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<p><a href="#">Centro de Atención Temporal a Extranjeros de Cartagena</a> [Cartagena Centre for Temporary Assistance of Foreigners]</p> <p>Centro Educativo La Zarza [La Zarza Educational Establishment]</p> <p><a href="#">follow-up visit</a>  <a href="#">disability project</a>  <a href="#">gender-based discrimination programme</a></p> <p><a href="#">Centro de Internamiento de Murcia</a> [Murcia Detention Facility]</p> <p><a href="#">Comisaría del CNP de Cartagena</a> [Cartagena National Police Force Station]</p> <p><a href="#">Comisaría del CNP de Cartagena en funciones de centro de atención temporal de extranjeros (CATE)</a> [Cartagena National Police Force Station in its role as a Centre for Temporary Assistance of Foreigners]</p>	

The table below shows the number of team members in each of the visits.

<b>TEAM COMPOSITION</b>
<b>41 multidisciplinary activities</b>
Young offender institutions (4), centres for minors (1), detention centres for foreigners (2), prison facilities (7), National Police Force stations and other custody facilities (9), Civil Guard barracks and other custody facilities (1), Local Police Force custody facilities and municipal detention facilities (1), prison psychiatric hospitals (1), centres for the temporary assistance of foreigners (6), military prisons (1), hospital custody units (1), mental health units (7)
<b>14 activities involving spokespeople from the NPM Advisory Board</b>
Young offender institutions (3), centres for minors (1), prison facilities (7), National Police Force stations and other custody facilities (2), Civil Guard barracks and other custody facilities (1), centres for the temporary assistance of foreigners (4), mental health units (2)
<b>6 activities involving autonomous community parliamentary commissioners</b>
Social integration facilities (1), prison facilities (2), mental health units (3)
<b>17 activities involving members of expert staff from other Spanish Ombudsmen's Office departments</b>
Detention facilities for foreigners (1), prison facilities (7), National Police Force stations and other custody facilities (2), centres for the temporary assistance of foreigners (1), military prisons (1), detention centres and centres for asylum seekers at border controls (2), hospital custody units (1), mental health units (1), social integration facilities (1)

In terms of prevention, we must not underestimate the significance of understanding the complaints that are submitted to the Ombudsman by citizens who are deprived of liberty since these complaints may mention several of the issues that are focus areas for the NPM.

As indicated in the table above, many of the specialist staff working in areas that process complaints submitted to the Ombudsman also participate in certain National Preventive Mechanism (NPM) visits.

### ***Incidents during visits***

The extent of the NPM's knowledge and the scope of its work is increasing, which means that the teams that make the visits are able to carry out their business as routine. At the beginning of each visit, leaders are informed about the role of the Spanish Ombudsman's Office and the specific nature of the NPM. This includes highlighting the fact that the preventive nature of its work seeks to identify situations that pose a risk.

Issues arise very infrequently and in 2022 there was only one incident worth highlighting. It occurred during the visit to the Acute Psychiatric Care Unit at Marqués de Valdecilla University Hospital in Santander. The NPM explained the purpose of the inspection to leaders at the facility, while bearing the previous visit made in 2019 in mind. The morning visit was industrious, and the facility collaborated at all times. However, it was not possible to complete the remainder of the visit as planned due to a lack of collaboration. The following morning, the team was able to carry out its work as expected and leaders at the unit were once again proactive in their support for the team.

### ***Visits with a specific transversal approach***

Visits that are integrated into projects or programmes with a transversal approach include those related to the programme for the prevention of gender-based discrimination, the disability project and the mental health project. In addition to the programme and the two projects, the NPM also makes other visits in which the focus is on other specific areas, including deaths in prison facilities, elderly prison detainees and the impact and effects of long-term deprivation of liberty in prison facilities on individuals serving long-term sentences. While these initiatives are all at different stages of development, together they are an innovative and necessary means of addressing the NPM's work as it moves forward. The programmes and projects are addressed in chapter 4.



***The NPM Advisory Board and structure***

The Advisory Board is a National Preventive Mechanism (NPM) technical and legal cooperation body chaired by the Ombudsman. Its members are Ombudsman deputies with a maximum of ten spokespersons (there are currently eight). The individuals who are assigned these roles have a solid trajectory in the defence of human rights or areas related to treatment of people who are deprived of liberty for whatever reason. The members of the board met twice in 2022 and did not receive any monetary retribution in exchange for this.

The role of the Advisory Board is to propose visits to places at which individuals are deprived of liberty; propose improvements to visit and follow-up protocols; define the types of reports that the Ombudsman should request on regulations relating to individuals who are deprived of liberty; suggest training courses and specialist training courses on the prevention of torture and cruel, inhuman or degrading treatment or punishment; and monitor the reports drawn up by the NPM and by the Subcommittee on Prevention of Torture (SPT).

Additional members of staff joined the NPM in 2022. At the end of the year, there were 11 members of staff in total. There is one department manager, seven members of expert staff and three members of administrative staff.

## 2 SPECIFIC PROGRAMMES AND PROJECTS

### 2.1 PROGRAMME FOR THE PREVENTION OF GENDER-BASED DISCRIMINATION IN PLACES OF DEPRIVATION OF LIBERTY

- Within the framework of the programme for the prevention of gender-based discrimination, since the National Preventive Mechanism (NPM) began operating in 2018, it has been able to confirm what the Subcommittee on Prevention of Torture (SPT) stated in section nine of its document on the prevention of torture and ill-treatment of women who are deprived of liberty, published on 18 January 2016 [[CAT/OP/27/1](#)]. The document states that, in the context of deprivation of liberty, women's rights have, at best, been subsumed under the recognised rights of a supposedly neutral individual who is, in practice, based on a male model, or they have simply been ignored or disregarded.

In its 2nd General Observation, the [European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment \(CPT\)](#) [[CAT/C/GC/2](#)] stresses that gender is a key factor in prevention of torture.

The purpose of the NPM's programme is to use the visits to check how girls, women and the LGBTBI collective are treated and to analyse the possible root causes of treatment that leads to gender-based discrimination, exclusion or restrictions that nullify or hinder recognition, use and exercise of their rights. The mechanism then formulates Recommendations that can contribute towards change in the criminal justice system and in healthcare within the system (psychiatric hospitals). This supports the State in its obligation to prevent discrimination.

In this regard, it should be highlighted that the key gender and deprivation of liberty regulation from 2022 addresses Recommendations on a range of issues that were formulated several years ago by the NPM: staff training; the protocol for prevention, detection, action and support for victims of sexual assault; and the suicide prevention protocol.<sup>1</sup>

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<sup>1</sup> Organic Law 10/2022 of 6 September on the comprehensive guarantee of sexual freedom and Secretary General of Penitentiary Institutions Instruction I-9-2022 on the gender perspective for the prevention of suicides in penitentiary facilities.

- The programme includes elements that are interconnected with gender, such as age, ethnicity, disability and mental health.
- The programme began in prisons in 2018 and was broadened to include psychiatric hospitals and young offender institutions in 2021. In 2022, it was extended to include police stations.

### 2.2.1 Police stations

- In 2022, the NPM began making visits with an approach that was sensitive to gender-based discrimination. These visits were to police stations (72 hours maximum deprivation of liberty) that fall under the authority of the Secretary of State for Security (Civil Guard and National Police Force).

The purpose of the visits was to examine the conditions for short-term deprivation of liberty of girls, women and the LGTBI collective in order to analyse the extent to which the treatment they are given meets their specific needs.

As it does this work, the NPM follows the regulations established by the United Nations Human Rights Council and the United Nations Committee Against Torture and the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, among other international regulations.<sup>2</sup>

The NPM visited Burgos National Police Force Provincial Police Station ([visit 54/2022](#)) and La Rioja National Police Force Headquarters ([visit 51/2022](#)).

#### **Staff training**

- At the time of the visit, custody of detainees in jail cells (adults or children) was carried out by male members of staff and this was the general rule. These members of staff had not received training on the specific gender-based circumstances and needs of detainees. Therefore, a recommendation was made for training courses of this nature to be provided. New Organic Law 10/2022 of 6 September on the comprehensive guarantee of sexual freedom, in line with NPM Recommendations on this subject, states that training for individuals who work in places of custody should transversally include the gender perspective and that staff should be provided with training on integral protection against sexual abuse within the scope of their functions.

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<sup>2</sup> [A/HRC/31/57](#); [A/HRC/46/L.27](#); [A/HRC/3](#) and [CAT/C/57/4](#).

### ***Facilities***

- The NPM performs special checks on deficiencies in the opportunities women are given to care for their personal hygiene, bearing in mind that their specific needs are broader than those of men.

There were, in fact, limitations on practical and safe use of showers at the two stations in Burgos and La Rioja that were visited. There are no towels at either of the stations and, at La Rioja National Police Force Headquarters, in addition to a broken shower and no hot water, there is a glass pane in the door to the bathroom which constitutes an invasion of privacy. Therefore, the NPM issued a Recommendation in respect thereof.

### ***Frisking***

- Frisking is a sensitive issue for any detainee but particularly so for female detainees because of their personal background, which may include having been subjected to gender-based violence.

At both stations, cases of frisking of women that did not seem to have adhered to the legal criteria of exceptionalism and proportionality provided for in the corresponding regulations were identified. Consequently, the NPM issued a Reminder of Legal Duties.

- With regards to frisking of transsexual individuals, it was not possible to identify the sex of the officers who carried this out at either station since custody records only included the civil servants' ID number. In other frisking records, however, the sex of the person performing the task was recorded. The NPM issued a Recommendation in respect thereof.

In addition, it was not possible to demonstrate at either station that transsexual detainees had been given the opportunity to choose whether frisking was performed by a male or a female officer since this information was not included on custody records or statements. Consequently, the NPM formulated a Recommendation to record the fact that transsexuals have been given the option of choosing the gender of the officer who will frisk them on custody records and statements.

