

# npm

**SUMMARY**  
**2019 annual report**  
**National Prevention Mechanism (NPM)**  
**Spain**

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



**DEFENSOR  
DEL PUEBLO**

**mnp**

Mecanismo Nacional de  
Prevención de la tortura



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A copy of the full Mecanismo Nacional de Prevención [National Prevention Mechanism-NPM] annual report, available here in summarised version, can be consulted on, or downloaded from, the webpage of the Defensor del Pueblo [Spanish Ombudsman]:

[https://www.defensordelpueblo.es/informes/resultados-busqueda-informes/?tipo\\_documento=informe\\_mnp](https://www.defensordelpueblo.es/informes/resultados-busqueda-informes/?tipo_documento=informe_mnp)

Links to the annexes, recommendations and visit reports referred to in the report, including tracking of replies received from the Administration, are available in this version.

Visits to different deprivation of liberty facilities made by the NPM can also be consulted on the website using this link:

[https://www.defensordelpueblo.es/en/prevention-of-torture/npm\\_activity/](https://www.defensordelpueblo.es/en/prevention-of-torture/npm_activity/)

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## **PRESENTATION**

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MNP-Defensor del Pueblo (en funciones)  
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The first ever activity report was presented in 2010 following the 2009 legislative reform further to which the Cortes Generales [Spanish Parliament] entrusted the Defensor del Pueblo [Spanish Ombudsman] with the role of National Mechanism for the Prevention of Torture, as provided for in the Optional Protocol to the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, OPCAT, (sole final provision of Organic Law 3/1981 of 6 April of the Spanish Ombudsman, as worded in Organic Law 1/2009 of 3 November).

The tenth report has now been submitted to the Spanish Parliament by the Spanish National Mechanism for the Prevention of Torture and a summary of it is provided below. The aforementioned trajectory gives us reason to be moderately optimistic with regards to acquiring a fount of knowledge and experience about how the tools provided by the regulation should be used to perform the assigned tasks and achieve the objectives. Within the framework of its role as supervisor of the rights of individuals deprived of liberty, it is the Spanish Ombudsman's specific mission to guarantee that individuals deprived of liberty are not subjected to torture and other cruel, inhuman or degrading treatment or punishment, and to do so in a preventive manner.

Taking into account this considerable period of activity, we might venture to say that the NPM is a leading entity in Spain in supervision of the performance of public administration bodies in this sphere.

Employees assigned exclusively to this line of work have collaborated closely with the departments at the office of the Spanish Ombudsman since 2009 and a broad schedule of visits has been drawn up.

However, our optimism must not make us complacent and the NPM must continually review both its results and the work procedures and resources of all kinds that it uses to achieve its objectives.

In order to talk about torture in terms of prevention, we must first of all determine what torture is and understand that acts of this kind are the upper echelon of a constant represented by torture and other cruel, inhuman or degrading treatment or punishment as referred to in the international regulation and they are the reason for the existence of the NPM and its role in the prevention of torture.

We commonly refer to total prohibition of torture and other cruel, inhuman

or degrading treatment or punishment at all times and in all places. Torture can never be legitimised and no state has the right to revoke a prohibition that exists in international law which, as the international law that it is, is applicable to all human beings without exception.

No internal rule of law may revoke this prohibition and, furthermore, de facto torture is prohibited and must be sanctioned under national criminal law.

Each NPM must perform its preventive role on a national scale. In Spain, the role has been assigned to the Spanish Ombudsman and a significant part of its resources are dedicated to it.

It is only through an analysis of the actual circumstances in each country that we can assess exactly how big the risk of torture is and ensure that it does not put individuals at risk of experiencing harmful conduct or situations.

To this end, the social and legal context in a country, its democratic culture and respect for human rights must work in collaboration with the international standards that provide NPMs around the world with information about what is considered acceptable.

Spain is aligned with the world's most advanced countries in its commitment to respecting and implementing human rights. It has high standards that underpin the preventive supervisory work of the NPM in Spain.

While we may never be able to say that the risk of torture has been totally eradicated and that the mission has been accomplished, it is true that the more advanced a country's respect for human rights, the lower the risk of torture.

There are a number of contributing factors:

- A modern Administration that identifies fully with the concept of designing and managing deprivation of liberty in a way that fully respects basic rights.
- An educated and duly informed population which has the ability to react to wrongdoing and uses effective means to demand respect for basic rights.
- A network of citizens who are committed to defending human rights and who can manifest this openly without it harming their position in society.
- Free and independent media that is able to question cases of abuse or policies that use repression, under the guise of added security, to restrict rights to freedom.
- Last, but by no means least, on the one hand, the legal system

protecting basic rights must be provided with sufficient resources and, on the other, there must be a complex system of external supervising bodies with decision-making powers, such as jurisdictional bodies, and others without such powers, such as the Ombudsman.

Spain meets all these requirements. As such, the prevention of torture and other cruel, inhuman or degrading treatment work assigned to the NPM must take all these circumstances, which are characteristic of an advanced democracy, into account.

The NPM's supervision work must be performed within this context and with the understanding that torture is not limited to physical and psychological violence. Inhuman, cruel or degrading practices can exist in certain acts because their persistence, intensity and intention seriously violate the dignity of individuals deprived of liberty.

As the tenth of its kind, this summarised report does not aim to deliver a comprehensive overview of deprivation of liberty in Spain. It has a more modest objective: it aspires to provide a brief, written account of the Spanish Ombudsman's findings within its role as NPM during visits to deprivation of liberty facilities in Spain in 2019. The visits in question were of great interest to the institution and led to Recommendations or Reminders of Legal Duties which were submitted to the Administration.



## INTRODUCTION

Prohibiting torture equates to protecting the very core of human beings as bearers of recognised dignity. The universal system for the protection of human rights calls on the State to develop a “mechanism” for preventing acts of torture and other cruel, inhuman or degrading treatment or punishment which, if they take place, unacceptably demean the individuals who are subjected to it.

States that commit internationally to prohibiting torture and abuse also embrace creation of a set of internal regulations that suitably define this matter. To this end, they must have an appropriate accountability system and set up a mechanism for the prevention of torture and ill-treatment. It shall ultimately seek to ensure that, in places in which human beings are legitimately deprived of liberty, there are no circumstances or procedures that make it possible for torture or abuse to take place and, should they occur, go unpunished because they are not made public or shared.

Visits to deprivation of liberty facilities are an essential and irreplaceable tool (but not necessarily the only tool) that mechanisms for the prevention of torture must use in order to perform their duties.

It is only possible to access the circumstances and procedures that affect the deprivation of individuals’ liberty through the direct knowledge that is gathered in visits. Knowledge and analysis must be used to determine if a person’s dignity may be compromised by the circumstances and procedures involved in his/her deprivation of liberty, to understand if they can be managed and, above all, if those circumstances and procedures can be classed as torture or other inhuman or degrading treatment or punishment.

However, visits are not the only important part. Access to quantitative data on deprivation of liberty is also a matter of huge interest. Putting facts into numerical context aids comprehension. Availability of data provided by public administration bodies is an auxiliary matter and does not and cannot be an end in itself.

### ***Structure of the report***

The comprehensive edition of this report (a summary of which is provided here) sticks to the same structure as used in previous years. It is divided into two parts: the management report and what has become known as “references”.

The management report adheres to the same information presentation criteria as used in the previous annual report. It is explained below:

- An assessment table at the beginning of sections on each type of deprivation of liberty facility, including information about what was supervised during the visit. It is organised according to a colour coding system.
- An electronic edition that facilitates access to the reports drawn up about each visit. Additional information can be accessed by consulting the conclusions and resolutions. There is also access to information on exchanges with the Administration following the visit. This includes the Administration's reply to the conclusions and resolutions and, where applicable, the NPM's assessment of them.
- Annexes with statistical information gathered from the Administration. As in the previous year's report, the electronic version facilitates access to the annexes from the table at the end of the chapter or epigraph of this report. The most recent available information is included. In some cases, data was not provided by the Administration, despite having requested it on several occasions.

The second part of the full report includes three chapters. One chapter addresses information about investigations into torture and agencies. Another addresses updates on matters of interest to the NPM that are included in international documents. The third chapter gives details about the NPM's training and dissemination institutional activities, including international ones. As an NPM, the Spanish Ombudsman's manner of working is bound by a dual regulatory link: one is internal or national and another is international. Its work is carried out mainly in Spain but there is also an international element. Therefore, knowledge must be shared with other mechanisms and relationships with them must be optimised. Identification of objectives and development of certified work methods stem from shared reference to a single international standard framework: OPCAT.





# **1 GENERAL DATA ON VISITS AND RESULTS OBTAINED**

- **Visits are a basic NPM activity.** During the year covered in this report, **106 on-site visits** to facilities at which individuals could potentially be deprived of liberty were carried out [§ 1]\*.
- Distribution of those visits according to type of facility is indicated below. The grouping criteria is based on ascending duration. That is, visits to detention facilities at which the duration of the detention is the shortest (according to OPCAT terminology), followed by visits to facilities at which the stays are medium to long in duration [§ 2].
- So-called **special purpose facilities** are at the end of the tables. This concept may require a brief explanation. It refers in general to facilities that were not necessarily designed to be deprivation of liberty facilities. For example, hospitals at which a small area is used to provide individuals who have been deprived of liberty with healthcare. These are known as hospital custody units. Means of transport used to transfer individuals who have been deprived of liberty from one place to another, whether this is from the place of detention to a police facility or from prison to court or even from one country to another during repatriation procedures, etc. are also included under special purpose facilities [§ 3].

## 1.1 Main lines of activity

- The **deprivation of liberty facilities visited in 2019** are indicated below [§ 4].

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\* The numbers between brackets correspond to the paragraph numbers in the complete report NPM 2019 in Spanish: <https://www.defensordelpueblo.es/informe-mnp/mecanismo-nacional-prevencion-la-tortura-informe-anual-2019/>

DEPRIVATION OF LIBERTY FACILITIES VISITED IN 2019		NUMBER OF VISITS
<b>Facilities for short-term deprivation of liberty</b>	Stations and other custody facilities of the Policía Nacional [National Police Force]	11
	Barracks and other custody facilities of the Guardia Civil [Civil Guard]	18
	Local police force custody facilities and municipal detention facilities	9
	Autonomous police force stations	6
	Courthouse jail cells	2
	Complementary first aid and detention facilities for aliens	6
	Detention centres and centres for asylum seekers at border controls (National Police Force)	3
<b>Facilities for medium-term deprivation of liberty</b>	Detention facilities for aliens	4
<b>Facilities for long-term deprivation of liberty</b>	Prison facilities	14
	Social integration facilities	2
	Young offender institutions	10
	Mental health facilities	5
<b>Special purpose deprivation of liberty facilities</b>	Alien repatriation operations (FRONTEX)	14
	Hospital custody units	2
<b>TOTAL</b>		<b>106</b>

- Visits are categorised into initial visits and follow-up visits. Operations for the transfer of aliens are a special type of visit because of the particular place at which deprivation of liberty occurs (generally aeroplanes) and because of the circumstances the individuals find themselves in. Fitting these visits into the conceptual framework that divides them into initial and follow-up visits was complicated. It is worth stepping back a moment and contemplating if each new visit to these types of facilities is actually a **follow-up visit**, not of the place itself, but of the **procedure** [§ 5].
- This would mean that 47 would have been follow-up visits and 59 would have been initial visits [§ 6].
- In 2019, visits to **15 autonomous communities**, Melilla and 30 provinces were carried out, as indicated below: Andalusia (Almería, Cádiz, Jaén, Granada, Málaga and Seville); Aragón (Zaragoza); Canary Islands (Santa Cruz de Tenerife and Las Palmas); Cantabria; Castilla-La Mancha (Albacete, Ciudad Real and Toledo); Castilla y León (Burgos and León); Catalonia (Barcelona and Lleida); Community of Madrid; Comunitat Valenciana (Valencia); Galicia (A Coruña, Lugo, Ourense and Pontevedra); Balearic Islands; La Rioja; Navarra; Basque Country (Araba/Álava, Bizkaia and Gipuzkoa) and the Principality of Asturias [§ 7].
- **Repatriation procedures for aliens** performed within the framework of FRONTEX were supervised on 14 occasions and for the routes indicated below: Albania-Georgia (7); Dominican Republic-Colombia (2), Ecuador-Columbia (1), Mauritania (2), Columbia-Dominican Republic (2) [§ 8].
- The **types of teams** who performed the visits are indicated below [§ 9].

