



**Optional Protocol to the
Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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**Subcommittee on Prevention of Torture and Other Cruel,
Inhuman or Degrading Treatment or Punishment**

**Visit to Spain undertaken from 15 to 26 October 2017:
observations and recommendations addressed to the national
preventive mechanism**

Report of the Subcommittee*[,] **

* In accordance with article 16 (1) of the Optional Protocol, the present report was transmitted confidentially to the national preventive mechanism on 15 March 2018. On 27 July 2018, the national preventive mechanism agreed to publish the report along with its replies.

** The annexes to the present document are being circulated in the language of submission only.



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I. Introduction

1. In accordance with its mandate under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment conducted a regular visit to Spain from 15 to 26 October 2017.
2. The Subcommittee members conducting the visit were: Felipe Villavicencio Terreros (head of delegation), Lorena González Pinto (Vice-Chair of the Subcommittee), Nora Sveaass (Vice-Chair of the Subcommittee), Roberto Michel Fehér Pérez and Abdallah Ounnir.
3. The Subcommittee was assisted by three human rights officers and two security officers from the Office of the United Nations High Commissioner for Human Rights (OHCHR).
4. Spain ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 21 October 1987 and ratified the Optional Protocol thereto on 4 April 2006. Organic Act No. 1/2009 of 3 November amended the Ombudsman Act to include a single final provision designating the Ombudsman as the national preventive mechanism of Spain.
5. One of the aims of the visit was to provide advice and technical assistance to the national preventive mechanism of Spain, in accordance with article 11 (b) of the Optional Protocol. The visit was also conducted with a view to strengthening the capacity and the mandate of the national preventive mechanism.
6. The present report sets out a series of recommendations to the national preventive mechanism of Spain. These recommendations are made in line with the Subcommittee's obligation to offer training and technical assistance with a view to strengthening the capacities of national preventive mechanisms and to advise and assist those mechanisms in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other ill-treatment, under article 11 (b) (ii) and (iii) of the Optional Protocol.
7. This report will be sent to the national preventive mechanism of Spain on a confidential basis; it will be up to the national preventive mechanism to decide whether or not to make it public. **The Subcommittee does, however, recommend that the national preventive mechanism make the report public and requests that it be notified of the mechanism's decision in that regard.**
8. The Subcommittee will prepare a separate confidential report for the Spanish authorities in which it will make recommendations to the State party.
9. The Subcommittee wishes to express its gratitude to the national preventive mechanism for its assistance and cooperation in the planning and undertaking of the visit.

II. National preventive mechanism

10. Organic Act No. 1/2009 of 3 November amended the Ombudsman Act to include a single final provision designating the Ombudsman as the national preventive mechanism of Spain. The mechanism has been established as a unit within the organizational structure of the Office of the Ombudsman; the unit is composed of a supervisor, technical advisers and administrative assistants and is supported in its work by external experts. The mechanism also has an advisory board, which is responsible for technical and legal cooperation and is made up of persons nominated by professional associations and persons with recognized experience in the defence of human rights or in fields relating to the treatment of detainees, who were selected following a call for applications.

11. The national preventive mechanism is responsible for conducting periodic visits to places of deprivation of liberty that are overseen by various public authorities, in order to make recommendations with a view to preventing torture and other cruel, inhuman or degrading treatment or punishment. The mechanism recognizes that it is competent to conduct regular unannounced visits to places such as National Police stations, Civil Guard barracks, autonomous community police stations, local police facilities, military establishments, municipal detention centres, judicial detention centres, juvenile detention centres, migrant detention centres, border control centres with police facilities in airports, ports and land border areas, hospitals, psychiatric hospitals, nursing homes, ships on which stowaways are detained and means of transport used by State security forces and agencies to transfer persons deprived of their liberty.

12. During its regular visit to Spain, the Subcommittee held two meetings with members of the national preventive mechanism and took part in a joint visit to a detention centre.¹ The centre was chosen on the basis of a proposal made by the Subcommittee's delegation, which was accepted by the mechanism, even though it had made arrangements to visit a different place of detention. During the visit, the Subcommittee members played a secondary role, while members of the mechanism led the delegation and oversaw all activities undertaken in the course of the visit.

