



CPT/Inf (2007) 28

**Report to the Spanish Government
on the visit to Spain
carried out by the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment (CPT)**

from 22 July to 1 August 2003

The Spanish Government has requested the publication of this report and of its response. The Government's response is set out in document CPT/Inf (2007) 29.

Strasbourg, 10 July 2007

CONTENTS

Copy of the letter transmitting the CPT’s report	5
I. INTRODUCTION.....	6
A. Dates of the visit and composition of the delegation	6
B. Establishments visited.....	7
C. Cooperation between the CPT and the Spanish authorities	8
II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED	9
A. Law enforcement agency establishments.....	9
1. Preliminary remarks	9
2. Ill-treatment	10
3. Safeguards against ill-treatment	12
a. introduction	12
b. access to a lawyer and notification of custody	12
c. access to a doctor	14
d. information on rights.....	15
e. custody records.....	15
f. inspections.....	16
4. Conditions of detention	16
5. Immigration detainees	19
a. introduction	19
b. safeguards against ill-treatment.....	20
c. conditions of detention in short-term ad hoc detention facilities	23
d. conditions of detention in long-term detention facilities	24
<i>i. preliminary remarks</i>	<i>24</i>
<i>ii. living conditions.....</i>	<i>24</i>
<i>iii. activities.....</i>	<i>26</i>
<i>iv. health care</i>	<i>26</i>
<i>v. staff</i>	<i>27</i>
<i>vi. other issues</i>	<i>28</i>

B. Prisons	30
1. Preliminary remarks	30
2. Ill-treatment	30
3. Prisoners subject to special regimes	31
a. prisoners considered to be “unadapted to an ordinary prison regime” or “dangerous”	31
b. prisoners separated from the general prison population for their own protection.....	33
4. Conditions of detention	34
a. material conditions	34
b. regime activities	35
5. Health-care services.....	36
6. Prisoners with drug-related problems.....	38
a. introduction	38
b. programmes for prisoners with drug-related problems in the establishments visited.....	38
7. Other issues.....	40
C. Penitentiary mental health-care facilities	42
1. Preliminary remarks	42
2. Ill-treatment	43
3. Living conditions of patients	43
4. Treatment.....	45
5. Restraint and seclusion	46
6. Staff resources	47
7. Suicide prevention	48
8. Safeguards	49
a. placement and discharge	49
b. other safeguards	51

D. Detention facilities for children	52
1. Preliminary remarks	52
2. Ill-treatment	53
3. Nivaria Closed Detention Centre for Children	53
4. Centres for unaccompanied foreign minors.....	55
a. living conditions.....	55
b. health care	56
c. staff issues	57
III. RECAPITULATION AND CONCLUSIONS	58

APPENDIX I:

LIST OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION	64
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APPENDIX II:

LIST OF THE AUTHORITIES AND NON-GOVERNMENTAL ORGANISATIONS WITH WHICH THE CPT'S DELEGATION HELD CONSULTATIONS.....	76
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Copy of the letter transmitting the CPT's report

Strasbourg, 16 March 2004

Dear Sir,

In pursuance of Article 10, paragraph 1, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, I enclose herewith the report to the Government of Spain drawn up by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to Spain from 22 July to 1 August 2003. The report was adopted by the CPT at its 53rd meeting, held from 1 to 5 March 2004.

I would draw your attention in particular to paragraph 181 of the report, in which the CPT requests the Spanish authorities to provide **within six months** a response setting out the action taken upon its visit report. The CPT would ask, in the event of the response being forwarded in Spanish, that it be accompanied by an English or French translation. It would be most helpful if the Spanish authorities could provide a copy of the response in electronic form.

I also wish to take this opportunity to offer the CPT's sincere condolences to the Spanish authorities for the great loss of life and many injuries suffered as a result of the bomb explosions in Madrid on 11 March 2004. Such heinous acts can only inspire revulsion.