### ***Gestation, breastfeeding and children***

- During its visits, the NPM observed that there are no specific regulations on police procedures for the detention and custody of women who are pregnant,

breastfeeding or have young children. The consequences of this include cases in which pregnant women spend nights in jail cells without having had their circumstances assessed from a suitability and proportionality perspective; a variety of different practices with regards to breastfeeding; and women who are the primary caregivers for young children spending nights in jail cells and potentially leaving their children unprotected. Consequently, the NPM issued a Recommendation.

### ***Overnight stays for victims of violence***

- The NPM has ascertained that, when decisions are taken regarding overnight stays in jail cells for female detainees, backgrounds of victimisation or gender-based violence or sexual violence are not accounted for. In addition, there is no appropriate care aimed at ensuring detainees are not victimised again or made to relive traumatic experiences. The NPM issued a Recommendation in respect thereof.

### 2.1.2 Young offender institutions

- In 2021, the NPM began visiting young offender institutions (CIMI) within the framework of the gender-based discrimination programme which is based on regulations such as the [Bangkok Rules](#), the [Yogyakarta Principles](#), European framework provisions,<sup>3</sup> Organic Law 8/2021 of 4 June on Comprehensive Protection of Children and Adolescents against Violence and Organic Law 10/2022 of 6 September on the Comprehensive Guarantee of Sexual Freedom.

The team visited facilities in the autonomous community of Andalusia (Bahía de Cádiz Young Offender Institution, visit 38/2021) and the autonomous community of Galicia (Concepción Arenal Young Offender Institution in A Coruña) ([visit 50/2021](#)). Recommendations were issued following the visits. They were all accepted. In 2022, the NPM visited La Zarza Young Offender Institution in Murcia ([visit 4/2022](#)).

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<sup>3</sup> Council of the European Union, Guidelines to promote and protect the enjoyment of all human rights by lesbian, gay, bisexual, transgender and intersex persons (LGBTI), Foreign Affairs Council Meeting, 24 June 2013.

- During exchanges with reference to the case files for both autonomous communities, the NPM requested information on practical implementation of the Recommendations issued for each young offender institution.

The corresponding entity within the Administration of the autonomous community of Galicia replied that all recommendations had been initiated at each of the young offender institutions in Galicia (Montefiz, Avelino Montero, Monteledo and Concepción Arenal) in 2022. Furthermore, the NPM received itemised information per facility on implementation of each Recommendation. Consequently, the case file was closed.

The Administration in the autonomous community of Andalusia replied that the Recommendations in question had been forwarded to the different young offender institutions in Andalusia for their information and gradual implementation. However, since the Recommendations have been accepted and, therefore, affect all facilities under the responsibility of the Administration in question and, as provided in recent applicable regulations, some of them must necessarily be implemented, the NPM sent a reminder for information to be provided on the status of implementation at each young offender institution under the control of the Junta de Andalusia (autonomous government in Andalusia).

### ***Disaggregated data and committal dossiers***

- The fact that some facilities do not disaggregate the data in logbooks and records according to gender, some of which include key documents such as restraint records and disciplinary records, makes it difficult to obtain statistics and impossible to draw conclusions and provide adolescents with the education and therapy they need. Consequently, the NPM issued a Recommendation in respect thereof.
- The need to disaggregate data also surfaces in the case of transsexual minors, Roma and disabled adolescents and individuals who have already been through the child welfare system.<sup>4</sup> The aim is to integrate this information and foster

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<sup>4</sup> Child-to-parent violence is the main reason why young women are committed to the facilities that were visited. While the young people are responsible for their violent conduct, these crimes bear a close link to dysfunctional family dynamics in which young people have often been victims of a serious lack of protection and, on reaching a certain age, have become aware of the lack of protection they have experienced.

application of suitably-adapted action with a gender-based discrimination perspective.

- Furthermore, during the visit to La Zarza Young Offender Institution in Murcia, the NPM ascertained that the language used in the committal dossier and corresponding annexed regulations and forms was not inclusive and did not account for the fact that females can be committed to the facility. This affected the self-esteem of these minors and caused psychological and emotional stress. In addition, their circumstances (possible gender-based violence, pregnancy, etc.) are not taken into account when they are committed. Consequently, the NPM issued a Recommendation in respect thereof.

### ***Transsexualism and sexual diversity***

- During the visit to Concepción Arenal Young Offender Institution in A Coruña, the NPM issued a Recommendation for information on transsexual minors to be written such that it reflects their chosen gender and for staff and colleagues to refrain from making discriminatory comments.

### ***Violence and sexual abuse***

- At the Bahía de Cádiz and Concepción Arenal facilities, psychological and health analyses did not include protocols for the detection of sexual violence and abuse prior to committal. This is an essential requirement for meeting legal criteria on 'adoption of the necessary measures to promote the physical, psychological and emotional recovery and the social inclusion of children and adolescents who are victims of violence.'<sup>5</sup>

The sexuality protocol at La Zarza does refer to the fact that individuals may have been subjected to sexual abuse in the past or at the facility itself with other minors as the perpetrator. However, it does not contemplate the possibility of personnel as the perpetrator. The facility treats matters of sexual abuse in its regulations and does not account for the appropriateness of making an assessment when an individual is committed and it has a number of shortcomings. For example, a programme for training staff and making them

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<sup>5</sup> Article 4.2 of Law 8/2021 of 4 June on Comprehensive Protection of Children and Adolescents against Violence. The law also promotes use of action protocols, efficiency of which must be assessed, including actions to prevent, detect in good time and react as quickly as possible to situations of violence. Along the same lines, it falls within the scope of rules 26 and 38 of the Bangkok Rules.

aware of this issue; a proposal for preventing abuse and all types of gender-based violence; a proactive proposal for dealing with these situations; and a results assessment and monitoring system. As the NPM was able to confirm at the facility, these circumstances are more common among women and have serious consequences on their health and development.

As a result, in the three visits, the NPM issued a Recommendation to set up a detailed protocol for scrutiny of cases of violence and sexual abuse prior to committal with the aim of providing suitable therapy and protection. In this same vein, the NPM issued a Recommendation during its visit to La Zarza facility. It stated that a prevention, detection, protection, and caretaking protocol for potential victims of gender-based violence or any other kind of violence should be drawn up and that this should regulate the victim's access to healthcare, psychological care and social care. It should also account for ongoing training for all staff on questions of gender-based violence and sexual violence and encourage a proactive attitude in response to these situations. The same Recommendation was sent to the corresponding entity in the Administration of the autonomous community of Andalusia since, during the visit, two minors reported cases of sexual violence. The Junta de Andalucía (autonomous government of Andalusia) issued the facilities with instructions to avoid situations of any kind in which an inmate is left alone with a member of staff in a bedroom or any other room (other than the healthcare area) that is not equipped with a video-surveillance system.

- New Organic Law 10/2022 of 6 September on the Comprehensive Guarantee of Sexual Freedom, in line with NPM Recommendations on this matter, states that offender institutions must have a protocol of this kind and that training for individuals working with young offenders should transversally include the gender perspective and that staff should be given training on integral protection against sexual abuse within the scope of their functions.

### ***Medication***

- During the visit to Bahía de Cádiz facility, the NPM observed that a significant number of adolescents were on medication. Consequently, with the aim of avoiding use of medication wherever possible, it formulated a Recommendation to develop multi-disciplinary intervention protocols on alternative means of treating anxiety and emotional stress.



- Surveys carried out at La Zarza facility showed that 80% of female minors claim to have been victims of physical violence or abuse during their childhood, have been bullied at school or have self-harmed. This compared with 27% of male minors. The NPM observed that, compared with their male counterparts, female minors were more commonly medicated prior to committal and were also more frequently victims of all types of violence. However, no gender perspective analysis was applied to psychiatric intervention at the facility. 60% of young women and approximately 38% of young men were prescribed psychiatric drugs, demonstrating a significant gender gap in use of medication. During interviews, female minors expressed their desire to be allowed to do the same tasks as their male counterparts. The NPM issued a Recommendation in respect thereof.

### ***Global insight into addiction withdrawal***

- Consumption of toxic substances is an issue for the large majority of inmates at the facilities that the NPM visited. Existing intervention programmes are not adapted to account for the elevated number of adolescent consumers and do not take a gender-sensitive approach. Since there is a need for a global framework to address withdrawal from drug dependency, the NPM issued the Administration in the three autonomous communities (Andalusia, Galicia and Murcia) with a Recommendation on provision of specialist treatment programmes addressing incorrect use of drugs with a gender perspective approach, and on sexual and intercultural diversity, accounting for possible earlier victimisation.

### ***Suicide prevention protocol***

- The NPM also issued all three facilities with a Recommendation to review the suicide prevention protocol to account for the gender perspective and sexual diversity.

### ***Sex education programmes***

- During the visit to the facility in Bahía de Cádiz, the NPM made a Recommendation for implementation of health education programmes addressing diversity in sex education; prevention and awareness of gender-based violence; and positive and healthy sexual relations. These should involve healthcare providers and address healthcare needs from a multidisciplinary and biological, psychological and social perspective. The Recommendation was reinforced during the visit to La Zarza since the programme had not progressed

over the last year and did not address sexual healthcare as a key dimension of all people. At the time of the visit, there were seven male minors committed to the facility for crimes related to sexual freedom and another two for gender-based violence. There were several references in the incident logbooks to interventions for emergency contraception and one pregnant young resident, which only strengthens the criteria that there is room for improvement when engaging in the field of sex education.

