



**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*, **

Addendum

Replies of the national preventive mechanism

[Date received: 27 July 2018]

* In accordance with article 16 (1) of the Optional Protocol, the report of the Subcommittee was transmitted confidentially to the national preventive mechanism on 15 March 2018. On 27 July 2018, the national preventive mechanism communicated its decision to make the report and its responses public.

** The present document is being issued without formal editing.



I. Introduction

1. The Subcommittee visited Spain from 15 to 26 October 2017. On 15 March 2018, it confidentially transmitted its report on the visit to the national preventive mechanism, giving the mechanism six months in which to issue an official response. At the same time, the Subcommittee sent a report to the Spanish authorities with recommendations on the general situation of the places of deprivation of liberty that were visited. That report will also remain confidential until such time as those authorities reach a decision concerning its publication.
2. In its report (para. 31), the Subcommittee recommends that the national preventive mechanism should make public the report submitted. Under the Optional Protocol, the decision on whether to do so is at the discretion of the national preventive mechanism, which is glad to comply with the recommendation by attaching the full text to its response.
3. The Subcommittee also requests the mechanism to inform it of the steps that it has taken to implement the recommendations submitted to it. For this reason, part II of this document includes the response of the national preventive mechanism in its entirety. The national preventive mechanism requests the Subcommittee to ensure that its report is always accompanied by this response, so that all readers will be fully aware of the mechanism's position on the issues addressed.

II. Response of the national preventive mechanism to the report of the Subcommittee

4. The national preventive mechanism thanks the Subcommittee and the delegation that represented it for its decision to visit Spain and for including among the goals of the visit those of providing "advice and technical assistance to the national preventive mechanism" and "strengthening the capacity and the mandate of the national preventive mechanism" (para. 5). The recommendations made by the Subcommittee have been and will be the subject of very careful consideration, notwithstanding the comments made below, which the national preventive mechanism considers necessary in order to place its mandate and institutional profile in context.
5. In paragraph 12 of its report, the Subcommittee states that a joint visit was made to a detention centre, namely, the Madrid V (Soto del Real) Prison in the Community of Madrid. It also states that, 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.
6. It must be pointed out that, when the schedule for the visit was drawn up, the national preventive mechanism warned that spending only two hours at the place of deprivation of liberty, as planned, was very different from the usual approach taken by the mechanism to an establishment of this kind, where it is necessary to spend between two and three full working days. Indeed, the national preventive mechanism's team spent an average of over 13 hours in the 16 prisons that it visited in 2017.
7. In view of this situation, the national preventive mechanism did not consider the visit made with the Subcommittee to the Soto del Real Prison to be sufficient and proceeded to continue it at a later date (visit 78/2017).
8. The national preventive mechanism notes the positive assessment, contained in paragraph 15 of the Subcommittee's report, of the mechanism's decision to publish the Guide to Good Practices in the Use of Physical Restraints (2017) and agrees with the Subcommittee's view that the Guide should be widely disseminated. The mechanism intends to continue this line of work, which is focused on preparing case studies on issues of great practical significance for the various types of deprivation of liberty.
9. The Subcommittee's recommendations primarily concern issues that come under the heading "visibility and independence" (paras. 17–20). The Subcommittee is of the view that

the mechanism has not managed to differentiate itself from the Ombudsman and that it requires its own visit methodology and dialogue. In the view of the Subcommittee, this results in the mechanism having “an extremely low profile in the eyes of persons deprived of their liberty, government authorities and civil society”. In the light of this situation, the Subcommittee recommends that the national preventive mechanism “should 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”. The following comments can be made about this issue:

- The requirements for the establishment of a mechanism of this type are set out in article 18 of the Optional Protocol and are wholly fulfilled by the Ombudsman. The first paragraph of that article refers to “functional independence”, that is, the need to be effectively fit for purpose. It was precisely this idea that inspired parliament’s decision to grant the status of national preventive mechanism to the Ombudsman, because the profile and the institutional guarantees by which this body is legally regulated ensure the highest level of independence. In fact, it would have been complicated to establish a new, similar body with the constitutional standing, breadth of investigative powers and legal guarantees that the Ombudsman enjoys.
- The Spanish legislature therefore decided to attribute the status of national preventive mechanism to the Ombudsman, which makes it difficult to countenance the idea that the mechanism should be clearly differentiated from this institution. This would be artificial and would mean disregarding the will of the legislators, who have full capacity to decide on the normative configuration of this body in domestic law.
- The advantages of allocating the role of the national preventive mechanism to the Ombudsman should also be considered. Far from giving rise to the problems outlined by the Subcommittee, this system allows for comprehensive and more coherent action that differentiates, at an operational level, the preventive dimension (pertaining to the national preventive mechanism) from the proactive dimension (addressed by the operational areas of the Ombudsman). In fact, when individual complaints are received in the course of a visit undertaken by the national preventive mechanism, they are referred to the competent unit in the Ombudsman’s Office, while the mechanism concentrates on analysing the general issues affecting each form of deprivation of liberty.
- Notwithstanding the above, the national preventive mechanism notes the proposals made by the Subcommittee in relation to the stepping up of advocacy and awareness-raising activities. To a large extent, such activities are already under way, including the production of materials, in various languages, on the specific nature of the mechanism’s mandate, the publication of annual reports and case studies and the adoption of identifying elements that highlight the mechanism’s specific role (through the use of its own colours, symbols or logos).

