accordingly in tandem with certain autonomous communities.

The infirmaries at the modern prisons are on a par with any public health centre. The situation at the older ones is more varied

340. The infirmaries at the modern prisons have facilities that are on a par with any public health centre and are furnished with modern medical equipment (dentist's chair, x-ray room, blood analysis equipment, etc.). The older ones, however, are very varied, although most of them fulfil the minimum requirements in this matter, with the following exceptions: Albacete, Alicante-Cumplimiento (where it often happens that given the lack of free beds some inmate patients spend the whole day in the infirmary and then return to their blocks to sleep) and Nanclares de la Oca (Alava), whose infirmary is a former juveniles block that has been refurbished and does not meet sanitary requirements in the most satisfactory way. On a more positive note on the other hand, there is the infirmary at Alicante II in Villena, which has a gym for physiotherapy rehabilitation. Overall, the closed prisons have more than 2,000 beds in infirmaries, according to data provided by the SGIP for 2009, added to which are the ones available at the secure hospital units (UCH), which are referred to in section 6.1 in this report.


The lack of suitable psychiatric care for inmates is especially serious. General concern expressed by all the medical staff at the prisons

341. Especially serious is the general lack of suitable psychiatric care for inmates. The prisons visited do not have a psychiatrist amongst their staff, which means that this care is provided by public health service psychiatrists or by hiring outside consultants, who visit the prison with varying frequencies, ranging from once a week to once a month. Regarding this matter, emphasis should be placed on the concern generally expressed by the medical staff at the prisons about the growing problem mental health poses for inmates, which has led to the implementation of a specific programme for mental healthcare called PAIEM (Framework programme of comprehensive care for mental health patients). It is therefore considered necessary to increase the frequency of the psychiatric and psychological care provided for inmates.

342. Regarding inmate fatalities in prison, it should be noted that over the 2003-2009 period, the annual number of deaths in prisons run by the SGIP ranged between 160 in 2003 and the 225 recorded in 2008. In percentage terms, the mortality rate has fluctuated between 0.34% in 2003 and 0.40% in 2006. The official data published by the SGIP indicate that in 2009 there were 224 deaths in prison (216 men and 8 women) specifying that 57% were due to natural causes without including the complications associated with HIV, 21% related to drug overdoses, 12.10% to suicides, 7.60% to complications associated with HIV, 1.30% (3 cases, the same as in 2008) to aggression, which despite being a low overall number is a significantly higher rate than in the population at large, and 0.90% to accidents. The mortality rate in prisons in 2009 was 0.34%, whereas in the population at large that rate is exceeded only after the age of 53 (0.36%), according to figures provided by the INE; the average age of the deceased in prison, however, was 44,5 years. For that average age, the mortality rate in prisons easily doubles the rate in the general population (0.15% at 44 and 0.18% at 45 for both sexes). Whenever a death is reported, a corresponding investigation is conducted by the Ombudsman's Security and Justice Department.

343. Official data for 2010 indicate that Spanish prisons were the scene of 56 suicide attempts and 23 deaths recorded as suicides. All the deaths by suicide involved hanging, which accounted for 64.28% of the total attempts, followed by self-inflicted cuts (23.21%) and swallowing harmful products (7.14%). A third of the deaths by suicide and a fifth of all attempts took place while inmates were in solitary confinement. Seven of the deaths by suicide involved inmates who were remanded in custody. Although the suicide rate in Spain is significantly lower than in other European countries, it cannot be ignored that the rate in prisons, based on data for 2009, is six times higher than the rate amongst the general population; specifically, in 2009 there were 3,429 deaths recorded as suicides amongst both sexes in the general population (0.0075%), whereas the prisons run by the SGIP recorded 27 cases, which is 0.0453%. Whenever the Ombudsman's office hears of a case, it proceeds to open an *ex-officio* investigation to monitor the scope of the confidential information that is gathered in all cases by the prison authorities, as well as the legal proceedings that, as appropriate, are instigated.

In addition, the inspection visits to prisons are used to monitor the implementation of the suicide prevention programme, whose purpose is the early detection of individual risk in order to take measures, which can even involve 24-hour accompaniment in order to prevent any suicide attempt. Specifically, according to SGIP sources, none of the inmates who died in 2010 and whose death was recorded as suicide was following this programme, yet this was the case for 18 of the people who attempted but failed to commit suicide.



The Ombudsman conducts a corresponding investigation whenever it is informed of the death of an inmate in a prison

According to official data, in 2010 there were 56 suicide attempts plus 23 deaths recorded as suicides

The inspection visits are used to monitor the implementation of the suicide prevention programme

There are several programmes for dealing with substance abuse

344. Likewise, there are several programmes for dealing with substance abuse, supervised by the prison authorities themselves or by non-profit organisations, which may take the form of drug-free modules (in which case the inmates voluntarily accept being housed in a specific area and agree not to take any kind of drugs); therapeutic modules; maintenance programmes involving methadone; and programmes for exchanging syringes (which are in decline due to the fewer number of users). In addition, this matter receives priority attention in health prevention programmes. Accordingly, favourable mention should be made of an innovative programme at Nanclares de la Oca (Alava) in which those inmates that so require are given buprenorphine patches as a substitute for methadone, with highly satisfactory results, although the prison authorities reported that it is a specific programme that is difficult to extend to other prisons, for both medical and financial reasons.

Whenever the prison regime so permits, inmates may attend specialist treatment centres outside

Furthermore, there is a possibility of attending specialist treatment centres outside whenever the prison regime so permits (third degree or individual flexibility in the case of second degree). During some of the inspection visits complaints were received from inmates who wanted to be given permission for leave to receive specialist care for their alleged drug addiction; after making the appropriate enquiries, it appears that in many cases the refusal was due to their prison regime or their conduct.

Most prisons have specialised treatment programmes for the re-education and reinsertion of offenders

345. Today, most prisons have a catalogue of specialised treatment programmes designed for the re-education and social reinsertion of offenders, and of a voluntary nature (rehabilitation programmes for sexual aggressors, schemes for those convicted of domestic violence, support for foreign national inmates, the mediated resolution of conflicts, health education, therapies with animals, programmes for inmates in closed prisons, programmes for those aged under 25, programmes on road safety and education, etc.). Nevertheless, it is of concern that some prisons cannot provide these activities for all the inmates they house due to a lack of specialist staff. Bearing in mind that these programmes seek to respond to the aims that the Spanish Constitution lays down for custodial sentences, it should be considered a priority to provide the resources required for these programmes.

Note should be made of the extension of the modules of respect observed, which by mid 2010 amounted to 119 modules at 62 centres

346. Note should be made of the extension of the modules of respect observed at the prisons run by the SGIP, which by mid 2010 amounted to 119 modules at 62 centres. The main feature of these modules is that access to them requires the subscription of a “contract” by an inmate, who thereby undertakes to maintain an especially respectful attitude towards the guards, their fellow inmates and the rules governing these units, as well as agree to take part in any proposed activities, which go beyond what is purely contained in the prison regulations. In short, it constitutes a reinforced commitment by inmates to their own re-education, which is rewarded by the dedication the

authorities make to their re-socialisation process. The operation of modules of this nature is based on inmate participation and on the existence of numerous committees responsible for managing their everyday life, whereby the formal control systems used by the prison authorities are activated solely when strictly necessary.

The main channel for conflict resolution in these blocks involves dialogue between the inmates affected, whereby a disciplinary measure is seen as a last resort, which also compromises the affected inmate's continued presence in the module. The inspection visits made have provided an opportunity to speak to inmates expelled from these modules of respect against their wishes, who expressed their desire to rejoin them once more. The difficulty in remaining in these modules lies in the high level of commitment required of the inmates in practice. Nevertheless, expulsions are not definitive, but contemplate a possible reprieve if the inmates' attitude changes for the better. Whilst acknowledging the benefits of this measure, it should be noted that their level of requirement restricts the profile of the candidates able to join these modules, whereby there continues to be a need to further develop treatment programmes that are applicable to broader groups.

347. The authorities are required to provide both basic education for inmates and their possibility of studying the corresponding courses in secondary and higher education. By means of agreements with the autonomous communities, which are responsible for education in their regions, public sector employees from the corresponding departments render their services at the different prisons, which tend to be rated as adult training centres, or are attached to a centre of this kind in a nearby town or city, which in both cases enables inmates to receive a recognised qualification in those studies they have completed successfully. In addition, they can study a university degree through the Spanish National Distance-Learning University (UNED).

The most significant shortcoming observed during the inspection visits was the shortage of teachers for attending to the inmate population at certain prisons, such as at Morón de la Frontera (Seville), where there is a long waiting-list.

The prisons also have libraries, both general ones and in the modules, which are stocked with books, the daily press and magazines, although generally speaking the range of books available in the modules is somewhat limited, and in some cases they do not provide the most appropriate reading material; as in the case of certain multipurpose rooms and modular libraries at the Madrid II prison in Alcalá de Henares.

In addition to formal education, the prisons visited have skills coaches, together with instructors, voluntary social workers, delegates from centres providing extension courses, and other people responsible for organising activities that

Their operation is based on inmate participation and they are made available to inmates who show a reinforced commitment to their own re-education

Access is to be provided to basic education and to the possibility of studying courses in secondary and higher education

The inspection visits have revealed a shortage of teachers in some cases

There are libraries

The centres visited have skills coaches



help to channel certain artistic or instructional interests amongst inmates, such as workshops on radio, theatre, music, painting, laughter therapy, magazines for internal distribution, cultural exchanges with secondary pupils outside, etc. A positive mention should be made of the wide and varied array of activities of this nature to be found at most prisons, as well as the involvement of an extremely ample array of social sectors these activities involve.

Inmates can spend several hours a day outside their cells

348. Inmates spend several hours a day outside their cells, with restrictions for those prisoners who are in first degree (who are entitled to at least four hours a day of communal life), in special departments (at least three hours per day in the yard), who have been confined to their cells as a disciplinary measure (who are entitled to just two hours outside in the yard) or who are in provisional solitary confinement, in which case this lasts only as long as is strictly necessary.

They can exercise or spend time outside

In order to allow inmates to exercise or spend time outside, the prisons have gyms, which have differing facilities available, and prison yards. The more modern prisons have spacious and varied sports facilities, such as a sports centre, gym, football pitches and, in some cases, swimming pools. By contrast, the older prisons have shortcomings that, given the design of their buildings, are difficult to remedy; as in the case of the lack of ventilation and the deteriorated state of the ceiling in the men's sports centre at Nanclares de la Oca (Alava). Furthermore, this prison has several open-air yards that have no benches or ledges to provide inmates with somewhere to sit other than on the ground, with this circumstance also being observed at many other prisons. It should also be noted that not all the prisons have open-air facilities that provide shelter against the inclemency of the weather, and this situation should be remedied.

Lack of sports monitors

The biggest problem at present, however, is the lack of sufficient staff for organising these activities, largely in the form of sports monitors, as is the case at Albocásser prison (Castellón).

During their time in prison, inmates can perform paid work

349. During the time they spend in prison, offenders can perform paid work in the prison's manufacturing workshops (carpentry, dressmaking, printing, etc.) or in the so-called paid duties or "*destinos retribuidos*" (laundry, kitchen, prison shop, maintenance, cleaning, etc.). As regards the former, the prisons visited have workshops — supervised by the prison authorities directly or through sub-contracted firms —, in which those inmates who so request may perform paid work, according to a special arrangement for employment in prisons referred to as "*relación laboral especial penitenciaria*". The current economic crisis has also had its impact on prisons, which means that with a few exceptions, such as at Alcázar de San Juan (Ciudad Real) or Picassent-Cumplimiento (Valencia), where the levels of occupation are very high, as there are not enough jobs for all the inmates who so request, there is a system of precedence, which gives rise to complaints from those inmates on the waiting-list.

350. Regarding religious freedom, it is common practice at all the prisons to grant unrestricted access to catholic priests, imams and ministers from other religious faiths, and no complaints were received on this issue during the inspection visits. Most of the prisons have catholic chapels; at those prisons housing a large number of Islamic inmates, specific areas are assigned to enable them to worship.

351. As regards inmate communications, visits are permitted by family members and friends, according to legally established conditions and, except in the cases of legally imposed solitary confinement (art. 51. LOGP), through visiting booths or in rooms for holding intimate or family visits, for which there are the appropriate facilities. No complaints have been received on this matter, except for certain minor considerations regarding the age of some of the facilities and equipment (intercoms in the booths).

During some of these inspection visits, however, some of the inmates complained about the searches and frisking performed on the relatives of prisoners accused or convicted of terrorist crimes. From 2009 onwards, for reasons of security and on a general basis, all those visiting these prisoners — including minors — had to undergo, in addition to electronic screening and regardless of the results, searches with physical touching. If a visitor refused, the visit was usually cancelled, which led to several incidents at various prisons, with the ensuing loss of family communications, as well as complaints made to this Office. However, dated 16 March 2010, instructions were issued that established specific limits regarding the prohibition of performing these searches on certain types of people (minors, the elderly or those with physical or psychological complaints or disabilities), establishing the need to arrange prior briefing sessions for all those people wishing to hold intimate or family communications.

352. Regarding inmate telephone communications, there are public phones in the residential blocks, although the privacy of the conversation cannot always be guaranteed through the installation of screens or other features. Furthermore, the use of the phones is supervised through a software application, which means that calls may be made solely to those numbers authorised beforehand by the authorities, and for the length and frequency stipulated by the regulations. The complaints the inmates make on this matter tend to refer to the short amount of time they are allowed to use the phone and the ban on mobile phones.

353. Regarding the inmates' access to lawyers, these visits are held without any kind of restriction, beyond the need to comply with each prison's organisational regulations regarding timetables. The sole requirement for authorising the visit is that the lawyer must provide proof of being the one appearing in the court proceedings against the inmate or that there is a justified reason for the visit.