### ***Treatment***

- During the visit to La Zarza in 2022, there were six children with a recognised disability. 40% of the young women had a certified disability while 8.8% of the young men had a disability. Further to a request by the NPM, the facility provided details of an additional five minors with an intellectual disability who had been at the facility in the last five years. Three of them were female and so it is fair to conclude that there are more females with disabilities serving sentences. It was noted during the visit that the facility does not keep a record of females with disabilities. This renders interventions with a gender-based approach adapted to their particular needs impossible. Therefore, the NPM recommended that steps for treatment of disabilities with a gender-based approach be drawn up.

### ***Restraints***

- At La Zarza, restraints are implemented by education assistants and security personnel, all of whom are male, despite the fact that a large percentage of female inmates have a personal background of abuse. Based on an analysis of the restraints logbook, the NPM observed that young female inmates are restrained more frequently than their male counterparts. This is particularly relevant if we take into account that the physical and psychological characteristics of the young women are not accounted for in protocols on applying physical restraints. This disproportionate percentage of restraints used on young women is an indication of shortfalls in the educational support they receive, which is not adapted to their needs. Therefore, the NPM issued a Recommendation to review the reasons for use of restraints and perform a gender-based perspective review of the procedure for immobilising inmates.

### **Body searches**

- At La Zarza, there are no female members of security personnel or female educational support staff who can perform body searches. The fact that female teaching staff have to perform these tasks has an impact on the relationship between young female offenders and teachers which could engender a lack of trust. Therefore, the NPM issued a Recommendation in respect thereof.

### 2.1.3 Mental health

- In 2022, when processing the files on the two visits carried out in 2021 to Conxo Psychiatric Hospital in Santiago de Compostela ([visit 52/2021](#)) and Alicante Prison Psychiatric Hospital ([visit 78/2021](#)), the NPM observed that most of the Recommendations that had been made had been accepted but not implemented.

### **Spaces and infrastructure**

- The Secretary General of Penitentiary Institutions accepted the Recommendation issued by the NPM to guarantee that the spaces at Seville Psychiatric Hospital account for women. This would greatly benefit women because, currently, the only prison psychiatric hospital with spaces for women is located in Alicante. This occasions estrangement from family and friends and often ends in a complete and irreparable breakdown of relations. At the time of the visit, 30% of the women at Alicante Prison Psychiatric Hospital were from Andalusia. The NPM noted that the female inmates were in a poorer financial situation than the men, that the women remained in the hospital for more extended periods than the men and that 24% of the women had children under 18 years of age (compared with 4.8% of the men). Consequently, it recommended implementing corrective and compensatory measures to avoid inmates having to break ties with their families and to facilitate psychotherapeutic work within families.
- At Alicante Hospital, women are grouped together in a single module. Consequently, the NPM issued a Recommendation to favour separation of women by age, illness and other criteria that could facilitate therapy and rehabilitation. However, when it issued its response to the Recommendation, the Secretary General of Penitentiary Institutions referred to inauguration of a new facility that will house the hospital in the future.

### ***Older women***

- In addition, there is no perceived sensitivity towards older women in the aforementioned hospitals since there is a lack of adapted material for therapy, rehabilitation and, in the case of Conxo, at work stations. This is despite the Recommendations made in respect thereof.

### ***Protocols***

- With regards to the Recommendation to draw up a specific protocol for both hospitals on prevention, detection, protection, and support for possible victims of gender-based violence or violence of any other kind, abuse or bullying at the facility, this has not been dealt with to date at either centre.

New Organic Law 10/2022 of 6 September requires places of deprivation of liberty to have a protocol addressing conduct that impedes sexual freedom and states that training for individuals working with young offenders must transversally include the gender perspective and comprehensive protection against sexual violence.

### ***Occupational therapy and jobs***

- The NPM recommended that both hospitals should ensure that everyone is given equal access to activities. Progress in this field is complicated and is a matter that must be addressed in visits so that, in addition to the documentation in files, headway can be checked in the same way that it is checked with regards to communications.

### ***Committal***

- The NPM highlights that it issued the regional government of Galicia (Xunta) with a Recommendation urging the Fundación Pública Galega para a Tutela de Personas Adultas (Spanish acronym FUNGA) [Public Foundation of Galicia for the Tutelage of Adults] to meet its guardianship duties by providing frequent and diligent exchanges that include the gender perspective. Through conversations with inmates at Conxo hospital, the NPM confirmed that exchanges were more frequent. This was backed by reports on the monthly meetings between Conxo Psychiatric Hospital patients and a FUNGA representative that have been held since March 2022, and the positive results that have been obtained.

## **Restraints**

- Despite declarations of gender-based violence by an elevated number of female inmates and this violence featuring in investigations, the NPM observed that women are restrained by men.<sup>6</sup>

### 2.1.4 Prison facilities

- So far, over the last few years, the NPM has carried out ten visits designed to obtain a global and precise understanding of the conditions of women and members of the LGBTI collective at different penitentiary facilities and at different stages of deprivation of liberty. The visits were organised based on complementary facility-related criteria (different types of prison architecture; mixed facilities and women-only facilities; facilities with different numbers of detainees; standard units/open prisons; different locations across mainland Spain, the islands, autonomous cities, etc.).
- In 2022, the NPM visited Ceuta Prison ([visit 29/2022](#)) and Irene Villa Residence (Alicante) ([visit 7/2022](#)).

### **Ceuta Prison**

- The positive results obtained in the field of gender at Ceuta Prison Facility following implementation of the Recommendations made by the NPM in 2020 are evident. Based on the logic that if one prison facility can achieve these results, others can also achieve them, the NPM carried out a follow-up visit in 2022. During the visit, the NPM confirmed there have been positive results with regards to the situation for women. This is contrary to all other visits to prison facilities within the framework of the programme over the last four years which have led to files being opened but rarely implemented, despite the fact that the Secretary General of Penitentiary Institutions often accepts the Recommendations.
- Consequently, and given that it is a pioneer in appropriate treatment of gender-related issues, the NPM issued a Recommendation to the Secretary General of

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<sup>6</sup> A 2017 report by Fedeaefes (Basque Country Federation of Associations for People and Relatives with Mental Health Issues) on violence directed against women with mental health issues ['Investigación sobre violencia contra las mujeres con enfermedad mental'] which states that 80% of women with mental health issues have been victims of intimate partner violence at some point in their lives; over 40% have been victims of sexual violence; 40% of these women are not aware of this violence as such; and in 50% of cases the assigned expert was unaware of the ill-treatment. When women with a background of abuse are restrained by men, this can rekindle memories of past trauma.

Penitentiary Institutions to assess protocols and experience at Ceuta Prison Facility with the aim of extending this approach to all other prison facilities, if applicable.

- **Reviews of classification and destination**

- In compliance with international legislation,<sup>7</sup> Ceuta Prison has used its equality protocol to implement positive steps such as inclusion of female inmates on specific training programmes aimed at employment and productive jobs, which makes up for the initial difficulties that these women face. The aim is to promote inclusion of the gender perspective when assessing how female inmates are classified. Therefore, the NPM issued the Secretary General of Penitentiary Institutions with a Recommendation to include the gender perspective in its study of changes to classification and destination. This would enhance positive discrimination measures in favour of women, as provided for in article 82.1 of the Prison Regulations.

- **Healthcare**

- Ceuta Prison has a health check protocol with a gender-sensitive approach. Among other positive aspects of this protocol, the NPM highlights care for the mental health of women because they are mothers who often have dependent children; multi-disciplinary participation with other employees at the facility (psychologists and social workers); and assessment during committal of women's medical history and social background, in addition to experience of abuse of any kind or ill-treatment. On the contrary to what it has observed in other facilities, the NPM classes this protocol as an example of good practice.

- The NPM values the facility's Programme for Integrated Care for Individuals with Mental Illness (Spanish acronym PAIEM) within the framework of its equality protocol and the steps it has taken to implement it, in addition to collaboration with families and tertiary sector entities that accompany the women in the final phase of their social reinsertion. Therefore, the NPM issued a Recommendation to include the gender perspective in the Programme for Integrated Care for Individuals with Mental Illness so that it may also be extended to other facilities.

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<sup>7</sup> As provided for in rule 57 of the Bangkok Rules: 'Gender-specific options for diversionary measures and pretrial and sentencing alternatives shall be developed within Member States' legal systems, taking account of the history of victimization of many women offenders and their caretaking responsibilities'.

- This Recommendation is of particular importance if we take into account that, in visits to other centres, women, unlike the men, were not even included in these care programmes. With this in mind, the NPM issued a Recommendation aimed at guaranteeing access for female inmates to psychiatric and psychological support that takes a gender-sensitive approach.

Later, in 2020, it issued a Recommendation specifically for inclusion of the gender perspective in the Suicide Prevention Programme. Four years later, the Secretary General of Penitentiary Institutions regulated this matter in Instruction I-9-2022 on the gender perspective for the prevention of suicides in penitentiary facilities.

#### - **Training and paid work**

- In terms of education, the equality protocol at Ceuta Prison sets aside a minimum number of spaces on each of the education programmes on offer. In line with this, female inmates have been participating in all available prison jobs and vocational training courses (Spanish acronym TPFE), irrespective of the type. This is in accordance with the Recommendation the NPM made in 2021 to guarantee access for women to training courses that give them practical knowledge and an official certificate that may improve their chances of finding employment, that has an impact on reinsertion and rehabilitation, and which is based on a system of quotas that provide men and women with equal opportunities. It was not accepted by the Secretary General of Penitentiary Institutions.

Ceuta Prison has also achieved similar positive results in questions of access to paid work. In compliance with the Recommendations made by the NPM, practically all of its inmates have a job and access to all areas of the prison facility.

#### - **Communication**

- Ceuta Prison indicated that, since there are many foreign inmates at the facility who have children and relatives who are unable to visit in person, access to telephone (video call) communication facilities has been made available to equate to visits made in person. This renders frequent and free exchanges possible and, as such, provides everyone with equal opportunities, irrespective of if their families live near or far from the facility. This good practice forms the bedrock of a Recommendation in this regard issued by the NPM.

