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SUMMARY
2020 annual report
National Prevention Mechanism (NPM)
Spain

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



**DEFENSOR
DEL PUEBLO**

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Mecanismo Nacional de
Prevención de la tortura

npm

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https://www.defensordelpueblo.es/informes/resultados-busqueda-informes/?tipo_documento=informe_mnp

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

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

https://www.defensordelpueblo.es/en/prevention-of-torture/npm_activity/

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TABLE OF CONTENTS

PRESENTATION.....	4
INTRODUCTION.....	8
1 GENERAL INFORMATION ON VISITS.....	12
1.1 General considerations with regards to visits to deprivation of liberty facilities during the pandemic and results obtained.....	14
1.2 Deprivation of liberty facilities visited.....	20
1.3 Preparing and carrying out visits.....	20
1.4 Conclusions drawn from visits, rulings and dialogue with organisms in charge	23
2 SHORT-TERM DEPRIVATION OF LIBERTY.....	26
3 MEDIUM-TERM DEPRIVATION OF LIBERTY DETENTION FACILITIES FOR ALIENS.....	32
4 LONG-TERM DEPRIVATION OF LIBERTY.....	38
4.1 Prison facilities.....	39
4.2 Young offender institutions.....	42
4.3 Mental health facilities at which individuals are involuntarily detained due to psychological disorders.....	48
5 PROGRAMME OF VISITS TO PREVENT GENDER AND SEXUAL ORIENTATION DISCRIMINATION.....	50
5.1 Recommendations.....	52
5.2 Suggestions.....	64
6 SPECIAL PURPOSE METHODS OF DEPRIVATION OF LIBERTY: STEPS TO REPATRIATE ALIENS.....	70
7 INVESTIGATION INTO ALLEGATIONS OF TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT.....	72
Abbreviations used.....	78



PRESENTATION

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MNP-Defensor del Pueblo (en funciones)

[NPM-Acting Spanish Ombudsman]

Each year's work cycle concludes with the preparation and presentation of the corresponding activity report. It has been the case since, in 2009, the Cortes Generales [Spanish Parliament] entrusted the Defensor del Pueblo [Spanish Ombudsman] with the role of **National Mechanism for the Prevention of Torture**, as provided for in the **Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)**. Article 3 states that 'each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).'

Therefore, since it was set up, the NPM in Spain has been integrated into the organisational structure of the Spanish Ombudsman's Office and forms part of its organisation chart. As such, it can be referred to as one of its lines of work. It has a number of distinctive features. Its main activity includes visiting deprivation of liberty facilities in Spain. These are not reactive visits or visits driven by specific facts; they are entirely preventive visits carried out in the interests of the OPCAT.

The aim of the report (broadly summarised here) is to render a public account of steps taken in 2020 further to findings observed during visits to various deprivation of liberty facilities.

This document is the result of work performed by an interdisciplinary team, including NPM technical staff, external technical staff and administrative personnel who have worked from home this year, and it focuses in particular on field visits performed under exceptionally demanding circumstances that, for obvious reasons, were sometimes difficult to manage. It meant that a sustained effort had to be made during times when, as a result of the COVID-19 pandemic, working from home has become widespread and the Ombudsman's Office has been no exception to the rule.

While numerous issues are addressed in this report, readers should bear in mind that not everything can be covered herewith in full. The brevity of the report means that the matters of most interest and importance have been selected.

Visits involve travelling to a deprivation of liberty facility and checking its condition. The testimonies provided by detainees or individuals performing

custody or support roles are equally as, or more important than, monitoring the condition of buildings and premises if we take into account that the prevention services we provide are designed specifically for these individuals. The simple fact that they are under custody means that these individuals find themselves in a vulnerable situation, meaning that we must always proceed with sensitivity and awareness whilst, at the same time, providing balanced criticism.

It has already been pointed out on a number of occasions that torture and ill-treatment comprise use of physical and psychological aggression and procedures, and even the condition of facilities, in a manner that violates human dignity.

This report will attempt to record the fact the exceptionally disruptive nature of the COVID-19 pandemic, which has acutely and unfairly affected society and the economy worldwide, has also disrupted regular operation of deprivation of liberty in Spain and the tasks of the NPM in its role as supervisor.

Suffice to say that, from the first quarter of 2020, and for the rest of the year, it was necessary to perform permanent assessments and adjustments with regards to juggling compliance with the NPM's mandate and adherence to the need for caution that such a serious pandemic has enforced upon us, in addition to adopting measures declared by healthcare authorities.

Nonetheless, it should be pointed out that the NPM's mandate has not been undermined by the pandemic. On the contrary, if anything, it has broadened, at least from a theoretical point of view, since any facilities at which the liberty of individuals has been forcibly deprived as a result of the pandemic also become the subject of potential visits made by the NPM.

It is also worth reminding readers before we bring this presentation to a close that, while the NPM fulfils a preventive role in the field of supervision of deprivation of liberty which, by definition, is national, its genesis is at the heart of the legal provisions of international law. As such, any specific international standards must necessarily be understood and used as basic references for preventive supervision work. Aside from their undeniable intrinsic value, it cannot be denied that those standards serve as a reference for international organisms in their supervision of how Spain fares in respect for human rights.

Sustenance of existing relationships with other NPMs or equivalent organisms, or a firm intent to foster them should they not already exist, in countries with a similar cultural and legal background also stems from the international nature of the NPM.

In any case, we must always focus on the work that remains ahead of us.

We must travel on the road towards prevention of torture together with the knowledge that there is no final destination at which the task we have been entrusted will reach a final conclusion.



INTRODUCTION

The where and how

According to articles 19 and 20 of the Optional Protocol to the Convention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), NPMs must examine ‘treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment.’

In addition, article 4.2 of the OPCAT understands prevention of liberty in terms of form and, as such, refers to ‘any form of deprivation of liberty’ and does not speak strictly about place.

Indeed, it refers to ‘any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.’

It is also evident that deprivation of liberty must take place in a given location and, therefore, field visits to ‘any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence’ are necessary.

Structure of the report

This document reports on the steps taken throughout the year (visits, findings and conversations on proposals for change with the Administration).

As has been the case since preparation of this series of reports began, the matters are addressed in adherence with criteria of time and place. Therefore, reference is made to short-term, medium-term and long-term deprivation of liberty facilities.

A range of detention facilities are referred to and the focus is on the duration of the deprivation of liberty of the individuals in question. Whilst the function of facilities is the same, they differ in architectural configuration and include police stations, courthouse jail cells, municipal detention facilities, etc.

These places, the national, regional and local police force jail cells for detainees, with all their distinguishing features stemming precisely from the differences between all the administrative bodies responsible for designing, managing and maintaining them, are the basic facilities at which NPM supervision tasks are carried out. Vehicles for transporting detainees, rooms assigned to asylum seekers and individuals who are rejected at border controls and facilities for accommodation and custody of undocumented individuals arriving by sea are classed as short-term facilities. Sometimes, individuals' long-term deprivation of liberty begins in a jail cell and leads to a stay that can vary in duration at any one of the types of facilities referred to below.

Medium-term deprivation of liberty facilities is addressed according to the indicated taxonomic criteria. Centros de internamiento de extranjeros (CIE) [detention facilities for aliens] are representatives par excellence of these kinds of facilities. Long-term deprivation of liberty facilities is indicated below. They include prisons, centros de internamiento de menores infractores (CIMI) [young offender institutions] and mental health facilities that are used for involuntary detention on grounds of psychological disorders.

Arguably, there are legal bridges or bridging clauses that link these deprivation of liberty facilities and through which individuals in this situation pass in a manner that sometimes goes unnoticed by society.

NPM management reports, including this one, have generally tended to observe, analyse and present these facilities, their procedures and the individuals staying at or inhabiting them as independent places with their own independent procedures, and which are, therefore, not interconnected.

However, while they are indeed different kinds of facilities managed by different kinds of administrative bodies, they are all means of detention, imprisonment and custody that are widely connected by their function and by procedures that satisfy the same logic of custodial, punitive and, on occasions, re-education rationale.

It is important to note that these so-called invisible bridges are often crossed by specific individuals who, during the course of their life, are often shaped by situations of deprivation of liberty imposed by a range of agents but who, once they have crossed over, are not given the opportunity to continue their journey.

The reader is thus invited to read this report under the knowledge that we are aware that the NPM's view of deprivation of liberty in Spain can be seen from other analytic perspectives.

Indeed, cells, frisking, relationships with the custody officer, health and

care, communication and contact with the individual who has been deprived of contact with the outside and the outside of contact with the individual, food, gender and sexual orientation are just the beginning of a very long list of points for analysis that give us a glimpse of a transversal manner of organising and approaching prevention of torture during deprivation of liberty.

This transversal outlook requires, in the first instance, changes to the approximation and analysis tools used to determine which situations, procedures and even environments represent abuse and torture, followed by studies to determine the best way of preventing these situations from arising, the procedures and the environments. Last of all, the work would entail devising a plan to bring an end to procedures or environments that could represent or lead to torture once they have been detected and verified. This is currently the case, but it is done through a different channel.

In other words, the result would be similar to this one: to suitably perform the NPM's mandate as provided for in the OPCAT; to encourage reflection and dialogue following visits in order to create environments in which procedures are entirely incompatible with the option of torture.



1 GENERAL INFORMATION ON VISITS

- The most significant part of the NPM's work, by virtue of the OPCAT mandate, is performed in the field. However, this ought not to obscure **the significant effort that is also made to gather and manage data**. This will also be covered in this part of the annual report. Administrative personnel, in coordination with technical staff from the NPM and the Infrastructures Department at the Spanish Ombudsman's Office, have collected a large quantity of data and prepared it for inclusion in this report. The work involved specific campaigns to collect data for use in this report and that led to **the 3,112 case files processed** using the case file management application at the Spanish Ombudsman's Office [§ 1] *.
- The singular nature of this data collection system is worth pointing out. In 2020, in addition to periodic campaigns, **two one-off campaigns were also carried out. One of these involved the prison service and the other involved autonomous community administrative bodies responsible for managing the young offender institutions** that use this data collection system. The aim in both cases was to obtain relevant information through completion of specific forms about COVID-19 rates in their respective areas of responsibility. Neither campaign was designed with continuity beyond this year in mind [§ 2].
- Within the framework of the **periodic data collection campaigns**, it should be reported that, in 2020, a third data request campaign aimed at 2,117 local entities with populations in excess of 1,000 and a police force was launched. By the end of the year, 84 percent had responded [§ 3].
- The second campaign, corresponding to the Policía Nacional [National Police Force] (2019), and the first campaign, corresponding to the Guardia Civil [Civil Guard] (2018-2019), have been closed. Both achieved a 100 percent level of response [§ 4].
- Subsequent data collection campaigns will be carried out with regional police forces and detention facilities for aliens and will take place in succession throughout 2021 [§ 5].

* The numbers between brackets correspond to the paragraph numbers in the complete report NPM 2020.

- In addition, in late 2019, another complementary project designed to analyse data was initiated. It is based on a specific computer tool that facilitates management of a large volume of information that the NPM collects and needs to manage appropriately. Use of the tool began in 2020 and the results were satisfactory. The data presented in this report was treated using that tool [§ 6].
- Within the framework of another project known as **The Venia Survey**, information was requested from legal representatives who provide individuals with support when they are legally detained. Accordingly, in 2020, 7 requests for collaboration were sent to lawyers at Official Colleges of Lawyers in Madrid. Only 6 replies to the 27 surveys sent out were received. The exiguous nature of these results suggests that the scarce coverage of this initiative means it ought to be **brought to a close in 2020** [§ 7].

1.1 General considerations with regards to visits to deprivation of liberty facilities during the pandemic and results obtained

- **Visits are a basic NPM activity.** During the year covered in this report, **66 on-site visits** and 49 activities known as 'off-site' activities at facilities in which individuals could potentially be deprived of liberty were carried out [§ 8].

Visits to places of deprivation of liberty

- The NPM carries out its activity in a range of different areas, but the administrative bodies that are supervised during visits to the deprivation of liberty facilities they manage are particularly familiar with its work. **Until the first national state of emergency was declared in order to control the first wave of the pandemic, the work of the NPM was carried out entirely as usual and according to the schedule that had been drawn up for the first quarter of the year** [§ 9].
- Evidently, the COVID-19 pandemic declared by the World Health Organization (WHO) and the subsequent declaration of the state of emergency in Spain in March 2020 affected the NPM's work in the same way that it affected work in the rest of the world. At the time

this report was written, the situation, which persisted throughout the year, was far from entirely under control. Depending on the time of the year, the NPM was affected to varying degrees of intensity [§ 10].

- In first place, **the pandemic meant that the work that the NPM could do, what needed to be done, how it could be done and from where it could be done had to be given serious thought, and this situation continued throughout the year and beyond.** A new social, legal and, above all, healthcare situation, the likes of which had never been experienced in modern times, had suddenly arisen. As mentioned before on so many occasions, whilst a lot has been learnt, at the beginning the issue had to be addressed globally and with no background knowledge on how to proceed in the midst of a pandemic. Furthermore, there was no clear criteria to help guide the way for NPMs worldwide in their work to prevent torture and ill-treatment [§ 11].
- The virus is not yet under control. New strains of the virus are emerging, leading to a range of waves of contagion. Research into treatment and cures is ongoing. The new strains temporarily cast shadows of doubt on the heart-warming results that have been achieved in terms of vaccines. The year closed with authorisation of the first vaccine designed specifically to combat the disease and with the hope spread by a vaccination campaign organised according to age and vulnerability [§ 12].