## 1.2 Preparing and carrying out visits

CHARACTERISTICS OF THE VISIT GROUPS IN 2019
<p><b>26 MULTIDISCIPLINARY</b></p> <p>8 detention facilities for minors; 9 prison facilities; 2 social integration facilities; 1 National Police Force station; 1 Civil Guard command headquarters; 4 care facilities for individuals with mental illness; 1 hospital custody unit</p>
<p><b>8 WITH SPOKESPEOPLE FROM THE NPM ADVISORY BOARD</b></p> <p>1 detention facility for aliens; 1 first aid and detention facility for aliens; 2 detention centres for minors; 2 prison facilities; 1 local police force custody facility and municipal detention facility; 1 aliens repatriation operation (FRONTEX)</p>
<p><b>5 WITH AUTONOMOUS COMMUNITY PARLIAMENTARY COMMISSIONERS</b></p> <p>1 detention facility for minors; 1 prison facility; 1 social integration facility; 1 National Police Force station; 1 autonomous police force station</p>
<p><b>29 MEMBERS OF TECHNICAL STAFF FROM OTHER SPANISH OMBUDSMAN DEPARTMENTS</b></p> <p>3 detention facilities for aliens; 1 first aid and detention facility for aliens; 1 detention facility for minors; 10 prison facilities; 2 social integration facilities; 1 autonomous police station; 2 National Police Force stations; 1 Civil Guard facility; 4 alien repatriation operations (FRONTEX); 1 room for unauthorised arrivals and asylum seekers at border controls; 3 facilities for individuals with mental health issues</p>

- The NPM commonly works in collaboration with Spanish Ombudsman **departments that deal with complaint management** and that, given the subjects they deal with, have close links to deprivation of liberty facilities. These include the Safety and Justice, Health and Social Policy and Immigration and Equality Departments [§ 10].
- Their coordinated participation in visits is important because this collaboration means that the departments and the NPM work based on the same criteria and with the same objectives, combining the reactive and preventive facets of the work performed by the departments and

the NPM, respectively [§ 11].

- While the work of the former is closely linked to resolving complaints made by citizens (and, for this reason, it is called reactive), the NPM's work is preventive and it is materialised through visits to deprivation of liberty facilities followed by **constructive dialogue with the Administration body responsible for the deprivation of liberty facility that was visited** [§ 12].
- Clearly, these two activities complement each other and enrich management work and the work of the NPM. This consolidated line of work must continue in the future [§ 13].

### **Gender approach visits**

- The presentation of the 2017 report highlighted the importance of studying the conditions faced by **women in prison facilities** based on signs observed during visits suggesting that there were gender-based distinctions, exclusions and restrictions that undermined or reversed implementation of women's rights [§ 14].
- In 2018, there was a great deal of interest in checking these circumstances in detail. A **pilot project** was launched to detect aspects of discrimination of this kind so that parameters could be established to help assess the situation of women during all NPM visits to prison facilities.

This initiative continued in 2019. The available resources meant that it was possible to make three visits of this kind to prison facilities. This helped to enhance **creation of the assessment parameters** that will be used to standardise analysis of the conditions experienced by female inmates during each visit to different types of prison facilities (mixed prisons, all-female prisons, mother and baby units, mixed units, different sentence regimes, etc.) [§ 15.]

- In the short term, this project will mean that **all visits** to prison facilities and, later, to other deprivation of liberty facilities will take the **gender approach** into account as an essential part of the analysis [§ 16].

### **Incidents during visits**

- With regards to incidents during visits, it is worth pointing out that **incidents at the start of or during visits are not relevant** from a quantitative point of view. The individuals in administrative roles at the

facilities that were visited took good care of visiting delegations and collaborated fully in ensuring that objectives could be met.

That said, the two incidents that occurred in 2019 should be highlighted. One was at the Comisaría de la Policía Foral de Tafalla [Territorial Government Police Station in Tafalla] (Navarra). The other was during the visit to Nuestra Señora del Carmen Neuropsychiatric Hospital in Garrapinillos (Zaragoza) [§ 17].

- During the visit to the Territorial Government Police Station in Tafalla, it was observed that one of the officers greeting the delegation had an **evident lack of knowledge of the roles and responsibilities of the Spanish Ombudsman as NPM.**

Despite carrying the appropriate ID and documentation and even though it was the second visit to the facilities made by the NPM, the officer in question hedged the questions made by the visiting team and hampered access to the requested documentation and to an interview with the person who was being detained at the time [§ 18].

- The individual had to be reminded of his duty to meet and enforce the provisions of article 19.2 of Organic Law 3/1981 of 6 April, regulating this institution, on the obligation that all government authorities have to collaborate with the Spanish Ombudsman. The situation in question may have been down to a lack of training. Therefore, a request has been made for information about the content of training courses given to officers in the police force and, in particular, to officers who perform custody duties, where applicable, in addition to whether or not references to the work performed by the Ombudsman's Office as NPM is a part of that content [§ 19].
- During the visit to Nuestra Señora del Carmen Neuropsychiatric Hospital, it was noted that a visit that began entirely normally and in an entirely collaborative manner was delayed due to an **incorrect interpretation of the role of the Ombudsman as NPM** and of the office's capacity to supervise the facility. It was argued that the facility was private and that it is already inspected by competent authorities and, where applicable, by the Justicia de Aragón [Ombudsman of Aragón]. The team attempted to provide a detailed explanation of the institution's competencies but, until the data protection manager at the group responsible for the facilities stated that employees should make themselves entirely available to technical staff from the Spanish Ombudsman's Office, the visit could not continue as normal [§ 20].

### 1.3 Conclusions drawn from visits, rulings and dialogue with organisms in charge

- As of 31 December 2019, **2,579 ex officio cases; 48 Recommendations** (of which, 18 have been accepted, 10 have been rejected, 14 are pending replies and 6 are being handled); **813 Suggestions** (of which, 444 have been accepted, 85 have been rejected, 262 are pending replies and 22 are being handled) and **28 Reminders of Legal Duties** had been opened [§ 21].
- It is common knowledge, but also worth pointing out, that the institution's webpage includes a link to **NPM activity information which is available to the public**. Decisions reached and submitted to the corresponding authorities can be accessed on it.

<https://www.defensordelpueblo.es/mnp/actividad/>

It contains an **interactive map** that displays all the visits carried out by the NPM in a graphic and aggregated manner. This map also allows users to access an **information sheet on each facility that has been visited**, including the resolutions resulting from the supervision procedure: Reminders of Legal Duties, Recommendations and Suggestions [§ 22].

- Minutes of all visits are drawn up. These include the conclusions drawn from observations at deprivation of liberty facilities and a careful analysis of documentation. Depending on their importance, these conclusions can lead to the generation of the different types of resolutions mentioned above [§ 23].
- Each type of facility dictates what the teams of visitors must focus on. These are determined beforehand and are, of course, linked to the predetermined objectives for each specific visit [§ 24].
- Irrespective of the type of facility to be visited (short stay, medium stay, long stay or circumstantial stay), the visiting team checks the condition of the facility. With regards to facility condition, the NPM intervenes when matters of design, construction or maintenance affect how facilities are used or the living conditions at facilities to such an extent that intervention is necessary, and taking national and international standards into account. For example, the potential risk to physical integrity and the risk of unease that could cause anxiety experienced

- by individuals deprived of liberty who are transported in vehicles that do not have certified restraint systems. This is unacceptable and, as such, it is a cause for the generation of a resolution. It is not this institution's responsibility to perform an analysis and assessment comparable to those performed during the service inspections that are carried out by the Administration on the general condition of facilities. However, it is its responsibility to **check if material conditions meet the minimum acceptable standards** expected in neighbouring countries with a similar culture [§ 25].
- The significance of the matters included in the conclusions written up following visits determine if they lead to resolutions. These can be formulated as Suggestions when the proposal is limited to the place in question or to the procedure it refers to. Recommendations seek to foster changes of greater significance and magnitude. Reminders of Legal Duties, as the name suggests, inform the Administration about the matters that arose during the visit and that, in the NPM's opinion, do not meet the provisions of corresponding regulations [§ 26].
  - The Dirección General de la Policía [Directorate-General of Police], Secretaría General de Instituciones Penitenciarias [Secretary General of Penitentiary Institutions], Dirección General de la Guardia Civil [Directorate-General of the Civil Guard], Secretaría de Estado de Seguridad [Secretary of State for Security] and Justicia e Interior de la Generalitat de Cataluña [Departments of Justice and Home Affairs of the Generalitat of Catalonia] repeatedly receive the greatest number of notifications, but it must be taken into account that they manage a large number of facilities [§ 27].
  - It should also be pointed out once again this year that replies from administrative bodies are generally received within an acceptable period of time [§ 28].
  - Administrative bodies are generally receptive to the matters included in Ombudsman Office resolutions. Nonetheless, finances are sometimes the explanation given for postponing implementation of certain measures. This means that the status of resolution executions that have been accepted but not executed must be monitored [§ 29].
  - An extra effort was made at the end of the year to ensure that completion of the **unit's tasks matched the schedule**. The ultimate goal is to ensure that the time that evolves between carrying out a visit and submitting documents to administrative bodies managing deprivation

of liberty facilities is appropriate. The main aim is to ensure that the Administration receives notifications from this institution as quickly as possible since they are the kick-off point for action. However, it is also the aim to ensure some synchronisation between presentation of annual reports by the Spanish Ombudsman and the annual report issued by the NPM [§ 30].

- Achieving these objectives has also led to a process of reflection comparing what is required of the NPM with the actual sustainable capacity of the NPM in Spain, taking into account existing human resources. This process of reflection has meant cancellation of several scheduled visits and some supervisions of FRONTEX repatriation flights [§ 31].



**2**

**SHORT-TERM DEPRIVATION  
OF LIBERTY**

- Without prejudice to other matters that are addressed later on this report, the main matters of concern observed by the NPM in 2019 during its visits to short-term deprivation of liberty facilities are linked to material detention conditions, in particular with regards to individuals in vulnerable circumstances (women in advanced stages of pregnancy, minors and so on). Efficient ventilation systems and suitable illumination inside cells is also assessed. Guarantees that rights are protected are also checked. These include, but are not limited to, detainee privacy and dignity during strip searches (provision of a gown, blanket or similar to cover oneself with). The need for facilities to make clothes available should individuals deprived of liberty need them during their stay in cells and when they go before the judge is also addressed. The presence or availability of certain weapons and instruments for incapacitation, and how they are used at the facilities that are visited, is covered. This refers to TASER guns (otherwise commonly known as electroshock weapons or stun guns) and defence aerosols [§ 35].
- In 2019, the NPM visited 55 short-term deprivation of liberty facilities. These include stations and other National Police Force custody facilities (20), Civil Guard stations and facilities (18), autonomous police stations (6), local police force cells (9) and courthouse jail facilities (2). The National Police Force custody facilities include places used to detain undocumented migrants arriving at the coast of Spain and provide them with initial accommodation. By virtue of the responsibilities of the aforementioned force in terms of alien arrivals and border control, these include the so-called Centros de Atención Temporal de Extranjeros (CATE) [short-term accommodation centres], a room for unauthorised arrivals and asylum seekers and two border controls [§ 36].

### ***Detention reference figures***

- The most recent available information highlights that there are over 4,700 police and courthouse facilities at which detainees may be retained. However, there are slightly fewer with custody facilities in use and the most recent calculations, based on information gathered from data received by the NPM, indicate that there are around 1,100 facilities. 309,000 detentions with committal to jail cells were made at these facilities.