Yours faithfully,

Silvia CASALE
President of the European Committee for
the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment

Don Fernando MANZANEDO GONZALEZ
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I. INTRODUCTION

A. Dates of the visit and composition of the delegation

1. In pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Convention”), a delegation of the CPT carried out a visit to Spain from 22 July to 1 August 2003. The visit formed part of the Committee’s programme of periodic visits for 2003. It was the CPT’s fourth periodic visit to Spain.¹

2. The visit was carried out by the following members of the CPT:

- Silvia CASALE, President of the CPT, Head of the delegation
- Roger BEAUVOIS
- Marija DEFINIS GOJANOVIC
- Petur HAUSSON
- Veronica PIMENOFF
- Ole Vedel RASMUSSEN.

They were supported by the following members of the CPT’s Secretariat:

- Hanne JUNCHER
- Cyrille ORIZET

and assisted by:

- James McMANUS, Professor at the Department of Law, University of Dundee, United Kingdom (expert)
- Danielle GREE (interpreter)
- Eduardo KAHANE (interpreter)
- Claude LORD (interpreter)
- Felix ORDEIG-COLE (interpreter)
- Melanie ROE (interpreter).

¹ The first three having taken place in April 1991, April 1994, and November/December 1998. The CPT has also carried out four ad hoc visits to Spain, in June 1994, January 1997, April 1997 and July 2001.

B. Establishments visited

3. The delegation visited the following places:

Law enforcement agency establishments

National Police

Seville Police Headquarters

Alicante and Alicante North Police Stations

Algeciras, Jerez de la Frontera, and Sanlucar de Barrameda Police Stations (Cadix)

Playa de Las Americas, La Laguna, Reina Sofia Airport and Santa Cruz South district Police Stations (Tenerife)

Civil Guard

Civil Guard Headquarters, Ceuta

Civil Guard Headquarters, Puerto Rosario, Fuerteventura

Civil Guard Headquarters, Santa Cruz, Tenerife

Civil Guard Headquarters, Torrevieja (Alicante)

Municipal police

Algeciras and Sanlucar de Barrameda Local Police detention facilities (Cadix)

Lebrija Local Police detention facilities (Seville)

Establishments for foreigners

Las Eras National Police Holding Facility for Foreigners, Algeciras

Isla de las Palomas Civil Guard Holding Facility for Foreigners, Tarifa

Algeciras National Police Detention Centre for Foreigners

El Matorral National Police Detention Centre for Foreigners, Fuerteventura

Fuerteventura Airport National Police Detention Centre for Foreigners

Prisons

Tenerife II Prison

Villabona Prison, Asturias

Penitentiary Psychiatric Hospital, Alicante

Penitentiary Psychiatric Hospital, Seville

Detention facilities for Children

Nivaria Closed Detention Centre for Children, Tenerife

San Antonio Centre for Children, Ceuta

Llanos Pelados Immediate Admission Centre for Foreign Children, Fuerteventura

The delegation also paid brief visits to Casillas del Angel Children's Home in Fuerteventura and to the facilities of the Order of the Hermanos Franciscanos de Cruz Blanca in Algeciras

C. Cooperation between the CPT and the Spanish authorities

4. The cooperation received by the CPT's delegation both before and during the visit was very good. The delegation gained rapid access to all places of detention and officials were in many cases aware of the possibility of a visit by the Committee.