What the NPM can do during a pandemic-induced state of emergency

- The first matter that required clarification was **if the NPM's mandate was affected by the new legal situation in a manner that would leave it incapacitated.** Next, the implications from a health visit point of view of the NPM's different options for moving forward were weighed up [§ 13].
- **The basic principle used to analyse this situation was the fact that prohibiting torture and other cruel, inhuman or degrading treatment or punishment must not, under any circumstances, be they ordinary, extraordinary or exceptional, be reversed.** The exceptional circumstances, which also makes governments take exceptional measures, **do not undermine the fact that**

- prohibition of torture cannot be reversed.** Therefore, the mandate of NPMs must remain intact under these circumstances [§ 14].
- From the outset, the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) published general guidelines for States and national prevention mechanisms with regards to COVID-19 [§ 15].
 - As such, based on the principle of irreversibility, it has been confirmed that, alongside usual deprivation of liberty facilities and police stations, prisons, detention facilities for aliens, etc., **official facilities for isolation fall under the mandate of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment**, insofar as individuals who have been obliged to isolate for health reasons are refrained from leaving [§ 16].
 - Coinciding with the guidelines developed by the SPT with regards to the pandemic, since the crisis began, the NPM in Spain has been in contact, using one means or another, with heads of deprivation of liberty facilities in order to stay up to date on any measures taken to protect the health of individuals deprived of liberty and the health of civil servants working in these facilities [§ 17].
 - Coinciding with WHO recommendations on prevention measures when visiting deprivation of liberty facilities, **during the first phase of the state of emergency, the NPM prioritised strictly observing social distancing measures by performing contactless supervision tasks.** This was decision was taken further to assessment of the so-called 'local risk', as it was called by international authorities, since Spain has had elevated COVID-19 incidence rates from the outset, including during the second and third waves that occurred sometime between late 2020 and early 2021 [§ 18].
 - **Further to SPT recommendations, the basic performance principle adhered to by the NPM during the pandemic in 2020 was to 'do no harm'.** In other words, the intent is to try and avoid teams of visitors doing supervision tasks from becoming vectors of transmission of the virus to individuals deprived of liberty. At the same time, teams of visitors must be protected and avoid taking any unjustified risks [§ 19].

- This protection is materialised through supervision tasks designed in such a way that there is no contact and through supply of **protection measures that are suitable** for the epidemiological circumstances in each deprivation of liberty facility when performing on-site visits [§ 20].
- During the initial state of emergency, all NPM staff, as has been the case for all other Ombudsman's Office staff, immediately began **working from home**. The rapid availability of IT teams and personal phones ensured that work could continue [§ 21].
- From the outset, work meetings were held remotely and, when the epidemiological circumstances were so serious and the entire population was required to isolate at home, it was agreed that for the duration of the state of emergency under the same terms as when it was adopted, the NPM would have to accept that supervision of deprivation of liberty facilities would be contactless or somehow remote [§ 22].
- This technical decision, which could alter depending on how the circumstances evolved, as indeed they did later on when the first state of emergency came to an end, was also reinforced by the fact that, unlike in other countries, the information that was available highlighted the fact that **appropriate management of the situation in facilities with the greatest risk of conflict had, in fact, led to the virus being kept reasonably under control, and this avoided any serious incidents. The facilities in question were prison facilities** [§ 23].
- The contagion rates and number of **deaths in prison facilities during the first wave were significantly lower than the average number outside** and, although the number of infected individuals did later rise, the information available has highlighted the fact that, during this period, there has been no epidemiological mayhem in deprivation of liberty facilities. Furthermore, **an almost entire absence of incidents**, including in facilities with the most potential for violence, as indicated, also influenced the decision to opt for contactless supervision during the first phase of the state of emergency. At the time, isolation at home was the general rule applicable to the entire population of Spain, except for key workers [§ 24].
- It is true that there was a safety incident that inspired a reactive

intervention by the Spanish Ombudsman at the detention facility for aliens in Madrid. In early April, individuals were released from all detention facilities for aliens because return procedures were suddenly no longer an option. Use of these facilities started up once again in the last quarter of the year, even though opportunities for return procedures were very limited. An issue that has never entirely gone away has once again gained notoriety: the continued existence of these kinds of facilities at which there are prolonged police-enforced deprivations of liberty because of administrative offences. These continue for as long as the corresponding penalty proceeding is being processed. In some cases, the conditions are worse than those endured in the punitive system [§ 25].

- **Remote or contactless supervision** tasks meant that specific questionnaires for each type of deprivation of liberty facility had to be drawn up [§ 26].
- NMP technical staff held numerous **interviews over the phone** with facility managers and with the civil servants working in them. Interviews were also held with some individuals deprived of liberty.

Among other matters, they were asked about the restriction measures that had been adopted, the availability of protection equipment and coronavirus detection tests for employees and inmates. These were all particularly scarce at the beginning given the excess demand that left them in short supply on a global scale. Steps were also taken to investigate how recommendations made by international organisms with regards to decreasing numbers of individuals deprived of liberty were implemented, with a view to avoiding over-occupation of facilities that could worsen any outbreaks on the inside. That is, steps were taken to determine if particularly vulnerable collectives (due to age or health) were protected [§ 27].

- As indicated above, 49 activities of this kind were carried out throughout the year at prison facilities (which, for obvious reasons, made up most of the activity) and at young offender institutions, detention facilities for aliens (for the time they remained open during the first state of emergency), mental health facilities and short-term deprivation of liberty facilities. Information about this will be provided in the corresponding sections of this report [§ 28].
- In addition to this supervision work, at the beginning of the pandemic, the NPM remained in contact with external collaborators in order to widen

their sources of information and aid them in their work, in addition to staying up to date through the media and social media [§ 29].

The 'new normal'

- A short time before the end of the first state of emergency and the move to the so-called 'new normal' (as it was called in the decree-law of June 2020 on prevention and health controls from that point onwards), **on-site visits began once again and continued until the end of the year**. The second state of emergency for controlling COVID-19 began in October 2020 and it was expected to last until May 2021. Close attention to evolution of the pandemic during the last quarter of the year was necessary in order to **permanently reassess the possibility of continuing to do on-site visits**. In all cases, steps to guarantee the safety of all parties involved were taken [§ 30].
- International organism guidelines state that the number of individuals in teams of visitors and the duration of visits should be adjusted accordingly during pandemics, and the scope of supervision objectives should be limited to what is absolutely necessary.

As a result, and in line with these recommendations, steps were taken to ensure the number of team members performing on-site visits after the summer and up until late 2020 **was limited to what was absolutely necessary**. The **duration of visits was limited**, and they were designed to focus on specific objectives. From the autumn, **COVID-19 infection tests** were taken from team members as close as possible to the start of visits and once they had ended. There were incidents on two occasions: a member of technical staff from the NPM and an external team member due to participate in two scheduled visits tested positive for COVID-19. It was possible to exclude them from the visit before the trip took place. This facilitated commitment to the 'do no harm' concept mentioned above.

The collaboration of members of autonomous community parliamentary commissioner technical staff and members of the Advisory Board was almost entirely eliminated for prevention reasons [§ 31].

1.2 Deprivation of liberty facilities visited

- Visits have traditionally been categorised solely as initial visits and follow-up visits. While this criterion remains valid and, as such, still applies, it is insufficient. It requires qualification because it seems to suggest that priority is given to the facility when, in fact, as indicated above, **although the most important aspect of NPM supervision is the individual**, analysis of applicable procedures is also key. Of course, during deprivation of liberty, individuals can be positively or negatively affected, or not affected at all, by the physical conditions at the facility. However, individuals are also subject to certain procedures. In fact, the rights of employees can also be affected in facilities of this kind [§ 35].
- The examination of transfer operations for aliens included in the previous report refers more to **supervision of procedures** than to supervision of the place and could be used to refer to all other types of facilities. It is particularly applicable to a single type of short, medium or long-term facility. Within these, facilities that are managed by the same administrative body can also be grouped together since they are generators of **organisation cultures and norms that lead to practices and procedures with a tendency towards homogeneity**.

In any case, with regards to the period covered, and in line with traditional criteria, **24 of them were follow-up visits and 42 of them were initial visits** [§ 36].

- 12 autonomous communities and autonomous cities and 16 provinces were visited in 2020 [§ 37].
- **Repatriation procedures for aliens** performed within the framework of FRONTEX were supervised **on 5 occasions** and for the routes indicated below [§ 38].

1.3 Preparing and carrying out visits

- **The participation of areas responsible for managing complaints in visits organised by the NPM, or visits that are designed in collaboration, is very valuable.** Therefore, the collaboration of the Safety and Justice, Health and Social Policy and Immigration

and Equality Departments of the Ombudsman's office has often been requested. Clearly, areas dealing with case file management and the NPM need to **work together and, where possible, using common criteria**. Unfortunately, the heavy workload over the year limited collaboration of this kind. This year, **shared activities were only carried out with the Safety and Justice Department** [§ 40].

- **The importance of this collaboration must be highlighted. For management areas, it is an efficient way of verifying the context and cornerstones of issues that may, and do, lead to written complaints submitted to the Spanish Ombudsman, in particular cases of ill-treatment, which are the most serious of all and must be given greater attention and treated with increased sensitivity** [§ 41].
- **During visits, collection of testimonies about such sensitive matters, investigation of which is at the very heart of the existence of the Spanish Ombudsman, is key. Understanding the context and organisational culture framework surrounding these complaints is also key to appropriate assessment of the responses that are, on the whole, provided by the Administration.**

This is done over and above any potential legal intervention because, strictly speaking, the competence stemming from the principle of separation of powers does not include verifying the specific basis for an alleged case of ill-treatment. Instead, it covers analysis of the overall issues surrounding and underlying the testimony recorded in situ; whether or not the event could have happened; if the event could be reported; if it can be verified in at internal and judicial headquarters; and last of all, if it did happen, if any possible recurrence can be avoided [§ 42].

- **Through this collaboration, the NPM can identify and deploy prevention strategies for any issues that have come up, insofar as that they can be considered torture or inhuman or degrading treatment. In short, it is a matter of harmonising the reactive side that is characteristic of work performed by case file management areas and the preventive side through visits to deprivation of liberty facilities, the key distinguishing feature of the role of the Spanish Ombudsman as NPM** [§ 43].

Visits aimed at avoiding sexual discrimination (gender and sexual orientation perspective)

- Since the need to pay particular attention to the conditions of female and LGBTI inmates was highlighted in 2018, visits that aim to prevent gender and sexual orientation-based discrimination have become a strategic activity that is gradually increasing and intensifying [§ 44].
- The COVID-19 pandemic, which has led to a significant decrease in the number of NPM visits in person, has not limited the number of visits carried out within the framework of this project and this is an indication of the importance given to this line of work. Furthermore, this year, in addition to proceeding with the necessary dialogue with the Administration that derives from processing case files that have already been opened, steps have also been taken through national and international dissemination of the project in activities carried out using telematic channels and with the participation of members of NPM technical staff [§ 45].
- The above is all described in detail in the report on visits to prevent discrimination based on gender or sexual orientation, and on training, dissemination and cooperation activities [§ 46].

Incidents during visits

- Once again this year, it is important to highlight the **appropriate treatment given to NPM team members** during inspection visits, meaning that planned objectives can be satisfactorily met each and every time. Even though they are few and far between, visits during which there is some kind of incident should also be pointed out.

The three that occurred this year took place at the regional police headquarters in Ceuta, Fuente Bermeja Psychiatric Hospital in Burgos and Punta Blanca Young Offenders Institution in Ceuta.

Clearly, **their quantitative and qualitative significance is very small**. Completing the inspection visit and achieving the prearranged objectives were not at risk in any of the cases.

On the whole, they were more of an inconvenience than an incident, never serious and only delayed the visit start time. Once the visits began, there were no relevant events during the visits themselves.

If there is anything worth pointing out, it is that the civil servants accompanying the team of visitors (surprisingly, they were high rank civil servants such as the ones at Fuente Bermeja Psychiatric Hospital in Burgos) are **sometimes insufficiently aware of the roles and responsibilities of the Spanish Ombudsman as NPM**. Far from being a cause for criticism, this should be used as a stimulus to encourage greater understanding of the institution and provide more information about it, about its competencies and about how it can intervene [§ 47].

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

- **When this report was concluded, 3,112 ex officio actions had been initiated (including requests for data on the Ábaco project) and 1,997 conclusions, 119 Recommendations, 545 Suggestions and 22 Reminders of Legal Duties had been issued [§ 48].**
- It is already well known but worth pointing out that the institution's webpage includes a link to **NPM activity information which is available to the public**. Decisions reached and submitted to the corresponding authorities can be accessed [§ 49]:

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

- The most important matters, out of all the matters that arose during visits or during posterior analysis of documents, have led to certain conclusions and, in turn, some of these, depending on their importance, substantiate rulings.

The NPM in Spain, insofar as it falls within the role of the Spanish Ombudsman, uses these **rulings to encourage effective change in situations where there is room for improvement**.

In order of increasing importance, **Suggestions, Recommendations and Reminders of Legal Duties are the tools** that the NPM can use to make the administrative bodies with which it interacts participants. On the other hand, it can use its criteria on issues that fall within its area of activity in terms of torture prevention to make society at large participants [§ 50].

- It should be kept in mind that the NPM's mandate and, as such, its work, consists mainly of preventing torture. This implies that its supervision work is not limited to verifying if the activity that deprives an individual of his/her liberty fits, in the broader sense, the provisions.