As indicated in last year's report, most detentions are made by the

National Police Force (around two thirds of the total), followed by the Civil Guard (around a fifth of the total). Regional police forces were responsible for the remainder.

According to the most recent information available, the number of detentions made by local police forces was around 25,000. This information is taken from data received by the NPM which, as this report was drawn up, was pending an update. Therefore, the estimated figure corresponds to information from 2018 following a request made to 2,107 local councils with a population in excess of 1,000 inhabitants. Information was received from 90% of them (Table 2) [§ 37].

- Data collection campaigns (for the National Police Force and local police forces) performed by the NPM include a question about how many detentions have been made at each deprivation of liberty facility, irrespective of if that person has been remanded in custody. This aim is to **measure the likelihood of detention progressing beyond initial steps**.

In the case of the National Police Force, the available information (100% responses) that was included in last year's report highlights that almost nine out of every ten detainees were remanded in custody in 2017 and 2018 [§ 38].

- Information about the number of **detentions in 2019 highlights that, over the year, there were 15 detentions during which individuals were isolated. All of them were made by the Civil Guard** (Table 3) [§ 39].
- Until information for 2019 can be gathered, the available data highlights that three out of every four cases of entry refusals at border controls (Table 6) take place at airport border controls. Over 95% of them take place at the Adolfo Suárez Madrid-Barajas and Josep Tarradellas Barcelona-El Prat airports. 20% of refusals of entry were made at maritime locations (most of them at the Tarifa and Algeciras ports in Cádiz) and almost 5% were at terrestrial locations. Beni Enzar in Melilla and El Tarajal in Ceuta account for 100% of these refusals [§ 40].
- In 2019, almost 116,692 international protection requests were submitted. Most were formulated in Madrid (55,118) and Barcelona (11,711) [§ 41].
- Suicide attempts in national and autonomous community law enforcement agent locations are recorded as follows, as per the information provided in 2019: Mossos d'Esquadra [Catalan Police

Force], 123 serious cases, 121 mild cases and 0 deaths; Civil Guard, 53 attempts, with no details on gravity, and 0 deaths; Ertzaintza [Basque Country Police Force], 0 serious cases, 15 mild cases and 0 deaths; Policía Canaria [Canary Islands Police Force], 0 attempts and 0 deaths; Territorial Government Police Force, 3 attempts, with no details on gravity, and 0 deaths; National Police Force, 20 serious cases, 178 mild cases and 14 deaths. The National Police Force case is significant. Information on the number of deaths and on the number of successful suicide attempts was requested. In one case, 13 deaths were reported and, in the other, 14 deaths were reported. This matter will require further clarification.

The lack of availability of data on suicide attempts at local police force facilities and the fact that information has been requested through the Ábaco project but remains unreceived should be highlighted [§ 42].

- With regards to deaths of individuals in national law enforcement agency custody, the data provided by these agencies (Table 9) stated a total of 14 individuals: one at the Civil Guard facility in Chipiona (Cádiz) and 13 at the National Police Force stations in Alicante, Almería, Asturias, Cádiz, Granada, Las Palmas, Madrid (3), Pontevedra (2), Soria and Valencia.

The previous report used information from Ábaco to report the death of two individuals remanded in custody by the Local Police Force in Barbate (Cádiz). This led to a visit to those facilities where it was confirmed that the information provided by the local police force was incorrect and that those individuals had died of no specific cause.

In addition, at the time this report was written, information from autonomous community and local law enforcement agencies on this matter was not available [§ 43].

### ***NPM activities***

- The visits led to 658 conclusions, which culminated in 3 Recommendations, 357 Suggestions and 5 Reminders of Legal Duties [§ 44].

## **2.1 Visits to general detention facilities**

- Twenty facilities managed by the **National Police Force** were visited. Seven of them were follow-up visits. Out of all the visits to places of deprivation of liberty that fall under the responsibility of this entity, six were made to short-term accommodation centres and other temporary facilities with similar functions. Three visits were made to rooms used

for individuals who have not been admitted and asylum-seekers. The specific nature of these facilities explains why they are referred to separately in posterior sections of this epigraph.

A table summarising the aspects that were checked and supervised during the visits to the facilities for short-term deprivation of liberty is provided below.

With regards to the visit made to the National Police Force station in Patraix (Valencia), “NE” denotes that the cells in these facilities are no longer in use and, therefore, individuals are not remanded in custody in the cell area. Detainees are taken to this police station to have their rights read, for an interview with the lawyer and other proceedings. After, they are taken to the Brigada Provincial de Extranjería y Fronteras de Valencia [Provincial Department for Aliens and Borders of Valencia] [§ 45].

- With regards to the **Civil Guard**, 18 facilities were visited. Four of these were follow-up visits [§ 46].
- Out of the six visits made to **autonomous police facilities** (Basque Country Police Force, Catalan Police Force, Canary Islands Police Force and Territorial Government Police Force of Navarra), three were follow-up visits at the Catalan Police Force facilities in Barcelona, the Territorial Government Police Force facilities in Tafalla and the Territorial Government Police Force facilities in Estella [§ 47].
- Nice **local police force** facilities were visited. All of them were initial visits, except the one made to the Local Police Force in Haro (La Rioja) [§ 48].
- Two **courthouses** were also visited (**Hall of Justice of Zaragoza and Hall of Justice of Logroño**). Both can be classed as initial visits since, even though the NPM had made visits to the cells at the courthouses previously, they were at different locations [§ 49].
- The following aspects were addressed [§ 50-110]:
  - Minimum material conditions for detention:
    - Detainees do not always access the custody area through an alternative door to the main entrance door. This would eliminate the risk of them bumping into individuals visiting the facilities for other reasons.
    - Cell size.

- Appropriate lighting.
- Supervision of the number of people per cell (compliance with the one detainee per cell requirement), where possible.
- Particular emphasis was given to elements that compromise the physical integrity of individuals deprived of liberty.
- Detainee access to toilets.
- Cleanliness, preservation and maintenance of facilities.
- Appropriate ventilation.
- Appropriate healthcare for the duration of deprivation of liberty.
- Presence of inappropriate elements in custody areas.
- Electroshock weapons and instruments for incapacitation.
- Monitoring of officer presence in custody areas whenever detainees are present.
- Appropriate spaces for interviews with lawyers.
- Appropriate supply of suitable food and access to water.
- Detention of minors.
- Video surveillance, audio surveillance and recordings.
  - More extensive video surveillance coverage.
  - Checks to ensure coverage does not infringe upon detainees' basic rights.
  - Suitability of audio recordings.
- Custody agent ID.
- Presence of female officers when frisking female detainees.
- Strip searches and gowns for detainees.
- Suitability of available clothing for detainees, should this be required.
- Record logs and compliance with the chain of custody:
  - Surveillance of digitalisation of these elements.
- Surveillance of appropriate completion of the information sheets that are given to detainees.
- Appropriate translation and interpretation services.
- Vehicles used by police forces to transfer individuals deprived of liberty:
  - Monitoring that video-surveillance coverage exists.
  - Particular emphasis on renewal and availability of suitable vehicles.



### **3 MEDIUM-TERM DEPRIVATION OF LIBERTY: DETENTION FACILITIES FOR ALIENS**

- The 2017 annual report already outlines the Spanish Ombudsman's criteria and opinion on detention facilities that are used exclusively for aliens.

As pointed out in last year's report, there are common threads to the matters examined in the section on short-term deprivation of liberty and medium-term deprivation of liberty, since detention facilities for aliens are used as elongations of the role of police stations.

Detention facilities for aliens have the sole purpose of guaranteeing execution repatriation rulings issued to aliens. Their purpose is not, therefore, to remunerate and they do not have a resocialisation function. For this reason, detention facilities for aliens are legally defined as public buildings that are not correctional facilities and aliens staying at them are only subjected to restrictions on freedom of movement [§ 111].

### **3.1 Information of interest on administrative detention of aliens**

- In 2019, as can be confirmed in the tables included in the digital annex that can be accessed at the end of this chapter in the electronic version of the report, there was a significant decrease in the number of undocumented individuals arriving at Spanish territory. Compared with 63,054 cases in 2018, in 2019 there were 32,524 cases.

But, in spite of this decrease, a significant number of repatriation and deportation cases were initiated and resolved in 2019 (69,119). Likewise, repatriation of aliens remained around the same level as in the previous year, with just a 2.03% decrease in number.

With regards to deportations executed in 2019 and the legal reasons for them, there was a higher percentage (57.98%) for undocumented stays, followed by repatriation due to judicial replacement of deprivation of liberty sentences (26.98%). Deportation of individuals found guilty of wilful misconduct and sentenced to deprivation of liberty in excess of one year was in third place (15.03% of all cases) [§112].

- Once again, it should be pointed out that the figure recorded in 2019 (3,759) equals a daily average of 10.29 repatriations. Over the last

five years, the figure has been below 30 individuals a day and the number has been below 26 individuals a day in two of those years. This highlights the issues that Spanish authorities face when enforcing the existing repatriation policy [§113].

- In 2019, 3,759 aliens were detained at and repatriated from the different detention facilities. In 97.81% of all cases, detainees were men [§ 114].
- This year, the number of unaccompanied minors at alien detention facilities decreased. There were 54 cases over the last year, compared with 88 cases the previous year. The figures at the alien detention centres in Algeciras, Barcelona and Murcia, with over 10 cases each, stand out in particular [§ 115].
- In 2019, there were 2,164 requests for international protection, compared with 1,776 requests the previous year. Despite this increase, the number of accepted requests decreased 39.96% in comparison with the previous year [§ 116].

The detention facility for aliens at Barranco Seco in Las Palmas reopened in November 2019 after it was closed in 2018 to perform refurbishment work.

There are now seven detention facilities for aliens up and running. There is also an annex to the detention facility for aliens in Algeciras, which is located in Tarifa (Cádiz).

Four detention facilities for aliens were visited in 2019: Algeciras, Barcelona, Tenerife and Valencia. With reference to last year, the Barcelona and Valencia facilities were visited once again and updates to checks at the Algeciras and Tenerife detention facilities for aliens were performed [§ 116].

## 3.2 Matters of special interest

It should be highlighted that the matters of most interest in terms of deprivation of liberty at these facilities include [§ 117-129]:

- Closure or refurbishment of facilities. The case for closing the detention facility for aliens in Algeciras has been made. Construction of a new centre in this locality has been announced. The detention facility for aliens in Valencia was refurbished to some extent but requires a comprehensive overhaul. The women's unit at the

detention facility for aliens in Barcelona was entirely refurbished. The men's unit will be refurbished in due course. Conditions at the detention facility for aliens in Tenerife are not ideal. There are plans to refurbish the detention facility for aliens in Murcia.

- Healthcare. Injury reports are not sent directly to the on-call examining magistrates' court. The company that has been commissioned to provide healthcare at all detention facilities for aliens does not have a secure e-mail service.
- Access to mobile phones and safe recharging points.
- Legal support and guidance. Not all detention facilities for aliens have legal guidance services for individuals at the facilities.
- Video surveillance. Video surveillance should be installed throughout centres, except in bedrooms and bathrooms. There should be means available to ensure that the system is not left inoperable if there is an electricity cut.
- Coercion. Use of coercion at detention facilities for aliens still needs to improve, both in terms of regulations and in terms of practical implementation. Cases that may give rise to use of these measures must be defined. Particular care must be taken when determining which situations legitimise its use so that verification of those situations leaves no shadow of a doubt.
- Phone booths and communication. Communication and visits with detainees must be increased in number and there must be no obstacles impeding contact between visitors and the individuals receiving visits. Restrictions based on generic safety reasons that affect the right to visits of detainees and their families, friends and non-governmental organisations must be avoided.