5. During the visit, the CPT's delegation held fruitful discussions with Angel ACEBES PANIAGUA, Minister for the Interior, and with Ignacio ASTARLOA HUARTE-MENDICOA, Secretary of State for Security, Jaime Ignacio GONZALEZ GONZALEZ, Government Representative for Foreigners and Immigration, and María Dolores de COSPEDAL GARCIA, Undersecretary of State at the Ministry of the Interior. In addition, the delegation met other senior officials from the Ministry of the Interior, as well as senior officials from the Ministry of Justice and representatives from the Office of the State Public Prosecutor. The delegation also met Enrique MUGICA HERZOG, Ombudsman (Defensor del Pueblo).²

6. As regards the more substantive aspects of cooperation, following the 2001 visit, the CPT indicated that the Spanish authorities had not yet implemented certain of its key recommendations concerning the protection of persons detained by law enforcement officials, in particular as regards the reinforcement of the three rights which should be offered to such persons as from the very outset of their custody (the right of access to a lawyer, the right of those concerned to have the fact of their detention notified to a close relative or third party of their choice, and the right to a medical examination by a doctor)³.

The CPT is pleased that matters have since taken a more positive turn. In the course of the 2003 visit, the Minister for the Interior informed the CPT's delegation that the authorities would take whatever steps were necessary to implement, in law and in practice, the Committee's recommendations concerning the fundamental safeguards to be accorded to persons deprived of their liberty by law enforcement officials. The CPT welcomes this important and unequivocal commitment by the Spanish authorities; it looks forward to receiving details of the concrete steps being taken (cf. paragraph 23).

² The complete list of authorities and non-governmental organisations with which the delegation held talks is set out in Appendix II to this report.

³ Cf. CPT/Inf (2003) 22, paragraph 4.

II. FACTS FOUND DURING THE VISIT AND ACTION PROPOSED

A. Law enforcement agency establishments

1. Preliminary remarks

7. The basic rules concerning detention by the law enforcement agencies have not changed since the CPT's first visit to Spain in 1991⁴. Criminal suspects may be held in custody by such agencies for up to 72 hours, which, in certain cases (e.g. persons suspected of terrorist-related offences), can be extended for a further 48 hours⁵.

Foreign nationals may also be detained, under aliens legislation, by the law enforcement agencies for up to 72 hours, and may remain in custody for a further forty days, on the basis of a judicial decision, pending the processing of their case or the enforcement of an expulsion order. Such long-term detention takes place in dedicated National Police detention facilities (cf. paragraphs 52 to 70).⁶

8. During the 2003 visit, the CPT's delegation visited a number of National Police and Civil Guard establishments (under the authority of the Ministry of the Interior), including premises used by those agencies on an ad hoc basis for holding foreign nationals and processing their cases when ordinary detention facilities are full, and three long-term detention facilities for foreigners. The delegation also visited Local Police establishments (under the authority of each municipality).

9. It should be noted at the outset that Spain's geographical location as part of the southern border of the European Union attracts very large numbers of foreign nationals seeking unauthorised entry into the country (and Europe). According to the delegation's observations, the resources allocated to deal with this influx are quite inadequate; as a consequence, the many foreigners being arrested are held in sub-standard conditions and the processing of their cases is characterised by serious flaws (cf. paragraphs 37 to 51).

⁴ Cf. CPT/Inf (96) 9, Part I, Appendix II.

⁵ Cf. Spanish Constitution, Article 17 (2), and Code of Criminal Procedure, Articles 520 and 520 bis.

⁶ Cf. CPT/Inf (2000) 5, paragraph 56, as well as Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration (as amended by Organic Laws 8/2000 and 11/2003), Articles 61 (1) (d), and 62 (2).

2. Ill-treatment

10. Most persons with whom the delegation spoke about their experience while in the custody of the law enforcement agencies indicated that they had been correctly treated.

However, some detained criminal suspects interviewed by the delegation indicated that they had been physically ill-treated by law enforcement officials.

11. The above-mentioned allegations concerned the Civil Guard and Local Police forces, and involved in the main slaps, punches and kicks to various parts of the body. Most of the allegations related to the time of arrest (including after the person had been brought under control), or during transport to a law enforcement agency establishment. In certain cases, the delegation's doctors found that the persons concerned bore injuries consistent with their allegations.