- **Staff training**

- Since the visit the NPM made in 2018, deficiencies in staff training on gender issues had been observed and, consequently, in 2019, the NPM issued a Recommendation to ensure all civil servants, expert staff and healthcare personnel have been duly trained on matters of gender identity and sexual orientation, and gender-based violence and the impact it can have on physical, mental and emotional health.
- The lack of training was particularly evident given the frequency with which the NPM noted during its visits that the sexual identity of transsexual individuals was recorded incorrectly. It was the case during the visit to Jaén Prison in 2022 ([visit 15/2022](#)). Consequently, a Recommendation to record the sexual identity of transsexual individuals correctly when taking details and when elaborating statistics was underscored. It was accepted by the corresponding Administration. In this regard, during its visit to Jaén Prison, the NPM made a Recommendation to review Secretary General of Penitentiary Institutions Instruction 7/2006 to bring it up to date with current social realities or, at the least, to specify how pertinent data should be recorded in prison facilities and the specific point at which facilities should record an individual as 'transsexual'.
- Recent Organic Law 10/2022 has enforced the requirement to transversally include the gender perspective in the training given to prison facility employees, in addition to training on integral protection against sexual violence within the scope of their functions.

- **Disaggregated data**

- A Recommendation to include the gender variable when gathering data and to generate statistics from data disaggregated by sex was issued during the NPM's first visit in 2018. It was accepted by the Secretary General of Penitentiary Institutions in 2019. However, it has not been implemented due to issues with the Administration's IT system. In addition to disregarding women, this generates an added difficulty when carrying out the comparative analyses that are key to questions such as use of means of coercion and isolation.<sup>8</sup>

At Ceuta Prison there is an application that records use of certain limitations and restraints (article 75.1 and 2 of the Prison Regulations)

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<sup>8</sup> In its 2018 visit, the NPM noted that provisional isolation, certified straps and physical force were used more frequently on women than men. This was also the case for isolation, as provided for in article 75.1, both in terms of quantity and duration, despite women being less violent and posing less of a danger.



which is disaggregated by sex. This is classed as a good practice that should be extended to application of article 72 until the Secretary General of Penitentiary Institutions is able to resolve the aforementioned IT issues.

- **Protocol for detection and intervention in cases of gender-based violence**

- At Ceuta Prison, the NPM observed that the 2021 Recommendation to draw up a protocol for detection and intervention in cases of gender-based violence as a biological, psychological, and social health issue, providing multi-disciplinary medical, psychological, treatment and social healthcare had been met. This is also provided for in new Organic Law 10/2022 of 6 September.

***Irene Villa Residence (Alicante)***

- In 2022, the NPM visited Irene Villa Residence in Alicante.

The Secretary General of Penitentiary Institutions only has two mother and child units. Mothers can only reside in them with children under the age of three which means that many women are forced to uproot and even leave older offspring at home so that they can keep their children under three years of age with them as they serve their sentence.

- By way of information, it should be highlighted that as many group and personal interviews with women as possible are held during visits to prisons within the framework of the programme. The common denominator in these interviews is the mothers' anguish with regards to their children's circumstances.

Many women complain about the treatment they are given in prison during pregnancy. Particularly noteworthy is the absence of social and health care; the lack of attention to their specific needs (nutrition, physical exercise, etc.); the absence of classes to prepare for childbirth; and the lack of privacy and confidentiality (police presence during gynaecological checks and sharing of documents, including medical reports).

- **Spaces and infrastructure**

- The residence has 32 official spaces. At the time of the visit, there were 16 mothers and 16 children. During the visit, the NPM observed that the infrastructure and shared spaces at the residence were entirely insufficient for the official spaces. The design of the building and its safety

features were not conceived for housing mothers (those on remand and those serving long-term sentences). The number and size of the spaces were conceived for residents on regular day release. The spaces were not designed to house individuals who are unable to leave the facilities and, in the mid to long term, this has a negative impact on mothers and their children.

However, the residence does have a strategic programme that addresses opportunities for day release. The NPM rates this very positively given that it would give inmates actual opportunities to acquire training and employment. Therefore, the NPM made a Recommendation to implement the pedagogical community approach contemplated in this strategic programme at the residence, including day release, within the framework of prison regulation provisions, and communication with the world outside the residence so that each inmate's personal and professional projects can get under way and their children can be provided with social care, healthcare and an education.

#### - **Inmates**

- At the time of the visit, Roma women constituted 31.5% of the prison population.<sup>9</sup> Since the residence opened in 2021, there have been 11 female Roma inmates, which equates to 29% of the total and demonstrates that Roma women are over-represented. 31.3% of the women were from overseas. Many of the women are adolescent mothers and have an average of four children. In terms of family dynamics, 25% are single mothers and 46% have a partner who is serving a sentence. Several of the inmates' parents were sentenced to prison and they spent some of their childhood in prisons. In many cases, their children are serving sentences. This is proof of the ongoing cycle of prison sentences. Consequently, the NPM recommended systematically collecting variables that would allow the facility to determine the cultural diversity and different needs of pregnant women and mothers of children under three years of age who are serving sentences, and adopt programmes that respond to those needs.

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<sup>9</sup> Since the residence opened in 2021, there have been 11 female Roma inmates which equates to 29% and demonstrates that Roma women are over-represented. In 2019, based on the elevated percentage of Roma women, the NPM recommended inclusion of Roma women as a variable when collecting data and preparing statistics ([visit 91/2019](#)). This was accepted by the Secretary General of Penitentiary Institutions after two years of exchanges but has not been implemented to date. The lack of corresponding statistics means that it is impossible to provide appropriate treatment in their daily lives as inmates and in their reinsertion programmes.

- **Healthcare**

- Childbirth healthcare for female inmates is generally provided by the local public hospital. The main complaints made by female inmates include the lack of privacy due to police presence during childbirth and the emotional distress and unease they experience since they do not have the support of relatives during the ensuing stay in hospital. This does not in any way constitute the specific care required for childbirth or basic levels of privacy during healthcare. Consequently, the NPM made the following Recommendations in respect thereof:

- creation of a protocol in conjunction with the Home Office to guarantee childbirth without police presence;
- if healthcare conditions allow, the guaranteed right of inmates to choose someone to accompany them at the hospital during and following childbirth, as is the case for the rest of the general population.

- When it opened, no staff were assigned to the residence. Consequently, staffing was arranged using expert staff and civil servants from Alicante Prison. Since operations began, it has had the support of social entities and voluntary paediatric and gynaecological staff which currently makes up for the lack of suitable personnel to care for residents in need of healthcare of this kind. This means there are shortcomings and an impact on the medium and long-term stability of the residence. Therefore, the NPM issued a Recommendation to staff the residence with medical, paediatric and gynaecological professionals under the command of the Prison Service Administration, with integrated support from associations and the general population.

- The women and staff at the residence comment that the food is not suitable and of poor quality. This has been identified as an issue that must be resolved and, at the time of the visit, a cooking workshop was under way to remedy these circumstances that have a significant impact on the health of pregnant women, mothers and children.

- The NPM also noted that there were no programmes to promote healthy lifestyle choices such as exercise. The sports facilities have been turned into a games room, so there is nowhere where women can do physical exercise.

Therefore, the NPM recommended correcting the existing issues in nutrition for pregnant women, mothers and children, and the lack of access to sports activities.

## - **Communication**

- Motherhood at the residence implies mothers taking charge of all the physical, emotional and support demands of their children on their own and there are hardly any opportunities to get fathers involved. This does not reflect standards in today's society and puts limitations on the relationship between children and fathers. The NPM recommended drawing up means for establishing frequent communication and cohabitation to help fathers get involved in caring for and taking responsibility for their children.

## 2.2 THE MENTAL HEALTH PROJECT

- Visits to mental health units also fall under the scope of international and national organisms responsible for preventing torture in places of deprivation of liberty. The Spanish Ombudsman's Office, in its role as National Preventive Mechanism, initiated a project on mental health to prevent ill-treatment of people with mental health issues who are deprived of liberty. Epigraph 3.3 of this report includes an epigraph on mental health in prison facilities.

### ***Objectives***

- People with mental health issues are, and must, form the focal point of this project because of the different forms of discrimination and stigma associated with the beliefs, stereotypes and social prejudices that are deeply embedded in society. As a result, when these individuals are institutionalised, they can become victims of abuse associated with this understanding of mental health and which manifests as unjustified deprivation of autonomy and erosion of rights and freedoms that can become cases of verbal or physical ill-treatment. The only way of preventing torture and other forms of ill-treatment in these contexts entails educating, detecting, identifying and reviewing entrenched practices and patterns of behaviour. This is a means of prevention, which is the epicentre of the NPM's mandate.
- The mental health project aims to use prevention to analyse the circumstances of people who are particularly vulnerable because they have mental health issues, while keeping in mind that they are deprived of liberty, even if this is for therapeutic reasons. This objective is materialised along three strategic lines that were analysed in all NPM visits in 2022:

- identification and prevention of situations that constitute ill-treatment in the field of mental health;
- guarantee systems within the committal system;
- use and eradication of mechanical and pharmacological restraints.

### **Starting point**

- A number of matters with a close connection to prevention of ill-treatment are discussed during the visits (mechanical restraints, complaints procedures, contact with the outside world, frisking and external supervision). The NPM's work goes as far as to include contact with the outside world: 'Not only for the prevention of ill-treatment but also from a therapeutic standpoint. Patients should be able to send and receive correspondence, to have access to the telephone and receive visits from their family and friends. Confidential access to a lawyer should also be guaranteed'. [[Inf/CPT/1998](#)].