## **4 LONG-TERM DEPRIVATION OF LIBERTY**

## 4.1 Prison facilities

### *Some basic figures*

- In 2019, there were 121 prison facilities for detainees in service in Spain. In the geographical area covered by the Secretary General of Correctional Facilities, in 2019, there were 69 ordinary regime facilities, 33 social integration facilities, three mother and baby units and two prison psychiatric hospitals. The prison service administration in Catalonia had nine ordinary regime facilities, four open prisons and a prison hospital unit in Terrassa (Barcelona).

In December 2019, there were 58,517 inmates in Spain. 8,388 of them were detained in prison facilities in Catalonia. 47,761 had been sentenced, 9,452 were in preventive custody, 730 were on remand and 537 were subject to security measures. In total, there were 366 people less than the previous year, which confirms that the number of individuals deprived of liberty is on the decrease.

There were 4,373 female inmates in Spain (1,242 alien women). In the geographical area covered by the Secretary General of Correctional Facilities, 596 were in preventive custody, 3,148 were sentenced, 42 were subject to security measures and 25 were on remand. In Catalonia, there were 562 women (244 aliens), of which 106 were in preventive custody, 453 were sentenced, 3 were subject to security measures and none were on remand [§ 130].

- With regards to **prisoner categories**, on the same date, there were 905 inmates in maximum security prisons, 35,520 inmates in ordinary regime, 8,047 inmates on day release and 3,289 inmates with no assigned category. In the area covered by the Secretary General of Correctional Facilities, there were 797 individuals in maximum security prisons, 31,140 in ordinary regime, 6,396 on day release and 2,696 with no assigned category. In Catalonia, there were 108 inmates in maximum security prisons, 4,380 inmates in ordinary regime, 1,651 inmates on day release and 593 inmates with no assigned category.

In terms of **aliens in Spain**, in December 2019, there were 16,740 individuals deprived of liberty. In the geographical area covered by the Secretary General of Correctional Facilities, there were 11,603 men and 998 women. In Catalonia there were 3,625 men and 244 women.

In terms of **age groups**, there were 506 individuals under 21 and over 18 years of age deprived of liberty in Spain (21 in preventive custody). In the over 60s age group, there were 344 individuals deprived of liberty (19 in preventive custody). In the geographical area covered by the Secretary General of Correctional Facilities there were 381 individuals under 21 years of age (17 in preventive custody) and in Catalonia there were 66 (2 in preventive custody). In the over 60s age group, there were 300 individuals deprived of liberty in the Central Government's geographical area (17 in preventive custody) and in Catalonia there were 336 (18 in preventive custody).

**Out of 574 individuals subject to deprivation of liberty security measures, 532 were in the geographical area covered by the Secretary General of Correctional Facilities and 42 were in Catalonia [§ 131].**

- **Out of the total indicated at the beginning, 50,129 (85.6%) individuals were under the responsibility of the Secretary General of Correctional Facilities and 8,388 (14.4%) were under the responsibility of the Secretaría de Medidas Penales, Reinserción y Atención a la Víctima (SMPRAV) [Secretariat for Penal Measures, Reinsertion and Victim Support].**

A comparison of the inmate population across autonomous communities shows that four of them (Andalusia, Catalonia, the Community of Madrid and Comunitat Valenciana) encompass 61.5% of all inmates in prison facilities. This is the same percentage as the previous year [§ 132].

- **In terms of deaths among inmates in 2019**, in the geographical area covered by the Secretary General of Correctional Facilities there were **194** deaths (185 men and 9 women). There were 210 deaths in 2018. That is, a slight decrease compared with the year before. The prison facilities at which there were most deaths were León (14) Seville I (10), Madrid VI (9), Malaga (8), Sevilla II (7), Las Palmas II (7) and Zaragoza (7).

According to the information provided by the Administration in Catalonia, in 2019 there were 26 deaths among inmates in Catalonia. The most relevant prison facilities in this sense are Brians II (8), Brians I (6) and Quatre Camins (5). In relative terms or, in other words, based on the inmate population assigned to each management area, the percentage is very similar in both cases: 0.38% for the geographical area covered by the Secretary General of Correctional Facilities and 0.30% for the Secretaría de Medidas Penales, Rehabilitación y Atención a la Víctima (Generalitat de Catalunya) [Secretariat for Penal Measures,

Reinsertion and Victim Support (Generalitat of Catalonia)] [§ 133].

### ***NPM activities***

- In 2019, visits to 16 prison facilities were carried out. One of these was a social integration facility and another was a centre obert (open facility). Nine were follow-up visits: Ourense, Madrid III (Valdemoro), Madrid II (Alcalá-Meco), Monterroso (Lugo), Asturias, Madrid I (women), San Sebastián, Melilla and Las Palmas and Las Palmas II prison facilities. The social integration facility that was visited was the Mercedes Pinto facility in Santa Cruz de Tenerife and the centre obert was the facility in Barcelona.

Visits were also made to the hospital custody unit in Punta de Europa Hospital in Algeciras and the prison hospital unit in Terrassa. By way of continuation of the visits that began the previous year, three gender approach visits were made: Madrid I (women), Las Palmas and Las Palmas II which, because of their specific nature, are discussed in a separate epigraph [§ 134].

- The numerous areas of NPM activity in this field of deprivation of liberty concentrated mainly on [§ 135-242]:
  - The need for improvements to use and supervision of mechanical restraints and control and use of other means of coercion used by the Administration.
  - Monitoring of the process to regulate use of video surveillance systems and improvements to the devices used.
  - Improvements to disciplinary measures to adapt to current legislation.
  - Efficiency in investigations into abuse, handling of injury reports and presumption of innocence among public sector employees.
  - Improvements to healthcare at prison facilities pending transfer to autonomous communities.
  - The issues faced by alien inmates in prison facilities given that they are not provided with professional simultaneous interpretation services, among other matters.
  - The claims and issues faced by prison facility staff when carrying out their work and the meetings held with their representatives.
  - Updates to prison infrastructures in obsolete facilities that have a negative impact on public sector employee work and on inmates.
  - The impact made by implementation of the Recommendation on prohibiting consumption of alcoholic drinks by prison facility staff inside prison facilities.
  - Development of procedures to avoid vendettas against inmates and

- improvements to the ID system for prison staff.
- Presence of individuals deprived of liberty when cells are checked.

## 4.2 Young offender institutions

### *General data*

- As indicated in previous NPM annual reports, according to the data submitted to this institution by the corresponding administrative bodies, there are 71 deprivation of liberty facilities for minors in Spain with approximately 2,868 places [§ 243].

### *NPM activities*

- In 2019, ten young offender institutions were visited in the autonomous communities of Andalusia (three visits), Catalonia (two visits), the Canary Islands (one visit), the Basque Country (one visit), the Balearic Islands (one visit), Cantabria (one visit) and Comunitat Valenciana (one visit). Except Cantabria, all the centres were visited for the first time by the NPM.

Specifically, the following facilities were visited (in chronological order): Carmona Drug Dependency Therapy Facility (Seville), Los Alcores Young Offender Institution (Seville), Rei Jaume I Re-integration Facility for Minors (Valencia), L'Alzina Youth Education Facility (Barcelona), Andoiu-Gorbeia Education Facility (Araba/Álava), El Segre Education Facility (Lleida), Maliaño Government of Cantabria Youth Social and Education Facility (Cantabria), La Marchenilla Young Offender Institution (Cádiz), La Montañerta Young Offender and Education Institution (Cádiz) and Es Fusteret Social and Education Facility (Balearic Islands) [§ 244].

- 290 conclusions were reached following the visits and there was one Recommendation addressed to the Department for Social Affairs and Sport of the Autonomous Community of the Balearic Islands, 6 Reminders of Legal Duties and 139 Suggestions [§ 245].
- The following aspects were also addressed [§ 246-323]:
  - Healthcare:
    - Lack of privacy during medical consultations since they are performed with the presence of educators or security staff,

- either in the consultation room or just outside with the door open.
- Facilities do not have access to professional interpretation services and other detained minors are asked to perform interpretation tasks. This violates rights to the privacy that is implicit in doctor/patient relationships.
  - Healthcare requests are not always recorded on file, meaning that checks on when they were made and when they were put into effect cannot be made, and statistics on types of healthcare cannot be developed.
  - In terms of prevention of attempts to commit suicide, one of the facilities that were visited did not have a suicide prevention protocol.
  - In another facility, some detained minors were requested to support other recent arrivals. It is the NPM's opinion that placing the responsibility of the suicide prevention programme on young people themselves is inappropriate.
- Injury reports:
    - At some facilities, injury reports were inappropriately filled in or did not contain all relevant information.
    - At one of the facilities, the injury reports protocol is only applied if injuries could lead to legal proceedings (when those injuries have been intentionally caused by a third party), injuries following restraint performed by security staff or injuries that are detected on an inmate's return to prison following temporary release and that have not been dealt with at another facility. This particularly restrictive interpretation does not encompass intentional self-harm and other injuries of unknown origin. The protocol does not state the need to issue an injury report when minors claim to have been the victim of an attack but do not have physical or mental injuries. It is the NPM's opinion that the aforementioned reports should also be issued in these cases, pointing out that the injuries in question are not visible ones.
  - Admissions
    - An inmate's experience on admission into a deprivation of liberty facility can be decisive. In some facilities, it was observed that, while they are in the observation unit, individuals are left alone, they eat in the same room (which does not have a table) and they also go to the yard alone, emulating the conditions faced by individuals who are punished with

group separation. These procedures can negatively affect how a person is received on arrival and this is an essential factor when rehabilitation begins.

- The admissions dossier that is given to young people on arrival, and which must contain information about rights, obligations and co-habitation rules at the facility, are too technical and, therefore, unsuitable for the individuals they are given to.
- Strip search records
  - There were a relatively high number of strip searches.
  - Furthermore, some testimonies state that, sometimes, minors were handcuffed during strip searches and that, in these cases, the search was carried out by force. This is not a suitable practice for detention facilities for minors and does not respect inmates' dignity.
  - Some testimonies state that, during strip searches, young people are asked to do squats.
- Use and registration of coercion
  - Not all facilities had a logbook recording use of coercion. These logbooks should record the most relevant aspects of use. At other facilities, logbooks did not contain important information such as the individuals who used the restraint or when (date and time) this began and ended.
  - At some facilities, it was observed that there was no reference to whether the mechanical restraint that was used was a reduced type (shackles) or prolonged type (straps).
  - With reference to prolonged use of mechanical restraints using certified straps, the rooms used for this purpose were examined. It was observed that none of them met the NPM's recommendations outlined in its good practices guide on the use of mechanical restraints. Furthermore, at some facilities, restraints were used on individuals in prone position, which violates the criteria in the aforementioned guide.
  - Not all facilities use this restraint method. In fact, several of the buildings that were visited did not have a room for this purpose. This is an indication that it is possible to use alternative methods that show greater respect for minors' dignity and that are more closely aligned with the educational role that these facilities fulfil.
  - Two facilities that share some areas have rooms known as "self-harm rooms" that are used to seclude minors for

preventive therapeutic reasons (in certain cases of the suicide risk protocol) and for control reasons (when minors are being aggressive or for sanctions). There is no furniture in these rooms other than the bed that is anchored to the floor. The walls are tiled and could be used for self-harm or for harming staff. There are bars on the windows. Furthermore, there is no call button or automatic door system which could compromise safety in an emergency situation. Likewise, the rooms are not very suitable for secluding minors for prolonged periods of time since they are very small (approximately 5.7 metres square) and claustrophobic.

- Separation from others
  - On examination of logbooks and other documentation on coercion and sanctions, it was determined that there is still some confusion between measures used to separate individuals from others and provisional isolation. It was observed that computer records on use of restraints did not cover provisional isolation. However, similar records on coercion did include precautionary steps for separating individuals from the rest of the group. These are not restraints; they are sanctions.
- Sanctions
  - Data was missing from several files: missing declarations made by the minor and no signature where there ought to be one.
  - On the whole, minors' legal representatives are not informed about disciplinary measures. Even if, in some cases, notifications sent to minors do include the option of being given guidance by a lawyer, the fact that legal representatives never visit minors at facilities make this guarantee merely a formal one and not in any way a practical one.
  - With reference to enforcing sanctions, particularly in the case of sanctions involving separation from others, some facilities always do this in the observation unit. A suggestion regarding performing a case by case assessment of the need to satisfy sanctions in the observation unit rather than in the minor's own room was rejected by the Administration. The Administration understood that enforcing a sanction always implies a step backwards and that sanctions should be completed in the observation unit so that the specific educational needs of the minor can be managed when disciplinary files are opened.