Unrestricted access is permitted to ministers from different religious faiths at all the prisons visited

Visits by family members and friends are permitted according to legally established conditions

The need has been established to arrange briefing sessions for all those people wishing to hold intimate or family communications

There are public phones in the residential blocks. The complaints refer to the short amount of time they are allowed to use the phone and the ban on mobile phones

Lawyers' visits are held without any kind of restriction. The visits are confidential and cannot be interrupted or cancelled

interrupted or cancelled unless by order of the courts and in circumstances of terrorist activity

Searches are conducted on both the inmates and their cells. The frequency increases according to the inmates' prison rating. X-ray examinations require the permission of the courts

During these inspection visits, inmates do not usually complain about the way searches are conducted

SGIP staff do not carry weapons, and no access is permitted by anyone who is armed. As coercive measures, use may be made of provisional solitary confinement, personal physical force, rubber batons, suitably appropriate aerosol sprays and handcuff

No irregularities have been observed during the visits

Based on this Office's experience to date, the justification of these reasons is not particularly strict and does not compromise the confidentiality of the lawyer-client relationship. The visits are held in booths, they are confidential and cannot be interrupted or cancelled unless by order of the courts and in circumstances of terrorist activity (art. 51.2 LOGP).

354. For reasons of interior security, the prisons conduct searches on both the inmates and their cells, with the frequency increasing according to the inmates' prison rating. Whenever strip searches are conducted, these are authorised by the Senior Duty Officer and are always performed by staff of the same sex as the inmate, in a room apart from all the other inmates, with the inmate being provided accordingly with a dressing gown. A written record is kept of both its performance and the reason the measure was taken, with notification made to the prison director. No provision is made in the rules for its notification to the courts, although some prisons do report instances of strip searches. If the result of the search is fruitless and there continue to be reasons to suspect that some item or substance is being concealed in a body cavity, the prison director may ask the competent courts for permission to use X-rays, as these are deemed to be invasive tests.

During these inspection visits, inmates do not usually complain about the way searches are conducted. Nevertheless, one of the inmates at Martutene prison (Gipuzkoa) complained that two days earlier he had been the subject of a strip search in one of the corridors on his row in front of all the other inmates; with his consent, these circumstances were reported to the Ombudsman's Department of Security and Justice, with a view to conducting the appropriate investigation, with the subsequent findings being that the complaint was unfounded.

355. According to prison legislation, in the event of situations that cause a disturbance of the peace, the following coercive measures may be used: provisional solitary confinement, personal physical force, rubber batons, suitably appropriate aerosol sprays and handcuffs. Pursuant to article 72 of the RP, the use of these measures is to be proportional to the situation, to be applied solely for the time as strictly necessary when there is no other gentler means, and they may not constitute a covert punishment. Their use is to be authorised beforehand by the director, except for reasons of emergency, in which case the director is to be informed immediately, and they are to be reported to the court, with a record kept in the inmate's personal file. SGIP staff do not carry weapons, and no access is permitted to a prison by anyone who is armed. The national security and police forces, generally the Civil Guard, are responsible solely for guarding the perimeter areas outside the prisons and do not have access to the blocks or the inmates' communal areas.

Whenever this Office visits the prisons, it is normal practice to visit those inmates who are subject to precautionary measures involving solitary confinement or

have been confined to their cell for disciplinary reasons, and no irregularities have been observed during the course of the same, with it being noted that medical staff visit these inmates on a daily basis.

356. The inmates' disciplinary regime should be designed to uphold their safety and peaceful coexistence. Upon arrival, the inmates are informed of its nature: the offences that can be committed (rated as minor, serious or very serious), the disciplinary measures they may involve (confined to the cell for up to 14 days, detention for up to 7 weekends, withdrawal of permissions for leave, restriction on oral communications, withdrawal of the right to go outside and take part in communal recreational activities and a warning), the written procedure to be followed for imposing a disciplinary measure, and the appeals that can be lodged against it before the courts.

During some of the prison visits, a selection of the disciplinary files has been examined, with no irregularities detected. However, this Office has been unable to gather any statistics on the disciplinary measures applied to inmates, so it has not been possible to know how many proceedings have been instigated, how many decisions have been contested before the courts and how many have been revoked by the courts. The prisons should provide these statistics, given the importance of the information they contain.

357. A perusal of some of the individual files reveals that it is commonplace for the medical reports issued after an examination of the injuries caused by incidents or disturbances to be very brief, although any medical examination arising from a disturbance or incident should follow a procedural protocol that fulfils certain minimum standards of good professional practice. Furthermore, in the event of complaints or accusations of torture or ill treatment, or even when there is not a formal complaint but there are signs that an act of this nature may have been committed, an investigation is to be opened that complies with the provisions of the "Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", commonly referred to as the Istanbul Protocol.

358. Inmates are entitled to make requests and complaints, which they may submit — in a sealed envelope if they so wish — to the courts, to the prison authorities, to the Ombudsman or to any other authority. It fairly often happens that there are letters or requests that are not answered by the authorities, with this being the reason, this Office was told, that the system for managing these complaints and requests is being overhauled to avoid subsequent incriminations.

Independently of the regular inspection visits made to the JVPs, a steady increase has been observed in the latter's use of CCTV conferencing systems for responding to inmates' complaints and for holding interviews with them, as noted at Albocásser (Castellon) and Pereiro de Aguiar (Ourense). Greater use

to inmates in solitary confinement

Upon arrival at the prison, inmates are informed of the disciplinary regime

It has not been possible to obtain statistics on the disciplinary measures imposed on inmates

It is commonplace for the medical reports issued after an examination of the injuries caused by incidents or disturbances to be very brief. An investigation is to be opened that complies with the provisions of the Istanbul Protocol

Inmates are entitled to make requests and complaints

A steady increase in the use of CCTV conferencing systems for responding to inmates' complaints and for holding interviews with them



of this system would be welcome, without this logically meaning any reduction in the physical supervision of the prisons by the JVPs. Furthermore, the increased use of these systems for court proceedings would reduce the need for inmates' leave and their transfer to other prisons, which inconvenience both the inmates themselves and the security forces responsible for their transfer, with the exception being those procedural guarantees that require an inmate to be physically present.

The prisons are subject to several types of both internal and external inspections

359. The prisons are subject to several types of both internal and external monitoring. They therefore receive internal inspections from the SGIP, from the health services in the autonomous communities and from Labour Inspection, as well as supervision by the JVP and the Public Prosecutor's Office, and by the Ombudsman.

In general, the situation of the maternal modules is good. It has been a good idea to create the so-called mothers' units "unidades de madres"

360. Regarding mothers in prison with their children, the data available at the time of writing of this report indicate that, at 31 December 2009, the number of minors accompanying their mothers at establishments run by the SGIP amounted to 218 minors with 206 mothers, with eight being over the age of three, and they were housed in external maternal units and in attached units. Generally speaking, the situation in maternal modules is good; as an example, mention should be made of the module visited at Dueñas (Palencia). Positive mention should be made of the schemes — whose aim is to avoid minors spending their entire time in such an unusual environment as a prison — to arrange for them to leave the prison and attend infant schools in nearby towns, as well as the creation of a new type of infrastructure called mothers' units "*unidades de madres*", located outside the prisons, which at the same time as they provide an environment for the minors help to reincorporate their mothers into society.

All the prisons visited have specific programmes catering for foreign nationals (30% of the inmate population)

361. All the prisons visited have specific programmes catering for foreign nationals, who account for approximately 30% of the inmate population. The overriding aim is to favour their integration through the teaching of Spanish in those cases as necessary, as well as helping them improve their understanding of the prison system. One of the problems that may affect foreign national inmates, which has come to light during the inspection visits made, is that those people without ties to our country have limited funds and are not supported by their consular services. Accordingly, the SGIP has reported that it does not have enough funds to attend to these needs, whereby the sole options for these foreign nationals — as well as for the Spanish nationals who are in similar circumstances — are to take up some form of paid employment, if possible, or seek assistance from an NGO.

A reason for complaint tends to be that the sentence passed does not consider the provision made in Spanish legislation

Furthermore, it should be noted that being a foreign national may have an impact on the possibilities of being granted leave from prison or accessing third degree, especially in those cases in which inmates have no family support outside. Finally, a further reason for complaint tends to be that the sentence

passed does not consider the provision made in Spanish legislation whereby under certain circumstances a custodial sentence can be replaced by removal from the country.

362. First-degree imprisonment, also referred to as “closed regime”, involves the application of high security criteria and constitutes the most restrictive type of living conditions considered by prison regulations. This regime applies to convicted inmates that are considered to be extremely dangerous or clearly unsuited to the ordinary regime (second degree) and open regime (third degree). The exceptional nature of this regime is apparent from official statistics, whereby (as indicated in paragraph 317), in December 2010, 1.76% of the inmate population is classified as first degree.

Many of the prisons visited had a specific block or department for this purpose, where voluntary activities are organised to enable these inmates to undertake certain activities on their own and, as they make progress, they can join activities in small groups, upholding certain minimum rules of coexistence, and with the ultimate aim being to allow them to step up a degree. Accordingly, although outside the year covered by this report, it should be welcomed that Royal Decree 419/2011, of 25 March, has introduced a third section into article 90 of the RP, making it mandatory to design a specific intervention programme to guarantee individual care for those inmates in a closed regime.

363. Although, on occasions, first-degree prisoners have been identified with the inmates included in the so-called “Files on Inmates Subject to Special Monitoring” (FIES), which also includes major drug smugglers, terrorists and public sector workers from the police and prison services who are serving sentences. During the drafting of this report, the aforementioned Royal Decree 419/2011 amended the RP, raising the statutory status of this matter, previously addressed by an internal instruction. Accordingly, pursuant to the new section 4 of article 6 of the RP, files may be opened on inmates for the purpose of safeguarding both their own wellbeing and that of the establishment itself, and under no circumstances shall determine a prison regime other than the one dictated by the regulations.

364. It has been noted that, since 2005, the prisons have been implementing a “Care programme for attending to inmates with physical, mental and sensory disabilities”. This programme basically involves an initial stage for singling out those people who require special care; this is followed by an intervention stage, with a view to catering for therapeutic and care requirements, pre-empting potential risk situations, and even proposing the application of the measures legally provided for according to the status of their court and prison proceedings. The aim of the final stage is to ensure disabled inmates have a release process that is as smooth as possible. During the inspection visits made, it has been noted that

whereby under certain circumstances a custodial sentence can be replaced by removal from the country

First degree, “closed regime” involves the application of high security criteria and constitutes the most restrictive type of living conditions considered

Many of the prisons visited had a specific block for this purpose

The “Files on Inmates Subject to Special Monitoring” (FIES) also includes major drug smugglers, terrorists and public sector workers from the police and prison services who are serving sentences

The “Care programme for attending to inmates with physical, mental and sensory disabilities” has been under way since 2005



the programme, which is currently being organised through a partnership agreement with FEAPS (Spanish Confederation of Organisations in favour of People with Intellectual Disability), is operating well.

I.2. Alcalá de Henares Military Prison (Madrid)

ÚThe only correctional facility where military personnel from all ranks can serve custodial sentences. It can hold 161 inmates, with the average occupancy being 65

365. The military prison in Alcalá de Henares is the only correctional facility where military personnel from all ranks (senior officers, officers, junior officers and rank and file soldiers) in the armed forces and the civil guard can serve the custodial sentences imposed by military or civil courts. In this latter case, if the sentence includes expulsion from the forces, they are sent to a prison run by the civil authorities. This prison likewise houses those military personnel who have been remanded in custody awaiting trial. Apart from guaranteeing the sentence imposed is served, the prison's remit is to re-educate and, insofar as possible, reintegrate the inmates into the Armed Forces. The prison can hold 161 inmates, with the average occupancy being 65 prisoners.

The competent authorities have been informed that more detailed secondary legislation is required to remedy the shortcomings in the development of the regulations on military prisons

366. Article 348 of Public General Act 2/1989, of 13 April, on military legal proceedings, stipulates that custodial sentences are to be served at military prisons and are to be undertaken in accordance with the aforementioned act and with the Regulations on Military Prisons, "which are to be based on the principles of the LOGP adapted to the specific structure of the Armed Forces". A study of Royal Decree 1396/1992, of 20 November, approving the Regulations on Military Prisons, suggests these have not been sufficiently developed by the Ministry of Defence. Accordingly, they are supplemented by the use of the general regulations, which are not always entirely appropriate, which means the prison director, with the advice of the governing board, decides upon the actual measures to be taken that affect the inmates. Consequently, the Ombudsman informed the competent authorities that this legal gap needed to be filled with more and more detailed secondary legislation, which has led to the creation of a working party for this purpose.

Upon arrival, new inmates are provided with written information on the prison regime. This will be applied according to the nature of the sentence imposed

367. Upon arrival, new inmates are provided with written information on the prison regime, their rights and obligations, disciplinary rules and the channels for submitting requests, enquiries, complaints and appeals. Following their admission, inmates are assigned to a specific module depending on their circumstances in a way that is similar to the process at civil prisons, also taking into account their military rank. The regime applied to the inmates will depend on the nature of the sentence they are serving, which is likewise divided into three degrees and follows identical criteria of promotion and demotion as in civil regulations.

368. The prison is located on the road from Meco to Alcalá de Henares and the options available for getting there by public transport are satisfactory. The facilities cover an area of 4 hectares. The buildings date back to 1979, although numerous alterations and a great deal of maintenance work have been performed since then and the general state of repair is good. Nevertheless, the development of building criteria and the modular structure of correctional facilities introduced since then recommend the need for a major refurbishment. As reported, the Ministry of Defence was provided with a report on the establishment's requirements (ADNE) that follows along these lines, so it would be convenient to proceed to its assessment.

369. The facilities housing the inmates consist of 132 individual cells (123 for men and 9 for women) and 19 collective ones, distributed between the various modules and buildings. In all cases, the cells have more than 10 square metres, which can be considered satisfactory. Depending on the location and distribution of the cells in the various buildings, their characteristics and age vary, although their conditions are generally acceptable. They are provided with basic items of furniture (shelves, tables, chairs, cots if required, etc.) and their own sanitary facilities with a toilet and washbasin. The cell doors are made of steel and, in some cases, of wood, and they do not have bars or grilles, remaining unlocked throughout the day.

370. The ventilation and temperature observed during the visit were acceptable, which was also confirmed by some of the inmates. There is central heating but no air conditioning in the cells or in the communal areas and canteens. The cells are lit by both natural lighting — they have outside windows — and artificial lighting, being sufficient for carrying out everyday activities. The state of cleanliness observed during the visit was good, with this being the inmates' responsibility. The prison has pest control services.