III. Recommendations to the national preventive mechanism

13. During the joint visit, the Subcommittee members were able to observe the working methods used by the national preventive mechanism and, in general, were left with a good impression of its work. One of the main positive aspects was the adaptability of the mechanism team, especially when confronted with the Subcommittee's last-minute request to conduct the joint visit to a different centre than the one initially selected by the mechanism. The Subcommittee was also struck by the hard work and professionalism of the members of the mechanism and the experience and aptitude of its external experts, especially those responsible for analysing medical histories. The Subcommittee considers that the team carrying out the visit made appropriate use of modern means of communication, which made it easier — especially in such a large prison — to rapidly compare information and situations in a coordinated manner, simultaneously or successively.

14. In the course of the visit, the Subcommittee members noted that the national preventive mechanism informed the prison authorities about the methodology that would be followed during the visit; requested statistics (such as the average time taken to rise through the ranks and the number of detainees under the various regimes); and requested information about the use of physical restraints, access to psychiatric care and safeguards for detainees under each regime. The Subcommittee considers it relevant that the mechanism requested permission from the prison authorities to be able to watch and analyse videos of incidents recorded using the video recording system.

15. The Subcommittee members were also informed that various documents on the prevention of torture had been produced. One which stood out was the 2017 Guide to Good Practices in the Use of Physical Restraints; the Subcommittee considers this document to be very comprehensive and encourages the national preventive mechanism to distribute it widely. At the end of the visit, the Subcommittee members raised some of their main concerns, which are detailed in the present report, at a meeting with members of the national preventive mechanism and the advisory board.

¹ Soto del Real Prison in Madrid.

Recommendations relating to institutional issues

Visibility and independence

16. The Subcommittee noted that the national preventive mechanism has not managed to differentiate itself from the Ombudsman. In terms of visit methodology and dialogue, the mechanism does not seem to have developed an effective strategy that distinguishes it from the Ombudsman. As a result, detainees, authorities and civil society know little about it. In most of the centres visited by the Subcommittee, there was no knowledge of the mechanism's mandate or any awareness of its existence.

17. The Subcommittee recommends that the national preventive mechanism develop a stronger strategy in order to differentiate its team from that of the Office of the Ombudsman and to raise awareness of the specific nature of its mandate among detainees, civil society organizations and authorities (see CAT/OP/12/5, para. 32). To that end, the Subcommittee recommends, for example, organizing awareness campaigns and other promotional activities, such as the production and distribution of materials in various languages on the specific nature of the mandate and activities of the national preventive mechanism, and considering the possibility of equipping members of the mechanism with vests or other clothing of a specific colour or marked with a symbol or logo, so as to clearly set them apart from members of the Office of the Ombudsman.

18. The Subcommittee noted that the national preventive mechanism has not been allocated a specific and adequate budget, for its budget is included, without differentiation, in the overall budget of the Office of the Ombudsman. This lack of a specific budget makes it difficult for the mechanism to effectively fulfil its mandate to prevent torture and ill-treatment throughout the country. In this connection, the Subcommittee considers that the mechanism does not have a large enough team of professionals to perform its mandate on a national scale. The Subcommittee emphasizes that the mechanism needs to recruit specialists, such as doctors and psychologists, in order to build its capacities in an interdisciplinary manner. It is important to note that the Subcommittee's guidelines on national preventive mechanisms state explicitly that the mechanism should enjoy complete financial and operational autonomy when carrying out its functions under the Optional Protocol (see CAT/OP/12/5, para. 12).

19. The Subcommittee recommends that the national preventive mechanism submit a proposal to the legislature and carry out advocacy and awareness-raising initiatives in order to obtain a budget of its own that enables it to perform its mandate more effectively. The Subcommittee further recommends that appropriate steps be taken to set aside a separate budget for the national preventive mechanism within the overall budget of the Office of the Ombudsman. In addition, it recommends that the mechanism take the necessary measures to build an interdisciplinary team of specialists and professionals that will enable it to perform its mandate for the prevention of torture properly.