- This institution does not share this point of view.
- Complaints were also received indicating that, during separation from others, young people do not attend their scheduled classes. This is a failure to comply with the provisions of article 60.3 of Organic Law Regulation 5/2000 approved by Royal Decree 1774/2004 of 30 July.
  - At another facility, it was observed that, during separation from others, minors do not receive daily visits from the doctor, psychologist or tutor.
  - The sanctions logbook did not include comprehensive information about enforcing sanctions, particularly with regards to start and end dates. This record book was not available at one of the visited facilities.
- Video recordings and access to recordings
    - Several of the facilities that were visited did not have a video surveillance and recording system and, in other facilities, these systems did not cover all communal areas or the rooms used for provisional isolation and mechanical restraints.
    - In two facilities, images were stored for a period that is clearly insufficient (7 and 15 days, respectively).
    - At some facilities, images are viewed if there are incidents. This is good practice. At others, however, downloading images is more complex and involves sending a request to the security services provider or to the managing foundation's central offices. Sometimes, images can only be downloaded if requested by an authorised individual.
    - The importance of access to suitable video surveillance and recording systems covering all appropriate areas, audio recordings and a protocol for downloading images if there is an incident, is highlighted during all NPM activities. It is essential that facility managers have direct access to the images that have been stored so that any incidents can be assessed and appropriate supervision of the facilities in question can be carried out.
  - Privacy during exchanges
    - At the facilities that were visited, on the whole, the conditions when young people make phone calls to friends and family are suitably private. However, some of the young people who were interviewed considered that they were not given enough privacy when making calls or during visits.

- Staff training
  - The qualifications and characteristics of staff providing services at facilities continued to be another area for analysis. These individuals are, to a great extent, responsible for the success of detention sentences among minors.
  - It was confirmed that educators and monitors have a range of qualifications ranging from primary school education to degrees in a range of subjects (psychology, pedagogy, law, social work and so on).
  - The NPM believes that, although the applicable regulations do not specifically state that employees must have a minimum level of studies in all cases since qualifications can be replaced by experience, it is reasonable to demand that educators and monitors working with young people at facilities have a minimum level of studies. They are their points of reference and should have at least secondary education level studies. Among other aspects, these individuals should serve as an example to the young people with regards to completing their education.
  - The security staff at some facilities had not received any specific training on how to restrain minors, on using force in such a way that this does not affect vital functions and on de-escalation techniques.
  - Bearing in mind the significant percentage of minors with toxic substance consumption issues, there was a lack of information about addictions. This could help to improve the perception that the minors in some facilities with toxic substance abuse treatment programmes have of these programmes (too basic and of no practical use in terms of avoiding consumption in real-life contexts).
  
- Training for minors
  - Once again, the need to make sufficient numbers of occupational workshops and specialist work training opportunities available to minors was emphasised. These courses should be given by staff with specialist knowledge and should include official vocational training courses.
  
- Gender
  - Specific visits with a gender approach were not made to court-ordered detention facilities for minors. This approach was

tackled at prison facilities and it was observed during visits to young offender institutions that there were certain situations suggesting that the specific conditions experienced by young people serving their sentence in deprivation of liberty facilities should be studied in greater detail.

- In terms of regulated classes, the fact that, in one facility, minors (males) were separated into levels and there was even a room specifically assigned to mental health, was noteworthy. Female minors, however, were mixed together with no differentiation in terms of ability or special needs. This puts them at a disadvantage in terms of the education that the facility should be providing them with. Again, the fact that there are fewer females than males led to them being left in a markedly inferior situation. They were not allowed to opt for the autonomous dwelling, do sports activities outside the facility or access other activities that the male minors could access.
  - An analysis of the use of restraints used over the last year indicated that they were used more frequently on females than on males, even though the number of females is a third of the number of males.
  - Furthermore, it was observed that, on the whole, there were no differences between the examination methods and protocols for men and women. There were no differences according to gender such as sexual and reproduction healthcare, which is recommendable and would provide information of interest.
  - However, the suicide prevention protocol stipulates the “male sex” as a risk factor in terms of suicidal behaviour among youths. The suicide prevention logbook states that, since 2017, the protocol has been activated for 14 minors. Seven of them were females, even though there are significantly fewer females at the facility.
- Facilities and materials
    - Some of the facilities that were visited were excessively prison-like and did not look like the educational buildings that these entities should be. For example, they had high fences and grille-style doors.
    - Some of the windows were covered with metal sheets with holes in them. This made ventilating difficult and limited the amount of natural light coming into the room.
    - Installation of systems with automatic doors that would

facilitate easy escape in case of an emergency is advised, particularly in facilities with a great number of detainees. Most facilities do not have a system of this kind.

- Transfers managed by law enforcement agencies
  - At some facilities, law enforcement agencies do not use official, marked vehicles to transfer minors. Furthermore, agents do not wear uniforms. Recommendations to this end have been repeatedly made by this institution with the purpose of guaranteeing minors' rights to privacy, safety and dignity.
- Complaints and requests
  - There were shortfalls at almost all the facilities that were visited in terms of how minors are able to submit requests or complaints, or the way in which these requests or complaints are recorded.
  - Furthermore, facilities that do not already have them, should install alternative ways of submitting complaints (suggestion box) so that minors can share matters that concern them anonymously and without having to go through their tutor.
- Alien minors
  - At some of the facilities that were visited, there was a significant number of alien minors. Staff at the facilities pointed out that they had issues processing the applicable documentation at consulates.
  - At one facility, 20 of the inmates were unaccompanied alien minors under the guardianship of the Administration. If these minors are undocumented, they cannot register at state schools in the corresponding autonomous community.

### **4.3 Mental health facilities at which individuals are involuntarily detained due to psychological disorders**

- Gathering mental health data in Spain is an arduous task. Precise information about admissions on the grounds of mental health, the facilities to which individuals are admitted and the number of voluntary and involuntary admissions is not available.

The majority of individuals who are involuntarily admitted into acute psychiatric units or residential facilities do so under the provisions of article 763 of the Civil Proceedings Law (CPL) regulating urgent

admissions of individuals with acute mental health issues.

The need to establish a specific procedure for involuntary admissions of this kind has been made clear in several reports and is reinforced here. Matters other than just involuntary admissions also need to be addressed. For example, control of the mechanical restraints that are used at these facilities and other matters which, given their nature, directly affect the fundamental rights of individuals who are admitted to these mental health facilities.

It is worth drawing attention at this point to the Constitutional Court (CC) case law which, in several sentences, has defined the procedure for determining that application of article 763 of the CPL is constitutionally appropriate when there are no grounds for urgency. Constitutional Court Rulings 13/2016 of 1 February, 34/2016 of 29 February and 132/2016 of 18 July, among others, resolve existing discrepancies on this matter regarding the appropriate procedural course for obtaining judicial authorisation to continue to detain individuals at facilities when they show signs of decreased cognitive ability. The CC argues that, when a person does not need to be admitted urgently, the procedure for modifying the capacity of articles 756 to 762 of the CPL (promoted by the prosecution service, the family itself or the facility) for precautionary committal applies.

With regards to involuntary committal due to a psychological disorder, the CC points out that, in addition to the psychological disorder, there must also be an urgency or need for medical intervention in order to protect the individual. Except in this case, measures have to be agreed with the judge and this must always be done with reference to a person who, at the time, is not deprived of liberty [§ 324].

- The following aspects were also addressed [§ 325-350]:
  - Use of mechanical restraints.
  - Absence of provisions that meet minimum common requirements for regulating application and, above all, for monitoring and controlling measures that have such a significant impact on individuals. This absence is directly linked to the lack of development of article 763 of the aforementioned CPL on involuntary admission. Therefore, it is once again highlighted that there ought to be regulations on the requirements and criteria for this matter.
  - Absence of restraint logbooks.
  - Absence of informed consent protocols according to article 9.2 b) of Law 41/2002 of 14 November regulating patient

autonomy, and rights and obligations in terms of information and clinical documentation, which requires all steps taken with regards to the patient's health to be underpinned by the individual in question's free and voluntary consent.

- Very limited monitoring and control of these measures.
- Voluntary and involuntary committal and the notifications that are sent to judicial authorities on involuntary committal.
- Legal counsel for individuals who are involuntarily admitted.
- Prolonged stays in the case of some individuals who are admitted to these facilities. These are sometimes as long as over 50 to 60 years.
- Absence of injury reports for residents at these facilities.
- Absence of an accessible complaints and suggestions system for patients or residents at most facilities.



## **5 PROGRAMME OF VISITS FOR PREVENTING GENDER AND SEXUAL ORIENTATION DISCRIMINATION**

- The NPM's interest in applying a gender and sexual orientation approach to its work began in 2018 through the application of a project in prisons. This work has continued this year. The aim is to determine procedures and standards that can be systematically applied to NPM visits to deprivation of liberty facilities.

Complementarity between the different prison facilities that are visited is key to achieving a global vision of the conditions of women and the LGBTI+ collective at the different types of facilities and during different stages of deprivation of liberty. With this in mind, mixed prison facility **Antoni Asunción Hernández in Picassent (Valencia)** was visited ([visit 101/2018](#)) in 2018. Architectural barriers stemming from organisation of space at the facility and distribution of inmates was observed. This had a direct impact on conditions for female inmates.

With a view to further developing the project, in **2019** visits were made to **Madrid I prison facility** ([visit 91/2019](#)), which is for women only, **the open prison unit at Las Palmas I prison facility** ([visit 102/2019](#)) and **Las Palmas II mixed prison facility** ([visit 104/2019](#)). The latter is one of the most modern prison facilities in Spain and it has several architectural and functional innovations. The improvements include an absence of issues caused by architectural barriers that are detected at other facilities. At the latter two facilities, isolation and its impact on conditions for women who are deprived of liberty stand out in particular. Furthermore, as outlined in more detail below, the two facilities are complementary since they are an example of how females who are deprived of liberty are transferred from an ordinary regime to day release. In other words, from an ordinary regime to semi-liberty.

This project follows the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, commonly known as the Bangkok Rules, in addition to the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity, among other international standards.

Three Recommendations were made at the visits to **Antoni Asunción Hernández prison facility in Picassent (Valencia)** in 2018. They were accepted by the Administration and three areas for study were explored and treated in 2019 [§ 351].

### *Disaggregated data*

- At **Las Palmas II prison facility**, it was observed that the Recommendation was accepted and applied. As such, it was possible to access statistical data disaggregated by sex and this, in turn, has made **obtaining results based on statistical data that is recorded** in an official and systematic manner by the prison facility's administrative body possible.

With regards to the request to collect disaggregated data, the **objective was broadened** in 2019 after it was observed in the visit to **Madrid I prison facility** that there were 40 **Roma women** at the facility. This data, which was provided by the team at the facility, needed to be collected from social affairs files further to an NPM request, since it was noted that this information is **not recorded in a disaggregated manner. The absence of disaggregated data on this minority group makes understanding the specific needs and vulnerabilities of Roma women impossible. This negatively affects planning of programmes that are better suited to these women and more effective in terms of reinsertion.** As a result, a Recommendation was made within the framework of the conclusions drawn from that visit [§ 352].