- Based on the aforementioned strategic lines of work, the NPM carried out nine visits and accounted for the fact that responsibility for healthcare is handed over to autonomous communities. It visited Marqués de Valdecilla University Hospital Acute Psychiatric Care Unit and the Eating Disorders Unit in Santander ([visit 1/2022](#)); Calatayud Care Unit in Zaragoza ([visit 10/2022](#)); Alcohete Residential and Rehabilitation Unit in Guadalajara ([visit 22/2022](#)); Málaga Regional University Hospital Mental Health Therapeutic Unit ([visit 24/2022](#)); Málaga Regional University Hospital Mental Health Admissions Unit ([visit 25/2022](#)); Málaga Regional University Hospital Eating Disorders Unit ([visit 27/2022](#)); Virgen de la Victoria University Hospital Mental Health Admissions Unit ([visit 26/2022](#)); Troncoso Residential Unit in Ourense and Alicante Prison Psychiatric Hospital ([visit 58/2022](#)). In addition to these visits, there was one in 2021 to Esquerdo Sanatorium in Madrid ([visit 64/2021](#)). The NPM analysed this visit in 2022 due to the challenges it faced and the delay in submitting the requested documentation.

### **Identification and prevention of situations that constitute ill-treatment in the field of mental health**

- When it comes to mental health, identifying cases of torture or inhuman or degrading treatment is an incredibly complex matter. The Istanbul Protocol refers to the concept of torture in the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the opening article of which presents the internationally-agreed legal definition of torture.

International mechanisms for the prevention of torture have focussed on the importance of interpreting torture from a gender-sensitive perspective, to which we might add the necessary approach in terms of mental health.

- In the social care and healthcare fields, there are certain actions which, for therapeutic or medical reasons, can conceal unjustified limitation of rights and imply covert sanctions or punishment. These include therapeutic restraints; being obliged to wear nightwear all day as a punishment for wrongdoing; not being permitted to leave rooms without authorisation during the first week following committal; not being allowed to converse with colleagues; not being informed about prescribed medication; and involuntarily admitting a person who is deprived of liberty to hospital. Using ‘therapeutic reasons’ as the explanation for an action does not imply immunity with regards to how power is exercised over people with mental health issues by means of coercion, including straps, medication and hospitalisation.
- In terms of regulations, small but insufficient steps are being made to address crucial aspects of mental health and how it should be managed. For example, State Prosecution Service Instruction 1/2022 of 19 January on the use of mechanical or pharmacological restraints in psychiatric or mental health units, plus care homes or social and health facilities for the elderly and people with disabilities. Also, the Secretary of State for Social Rights Resolution of 28 July 2022 publishing the Territorial Council of Social Services and the System for Autonomy and Dependency Support Agreement on common accreditation and quality criteria for facilities and services within the System for Autonomy and Dependency Support.

Some of the matters dealt with in 2022 which, to some extent, are representative of opportunities for improvement in matters of prevention are indicated below. The NPM has been involved in formulating, monitoring and implementing them.

- **Visits**

- Identification and prevention of situations that constitute ill-treatment in the field of mental health are closely linked to the stigma, discrimination and lack of autonomy to which individuals committed to mental health facilities are subjected.

When it is not hidden from sight altogether, ill-treatment is normalised. With regards to allegations, filing reports or cases of ill-treatment,

managers in all facilities commonly state that they have not been informed about reports of ill-treatment filed against them and do not have a specific record of reports filed by inmates. In addition, there is no specific protocol for response to allegations and reports of ill-treatment against inmates or a system for recording this.

- In the NPM's opinion, there should be a guarantee that individuals who are committed to a mental health facility and who wish to report a case of aggression, ill-treatment or any kind of incident during their stay, irrespective of if they have been injured or not and irrespective of if this has been intentional or accidental, have access to suitable channels to do so at the units to which they have been committed.

In order for residents to be able to exercise this right appropriately, there must be different ways of filing complaints and any necessary adaptations must be made available (language, support measures, accompaniment, etc.). Confidentiality of allegations or reports must also be guaranteed.

#### - **Prevention recommendations**

- The NPM issued a Recommendation to provide mental health units, within the scope of their functions, with a protocol for prevention, detection, protection, and support for victims of ill-treatment, abuse or bullying at the facility. This should regulate the person's access to medical, psychological, and social care and individuals should be informed of this right in a way that is understandable to them when they are committed to the unit. There should also be a tamper-proof logbook to record all reports of ill-treatment against inmates. This may also be provided in electronic format and should adhere to regulations on data protection.

In direct relation to this fact, the NPM has observed the need for a specific action protocol for when an individual is physically harmed in a mental health facility and a record of those steps, in addition to simply including this on medical records. An absence of records of this kind was observed in some visits.

- With regards to protocols that may be solely preventive, most facilities do not have an in-house Suicide Prevention Protocol (Spanish acronym PPS) or one that is specific to the facility. Consequently, the NPM issued a Recommendation in respect thereof to all the facilities that were visited.
- With regards to failures to stick to rules and the fact that this can lead to punishment that could be considered ill-treatment of people committed to mental health facilities, the NPM drew up Suggestions regarding a review of the protocol on how to proceed when rules are broken. For

example, the rules class use of electronic devices by people committed to the facility as a privilege. The aim is to minimise coercion behaviour that violates the freedom and autonomy of patients and to eliminate measures that may be understood as ‘punishment for bad behaviour’, with particular emphasis on any that involve removing personal property or impeding the ability to exercise basic patient rights.

- A lack of autonomy in the people committed to mental health facilities was observed during visits. For example, in limitations on communication with the outside world using mobile phones or landlines and insufficient privacy when communication was permitted. The NPM issued Suggestions in respect thereof. It also insisted upon the importance of online court hearings being held in rooms that are suitable for this purpose, thus guaranteeing an environment that is not intimidating, is respectful and in which the person feels at ease and safe to openly express themselves about their conditions and the treatment they have been given during committal.

The NPM issued the local authorities with a Suggestion to take any necessary steps to promote access to community resources and to set up public transport to Alcohete Residential and Rehabilitation Unit in order to promote the autonomy of people committed to the facility and their integration into the community, as provided for in article 19 of the Convention on the Rights of Persons with Disabilities.

- The absence of open spaces or access to them, and the lack of therapeutic, recreation and sports activities, is equally as significant.
- Access to a suitable team of psychologists and psychiatrists for therapy equates to top-quality healthcare and, without a doubt, combats inappropriate treatment that runs the risk of becoming degrading or inhuman. The NPM issued Suggestions to all the facilities that were visited.

### ***Guarantee systems within the committal system***

- Differentiating between voluntary and involuntary committal of a person to a mental health hospital unit is key to torture prevention because it is the basis for demands linked to the administrative and legal guarantees system.

- **Voluntary and involuntary confinement**

- In keeping with report CAT/OP/27/2 by the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the NPM’s criteria is: ‘Confinement and institutionalization are voluntary only when the person concerned has



decided on it upon informed consent and retains the ability to exit the institution or facility'. The NPM has insisted upon this on numerous occasions.

Even if confinement is for a justified reason, certain guarantees linked to deprivation or limitation of a person's liberty must be provided and include actual opportunities to exit or remain in the facility and to report ill-treatment during deprivation of liberty.

During its visits to mental health facilities, the NPM observed that, in practice, this distinction is not always made suitably clear since the criteria for classing confinement as voluntary or involuntary vary depending on the unit and the autonomous community.

#### - **Legal procedures**

- Involuntary confinement can be emergency or otherwise and this has an impact on extrajudicial demands and exactly when legal intervention takes place. The Constitutional Court itself understands that, to the person in question, involuntary confinement constitutes deprivation of liberty which must necessarily uphold the guarantees that protection of the mentioned fundamental right demand, as interpreted in accordance with international treaties and agreements on this matter ratified by Spain (article 10 Spanish Constitution) (Sentence 141/2012 of 2 June).

This sentence, which passed judgement specifically on emergency psychiatric confinement from the perspective of the fundamental right to personal liberty, established that 'the extrajudicial phase of emergency confinement is validated by compliance with four basic necessities stemming from respect for the fundamental right to personal liberty' (article 17 of the Spanish Constitution) and explains that the existence of a psychiatric disorder is the objective prerequisite for the measure, in addition to an 'emergency' situation or immediate need for medical intervention in order to protect the individual. In other words, the existence of a psychiatric disorder plus emergency circumstances or the need to provide medical support for the person's own protection are the objective legal prerequisites for cases of emergency involuntary confinement. Other than this exception, which requires legal ratification of the measure within 24 hours, committal must be authorised by a judge before it takes place and must always refer to a person who is not already deprived of liberty.

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

- In Spain, there are no specific national regulations on use of restraints. In 2022, the State Prosecution Service, in accordance with Recommendations the NPM

has made, approved Instruction 1/2022 of 19 January on the use of mechanical and pharmacological restraints in psychiatric or mental health units and care homes or social and health facilities for the elderly or people with disabilities. The aim was to recognise and safeguard the dignity of the people who use these resources and may be subjected to coercive measures. As the institution itself states: 'The safety and protection reasons that justify use of this measure are negated by the idea that puts the person, their wishes, desires and preferences at the heart of their care, pushing this approach of excessive protectionism that has been used with people who are in these collectives to one side'. In this regard, we must promote the search for alternatives to restraints to guarantee, on the one hand, the protection and safety of individuals and, on the other, respect for their dignity.

- We should also point out the recent Secretary of State for Social Rights Resolution of 28 July 2022 publishing the Territorial Council of Social Services and the System for Autonomy and Dependency Support Agreement on common accreditation and quality criteria for facilities and services within the System for Autonomy and Dependency Support. In title II, it states that residential care facilities must have 'a formal commitment to care that is free from restraints and coercion and accredited by means of a Restraint-Free Care Programme that contemplates safe abolition of restraints with use being limited to exceptional circumstances in the manner contemplated in this agreement'.
- In light of the highlighted regulation, a system for protecting the rights of people who are subjected to this exceptional practice must be set up. It must possess sufficient control measures before and during application and there must be posterior supervision. Attempts to apply alternative measures must be documented and details must be provided and must guarantee the principles of exceptionalness, individualisation, proportion, minimal intensity, and minimum duration.