NPM analysis criteria must be broader and, consequently, more demanding than simply limiting the Administration to provisions. It must analyse if, even when provisions are met or, in other words, irrespective of any potential failure to comply with provisions, there are situations or procedures in which there is room for improvement and that would decrease the risk of cases of torture or ill-treatment. Suggestions, Recommendations and Reminders of Legal Duties are the backbone of the next part of this report, which covers detailed explanations of the content of the main rulings that have been reached and the specific context in which they were formulated [§ 51].

- This report has been designed to serve as a text that, once presented, will **preferably be used for occasional consultation**. This is why each chapter includes references to the unique context that has characterised the work of the NPM over the period in question. Readers of the entire text may find the reference to the pandemic in each chapter somewhat repetitive and we offer our apologies for that [§ 52].

The NPM Advisory Board

- The current circumstances have also affected how Advisory Board meetings are held. The last one was held using video conference facilities. The meeting was originally scheduled for mid-2020, mainly in an attempt to continue with the on-site nature that these meetings have always had. Evolution of the pandemic and the need to do our part stop it from spreading by continuing to practice social distancing and avoiding travel, limiting contact and travel to what was strictly necessary, meant that the decision was taken to hold the meeting using video conference facilities. It is only to be expected that this new way of holding remote meetings, which has become commonplace in national and international environments, public and private domains, will also become common practice for the Advisory Board [§ 53].

Structure of the NPM

- The team should theoretically include one technical staff manager, seven members of technical staff and three office clerks. However, at the end of the year, there were only five members of technical staff and two office clerks. One of the three office clerks retired, and the position has not been covered yet [§ 54].



2 SHORT-TERM DEPRIVATION OF LIBERTY

- The situation generated by the COVID-19 pandemic meant that visits to short-term deprivation of liberty facilities could not be carried out as usual. Given the exceptional circumstances, the NPM's supervision work initially consisted of off-site work, consisting of over-the-phone interviews with facility managers and with the civil servants working there. To this end, questionnaires aimed at understanding how deprivation of liberty was being arranged at the facilities during the pandemic were drawn up [§ 55].
- Contact was also established with legal aid managers at the Official Colleges of Lawyers in Madrid and Barcelona, representatives of the Free Legal Association and with the spokesperson of the NPM Advisory Board - appointed further to a proposal made by the General Council of Lawyers in Spain - with the aim of requesting information about the issues or incidents that came up when providing detainees with legal counsel in the field of law enforcement and at judicial level in the context of the pandemic. In addition, the opinion of several external members of technical staff who often escort NPM visits was recorded, and they shared their main concerns with regards to their areas of professional expertise (psychiatry and forensics) [§ 56].
- Prior to introduction of the so-called 'new normal', the decision to renew on-site visits was taken. They had been suspended due to the state of emergency. These visits complied with SPT recommendations and the 'do no harm' principle. That is, attempts to ensure that the supervision tasks performed by the team of visitors did not compromise the health of individuals deprived of liberty and of the staff responsible for their custody. Likewise, the aim was also to ensure that the teams making the visits could do their work with all the necessary protection guarantees and without having to take any unnecessary risks [§ 57].
- Taking into account the logistical and health protection limitations, most of the visits that took place before the first state of emergency was lifted were limited to the autonomous community of Madrid. During the visits, it was possible to corroborate in situ the information collected during the off-site activities mentioned above. This has, therefore, been included in this chapter [§ 58].
- In 2020, the NPM carried out 47 activities in short-term deprivation of

liberty facilities, 39 of which were visits and 8 of which were off-site activities. 12 police stations and National Police Force custody facilities were visited, and, in addition, there were 4 off-site activities. The National Police Force custody facilities included places used to detain undocumented migrants arriving at the coast of Spain and provide them with initial accommodation, the so-called Centros de Atención Temporal de Extranjeros (CATE) [short-term accommodation centres] (7, plus one off-site activity), 2 rooms for unauthorised arrivals and asylum seekers (one of which - at the Adolfo Suárez Madrid-Barajas airport - was an off-site activity) and Arguineguín dock in Las Palmas (Gran Canaria).

Visits to 10 command headquarters and Civil Guard posts were carried out, and off-site activities were carried out at 1 Regional Police Force station, 4 Local Police Force jail cells and 5 courthouse custody facilities [§ 59].

NPM activities

- **The visits led to 807 conclusions and originated 26 Recommendations, 335 Suggestions and 4 Reminders of Legal Duties [§ 60].**
- The following aspects were addressed:
 - Minimum material conditions for detention:
 - Facilities are not always well maintained and in a good state of repair.
 - Cell size.
 - Particular emphasis was given to elements that compromise the physical integrity of individuals whose liberty has been deprived.
 - Supervision of compliance with people per cell (one detainee per cell), where possible.
 - Availability of elements that provide a suitable place of rest for detainees.
 - Checks to ensure that cells for collective use do not have toilets in them.
 - Pandemic-related medical care and health protection measures:
 - Supervision of specific protocols and preventive measures.

- Presence of weapons during custody and transfer of detainees:
 - Cabinets are not always available.
 - Availability of police force anti-theft containers.
- Electroshock weapons and instruments for incapacitation:
 - Usage and storage protocol checks.
- Prevention of attempts to commit suicide:
 - Need to draw up corresponding specific protocols.
- Legal counsel and a space for holding interviews with legal representatives.
- Detention of minors:
 - Supervision of compliance with specific protocols for action.
- Video-surveillance, audio-surveillance and recordings:
 - Demand for greater video-surveillance coverage.
 - Suitability of audio recordings.
 - Protocols followed.
- Custody agent ID.
- Full body searches and gowns for performing searches:
 - Checks to ensure that the dignity of individuals deprived of liberty is not compromised.
- Record logs and appropriate compliance with the chain of custody:
 - Surveillance of digitalisation of these elements.
- Vehicles used by police forces:
 - Supervision of appropriate vehicles and transfer protocols for individuals deprived of liberty.

Undocumented arrival by sea

- In 2020, there was a significant increase in the arrival of undocumented individuals by sea and deficiencies in the care and accommodation system were made clear. References to the so-called 2020 migration crisis on the Canary Islands will be addressed separately in another section [§ 61].
- The following aspects were addressed:
 - The condition of short-term accommodation centres:
 - Migrant individuals are not identified using their name and surname.
 - Algerian and Moroccan individuals are accommodated while sub-Saharan individuals are sent to humanitarian accommodation centres.
 - Availability of spaces in which individuals can spend time during the day that help to ensure they do not become idle, thus avoiding the knock-on effects that idleness can have.
 - Bunk beds in the women's module.
 - Contact between aliens and the outside.
 - Aliens held at police stations:
 - Facilities that are not suitable for accommodating individuals rescued at sea.
 - Poorly kept records of updates in detainee logbooks and custody files, logbooks for at-risk minors and the disabled and on forms for Secretary of State for Security Instruction no. 4/2018 enacting the protocol for action in matters of custody of detainees by the country's law enforcement agents.
 - The migration crisis on the Canary Islands in 2020.
 - Arguineguín dock:
 - Elevated capacity.
 - Registration of arrivals.
 - Some aliens slept on the floor.
 - Access to showers was not provided.
 - The clothes and blankets given to individuals on arrival

- were not replaced for the duration of their stay.
 - Personnel working at the facilities.
 - Health care.
 - Means of protection against COVID-19.
 - According to the staff present, the approximate number of positive cases was between 3 and 5%.
 - The protocol for action formulated by the Secretary of State for Migration was not fully complied with.
 - Food.
- Camp at the Barranco Seco military armament storage facilities:
 - Capacity for 430 individuals.
 - Health care.
 - Means of protection against the pandemic.
 - Food.
 - While individuals are free to leave the camp 72 hours after arrival, they were unaware of this right and, as such, remained there until they were given a place at an accommodation centre.
 - Furthermore, they had not been given information about the option of requesting international protection.



3 MEDIUM-TERM DEPRIVATION OF LIBERTY DETENTION FACILITIES FOR ALIENS

- According to the Spanish Ministry for Home Affairs report on undocumented migration in 2020, a total of 41,861 individuals arrived in Spain by sea and over land. That is, 29% more arrivals than in 2019. Many of these individuals were being accommodated at detention facilities for aliens waiting to be returned to their country [§ 157].
- It should be pointed out that **detention facilities for aliens are not prison facilities. They are facilities at which undocumented aliens are accommodated for a maximum stay of 60 days. The individuals staying there have not committed a crime; they have committed an administrative offence.** According to Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning undocumented third-country nationals, the period must be used to prepare the return procedure or carry out removal.

The criteria and views of the Spanish Ombudsman with regards to these detention centres, as provided in the 2017 annual report, must also be referred to [§ 158].

- As a result of the COVID-19 health crisis, Royal Decree 463/2020 of 14 March declared a state of emergency designed to manage the health crisis. At the time, there were individuals being accommodated at all detention facilities for aliens. Countries, including Morocco and Algeria, began closing their borders to individuals from Spain. **It was to be expected that it would be impossible to return individuals staying at detention facilities for aliens and that it would become impossible to justify continuing to hold them there.**

Incidents occurred that highlighted the migrants' fear of catching COVID-19 and the fact that they could not be returned to their country of origin. The Spanish Ombudsman quickly intervened when a riot broke out at a detention facility for aliens in Madrid [§ 159].

- **All the individuals at the detention facilities for aliens during the state of emergency were permitted to leave**, either further to a court order or because the duration of their stay had ended or because they could not be returned. Although the Spanish Ombudsman and organisations backed permanent closure of detention facilities for aliens, the Ministry for Home Affairs opened them once again in the autumn [§ 160].

- In fact, gradual reopening of these facilities began in September 2020. The NPM opened an ex officio case file to perform periodic monitoring of occupation, safety measures and other relevant matters [§ 161].
- As with all other deprivation of liberty facilities, the NPM's work at the detention facilities for aliens meant that action protocols needed to be updated. In the first phase, during the first state of emergency and occupation of these facilities, several off-site activities with managers of the detention facilities for aliens were performed and on-site visits were carried out when this was possible. Four off-site activities were carried out at detention facilities for aliens in Madrid, Valencia, Las Palmas de Gran Canaria and Santa Cruz de Tenerife [§ 162].
- 44 conclusions were drawn with reference to **off-site** visits. With regards to **on-site** visits, 81 conclusions were drawn and, from these, 31 Suggestions, three Reminders of Legal Duties and three Recommendations were formulated [§ 163].
- Likewise, work has continued with the Administration with regards to aspects that arose during earlier visits to detention facilities for aliens. The conclusions drawn and resolutions undertaken have been monitored [§ 164].

Information on administrative detention of aliens

- Based on the information received from the Comisaría General de Extranjería y Fronteras (CGEF) [General Headquarters for Immigration and Border Control], which can be consulted in the tables included in the digital annex that can be accessed at the end of this chapter in electronic version, there has been a decrease in numbers in comparison with 2019. This is explained by COVID-19. While 69,119 return and expulsion rulings were instituted in 2019, in 2020 the figure was 42,597.

With regards to expulsions and returns executed based on legal causes, undocumented residence can be singled out (807 individuals). This is followed by expulsion as a substitute for a sentence (604 individuals) and expulsion following a deprivation of liberty sentence exceeding one year (200 individuals).

A total of 1,244 aliens who had been detained at detention facilities for aliens were repatriated in 2020, compared with 3,758 in 2019.

Minors who were not identified as such on arrival continue to be found at detention facilities for aliens. In 2020, 44 individuals were identified as minors. The highest numbers were found at the detention facilities for aliens in Madrid and Las Palmas.

With regards to requests for international protection at detention facilities for aliens, there continues to be a striking difference between the number of requests in 2020 (776) and the number of requests that have actually been passed on for processing (163) [§ 165].

- **The public prosecution service 2019 activity report includes relevant data.** This data relates to favourable and unfavourable public prosecution service reports on precautionary detention at detention facilities for aliens. It also indicates the number of visits made by each public prosecution service. The data is not collected using a homogeneous computer system and, as such, its reliability is questionable. Nonetheless, the data to be of interest [§ 166].

Follow-up of previous visits

- In 2020, the case file that was opened further to a visit to the detention facility for aliens in Tarifa (Cádiz) was closed. The institution was informed that the numerous updates the NPM called for would not be put in place because there were plans to build a new detention facility for aliens in Algeciras [§ 167].
- Case files for the 2019 visits to detention facilities for aliens in Hoya Fría (Tenerife), Barcelona and Valencia are still being processed [§ 168].

Off-site activities

- As indicated, since the beginning of the health crisis, the NPM has remained in permanent contact with deprivation of liberty facility managers in order to understand the measures being taken to protect detainees and the civil servants working there. Specific forms were drawn up and numerous interviews over the phone with managers and civil servants were carried out. Contact with the managers and civil servants at four detention facilities for aliens (Madrid, Valencia, Las Palmas de Gran Canaria and Santa Cruz de Tenerife) was made in this way [§ 169].
- Positive cases of COVID-19 were only detected at the detention facility for aliens in Barranco Seco (Gran Canaria). In Tenerife, one employee was affected during the first wave of the pandemic [§ 170].
- All the facilities had sufficient personal protection material (facemasks, gloves, personal protective equipment and sanitiser) for employees and detainees. However, none of them had detection tests. These tests had to be performed at local health centres. In addition, at the detention facility for aliens in Valencia, it was decided that the health service would

hold consultations with detainees on a daily basis [§ 171].