### *Inclusive language*

- During the 2019 visit to **Madrid I** prison facility, it was observed that, despite being a prison facility that is for women only and despite making the visit just one year after pointing out to the Administration the need to apply a gender approach to all aspects related to prison facility management, there were still forms that **mentioned “inmates” in generic terms** and did not give the option of stipulating that an inmate is female. This obscures the position of women who are deprived of liberty. Women filling in forms perceive that the Administration does not take gender into account and it is simply a matter of how forms are designed. The problem is not so much a question of the fact that the distinction is not made (which may be seen as more or less relevant depending how sensitive a person is to these matters); it is more about the Administration's evident lack of interest in dealing with these details. Likewise, during the visit made to **Las Palmas II prison facility**, it was observed that the **documentation that inmates are provided with on arrival** does not use inclusive language and information that is adapted to suit women's circumstances [§ 353].

### *Psychological assessment and semi-structured interviews*

- This matter was increasingly explored as the visits programme for 2019 progressed.

During the visit made to **Madrid I prison facility and Madrid II prison facility**, it was observed that the **suicide prevention protocol (SPP)** contains a certified suicide risk assessment scale for all prison facilities and it is the same for men and women. Although the scale does address the concerns that individuals who are deprived of liberty have about the outside world (children, dependent ascendants and descendants, which tend to be one of the main emotional challenges for women when committed to prison), **the suicide risk variables table did not appropriately and explicitly reflect other matters that are particularly relevant to women. Therefore, the aforementioned Recommendation was submitted.**

Furthermore, it was observed in both facilities that most female inmates believe that **the psychological support they are given is scarce and not very useful** since it does not address the issues that concern them. It has been suggested that **women who are deprived of liberty should be guaranteed access to psychological support that takes matters of gender into account.**

In addition to these clarifications, it should also be pointed out that new Recommendations on the matter have been made.

During the visit to **Madrid I prison facility**, it was made clear that **a significant percentage of female inmates experience gender-based violence. The percentage of women suffering from this type of violence is estimated to be 70% by Madrid I prison facility management, 50% by Las Palmas I prison facility management and 60% by Las Palmas II prison facility management.** These are estimations since data including this information is **not systematically collected.** This matter has a very significant impact on individuals and affects **physical, psychological and emotional health among women. It also affects their rehabilitation and reinsertion process. Gender-based violence is not directly assessed in any of the protocols that were reviewed** (personal treatment programme, committal interview, psychological report, social background), and **it is not included in treatment programmes.** Therefore, a Recommendation was made following the visit to Madrid I prison facility.

**When an individual who is deprived of liberty is transferred to a semi-liberty regime, he/she restarts his/her life on the outside, even if only to a certain extent. Failing to gather information about a**

possible background of gender-based violence denies the individuals who are responsible for assessing this access to incredibly important information. It means there is a lack of **knowledge regarding the chances that a woman will return to circumstances where she will experience gender-based violence at home or in the family, plus the potential need to make contact with entities specialising in gender-based violence.** A Recommendation based on this situation was made following the **visit to Las Palmas I prison facility open prison unit.**

Two matters were observed during the **2019 visits** and, given their relevance, a Recommendation was formulated [§ 354].

### *Training for civil servants, technical staff and healthcare personnel*

- During the visit to **Madrid I prison facility**, it was observed that the public service and healthcare employees working at prison facilities with female inmates **are not given specific and ongoing training on matters of equality and gender-based violence.** Gender-based violence crimes such as human trafficking mean that it is essential that staff training is improved. An opportunity for teams of social workers to improve training on questions of gender, the institutional network of resources and action protocols on this matter was also identified. Likewise, it was noted that healthcare personnel are not given specific training on gender violence and the gender perspective. It was observed during interviews that **not all professionals treat transsexual individuals with respect** and in a manner that is mindful of their declared gender. Therefore, **staff must also be given training on sexual diversity and appropriate treatment of transsexual individuals.** This was repeated during the interviews held at **Las Palmas II prison facility**, at which **complaints were filed by transsexual individuals** regarding the support provided by members of **staff covering technical, psychological and psychiatric issues, in addition to being treated in a way that does not take their situation into account.** **Transsexual individuals and women repeatedly agreed that they were not treated with respect during body searches and frisking.**

Therefore, a Recommendation was made following the visit to Madrid I prison facility.

A Recommendation was formulated following the visit to **Antoni Asunción Hernández prison facility** and was made once again following the visit to **Las Palmas II prison facility** [§ 355].

### *Prison shop*

- During interviews, a certain number of female inmates complained about the prison shop and the **availability of certain products**. As a result, a Recommendation was made following the visit to **Las Palmas II prison facility**.

This matter was also noted at another visit to a mixed facility within the framework of the project: **Antonio Asunción Hernández prison facility** [§ 356].

### *Access to employment*

- **Professional training that is acquired during ordinary regimes has a significant impact on job opportunities when inmates progress to day release, as observed during visits to the open prison unit at Las Palmas I prison facility and Las Palmas II prison facility.**

In the **open prison unit at Las Palmas I prison facility, to which female inmates from the Palmas II prison facility progress as they go through the prison system**, it was observed at the time of the visit that the In/Out Programme was no longer being carried out. The aim of this programme is to aid progression from ordinary regimes to day release or from ordinary regime to semi-liberty. In terms of job training, at the time, La Caixa Foundation was running the Reincorporation Programme but only one female inmate was on the programme.

On the whole, women who are on day release generally perceive their new circumstances under day release as extremely provisional. They are faced with significant difficulties in their attempts to secure work outside prison and they face the risk of having to regress in the prison regime system if they do not manage to do so. Everything seems to depend on the inmate's own initiative and, therefore, most probably on the network of relationships that they had before committal. In real terms, the time that they are given to secure a job position that guarantees them semi-liberty is unrealistic. During interviews, they made references to the Administration's lack of support in the search for employment. The team of technical staff confirmed that women have more issues securing employment. The reason that they give for this is that they are less well educated and have fewer qualifications. Furthermore, **it is not easy for female inmates to make the most of training activities at prison facilities given the duration of their sentences, which tend to be short. The limited duration of their sentences excludes them from access to training courses which**

**need to be completed over longer periods of time and which give students better qualifications. These courses, in turn, open the doors to what can be considered, at least to some extent, qualified employment.**

**On the whole, training levels tend to be low for men and women but the former do tend to have more work experience than the latter. In addition, women tend to bear the greater responsibility for family upkeep.**

An analysis of **training course data at Las Palmas II prison facility** revealed that women are suitably represented on employment-based training courses. Most courses are mixed but the **distribution** between men and women was somewhat **sexist** on three courses: only women participate in the course on cleaning surfaces and furnishings in buildings and premises; and only men are enrolled on the plumbing and air-conditioning course and the painting course. This only goes to reaffirm gender roles that have a negative impact on women.

**Therefore, both facilities are urged to guarantee access to education and training courses for women in ordinary and day release regimes so that their options of employment increase. They are urged to intervene to compensate for the evident inequality that exists at employment level.**

It was observed at the visit made to **Madrid I prison facility** that the **MENTOR Programme** providing access to online training courses on a range of professional fields does have an assigned classroom and computer equipment but they are not put to use. General security is the reason given for not permitting access to the Internet and this renders the computers useless in terms of online training. It is evident that online training would improve the chances of re-insertion for female inmates who, to a large extent, have low levels of education [§ 357].

### **Addictions**

- **During visits to the Las Palmas I and Las Palmas II prison facility open prison units, the significant link between how treatment for addictions is addressed and progress from ordinary regime through to day release was observed.**

The team of technical staff at Las Palmas I prison facility open prison unit indicated that addictions are one of the main barriers to reinsertion for individuals who are deprived of liberty. Furthermore, this often underpins why many female inmates fall backwards in the

system and relapse into criminal behaviour.

**Women at these facilities do not have access to an addiction support network.** Men, meanwhile, are given global treatment starting with the therapeutic unit in prison facilities. This continues through to day release with the support of the external therapeutic community called Almogarán. Experts consider that the fact that women are not given this opportunity is unfair and unjust treatment. The explanations that are given are the smaller number of women and the type of addictions they have. It was pointed out that their addictions have a lower social impact and are not so closely linked to crimes. As a result, instead of helping to open doors, paradoxically, women's less conflictive and aggressive behaviour actually limits their opportunities and gives rise to circumstances that are entirely unjust.

During the visit to Las Palmas II prison facility, it was observed that, during their terms in prison in ordinary regime, women are not provided with access to the module for treatment of addictions. Furthermore, they are not provided with any other kind of outpatient treatment for drug addictions. This shortcoming is unjustifiable. Women deserve to be provided with this treatment since addictions among this population group are high. Failing to provide treatment for their addictions limits their chances of reinsertion and, furthermore, is often a cause for disciplinary action when they are serving their sentences. This is confirmed by the female inmates themselves, the team of technical staff and public service surveillance staff. They all believe that specific interventions with regards to addictions in women is necessary.

This lack of treatment during ordinary regime leads to reinsertion issues and can impede progression through regimes when female inmates are at Las Palmas I under day release. **Furthermore, women under day release do not have access to external entities giving them residential support or guidance as they serve their sentences under these conditions. Men, as mentioned above, have access to residential resources, such as Almogarán, which specialises in addictions.**

In addition, **the need to suitably adapt drug addiction and rehabilitation programmes to gender-based differences and characteristics** is mentioned at all visits. The aim is for women to be treated equally and exercise their rights to access to efficient drug addiction treatment programmes.

With reference to addictions, it should also be highlighted that **large quantities of psychotropic drugs are dispensed at the Madrid I prison facility and Las Palmas II prison facility. It was suggested**

that a review of this situation ought to be carried out, including a guarantee that these drugs are actually taken and a search for alternatives to consumption of therapeutic drugs. For example, managing anxiety and sleeping patterns and increasing physical activity and employment [§ 358].

### Treatments

- At Las Palmas II prison facility and Madrid I prison facility, it was observed that female inmates are largely unaware of the existence and content of the personalised treatment programme.

During the visit to Las Palmas II prison facility, it was observed that female inmates were not given access to the healthcare programme for mental health issues.

Headquarters services at the Secretary General of Correctional Facilities run the “Ser Mujer” (Being a Woman) programme as a means of dealing with the gender-based violence that a large percentage of female inmates experience. During visits to Las Palmas II prison facility, this programme was not up and running and, at Madrid I prison facility, eight women were participating in it following a period during which the programme had been out on hold due to a lack of available staff [§ 359].

### Contact

- At Madrid I prison facility, it was observed that there are issues managing visits between female inmates and their children when the latter are under the guardianship of the Administration. Furthermore, these issues are on the increase. The issues mean that scheduled visits sometimes do not go ahead or are delayed. According to the information received, these cancellations or delays are due to limited options for transferring female inmates to meeting points. It was argued that the Administration with guardianship rights over minors is responsible for taking them to prisons for visits.

Likewise, further to an analysis of Prison Security Tribunal number 2 court decisions in 2018 and 2019, it was observed that this court repealed many of the court decisions for Madrid I prison facility refusing prisoners leave and approved the appeals made by female inmates. This is an indication of the inflexibility of the Administration when granting leave and reluctance to accept judicial body criteria. In this case, this inflexibility negatively affects individuals who are deprived of liberty and who do not contest these court decisions.

Last of all, it should be noted that the **communication booths** at this prison facility do not have the necessary means for facilitating communication. For example, telephones. Furthermore, they do not have doors and there is no insulation against background noise coming from other conversations. It was a common cause for complaint among the women who were interviewed.

At this prison facility, the fact that telephone booths are in such high demand, the elevated costs of calls and, in many cases, female inmates' lack of wherewithal means that their families and support networks are unable to give them over-the-phone support. Alien inmates are particularly affected by this. They do not receive visits, have limited wherewithal and have to cover elevated telephone call costs. As a result, many female inmates would like to have access to **video conference facilities** since it would mean that they would be able to see their families and the quality of contact with their families would be far greater. The same thing happens at **Las Palmas II prison facility** at which, in addition, **insularity** means that women who are not from the island face even greater issues securing visits.

It should also be pointed out that, at the time of the visit to **Madrid I prison facility**, there were 264 female aliens (55% of the total prison population). Several of the inmates who were interviewed indicated that, along with other fellow alien inmates, they face **issues communicating with Administration bodies because of the language barrier**. The implementation of a telephone simultaneous interpreting system was suggested [§ 360].