371. As they are located inside the cells, there is permanent access to the toilets. On this matter, inmates are required to look after and care for their personal hygiene. Upon arrival at the prison inmates are given a batch of personal toiletries, as well as any items they ask and pay for. Furthermore, this basic batch of products, which also contains feminine hygiene products for women inmates, is restocked each month.

The prison provides bed linen and towels in sufficient quantity and in good condition, which are washed by the establishment's laundry service, as are personal items of clothing. Inmates wear uniforms.

372. Regarding CCTV, during the visit this Office noted the presence of cameras in the recreational areas, in certain indoor passageways and outside in the yards, whereas there are none inside the cells, toilets, visiting rooms or search and registration rooms. No information was provided on CCTV recordings.

The facilities cover an area of 4 hectares. The general state of repair is good. Nevertheless, the age of the buildings recommend the need for a major refurbishment

The size of the cells is considered satisfactory. Their doors are made of steel and remain unlocked throughout the day

The ventilation and temperature observed during the visit were acceptable. The lighting was satisfactory and the facilities were clean

Permanent access to toilets. Upon arrival, inmates are given a batch of personal toiletries

Bed linen and towels in good condition. Inmates wear uniforms

No information was provided on CCTV recordings

There are fire-fighting measures and evacuation instruction rules

373. Regarding fire-fighting measures, there were smoke detectors, alarm systems, fire extinguishers and an evacuation protocol, with emergency exit information on display in communal areas. Although the cells do not have any of this equipment, there is nevertheless an intercom system for reporting any incident to the guards, with the latter also reporting that there are evacuation instruction rules and fire practices are held on a regular basis involving both staff and inmates.

Same for both inmates and staff. Permanent and unrestricted access to drinking water

374. The food, which is the same for both inmates and staff, is cooked at the prison itself. Meals are provided at breakfast, lunch and supper, with hot and good quality food in each case. The menu is set by the Head of the Kitchen Department according to the calories and nutritional requirements specified by an expert. In addition, inmates are provided with any kind of special diet they require for religious or health reasons. Access to drinking water is permanent and unrestricted, as is access to food and drink outside meal times, as they can be requested and there are vending machines on the premises.

24-hour healthcare

375. The inspection visit revealed that healthcare is available to inmates 24 hours a day, given that it is provided by doctors and DUEs belonging to the Military Health Corps who are duty for full-day shifts. They are supported accordingly by the appropriate infirmary, suitably provided with an annexed observation ward. If required, patients can be transferred to a military hospital, Hospital Central de la Defensa, in Madrid, or, in an emergency, to the nearby Hospital Universitario Príncipe de Asturias, in Alcalá de Henares (Madrid).

The guidelines for healthcare are similar to those at civil prisons. The main advantage is that the prison has a dedicated psychiatrist

The guidelines for the initial check-up, general healthcare procedures, the process regarding infectious and contagious diseases and gynaecological care are not substantially different to those applied at civil prisons, although the problems described for consulting outside specialists do not have the same impact, as the armed forces have their own medical services. The main advantage in this matter is that the prison has a dedicated psychiatrist (personnel from the Military Health Corps). Gynaecological, dentistry and optic care is provided at the Hospital Central de la Defensa whenever so required.

Protocol for the prevention of suicides and treatment of substance abuse

The prison has a specific protocol for the prevention of suicides, although it does not have an appropriate cell for accommodating inmates of this kind, and the Ministry of Defence has been informed of this circumstance, with a view to conditioning a cell for this purpose. In addition, there are programmes for treating substance abuse.

Spacious and comfortable recreational areas and a library

376. The recreational areas, where inmates may spend most of the day, are spacious and comfortable. They are furnished with television sets, chairs, tables, and vending machines for food and drinks. There are, in addition, two rooms specially furnished for children to play in and spend their time — they are well appointed and have plenty of equipment —, for whenever the case may arise. The

establishment also has a library, which is very spacious with a large amount of reading matter, in addition to the daily press and magazines. The inmates are likewise provided with games equipment and the option to attend educational and training workshops.

With a view to enabling inmates to exercise and play sports, or spend some time outdoors, the prison has a well equipped gym supervised by a sports trainer, as well as several yards with sports facilities.

377. During their time in prison, inmates can study all levels of education up to a university degree, which is arranged through the UNED. On this matter, the Ombudsman was informed that the rate of academic success is around 60%. There are no manufacturing workshops.

378. The establishment has a catholic chapel. Furthermore, inmates may receive a visit from a minister of their faith.

379. Oral, special, written and telephone communications are governed by the rules set out in the RP. Ordinary visits are held in large rooms, not in booths, and are supervised by the prison guards; permission may also be granted for receiving intimate visits once a week, for which the appropriate facilities are available. In addition, inmates may be granted permission to make phone calls using the public phones that operate through a smart card system, similar to the one used at other correctional facilities.

Regarding the inmates' right to see their lawyers, visits by legal counsels are unrestricted and there is a special room set aside for this purpose.

380. Regarding searches and restraining methods, application is made of the general rules for prisons specified in paragraphs 354 and 355.

381. Pursuant to the provisions of the Regulations on Military Prisons, this establishment applies the rules of the RP's disciplinary regime in matters of offences and sanctions. The procedure for the application of disciplinary measures is likewise specified in the RP, and any disciplinary measures may be contested before the courts. Nevertheless, even when no appeal is made to the courts, and regardless of whether or not they have been fulfilled, such measures may be revoked or reduced by the Secretary of State at the Ministry of Defence, whenever it is ruled that the measure imposed was unlawful.

Under certain circumstances, inmates may be placed in solitary confinement. Accordingly, there are six customised cells for this purpose with the same characteristics as in all the other prisons, with inmates entitled to go out into the yards for several hours and receive visits in the same way as all the other inmates, including intimate communications. The prison director may order solitary confinement for up to 14 days, with a court order required for any longer periods. A written record is to be made of the adoption of this measure, as well as a

Well equipped gym

Recognised courses may be studied. There are no manufacturing workshops

Visits from a minister of their faith

Oral, special, written and telephone communications are governed by the RP. Ordinary visits are held in large rooms

Unrestricted visits from lawyers

Similar search and restraining methods as in civil prisons

In matters of offences or sanctions, application is made of the rules of the RP's disciplinary regime

Inmates may be placed in solitary confinement under certain circumstances



description of all the circumstances, with the option available of contesting the measure by urgent proceedings instigated before the JVP. Throughout the time spent in solitary confinement inmates undergo a daily medical check-up.

*Making complaints.
The JVP conducts a
monthly inspection*

382. Inmates have their corresponding statutory process for making complaints, which are submitted to the prison director, who will verify them and provide a response, providing the inmate involved with a receipt. If necessary, the complaints are brought before the JVP or sent to the appropriate authorities. The JVP conducts a monthly inspection of the prison.

II. Centres for young offenders

*The LORPM distinguishes
between the offenses
committed by persons
under the age of 14 and
those committed between
the ages of 14 and 18.
Royal Decree 1774/2004, of
30 July, develops the
general statutory
framework of centres for
young offenders.*

383. The current Criminal Code, which dates from 1995, specifies that the minimum legal age for imprisonment is eighteen and informed the enactment of independent legislation to expressly regulate the criminal liability of those under that age. In compliance with that legal mandate, Public General Act 5/2000, of 12 January, was passed to regulate the criminal liability of juveniles (LORPM), which distinguishes between the offenses committed by persons over the age of 14 and under the age of 18, and those committed by persons under the age of 14. In the former case, it provides for what are referred to as “young offender centres”, designed not for serving “sentences” in the technical-legal sense, but instead for applying what are referred to as certain “measures” of detention and of other kinds. If “sentences” and “measures” coincide for the purpose of reinsertion mentioned in article 25 of the Spanish Constitution, the “minor’s greater interest” is the specific purpose of the so-called “measures” within the sphere of young offenders. Royal Decree 1774/2004, of 30 July, approved the Regulations of the Public General Act governing the Criminal Liability of Juveniles, which develops the general statutory framework of centres for young offenders.

*It befalls the autonomous
communities and cities to
apply the measures
imposed upon young
offenders by the courts*

The application of the measures imposed by the juvenile courts befalls the autonomous communities and cities, pursuant to article 45 of the LORPM, which in practice means a wide diversity not only in the public authorities with powers in the matter, but also, and this is more important, in management systems. The authorities in the autonomous communities may create centres for young offenders, but they may also enter into agreements with public or non-profit organisations (art. 45.3 LORPM) for the application of the measures in public or private centres. Nevertheless, in those cases of private management there is no conveyance of the powers in matters involving young offenders and supervisory powers are to be retained under all circumstances. The application of the measures regarding offences falling within the jurisdiction of the High Court (Audiencia Nacional) corresponds to the

central government, which may also enter into the aforementioned agreements (article 8.2 of the Regulations).

384. Most of the autonomous communities have legislation of relevance to the issue addressed here. The following table is provided for reference purposes and with no attempt to be thorough:

*Relevant legislation
in the autonomous
communities*

Table 23. Secondary LORPM legislation enacted by the autonomous communities

Autonomous Community	Secondary Legislation
Andalusia	Andalusia Act 1/1998, of 20 April, on minors (<i>art. 43 to 53</i>). Decree 33/2008, of 5 February, regulating juvenile reform centres and services and laying down the quality management system.
Aragon	Aragon Act 12/2001, of 2 July, on childhood and adolescence (<i>art. 78 to 81</i>). Decree 165/1992, of 17 September, by the Provincial Government of Aragon, approving the regulations on the interior regime for centres of education and detention by court order in the autonomous community of Aragon.
Asturias	Decree 40/2006, of 4 May, approving the regulations on the organisation and operation of specific centres for the application of measures for the deprivation of liberty of juvenile and young offenders.
Canary Islands	Canary Islands Act 1/1997, of 7 February, on minors (<i>art. 78 to 80</i>). Decree 36/2002, of 8 April, approving the regulations on the organisation and operation of centres for the application of detention measures to juvenile and young offenders imposed by juvenile courts.
Cantabria	Cantabria Act 8/2010, of 23 de December, guaranteeing rights and care in childhood and adolescence (<i>art. 85 to 92</i>).
Castilla-La Mancha	Castilla-La Mancha Act 3/1999, of 31 March, on the protection of minors (<i>art. 68 to 74</i>).
Castilla y Leon	Castilla y Leon Act 14/2002, of 25 July, on care and protection in childhood (<i>art. 112 to 122</i>).
Catalonia	Act 27/2001, of 31 December, on Juvenile Justice. Decree 48/2006, of 28 March, specifying the highest single executive authority in juvenile justice centres.
Community of Valencia	Community of Valencia Act 12/2008, of 3 July, on the integral protection of childhood and adolescence (<i>art. 131 to 145</i>).
Extremadura	Decree 181/2010, of 27 August, approving the statute for the organisation and operation of centres for the application of measures for the deprivation of liberty involving young offenders in the autonomous community of Extremadura.

Autonomous Community	Secondary Legislation
Galicia	Decree 427/2001, of 11 de December, approving the text of the regulations on the internal operation of re-education centres for minors and juveniles subject to measures for the deprivation of liberty. <i>(Partially repealed by Decree 124/2006, of 20 July, with the exception of articles 113 to 117 under Heading V “Organisational structure of the centres”)</i> .
Balearic Isles	Order of the First Minister’s Office and Sports Department of 10 January 2006, repealing the order of the regional minister for Social Welfare of 18 May 2001, and approving the internal regime for the operation of the detention centres in the Balearic Isles for the application of the measures for the deprivation of liberty imposed by the juvenile courts.
Madrid	Act 3/2004, of 10 December, creating the Agency of the Community of Madrid for the re-education and reinsertion of young offenders.
Navarre	Navarre Act 15/2005, of 5 December, on promotion, care and protection in childhood and adolescence (<i>art. 86 to 96</i>).
Basque Country	Act 3/2005, of 18 February, on care and protection in childhood and adolescence (<i>art. 86 to 95</i>). Decree 80/2009, of 21 April, on education centres for the application of measures for the deprivation of liberty in the Basque Autonomous Community.
Region of Murcia	Murcia Act 3/1995, of 21 March, on childhood (<i>art. 41 to 43</i>).

CMs are designed for the application of the custodial measures, in an open, semi-open or closed regime, imposed upon young offenders as well as for weekend detention at the centres

385. The LORPM provides for the fact that measures for the deprivation of liberty, for both those on remand and those convicted, are to be served at specific centres for juveniles. These centres for young offenders (henceforth CMs) are designed for the application of the detention measures, in an open, semi-open or closed regime, imposed upon young offenders, as well as the weekend detentions at the centres provided for in article 7 of the LORPM, and for preventive custody according to the terms laid down by the juvenile courts. It should be noted that in addition to these measures for the deprivation of liberty, the young offenders detained in these centres may at the same time fulfil other legal measures imposed in the sentence, such as the performance of community services and socio-educational tasks. Likewise, application is made of those legal measures imposed upon the minors on a supplementary basis and simultaneous to the detention, generally involving out-patient treatment for rehabilitation from toxic substances or for psychological treatment.

The number of offences committed in 2009 by minors was 29,764, according to the latest official data available

386. The latest official available data (INE) for Spain as a whole, corresponding to 2009, indicate that the number of criminal offences committed by juveniles amounted to 29,674, which led to the conviction of 17,572 minors. The rate of convicted minors aged 14 to 17 was 0.97%, recording a year-on-year increase of 0.10%. 84.10% of the convicted minors were males and 15.90% were females. Out

of the overall total of convicted minors, 77.60% were Spanish nationals and 22.40% were foreign nationals.

Regarding the measures adopted, the most frequent ones are probation (35%), following by community service (20.10%) and the performance of socio-educational tasks (12.70%), which account for more than two-thirds of all the measures imposed. Regarding measures for the deprivation of liberty, in percentage terms from greater to lesser application, there is custody in a semi-open regime (11.60%), weekend detention (6%), custody in a closed regime (2.90%), therapeutic custody in any one of the three possible regimes (1.30%) and, finally, custody in an open regime (0.50%).