- All facilities made arrangements for closed bubbles of employees at the facility so that the same agents would always be in the same group. The aim was to avoid contagion between employees on different shifts. At the detention facility for aliens in Valencia, steps were also taken on the inside to avoid large groups of detainees from gathering in the canteen and recreation areas [§ 172].
- Families and friends were not permitted to visit, and access was denied to external entities, other than the Red Cross which, having reached an agreement with the Administration, performs social support tasks at the facilities. However, not even the support provided by this organisation was permitted at the detention facility for aliens in Barranco Seco.

Lawyer access to the facilities was not prohibited but it was suggested that legal counsel be provided over the phone in order to minimise the risk of contagion. A specific phone line was set up for this purpose [§ 173].

- The Magistrate Judge at the detention facility for aliens in Valencia issued a court order on measures that should be taken during isolation and the state of emergency. In Tenerife, while the Magistrate Judge did not enforce specific measures, he/she did ask to be kept informed about any special measures being taken at the time [§ 174].

On-site visits

- **The NPM visited the detention facility for aliens in Madrid on two occasions (visit 10/2020 and visit 112/2020), the detention facility for aliens in Las Palmas, Gran Canaria (Barranco Seco, visit 109/2020) and the detention facility for aliens in Murcia (visit 115/2020) on two occasions [§ 175].**
- The purpose of the first visit to the detention facility for aliens in Madrid (visit 10/2020) was to supervise the phase prior to a repatriation flight organised by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) and the Spanish Police Force. The flight was scheduled for the day after the Ecuador and Columbia flight, which was suspended due to the pandemic.

The second visit to the detention facility for aliens in Madrid (visit 112/2020) also took place immediately before the FRONTEX operation to the Dominican Republic and Columbia, which took place in late 2020 [§ 176].

- The first visit to the **detention facility for aliens in Murcia** (visit 101/2020) took place because the team of visitors was in the area carrying out other tasks. Its specific purpose entailed ascertaining if the detention facilities for aliens had been reopened and how the Administration had published the reopening in the media. NPM technical staff arrived at 21.00 and confirmed that the facilities were indeed open and, according to the information provided, there were 16 Algerians at the facility who had arrived the day before the visit. It was also pointed out that a further 29 Algerian individuals were expected to arrive from Almería.

With regards to **protection measures against the pandemic**, the 16 detainees had taken a PCR diagnostic test. The results were all negative. The detainees were being supported by members of the Red Cross. There was a doctor and a nurse from an outsourced healthcare services company at the detention facility for aliens. Last of all, it was indicated that, in order to protect the health of aliens, the number of available places at the facility had been reduced to 46, their temperature was being taken three times a day and all detainees had surgical masks.

The second visit to the detention facility for aliens in Murcia (visit 115/2020) involved following up observations from earlier visits and analysis of other aspects. It was observed that there had been no changes with regards to the suggestions made during the previous visit [§ 177].

- The visit to the detention facility for aliens in Las Palmas (visit 109/2020) was carried out within the framework of visits to the Canary Islands organised in response to the migration crisis. At the time of the visit, there were very few detainees at the facilities. This may have been due to the issues caused by border closure which stopped expulsion case files from being closed when expulsion orders materialised [§ 178].
- The following aspects were also addressed:
 - Notification 24 hours in advance of removal of individuals.
 - Ill-treatment and harassment of detainees at detention facilities for aliens.
 - Injury reports.
 - Medical care.
 - Legal support and guidance.
 - Coercion.
 - Detainee rights.
 - Video-surveillance systems.
 - Mobile phone chargers.
 - Closure or refurbishment of facilities.



**4 LONG-TERM DEPRIVATION
OF LIBERTY**

4.1 Prison facilities

- The health emergency has also affected action taken by the Administration in the prison service environment. La Secretaría General de Instituciones Penitenciarias (SGIP) [Secretary General of Correctional Facilities], which falls under the Ministry for Home Affairs, and the Secretaría de Medidas Penales, Reinserción y Atención a la Víctima (SMPRAV) [Secretariat for Criminal Measures, Social Reintegration and Victim Support], which falls under the Department of Justice of the Generalitat of Catalonia, needed to act swiftly in response to the situation generated by the COVID-19 pandemic. This was in compliance with their key duty to protect the life and physical integrity of individuals deprived of liberty, custody of whom is their responsibility, and to guarantee that prison service public sector employees in both administrations could perform their role safely.

As indicated at the start of this report, while the measures taken by the Secretary General of Correctional Facilities and the Department of Justice of the Generalitat of Catalonia during the first state of emergency aimed at fighting the pandemic did imply restrictions of rights, these steps were appropriate from a healthcare point of view [§ 205].

- The pandemic is still ongoing, and it is a very real threat to the health and life of individuals deprived of liberty and public sector workers. Steps to avoid contagion taken by the general public also need to be taken in prison facilities and adapted to these special circumstances.

During the first phase of the pandemic, the decision to decrease the numbers of prison facility inmates by anticipating partial liberty where possible, or by applying alternative punishments where possible, was taken [§ 206].

- The pandemic has also highlighted the fact that integration of healthcare for inmates into the healthcare system in the autonomous community remains pending. There is, therefore, a case for providing detainees and the incredibly understaffed healthcare service personnel at prison facilities with information and the technical means to tackle the pandemic in the best way possible. To this end, a Recommendation was submitted to the Secretary General of Correctional Facilities (visit 79/2020) [§ 207].

- With regards to the above, the Secretary General of Correctional Facilities has informed the institution that the prison service administrative body has set up two new selection processes: one for incorporation of doctors and another for the incorporation of nurses. However, very few candidates have sent in applications for the former and only a small number of places will be covered. In order to bring new doctors onto the team, the prison service administrative body submitted a request to the civil service for authorisation of 45 new job opportunities for interim doctors who have not yet taken the Spanish resident doctor exam for their specialization. (The requested areas of specialism are general and community practitioners and internal medicine). However, the prison service administration needs to take steps to make the job opportunities more attractive to candidates, particularly given the current circumstances in which there is a shortage of candidates and other alternatives that are more appealing than forming part of a team of doctors working for the prison service [§ 208].
- One of the important and complicated issues from the last year entailed maintaining a balance between the steps taken to protect inmates and public sector employees and respecting the rights of individuals deprived of liberty at prison facilities and the rights of their families [§ 209].
- The instructions given by the European Committee for the Prevention of Torture (CPT) were kept in mind throughout the activities undertaken by the NPM in the prison service environment. On 20 March 2020, the former published a declaration of principles with regards to the treatment given to individuals deprived of liberty in the context of the coronavirus pandemic [§CPT/Inf(2020)13]. Likewise, on 25 March 2020, the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) submitted recommendations relating to the COVID-19 pandemic to Member States of the Optional Protocol to the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), including Spain, and national prevention mechanisms [§ 210].

Some basic figures

- In 2020, the same facilities as the previous year were in operation in Spain. That is, in the geographical area covered by the Secretary General of Correctional Facilities, there were 69 ordinary regime facilities, 33 social integration facilities, three mother and baby units and two prison psychiatric hospitals. The prison service administration in Catalonia has nine ordinary regime facilities, four open prisons and a

prison psychiatric hospital facility in Terrassa (Barcelona).

In December 2020, there were 55,180 inmates in Spain. Out of these, 7,880 were detained in prison facilities in Catalonia. 45,381 of these had been sentenced, 8,672 were in preventive custody, 600 were on remand and 537 were subject to security measures. In total, there were 3,337 fewer individuals than the year before. This decrease happened at the start of the pandemic and can be understood to have occurred as a way of containing the risk of contagion by limiting numbers.

In 2020, there were 4,015 women deprived of liberty at prison facilities in Spain, 513 of whom were in facilities managed by the Administration in Catalonia [§ 211].

- With regards to the **number of aliens**, in December 2020, there were 15,918 individuals deprived of liberty (1,103 were women). Out of these, 3,776 were in prison facilities in Catalonia (210 women) [§ 212].
- With regards to deaths among individuals deprived of liberty at facilities under the responsibility of the Secretary General of Correctional Facilities, there were 204 deaths in 2020, including deaths at facilities and in hospital. There were 194 deaths in 2019, a slight increase on the year before. With regards to facilities in Catalonia, three deaths were notified. One of them happened at a prison facility and the other two happened in hospital [§ 213].
- In addition to the aforementioned, the following issues should be pointed out:
 - Particular care has been taken with regards to the checks that the NPM carries out following each visit in order to avoid backlashes from interviewees.
 - The need to update identification of prison service personnel in Secretary General of Correctional Facilities has been made clear.
 - Video-surveillance systems at prison facilities must continue to improve. Updated instructions to this end issued by the Secretary General of Correctional Facilities are pending.
 - Frequent use of restraint methods and disciplinary measures was observed.
 - In terms of healthcare, there is a shortage of personnel. Therefore, the need to transfer prison facility healthcare to autonomous communities has been pointed out.
 - The need to reinforce psychological and psychiatric healthcare

was observed.

- Personnel shortages in some workforces complicated responses to the health emergency.
- Online healthcare should be improved.
- With regards to injury reports, the need to improve how they are written and processed has once again been highlighted.
- Communication issues among alien inmates mean that simultaneous translation services need to be implemented.
- Individuals deprived of liberty should be present when their cells are checked.
- Investigations into ill-treatment need to be improved in many cases.
- Records of, and investigation into, complaints of ill-treatment are incomplete.
- The need to improve how injury reports are processed and managed has once again been pointed out.
- The care provided, activities carried out and investigations into treatment in closed regime units must be improved.
- There is frequent and deficient use of restraint methods.
- In terms of disciplinary measures, processing of disciplinary proceedings needs to have greater guarantees
- Processing of inmate request and complaint forms is often deficient.
- At the start of the pandemic, there was insufficient personal protective equipment for civil servants and inmates.
- The need to continually update individuals deprived of liberty about the health crisis was highlighted.
- Contact between inmates and their families by phone or on video calls is welcomed.
- It was observed that a great number of activities were suspended for the duration of the state of emergency.

4.2 Young offender institutions

General data

- As indicated in previous NPM annual reports, according to the data submitted to this institution by the corresponding administrative bodies, there are 67 deprivation of liberty facilities for minors in Spain with approximately 2,883 places [§ 371].

NPM activities

- Mainly as a result of the situation generated by the COVID-19 health crisis, visits to this type of facility were adapted to suit capacity [§ 372].
- In 2020, **seven visits to young offender institutions were carried out** in the autonomous communities of Andalusia (two visits); the Balearic Islands (two visits); Madrid (one visit); Castilla La Mancha (one visit) and Ceuta Autonomous City (one visit). Two of the facilities were visited for the first time. The remainder were follow-up visits.

The following facilities were visited (in chronological order): El Lavadero Centre for Court-Ordered Detention (Madrid), Tierras de Oria Young Offender Institution (Almería), La Marchenilla Young Offender Institution (Cádiz), Punta Blanca Young Offender Institution (Ceuta), Albaidel Regional Centre for Minors and Young Offenders (Albacete), Es Mussol Socio-Educational Facility (Palma de Mallorca) and Es Pinaret Socio-Educational Facility (Palma de Mallorca) [§ 373].

- The main aim of the visit to the Tierras de Oria facility was to check the conditions under which mechanical restraints are used. One day after the visit to the facility, the Spanish Ombudsman submitted a Recommendation to the Ministry of Justice calling for the repeal of the regulation that permits use of mechanical restraints at young offender institutions on a national scale [§ 374].
- The minutes of the on-site visits led to 322 conclusions and the generation of 36 Recommendations, of which 33 were directed towards the Department for Social Affairs of the Autonomous City of Ceuta, the other three were directed towards the Department for Social Affairs and Sport of the Autonomous Community of the Balearic Islands, the Department for Justice, Home Affairs and Victims of the Autonomous Community of Madrid and the Department for Tourism, Regeneration, Justice and Local Administration of the Junta in Andalusia. In addition, there were seven Reminders of Legal Duties and 70 Suggestions. Two new Recommendations relating to case files initiated in 2019 were also generated with reference to the Recommendation submitted to the Ministry of Justice by the Safety and Justice Department at the institution. The objective was to bring an end to the use of mechanical restraints at young offender institutions [§ 375].

Off-site activities

- Following declaration of the state of emergency and subsequent

isolation of the general population, nine off-site activities were carried out through phone calls to the following facilities (in chronological order). Carmona Drug Dependency Therapy Facility (Sevilla), L'Alzina Youth Education Facility (Barcelona), El Lavadero Centre for Court-Ordered Detention (Madrid), Medina Azahara Young Offender Institution (Córdoba), Aranguren Education Facility (Navarra), El Segre Education Facility (Lleida), Tierras de Oria Young Offender Institution (Almería), La Marchenilla Young Offender Institution (Cádiz) and Punta Blanca Young Offender Institution (Ceuta) [§ 376].

- These off-site activities, just like the ones carried out in other deprivation of liberty facilities, consisted mainly of understanding the detainees' circumstances and the protocols used to protect employees. Since family visits were suspended, information about reinforcement of communication between the young people and their families was also collected, in addition to information on health and psychological care, any incidents, containment measures and specific measures for detecting and preventing contagion. During some of these activities, information about the steps taken to facilitate adherence to Ramadan for Muslim detainees was collected. The same applied to off-site activities carried out with the facilities in L'Alzina, El Segre, Tierras de Oria, La Marchenilla and Punta Blanca.

In off-site activities of this kind, the information provided by the facilities could not be confirmed or broadened with testimonies provided by individuals deprived of liberty [§ 377].