## Spaces

- At the time of the visit, there were 480 female inmates in **Madrid I prison facility**. Out of these, 370 had individual rooms. The cells are 2.97m long by 2.43m wide (7.22m<sup>2</sup>) and issues ventilating them were observed on several occasions. The minimum standard stipulated by the **Committee for the Prevention of Torture is four metres square per inmate when cells are shared**. The female inmates who were interviewed often referred to a lack of privacy because they were required to share cells and because they spend a lot of time in the little space they have. Therefore, it is suggested that **female inmates be guaranteed an individual cell unless it is understood that they are better off sharing. Should this be the case, they should be guaranteed a minimum space of four metres square each**.

At this prison facility, it was observed that cell accessibility is limited due to architectural barriers such as steps and narrow showers with

steps going up to them. This means they cannot be used by individuals who have mobility impairments or who are overweight.

Last of all, cell maintenance (damp patches and paintwork) and mattress deficiencies were observed at Madrid I prison facility. Several women also requested installation in cells of surfaces capable of reflecting images. Suitably safe surfaces of this kind would help to promote self-confidence and a more normal environment.

At **Las Palmas I prison facility open prison unit**, it was observed that the facilities are not suitable for overnight stays. They are not suitably maintained, are too small and do not have a safe place for belongings. The bathrooms are in decline, there is damp and they lack upkeep. Overall, the facilities are not suitable for the initial period when inmates are granted day release or later on when they are required to stay at the unit if they are not granted release from prison. Even though this matter is covered in more detail below, it is worth pointing out that individuals are required to spend 16 hours a day outside at the open prison unit. If, for whatever reason, individuals are unable to spend 16 hours a day outside and need to remain at the facilities, the conditions at the open prison facility are not fit for this purpose. Last of all, architectural conditions meant that some female inmates indicated that they felt unsafe, particularly at night. This was confirmed by prison staff [§ 361].

### *Maternity*

- **None of the prison facilities on the Canary Islands, including Las Palmas II prison facility which has a 12% female population, over half of which are of reproductive age, have a mother and baby unit.** This is a significant obstacle for women who wish to have children during their stay in a prison facility. Furthermore, it means that pregnant women have to be separated from their babies after birth, unless both can be transferred to peninsular Spain. This means uprooting individuals and it can even lead to older children being left behind. This was the basis for a Suggestion that was submitted indicating that **mothers deprived of liberty on the Canary Islands should be provided with suitable facilities in which to serve their sentence along with any children aged under three if they are with them.**

At **Madrid I prison facility**, it was observed that **pregnant women are not provided with a special diet.** An analysis of the monthly meal plans that were provided by management indicates that it includes very few proteins, particularly in the vegetarian option. There is **no access to childbirth classes** and access to yoga classes

is limited because demand is very high [§ 362].

### ***Open prison units***

- At the time of the visit, there were 96 male inmates and 9 female inmates (9.3% of day release inmates) at **Las Palmas I prison facility open prison unit**. An analysis of the files for female inmates at the facility at the time of the visit confirmed that the **women** on day release had **primary level profiles** and had been sentenced for **non-violent crimes** such as theft, driving without a license or fraud. The staff at the facility confirmed this and the information coincides with existing studies on delinquency and the female prison population. When the visit was carried out, the female inmates **did not have financial resources when granted day release**.

In the **open prison unit**, inmates are required to leave the facilities **each day at 6.30 in the morning and return at 20.30 or 22.00**. From a health point of view, and in particular if inmates have chronic illnesses, are pregnant or have other special circumstances that imply special dietary requirements, **the 16 hours that they are required to spend outside prison (which begins without having first had an suitable meal) could entail significant risks**. It was also observed that the schedule **does not always work for some of the jobs that inmates find**. For example, the hospitality sector often implies working later than the time that inmates are required to return to the open prison unit. It means that they are unable to opt for work of this kind when, furthermore, it is one of the few options for individuals without specific qualifications. In addition, **with no access to financial resources, having to remain outside prison for between 14 and 16 hours a day means that individuals who are deprived of liberty end up having an erratic and destitute existence that borders on homelessness**.

These misalignments in schedules (sometimes too much, sometimes too little) negatively affect reinsertion processes for women. **If special needs are not accounted for, it can lead to women obtaining financial resources using alternative means. Their lack of resources makes them vulnerable and the Administration should take responsibility for ensuring that circumstances of this kind do not arise [§ 363]**.

### ***Matters of interest observed during other visits***

- Aside from during the visits made within the framework of this project,

other inequalities were also identified. These include **increased precariousness of spaces and, therefore, poorer accommodation and treatment conditions.**

In terms of **medical assistance, at Santa Cruz de La Palma prison facility** (visit 26/2019), the **female inmates unit does not have a medical consultation room** and healthcare is provided in a public service employee's office. The space is clearly unsuitable for this purpose. Female inmates are only transferred to the medical consultation room in the men's unit to deal with more serious issues, which is not very frequently. At **Melilla prison facility** (visit 98/2019), **when female inmates have any health issues, they are not taken to the nursing unit. They remain in their own unit.**

With regards to the **smaller size of female sections**, it should be pointed out that, at **Ourense prison facility** (visit 8/2019), the **yard in the women's unit** is very small and some female inmates only have access to the main yard under very special circumstances when they are being given training courses. The communal areas and cells in the female inmates' unit at **Santa Cruz de La Palma prison facility** (visit 26/2019) **are very small.** This makes cohabitation difficult since individuals feel closed in and it makes exercising or making productive use of time complicated. In addition, **female inmates cannot access certain spaces at the facility because those spaces are in the men's section.** For example, the library or chapel at **Santa Cruz de La Palma prison facility** (visit 26/2019), or the gym, library and activities such as cookery at **Melilla prison facility** (visit 98/2019) because they are outside the unit for female inmates.

Last of all, the two isolation cells in the female unit at **Melilla prison facility** (visit 98/2019) did not have running water, the call button did not work and the window could not be opened [§ 364].

### *Restricted access to productive workshops*

- During the visit to **Ourense prison facility**, (visit 8/2019) it was confirmed that **women have issues accessing the productive workshops held in external companies.** In fact, at the time of the visit, there were no women working, despite the facility having access to 15 places in external company workshops [§ 365].

### *Pregnancy*

Last of all, during the visit to **San Sebastián prison facility** (visit 93/2019), deficiencies affecting management of relevant information were observed.

**There is no field on the Prisons Computer System for indicating if a female inmate is pregnant**, even though this is a relevant piece of information that comes with specific needs (beyond specialist healthcare). A Recommendation was made in response to this.



**6 SPECIAL PURPOSE  
DEPRIVATION OF LIBERTY  
FACILITIES: ALIEN  
REPATRIATION OPERATIONS**

- **Fourteen alien repatriation operations** were observed in 2019. All of them were within the framework of airborne operations run by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX).

The repatriation flights that were inspected were destined for the following places: Tirana (Albania), Tibilisi (Georgia), Bogotá (Columbia), Santo Domingo (Dominican Republic), Quito (Ecuador) and Nuadibú (Mauritania).

Seven trips were made to Tirana and Tibilisi (all of them with a shared plane); five to Bogotá; four to Santo Domingo; one to Quito and two to Nuadibú (operations 9/2019, 11/2019, 18/2019, 32/2019, 33/2019, 38/2019, 43/2019, 47/2019, 57/2019, 60/2019, 81/2019, 90/2019, 95/2019 and 106/2019).

All supervised flights left Adolfo Suárez Madrid-Barajas Airport. However, over half made stops at other localities to pick up some or all of the individuals who were scheduled for repatriation. Specifically, the flights stopped at Tenerife Norte airport (four occasions) and Barcelona airport (four occasions) [§ 366].

- As indicated in the following sections, the supervisions work confirmed that several of the issues observed over previous years persist. These include numerous failures to provide sufficient warning that flights will take place; only providing individuals from detention facilitates for aliens with fit to travel documents; errors in the chain of custody; and failures to allow individuals under police detention to collect their personal belongings.

Some improvements were also noted. For example, on more recent flights, FRONTEX complaint forms were available in most of the languages spoken by individuals being repatriated and the individuals in question were informed that forms were available. However, the interpreter on flights to countries in Africa did not always speak the languages spoken by individuals being repatriated, making communicating with them difficult.

The observations made during supervision of repatriation flights to Mauritania underpinned by the Agreement on Immigration signed by Mauritania and Spain in 2003, which facilitates repatriation of individuals from other countries to the former, are of particular

interest [§ 324 y 367].

### ***New FRONTEX regulations***

- In 2019, Regulation (EU) 2019/1896 of the European Parliament and of the Council, of 13 November 2019, on the European Border and Coast Guard, repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624, was adopted.

Among other matters, the new regulation seeks to reinforce the agency by increasing personnel and technical and financial resources, in addition to broadening its capacity to support Member States in questions of border control, returns and cooperation with third countries. It also aims to improve transparency and access to information on its activities and incorporates EUROSUR, the European Border Control System.

With regards to supervision of operations, the new regulation states that, further to an agreement with the Member State in question, FRONTEX must allow the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the European Council to carry out visits when performing return operations, within the framework of the supervision mechanism created by European Council members by virtue of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment [§ 368].

### ***Supervision of repatriation operations in the EU***

- The European Union Agency for Fundamental Rights (FRA) performs an annual comparison of Member State activity in the field of repatriation operations.

Based on the information available on its webpage (data for activity in 2018 was available on closure of this report), it can be ascertained that in 11 of the 26 EU countries that were analysed, supervision work is performed by that country's NPM.

In Germany, Slovakia and Sweden, the supervision organism designated by law is an agency or entity that is part of the branch of government that is responsible for returns. As such, the FRA understands supervision cannot be classed as "effective" because it is insufficiently independent, as per Article 8 (6) of Directive 2008/115/EC on returns. In Germany, the system for monitoring return operations run by the NGOs at certain airports only covers part of the country.

Not including The Netherlands (where the NPM is made up of a network or several bodies and entities), Spain is the third country in terms of the number of flights (14) monitored by an independent supervising body which is also the NPM (after Italy at 22 and Greece at 18). In Italy and Greece, the NPM has 21 and 18 employees doing this job, respectively. The NPM in Spain, meanwhile, has 10, taking into account staff from other Ombudsman departments who participate in some of those operations [§ 369].

### ***Figures for return operations and NPM activities***

- **In 2019, the NPM monitored repatriation of 552 foreign individuals.** Technical staff from the institution's Department of Migrations and Equal Treatment or the Director of International Relations at the Ombudsman's Office participated in four out of the 14 flights [§ 370].
- According to information provided by the Unidad Central de Expulsiones y Repatriaciones (CGEF) [Central Unit for Expulsions and Deportations], in 2019, 669 individuals were repatriated in 19 operations performed in conjunction with FRONTEX [§ 371].
- As usual, supervision of repatriation operations included examination of the information that is available before the flight takes place, supervision of the operation, analysis of available documentation and the conditions of the flight itself. Further to the most recent supervised operations, work with the Directorate General of the Police in Spain is ongoing to facilitate earlier submission of documentation on individuals scheduled to be repatriated so that the circumstances surrounding each case can be duly analysed.

The 14 operations supervised by the NPM this year have led to the creation of 139 conclusions, which underpin the one Reminder of Legal Duties, one Recommendation and 15 Suggestions that were issued.

All reports issued by the NPM have been sent to the corresponding units in the Administration and to the FRONTEX agency human rights officer. In the case of the latter, this was for information purposes [§ 372].

- The NPM's activity in this field of supervision has centred mainly on [§ 373-393]:
  - How custody personnel handled cases during the phase of the process, which begins on arrival at airport facilities. On the

whole, operations are carried out without incidents and in a professional manner by participating officers who facilitate the work of inspection teams.