Taking for illustrative purposes the data on the adoption of the custody measures in a closed regime, which is the strictest of those arrangements provided for by the LORPM, it may be indicated that 702 custodial orders were imposed in 2009, and almost 92% of these were imposed on males, which generally speaking reflects the situation in prisons for adults. However, as regards the ratio of Spanish nationals to foreign nationals, the situation changes, given that in 2009 a balance is almost struck between the two groups (50.99% for Spanish nationals and 49.01% for foreign nationals). By ages, the percentage impact of this measure on the overall number of those imposed upon juveniles of the same age is 2.40% at the age of fourteen; 2.30% at fifteen; and 3.20% at sixteen and seventeen. Within the group of minors in custody in a closed regime, those aged fourteen account for 11.82%, those aged fifteen for 18.09%, and the percentages rise to 33.76% for those aged sixteen and to 36.33% for seventeen-year-olds.

387. During the first year the Ombudsman has operated as an NPM, priority has been given within this field to visiting centres holding juveniles in a closed regime. Specifically, inspections visits have been made to 8 CMs located in as many autonomous communities, at Alcalá de Guadaira (Seville), Bacarot (Alicante), Badajoz, Ceuta, Ilundáin (Navarre), Madrid, Maliaño (Cantabria), and Palma de Mallorca (Balearic Isles).

The most frequent measures were probation, community service and the performance of socio-educational tasks

The number of detentions in 2009 was 702, with almost 92% corresponding to males

The priority has been to visit centres holding juveniles in a closed regime. A total of 8 CMs have been visited

Graphic 18. Geographical location of the CMs visited in 2010



Two of the centres visited were run by the Administration, with the others being managed by non-profit foundations

388. The management of the centres visited varies according to the option chosen by the corresponding authorities in the autonomous community. Thus, regarding the inspection visits made in 2010, two centres were run directly by the regional government in question (CM “Vicente Marcelo Nessi”, in Badajoz, and CM “Punta Blanca”, in Ceuta) and the remaining six cases had opted for the subscription of cooperation agreements with private non-profit foundations (CM “El Pinar II” in Madrid, run by the Grupo Norte Foundation; the CM “Es Pinaret” in Marratxí (Balearic Isles), run by the S’Estel Foundation; the CM “Ilundáin” (Navarre), run by the Ilundáin Haritz-Berri Foundation; and, finally, the CMs “La Jara”, in Alcalá de Guadaíra (Seville), “Els Reiets”, in Bacarot (Alicante), and “Maliaño” in Santander (Cantabria), run by the Diagrama Intervención Psicosocial Foundation.

The average annual occupancy ranges between 60% and el 93%. The CM “Es Pinaret” officially has

389. The number of places available ranges between 21 and 32 at the centres of “El Pinar II” (Madrid), “Ilundáin” (Navarre), “La Jara”, “Alcalá de Guadaíra” (Seville), “Maliaño”, in Santander (Cantabria) and “Punta Blanca” (Ceuta). In turn, the CM “Els Reiets” in Bacarot (Alicante) has 70 places and “Vicente Marcelo Nessi” in Badajoz has 50. The average annual occupancy of these CMs is between

t60% and 93%. A case apart is the CM of “Es Pinaret”, in Marratxí (Balearic Isles), which officially has 38 places available, yet on average it houses 50 young offenders. In order to accommodate these extra inmates, one of the workshop modules has been converted into a residential wing. In this case, the authorities in the autonomous community of the Balearic Isles have been informed of the need to provide more facilities and more human and material resources to cater for the current demand for places at this centre.

The number of people staffing the CMs visited depends on the capacity and number of places for juveniles at each centre. It ranges between 60-70 people, at those centres with a capacity for 20 to 30 inmates, and 110 to 130 staff at those centres with a capacity for between 50 and 70 juveniles.

390. The residential and recreational modules for the juveniles at all the centres visited are supplemented by premises devoted to services, classrooms, sports facilities, workshops, swimming pool, allotment, farm, garden and exercise yards. The exception is CM “Punta Blanca”, in Ceuta, which has serious shortcomings. These features imply that the CMs are located in spacious grounds away from or outside cities, which means they are difficult to reach on public transport if there is no scheduled bus service; this is the case of “Ilundáin” (Navarre), “Maliaño”, in Santander (Cantabria) and “Punta Blanca” in Ceuta.

391. The CMs covered by this report have largely been built in the first decade of the 21st century, and those that existed beforehand [“Ilundáin” (Navarre), “Punta Blanca” (Ceuta) and “Vicente Marcelo Nessi” (Badajoz)] have undergone refurbishments of varying degrees since the enactment of the LORPM. Given these recent dates of the buildings and of the alterations made to existing establishments, the living conditions and the premises for both staff and juveniles can be considered satisfactory in general terms.

392. Depending on the CM, the size of the rooms varies between 8 and 15 m². The rooms are generally furnished with a bed, table, chair, wastepaper basket and a fitted wardrobe with no doors and built-in shelves. The doors to the rooms are made of steel and have a service hatch. The number of rooms at each centre corresponds to the number of places available; except at CM “Els Reiets”, in Bacarot (Alicante), and at “Ilundáin” (Navarre), which have a few double rooms.

393. The conditions of ventilation, temperature and lighting at the centres visited are good, as they have outside windows, heating and air conditioning. The same can be said for the state of cleanliness, with cleaning performed daily, with regular pest control and disinfection. The cleanliness of the facilities was satisfactory, with the juveniles housed there being responsible for the rooms, sanitary facilities, communal areas and workshop modules, and the rest of the premises are cleaned by contracted cleaning services. At the time of the visit to

38 places and yet on average. It houses 50 inmates. This means the facilities and resources need to be extended to meet the current demand

The number of staff depends on the centre's capacity

Except for CM “Punta Blanca” in Ceuta, they have sports facilities, workshops, an allotment, farms, exercise yards, etc. Their location means they are difficult to reach

Built largely in the first decade of the 21st century. Satisfactory premises for staff and juveniles

The size of the room varies. The doors to the rooms are made of steel and have service hatches

The conditions of ventilation, temperature and lighting are good. The cleanliness was satisfactory, except at “Punta Blanca” (Ceuta) where it was unsatisfactory



the CM “Punta Blanca” in Ceuta, the state of cleanliness of the rooms was unsatisfactory, whereby this Office insisted on the need for improvement.

There is permanent access to toilets. Sheets and towels are regularly changed and washed

394. There is permanent access to the sanitary facilities in the rooms and communal areas and the centres provide the juveniles with sufficient personal toiletries, consisting of towels, sponges, soap, toothpaste, toothbrush, etc. They may also ask for purchase to be made at their own expense of a specific shampoo or bath gel. Females are provided with the hygiene products they require. Sheets and towels are regularly changed and washed, once or twice a week, depending on the centre, and were in good condition.

All the centres have CCTV around the perimeter as well as in communal areas. The cameras do not have recording capabilities. The system was not working at “Els Reiets”

395. All the centres have CCTV around the perimeter and in the communal living areas and corridors, except at the CM “Els Reiets” in Bacarot (Alicante), which has only perimeter surveillance that was not working at the time of the visit. On the other hand, there is no CCTV in the rooms, toilets and showers, with the exception of “Vicente Marcelo Nessi” in Badajoz, which has installed CCTV cameras in the two rooms for containment and suicide prevention. The security cameras provide a picture but no sound, and none of the centres has recording capabilities. The equipment that is out of service needs to be repaired, extending CCTV surveillance to all communal and transit areas and providing the centres with recording systems.

No communication is guaranteed in those centres that are not equipped with intercoms or acoustic or light call systems, such as at “Ilundáin”, “Vicente Marcelo Nessi” and “La Jara”. It was out of order at “Punta Blanca”

396. The communication between the guards and monitors and the juveniles, when the latter are in their rooms, is guaranteed at those centres equipped with intercoms or acoustic or light call systems. At “Ilundáin” in Navarre and “Vicente Marcelo Nessi” in Badajoz, none of the rooms has a bell or acoustic call system, so the inmates have to call out aloud to the guards, although it should be made clear that given the rooms’ proximity to the guard station the communication is guaranteed. “La Jara”, in Alcalá de Guadaíra (Seville), too, is devoid of intercoms or call systems in the rooms, and considering where the guards and monitors are when the juveniles are in their rooms, this CM needs to install an acoustic call system in the rooms in order to ensure there is communication with the monitors in the event of a situation that requires their immediate presence. During the visit to “Punta Blanca” de Ceuta, it was noted that although the equipment was installed, on that day most of the intercoms did not work, which means they should be repaired.

The lack of fire-fighting equipment at “Punta Blanca” needs to be addressed. An automatic

397. Regarding fire-fighting measures, it should be noted that there are smoke detectors, alarm buttons, fire extinguishers, emergency exit doors and an evacuation plan at all the centres visited, except in the case of CM “Punta Blanca” in Ceuta, where they reported that the drafting of an evacuation plan was pending and note was made of the lack of emergency measures. There is, therefore, an urgent and pressing need to correct the shortcoming detected. None of the centres

visited has an automatic door opening system, so it is to be recommended, above all at those centres with the highest number of inmates, that this arrangement be installed in order to ensure the rooms can be quickly evacuated in the event of an emergency.

398. All the centres provide five meals a day: breakfast, a mid-morning snack, lunch, a mid-afternoon snack and supper. Provision is made for special diets, as required for both medical and religious reasons. In all cases, the menus are drawn up by dieticians and, depending on the centre, there are three or four weekly menus in summer, with the same arrangement in winter. At “Els Reiets”, in Bacarot (Alicante), “Es Pinaret”, “Marratxí” (Balearic Isles), “La Jara” in Alcalá de Guadaíra (Seville), “Maliaño” in Santander (Cantabria) and “Vicente Marcelo Nessi” in Badajoz, all the food served to the juveniles is prepared on site. In the case of “El Pinar II” in Madrid, the meals are cooked at the adjacent CM “El Laurel” and are delivered in thermal trolleys, as the two establishments are very close to each other. At “Ilundáin” (Navarre) and “Punta Blanca” (Ceuta) all the food provided for the inmates is cooked by an outside catering firm.

The same menu is usually served to the staff working at the centre. Samples of the food are kept for the legally required time in order to identify any possible cases of food poisoning. Relatives and friends are not permitted to take food to the juveniles. On special occasions, such as a birthday, a cake may be ordered, which is paid for by the juveniles themselves or by their relatives, and it is bought by the staff at the centre. Snacks are also available from the vending machines on site.

399. Upon their arrival at the centre, the juveniles undergo a medical examination and sundry tests, including a urine test for drugs, and answer questions on their own and their family’s health record. The juveniles are provided with healthcare, being attended at the corresponding public health hospitals. In addition, they are regularly examined by the doctors, psychiatrists and nurses who make up part of the medical staff at the centres; although at CM “Es Pinaret” in Marratxí (Balearic Isles) note was made of the need to include the centre’s sessions for psychiatric and psychological care, given the number of juveniles housed there. Mention was also made of the need to improve the psychiatric and psychological care for the juveniles detained at “Punta Blanca” in Ceuta.

All the centres have personal protection equipment, such as masks and rubber gloves, and whenever an infectious or contagious disease is detected, rooms are disinfected and the suspected patient is isolated from all the other inmates. According to the information provided, over the past year none of the centres visited has recorded cases of infectious or contagious diseases.

door opening system is required to ensure the rooms can be evacuated in an emergency

All the centres provide five meals a day and provision is made for special diets, as required for both medical and religious reasons

A medical examination and tests are held upon arrival, including a drugs test. Healthcare is provided

Medicines prescribed by doctors

Medicines are prescribed by doctors, with the doses being prepared by the DUEs. The monitor-educators are the one often responsible for giving them to the juveniles.

Provide CM “Vicente Marcelo Nessi” with a remote healthcare service

With a view to reducing the number of transfers, a request has been made to provide the CM “Vicente Marcelo Nessi”, in Badajoz, with a remote healthcare system (referred to in Spanish as “telemedicina”) via CCTV conferencing, to be used for minor health problems, and for psychiatric and psychological sessions.

There are no specific protocols for pregnant women at the mixed centres

400. The mixed centres [“El Pinar II” in Madrid, “Els Reiets” in Bacarot (Alicante) and “Ilundáin” in Navarre] do not have any specific protocols for pregnant women. In the specific case of “El Pinar II” in Madrid, this Office was told that pregnant juveniles would be transferred to CM “El Madroño”, which is a specific internment centre run by the Community of Madrid for young offenders that are in that situation or who are already mothers.

The CM “Punta Blanca” in Ceuta has been asked to introduce a suicide prevention protocol

401. During the visit to CM Ilundáin (Navarre), this Office was informed that in March 2009, one of the juveniles used their own belt to commit suicide in their room. As a result of this serious event, the centre now has a written procedure for preventing suicides that is also used by the centre “Vicente Marcelo Nessi” in Badajoz, with two rooms being set aside for accommodating the juveniles included in the protocol, with CCTV inside these facilities. The CM “Punta Blanca” in Ceuta has been asked to introduce a suicide prevention protocol.

Induction protocol. New arrivals receive a document setting out their rights and obligations, the internal organisation and disciplinary measures

402. The centres have an induction protocol for informing each juvenile of the various stages (arrival, stay and departure) involved in their time at the centre. A first step involves giving a document to the juvenile, who signs the corresponding receipt, which sets out their rights and obligations, the centre’s rules of operation and organisation and the disciplinary measures.

The juveniles are accommodated according to individualised care programmes

The criteria for accommodating the juveniles are consistent with the juvenile’s custodial regime, age, maturity, social needs and skills. Accordingly, the centres are organised and structured into different groups, modules or living quarters, where the inmates are housed according to individualised care programmes, which involve several stages, from arrival and diagnosis through to self-reliance and departure, depending on their evolution. Those who for whatever reason require special protection are separated from those who might possibly put them at risk, with this generally involving their relocation to another module.