The NPM has issued several Recommendations and Suggestions in respect thereof to the facilities it has visited this year, in addition to a general one discouraging use of restraints which was issued specifically during the visit to Alcohete Residential and Rehabilitation Unit in Guadalajara, plus an appropriate adaptation at Málaga Regional University Hospital Mental Health Admissions Unit, so that specific measures are taken to discourage use of restraints in public or private mental health units, care homes and social and health facilities, with a

guarantee that they are never used in a generic manner, but customised to each person and situation, and never as a sanction or punishment or as a means of therapy, as provided in international standards on this matter and the guidelines established in recent Instruction 1/2022 of 19 January and the Resolution of 28 July 2022.

- The same Recommendation was issued expressly to Marqués de Valdecilla University Hospital Eating Disorders Unit in Santander since, in light of interviews with minors at the facility, use of mechanical restraints is commonplace at the unit and understood as a punishment for bad behaviour. The NPM was able to confirm through its analysis of documentation that mechanical restraints are prescribed as treatment in a generic manner and not customised. One instance of this had a start date from three months earlier. A Recommendation was issued in respect thereof.

At the opposite end of the spectrum, during the visit to Málaga Regional University Hospital Eating Disorders Unit, it was observed that there are no mechanical restraints or rooms for their use since, according to the information given to the NPM, mechanical restraints are not used and patients are not isolated.

- With regards to use of restraints, the NPM has observed that staff shortages are often the reason why restraints are used and, in addition, staff are given limited training. This was mentioned in paragraph 49 of the report by the European Committee for the Prevention of Torture [[CPT/Inf\(2006\)35part](#)].

The NPM shares the CPT's opinion and believes that restraints are used with insufficient supervision. In respect thereof, in its visit to Esquerdo Sanatorium, the NPM issued a Suggestion to bring an end to their use by security personnel plus a Recommendation to give staff the necessary training.

#### - **Restraints protocol**

- The lack of uniformity in how use of restraints is regulated became clear following preliminary analysis of all the protocols used in the autonomous communities visited by the NPM. It observed that some restraint protocols contravene international directives by taking the type of committal (in other words, the legal circumstances) into account as the basis for the timeline of use of the measure.
- It is the NPM's opinion that, in order to favour transparency in mental health facilities, existing protocols should be made public, especially

those relating to use of mechanical or pharmacological restraints since they are particularly susceptible to constituting ill-treatment. Protocols on restraints should always state that restraints must be used in a room that is designed specifically for this purpose and which meets a number of conditions that guarantee correct use. Accordingly, the NPM formulated a Suggestion to install all necessary elements in these isolation rooms so that, should they be used for applying restraints, it is done with maximum guarantees.

The NPM has often observed that these rooms are used as isolation rooms based on the argument that there was a risk of suicide. This should be avoided wherever possible. The NPM issued a Suggestion in respect thereof.

- **Consent**

- The NPM has issued Recommendations that consent forms for the use of restraints should indicate the type of restraint, the reason for use and the signature of the member of staff (doctor, social worker, nurse or facility manager) providing the information, the direct physical and psychological risks associated with the restraints and the consequences of use of the indicated restraints.

- As suggested by the NPM, informed consent for the use of mechanical restraints aimed at avoiding falls at night must always be signed and have been understood, and must account for the option of being rescinded by the person on whom the restraints are used. In this regard, an anticipated statement of intent is contemplated in article 11, prior instructions, of Law 41/2022 of 14 November regulating patient autonomy, and rights and obligations in terms of information and clinical documentation. This could be used as a tool to favour guaranteeing the rights of people on whom restraints may be used. The NPM has issued a Recommendation in accordance with this line of reasoning.

- **Records and communication**

- In most of the visits, the absence of an accessible record of use of restraints that would serve as a control of this practice was alarming. It is not generally possible to generate lists and the procedure and its guarantees have to be analysed selectively, case by case. This renders an appropriate inspection of how frequently these measures are used impossible since the necessary elements for doing so are unavailable. Records are often kept by nursing staff and there is no reference to this data in medical records when, in theory, doctors prescribe the use of restraints.

Paragraph 52 of the European Committee for the Prevention of Torture (CPT) report entitled 'Means of Restraint in Psychiatric Establishments for Adults' states that experience has shown that detailed and accurate recording of instances of restraint can provide hospital management with an oversight of the extent of their use and facilitate measures, where appropriate, to decrease the incidence rate. The NPM issued a Recommendation in line with this argument.

### 2.3 THE INTELLECTUAL DISABILITY PROJECT

- Since 2020, the NPM has shown an interest in the circumstances of people who have an intellectual disability and are deprived of liberty. The first visit of this kind took place in 2021 at Don Benito National Police Force Provincial Police Station in Badajoz where an incident had occurred during the arrest of a person with an intellectual disability and in which the intervention of the psychologist in charge of the person's therapeutic care was prohibited. This event was subject to criminal proceedings.

In 2021, the NPM started preparing the project and visited a young offender institution and two National Police Force stations.

In 2022, a project was initiated in the context of police stations since they are the first point of deprivation of liberty at which people arrive and the consequences of failing to detect their disability can be key to the entire criminal proceedings. The Recommendations made refer to the framework for detecting disabilities and how those disabilities are handled, in addition to the impact that facilities and organisation of those facilities can have on the person's stay. For example, references in terms of time and space.

Based on the results obtained, the project continues to investigate how people in police stations are treated and the NPM will also continue this work in the context of young offender institutions. These individuals end up being particularly vulnerable in these places (police stations and young offender institutions) if appropriate steps are not taken. On the one hand because they are minors who, with suitable treatment, can be rehabilitated and have a chance at making a future for themselves and, on the other, in the case of individuals who are detained at police stations, because it can affect the entire criminal proceedings following arrest. Therefore, the NPM will continue its work in both areas.

This project has adhered to the criteria set out in the Convention on the Rights of Persons with Disabilities which was included in the Spanish legal system and came into force on 3 May 2008. Article 2 of the convention, paragraph 4, establishes the concept of discrimination on the basis of disability. It is understood as any distinction, exclusion, or restriction on the basis of disability which has the purpose or effect of impairing or nullifying recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable adjustments. The NPM highlights the fact that this provision anticipates situations by pointing out that disability-based discrimination can also exist if we fail to make adjustments adapted to that disability.

### **Visits**

- In 2022, the NPM visited La Zarza Young Offender Institution in Murcia, Burgos Provincial Police Station and La Rioja Police Headquarters.

The findings and circumstances that posed a risk of discrimination that were detected and about which, when this report was closed, no reply had been received from the Secretary of State for Security are listed below. The Secretary of State for Security is responsible for the police stations that were visited. In addition, no reply was received from the corresponding local government department in the Region of Murcia responsible for La Zarza Young Offender Institution.

### **Detection**

- Neither of the two police stations that were visited has specific regulations for detecting individuals with an intellectual disability or for how to proceed during arrest or while the person remains under police custody. Therefore, a Recommendation was made to regulate detection of and care for these individuals.
- In the case of La Zarza Young Offender Institution, the NPM observed that information about disabilities was not systematically or comprehensively recorded. This means that these particularly vulnerable individuals are disregarded and it is impossible to intervene in a manner that is adapted to their special needs. Therefore, the NPM issued a Recommendation to establish a record documenting all types of disabilities that are identified in people serving a

sentence in order to favour assistance that is adapted to particularly vulnerable individuals.

### ***Health and psychological and social care***

- At Burgos Police Station, the NPM noted that a detainee who possibly suffered from a psychological disability and was taking prescribed medication was not provided with that medication until 15 hours into the arrest. During that time, the individual had made a statement and had been brought before the judge. The individual had to do this in an elevated state of mental impairment and with a diminished ability to pay attention. Therefore, the NPM made a Recommendation to regulate the healthcare procedure for people taking prescribed medication for mental health conditions, such that their right to be defended can be guaranteed.
- At La Zarza Young Offender Institution, the NPM noted that the psychological and psychiatric care given to people with an intellectual disability was not specifically adapted to their needs and a Recommendation in respect thereof was issued.

### ***Conditions at the facilities***

- At the two police stations, the NPM observed that there were no jail cells specifically for people with an intellectual or developmental disability. Therefore, for the duration of their stay, they were in contact with all other detainees. People with an intellectual disability face difficulties relating with others and have issues managing their social skills. They tend to be easily influenced and this makes them particularly vulnerable when they are in contact with other detainees. Consequently, the NPM issued a Recommendation in respect thereof.
- One issue that the NPM observed in all the facilities it visited was the lack of natural light. Jail cells at police stations are generally in basements and do not have natural light. In addition to the emotional impact this can have, an absolute lack of natural light exacerbates feelings of oppression, which makes it difficult for detainees to control the passage of time. This is particularly important to people with an intellectual disability. In addition, these spaces do not always have signs on them or the signs they do have are incorrect. This can intensify the feeling of being enclosed and make individuals feel more disoriented. Consequently, two Recommendations were issued to install signs and clocks that detainees can refer to in the jail cells so that they have a reference in terms of space and time.