By way of example, one person alleged that, following his arrest two nights previously, he had been thrown to the ground by Sanlucar de Barrameda Local Police officers and, while placed in a police vehicle in handcuffs, hit by them in the face and ribs. When medically examined at a clinic shortly afterwards, the examining doctor noted that he displayed "excoriation on lip; excoriations left hemithorax, face; bruising left knee; minor wound dorsal point of right hand". The person concerned further alleged that the same officers, who had been present during the above-mentioned examination and had heard him complain to the doctor about his ill-treatment, had subsequently beaten him again. A medical examination by the delegation's doctors revealed a slightly swollen lower lip and reddish abrasions measuring from 1.5 x 0.3 cm to 1.5 x 0.5 cm, some with scabs, on the left side of the forehead, by the left ear, on the back of the right hand, on the left wrist, on the lower part of the right side of the chest and on the knees and lower legs. The injuries observed were consistent with the allegations made.

12. It should be added that, both before and after the visit, the CPT has continued to receive information from a variety of sources concerning allegations of ill-treatment of detained persons by law enforcement officials. The persistence of allegations of ill-treatment (on occasion of a severe nature) brought to the Committee's attention as regards both ordinary criminal suspects and persons detained in connection with terrorist-related activities is a source of considerable concern.

13. As regards immigration detainees, one foreign national interviewed by the delegation at the Algeciras Detention Centre for Foreigners alleged that, two days previously, while lying on the ground, he had been hit with a baton on the legs by National Police officers. An examination by a medical member of the delegation showed a swollen left ankle and a purplish contusion measuring 7 x 3 cm on the lower outer part of the left leg.

14. In the light of all the information at its disposal, **the CPT must reiterate the recommendation that law enforcement officials be reminded regularly and in an appropriate manner that the ill-treatment of detained persons is not acceptable and will be the subject of severe sanctions**⁷.

Further, the CPT has repeatedly stressed that no more force than is reasonably necessary should be used when effecting an arrest. More specifically, once apprehended persons have been brought under control, there can be no justification for their being struck.⁸ **Law enforcement officials should be reminded of these precepts.**

15. The best possible guarantee against ill-treatment is for its use to be rejected by law enforcement officials themselves. In addition to strict selection criteria at the time of recruitment of such officials, this implies the provision of adequate professional training; that training should be pursued at all levels of the law enforcement officials' hierarchy, and should be ongoing. **The CPT recommends that the Spanish authorities integrate human rights concepts into practical professional training for high-risk situations, such as the arrest and interrogation of suspects. This will prove more effective than separate courses on human rights.**

16. Another effective means of preventing ill-treatment by law enforcement officials lies in the diligent examination by the competent authorities of all complaints of such treatment brought before them and, where evidence of wrongdoing emerges, the imposition of appropriate disciplinary and/or criminal penalties. This will have a very strong deterrent effect. Conversely, if the relevant authorities do not take effective action upon complaints referred to them, those minded to ill-treat persons deprived of their liberty will quickly come to believe that they can act with impunity.⁹

In this connection, the CPT considers that the persons responsible for overseeing and carrying out investigations into possible ill-treatment by law enforcement officials should be independent from those implicated in the events. Further, such investigations should offer guarantees of effectiveness, promptness and expeditiousness.

The findings made during the 2001 visit, where this subject was examined in depth, clearly showed the need to have in place complaints procedures which comply with the criteria identified above. In their subsequent response, the Spanish authorities indicated that they consider current mechanisms to be fully adequate.¹⁰ In the CPT's opinion, that position is untenable.

The CPT reiterates its recommendation that consideration be given to creating a fully independent investigating agency to process complaints against law enforcement officials; such a body should have the power to instigate disciplinary proceedings against law enforcement officials and to refer cases to the judicial authorities which are competent to consider whether criminal proceedings should be brought.¹¹

⁷ Cf. CPT/Inf (96) 9, Part II, paragraph 21, and CPT/Inf (98) 9, paragraph 47.