The staff are organised into working parties

403. The staff working at these centres are distributed and organised into various teams or working parties. The management team is usually made up of a director, deputy director, as appropriate, and coordinators. The technical-educational team consists of social workers, monitor-educators and auxiliary educators, teachers, psychologists, workshop supervisors and sports monitors. The medical team usually includes a doctor, psychiatrist, DUE and junior

nurses. The teaching and literacy team is made up of primary and secondary school teachers, and personnel from the region's Department of Education; then there is a team of sundry services for the centre's administration and for kitchen, laundry, cleaning and maintenance duties, and a security team made up of private security guards.

404. During the time the juveniles are serving a custodial sentence they are involved in training, educational, employment and leisure activities. Nevertheless, regarding CM "Punta Blanca" mention should be made of the need to provide a suitable budget for the organisation of socio-cultural and training activities, as on the day of the visit it was noted that the arts and crafts workshop was closed for this reason and the computer equipment was obsolete.

During the interviews with several directors at the CMs it became apparent that there was a certain lack of coordination with the social care services that pave the way for the young people to return to a life of liberty with greater assurances. According to their explanations, once the custodial measures imposed by the courts have been served, especially when they are of a short or medium-term length, the expectations for rehabilitation are dashed as these young people do not continue with the drug rehabilitation programmes they are following within the centres.

405. Unless the juvenile objects, visits from relatives are allowed, and these are usually held in facilities set aside for this purpose that do not look like prison visiting rooms, being provided with suitable furnishings. Furthermore, they are entitled to receive visits from consular staff and ministers of their religious faith.

The juveniles are entitled to use the telephone for both making and receiving calls, involving relatives and friends on certain phone numbers authorised by the centre's supervisors, after prior verification of the holder's identity.

406. Juveniles in custody are entitled to communicate with their legal counsel by phone and receive visits from them. During the inspection visits to the CMs, at some of the interviews held with the minors, these complained in certain cases about what they considered to be a lack of commitment on the part of the lawyers they had been assigned. In such cases, the Ombudsman reminds the corresponding bar associations of their legal duties.

407. Any property belonging to the juveniles that they are not permitted to have at the centre is delivered to their relatives or kept in a safe in the director's office, with the delivery being recorded on an official receipt. At CM "La Jara", in Alcalá de Guadaíra (Seville), the juvenile is provided with written information on the centre's limited liability for any loss or damage regarding any property or valuables in their possession, as well as a list of the items they are permitted to have in their rooms.

Training, employment and leisure activities are organised

Lack of coordination with social care services that pave the way for the return to a life of liberty

Visits from relatives are allowed

They are entitled to make and receive authorised calls

Right to receive visits from their legal counsel

CM "La Jara" provides written information on the centre's limited liability for any loss or damage regarding any property or valuables

Room searches are conducted in the juvenile's presence

Rooms are searched by security staff, always in the juvenile's presence. They are conducted randomly or in response to suspicious circumstances and an official record of the search is made, which is to be signed by the juvenile, the educator and the guard involved.

Searches are conducted by two members of the security staff and an educator of the same sex as the juvenile

Personal searches involve frisking only, and any banned or unauthorised items or substances are confiscated, in response to a list that the juvenile has already been given. A personal search is conducted by two members of the security staff and an educator, all of the same sex as the juvenile involved, and takes place whenever the juveniles return from a trip outside the centre.

Strip search authorised by the director. The juvenile courts are to be notified

In the event a strip search is required, this is to be authorised by the director; with the drafting of an official document to record its performance and the reasons behind it. The performance of searches of this kind is always to be reported to the juvenile courts.

The security staff are responsible for applying methods of restraint

408. The application of methods of restraint corresponds to the security staff who, as noted earlier, are not members of the security forces or corps, but instead are personnel from private companies. These measures are to be applied under supervision and on the instructions of one of the centre's supervisors or educators. The juveniles are handcuffed when offering resistance or behaving violently, and when it is impossible to physically restrain them by any other means. These situations are to be reported to the juvenile courts and to the respective regional government department that supervises the management of the centre, with the medical services being informed of any possible injuries and a written report being drawn up accordingly.

The solitary confinement rooms at "El Pinar II" in Madrid and at "Vicente Marcelo Nessi" in Badajoz are not used for disciplinary purposes, so they are used for the restraint of juveniles during bouts of violence or aggression until the individual in question calms down.

Common disciplinary regime at all the centres

409. The disciplinary regime is common to all the centres; it is governed by the Regulations of the LORPM, approved by Royal Decree 1774/2004, of 30 July. Basically, disciplinary responsibility is invoked by initiating proceedings that are heard by an adult who has not taken part in or witnessed the events. The facts are investigated, the juvenile gives evidence and the examining adult may agree to dismiss the case, change the nature of the infringement (to educational instead of disciplinary), or confirm the disciplinary misdemeanour. In this latter case, the decision is to be submitted to the director of the CM, who is to pass judgement. The juvenile's legal counsel is to be sent a copy of the proceedings, and if the juvenile does not agree with the outcome they may appeal before the juvenile courts, which are to issue a ruling within 24 hours, although in practice it often takes up to 4 or 5 days.

The most serious punishment is to be separated from the group

410. The most serious disciplinary measure contemplated is separation from the group, to be applied in the event of very serious or serious misdemeanours,

and is to involve confining the juvenile to their own room or to another of similar characteristics. The inspection visits have revealed that the measure of separating the juvenile from the rest of the group normally involves confining the juvenile to their own room. Nevertheless, certain centres have specific rooms for the fulfilment of this measure, with these being similar to all the other rooms. Thus, at CM “Vicente Marcelo Nessi” in Badajoz there are 5 rooms for applying this disciplinary confinement measure; 4 at “Punta Blanca”, in Ceuta, 3 at “Maliaño” in Santander (Cantabria) and 2 at “Ilundáin” (Navarre) and also at “El Pinar II” in Madrid.

During the application of the disciplinary confinement measure, the juvenile is allowed two hours outside; they must also attend, as appropriate, any classes in compulsory education, and they may receive visits.

411. If an inmate is the mother of a child under the age of three, and pursuant to the provisions of the secondary legislation on the LORPM, she is permitted to keep her child with her in the same room, which is always to be an individual one. During the visit made to CM “Els Reiets”, in Bacarot (Alicante), an interview was held with an underage mother with a one-year-old daughter living with her at the centre.

412. The procedure for transferring a juvenile outside the centre in which they are housed depends on the regime they have been assigned, as in the case of a semi-open regime, the juvenile is accompanied by an educator to the place where they have some business to do. In the case of custody under a closed regime, the trip is always to be made in the company of an educator accompanied by members of the security forces, who are to be dressed in plain clothes and travel in unmarked cars. The transfer of juveniles in custody at “Punta Blanca” in Ceuta to the courts or for medical reasons is undertaken by officers of the CNP, who are dressed in uniform and travel in police cars, which needs to be corrected to comply with the aforementioned legal requirements.

Entitlement to two hours outdoors during confinement

If an inmate is the mother of a child under the age of three, she may keep her child with her at the centre

The transfer of juveniles in custody under a closed regime is to be undertaken by members of the security forces in plain clothes and in unmarked cars, accompanied by an educator

Special-Purpose Places of Deprivation of Liberty

- I. Secure hospital units §414 - §423
- II. Vehicles for transporting persons in custod
§424 - §440
- III. Procedure for repatriating foreign nationals
§441 - §456

413. Pertinent to this chapter are the actions undertaken with regard to three types of places whose common denominator is the fact they are means for attending to the needs of a varying nature arising from the custody of people deprived of their liberty: secure hospital units, vehicles for transporting persons in custody and, from a combined perspective, a procedure for repatriating foreign nationals that involved the use of several detention centres and methods of transportation under custody. This instrumental nature renders it expedient to address each one on an individual basis, given that their inclusion in other chapters does not fit in well with the structure used so far in this report, which considers static situations.

I. Secure hospital units

414. The need to provide inmates with hospital care outside prisons has been resolved in different ways by those agencies with powers in the matter (SGIP and its equivalent in the regional government, the Generalitat, of Catalonia).

Insofar as the SGIP is concerned, a series of secure hospital units have been set up through agreements within the framework of the provisions of article 207.2 of the RP, between this body, specifically the *Sociedad de Infraestructuras y Equipamientos Penitenciarios, S.A. (SIEPSA)*, and the corresponding authorities with powers in healthcare matters (UCH). These UCHs are therefore officially attached directly to the SGIP, as they accommodate prison inmates; however, as they are located in hospitals within the public health network, their facilities and the provision of general services are the responsibility of the health authorities, who also lay down the rules and the catalogue of services in those areas that do not have a specific bearing on custodial matters; and members of the security forces — usually police officers — are the ones entrusted with the custody of the patients and who apply the methods of restraint that may at times be required, except those that stem directly from the medical treatment to be provided.

It should be noted that the decision on the transfer of sick inmates to another part of the hospital (ICU, area for performing diagnostic tests, observation, etc.), corresponds solely to the attending medical team. In such cases, the police officers guard the patient in this new location.

415. Of the 45 UCHs provided by the SGIP, according to this body's 2009 report, the NPM has visited 13 of these facilities located in 10 autonomous communities. The UCHs visited were in the following hospitals: Hospital Universitario in A Coruña, Hospital Provincial "Nuestra Señora de Sonsoles" in Avila, Hospital "Virgen de la Montaña" in Caceres, Hospital General in Ciudad Real, Hospital

Actions involving places that constitute a means for attending to needs of a varying nature, albeit all arising from the custody of persons deprived of their liberty

The SGIP and its equivalent in Catalonia are empowered in this matter

In the case of the central government, they are organically attached to the SGIP. Their facilities and the provision of services are the responsibility of the health authorities. The security forces carry out custodial duties

The decision on any transfer within the hospital is made by the medical team

13 facilities have been visited in 10 autonomous communities

Provincial in Cordoba, Hospital “San Millán-San Pedro” in Logroño (La Rioja), Hospital Universitario in Oviedo (Asturias), Hospital “Marqués de Valdecilla” in Santander (Cantabria), Hospital General in Segovia, Hospital General in Valencia, Hospital Clínico in Valladolid, Hospital Txagorritxu in Vitoria (Alava) and Hospital “Miguel Servet” in Zaragoza.

Graphic 19. Cities with a UCH visited in 2010



They are generally well communicated by public transport. It usually involves an enclosed ward with a main corridor that provides access to the cell-rooms and to the office or station for security staff

416. The hospitals housing the UCHs are generally located within the city limits, with good communication by both public and private transport. The layout of these UCH facilities tends to involve a closed ward, with a corridor or passageway that leads to the cell-rooms and to the office or control station for the police officers guarding the prisoners. Some of these rooms are specifically designed for quarantine cases and for accommodating people who have infectious and contagious diseases that are in the active phase. Some UCHs also have a room for visitors, such as the units in A Coruña and Santander. As regards the size of the cell-rooms, it is satisfactory in those cases inspected. The cell-rooms have steel doors with observation hatches for outside monitoring.

417. The installations and facilities of the UCHs visited, in terms of those assigned to the inmates and to their guards, are in good condition and clean. They are cleaned daily and the premises are disinfected with the same frequency as all the other rooms in the hospital.

Premises in good condition and clean

Nonetheless, in the case of the UCH at the Hospital Clínico in Valladolid, the general state of the facilities cannot be considered satisfactory and there are issues with both habitability and security. This Office was, however, informed that there was a comprehensive refurbishment project for the hospital facilities as a whole, which in view of the situation observed needs to be prioritised.

The state of the UCH at the Hospital Clínico in Valladolid is unsatisfactory

Attention was also drawn to the beds used in the UCH at the Hospital Universitario in A Coruña, which could not be raised, thereby hindering the work of the medical staff and providing reduced comfort for the people occupying them. The explanation provided was that this measure has been adopted to avoid self-injuries, but criteria can be applied to ensure the use of standard hospital beds is compatible with the due assurance of safety.

418. All the UCHs visited have a good ventilation and temperature, as they are provided with air conditioning. The same can be said for the lighting conditions, as they have both outside windows and artificial lighting.

They have a good ventilation and temperature

419. There is permanent access to sanitary facilities, as the rooms have a washbasin, toilet and shower, except in the case of the double rooms at the Hospital Universitario Central de Asturias (Oviedo), which have a toilet in the corridor in the UCH, with the patients being required to ask to use the toilet by means of the acoustic call systems inside the rooms. However, it should be noted that at the time of the visit this Office was informed that the work on a new hospital in Oviedo was pending completion and that the opening of a new UCH would remedy this situation.

Permanent access to sanitary facilities. In the case of the double rooms at the Hospital Universitario Central de Asturias (Oviedo), the toilets are in the corridor

The hospitals provide the patients with enough personal toiletries. The mattresses and bed linen in the rooms are the same as in the rest of the hospital and their cleanliness and condition were satisfactory in all the cases inspected.

Satisfactory condition and cleanliness of mattresses and bed linen

420. The CCTV systems fitted in most of the UCHs visited, with the exception of those in Ciudad Real and Valladolid, cover the access areas to the unit and the corridor or passage, but not the rooms. In the case of the UCH at the Hospital “Miguel Servet” in Zaragoza, the CCTV system does not cover the communal areas, but the rooms instead. Some of the systems installed are obsolete and technically limited. It is considered necessary to install CCTV systems that include recording capabilities. Out of respect for the patients’ privacy, the cameras’ field of vision should include all the communal areas, with the exception of the toilets

It is considered necessary to install CCTV systems that include recording capabilities and cover all the communal areas

and the rooms. This requires changing the location of the cameras in the UCH in Zaragoza.

Automatic door opening in the UCH at Hospital Txagorritxu in Vitoria. Intercoms need to be installed in the rooms in several UCHs

421. The UCHs follow the emergency and fire-fighting procedures of application in their host hospitals, which logically include an evacuation plan, fire extinguishers, smoke detectors and alarm systems. In addition, the cell-rooms in the UCH at Hospital Txagorritxu in Vitoria have an automatic door opening system. Furthermore, the units visited in Caceres, Cordoba, Santander, Valencia and Vitoria have acoustic call systems or intercoms. In order to guarantee the prisoners' safety and for communicating with the police officers, there is a need to install intercoms in the rooms in the UCHs in A Coruña, Avila, Ciudad Real, Logroño (La Rioja), Oviedo (Asturias), Segovia, Valladolid and Zaragoza.