Recommendations relating to methodological issues

Interview methodology

20. The Subcommittee noted several problems relating to interview technique. In some cases, at the start of the interview, the interviewer failed to mention the principle of confidentiality and the safeguards against the risk of reprisals. Furthermore, the interviewer sometimes asked leading questions or interrupted the detainees. The mandate of the national preventive mechanism was explained very briefly and no distinction was drawn between the mandate of the Ombudsman and that of the mechanism; as a result, the detainees believed them to be one and the same thing. The team sometimes failed to request permission to take photographs of cells and to make sure that the interview took place out of the earshot of guards. In some cases, no questions were asked about the legal proceedings being brought against the interviewee or about his or her access to legal counsel.

21. **The Subcommittee recommends that the national preventive mechanism review and update the interview techniques used by its team (see CAT/OP/12/5, para. 31). The mechanism's interview methodology should be improved to ensure that interviews with detainees are open and in-depth and take place in confidentiality, so as to ensure that cases of torture and ill-treatment and structural situations that enable or promote such behaviour are uncovered. The Subcommittee further recommends that the national preventive mechanism adopt a strategy to prevent possible reprisals against interviewees.**

Interpreters

22. Given the high proportion of detainees who speak languages other than Spanish and are being held in different detention centres, the national preventive mechanism needs to make sure that it has enough interpreters to be able to perform its role effectively.

23. **The Subcommittee recommends that the national preventive mechanism take the necessary measures to recruit a sufficient number of interpreters, so as to be able to conduct interviews with detainees who do not speak Spanish. It further recommends that the mechanism produce materials containing general information on its mandate and on the procedure for submitting complaints of torture and ill-treatment to the Ombudsman, in languages other than Spanish.**

Complaints

24. The Subcommittee noted that some detainees were concerned about the stage reached in processing the complaints of torture and ill-treatment that they had filed with the Ombudsman. It is precisely the failure to differentiate clearly between the mandates of the national preventive mechanism and the Ombudsman that has created confusion among detainees; this was clearly demonstrated when detainees asked staff from the mechanism about the status of their complaints.

25. **The Subcommittee recommends that detainees be informed systematically of the difference between the mandate of the national preventive mechanism and that of the Ombudsman and that the mechanism take the necessary steps to improve its system for the referral of individual cases identified during its visits and the provision of information about those cases to the Ombudsman in order to facilitate the processing of complaints.**

Strategy for monitoring the implementation of recommendations

26. The Subcommittee notes that the national preventive mechanism draws up reports for detention centre authorities after each visit, makes recommendations and has developed a monitoring grid; furthermore, its recommendations are frequently used as the basis for decisions by the authorities. However, the Subcommittee considers that these measures do not adequately enable the mechanism to engage in constructive dialogue with senior authorities and to effectively monitor the implementation of its recommendations.

27. **The Subcommittee recommends that, after each visit, the national preventive mechanism submit recommendations to the relevant authorities more rapidly and conduct follow-up visits promptly. The Subcommittee further recommends increasing the number of visits carried out to follow up on recommendations made to detention centre authorities. The Subcommittee recommends that the national preventive mechanism establish, together with the relevant authorities if possible, an effective mechanism for monitoring the implementation of its recommendations (see CAT/OP/12/5, paras. 36 and 38).**

28. **The Subcommittee recommends that the national preventive mechanism take the necessary steps to effectively increase its interaction with civil society and the offices of the ombudsman of the autonomous communities in the performance of its work.**

29. The Subcommittee wishes to emphasize that these problems were acknowledged by the national preventive mechanism in dialogues held during the visit.

30. The Subcommittee also encourages the national preventive mechanism to transmit its annual reports to the Subcommittee and reaffirms its readiness to help the mechanism to achieve the shared aim of preventing torture and ill-treatment.

31. The Subcommittee recommends that the national preventive mechanism make the present report public and requests that it be notified of the mechanism's decision in that regard.