10. The Subcommittee also believes (paras. 18 and 19) that the budget allocated to the national preventive mechanism is insufficient and that the inclusion of this budget, “without differentiation, in the overall budget of the Office of the Ombudsman”, is problematic. In fact, the Subcommittee states that 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”. The Subcommittee also asserts that the mechanism does not have a large enough team of professionals to perform the national mandate assigned to it and requests that health-science specialists be recruited in order to strengthen the interdisciplinary nature of visits. The following comments can be made on these issues:

- The national preventive mechanism agrees that the operationalization of the mechanism took place against a backdrop of serious economic constraints. In fact, its launch could be guaranteed only because its mandate was assumed by an institution that already had a budget and sufficient experience to begin undertaking the actions concerned, which it has continued to execute for seven years with financial and material resources that are clearly insufficient. For this reason, the mechanism endorses the Subcommittee’s request to the Spanish parliament to ensure

that the budget allocated to this function is in accordance with the scope of its mandate.

- With regard to the absence of a specific budget, the national preventive mechanism again wishes to highlight the advantages in terms of independence arising from the fact that the budget is set directly by the legislature without the participation of the other branches of Government. This is a guarantee against any attempts to restrict the operating capacity of this supervisory institution.
- On the other hand, the specificity of the Ombudsman's budget (Service 05 of the Parliament budget line), within the overall framework of the national budgets, is already sufficiently detailed, and an analysis of the Ombudsman's successive budgets since the implementation of the national preventive mechanism reveals that, within the context of the budgetary constraints common to the entire period, steps have been taken to ensure the availability of resources and even to gradually increase the human resources (both staff members and outside specialists) available to the mechanism.
- The national preventive mechanism notes the Subcommittee's recommendation to consolidate the team of health-science specialists and will endeavour, as far as budgetary resources permit, to recruit permanent staff members with this professional profile. For reasons of efficiency, however, it would be advisable to continue and even strengthen the practice followed to date of using outside specialists from various branches of the health sciences or, where necessary, other fields, according to the circumstances and objectives of each visit. Thanks to this system, in which 22 external experts (principally forensic doctors, psychiatrists and psychologists) have taken part since the national preventive mechanism first started operating, 107 multidisciplinary visits have been carried out, representing 14.3 per cent of the total number of visits. This is considered to be the best way of optimizing resources and, at the same time, adequately meeting the requirements for technical assistance in different specialist areas, which would be difficult to fulfil with regular staff alone.

11. Regarding the methodology for conducting interviews with persons deprived of their liberty, the Subcommittee recommends (para. 21) that interview techniques should be reviewed and updated, as little emphasis was placed on confidentiality, explaining the mandate of the national preventive mechanism and safeguarding against the risk of reprisals. In the view of the Subcommittee, the interviews observed were not sufficiently open, with the interviewer sometimes asking leading questions. The following comments can be made in relation to these issues:

- The national preventive mechanism believes that the Subcommittee is right to call attention to these issues. However, it should be noted that many of the views put forward by the Subcommittee are largely linked to the conditions, mentioned above, under which the visit with the Subcommittee took place.
- In its everyday work, the mechanism tries to conduct its interviews in suitable places and seeks to create trusted areas within them in which persons deprived of their liberty feel safe to express themselves. Similarly, in larger facilities, the persons to be interviewed are selected following an examination of files and other documentation (disciplinary reports, medical records, etc.) or after a general survey has been carried out that allows a priority to be established on the basis of the objectives of the visit. Practical measures are also taken to avoid, to the extent possible, linking the testimonies received with the persons interviewed. Several of these techniques could not be implemented in the two-hour visit undertaken when the Subcommittee's delegation accompanied the national preventive mechanism's team.
- The particular conditions in which the Subcommittee's delegation took part in the visit also explain the possible confusion on the part of persons deprived of their liberty regarding the actions of the national preventive mechanism and the mechanisms for the analysis of individual complaints by the Ombudsman (paras. 24 and 25). It is perfectly understandable that any persons deprived of their liberty who

have filed a complaint with the Ombudsman should ask persons connected with the institution about the handling of their complaint in order to obtain first-hand information. In such cases, the national preventive mechanism informs the interested parties that these matters are handled by another department and provides the parties concerned with the means to directly consult the public information system set up by the Ombudsman. Notwithstanding the above, steps will be taken to improve the information provided to persons proposed for interview so that they can better distinguish between the remit of the Ombudsman, which may affect their particular situation, and that of the national preventive mechanism, which focuses on increasing transparency and introducing guarantees and improvements for the future.