⁸ Cf. CPT/Inf 2000 (5), paragraph 13.

⁹ Cf. CPT/Inf (96) 9, Part II, paragraph 23, and CPT/Inf (2003) 22, paragraphs 19 et seq.

¹⁰ Cf. CPT/Inf (2003) 23, page 26.

¹¹ Cf. CPT/Inf (2003) 22, paragraph 33.

3. Safeguards against ill-treatment

a. introduction

17. The CPT places particular emphasis on three fundamental safeguards to be offered to persons detained by law enforcement officials - the rights of such persons to inform a close relative or another third party of their choice of their situation, to have access to a lawyer, and to have access to a doctor. It is equally essential that persons detained by law enforcement agencies be informed without delay of all their rights.

The functioning of the above-mentioned rights has been at the centre of the CPT's ongoing dialogue with the Spanish authorities for more than a decade.

b. access to a lawyer and notification of custody

18. The CPT has repeatedly recommended that persons detained by the Spanish law enforcement agencies be granted the right of access to a lawyer as from the outset of their detention, and that the period of time for which such persons may be denied the right to have the fact of their detention and the place in which they are being held made known to a relative or other person of their choice be substantially shortened (to a maximum of 48 hours).

In 1998, the Spanish authorities gave a clear undertaking to take action upon these recommendations, which, however, they subsequently appeared to withdraw.¹² In the report on the 2001 visit, the CPT concluded that the existing legal framework failed to provide an effective set of safeguards against ill-treatment for persons deprived of their liberty by the law enforcement agencies, in the terms advocated by the Committee.¹³ At the time of the 2003 visit, the situation remained unchanged.

19. The CPT has made it clear that the objective of the fully-fledged right of access to a lawyer, as advocated by the Committee, is not linked to issues of due process or the right to a defence; it is aimed at preventing ill-treatment. For this safeguard to be effective, access to a lawyer must be guaranteed as from the very outset of custody and the lawyer and the detained person must be able to meet in private.¹⁴

¹² Cf. CPT/Inf (2000) 5, paragraph 21, and CPT/Inf (2003) 22, paragraph 8.

¹³ Cf. CPT/Inf (2003) 22, paragraph 17.

¹⁴ Cf. CPT/Inf (2000) 5, paragraph 19.

20. The delegation which carried out the 2003 visit again found that, without exception, detained persons first met with a lawyer when they made a formal statement to law enforcement officials, often hours after they had first been brought into custody. They were able to consult in private with a lawyer only after making such a statement.¹⁵ These findings were consistently borne out by the individual cases and records examined, and by the descriptions of law and practice given by all law enforcement officials of all ranks with whom the matter was discussed. Further, in certain of the establishments visited, the records examined showed that a considerable time could elapse (e.g. 12 hours or more) before law enforcement officials contacted a lawyer.

In the case of persons held *incommunicado*, the right of access to a lawyer is further restricted; such persons are denied the right to the presence of a lawyer of their own choice when making a formal statement, and cannot hold any consultation in private with their officially-appointed lawyer, even after the formal statement has been made.¹⁶

21. As regards notification of custody, the persons interviewed during the visit who were or had been in the custody of the law enforcement agencies (all detained in connection with ordinary criminal offences or under aliens legislation), and who had requested that a relative or other person be informed of their situation, indicated that this had been done without delay. Moreover, the measures taken pursuant to such requests had been properly recorded. The CPT welcomes this.

22. Persons held *incommunicado* are denied the exercise of the right to have the fact of their detention and the place in which they are being held made known to a relative or other person of their choice, in principle for up to five days.

However, reference should be made to certain amendments to the Code of Criminal Procedure introduced since the CPT's visit¹⁷. These permit *incommunicado* detention in prison by order of the competent judge for periods of up to ten days in the case of persons detained in connection with certain offences (e.g. related to terrorism or organised crime), with the possibility of a further period of *incommunicado* detention of up to three days. This would appear to bring to a total of eighteen days the maximum period during which persons can be held in secret in so far as their family and friends are concerned.