- All the facilities that were consulted indicated that they had purchased laptop computers or mobile phones so that detainees could make video calls instead of receiving visits from family members. Furthermore, the duration of calls and video calls was increased to make up for the suspension of visits to the facilities.

With regards to activities, we were informed that activities organised by external parties had been suspended because access to the facilities by individuals from outside was not permitted.

All the facilities that were consulted put contingency plans in place to avoid the risk of contagion among detainees. The steps taken included accommodation spaces specifically for suspected infected individuals, division of activities and, as such, creation of contact bubbles to avoid contagion through human contact.

With regards to steps taken to help detainees adhere to Ramadan, we were advised that anyone interested had to submit a request beforehand. Some of the facilities had a cultural mediator who, in

addition to interpreting for individuals with communication difficulties, provided information about Ramadan in meetings open to anyone interested. Out of the facilities that were consulted, the ones in El Segre, L'Alzina and Tierras de Oria had a cultural mediator of this kind. It was pointed out that, during Ramadan, facilities have to adapt the diet and schedule to suit individuals adhering to it [§ 378].

- The following aspects were also addressed:
 - The right to privacy for minors and confidentiality between doctors and patients is not observed during healthcare appointments because educators or security staff are present in the consultation room or just outside but with the door open.
 - At facilities where there is no interpreter, other detainees do the interpreting for individuals who do not understand the language.
 - When detainees request healthcare, these requests are not always documented because they are verbal requests. This means that it is not possible to check when the request was made.
 - When a detainee self-harms, he/she is put under permanent observation with the door to the room left open. Personnel from the facility stay in the corridor and observe the individual all the time. This permanent presence of a supervisor with the door left open is disproportionate and cannot be clinically or therapeutically justified.
 - It was observed that copies of injury reports are often not handed over to minors.
 - New inmates are taken to an 'observation area'. As such, minors being committed for the first-time co-habit with individuals who have already been sentenced. This observation area tends to have a greater level of security, creating an excessively prison-like atmosphere. It is important that detainees' initial contact with facilities be as comforting as possible.
 - It was observed in a reception protocol that when a person enters a facility, he/she must spend at least the first two days without any contact with other minors and must eat in his/her room.
 - The committal dossier that is given to minors at facilities is not always suitable for their age and the terminology that is used is excessively technical.
 - Strip searches are commonly used, for which purpose minors are obliged to undress completely. Searches of this kind that involve individuals having to strip naked are very intrusive. This directly affects a person's right to privacy and is potentially

degrading. Therefore, every possible step should be taken to avoid the embarrassment that individual's subjected to these searches experience. Furthermore, testimonies stating that, after having been made to strip naked, individuals were made to bend over several times were also recorded.

- The NPM has been examining the conditions under which use of mechanical restraints are used in offender institutions for years.

Practical use of mechanical restraints at these facilities is a matter of constant concern for this institution. Previous reports have indicated the need to reflect upon the suitability of using mechanical restraints, or of prioritising use of alternative methods to manage cases of violence. For example, using verbal de-escalation techniques to stop conflicts from worsening. The aim is to treat individuals deprived of liberty with dignity. In short, methods that are more coherent with the educational role of these facilities.

A number of matters were observed and highlighted during the visits carried out over the period in question. For example, the unsuitable nature of rooms where mechanical restraint practices is carried out; the absence of logbooks in some cases, or failures to fill them in correctly; the absence of protocols for using non-violent restraint mechanisms; the absence of video-surveillance and video-recording systems; and staff training courses on conflict and aggression management techniques.

The NPM has always understood that all the above must be taken into account. They contribute towards ensuring that mechanical restraints are used as safely as possible when individuals are being restrained and in a way that respects the person's right to life and physical integrity.

To this end, the Safety and Justice Department of the Ombudsman's Office submitted a Recommendation to the Ministry of Justice indicating that mechanical restraints as a means of restraining individuals at young offender institutions throughout Spain ought to be abolished. The Recommendation was as follows:

Repeal letter c) of number 2 of article 55 of Royal Decree 1774/2004 of 30 July approving Organic Law Regulation 5/2000 of 12 January regulating penal responsibility for minors, such that mechanical restraints as a means of restraining individuals at young offender institutions throughout Spain be abolished.

The Administration has responded favourably to this Recommendation and processing of the corresponding change in legislation is under way.

On closure of this report, parliamentary procedures to prohibit restraint of minors at young offender institutions by anchoring them to articulated beds, fixed objects, facilities or furniture were being processed.

Before making the Recommendation, the NPM visited the young offender institution in Tierras de Oria (Almería) to examine use of mechanical restraints. Images of several cases of use of mechanical restraints were viewed and the following conclusions were drawn:

- The managers at the centre did not view the recordings.
- The minors were neither agitated nor acting violently just before mechanical restraints were used.
- Restraints were used for too long.
- Mechanical restraints seemed to be used as a means of punishing minors' actions.
- Doctors do not intervene at the beginning of the period of restraint.
- Minors are in pain when straps are tightened around their ankles and wrists.
- Recurrent use of mechanical restraints on minors detained at the facility for mental health therapeutic committal reasons.
- Testimonies were taken from young people who had been restrained using mechanical restraints. The sessions were frequent and lasted for long periods of time, causing pain in ankles and thighs.
- It was observed that minors were frequently made to sit on a seat with their hands cuffed behind them.
- It was observed that a bed for mechanical restraint had been installed in the area assigned to rooms for contact with family members. It was used when the other bed was already in use.
- The spaces used for provisional isolation are unsuitable.
- On occasions, there is some confusion between provisional isolation and measures to separate groups.
- Lack of a disciplinary record logbook, lack of information about the right to bring action, file a complaint or provide proof.
- There were no cameras in any of the communal areas or in the provisional isolation rooms.
- Recorded images were not stored for long enough.
- The intimacy and privacy required for communication and visits with family members is not always observed.
- Security staff at facilities of this kind are not required to have any specific training on how to deal with young detainees.
- The COVID-19 pandemic has, on the whole, led to a decline in training and education services.

- Operation of facilities was characterised by COVID-19 prevention protocols, and this has had a negative impact not only on organisation of school and training activities but also on recreational and therapeutic group activities. It has also had a negative impact on the option of doing mixed activities.
- Particular care was taken to analyse the conditions for females at young offender institutions.
- Unlike male detainees, female detainees did not have a scheduled exercise programme and the time assigned to yard access was optional and shorter than the time assigned to male counterparts.
- The areas assigned to female detainees were not the same as the ones assigned to male detainees. They were significantly inferior and did not allow for separation of detainees according to phases.
- Gender was not taken into account during checks or in the health protocol.
- There were practically no spaces assigned to recreation and other activities.
- The physical appearance of the facilities as a whole was one of a prison. The structure was modular, the doors to the rooms were similar to those in a prison, there were bars on windows, communal areas were uncomfortable and uninviting and there was concertina wire on top of walls and fences. These elements give facilities, which ought to have a more educational feel to them, too much of a prison-like appearance.
- There were deficiencies in the system for filing complaints and requests.
- There was a lack of reinsertion or re-education programmes adapted to suit unaccompanied minors from Morocco.
- When young people are unable to use their own clothes, the facility provides them with clothing. These clothes are the same for everybody. Some young people's clothes were in poor condition.

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

The impact of the pandemic on mental health

- As mentioned above, 2020 was characterised by the COVID-19

pandemic, a disease generated by the SARS-CoV-2 virus.

Numerous experts indicate that the personal and social impacts of the pandemic include depression, fear and uncertainty caused by changes in one's personal, social and work life, isolation, restraints on liberty and the inability to spend time with and embrace loved ones [§ 439].


- Aside from deaths, the impact of the COVID-19 pandemic remains unclear, but it will most certainly be significant for everyone, particularly individuals who are most vulnerable. For involuntary detainees at mental health facilities, the current circumstances have accentuated their potential vulnerability. The aforementioned factors have now been added to their existence at the facilities at which they are detained. Family visits were suspended, activities were completely disrupted, and this altered the routines that give the lives of individuals with psychiatric disorders some structure. All this occurred in environments with insufficient means and at facilities where there are staff shortages. As mentioned above, all of this has heightened potential vulnerability.

Dealing with the pandemic is very complicated for many of these individuals, particularly if they have issues understanding what is going on, the changes to their room, isolation, prohibitions on visits and changes to timetables. In short, they require constant support for their physical, cognitive and emotional needs and sudden changes to, or breaks in, their care should be avoided [§ 440].

- As has been the case with all the other facilities monitored throughout the year, the NPM has applied the principle of 'do no harm' that is referred to so frequently in this report. As such, during the first state of emergency, off-site activities were carried out with certain facilities, some of which had already been visited. They include José Germaín de Leganés Psychiatric Unit (Autonomous Community of Madrid), Mentalia Arévalo Clinic (Ávila), Nuestra Señora del Carmen Neuropsychiatric Hospital (Garrapinillos, Zaragoza), San Juan de Dios Clinic (Ciempozuelos, Autonomous Community of Madrid), Conxo Psychiatric Hospital (Santiago de Compostela) and La Morenica Social and Healthcare Clinic (Villena, Alicante). Facilities that were also called but not visited by the NPM include Esquerdo Sanatorium (Autonomous Community of Madrid), Alcohete Residential and Rehabilitation Unit (Guadalajara) and Rodríguez Lafora Hospital (Autonomous Community of Madrid).

Given the circumstances, just one on-site visit was made to Fuente Bermeja Hospital in Burgos [§ 441].

- 100 conclusions were reached based on off-site visits. On-site visits led to 29 conclusions, 14 Suggestions and six Recommendations [§ 442].



5 PROGRAMME OF VISITS TO PREVENT GENDER AND SEXUAL ORIENTATION DISCRIMINATION

- The purpose of the project is to analyse the situation of women and the LGBTBI community in prison facilities based on NPM standards in this field. The aim is to allow female and LGBTBI community identities, as a whole and in their full complexities (culture, migration, age, marginalisation, violence, poverty, disabilities, mental disorders, drug addiction, maternity and parenting), to show through within the male-centred prison system and in an environment in which their rights are often, quite simply, not accounted for just because they are women or part of the LGBTBI community and, therefore, a minority. The main aim of this NPM project, within the framework of its wide-reaching role as guardian of the rights of individuals deprived of liberty, is to give these rights visibility and make society and the Administration fully aware of them through formulation of Recommendations [§ 478].
- External professionals from the fields of psychology and medicine with specialist training in matters of gender work alongside NPM personnel to develop and execute this role. This **interdisciplinary team** has come up with **specific and precise tools** (interview forms, methodologies for performing visits to prison facilities and for analysis of documents) in order to, first of all, identify and then use Recommendations and Suggestions to pinpoint essential aspects that seek to appropriately position these individuals and their rights based on the principle of equality [§ 479].
- In this sense, it has been confirmed that the reports issued by the NPM following the visits included in this project are delivering results. An indication that the content of these reports has served as the basis for the parliamentary non-legislative motion approved by the Spanish Parliament on 16 June 2020 illustrates this point. It states as follows:

The Spanish Parliament urges the Government to draw up a report within six months about the circumstances of female inmates in the State's prison facilities which, along with appropriate measures for incorporating gender with an intersectional perspective into prison service policy, shall be submitted to the Equality Committee of the Spanish Parliament [§ 480].
- In order to obtain a **global and precise overview** of the situation for women and LGBTBI individuals at the different types of facilities and at different stages of deprivation of liberty, **six visits** have been carried out to date over the last few years. These include Antoni Asunción

Hernández de Picassent prison facility (Valencia) (visit 101/2018) in 2018; Madrid I prison facility (visit 91/2019), Las Palmas I prison facility (visit 102/2019) and Las Palmas II prison facility (visit 104/2019) in 2019; and Ceuta prison facility (visit 88/2020) and Alcalá de Guadaira prison facility (Seville) (visit 102/2020) in 2020. The visits were organised taking into account **places** that complemented each other (different types of prison facility architecture, mixed facilities and facilities for women only, facilities with different numbers of detainees, standard units/open prisons, across different locations in mainland Spain, the islands and autonomous cities). During the visits, **utmost attention was paid to the parties in question**. This included detainees and staff at all levels working in the prison facilities. Furthermore, **the documentation gathered in each visit was also carefully analysed** [§ 481].

- This project follows the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, commonly known as the Bangkok Rules, in addition to the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity, among other international standards [§ 482].
- Further to these visits, it was confirmed that many of the points included in the suggestions made over the years in light of the situations observed at the different prison facilities persist (health, treatment, committal documentation, the work performed by support staff, etc.). It was concluded that the deficiencies in question are **structural aspects of the prison system** in matters of gender and addressing them means taking a wider approach and using more powerful means. As such, these aspects should be treated as rulings in the form of Recommendations so that they can be given the global approach they deserve [§ 483].

5.1 Recommendations

- The Recommendations made further to the visits and the Administration's standpoint with regards to those Recommendations, both in terms of processing cases and practical implementation as confirmed during subsequent visits, are addressed below in four sections. Reading them may help to understand the lack of confidence that exists with regards to recognition of their part in society, and which often comes up during interviews with women and members of the LGTBI community [§ 484].

5.1.1 Prison detainee data

Data disaggregated by sex

- This Recommendation, which was made following the first visit to Antoni Asunción Hernández prison facility project in 2018, **was accepted by the Administration from the outset and, in subsequent visits, it was possible to confirm effective implementation.** This means that **it has been possible to gather statistical results**, without which **it would be impossible to tackle the project** [§ 485].