Anexo I

Lista de las personas con quienes se reunió el Subcomité

A. Autoridades

Ministerio de Asuntos Exteriores y Cooperación

- Pablo Ruíz-Jarabo Quemada, Embajador en Misión Especial para los Derechos Humanos, la Democracia y el Estado de Derecho
- Adela Díaz Bernárdez, Directora de la Oficina de Derechos Humanos

Ministerio de Justicia

- Ana Andrés Ballesteros, Subdirectora General para Asuntos de Justicia en la Unión Europea y Organismos Internacionales
- Raquel de Miguel Morante, Fiscal y Asesora en el Gabinete Técnico de la Subsecretaría

Ministerio de Defensa

- Juan Manuel García Labajo, General Consejero Togado del Cuerpo Jurídico Militar, Vocal Asesor del Subsecretario de Defensa

Ministerio del Interior

- Luis Aguilera Ruíz, Subsecretario
- Ángel Yuste Castillejo, Secretario General de Instituciones Penitenciarias
- Germán López Iglesias, Director General de la Policía
- Juan Carlos Ortiz Argüelles, Comisario General de Extranjería y Fronteras
- Luis Aparicio Campillo, Jefe de los Servicios Jurídicos de la Comisaría General de Extranjería y Fronteras
- José Manuel Holgado Merino, Director de la Guardia Civil
- José Manuel Santiago Marín, Jefe de la Sección de Operaciones del Estado Mayor
- Miguel Fayos Mestre, de la Unidad Técnica de Policía Judicial
- Ángel García Navarro, Jefe de Servicio, Subdirección General de Relaciones Internacionales, Inmigración y Extranjería

Ministerio de Sanidad, Servicios Sociales e Igualdad

- Encarna Cruz, Directora General de Cartera Básica de Servicios del Servicio Nacional de Salud y Farmacia

Ministerio Fiscal

- Jesús Alonso, Fiscal Jefe de la Audiencia Nacional
- Joaquín Sánchez-Covisa, Fiscal de Extranjería

Tribunal Supremo de Justicia

- Carlos Lesmes Serrano, Presidente del Tribunal Supremo y del Consejo General del Poder Judicial

- Juan José López Ortega, Presidente de la Sección Cuarta (de lo Penal y Menores) de la Audiencia Provincial de Madrid [Ha sido miembro del Comité contra la Desaparición Forzada]
- María José García-Galán San Miguel, Magistrada de la Sección Cuarta (de lo Penal y Menores) de la Audiencia Provincial de Madrid

Instituto de Medicina Legal y Ciencias Forenses

- Rafael M. Bañon González, Director del Instituto de Medicina Legal y Ciencias Forenses
- José Luis Prieto, Instituto de Medicina Legal y Ciencias Forenses
- Eduardo Andreu, Instituto de Medicina Legal y Ciencias Forenses
- Vidal Santos, Director del Instituto de Medicina Legal de Órganos Judiciales Centrales
- Cristina Romero, médico forense

Mecanismo nacional de prevención

- Francisco Fernández Marugán, Defensor del Pueblo en funciones
- Concepción Ferrer, Defensora del Pueblo Adjunta
- Bartolomé José Martínez García, Jefe de la Unidad Mecanismo Nacional de Prevención
- José Manuel Sánchez Saudinós, Secretario General del Defensor del Pueblo
- Arantxa Díaz Ugarte, personal técnico adscrito a la Unidad mecanismo nacional de prevención
- Esther Pino Gamero, personal técnico adscrito a la Unidad mecanismo nacional de prevención
- Rocío Monterroso Barrero, personal técnico adscrito a la Unidad mecanismo nacional de prevención
- Santiago Yerga Cobos, personal técnico adscrito a la Unidad mecanismo nacional de prevención
- Silvia Martín Honrubia, personal técnico adscrito a la Unidad mecanismo nacional de prevención
- Sergio Hernández Moya, administrativo adscrito a la Unidad mecanismo nacional de prevención, encargado de videofilmación
- Carmen Comas-Mata Mira, técnica jefe de relaciones internacionales del Defensor del Pueblo
- Fernando Herrero Camps, técnico de seguridad y justicia, experto en prisiones
- Vicenta Esteve Biot, vocal del Consejo Asesor del mecanismo nacional de prevención, a propuesta del Consejo General de Colegios de Psicólogos de España
- Pau Pérez Sales, técnico externo consultor especialista en psiquiatría
- Antonio Muñoz Faraldo, técnico de la Unidad mecanismo nacional de prevención
- Milagros Fuentes González, vocal del Consejo Asesor del mecanismo nacional de prevención, a propuesta del Consejo General de la Abogacía Española
- Inmaculada Martínez Torre, vocal del Consejo Asesor del mecanismo nacional de prevención, a propuesta de la Organización Médica Colegial
- Julián Carlos Ríos Martín, vocal del Consejo Asesor del mecanismo nacional de prevención