Permission is granted for visits by legal counsel and consular staff. Visits by relatives and friends need to be authorised

422. Article 217 of the RP states that the visits by relatives or close friends to the prisoners in hospital outside prison are governed by the hospital's own operating rules, whilst upholding the security conditions and measures implemented by their custodians. The prison is to inform the attendant guards of the prisoner's security profile. It was observed that in practice permission was granted for visits by the prisoner's legal counsel and consular staff. Visits by relatives or friends require authorisation from the prison itself and, in most cases, take place within the actual cell-room.

Hospital clothes are worn. It is essential for the guards to be from both sexes

423. When inmates or those in custody are accommodated in their cell-rooms, they put on hospital clothing (pyjamas and robe). This change of clothing is performed in the presence of the guards, and the withdrawal of possessions replaces the usual frisking or search that is performed on anyone taken into custody when they first enter a new establishment. It should be noted that, as reported in the UCHs in A Coruña, Ávila, Cordoba, Oviedo (Asturias), Santander (Cantabria), Segovia and Valladolid, there were sometimes no female officers on duty in the UCH, which meant that their presence had to be requested from the nearest police station. Despite the understandable difficulties in staff management that this might involve, it is considered essential for the guard duties in a UCH to be provided by personnel of both sexes, at least when there is a female patient or when the patients are going to receive visits from women.

II. Vehicles for transporting persons in custody

The aim is to inspect the conditions of interior habitability and roadworthiness

424. As well as visiting the establishments holding people who have been deprived of their liberty, it has likewise been considered necessary to inspect the methods of transport used for the transfer of prisoners. The aim of these actions is to inspect the general state of these vehicles and, especially, their conditions of interior habitability and roadworthiness.

425. The specific regulations on this matter are laid down in Decree 2355/1967, of 16 September, which regulates the transfers of detainees, prisoners and convicted offender, the Order of 15 June 1995, which provides the technical specifications to be fulfilled by vehicles used for the transfer of detainees, prisoners and convicted offenders, as well as Instruction SES 8/2009, which amended Instruction 5/2009, on the transfer and custody of prison inmates.

426. The state and regional security forces transfer those people deprived of their liberty in order to comply with the procedure of application in each case (appearing before the court, medical forensic examination, legal formalities, etc.). In this first year the Ombudsman has acted as an NPM, priority has been given to inspecting the services used for the transfer of convicted prisoners, whose long-term custodial sentences make them the ones most affected by these actions. In Spain, the inter-city transfer of convicted prisoners and detainees is undertaken by three police forces: the Civil Guard — pursuant to the provisions of article 12.1.B.f of Public General Act 2/1986, of 13 March, on the Security Forces —, the Mossos d'Esquadra in Catalonia and the Ertzaintza in the Basque Country. The overall number of transfers made in 2010 by these three forces amounted to 127,820, with 71.57% of them being undertaken by the Civil Guard, 24.32% by the Mossos d'Esquadra and 4,10% by the Ertzaintza.

Given that the Civil Guard is the force undertaking the highest number of transfers, involving 263,444 people deprived of their liberty, inspection visits were made to two facilities housing transfer vehicles: the *Servicio Central de Material Móvil*, located in Madrid and the *Servicio de Material de la Comandancia* in Lugo.

The Civil Guard purchases the vehicles directly off the production line in order to customise them for their specific purpose. Before being commissioned, these vehicles are required to pass a Technical Inspection (ITE, according to its Spanish acronym), in view of the alterations made to them, and they have to have their corresponding technical papers, including an insurance policy. The transfers are undertaken by what are referred to as the Protection and Security Units (UPROSE, according to their Spanish acronym).

427. The Civil Guard undertakes these transfers using three types of vehicles, according to the technical and security specifications laid down in the Order of 15 June 1995. A type A vehicle, of which there are 265 units currently in service, is a van for transferring a maximum of 5 inmates, being divided into one area for the prisoners and another for three escorts and the driver, and it is the one used for the transfer of inmates in solitary confinement. There are some vehicles in this model that are not fitted with toilets or sanitary facilities, and they are used for short-haul transfers. A type B vehicle, of which there are 62 units,

The specific regulations are laid down in Decree 2355/1967, the Order of 15 June 1995 and Instruction SES 8/2009

A total of 127,820 transfers were made in 2010: Civil Guard (71.57%), Mossos d'Esquadra (24.32%) and Ertzaintza (4.10%)

The GC transferred 263,444 detainees

Three types of vehicles: type A, with 265 units in service, a van with a maximum capacity of five inmates and a cabin for three escorts and the driver

Type B is a bus with a capacity for 16 inmates (62 units). Type C caters for the transfer of 28 inmates

Type A has a steel bench for the inmates and a toilet

The distribution in types B and C is arranged according to prison profile and affinity

The doors to the compartments are made of steel and have an observation hatch

There is central air conditioning and heating and artificial lighting. Vehicles are cleaned after each service

Variable number of escorts

A request has been made for CCTV coverage with recording capabilities

The seating for the prisoners is not fitted with safety belts

is a bus used for transferring up to a maximum of 16 inmates and 6 guards, including the driver; it is divided into 8 double compartments for the inmates with a central aisle, and two compartments (one at the front and one at the rear) for the escorts and the driver. A type C vehicle, of which there are 30 units, is a similar bus to the previous one, but it can transfer a maximum of 28 inmates, divided up into 14 double compartments for the inmates.

428. The compartments for inmates in type A vehicles are furnished with a steel bench and include a toilet, and in type B and C vehicles there are two single seats per compartment and there is a toilet at the back of the bus.

429. In type A vehicles, the inmates are not separated from each other during the journey. In types B and C, where they are separated into pairs, the distribution criteria are based on the inmates' prison profile and their affinity. No transfers are made with prisoners of both sexes.

430. The access to type A vehicles is through a single large side-opening door for the people being transferred. On types B and C, the people being transferred enter the vehicle through the front or rear doors, passing along a distribution aisle. The doors to the compartments are made of steel with a small observation hatch for monitoring the interior. The guards do not travel alongside the inmates.

431. Ventilation is provided through grilles on the door separating the prisoners' compartment from the escorts' area and involves an extractor fan arrangement. The vehicles have a central air conditioning and heating system. The lighting is artificial, although there is also natural light through an outside window with a grille. The vehicles are cleaned and disinfected after each service.

432. The vehicles carry a variable number of escorts depending on the number of prisoners being transferred and their criminal profile, with there also being an external escort service in the form of a police car.

433. The majority of type A vehicles do not have CCTV, although the more modern ones have been fitted with a camera inside the prisoners' compartment, with the images shown on a screen in the escorts' compartment. No recordings are made. There are no cameras on type B and C vehicles, so a request has been made for CCTV coverage that includes the recording of images.

434. All the vehicles have safety equipment, such as fire extinguishers, within the reach of the guards, and an opening roof for evacuating the vehicle in the event of a rollover, which is fitted with an automatic release. In addition, type B and C vehicles also have an automatic system for opening the doors to the compartments. The seating for the escorts and the driver is fitted with safety belts, but this is not the case regarding the prisoners. The Ombudsman was already

aware of this circumstance and has repeatedly called upon the Civil Guard to remedy this serious shortcoming in passive safety.

Type A vehicles are not fitted with acoustic call or communication systems with the guards, as they are not deemed necessary. Each compartment on type B and C vehicles has a buzzer connected to a light in the escorts' area, which allows the automatic opening of the compartment to enable the prisoner to use the toilet.

435. The transfers are made between prisons all over Spain, with there being seven regular weekly routes for male prisoners (A Coruña, Barcelona, Malaga, Malaga-Seville, Nanclares de la Oca (Alava); Puerto de Santa María (Cadiz) and Valencia), as well as habitual and special transfers as per requirements for both men and women. The transfer between prisons make take several days, with the prisoners spending the nights in transit in midway prisons, in the new entries block. The maximum driving time for each driver is four and a half hours, so if the distance so requires the detachment may include several drivers.

436. If during the journey one of the detainees requests medical care, the head of the detachment is to take the most appropriate decision: divert to a prison on the way so the prisoner can be attended to or else call for assistance from the emergency services. The personnel involved in the transfers are provided with medical safety equipment such as masks and rubber gloves.

Rule 12.b in Instruction 7/2009, of the Directorate General for Territorial Coordination and Open Medium of the SGIP , stipulates that upon departure, and following the prisoner's identification, an individual identification sheet for each prisoner is to be given to the transfer detachment, and will include, amongst other details, any preventive-medical measures that are to be adopted. If necessary, the police officers are to be responsible for dispensing any medication the prisoners are required to take during the journey.

When the transfer involves pregnant women, this is to be undertaken in an ambulance and not in the types of vehicles described here.

437. The corresponding prison provides each prisoner with the necessary food for the scheduled transfer and a bottle of water.

438. Before entering the vehicle and even though the prisoner has been searched at the prison, they are to be frisked, with confiscation of any items considered to be dangerous. No strip searches are made. It was reported that the prisoners are handcuffed during the journey. The police officers are armed and carry batons.

Type A vehicles do not have acoustic call systems

There are seven regular weekly routes for male prisoners and special transfers are also made. The maximum continuous driving time per person is four and a half hours

If medical care is required during the journey, the decision lies with the head of the guard detachment

An individual identification sheet is to include any preventive-medical measures to be adopted

Pregnant women are transferred by ambulance

Each prison is responsible for providing food

No strip searches are made. Prisoners are always handcuffed

A written report is made on any incident

There is a need to implement a protocol that will allow reducing the huge number of transfers

In 2010, the UCER was responsible for the repatriation of around 8,000 foreign nationals

At the time of writing of this report several investigations remain open related to the fulfilment of expulsion orders

Need to reinforce the protocol on physical restraining techniques in the police procedure involving the repatriation and transfer of foreign nationals by sea and air

The DGPGC has accepted a recommendation made by the Ombudsman in 2008, whereby it was requested

439. The head of the detachment draws up a written report on each transfer that details all the incidents and circumstances of the service undertaken. Whenever necessary, information may be relayed by phone and radio.

440. Better coordination is required between the various public administrations involved in these transfers with a view to implementing a protocol that will allow reducing the huge number of transfers currently being undertaken, with this involving CCTV conferencing and a more rational approach to the systems of healthcare appointments and summons to appear before the courts.

III. Procedure for repatriating foreign nationals

441. The data for the year covered by this report provided by the Ministry of the Interior indicate that foreign nationals were subject to 7,297 repatriations and 11,454 expulsions. These repatriations are effected by each and every one of the police forces, although the UCER, attached to the CNP's *Comisaría General de Extranjería y Fronteras* has been responsible — according to its own figures — for the repatriation of around 8,000 foreign nationals, with most these cases following the procedures described in this section.

442. The Ombudsman has been closely monitoring the procedure for repatriations since 2007. At the time of writing this report several investigations remain open on a number of incidents regarding the fulfilment of certain expulsion orders. Monitoring is therefore being made of the legal proceedings investigating the death, in 2007, of a foreign national during the repatriation flight and of other legal proceedings investigating possible ill-treatment during the repatriation of other foreign nationals.

The investigation concluded in 2010 into the alleged mistreatment of a foreign national who resisted repatriation, with photographs being posted on the internet. In view of these cases, note has been made of the need to reinforce aspects of the protocol for the police procedure involving the repatriation and expulsion of foreign nationals by sea and air as regards the techniques of physical restraint used. After seeing the pictures and receiving official information, the Ombudsman did not approve of the behaviour of one police officer who placed a foot on the back of the person being repatriated, at a time when this person was already bound by the feet and hands.

443. Mention should also be made of the recommendation made on 17 July 2008, which was accepted by the DGPGC, whereby a request was made for the amendment of the Resolution of 1 October 2007, of the aforesaid body, on the repatriations and transfers of foreign nationals by sea and air. Following a com

parison between this resolution and the common guidelines on security measures in group expulsions by air, contained in the Council Decision, of 29 April 2004, as well as a review of the conclusions reached by the CPT on the deportation of foreign nationals by air [GR 13 (2002-2003), sections 27 to 45, and especially 36], a request was made for the amendment of section 4.3.9 whereby it would specifically mention that any coercive measures should not hinder or endanger the ability of the person being repatriated to breathe normally, with total prohibition of the use of any measure that might block the respiratory pathway. In addition, a request was made to prohibit any measure for depriving the persons being repatriated of the ability to see or hear.

444. Personnel for the Institution were present on a repatriation flight involving 18 Moroccan nationals, 14 of whom were defined as “*cualificados*” (qualified), according to the terminology used by the Spanish Ministry of the Interior, that is, foreign nationals who have served their sentence or who have opted for expulsion rather than imprisonment.

It should be noted that this visit required prior notice in view of the difficulties of a practical nature encountered for receiving information beforehand on the flights programmed and for entering the facilities and boarding the actual plane, as well as for the unannounced access to the airport facilities accommodating the people about to be repatriated. The procedure for these repatriations needs to be monitored more closely, whilst arrangements are being studied to enable these inspections to be made without any prior warning.

445. The repatriation procedure inspected underwent the following stages:

- a) Concentration of the guards and people to be repatriated at the UCER facilities at Madrid-Barajas airport.
- b) Transfer to the plane, flight and disembarkation at Jerez de la Frontera Airport (Cadiz).
- c) Transfer by road to the Port of Algeciras.
- d) Sea crossing between Algeciras and Ceuta.
- e) Disembarkation and transfer by road to the border crossing with Morocco.