- Measures taken to reduce the risk of retaliation have so far been based on protecting the identity of the source, to the extent possible, and enabling all the mechanism's informants to easily and safely report any problems that they encounter. It should be borne in mind that Spanish prison legislation guarantees that any oral or written communication with the Ombudsman may not be subject to intervention or censorship and that inmates in such centres have the right to submit sealed, written communications to this institution. The national preventive mechanism welcomes the Subcommittee's recommendation to adopt a broader strategy for the prevention of possible retaliation and will review its operating procedures to this end.

12. In view of the fact that a significant percentage of persons deprived of their liberty do not have sufficient mastery of the Spanish language, the Subcommittee stresses the mechanism's need for interpreters (para. 23). The mechanism is aware of this situation and therefore includes interpreters when scheduling visits that may involve meetings with persons who do not understand or speak Spanish or one of the other languages spoken by the members of the visiting team. In order to extend this coverage to any situation where it may prove necessary, all teams have been equipped with a telephone interpretation service, provided through mobile terminals, which currently covers 51 languages. This system also makes it possible to identify the language used by the interviewee when this is in doubt.

13. The Subcommittee requests the mechanism to 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 (para. 23). The institution has this material in Spanish and assists people, in various ways, with the filing of complaints about any matter. For its part, the mechanism has semi-structured questionnaires for interviews that have been translated into various languages or adapted through the use of pictograms for persons who have difficulty reading. However, it takes note of the Subcommittee's recommendations with a view to adopting the measures indicated.

14. Although the mechanism already has a system for following up on each visit which takes into account the recommendations (in the institution's own terminology, recommendations, suggestions, reminders of legal duties and warnings) formulated after each visit, the Subcommittee is of the view that constructive dialogue and monitoring of the implementation of the recommendations should be improved (paras. 26 and 27). It stresses the need for recommendations to be submitted more rapidly after each visit and for follow-up visits to be carried out more promptly.

- The mechanism is of the view that, while it is generally preferable not to delay the submission of conclusions and recommendations arising from a visit, consideration should be given to the need for careful and interrelated examination of the many items documented in a visit (physical documents, data extracted from computer applications, photographs, video and audio recordings, interviews, surveys and, where appropriate, reports produced by outside specialists, etc.). All this takes time. The mechanism's preventive work requires this kind of aggregate and reflective analysis to be carried out to ensure that its findings are not superficial ones that would diminish the quality of its reports and the credibility of the decisions issued.
- The mechanism agrees that it is necessary to increase the number and frequency of follow-up visits. Since the start of its operations, 29 per cent of visits have been of this nature. It is clear that this number should increase, but not at the cost of reducing the rate at which unvisited places of deprivation of liberty are covered. An

improvement in budgetary resources, in line with the Subcommittee's proposal, would make it possible to pay greater attention to this task.

- With regard to the monitoring of the recommendations made and the effectiveness of their implementation, the mechanism believes that it already has a powerful public information and analysis tool in the form of "follow-up" files on visits, which can be consulted by any interested person (see <https://www.defensordelpueblo.es/mnp/actividad/>). These files give a detailed account of the decisions and conclusions reached as well as the response provided by the authorities to each of them. They also include comments on the effective implementation of recommendations or suggestions accepted during follow-up visits. The mechanism is working on the design and implementation of an application that will allow it to manage and provide this information in summarized form, disaggregated by type of centre and place of deprivation of liberty, making it easier to monitor both the general situation of each centre and its development in respect of the issues identified by the mechanism.
- Within this framework, which will serve as an advanced analytical tool, the mechanism believes that, in the medium term, it will be possible to improve the monitoring of decisions and dialogue with the authorities responsible for the various places of deprivation of liberty in line with the Subcommittee's recommendations.

15. The Subcommittee also recommends strengthening the effective interaction of the mechanism with civil society and the offices of the ombudsman of the autonomous communities in the performance of its work (para. 28).

- The mechanism fully agrees that it is necessary to increase interaction with civil society and is taking steps to achieve this goal.
- With regard to the offices of the ombudsman of the autonomous communities, it should be noted that the Ombudsman initially proposed a multilateral collaboration agreement to establish a channel of close collaboration between it and its counterparts in the autonomous communities. The proposal was unsuccessful due to the objections raised by several ombudsmen, who argued, inter alia, that they feared losing their independence and were concerned about constraints on the resources needed to cope with the increased workload. In 2013, however, the decision was taken to invite members of staff belonging to the offices of the ombudsman of the autonomous communities to join the teams undertaking some of the visits. To the extent that this is acceptable to the institutions involved, this collaboration could be increased, provided that a code of conduct based on the existence of unified supervision and evaluation standards is maintained, along with mutual respect between institutions and an operational capacity that enables additional coordination commitments to be assumed and a unified public information system to be established.

16. Lastly, the Subcommittee encourages the national preventive mechanism to transmit its annual reports and reaffirms its readiness to assist the mechanism in achieving the common aim of preventing torture and ill-treatment (para. 30). For its part, the Spanish mechanism will continue to operate as it has done since its inception, forwarding annual reports and other publications to the Subcommittee at the same time as it sends them to parliament.

17. The national preventive mechanism is grateful to the Subcommittee for its willingness to offer its assistance in achieving the goal pursued by both bodies. The mechanism will take advantage of this offer as often as is necessary.