### ***Adaptation of documentation, protocols, and regulations***

- The Secretary of State for Security's Information Form for Detainees, Instruction 4/2018, and the Detention Act and Information on Rights and Essential Elements of Steps to Dispute Detention at Police Stations are not written in a way that is easy to comprehend. The NPM issued a Recommendation in respect thereof.
- The dossier that is provided when minors are committed to La Zarza facility is 42 pages long and is not written in a manner that is easy to understand. This makes comprehension particularly difficult for people with an intellectual disability. The NPM issued a Recommendation to draw up a committal dossier that is easy to read, making any necessary and appropriate changes and adaptations, so that people with an intellectual and development disability can understand the document when they are committed.
- Action protocols that are covered by the project at the facility are not adapted to people with an intellectual disability. In these protocols, adaptations covering use of physical restraints is of particular importance since people with an intellectual disability have greater difficulty remaining calm and handling their emotions. This can result in behaviour which, since it cannot be managed any other way, ends in use of physical restraints. The NPM issued a Recommendation.

The NPM has noted that people with intellectual disabilities that are known to the facility were issued several sanctions. The absence of regulations at the facility adapted to account for people with an intellectual disability or issues with comprehension can affect those people's rights. The NPM issued a Recommendation to adapt the facility's regulations and to make adjustments to account for people with an intellectual or developmental disability.

### ***Education***

- La Zarza facility does not adapt its personalised programme to meet the specific educational needs of people with intellectual disabilities. Therefore, the NPM recommended that the programme should include any necessary adaptations so that discriminatory situations do not arise.

There are deficiencies in the training for and adaptation of the curriculum to meet the needs of people with intellectual disabilities. There is no specialist teaching staff and any adaptations that have been made are cursory. Article 24.2 letter d) of the Convention on the Rights of Persons with Disabilities states:



‘Persons with disabilities receive the support required, within the general education system, to facilitate their effective education’. Based on the above, the NPM issued a Recommendation to ensure the provision of any necessary resources so that inmates with an intellectual disability or developmental disability can be educated in a manner that is adapted to their needs.

### ***Security systems***

- At Burgos Police Station, the NPM noted that there were no call devices in the jail cells. People in custody were required to shout or make a noise in order to get the attention of custody personnel. This only exacerbated the agitation of detainees, could make it difficult to be heard and could be interpreted as aggressive behaviour. These situations can be particularly unsettling for detainees with an intellectual disability. The NPM issued a Recommendation in respect thereof.

At Logroño Police Station, there are no custody officers in the jail cell area at night. These officers take charge of custody from the ground floor of the building. Although the cells do have a call system, since it is a light-based system and not a sound-based system, calls can be missed by officers at the control station. This, in addition to the fact that there is no video-surveillance system in the jail cells, is classed as a deficiency that could affect the needs of detainees. The NPM has reiterated the Recommendations made in the follow-up visit to Logroño Police Station to install a calling device and video-surveillance cameras in all jail cells in order to guarantee the protection and safety of all detainees.

### ***Frisking***

- In both police stations, the NPM identified cases in which frisking of individuals with intellectual disabilities did not meet the established criteria for exception and proportion provided for in applicable regulations. Therefore, a Reminder of Legal Duties was issued such that the provisions of the second instruction, second section of Instruction 13/2018 of 7 October, of the Secretary of State for Security on external frisking and the interpretation of certain breaches are met.

### ***Restraints***

- During the visit to La Zarza facility, during interviews with minors, the NPM was informed about the use of shackles on minors with intellectual disabilities. Information about this was requested from the Administration.

### **Staff training**

- At La Zarza facility, the NPM observed that there are no specialist education or technical staff or staff with specific knowledge of how to work with minors who have disabilities.<sup>10</sup> Consequently, it issued a Recommendation to foster training for all staff on the rights of people with disabilities at young offender institutions, particularly for educators and expert staff.
- In the case of the police stations, the staff dealing with detainees have not been given specific training on how to handle or detect people with an intellectual or development disability. Consequently, the NPM issued a Recommendation in respect thereof.

### **Support for detainees with intellectual disabilities**

- At La Rioja Police Force Headquarters, further to analysis of the documentation provided by the station, the NPM observed that there have been cases of detainees with intellectual disabilities. These people have been given the support of a professional enabler when giving statements at the station. This is classed as good practice.

Law 8/2021 of 2 June reforming civil and procedural legislation for the support of people with disabilities when exercising their legal rights, recognises the role of an enabler. This person is an expert in intellectual disability and recording statements who can guarantee that interviews are carried out in accordance with the person's abilities and that any secondary victimisation processes are minimised and that cases of mental blocks and nerves are avoided. The enabler acts as a mediator and facilitates the entire process, providing the necessary keys for obtaining a quality statement and interpretation and assessment thereof

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<sup>10</sup> The Convention on the Rights of Persons with Disabilities of 13 December 2006 provides for the obligation in article 4.1 letter i) 'To promote the training of professionals and staff working with persons with disabilities in the rights recognized in this Convention so as to better provide the assistance and services guaranteed by those rights'.

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

Investigation and documentation of allegations of torture and ill-treatment play an essential role in preventing torture since they form part of what is known as ‘indirect or dissuasive prevention’<sup>11</sup> which exists as a guarantee of non-repetition so that systematic acts or cases of ill-treatment do not occur again in the future. The United Nations Committee Against Torture understands that ‘the investigation must seek both to determine the nature and circumstances of the alleged acts and to establish the identity of any person who might be involved’.<sup>12</sup>

In addition, as sustained by the European Court of Human Rights (ECHR), prohibition of torture and inhuman or degrading treatment by officers of the State would be inefficient in practice if there were no procedure for investigating allegations of ill-treatment made by individuals who are deprived of liberty.<sup>13</sup>

#### Regulatory references and the main court rulings

With reference to the international sphere, we might point out that the updated version of the [Istanbul Protocol](#) was published in June 2022. It is a manual for investigation and documentation of torture, punishment and cruel, inhuman, or degrading treatment. The translation into Spanish is pending. The update covers the main changes to international standards on this subject and it includes guidelines for States to effectively implement their obligations in matters of prevention, investigation, and judgement of torture.

As indicated in its annual reports, Spain has been sentenced on this matter by the European Court of Human Rights on several occasions.

At national level, we can reference the key sentences handed down in 2022 by the Constitutional Court and the Supreme Court.

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<sup>11</sup> *Preventing Torture*. An Operational Guide for National Human Rights Institutions, OHCHR, APT and the Asia Pacific Forum, May 2010.

<sup>12</sup> Blanco Abad v. Spain, Committee Against Torture, Communication 59/1996, views adopted on 14 May 1998.

<sup>13</sup> European Council, European Court of Human Rights, European Convention on Human Rights Case Law Guide, the rights of persons deprived of liberty, 2022, p. 47.

***Constitutional Court Sentence 12/2022 of 7 February (Official State Journal of Spain number 59 of 10 March 2022)***

The appellant filed a written complaint at the Constitutional Court reporting the ill-treatment they claimed to have suffered in the prison facility at which they were an inmate. This complaint had been sent to a court in Arganda del Rey (Madrid) which, following hearings with the appellant and the civil servants accused of the ill-treatment, and based on the medical report issued by the facility, declared temporary stay of the proceedings and ruled there was no case to answer to since there was insufficient evidence to prove a crime had been committed.

According to the Constitutional Court, the investigation led by the examining magistrate did not meet the demands of sufficiency and effectiveness provided for in the constitutional doctrine of the European Court of Human Rights. It affirmed that the fact that the appellant was committed to an isolation module at the prison facility and that, immediately after the reported events, was subjected to provisional isolation with straps had not been taken suitably into account. In this same vein, the court rejected arguments that the delay in filing the complaint indicated that a crime had not actually been committed. The prison facility took ten days to file the complaint at the duty magistrates' court, which suggested to the tribunal that the prison service Administration may have been somewhat reluctant to uncover the facts.

Furthermore, according to the Constitutional Court sentence, the reasoning behind the court decision appeal denying the means of investigation that the appellant had requested was deficient. Specifically, it withheld that the three civil servants and a service lead who had confirmed they had gone to the jail cell where the events took place should have been called to testify and that the court should have called for scaling-up of the documentation handed over by the facility on the range of medical care provided and medical reports that had been issued. It could also have called on inmates who may have heard what went on to testify as witnesses. The High Court concluded that the investigation was closed without having cleared up all reasonable doubt and despite sufficient means to do so being available.

***Constitutional Court Sentence 13/2022 of 7 February (Official State Journal of Spain number 59 of 10 March 2022)***

The complainant had filed a report that they had been subjected to nude frisking whilst under police custody. Despite several formalities - identification and

statements from offices, examination of audio recordings, receipt of police and medical reports - a magistrates' court and the Provincial Appellate Court of Badajoz agreed to declare temporary stay of the proceedings since they considered that the facts in the complaint did not uphold perpetration of an aggression against moral integrity.

In application of the doctrine in Sentence 34/2008 of 25 February addressed in Sentence 166/2021 of 4 October on the requirement to carry out efficient legal investigations into claims of torture, inhuman, or degrading treatment while under police custody, the Constitutional Court granted protection. On this occasion, according to the high court, the investigation into police conduct (which the complainant claimed was excessive and an attempt against their dignity) was insufficient since it was brought to a close despite the availability of suitable means of investigation to clarify the facts. Specifically, it sustained that a defence declaration should have been made in person by the police officer who did the frisking. This would have provided the basis for reaching a reasonable decision on whether or not additional expert evidence needed to be sought from the audio files the complainant recorded at the police facilities.

***Constitutional Court Sentence 34/2022 of 7 March (Official State Journal of Spain number 84 of 8 April 2022)***

The Constitutional Court granted protection against the rulings of the Provincial Appellate Court and magistrates' court of Granada which declared temporary stay of proceedings in a claim of ill-treatment, in application of the doctrine on the requirement to carry out efficient legal investigations into claims of torture while under police custody (Sentence 34/2008 of 25 February and European Court of Human Rights Sentence López Martínez v. Spain of 9 March 2021).