Inclusion of Roma women as a variable

- In 2019, during the visit to **Madrid I prison facility**, **it was confirmed that** there were 40 **Roma women** at the facility. **This information** was provided by facility management. It had to be collected from each of the social case files for women deprived of liberty further to a request by the NPM since this information **had not, up until then, been disaggregated.**

The lack of disaggregated data renders understanding the specific needs and vulnerabilities of Roma women impossible. As a result, it not possible to plan suitably designed or, quite simply, effective programmes on essential matters such as treatment at prison facilities, overall preparation, analysing and granting permits, relationships with families and addressing addictions, among others. This lack of disaggregated data means that it is impossible to provide the precise solutions that are required and that are suitably adapted to different health and social needs. This complicates the reinsertion process and leads to discrimination by omission. This is why the Recommendation was formulated. The Recommendation was **rejected** by the Administration on the grounds that it implies stigmatisation, and that this information is addressed in existing legislation and does not need to be used by the prison service administration in order to meet its obligations.

This point of view and refraining the Administration from meeting the obligation it was assigned by the Spanish Parliament to write a **report on appropriate measures for including gender with an intersectional perspective** in prison system policies is contrary to the criteria stipulated in the **Report on the evaluation of the EU Framework for National Roma Integration Strategies up to 2020-COM(2018)785 final**, in the **Declaration of the Special Rapporteur of the United Nations on questions of minorities in the conclusions to his official visit to Spain between 14 and 25 January 2019** and in rule 54 of the **Bangkok Rules**, among others.

Alcalá de Guadaira prison facility for women was visited in 2020 (visit 102/2020). It was observed that there were 20 Roma women at the facility. In other words, 20.4% of female inmates. The information provided by management was once again collected from social case files further to an NPM request. It was observed that this information was not previously disaggregated, as was the case in other prison facilities that were visited. Given the aforementioned lack of recorded data, the situation for Roma women was analysed during visits by comparing lists and using information provided in interviews by these women or by technical staff and civil servants. This analysis provides us with relevant data. For example, 85% of Roma women at the prison facility did not have any formal education at all or had not completed primary education. 100% of Roma women inmates were mothers. With regards to the offences themselves, the interviewees mentioned public health offences, theft in order to provide for their families and consumption of toxic substances. **The Administration's outright lack of understanding of Roma women's circumstances** renders treating them appropriately, both on a day-to-day basis and in terms of reinsertion, impossible. **Therefore, a renewed Recommendation was submitted following the visit to the prison facility** [§ 486].

Forms and records with inclusive language

- The purpose of this Recommendation is **to give female detainees a place and name**. It was submitted following the project's first visit (2018) and **accepted by the Administration but has not been implemented to date**. This failure to implement the Recommendation even persisted in women-only prison facilities such as Madrid I (2019) and Alcalá de Guadaira (2020). Therefore, it is repeated at each visit. There is surprising persistent use of non-inclusive language by entities that hold public responsibility for translating constitutional values such as equality into something as simple as a form or record recognising the existence of women in prison facilities [§ 487].

Inclusive language in committal dossiers

- It was observed in all the visits that the language used on documentation provided to detainees when committed was not inclusive and the information was not adapted to suit women's circumstances. It failed to account for their existence and for special requirements such as sexual and reproductive health or gender-based violence. Therefore, a Recommendation was made during the visit to Ceuta prison facility (visit 88/2020) and was reiterated during the visit to Alcalá de Guadaira prison

facility (visit 102/2020) [§ 488].

Distance between place of origin and prison facility: compensatory measures

- It was confirmed in the visits that, in comparison with men, women face more issues in terms of serving their sentences at facilities located close to their family, friends and loved ones. Furthermore, they have fewer material opportunities to serve the end of their sentences under a semi-liberty arrangement because there are insufficient suitable facilities close to their local areas. This is a clear indicator of inequality, which also has a negative impact on these women's right to health. The prison service administrative body is legally obliged to protect this right. Health and finances are disproportionately affected based on gender. Furthermore, being separated from their families makes the committal process for women particularly complicated since they often fulfil an emotional and care-giving role. This clearly has a negative impact on the biopsychosocial health of detainees. Furthermore, geographical distance makes family visits difficult and expensive [§ 489].

Video conference calls with families

- Like in all the other facilities that were visited, there were communication issues due to many female inmates' lack of financial resources, even if communication of this kind is key to their well-being and emotional health. A lack of income and the elevated cost of calls limits how many they can make. International female inmates (most of whom are from countries with low incomes) who do not receive visits, face additional financial and bureaucratic issues when keeping in touch with their families through international calls. Furthermore, the lack of mother and baby units means that, in most cases, women with children under the age of three have to serve their sentences in prison facilities far from the rest of their family. On the other hand, because of the pandemic, video conference calls were set up with family members although several detainees complained about facility discretion when assigning these calls. With regards to gatherings with families, female inmates were commonly told to 'wait' in 2020 as a result of the pandemic. In addition, they faced solitude, neglect, lack of affection and grief at not being able to fulfil their role as mothers. Managing affection is a prior requisite to the reinsertion processes.

The long distances from their places of reference faced by female inmates underpins the importance that the NPM gives to safeguarding **communication**. Suggestions such as the ones below have been made.

Suggestions were made at **Las Palmas II prison facility** (visit

104/2019) and **Ceuta prison facility** (visit 88/2020) with a view to encouraging use of **video conference** facilities with family members. Factors associated with the location of prison facilities (**isolated areas or across borders**, for example) need to be taken into account.

At **Madrid I prison facility** (visit 91/2019), it was suggested that steps be taken to insulate **phone booths** appropriately. Poorly insulated phone booths generate anxiety, frustration and can discourage inmates from using them, which is the exact opposite of what the Administration should aim to achieve. This Suggestion was rejected on the basis that it is a very complex redesign. The NPM insists that phone booths should be **private** because otherwise they do not fit the purpose they are designed for. Furthermore, it was observed on the visit that the prison facility was inflexible when issuing leave **permits** and that appeals made by female inmates were often approved by supervising prison judges. To this end, the Administration replied that this is mainly due to the elevated number of 'aliens' among female inmates and that the facility will be reminded of the need to account for individuals' roots when taking decisions [§ 490].

5.1.2 Prevention of gender and sexual orientation-based discrimination

Training for civil servants, technical staff and healthcare personnel

- Lack of training for civil servants and healthcare personnel on questions of gender has been observed since the first visit in 2018 (visit 101/2018). As a result, a Suggestion was submitted. The Administration replied that training on these matters is part of the induction training for access to the different professions. When information was requested, it was confirmed that the training sessions only addressed gender-based violence.

A Recommendation was submitted during the second visit made to Madrid I prison facility (visit 91/2019) further to a renewed observation that civil servants and caregiving staff at prison facilities for women **are not given specific and on-going training on equality and gender-based violence, gender identity and sexual orientation**. It is also essential in new and frequent profiles of violent offences against women, such as people trafficking. Lack of training on these matters was also observed in the **social care team**, in the resources institutional network and in the corresponding response protocols since there are no indications of training on matters of gender-based violence and gender perspective for healthcare personnel. In addition, it was observed during interviews **that not all professionals treat transexual individuals with respect**

and in a manner that is in line with their preferred gender. Therefore, **staff must be given training on sexual diversity and treatment of transexual individuals.** This was repeated during the interviews held at **Las Palmas II prison facility** at which **complaints were filed by transexual individuals** regarding the support provided by members of **staff covering technical, psychological and psychiatric issues, in addition to being treated in a way that does not take their situation into account.** Transexual individuals and women repeatedly agreed that they were not treated with respect during body searches and frisking.

During the visit to **Alcalá de Guadaira prison facility** (visit 102/2020), **it was observed that the documentation handed over by the facility categorised transexual detainees incorrectly.** During the interviews that were held, it was once again observed that civil servants, technical staff and healthcare personnel lacked training and transexual individuals complained about being treated with a lack of respect.

The Recommendation, which has been partially accepted by the Administration since it does not include healthcare personnel, has not been implemented [§ 491].

Psychological assessment and semi-structured interviews

- This **Recommendation has been accepted but not implemented [§ 492].**

Suicide Prevention Programme

- This Recommendation was formulated based on an earlier Suggestion (the visit to Las Palmas II prison facility), which was accepted but not implemented. It was made during the visit to **Ceuta prison facility** (visit 88/2020) on observing that, at all the prison facilities that were visited, the suicide prevention programme is arranged based on a suicide risk assessment scale that has been approved for all prison facilities. The scale is the same for men and women. Although the scale does address concerns about the outside world - children, dependent ascendants and dependent descendants - which tend to be one of the main emotional challenges for women on committal, **other matters of specific relevance to women were not explicitly referred to [§ 493].**

Prison support staff for the Suicide Prevention Programme

- Prison support staff play an essential role in appropriate operation of suicide prevention programmes. Prison staff performing this role should be given training on gender perspective and should be monitored by educators and/or psychologists and, given that it is a very emotionally demanding role, there should be rooms for letting off steam. This was pointed out by several members of support staff who, in meeting their professional obligations, have let their own physical and mental health suffer. They have not been compensated for this in any way [§ 494].

Psychiatric and psychological support

- At Madrid I prison facility (visit 91/2019) and Las Palmas II prison facility (visit 104/2019), **it was observed that the large majority of female inmates believe that the psychological support that is available is limited and of little use.** The prison service administration blames this on a lack of human resources. In addition, **the female inmates at Las Palmas II prison facility did not have access to the Programa de Atención Integral a Enfermos Mentales (PAIEM) [Programme for Integrated Care for Individuals with Mental Illness].** This was also the case at **Ceuta prison facility** (visit 88/2020) and in contrast to the case for male inmates. Further to a Suggestion to this end submitted to Las Palmas II prison facility, the Administration replied that, following the visit there had been some reorganisation and that women would have the option of participating in scheduled activities and excursions. Furthermore, once it had got under way, the results would be assessed and an opportunity for implementing a unit for the Programme for Integrated Care for Individuals with Mental Illness at the facility would be assessed. The NPM once again points out that female inmates have the same rights as male inmates to health and care within the framework of the Programme for Integrated Care for Individuals with Mental Illness and, where applicable, to the creation of a unit of this kind.

Once again, during the visit to **Alcalá de Guadaira prison facility** (visit 102/2020), **it was observed that there is no specialist psychiatric assessment and support, which is very important to women in the Programme for Integrated Care for Individuals with Mental Illness,** as stipulated in the prison facility administration's implementation protocol for this programme, or for female inmates under a long-term or recurrent prevention of suicide protocol. Therefore, a Recommendation was submitted [§ 495].

5.1.3 Gender-based violence

Protocols and semi-structured interviews

- In the meetings held with prison system management and care-giving teams, the institution was informed that the large majority of women have been victims of gender-based violence at some point in their lives. The following estimations were made Antoni Asunción Hernández prison facility 90%; Madrid I prison facility 70%; Las Palmas I prison facility 50%; Las Palmas II prison facility 60%; Ceuta prison facility 60%; Alcalá de Guadaíra prison facility 80%.

These are estimations since **this information is not systematically collected, despite the impact it has on women's physical, psychological and emotional health in life in general and in the rehabilitation and reinsertion processes. Gender-based violence is not directly assessed in any of the protocols that were reviewed (Personal Treatment Programme, committal interview, psychological report, social background), and it is not included in treatment programmes or on health information files.**

The Recommendation, which has not been implemented to date, was partially accepted by the Administration. It states that

on the whole, in the healthcare field, this inclusion is considered unnecessary because, as is the case in exterior public healthcare, assessing the appropriateness/need to collect and document it in clinical histories in certain cases is decided by the doctor providing care at that particular moment and, where applicable, the specialist doctor (psychiatric or other) in his/her field of speciality [§ 496].

- In line with what specialists in the field indicate, the **NPM believes** that experiences of gender-based violence have a significant impact on victims' physical and mental health and can have aftereffects such as functional limitations, post-traumatic stress and anxiety and they can affect rehabilitation and reinsertion processes. The failure to record the different types of gender-based violence detainees may have been subjected to, including psychological, physical, sexual abuse (aggression, abuse, prostitution) or also other types of violence (vicarious violence, structural violence), in a disaggregated manner, seriously limits responses from a healthcare point of view [§ 497].

Social case files in open prisons

- During the visit to **Las Palmas I open prison facility**, the following Recommendation was made based on the particular importance of having access to **precise knowledge that a female detainee may return to a situation in which she faces gender-based violence at home or from relatives when she is granted semi-liberty** and, to some extent, returns to her life on the outside. This information is not collected. The Recommendation was **accepted by the Administration** [§ 498].

The ‘Being a woman’ programme

- The **‘Being a woman’** programme, which is a treatment-based response to the reality of gender-based violence experienced by a large percentage of female inmates, **was not being implemented at Las Palmas II prison facility** at the time of the visit because of a staff shortage. There is no plan for it to start up again. At **Madrid I prison facility**, it had to be suspended because there was a shortage of staff and, when the visit took place, only eight women were involved in it. During the visit to **Alcalá de Guadaira prison facility** (visit 102/2020), it was observed that **the programme**, which, on paper, is broad and proposes raising awareness of and addressing the violence faced by women, **has not been appropriately developed since it does not include all the necessary sections, is not assessed, does not include participation of healthcare professionals or legal experts, does not have any links to community resources specialising in care for women and is not included in the Personal Treatment Programme for Women**. Therefore, a Recommendation was made [§ 499].