23. Against this background, the CPT is pleased to note that, during discussions held at the outset of the 2003 visit, the Minister for the Interior stated that the Spanish Government would take "whatever steps are necessary" to ensure that detained persons' fundamental rights, as understood by the Committee, are guaranteed in law and in practice as from the very outset of custody.

¹⁵ Cf. Code of Criminal Procedure, Article 520 (6) (c).

¹⁶ The CPT has noted that, by virtue of Article 17 (4) of Organic Law 5/2000 on the criminal responsibility of minors, the application of the legal provisions on *incommunicado* detention (i.e. Articles 520 bis and 527 of the Code of Criminal Procedure) has been extended to persons under 18 years old.

¹⁷ Cf. Organic Law 13/2003 of 24 October, and Articles 509 and 510 of the Code of Criminal Procedure, as amended.

The CPT would like to receive detailed information concerning the concrete measures being taken pursuant to this firm and unambiguous commitment to implement in full the Committee's recommendations concerning the rights of access to a lawyer and notification of custody¹⁸.

c. access to a doctor

24. The right for detained persons to have access to a doctor appeared on the whole to function in a satisfactory manner.

However, one person detained at Algeciras National Police Station complained that his request to be seen by a doctor had been turned down by police officers. Further, several persons interviewed stated that they had been medically examined in the presence of law enforcement officials, and the delegation observed that, on occasion, the latter had free access to medical documents kept on police premises. Such practices are not in conformity with the requirements of medical confidentiality and may place detained persons at (further) risk (cf. paragraph 11, second sub-paragraph).

The CPT recommends that measures be adopted to ensure that medical confidentiality is fully respected in practice. More particularly, medical examinations of detained persons must be conducted out of the hearing and, unless the doctor concerned expressly requests otherwise in a given case, out of the sight of law enforcement officials¹⁹. It goes without saying that the officials concerned should, when appropriate, fully apprise the doctor of any relevant prior behaviour on the part of the detained person. It is then for the doctor, not the law enforcement officials, to judge the potential danger involved and whether it justifies the medical examination exceptionally being conducted within the sight of such officials.

Further, the results of every examination, as well as any relevant statements by the person in custody and the doctor's conclusions, are to be recorded in writing by the doctor and made available to the person in custody and his lawyer.

25. In addition to the right available to all persons detained by the law enforcement agencies to be examined by a state-appointed forensic doctor, those who are not held incommunicado also in principle have the right to be examined by a doctor of their own choice (at their own expense). **The CPT would recall its recommendation that persons held incommunicado also be guaranteed the right to be examined by a doctor of their own choice, it being understood that such a second examination may take place in the presence of a state-appointed doctor²⁰.**

The CPT would also like to be informed of action taken to adopt its proposed amendments to the form used by doctors performing forensic functions, and to ensure that the form is actually used by such doctors.²¹

¹⁸ Cf. in particular CPT/Inf (2003) 22, paragraph 18.

¹⁹ Cf. more recently CPT/Inf (2000) 3, paragraph 54.

²⁰ Cf. CPT/Inf (2003) 22, paragraph 18.

²¹ Cf. CPT/Inf (2000) 5, paragraph 25, and CPT/Inf (2003) 22, paragraph 18.

d. information on rights

26. Detained persons were systematically provided with oral information about their rights and shown a sheet of paper setting them out. However, the aim should be for law enforcement officials to provide the information in a manner which ensures that detained persons fully understand their rights and are able to exercise them effectively. The practice observed left something to be desired in this regard.

The CPT recommends that a form setting out detained persons' rights in a straightforward manner be systematically given to such persons at the very outset of their deprivation of liberty. The form should be available in an appropriate range of languages. Further, it should be indicated unequivocally that a state-appointed lawyer is free of charge for the detained person.