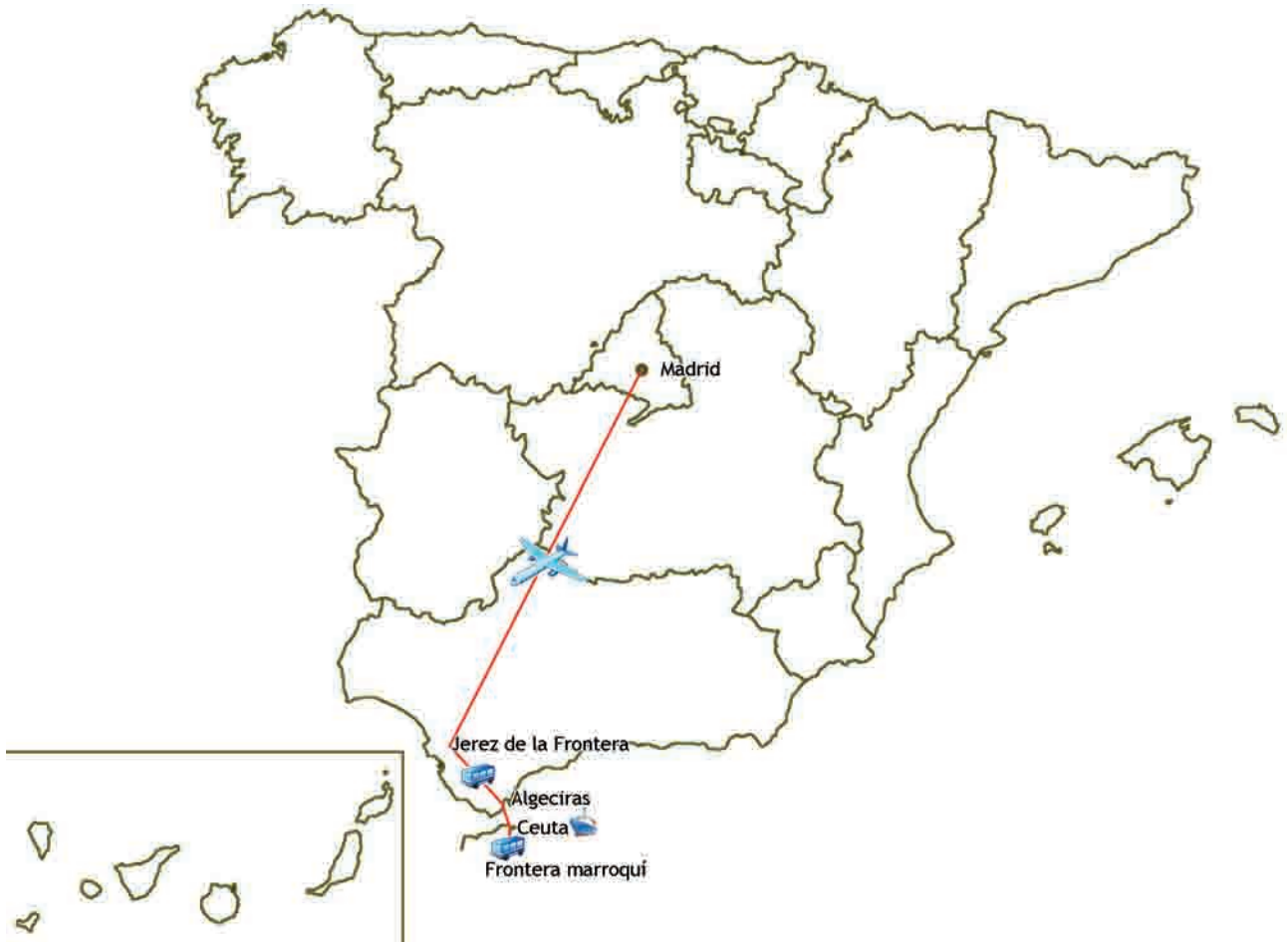
that the Resolution of 1 October 2007 should expressly state that any coercive measures should not hinder or endanger the normal breathing process of the person being repatriated

Personnel from the Institution were present on the repatriation flight of 18 Moroccan nationals

Given the practical difficulties for receiving information beforehand on programmed flights, this inspection visit required prior notice

The repatriation procedure inspected underwent several stages involving transfers by air, sea and road; from Madrid-Barajas Airport to the border crossing with Morocco

Graphic 20. Repatriation procedure followed by the UCER



The inspection focused initially on Madrid-Barajas Airport

It has a comprehensive fire-fighting system and one CCTV camera. The ventilation, temperature, lighting and cleanliness were satisfactory

Medical care is provided by Aena

No food is provided. Drinking water needs to be requested from the guards

446. The inspection focused, firstly, on the facilities at Madrid-Barajas Airport, in a building near Terminal 1, owned by AENA, which are used by the UCER for organising repatriations. These premises are reached by car via the airport's inner roads.

The hall used for accommodating the foreign nationals to be deported is spacious and furnished with plastic chairs and two toilets. There is a fire-fighting system and one CCTV camera. The ventilation, temperature, lighting and cleanliness inspected during the visit were satisfactory, involving cleaning staff hired by AENA. The two sanitary facilities provided for the detainees were also clean, being equipped with washbasins and toilets. Those women who so require are provided with items of personal feminine hygiene.

447. Any medical care required during the time spent at these airport facilities is provided by the medical staff hired by AENA and deployed at the airport.

448. The detainees are not provided with any food whatsoever during the time they spend at the airport's facilities. In view of the short amount of time they spend on the premises, which is sometimes not even an hour, this is not considered

necessary. In the event of an unexpected delay, the necessary measures would be taken to provide the detainees with some food. Drinking water needs to be requested from the guards.

449. The UCER drafts a General Onboard Security and Surveillance Plan (*Plan General de Seguridad y Vigilancia a Bordo*), as well as a service order that also affects the stage of the transfer undertaken by road, being notified, at a prior meeting, as verified by this Institution's team, to all the guards before the expulsion operation began. On each occasion, a supervisor is appointed by the UCER, who liaises with the operational head of the security detachment regarding the undertaking of the tasks, the distribution of guards and the disclosure of the necessary information for the normal arrangement of the flight. The number of guards is determined, following an assessment of potential risks, establishing, on a general basis, that their number shall be at least equal to the number of repatriated people scheduled to travel on the flight.

The procedure began with the UCER personnel checking the foreign nationals' identity, the documents drawn up for the repatriation and making an entry in the log book provided on the premises, which records the order number, date, nationality, name and surname(s), origin, date of departure, time of entry at the facilities, time of departure and reason for the expulsion. The head of the police detachment is responsible for all the documents through to arrival in the country of destination.

During the next step, the guards perform a thorough personal search on each foreign national, regardless of whether this has already been carried out at other police facilities, with special care being taken to confiscate any items that may pose a threat to people's safety, with any such items being placed in the plane's cargo hold.

450. The personnel involved in the operation were equipped with a series of personal protection and restraining items: rubber gloves, wrist ties, health masks, tools for cutting ties, belts, endorsed restraining garments and transparent plastic bags with labels for holding the personal items of value pertaining to the deportees. At no time were metal handcuffs used during the operation, with fabric ties being used instead. All the guards had cutting implements for rapidly releasing the security ties if necessary.

451. The UCER supervises the assignment of a secure area at the airport or port of departure with a view to streamlining the holding and boarding tasks. During the procedure inspected the head of the detachment called for the deportees' collaboration, reminding them that no hostile or uncooperative behaviour would stop the operation under way.

A General Onboard Security and Surveillance Plan is drafted. A chief supervisor is appointed

The number of guards is established after an assessment of the operation's potential risks

The first step involves checking the foreign nationals' identity

The foreign nationals were then subjected to a thorough search

Provision was made of rubber gloves, wrist ties, health masks, tools for cutting the ties, belts and endorsed restraining garments

Assignment of a secure area at the airport or port of departure with a view to making boarding easier

The CNP officers involved are not uniformed or identified by their plaque number

The various methods of transport used during the operation had not been adapted in any specific way

The guards formed a security cordon as the foreign nationals were transferred to the plane

The police officers escorted the deportees to their appointed seats

The deportees kept their seat belts fastened throughout the entire flight

All the other stages of the journey basically followed along the same lines. Out of the 18 foreign nationals, the Moroccan authorities accepted 17

The head of the detachment arranged the return of the foreign national who was not accepted

452. The CNP officers involved in these operations are not uniformed or identified by their plaque number, and throughout the operation they wear a reflective vest with the word “*policía*” on it.

453. Regarding the methods of transport used in the operation, the first one involved a commercial airplane (model ATR-72), without any kind of alteration or special configuration, with a civilian airline crew. In turn, the crossing by sea involved a chartered vessel, as used by the scheduled lines that sail daily between Algeciras and Ceuta. The journey by road involved coaches from private companies specifically hired for the purpose.

454. Once permission had been given to board, a security cordon was formed by the guards, and the foreign nationals were transferred to the plane, either directly or aboard special vehicles. Only one door was used for boarding and leaving the plane, with a separation between each deportee to avoid groups forming.


The police officers then escorted the deportees to their appointed seats according to the nature of the contingent and their police profile.

455. The deportees kept their seatbelts fastened throughout the entire flight. The wrist ties were not removed on the flight inspected given that, according to the senior police officer, this was not necessary because the flight was so short. The foreign nationals were accompanied to the toilet by police officers.

456. The procedure followed for disembarking from the plane, the transfer by coach from Jerez de la Frontera Airport to Algeciras (Cadiz), as well as boarding the ship for the sea crossing to the Port of Ceuta, with a further journey by coach to the frontier with Morocco, basically followed along the same lines described in the preceding paragraphs. The UCER personnel delivered the deportees to the Moroccan authorities at the border crossing. The handover took around 30 minutes and 17 out of the 18 deportees were accepted by the Moroccan authorities.

The head of the detachment arranged for the return of the foreign national who was not accepted by the Moroccan authorities. No wrist ties were used during the return journey.

**Institutional Training
and Dissemination
Activities
§457 - §463**



457. The Ombudsman sought to officially acknowledge the assumption of the duties of the national preventive mechanism through a presentation event held at the Palacio del Senado in Madrid on 10 May 2010.

The event began with a speech delivered by the President of the Senate, and it included further speeches by the Vice-chairperson of the SPT responsible for relations with national mechanisms and a member of that subcommittee, France's Controller General for Places of Deprivation of Liberty, the Director of the Unit for Cooperation with the National Human Rights' Structures of the Council of Europe, delegates from the APT and the World Organisation Against Torture, and the Director of Amnesty International Spain. Also involved were the ombudsmen of the autonomous communities, together with delegates from civil society, the public administrations — especially those with places for the deprivation of liberty —, the judiciary and the attorney general's office.

The topics addressed focused on an analysis of the shared experiences of the national preventive mechanisms; on an analysis of the international system for the prevention of torture and ill-treatment, and on a study of a key concept in an NPM's work, namely, preventive supervision.

458. Regarding training, a highlight has been the involvement and efforts of the Council of Europe, which through its Unit for Cooperation with National Human Rights' Structures has implemented a project called the "European NPM Project". This programme, funded jointly by the Council itself and the European Commission, has the support of the APT, a non-governmental organisation with protracted international experience in the prevention of torture. The project's overriding aim is to strengthen the prevention of torture amongst the Member States of the Council of Europe, by reinforcing a network of national mechanisms that permit the sharing of ideas and experiences, the dissemination of the working methods used by the SPT and the CPT, the disclosure of international standards on the prevention of torture, as well as boosting cooperation between these international organisations and the national mechanisms that make up the network.

459. This Institution accepted the invitation made by the Council of Europe to submit to an assessment of its operating procedures and methodology. Accordingly, from 2 to 5 November 2010, the Ombudsman's head offices hosted a symposium on training and the sharing of experiences called "NPM On-site Visit and Exchange of Experiences", which was attended by fifteen advisers to the Ombudsman and five international experts from the SPT, the CPT, the Council of Europe Directorate General of Human Rights and Legal Affairs, the APT and an independent expert.

460. The event consisted of three days of presentations and debates, as well as a field trip to visit a prison, specifically, CP Madrid V in Soto del Real. In view of

Presentation event held at the Spanish Senate on 10 May 2010

Speeches by several authorities on the matter from both Spain and abroad. Presence of ombudsmen from the autonomous communities and delegates from civil society

Amongst other topics, an analysis was made of the Spanish NPM's experience

"European NPM Project" by the Council of Europe. The aim is to reinforce the prevention of torture amongst Member States

The symposium "NPM On-site Visit and Exchange of Experiences" was held from 2 to 5 November at our head-offices

It consisted of three days of speeches and debates and a field trip to a prison



the size of the centre, the visit was arranged into five parallel inspection teams each consisting of five members (staff from the Ombudsman's Office, international experts and simultaneous translators), whose tasks were chosen in order to encompass the highest possible number of physical areas and modules that make up the CP. The following two days were devoted to the study of the results recorded during the field work, giving rise to a discussion and exchange of points of view on the methodology used during the preparation of the visit and the inspection itself; with the international experts sharing their views with all the other participants and making valuable remarks and suggestions for improvement.

Attendance by NPM members of dedicated workshops and meetings

461. During 2010, within the framework of the aforementioned "European NPM Project", NPM members have attended dedicated workshops and meetings on the prevention of torture held in Strasburg (France), Padua (Italy), Tirana (Albania) and Yerevan (Armenia); which have involved delegates from the national preventive mechanisms of Members States of the Council of Europe, together with delegates from the SPT, CPT and APT. The following topics were analysed at these meetings: concept of preventive action; the role of national mechanisms in the prevention of ill-treatment at psychiatric establishments; the protection of individual rights during police custody and the scheduling of programmes of inspection visits to the various types of places of deprivation of liberty. Finally, on 2 December 2010, the acting Ombudswoman spoke at the second annual meeting of the heads and contact persons of national preventive mechanisms, held at the Council of Europe's headquarters in Strasburg.


Furthering knowledge on its mandate and on the rules outlawing torture. Specifically, training for the CNP and GC

462. One of the specific remits of the Ombudsman's Office as NPM has been to further the knowledge on its mandate and on the rules that outlaw torture, ill-treatment and any other cruel, inhuman or degrading actions by people working for the public administrations and affecting those people deprived of their liberty that are in their charge or under their custody. Accordingly, this Institution has taken part in the most varied array of fora, ranging from its involvement in training schemes for the CNP or Civil Guard to lecturing in degree courses on human rights.

For more information on our activities, please visit our website

463. Anyone interested in furthering their knowledge on the business of the Ombudsman as an NPM may do so by visiting the website created for this purpose: <http://mnp.defensordelpueblo.es/>, hosted on this Institution's website. In addition to the NPM's organisation and duties, they will find current information on the inspections conducted, which is updated on a monthly basis, news on the NPM and its operations, as well as the full text of the reports it drafts.