B. Naciones Unidas

- Marta García, Jefa Unidad de Protección, Alto Comisionado de las Naciones Unidas para los Refugiados
- María Valles, Unidad de Protección, Alto Comisionado de las Naciones Unidas para los Refugiados

C. Organismos de la sociedad civil

Madrid

- Asociación Libre de Abogadas y Abogados
- Agrupación de los Cuerpos de la Administración de Instituciones Penitenciarias (ACAIP)
- SOS Racismo
- Salud Mental España
- Fundación Abogacía Española
- Asociación Pro-Derechos Humanos España
- Red Acoge
- Comisión Legal SOL, Coordinadora para la Prevención y Denuncia de la Tortura (CPDT)
- Women's Link Worldwide
- Subcomisión Derecho Penitenciario, Consejo General Abogacía Española
- Coordinadora Catalana para la prevención y denuncia de la Tortura (IRIDIA)
- Instituto Internacional para la Acción No-Violenta (NOVACT)
- Comisión Española de Ayuda al Refugiado (CEAR)
- Amnistía Internacional

Melilla

- Cruz Roja Española
- Movimiento por la Paz
- Melilla Acoge
- Asociación Pro Derechos de la Infancia (PRODEIN), Melilla

Bilbao

- Etxerat
- SOS Racismo Bizkaia
- CPDT
- Sare
- Jaiki Hadi
- Salhaketa Araba
- Salhaketa Bizkaia

Anexo II

Lugares de privación de libertad visitados

A. Establecimientos penitenciarios

- Centro Penitenciario Soto del Real (Madrid) (conjunta con el mecanismo nacional de prevención)
- Centro Penitenciario de Picassent (Valencia)
- Centro Penitenciario de Melilla (Melilla)
- Centro Penitenciario Basauri (Bilbao)
- Centro Penitenciario de Alhaurín de la Torre (Málaga)
- Centro Penitenciario de San Sebastián
- Centro Penitenciario de Puerto I (Cádiz)
- Centro Penitenciario de Puerto II (Cádiz)

B. Establecimientos policiales

- Comisaría del Cuerpo Nacional de Policía Puente Vallecas (Madrid)
- Comisaría del Cuerpo Nacional de Policía Leganitos (Madrid)
- Comisaría del Cuerpo Nacional de Policía El Retiro (Madrid)
- Comisaría del Cuerpo Nacional de Policía (Melilla)
- Comisaría de la Guardia Civil (Melilla)
- Comisaría de la Guardia Civil de Almusafes (Valencia)
- Comisaría de la Policía Local de Torrent (Valencia)
- Comisaría de la Ertzaintza de Sestao (Vizcaya)
- Comisaría de la Ertzaintza de San Sebastián (Vizcaya)
- Puesto Fronterizo de Beni Enzar (Melilla)
- Comisaría de la Policía Local (Melilla)
- Comisaría de la Policía Local (Málaga)
- Comisaría del Cuerpo Nacional de Policía Plaza Manuel Azaña (Málaga)

C. Establecimientos del Poder Judicial

- Calabozos juzgados (Madrid)
- Calabozos Audiencia Nacional (Madrid)

D. Establecimientos de migrantes

- Centro de Internamiento de Extranjeros (Madrid)
- Centro de Internamiento de Extranjeros (Valencia)
- Centro de Internamiento de Extranjeros (Algeciras)
- Centro de Estancia Temporal de Inmigrantes (Melilla)
- Aeropuerto Adolfo Suárez Madrid-Barajas, Terminal 1 (Madrid)

- Aeropuerto Adolfo Suárez Madrid-Barajas, Terminal 4 (Madrid)

E. Establecimientos de menores

- Centro de Internamiento de Menores (Melilla)

F. Instituciones psiquiátricas

- Hospital psiquiátrico de Bétera (Valencia)
-