5.1.4 Health

- During the visit to **Alcalá de Guadaira prison facility** (visit 102/2020), matters of health were addressed and the Recommendations indicated below were made [§ 500].

Sensory defects and loss of functional capacity due to age

- A failure to assess sensory defects such as deafness that could severely affect a woman’s functional capacity and autonomy was observed. The need to articulate a response to health issues, (false teeth and dental occlusion, glasses for poor eyesight, presbyopia brought on by age, hearing aids and so on) that require financial input by the individual

since they are not covered by the public health system, also needs to be taken into account. Age and losses of functional capacity associated with age are an additional limiting factor. The age of female inmates is on the increase and the female inmate population is gradually ageing. No consideration is given to the limitations brought on by age and old age and, as such, there is a failure to suitably adapt recreational activities and destinations [§ 501].

Health diagnoses

- A lack of health checks for female inmates was observed during the visit. Despite having access to comprehensive information in medical and social records, in addition to the opinions of professionals with a great deal of experience in their field of work, there were no health checks suitable for providing female inmates with answers to their health requirements while committed. Based on observations and information gathered during the visit, mental health issues and drug addictions, gender-based violence (particularly sexual violence), obesity and excess weight, transmissible diseases such as HIV, hepatitis B and C, tuberculosis and high blood pressure, and type II diabetes stood out as prevalent. There were also a great number of pregnancies among adolescent girls and the women had more children than average [§ 502].

Health promotion activities

- There are no specific health and healthy lifestyle promotion programmes such as active lifestyles and physical exercise aimed at preventing obesity and excess weight, or a healthy eating programme, tobacco withdrawal programmes, anxiety management, healthy sleeping pattern programmes and programmes aimed at promoting violence-free lives, or information about sex and reproduction rights [§ 503].

Therapeutic alternatives to medication

- As is the case at other facilities such as Madrid I prison facility (visit 91/2019) and Las Palmas II prison facility (visit 104/2019), there was evidence of elevated consumption of medication that could be regarded as invisible addictions because they are prescribed drugs. As a result, a Recommendation was made [§ 504].

Periodic explanation of the Personal Treatment Programme

- As was the case in other facilities, it was observed that female inmates

are largely unaware of their Personal Treatment Programme and, when they are aware of it, nothing has been done to work on committing to their change objectives. This complicates taking an active and leading role in their sentence and reinsertion programme [§ 505].

Global insight into addiction withdrawal

- Addictions are one of the prevalent health issues. A significant number of female inmates confirmed during their interviews that the reason for their deprivation of liberty was linked to consumption of illegal substances. Consumption of these substances is directly linked to repeat offences, and, during interviews, detainees indicated that consumption continues as they serve their sentence and that it causes conflicts on the inside.

It is not possible to ascertain the percentage of Roma women with addictions based on medical histories since the Roma minority variable is not contemplated when data is collected. Based on the interviews that were held, it was confirmed that there are cases of this issue among Roma women in prison. Recognising this helps to keep key cultural aspects in mind for programmes dealing with addictions.

There were no units for therapeutic purposes at the facilities that were visited. Specific programmes addressing addictions to substances that are developed by external entities and that are not linked to health and psychiatric professionals at the facility are insufficient and female inmates do not rate their content and usefulness very highly.

Inmates in the mother and baby unit do not have access to the addictions programme.

There is no direct coordination with community services dealing with addictions in order to facilitate getting female inmates onto day release programmes. Likewise, there are no continuity to programmes for women who are committed and for women who progress or are released from prison.

The aforementioned Recommendation is complementary to the one made during the visit to **Ceuta prison facility** (visit 88/2020) [§ 506].

Equal opportunities and treating drug addiction

- During the aforementioned visit to **Ceuta prison facility**, it was confirmed that female inmates cannot access the drug addiction treatment programme. They only have access to the tobacco withdrawal programme. The female inmates who were interviewed as a group

indicated that a programme for addressing addiction issues is necessary. Drug addiction and withdrawal programmes for female inmates need to be suitably adapted to the differences and special circumstances of their gender. It is essential if they are to be treated equally and make full use of their right to access efficient withdrawal programmes. This was the basis of this Recommendation [§ 507].

- Furthermore, within the field of addictions, a significant link between treatment in ordinary regime and day release facilities was observed during visits to Las Palmas I and CP Palmas II open prison facilities.

At **Las Palmas I open prison facility**, the team of technicians explained that addictions are one of the main hurdles that individuals deprived of liberty face in terms of reinsertion and that they are often the reason behind many steps backwards in the prison system and cases of renewed offences. **Female inmates do not have access to an addiction support network. Men receive global treatment starting with the therapeutic unit in prison facilities and this continues through to day release with the support of the therapeutic community in Almogaren that specialises in addictions, and which has residential resources. Women are not given this opportunity in ordinary regimes at Las Palmas II prison facility or during day release at Las Palmas I prison facility.** The staff considers that this constitutes unfair and unequal treatment. They understand that it is because there are fewer women and because of the types of addictions they have (less social impact and not so closely linked to offences). As a result, instead of helping to open doors, the less conflictive and aggressive behaviour shown by women paradoxically limits their opportunities and generates an entirely unequal set of circumstances. The Suggestions made with regards to this were rejected. The passive nature and lack of planning associated with the process for reinserting female inmates back into society is striking. The alleged lack of resources should be resolved through a proactive policy to set up a therapeutic unit for addictions designed for female inmates in ordinary regime at Las Palmas II prison facility and access to suitable external resources for the treatment of addictions during day release, as is the case for the men.

The last Recommendation, which is being dealt with right now, is linked to the shop at **Las Palmas II prison facility**. As explained in the next epigraph, given that this recurrently affects women's health across several prison facilities, it should be the object of a Recommendation [§ 508].

Prison shop

- Female inmates request access to shower gel, face and body cream, nail varnish and acetone, among other items, for personal hygiene and care purposes. Sub-Saharan women also request specific products suitable for their hair and skin and, in prison facilities with a mother and baby unit, there is an additional request for baby products. Provision of sufficient quantities of personal hygiene products for female inmates is being addressed in order to determine if the Administration fully respects the provisions of article 5 of the Bangkok Rules [§ 509].

5.2 Suggestions

In addition to these matters for which Recommendations have been formulated, in 2020, numerous conclusions and Suggestions were processed, both with regards to the visits made within the framework of this project and with regards to other visits.

5.2.1 Access to work and treatment

- The way in which female inmates are treated with regards to this matter suggests that the perception the Administration has of them needs to be reassessed. It seems that the Administration considers them to be non-productive, even from a cognitive point of view. The restrictions they face in the day-to-day clash with the hope of a better future.

Barriers with regards to access to training and treatment for female inmates based on organisation of spaces at the prison facility and distribution of inmates was observed during the first visit to **Antoni Asunción Hernández prison facility** (visit 101/2018). A Suggestion aimed at adopting measures to resolve this was formulated. It was accepted and effective execution is currently being checked through supervision of how the case is being processed.

The Suggestion indicating that women should be instructed to access the sports facilities under the same conditions as male inmates was accepted by this prison facility.

Last of all, **gender-based discrimination indicators in terms of access to training workshops and destinations** was also observed in this visit and a Suggestion was formulated. It was accepted by the Administration.

Further to analysis of training course data at **Las Palmas II prison**

facility (visit 104/2019), it was observed that **women are suitably represented in terms of training for employment courses**. Most of them are mixed courses. However, there was some **sexism in the distribution** on certain courses: the surface and furniture in buildings and retail outlets cleaning course is for women only and the domestic plumbing and air-conditioning activities course and the painting auxiliary activities course is for men only. This simply sustains the concept of gender-based division of roles. Further to the corresponding Suggestion, the Administration replied that it will take steps to encourage participation in courses and will work on eliminating sexism of all kinds with regards to access to training courses. The NPM insisted in its reply that female inmates are already motivated since, during the numerous interviews that were held, they asked to participate in workshops such as bakery and maintenance in which they currently do not get involved. The NPM has insisted that, in fact, the Administration needs to begin by recognising the differences because, unless it does so, effective training under equal terms cannot be delivered.

During the visits to **Alicante II prison facility** (visit 78/2020), the female inmates who were interviewed at the facility said that they were discriminated against in comparison with male inmates since the men had access to more paid destinations and more activities.

During the visit to **Alcalá de Guadaira prison facility** (visit 102/2020), it was observed that occupational activities only take place in the female unit. There are no activities or occupations available to female inmates in the open prison unit or to those in the mother and baby unit. The activities that are available are very limited occupational activities that are not given much support and that are mainly linked to sewing (which encourages gender stereotyping) and painting tiles.

During the visit to **Ceuta prison facility** (visit 88/2020), it was observed that female inmates had limited access to training workshops and destinations [§ 510].

5.2.2 Spaces

- Assigned spaces are the framework within which individuals define their role in life and discover their social identity. Individuals perform all their bodily functions in them. Based on observations of a lack of connection between the actual spaces assigned to women in prison facilities and the corresponding legal mandate, the NPM has submitted Suggestions aimed at transforming the exclusion symbol often represented by the spaces assigned to female inmates. Furthermore, some thought should

be put into what is an appropriate space for serving a short sentence or one that is closely linked to subjective conditions, such as drug addiction.

Some of the specific findings in terms of spaces are indicated below [§ 511].

Lack of space

- During the visit to Murcia II prison facility (visit 100/2020), it was observed that female inmates cannot be committed to the ordinary regime unit. This is not possible at Murcia I prison facility, either. Therefore, if a woman is classed as a first-degree inmate or is in preventive custody and article 10 of the Ley Orgánica General Penitenciaria (LOGP) [General Prisons Act] is applied, she must necessarily move to another province. Therefore, it is suggested that the Administration ought to assign some of the sections of the closed prison unit to women [§ 512].
- During the Ceuta prison facility visit (visit 88/2020), it was observed that female inmates do not have places in the social insertion facility because there is a staff shortage. As such, the female inmates on day release have to share unit 9 with all the other female inmates, which is clearly discriminatory when compared with the situation for men. Their right to make the most of day release as a step forward towards reinsertion under the same conditions as men is not respected. The prison facility tries to compensate for this shortage of spaces by using control tags. However, devices of this kind are not always available, or they cannot be used because of certain circumstances, such as when the detainee does not have a home or resources outside of the facility. This situation puts women at a serious disadvantage and generates a lot of stress because it means that they miss out on their right to daily contact with their children and are fearful that they may even lose custody of them. By giving detainees semi-liberty outside the prison facility when it is not necessary or justified for them to stay at the facility, it is possible to protect their children from the long-lasting side effects of having a mother in prison, including ending up in the care system and eventually in prison themselves.

At the time of the visit to Ceuta prison facility (visit 88/2020), it was observed that female inmates were not suitably separated from each other on the inside. There were 15 female inmates (seven from Morocco and eight from Spain), five of whom were second degree inmates and ten of whom had not been assigned a category and were in precautionary detention. They are in unit 9, which has 72 places. Unit 10 is also assigned to women, and it is empty due to a lack of personnel and, therefore, there are no divisions on the inside. An analysis of the incidents indicated that

most of them consist of slight aggressions between inmates, insults and threats, passive resistance, failure to comply with rules and introduction of prohibited goods. There were no records of aggressions aimed at civil servants or of active resistance, possession of dangerous goods or other types of more serious incidents. This does tend to happen among male inmates. The number and intensity of the incidents is much lower compared with men. If the spaces on the inside were suitably divided up, this would decrease incidents even more. A Suggestion to this end was accordingly submitted [§ 513].

- None of the prison facilities on the Canary Islands, including Las Palmas II prison facility which has a 12% female population, over half of which are of reproductive age, have a mother and baby unit. This is a significant obstacle for women who wish to have children during their stay in a prison facility. Furthermore, this means that pregnant women have to be separated from their babies after birth, unless both can be transferred to peninsular Spain. This means uprooting individuals and it can even lead to older children being abandoned. This is why it was suggested that mothers deprived of liberty on the Canary Islands be provided with suitable facilities in which to serve their sentence with children under three if they are with them. The Administration replied that the scarcity of potential users means that, for the time being, opening a facility of this kind is not considered necessary. The NPM has insisted that the Suggestion refers to suitable facilities, not to opening up a new facility specifically for this purpose. A response to the Suggestion has been requested. The same Suggestion was made with reference to the Ceuta prison facility visit (visit 88/2020) [§ 514].

Size

- At the time of the visit, there were 480 female inmates in Madrid I prison facility. Out of these, 370 had individual rooms and the remainder had shared rooms. The cells are 2.97m long by 2.43m wide (7.22m²) and issues ventilating them were observed on several occasions. The minimum standard stipulated by the Committee for the Prevention of Torture is four metres square per inmate when cells are shared. The female inmates who were interviewed often referred to a lack of privacy because they were required to share cells and because they spend a lot of time in the little space they have. Therefore, it is suggested that female inmates be guaranteed an individual cell unless it is understood that they are better off sharing. Should this be the case, they should be guaranteed a minimum space of four metres square each. The Administration replied that, given architectural limitations, female inmates who wish to be alone should be transferred to an alternative facility if there are no vacant cells

available. This should be done wherever possible and taking relevant circumstances into account. The NPM insists that the Administration must respect established international standards on the minimum necessary space per person in cells.

It was observed that access to cells in this prison facility was limited by architectural barriers. There is a section of stairs in order to access cells and the shower is narrow and has a step for access which means it cannot be used by individuals with limited mobility or who are overweight. Further to a Suggestion aimed at improving this situation, the Administration widened the shower in two cells. This is entirely insufficient given the elevated number of individuals at the facility and the growing number of older women [§ 515].