- Notification of repatriation orders and collection of belongings. Many of the individuals interviewed during operations point out that they were not given sufficient notice about when and how expulsion would be executed.
- Transfer to the departure flight. In many cases, transfer from the different localities to the Central Unit for Expulsions and Deportations facilities was done in an afflictive manner with no stops for meals or comfort breaks even when, on occasions, the trips had lasted several hours and individuals were handcuffed to each other during transfer.
- Restraint measures logbooks. They continue to be filled in inappropriately.
- Central Unit for Expulsions and Deportations facilities at Adolfo Suárez Madrid-Barajas airport.
- Chain of custody. There continue to be evident deficiencies with regards to how chain of custody forms are filled in.
- Identification of individuals participating in the operation. Sometimes, the police officers collaborating with the Central Unit for Expulsions and Deportations did not wear vests and did not have appropriate ID.
- Fit to travel and medical condition documents. Deficiencies with regards to fit to travel documents and the medical documents carried by the healthcare team and that have been pointed out on previous occasions remain unresolved.
- Complaints mechanism. Even though FRONTEX does have a complaints mechanism consisting of a complaints form, this was not always available in the languages spoken by repatriated individuals and they were not given information about the complaints system.
- Documentation on repatriations.
- There is no standard yardstick for the duration of entry bans following expulsion. The justification for these rulings is limited.
- Lack of data protection when handing documentation over to foreign authorities and an absence of proof that individuals have been handed over to the police in the destination country.
- Two different types of expulsion orders (judicial and administrative) of different durations and effects (judicial ones apply to national territory and administrative ones apply to the entire Schengen territory) for the same repatriated individual.
- Repatriation to Mauritania. Individuals from states such as

Senegal, Guinea Bissau, Guinea and Gambia were repatriated to Mauritania on repatriation flights to that country. Individuals from Mali and a smaller number from the Ivory Coast were also on these flights. Many regions in Mali have been declared areas of risk by UNHCR. Individuals should not be returned, even indirectly, to places that pose a risk to their safety.



## **7 INVESTIGATIONS INTO ALLEGATIONS OF TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT**

- The Tribunal Europeo de Derechos Humanos (TEDH) [European Court of Human Rights (ECHR)] has found Spain guilty of violating article three of the European Agreement on Human Rights on several occasions. The convictions have been for **inappropriate investigation of possible cases of torture, inhuman or degrading treatment**.

Individuals who are deprived of liberty retain their right to be treated with respect for their physical and moral integrity (article 15 of the Spanish Constitution). At the same time, public service employees have the right to be presumed innocent until proven guilty when claims that they have allegedly proceeded incorrectly are made against them (article 24.2). Both rights need to be respected and protected by a system guaranteeing protection for public sector employees and individuals who are deprived of liberty.

**Individuals who are deprived of liberty sometimes face serious issues trying to provide proof to back their allegations of physical or psychological abuse. In other cases, public sector workers who have been accused of abuse do not have access to specific proof to prove that the claims made against them are unfounded.**

In cases of inappropriate, unjustified or disproportionate use of physical force by individuals who have the right to employ physical force in deprivation of liberty environments, lack of available proof can lead to tensions that are particularly pertinent in prison facility situations. It affects imprisoned individuals who believe they are left unprotected and it also affects public sector employees. The latter personally file complaints or file complaints through representatives stating that they have been subjected to false claims and accusations of abuse.

The Spanish Ombudsman has highlighted this situation on several occasions, in addition to the need to establish a range of procedures aimed at trying to bring them to an end.

In 2014, a study entitled Injury Reports for Individuals Deprived of Liberty was published in 2014. It included a recommendation directed towards the Secretary of State for Security:

Issue appropriate instructions to all public medical services so that: [...] **Copies of injury reports are delivered directly, without the use of intermediaries and without delay, to the affected party, the magistrate's court and, where applicable, to the court in charge of deprivation of liberty** so that interventions by forensic doctors

who write the reports that help judges to determine the origins and consequences of injuries are not delayed, and are not written when injuries are no longer visible or have altered substantially.

The study also made the following recommendations to the Minister for Justice: **“Foment applicable reforms to regulate the minimum content for injury reports in a comprehensive and homogeneous manner throughout the country.”** The content in question is referred to in section 5.4 of the study when it mentions the “structure and minimum acceptable aspects of injury reports” and it includes the so-called “compatibility opinion” according to which doctors are required to assess the compatibility or incompatibility of the allegations of abuse/torture made by the individual being examined with the examination being performed.

It should be taken into account that injuries can arise from appropriate use of means of coercion and that this does not mean that there has been any abuse. This is what makes the specialist doctor’s compatibility opinion a matter of such significance. The doctor is the expert with the ability to determine if the type and characteristics of the injuries match the specific allegation of abuse.

It should also be highlighted that, just as a presence of injuries that match allegations of abuse does not necessarily imply that the public sector employee has acted inappropriately, an absence of injuries cannot unquestionably imply that the public sector employee is faultless. It is precisely in these cases that **appropriate investigation work during the administrative phase is absolutely key. At the very least, it implies that it must not be insufficient.**

In 2019, within the prisons service, as already pointed out, an internal regulation known as the **“legal obligation to issue injury reports”** was issued by the Secretary General of Correctional Facilities. It was submitted by the General Director of Penal Enforcement and Social Reinsertion to prison facility managers. In this epigraph, suffice it to highlight the importance of having the option of gaining access to reliable proof in all investigations, particularly if there are allegations of abuse or torture. For example, reports or injury reports drawn up by doctors in accordance with the regulations on preparation of medical and legal documents of this kind.

There is nothing new in highlighting that the aforementioned 2019 regulation should state that injury reports describing injuries ought to be sent immediately to the corresponding magistrate’s court, along with reports on the event and any other additional appropriate and available reports. The unique characteristic of this regulation is that, **whenever individuals deprived of liberty in prison facilities claim**

**to have been subjected to violence, the procedure must always be the same. That is, injury reports must always be sent to the corresponding magistrate's court, irrespective of whether or not the doctor in question observed injuries on the individual.**

Writing injury reports correctly following use of coercion or a request to file a report by an individual deprived of liberty implies that the doctor must carefully write down the claims made about the incident during which the individual was allegedly injured and then develop a compatibility opinion. This **compatibility opinion** must establish a plausible logical link between the claims and the evidence, based on medical science. Clearly, if claims regarding use of force leading to injuries are made to the doctor (and the doctor takes note of them) and the injuries in question are not visible, the document is incomplete if it does not state that the injuries allegedly produced in the incident were not observed.

The aforementioned internal regulation has also now added that the prison facility manager must also agree take steps to clarify what occurred and must always submit a copy of events, the internal declaration, the injury reports and any additional applicable reports to the magistrate's court. Last of all, a determination to reinforce the guarantee implied by judicial supervision is present since it states that injury reports must also be sent to the corresponding prison oversight judge.

With regards to whether or not the updates satisfy the **suggestions made by the NPM**, it can be said that they may contribute towards **improving administrative processes looking into allegations of torture or abuse** and that they are a good administrative practice that satisfy the recommendations made by the Spanish Ombudsman.

The NPM will take a careful look at this regulation during visits to places of deprivation of liberty where it is applied [§ 394].

### ***Information on processes and investigations***

- Based on information provided by the Secretary of State for Justice, **in 2019, seven guilty verdicts were handed down in Spain for crimes of torture (article 174); 60 for offences against moral integrity (article 175); one for offences associated with failing to stop torture or attacks against moral integrity (article 176);** none for illegal arrest or abduction (article 167.1); and fourteen for discovery and disclosure of secrets (article 198). It should also be pointed out that, in that same year, **no total or partial pardons were issued to members of the**

**country's security forces with reference to these offences.**

On the contrary, 12,252 citizens were sentenced for undermining the authority of the law, its agents and civil servants and for resistance and civil disobedience (articles 550 to 553 and 556 of the criminal code).

Based on 2019 data available on the National Human Rights Plan computer application on complaints made regarding police behaviour and suggesting there may have been a case of abuse or that detainees have been denied guarantees, 58 cases were related to aggression involving injuries; four were related to threats, duress, offences or humiliation; two were for illegal detention; two were related to murder or manslaughter; and two were related to torture, abuse or other crimes affecting moral integrity.

The same source indicated that **53 National Police Force officers or Civil Guard officers had ongoing criminal proceedings against them in 2019. One Civil Guard officer was acquitted, 26 police officers and 23 Civil Guard officers have ongoing proceedings against them and only two Civil Guard officers have been acquitted.** Information on one of the proceedings was not provided.

With reference to the **Secretary General of Correctional Facilities, in 2019, no legal proceedings ended in the sentencing of public service employees or workers at this body for reasons of malpractice or abuse.**

In 2019, the information submitted by the different administrative bodies **did not include any indications of sentences handed down for malpractice or torture, abuse, cruel or inhuman treatment at young offender institutions** [§ 395].

- From an administrative point of view, for reasons of malpractice or alleged abuse, cruel or inhuman treatment of individuals deprived of liberty by officers at official facilities and during transfers, **according to the information provided in Spain's National Human Rights Plan, in 2019 there were 68 police officers or Civil Guard officers with ongoing disciplinary administrative procedures against them.** None of these procedures have been filed. One National Police Force officer was provisionally suspended from service. No Civil Guard officers were suspended.

With regards to autonomous community police forces, in 2019, the Catalan Police Force opened six cases of classified information and disciplinary procedures after the same number of reports were filed (one for crimes committed against alien rights; one for illegal detention; two for serious lack of consideration for citizens and two for theft).

Only one claim was made against the Basque Country Police Force and there were no cases of classified information and disciplinary procedures. No claims were made against the Navarre Regional Police or the autonomous police force of the Canary Islands and there were no cases of classified information or disciplinary procedures.

According to the information provided by different administrative bodies, in 2019, there were 27 allegations or complaints filed for malpractice or alleged torture, abuse, cruel or inhuman treatment at young offender institutions. These were either processed and concluded in the administrative system or continued in the judicial system. Twelve of them were rejected, 13 are ongoing, 1 has been filed and there is no information about one of them because the allegations were made against workers [§ 396].

## Abbreviations used

<b>CATE</b>	Centro de atención temporal de extranjeros [Short-term accommodation centre]
<b>CGEF</b>	Comisaría General de Extranjería y Fronteras [General Council of the Judiciary]
<b>CIE</b>	Centro de internamiento de extranjeros [Detention Facility for Aliens]
<b>CIMI</b>	Centro para menores infractores [Young Offender Institution]
<b>CP</b>	Centro penitenciario/centros penitenciarios [prison facility/facilities]
<b>CPT</b>	Comité Europeo para la Prevención de la Tortura (Consejo de Europa) [Committee on Prevention of Torture (European Council)]
<b>FRONTEX</b>	Agencia Europea para la Gestión de la Cooperación Operativa en las Fronteras Exteriores [European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union]
<b>IA</b>	National Mechanism for the Prevention of Torture Annual Report
<b>LGTBI</b>	Lesbians, gays, transexuals, bisexuals and intersexuals
<b>MNP</b>	Mecanismo Nacional de Prevención de la Tortura y otros tratos o penas crueles, inhumanos o degradantes/ National Mechanism for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
<b>OPCAT</b>	Optional Protocol to the United Nations Convention for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
<b>PAIEM</b>	Programa marco para la atención integral a los enfermos mentales [Programme for Integrated Care for Individuals with Mental Illness]

<b>RP</b>	Reglamento penitenciario [Prison Regulations]
<b>SGIP</b>	Secretaría General de Instituciones Penitenciarias [Secretary General of Penitentiary Institutions]
<b>SMPRAV</b>	Secretaría de Medidas Penales, Rehabilitación y Atención a la Víctima (Generalitat de Catalunya) [Secretariat for Penal Measures, Reinsertion and Victim Support (Generalitat of Catalonia)]
<b>SPT</b>	Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
<b>UCER</b>	Unidad Central de Expulsiones y Repatriaciones (CGEF) [Central Unit for Expulsions and Deportations]
<b>UE</b>	European Union