The high court reminds us that there is a special mandate to perform exhaustive, sufficient, and effective investigation into claims of crimes of torture, according to which judges must make use of all possible means of investigation to clarify the facts and guarantees must be enhanced when there is a special situation in which the citizen is under provisional custody of the State. In this specific case, the Constitutional Court understood that the judge should have heard declarations by the complainant, the police officers involved in the incidents, any witnesses who had been identified, the doctor and the court-appointed lawyers. It should also have gathered documentation from pre-trial proceedings initiated against the claimant for the acts that led to the arrest.

### ***Supreme Court Sentence 861/2022 of 3 November 2022***

The Supreme Court dismissed appeal proceedings made by two prison civil servants and confirmed the rulings of the Supreme Court of Justice in Andalusia, Ceuta and Melilla and the Provincial Appellate Court of Cádiz, thereby confirming the sentence handed down to two prison civil servants for the crime of torture in article 174 of the Criminal Code as concurrent minor offences of bodily harm for assaulting a person who had recently been provisionally detained in a prison facility.

### ***Constitutional Court Sentence 122/2022 of 10 October (Official State Journal of Spain number 277 of 18 November 2022)***

During the pre-trial phase, the complainant was sentenced to preventive provisional imprisonment without bail, which was ratified and confirmed at appeal. In parallel, the complainant asked to be checked by a forensic doctor on several occasions in order to attest to the presence of bodily harm which the complainant claimed to have suffered as a result of torture during police custody. The examination did not take place.

The Constitutional Court granted protection based on violation of the right to effective legal support with regards to the right not to be subjected to torture or inhuman or degrading treatment. The judicial bodies did not meet the obligation to perform reinforced due diligence since they failed to reach appropriate procedural decisions giving grounds for criminal proceedings which, through sufficient and effective investigation, might have clarified any doubts about the torture or ill-treatment which the appellant claimed to have suffered in their oral statement. This included, for example, agreeing to provide the necessary measures for guaranteeing the effectiveness of the right of the appellant to be examined by a forensic doctor.

On the other hand, the sentence did not overturn the writ agreeing to provisional imprisonment as a precautionary measure by failing to discuss the presumptions that led to this decision.

With regards to the right to not be subjected to torture or inhuman or degrading treatment (article 15 of the Spanish Constitution), the Constitutional Court sentence that is highlighted above considered that the right to effective legal advice had been violated (article 24.1 of the Spanish Constitution). All of these declarations considered that the legal investigation did not reach the

sufficiency and effectiveness demands of constitutional case law and a potential 'failure' of the Administration to collaborate could not be ruled out.

According to the Constitutional Court, aforementioned sentence Supreme Court 861/2022 should be highlighted since all the legal authorities confirm that a crime of torture as provided for in article 174 of the Spanish Constitution was committed. The case shows a consequence that is characteristic of this type of crime. That is, two civil servants in charge of the custody of a person who was deprived of liberty took advantage of their position to violate the moral integrity of a person simply because of the circumstances that had led to said deprivation of liberty.

In short, as concluded by the Constitutional Court, the dominating standards of these rulings may help to improve the work of all institutions in charge of investigating cases of torture. The fact that these sentences refer only to personnel in charge of prison facilities or police facilities must be a matter for reflection.

#### Situations of risk identified by the NPM with regards to complaints, records, and investigations into allegations of ill-treatment

As indicated above, during visits to places of deprivation of liberty, the NPM has sometimes observed deficiencies in due investigation of claims of torture or ill-treatment.

There are no real, effective, confidential, and independent channels for filing claims that allow individuals who have been deprived of liberty to report ill-treatment and be protected against possible reprisals. Allegations and claims of ill-treatment tend to be made public as a result of the perseverance of relatives and civil organisations. Generally, this is limited to cases of physical ill-treatment that are so severe that they cannot be concealed. As indicated in Sentence 12/2022,<sup>14</sup> being informed indirectly of these circumstances only makes it more difficult to obtain already scarce proof and means that investigations into

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<sup>14</sup> After 25 years, the observation made at the time by the European Committee for the Prevention of Torture (CPT) is still upheld. One of the first CPT rulings against Spain was in 'Blanco Abad v. Spain' which concluded that the fact that the State did not investigate a claim of torture for 15 months violated article 12 since the timeframe was not reasonable and contrary to the requirement to investigate 'promptly'.

allegations of ill-treatment tend to end in stay and filing of proceedings without all due diligence having been performed on matters that may have been relevant.

Furthermore, the NPM continues to observe that there is a lack of tamper-proof logbooks recording complaints and allegations of ill-treatment during arrest and custody so that intervening organisms can perform appropriate monitoring thereof.

With regards to the right to not be subjected to torture or inhuman or degrading treatment, delays in legal investigations also continue to be a problem that compromises people's right to legal proceedings without undue delay (article 24.2 of the Spanish Constitution).<sup>15</sup> The Constitutional Court itself warned about this in the aforementioned sentences.

Of course, a lack of training on questions of human rights is clearly a factor in prevention and investigation. There continue to be practices that suggest that deprivation of liberty custody officers lack an understanding of the dignity of individuals. In Sentence 861/2022, the Supreme Court points out: 'The idea of the inviolability of the human character in the right to be treated as oneself, as a free human being and never as a simple object'. This means that 'an attack on the moral integrity of an inmate when the civil servants who should have been guarding and safeguarding them attack them in retaliation for an alleged fact, irrespective of how serious it is, does not in any way grant the right to exert such violence against an inmate in a jail cell from which they cannot exit'.

### Additional relevant information

As in previous editions and in order to write its report, the NPM requested information stored by the State Prosecution Service and Secretary of State for Justice in its administrative records. The information referred to people in positions of authority and civil servants who work in places of deprivation of liberty who have been sentenced for certain crimes, plus any corresponding pardons.

In addition to court convictions, any dismissals and acquittals relating to crimes of torture and ill-treatment involving people working in the field of

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<sup>15</sup> Point 25 of the 2022 United Nations General Assembly report (in which Spain participated) highlights the importance of having efficient and safe systems for gathering, treating and managing data that ensures that the information is accessible, as provided for in applicable laws.



deprivation of liberty are also of interest (articles 173, 174 and 175 of the Spanish Criminal Code).

The State Prosecution Service stated that ‘obtaining the specific data requested from the different territorial prosecution offices has been very difficult since this information cannot be obtained automatically from the system that is used to manage sentences. Therefore, it was obtained manually’.

There are six reports of ill-treatment on the State Prosecution Service records between 1 September 2021 and 31 August 2022. This only reinforces the need to improve direct reporting channels for crimes of this kind. Among the types of crimes committed in contexts of deprivation of liberty that were consulted, 13 civil servants were sentenced, seven of which were for crimes against moral integrity (article 175 of the Spanish Criminal Code). No civil servants were sentenced for special crimes or those classed as torture or ill-treatment (articles 173 and 174 of the Spanish Criminal Code).

The Secretary of State for Justice informed that 74 civil servants were sentenced over the period for these types of crimes. 45 of these sentences were for crimes against moral integrity (article 175 of the Spanish Criminal Code). As with the State Prosecution Service, it did not have any records of sentences over the last year for crimes classed as torture (article 174 of the Spanish criminal code) or ill-treatment (article 173 of the Spanish Criminal Code).

The data provided by the Secretary of State for Justice does not match the data provided by State Prosecution Service. The Secretary of State for Justice itself stated that ‘the information on the Justice Administration Support Administrative Records System (SIRAJ) does not specify the role or level of authority of the civil servants working in contexts of deprivation of liberty’.

Therefore, given the current configuration of the SIRAJ database, it is not possible to disaggregate information on perpetrators unless the provisions of the criminal code itself limit it to those people, as was the case in the offences typified in articles 174.2, 443.2 and 530 of the Criminal Code. Consequently, in the case of crimes of ill-treatment, it is not possible to access specific information because the records do not specify the perpetrators of the general crime of ill-treatment provided for in article 173 of the Spanish Criminal Code.

The absence of disaggregated data on ill-treatment or torture crimes in places of deprivation of liberty is not a minor issue for the NPM given the position

of superiority of personnel in charge of the custody of detainees or people deprived of liberty and by virtue of the guarantees stemming from protection of citizens who are, even if provisionally, under the physical custody of the State.

Since it began operating, the NPM has noted how execution of a sentence in all its terms can serve as a deterrent with a view to acts of this kind happening again in the future. The impact diminishes when a pardon is granted since it spurs the perception of certain expectations of impunity. In this sense, it should be highlighted that, in 2022, no members of Spain's security forces and bodies were pardoned for the crimes about which information was requested from the Secretary of State for Justice.

## Conclusions

The NPM continues to perceive a risk that stems from the current gap between complaints and allegations of various types of abuse experienced in places of deprivation of liberty: those that are reported, recorded, and investigated and those that manage to evade existing administrative and legal barriers. Therefore, the fact that court rulings on this matter continue to be scarce is a matter for reflection in order to dispel the existing risks stemming from deficiencies in the reporting channel, the availability of means for providing proof, the possible fear of reprisals and delays in carrying out investigations.

Investigations into ill-treatment imply the joint effort of the different administrative bodies if we are to bring conclusion of these investigations in dismissals and suspension of criminal proceedings to an end.

Constitutional Court Sentence 122/2022 states that 'there is a special mandate to perform an exhaustive, sufficient and effective investigation into claims of crimes of this kind, making use of all possible useful means of investigation to clarify the facts since it is necessary to enhance guarantees because there are special circumstances in which the citizen is provisionally under the custody of the State'.

The Recommendations made by the Ombudsman's Office in its role as National Preventive Mechanism seek to diminish the chances of situations of risk that could lead to ill-treatment in places of deprivation of liberty in Spain going undetected. This would be achieved through use of the following: real and effective reporting channels; suitable means of proof; and protection of potential victims. The above means that records and databases must be improved so that

we can analyse how well the administrative bodies in charge of deprivation of liberty are performing their role from a human rights perspective.

**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)**



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