**General
Conclusions
§464 - §482**



464. The deprivation of liberty, in any one of its various guises, is of great significance from both a quantitative and a qualitative perspective. Just considering those deprivations of liberty that have involved detention in a place of custody, it can be affirmed — even with the uncertainty involved in the high number of law enforcement agencies existing within the local sphere — that the overall figure for these deprivations of liberty stands at around 600,000 in one year. Furthermore, the administrative structures charged with managing the deprivation of liberty require the intervention, under a wide array of different legal statutes, of a series of professional groups, which all together easily exceed 200,000 people.

The magnitude of these data, together with the numerous different approaches to the deprivation of liberty, the multiplicity of regulations governing them, as well as their geographical dispersion and the variety of types of places of deprivation of liberty, require control systems that adopt different, albeit complementary, perspectives regarding constitutional rights, especially regarding a situation that, as noted, is an especially vulnerable one. This has been the Ombudsman's focus of attention since it was first created, with this duty now being reinforced by the assumption of the powers provided for under the OPCAT for the national preventive mechanism against torture and other cruel, inhuman or degrading treatment or punishment. This Institution is therefore in a position to guarantee the tutelage of the rights of all persons, regardless of the place of deprivation of liberty in which they have been detained and of the Administration or authority responsible for their situation in each case; demanding the application of the same standards of treatment throughout the whole territory under the jurisdiction of any Spanish authority.

465. This report contains myriad data and observations that enable the reader to form an opinion on the specific situation of the places visited and the criteria applied by the administrations running them. Therefore, this final chapter provides a series of conclusions of a mainstream nature focusing on a preventive approach to torture and other ill-treatment, which in Spain is the specific remit of the Ombudsman as NPM. The aim accordingly is to drive the necessary changes of both a regulatory and operational nature to restrict, and ideally banish, any potential cases of torture or ill-treatment.

466. Stress should first of all be placed on this Institution's concern about the media exposure of police arrests, especially in those cases that attract considerable public attention. The image of people in handcuffs being removed from their homes or entering police premises or the courts is a common sight on the news and even in entertainment programmes. This situation reveals a total disregard for the rules laid down for the arrest procedure by section 1 of article 520 of the LECrim. Law enforcement officers should not only discourage situations of this nature but also stop them from occurring, given that they are in themselves a form of degrading treatment.

High quantitative and qualitative importance of the deprivation of liberty. Around 600,000 cases in one year involving the intervention of more than 200,000 professionals

Guaranteeing full respect for constitutional rights in such a wide variety of situations requires different, albeit complementary, control systems

Mainstream conclusions focusing on a preventive approach to torture and other ill-treatment

Concern for the media exposure of police arrests

The Ombudsman is calling for a reform of the Criminal Code, including the question of torture

467. The concluding observations made by the CAT on the fifth periodic report of Spain, dated 9 December 2009, called for an amendment of the Criminal Code to include that the act of torture can also be committed by any “other person acting in an official capacity” and that the purposes of torture may include “intimidating or coercing him or a third person”.

Furthermore, the CAT noted that under article 174 of the Criminal Code, the fact that a person guilty of torture “shall be liable to a term of two to six years’ imprisonment if the infringement was a serious one, and a term of one to three years’ imprisonment if it was not”, did not appear to be in line with article 4, paragraph 2, of the Convention, under which States Parties to the protocol are obliged to punish all acts of torture by appropriate penalties which take into account their grave nature. In addition, the State Party should ensure that in all cases all acts of torture are considered to be of a grave nature. The Ombudsman shares this opinion and calls upon the public powers to address this regulatory reform.

Access to legal counsel immediately upon the start of the deprivation of liberty

468. Access to legal counsel within the period immediately after the start of the deprivation of liberty is essential for the prevention of torture and ill-treatment. Accordingly, article 29 of Spain’s Act 1/1996, of 10 January, on Free Legal Aid, lays down as a special requirement of the criminal system the application, in addition to the rules contained therein, of the guarantees provided for in the LECrim “with a view to safeguarding, under all circumstances, the right to a legal defence from the very moment of detention “. Measure 96 of the Human Rights Plan provided for the amendment of article 520.4 of the LECrim, for the purpose of reducing the maximum time limit of eight hours for the fulfilment of the right to receive legal counsel. In its response to the Concluding observations of the CAT, following the latter’s consideration of the fifth periodic report of Spain, the Government of Spain declared that it was drawing up a draft reform of said legislation; however, at the close of this report, said reform has yet to be submitted to the Spanish parliament, the Cortes Generales.

More resolute investigative action by the Judiciary

469. The gravity of the crimes of torture and other ill-treatment requires more resolute investigative action by the Judiciary. A common goal should be pursued whereby all the players in the deprivation of liberty should accept that any accusation of torture or ill-treatment will be thoroughly investigated through to its ultimate consequences. Especially, measures should be taken to ensure that anyone in a situation of vulnerability (either because they have been deprived of their liberty or because of the imminence of their repatriation to their country of origin) does not face serious consequences if they report ill-treatment or torture or even if in practice there is no possibility of these accusations being legally investigated and resolved.

The convenience of a more general and comprehensive regulation of non-voluntary civil detention

470. It should be remembered that Spain’s Constitutional Court in its Ruling 132/2010 adjudged unconstitutional two paragraphs of section one of article 763

of the Civil Proceedings Act, governing non-voluntary detention for reasons of mental disorder, by considering that a regulation of this nature could not be enacted through secondary legislation but instead required primary treatment. Over and above the need to remedy this issue, the Ombudsman needs to stress the convenience of introducing a more general and comprehensive regulation of non-voluntary civil detention. Especially, assurances should be made of the gradual nature of the measures to be adopted and their regular supervision, as well as of the material conditions in which they are effected, and the criteria for the use of restraining methods of both a physical and pharmaceutical nature.

471. It often occurs that crucial aspects regarding the treatment to be expected by those people deprived of their liberty are regulated through instructions or circulars. Such instruments do not in themselves have all the requirements made of legal statutes, as they are not addressed to the public at large, but only to the specific personnel in question. On the other hand, the process for drafting these provisions does not follow the procedure or apply the safeguards specific to the approval of legal regulations. Give the direct impact on constitutional rights involved in any deprivation of liberty, those regulations that are basic to the determination of the manner in which that restraint of freedom is to occur should be of the highest legal order.

472. The dispersion and diversity of the structure and size of local law enforcement agencies, together with the difficulty involved in ensuring an impartial procedure for examining the disputed actions of small police forces or of their direct political masters, render it advisable to introduce unified inspection systems across the board for the personnel involved that will bring them in line with the large enforcement agencies nationwide or in each autonomous community. Accordingly, in operational terms, the theoretical model to be applied would be the *Inspección de Personal y Servicios de Seguridad* (Inspection of Security Staff and Services) attached to the SES. This system could be introduced through the creation of an *Inspección General de Policías Locales* (General Inspectorate for Local Police Forces) either for Spain as a whole or for each one of the autonomous communities, according to their powers in the coordination of local police forces statutorily vested in them.

473. Whenever there is a conveyance of responsibility for a person deprived of their liberty between different law enforcement agencies or different establishments run by the same agency, the common rules of procedure should include a check to ensure the person transferred does not have any signs of having been subjected to physical or mental ill-treatment. If in any doubt and even though the person in question may not specifically say so, a medical examination is to be conducted immediately to detect any anomaly.

High legal order of the basic regulations for determining the treatment received by people deprived of their liberty

Introduce unified inspection systems across the board for the members of local police forces

Common procedures should include a check to ensure the person transferred does not have any signs of ill-treatment

Special attention is to be paid to the management and content of the software application to be used for gathering updated information on possible cases of the violation of the rights of persons in police custody

Highly appropriate to display information at these establishments on the prohibition of the use of torture and how to report it

Providing the person involved with clear and concise written information on their statutory rights

CCTV and CCTV recording throughout the entire premises, except for visiting rooms with legal counsel or religious ministers, intimate or family encounters, toilets and cells or rooms

Conducting of regular inspections and audits not linked to the investigation of specific incidents or complaints

474. Measure 102 of the Government of Spain’s Human Rights Plan provided for the design of a software application that would allow “gathering updated information on cases that might involve an abuse of authority or the violation of the rights of persons in police custody”. The building of this application was commissioned to the Ministry of the Interior’s Interior Security Research Department (GESI, according to its Spanish acronym), in line with the answers the Government of Spain made to the Concluding observations of the CAT following the latter’s examination of the fifth periodic report of Spain. In order to suitably exploit the potential of an instrument of this nature, it should consider all the incidents reported, regardless of the enforcement agency or establishment involved, as well as any possible legal convictions and criminal sentences or disciplinary measures imposed; and these matters are to be the focus of special attention on the part of this Institution once this database has been submitted to it.

475. In line with the declarations made by the SPT, it would be highly appropriate for all those establishments accommodating persons deprived of their liberty in Spain to publically display information — for example, in poster form — using language that is clear and concise on the prohibition of the use of torture and ill-treatment, as well as on how any such circumstances should be reported and to whom.

476. Persons involved in any situation of deprivation of liberty should be provided with written information on their statutory rights in such circumstances, including the right to habeas corpus, whenever legally applicable. This information is to be provided in a clear and concise manner that can be understood by someone who is not familiar with legal jargon. For example, and referring to the Spanish language, the use of the term “*letrado*” should be avoided when referring to a lawyer or solicitor, and a suitable explanation should be provided on the scope of the right of habeas corpus.

477. CCTV and CCTV recording are basic tools for preventing improper conduct by the staff working at custodial establishments. The inspection visits described in this report have revealed a wide range of practices in this matter. The general criterion should be to deploy these technical means in all those establishments accommodating persons deprived of their liberty, with the exception of rooms set aside for visits from legal counsel or religious ministers and intimate or family encounters, bathrooms and, in cases of medium and long-term detention, cells or rooms.

A study should be made of the conditions that trigger the recordings, the time they are kept, the security protocols for their safeguarding, the means for informing detainees these recordings are being made and the authority to whom they may exercise their rights as laid down by data protection legislation. Furthermore, all procedural protocols should include the taking and saving of

images that cover any incident involving a detainee, without the need for a formal request to be made accordingly. On a general basis, consideration should be given, as a preventive measure, to the holding by the custodian authority of regular audits of the CCTV recordings, without this being linked to the investigation of specific incidents or complaints.

478. In all cases of deprivation of liberty, but especially in those of a short-term nature in which healthcare is not provided on a systematic basis, the practice should be introduced of offering detainees or inmates the option of making a statement of voluntary compliance regarding whether or not they have any illness, allergy or intolerance to foods or medication, or if they are following any course of treatment.

479. All places of deprivation of liberty that do not have a permanent medical service are to be provided with first-aid equipment. Along these lines, numerous staff responsible for the custody of detainees stated during the interviews that there was a need to have emergency medical equipment — for cases such as epileptic attacks, cardiac arrests, etc. —, and to have the necessary training to provide emergency care until the medical services arrived.

480. Incommunicado detention is a regime that especially restricts the rights of a detainee. Given the criminal profiles for which it is reserved, which presupposes the operations of gangs or organised groups that have a certain ability to evade the action of the law, its application has traditionally been justified as a means for achieving three ends: ensuring the access to evidence is not compromised by knowledge of the arrest; stopping news of the arrest being used by the members of a gang or group to help possible accomplices or other members of the organisation evade the action of the law; and, finally, stopping the criminal organisation —which may have a significant scope for manoeuvre through relatives, friends, lawyers, etc. — from bringing pressure to bear on the detainee in order to hinder the investigation or even dissuade them from cooperating with the police.

Given the widespread practice observed by senior law enforcement officers of using the media to rapidly disclose the arrest of suspected members of armed bands or terrorists, the first two reasons expounded have lost much of their justification as reasons for maintaining this type of detention. Nevertheless, the third reason continues to be valid in cases such as those analysed here, in which the aim is to pursue cases of criminality by conviction in which the detainee, if they do in fact pertain to an organisation, becomes both an icon and a potential threat to it. Given that a regime of this nature should always be applied with restrictive criteria, surrounding it with special compensatory safeguards, an overall analysis of the same needs to be conducted in order to decide upon its practical efficacy and the most suitable decisions in terms of legislative policy.

Offer the option upon arrival of a voluntary statement on their state of health and any intolerances

Those places of deprivation of liberty without a permanent medical service should have first-aid equipment

Incommunicado detention should always be applied according to restrictive criteria, surrounding it with special compensatory safeguards

An overall analysis of the same needs to be conducted in order to decide upon its practical efficacy and the most suitable decisions in terms of legislative policy

A welcome development would be to at least amend the legislation governing this form of deprivation of liberty

Improve its practical application

A swifter publication of the CPT's reports in the future would be welcome

481. Regardless of the outcome of the analysis called for in the preceding paragraph on incommunicado detention, a welcome development would be to at least amend the legislation governing this form of deprivation of liberty in order to forbid its application to juveniles and allow detainees to hold private interviews with their court-appointed legal counsel. Furthermore, the provision contained in paragraph c) of measure 97 of the Government of Spain's Human Rights Plan has yet to be fulfilled, whereby the NPM may appoint a second doctor, attached to the public health system, to conduct an independent examination of the detainees during the time they are held incommunicado.

Likewise, and in order to improve the practical application of this form of detention, there should be greater involvement of the courts, especially as regards any extension of the condition of incommunicado. A further requirement should be the introduction of CCTV recording, which includes the recording of sound on an uninterrupted basis during the incommunicado period. This recording is to cover all those places in which the detainees are held or pass through, including transfer vehicles, with the sole exception being sanitary facilities. At the same time, there is a need to generalise certain practices that are already being applied at the behest of the courts or by the Basque police (Ertzaintza), such as reinforcing the daily supervision of the person incommunicado by forensic doctors; standardise the most comprehensive forensic-medical examinations and regulate the notification made to the detainees immediate family of the arrest made and of the detainee's present location.

482. Publication was made on 25 March 2011 of the CPT's report corresponding to the eleventh visit to Spain, conducted between 19 September and 1 October 2007. The Ombudsman welcomes the publication of the aforesaid report and urges the Government to ensure that the publication process is swifter in the future.

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Defensor del Pueblo de España