In this connection, **the CPT would also recall its recommendation that the form currently being used to inform detained persons of their rights be amended in order to ensure that all detained persons (including those being held incommunicado) are expressly informed of their right to be examined by a doctor of their own choice (at their own expense).**

e. custody records

27. The requirement that the fact of a person's deprivation of liberty by a law enforcement agency be recorded without delay is another valuable safeguard against ill-treatment. The delegation's examination of custody records revealed that there is room for improvement in this area. At several law enforcement agency facilities, it was not uncommon for the dates and times of release/transfer from law enforcement agency custody to be omitted.

The CPT recommends that law enforcement officials be reminded of the need to keep accurate records. The failings observed also show the importance of the authorities developing a single and comprehensive custody record to be kept for all persons held in law enforcement agency establishments. **The CPT reiterates its recommendation in this respect²².**

28. The existence of a "custody officer" (as distinct from an officer merely posted to the detention area) specifically selected and trained for the job, as suggested by the CPT²³, would also contribute to improving custody records. Given that such an officer would be accountable for the well-being of detained persons during the period of time spent in custody under his responsibility, it could also enhance the protection of such persons against ill-treatment. **The CPT would therefore renew its invitation to the Spanish authorities to explore the possibility of attributing the responsibility for the custody of detained persons to custody officers who are specifically selected and trained for that post.**

²² Cf. CPT/Inf (96) 9, Part II, paragraph 66.

²³ Cf. CPT/Inf (96) 9, Part II, paragraph 77.

f. inspections

29. The CPT has indicated in the past that systems for the inspection of law enforcement agency detention facilities by an independent authority are capable of making an important contribution towards the prevention of ill-treatment of persons held by law enforcement agencies and, more particularly, of ensuring satisfactory conditions of detention²⁴. To be fully effective, the visits by such an authority should be both frequent and unannounced, and the authority concerned should be empowered to discuss in private with detained persons.

In response, the authorities indicated that the office of the Ombudsman carries out visits to places falling within its mandate²⁵. However, while those visits are to be welcomed, it is clear that the office of the Ombudsman will not be in a position to visit a given law enforcement agency establishment on a frequent basis; consequently, the Ombudsman cannot replace the type of inspection mechanism suggested by the CPT. Further, as had been the case during previous visits, the CPT's delegation found no evidence to suggest that the judicial or prosecuting authorities are conducting sustained on-the-spot supervision of places of detention²⁶.

Consequently, **the CPT reiterates its invitation to the Spanish authorities to establish a system of frequent and unannounced visits to law enforcement agency detention facilities by an independent authority.**

4. Conditions of detention

30. Conditions in **Lebrija** and **Sanlucar de Barrameda Local Police Stations** were on the whole satisfactory for short-term detention (a maximum of a few days). The cells were of an adequate size (one person in 5 to 7 m²), and were well lit (including access to natural light) and ventilated (e.g. cell windows at Lebrija could be opened). As in all permanent law enforcement agency establishments visited, cells were equipped with a means of rest (plinths), and mattresses and blankets were available for detained persons. However, at Lebrija, in-cell lavatories were in need of repair and the cells' state of cleanliness left something to be desired.

31. As regards the National Police, conditions were generally acceptable at **Seville Headquarters** and at **Alicante North, La Laguna** and **Sanlucar Police Stations**. Cells were adequately lit (except at the Seville Headquarters) and ventilated, but had no access to natural light; they were clean and in a reasonable state of repair.

²⁴ Cf. CPT/Inf (2000) 5, paragraphs 29 to 30.

²⁵ Cf. CPT/Inf (2000) 6, page 23.

²⁶ Cf. CPT/Inf (2000) 5, paragraph 30.