- At Pereiro de Aguiar prison facility (visit 8/2019), it was observed that the yard in the female unit was small and that female inmates only have access to the main yard when they are participating in training courses. Again, at La Palma prison facility (visit 26/2019), the communal areas in the female unit are very small, which limits doing any physical exercise and helping individuals to relax, and communication with others and visual stimulation, which are an integral part of sustaining a person's physical and psychological abilities. This only adds to the feeling of being enclosed that one experiences when living permanently in this unit [§ 516].

Deficiencies in maintenance and safety measures

- Deficiencies in maintenance were observed in the female units in several prison facilities. For example, Madrid I prison facility (visit 91/2019), Melilla prison facility (visit 98/2019) and the open prison unit at Las Palmas I prison facility (visit 102/2019). Some female inmates indicated that they felt unsafe, particularly at night, and this was confirmed by prison staff. This feeling of insecurity was also observed during the visit to Antoni Asunción Hernández prison facility (visit 101/2018) and, therefore, suitable supervision was suggested in order guarantee fair and safe use of communal areas. This Suggestion was accepted by the Administration [§ 517].

Inaccessible spaces

- There are spaces with architectural barriers which make them inaccessible to female inmates. For example, the library or chapel, which are in the male inmate unit at La Palma prison facility (visit 26/2019). Or, for example, the library and activity spaces, such as the kitchen, which are

located outside the women's unit at Melilla prison facility (visit 98/2019) [§ 518].

- In terms of medical assistance, the women's unit at La Palma prison facility (visit 26/2019) does not have a doctor's consultation room and healthcare is provided in the civil servant's office, which is clearly unsuitable for this purpose. Female inmates are only transferred to the doctor's consultation room in the men's unit to deal with more serious issues and, according to the information provided, this does not happen very often. Again, at Melilla prison facility (visit 98/2019) and Ceuta prison facility (visit 88/2020), female inmates are not taken to the nursing unit when they have health issues because of a shortage of staff [§ 519].

5.2.3 Coercive means and isolation

- During the visit to Antoni Asunción Hernández prison facility (visit 101/2018), the management team indicated that weapons are not generally used during incidents involving women and that the incidents tend to be much less aggressive than ones among men. When incidents are over, it is easier to get women to reconcile than men.

However, detailed analysis of documentation about use of safety measures and coercive means provided for in article 72 of the Reglamento Penitenciario (RP) [Prison Regulations], which is available on the computer system used to record incidents, led to the conclusion that temporary isolation, validated straps and physical force are used to a greater extent on women than on men. Surprisingly, there are hardly any records of use of rubber batons and handcuffs, which is consistent with less aggression and less serious incidents among women. The fact that women are subjected to temporary isolation, entirely immobilised using straps and use of physical force to a greater extent than men indicates that these means are used as an informal means of punishment. This suggests that the Administration is not as ready to accept acts of insubordination among women.

Furthermore, it was observed that female inmates are much more commonly subjected to application of article 75.1 (restriction means adopted outside the prison regulations isolation guarantees system) and for much longer periods than male inmates. Therefore, a review of use was suggested. Continued pressure by the NPM has meant that the Administration has admitted to this discrimination and is reviewing the reasons for this difference in treatment [§ 520].



6 SPECIAL PURPOSE METHODS OF DEPTIVATION OF LIBERTY: STEPS TO REPATRIATE ALIENS

- In 2020, **the number of alien expulsion procedures significantly decreased** as a result of the COVID-19 pandemic [§ 521].
- The information received regarding a **FRONTEX operation to Tunisia** that was scheduled to take place in April 2020 is of particular relevance. Since the state of emergency was declared in Spain on 14 March 2020, it was the first operation that had been announced. Furthermore, this case coincided with the special isolation circumstances affecting most of the population and closure of detention facilities for aliens in Spain. Therefore, an ex officio file aimed at understanding the circumstances surrounding this flight and the health safety measures for everyone involved was opened. In the end, the Dirección General de la Policía [Police Directorate General] indicated that the flight would not go ahead because of the pandemic and so the case was closed [§ 522].
- In 2020, 3 operations to Mauritania (visits 1/2020, 2/2020 and 7/2020), 1 operation to Melilla with Morocco as its final destination (visit 9/2020), organised by the Unidad Central de Expulsiones y Repatriaciones (UCER) [Central Unit for Expulsions and Deportations], one to Albania and Georgia (visit 111/2020) and another to the Dominican Republic and Columbia (visit 114/2020) were supervised.

107 conclusions and 17 resolutions, classified into 12 Suggestions and 9 Recommendations, have been issued. They were submitted to the Police Directorate General in its role as the corresponding administrative body and with the aim of monitoring the corresponding procedures. They were also submitted to the UCER and, for informative purposes, to the head of human rights at FRONTEX.

3 of the flights left Adolfo Suárez Madrid-Barajas airport (the 1 to Melilla, the 1 to Albania and Georgia and the 1 to the Dominican Republic), 2 flights to Mauritania left from Tenerife Norte airport and another left from Las Palmas de Gran Canaria [§ 523].

- Likewise, the Comisaría General de Extranjería y Fronteras [General Headquarters for Immigration and Border Control] also provided information about an additional flight to Mauritania that the NPM decided not to monitor in person. In order to monitor operation documentation, information about the operation in general and specifically about health safety measures that would be taken before and after was requested [§ 524].



7 INVESTIGATION INTO ALLEGATIONS OF TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT

- On 19 January 2021, the European Tribunal of Human Rights once again ruled against Spain for failing to appropriately investigate claims of torture under police custody. The ruling was not for ill-treatment or torture but for deficient investigation. It needs to be understood that gathering proof of ill-treatment during detention is complicated, particularly in cases when individuals are isolated.

Investigations should not leave any shadow of a doubt, whether this be in terms of administration, judicial or fiscal areas. In addition to benefiting individuals deprived of liberty, as is only right, it also benefits all other State institutions involved [§ 566].

- In this same context, and with regards to complaints of ill-treatment, two sentences handed down to authorities and civil servants by the Fiscalía General del Estado [State Prosecution Service] for crimes within the framework of articles 174 and 175 of the Spanish penal code were analysed as examples and for the purpose of writing this report [§ 567].

In the first case, in 2020, the Provincial Appellate Court of Madrid handed down an innocent verdict and, in the second case, in 2021, the Provincial Appellate Court in Las Palmas, handed down a guilty verdict.

- In the first case, the prosecution service did not make a case against the national police officers who were investigated. The private prosecution service sought a guilty verdict for torture, aggravated injuries, illegal arrest (collaterally against constitutional rights) and offences against moral integrity.

The alien making the accusations stated that he had been the victim of aggression following arrest by the police and had to be treated for head trauma. Prior to this, the complainant had been arrested for attacking and causing injury. It was precisely for this reason that the witness' statements should be treated with special care since the facts included in the complaint occurred during a process of law enforcement and ended up with criminal proceedings filed against the witness. It was not suggested that he/she was lying but that his/her statement or claims ought to be examined with care when taking the declaration as a means of undermining the defendants' presumption of innocence.

With reference to the objective credibility of the claimant's declarations, the tribunal pointed out certain aspects that detracted from its effectiveness as evidence. It was demonstrated that the declaration did not match actual events. Furthermore, the timing of the events as

recorded in the complainant's statement did not match documentary evidence. Again, injuries in line with the content of the statement were not objectively confirmed.

As a result, the court determined that there was insufficient proof about the episode. Although the court did confirm there were certain aftereffects, it was not proven that they were the result of the claims made against the police. Gaps in the internal and external coherence of the statement meant that a conviction could not be made, and a sentence could not be handed down [§ 568].

- The second case, on the other hand, did lead to a guilty verdict. The verdict stated that one of the local plain clothes police force officers monitoring and controlling local regulations for street sales and publicity went up to the victim who was selling goods and asked him/her to follow him to another location without first showing his/her ID.

The victim knew the local police officers in question since they had been involved in an operation with his/her cousin some days earlier. The cousin also sold goods on the streets and was injured during the operation. The victim had been called to act as a witness in the proceedings. During arrest, transfer and while at the police station, the victim was punched. At the end of the day, the victim was transferred to a health centre to receive treatment.

The accused arrested the victim on suspicion of criminal assault, resistance and serious disobedience but the court provisionally suspended the proceedings since there was not enough evidence to prove that the offence had been committed. In retaliation, the accused hit and abused the victim for selling goods on the streets. They intimidated him/her with regards to his/her declarations in a court case that one of the accused police officers was involved in.

The victim received a closed fracture to the left ulna, contusion of the thoracic wall and frontal contusion and grazes. In addition to initial health assistance, the injuries needed posterior medical and surgical intervention consisting of surgery and rehabilitation. The victim took 341 days to recover and spent one day in hospital.

The aftereffects included a small surgical scar about 10 centimetres in length on the victim's left forearm (1 point), osteosynthesis material consisting of a plate and five screws on the left ulna (2 points) and difficulties bending his left arm entirely (1 point). The accused were not deprived of liberty, were not suspended from their jobs and did not have their pay suspended.

The events lead to a guilty verdict for aggravated injuries, as

provided for in article 148.1 of the Criminal Code, and with reference to article 147 of the Criminal Code, and to a guilty verdict for torture in the serious attack on moral integrity category, as provided for in article 174.1 of the Criminal Code [§ 569].

- Internationalisation of human rights and, in particular, of its guarantees, provides significant assurances. Last year, a delegation from the European Council Committee for the Prevention of Torture visited several deprivations of liberty facilities in Spain. Specifically, they visited Brieva (Ávila), Castellón II, Soto del Real and Estremera (Madrid), Seville I and II, Picassent (Valencia) prison facilities; Seville Prison Psychiatric Hospital; Algeciras (Cádiz), Castellón de la Plana, Blas Infante in Seville and Zapadores in Valencia police stations; Hortaleza facility for minors, Moratalaz facility for minors and the Group of Minors of the Provincial Judicial Police Squad in Madrid; Utrera local police station (Seville); and La Marchenilla young offender institution in Algeciras (Cádiz) [§ 570].
- The rule of law and the applicability of the Spanish Constitution and the legal system to the general public and to public entities, as provided for in article 9, protects civil servants and individuals deprived of liberty.

The special applicability relationship itself, when applied to prison sentences, can in no way justify less protection for individuals deprived of liberty at facilities in Spain. On the contrary, the special applicability relationship between the individual deprived of liberty and the State means that the latter is in a particularly special situation as guarantor of life and physical integrity.

Therefore, efficient investigation when there are indications of ill-treatment not only helps individuals deprived of liberty, but it also favours and obliges all State organisms involved. To this end, it is the obligation of the heads of deprivation of liberty facilities to provide all the available information when there is an alleged case of an offence. It must also favour and support administrative or legal investigations of any kind into the alleged offence. In Spain, the ill-treatment issue is not so much a matter of regulatory deficiencies but one of the need to carry out effective investigations [§ 571].

- As indicated in last year's report, with regards to public order services, on 1 July 2019 and with regards to the Secretary General of Prison Facilities' legal obligation to issue injury reports, on its visits to deprivation of liberty facilities, the NPM observed how injury reports are processed from a legal and administrative point of view.

There continue to be deficiencies in how prison facilities write and

process these reports, both in terms of the Prison Information System and in terms of the Secretariat for Penal Measures, Reinsertion and Victim Support. During the visits, the NPM observed that almost no teams of doctors at prison facilities submitted injury reports to legal authorities. Facility managers are generally responsible for sending them to the corresponding court. Some of them are even filtered and not all of them are sent to legal authorities.

It is this institution's opinion that doctors should send injury reports directly to the corresponding legal authorities, as provided for in articles 262 and 355 of the Spanish Criminal Procedure Act, without prejudice to informing facility managers in whatever manner applies [§ 572].

- As indicated in the study on Injury reports for individuals deprived of liberty published by this institution in 2014 (https://www.defensordelpueblo.es/en/wp-content/uploads/sites/2/2016/01/Study_Injury_Reports- People_Deprived.pdf), and in the Istanbul Protocol for efficiently investigating and documenting torture and other cruel, inhuman or degrading treatment or punishment, injuries must be photographed and the photographs should be attached to injury reports or, where applicable, be made available to whoever requests them [§ 573].

Information on processes and investigations

- Based on information provided by the Secretary of State for Justice, in 2020, no guilty verdicts were handed down in Spain for crimes of torture (article 174); there were 26 for offences against moral integrity (article 175); none for offences associated with failing to stop torture or attacks against moral integrity (article 176); none for illegal arrest or abduction (article 167.1); and nine for discovery and disclosure of secrets (article 198). It should also be pointed out that, in that same year, no total or partial pardons were issued to members of the country's security forces with reference to these offences.

On the contrary, 8,177 citizens were sentenced for undermining the authority of the law, its agents and civil servants and for resistance and civil disobedience (articles 550 to 553 and 556 of the criminal code).

According to data for 2020 on the National Human Rights Programme computer system, the reasons for complaints filed against the police for behaviour that may be classed as alleged ill-treatment or denial of guarantees for detainees were as follows: 1 for offences against fundamental rights and public liberties as guaranteed by the constitution; 15 for aggression leading to injury; 4 for threats, coercion, insults and harassment; 1 for illegal arrest; 2 for concealment or crimes

against the justice system; 3 for serious disregard for citizens; none for manslaughter or murder; and 1 for torture, ill-treatment and other offences against moral integrity [§ 574].

Abbreviations used

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

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