Detained persons fared less well at **Jerez** and **Algeciras Police Stations**, and at the **Reina Sofia Airport**, **Playa de las Americas** and **Santa Cruz Police Stations** in Tenerife. In addition to limited or no access to natural light, cells had no means of ventilation and were very dirty. Further, at Playa de las Americas, a person was being held in a cell where the artificial lighting was not functioning.

At **Alicante Central Police Station** - apparently about to undergo major renovation - cells had no artificial lighting and no (or very limited) access to natural light; they were poorly ventilated, dirty and dilapidated, and the sanitary facilities were in need of repair. The situation in two cells (said to be used for dangerous detainees) gives rise to particular concern. They had solid doors (unlike other National Police cells that had bars) which, when closed, plunged the cells into complete darkness; they had no call system and the office used by the officer supervising the detention facility was not within earshot.

32. Concerning the Civil Guard, at **Santa Cruz Headquarters**, an establishment brought into service six months previously, conditions of detention were generally satisfactory. The cells, which had rarely been used, had good access to natural light and ventilation, as well as artificial lighting (from spotlights in the corridor). The situation was also on the whole adequate in the section for women and juveniles at **Torreviaja Headquarters**; in particular, cells were well lit and ventilated, had some access to natural light and were clean.

Conditions in the other Civil Guard establishments visited left much to be desired. Cells in **Ceuta Headquarters'** detention facilities (in the main barracks and at the port) had very limited access to natural light, and the cells at the port were very dirty. At **Puerto Rosario**, cells also had limited access to natural light and no means of ventilation. The situation was entirely unacceptable in the section for male adults at **Torreviaja Headquarters**, where cells had neither artificial lighting nor access to natural light, nor ventilation.

33. In many of the National Police and Civil Guard establishments visited, the situation was made worse by inadequate cell sizes and/or excessive occupancy levels.

By way of example, at Sanlucar National Police Station, and Puerto Rosario and Santa Cruz Civil Guard Headquarters, the delegation found cells measuring a mere 2.3 to 3.4 m². Further, while cells at the Ceuta Civil Guard Headquarters' barracks and port detention facilities were larger than those seen at the time of the 1997 visit²⁷, official capacities for overnight accommodation were far too high (e.g. three persons to a 5 m² cell) and the records examined by the delegation revealed that, on occasion, even those capacities were exceeded. At Alicante Central Police Station, the delegation was told that cells measuring 15 m² could be used to hold up to six persons overnight.

As indicated in previous visit reports, cells measuring around 3 m² are only suitable for temporary holding purposes (i.e. for a maximum of a few hours); they should not be used to accommodate detained persons overnight. Further, the CPT considers that cells intended for single occupancy for stays in excess of a few hours should be in the order of 7 m² and that multiple occupancy cells should offer at least 4 m² per person.²⁸

²⁷ Cf. CPT/Inf (98) 9, paragraph 48.

²⁸ Cf. inter alia CPT/Inf (1996) 9, part II, paragraphs 35, 38 and 51.

34. The CPT wishes to make certain additional remarks concerning the law enforcement agency detention facilities visited and the transport of detained persons. It should be noted that all of these issues have been raised by the Committee following previous visits.

Since the 1997 visit, the Civil Guard detention facilities at Ceuta's Port had been fitted with a semi-partitioned lavatory designed for the recovery of substances concealed within the body. However, according to the information provided to the delegation, it remained the case that detained persons diagnosed with *body-pack syndrome* were held for up to 72 hours awaiting discharge of such substances without close medical supervision, despite the risks involved (of intestinal obstruction or perforation of the packaging of the substance resulting in acute poisoning).

A Civil Guard vehicle used for the *transport of detained persons* examined by the delegation contained 14 closed cabins. There was sufficient artificial and natural light and ventilation. However, the cabins were too small for their intended occupancy rate (scarcely 1 m² for two persons). Further, there were no means of ensuring the rapid evacuation of detained persons in case of an accident.

With the exception of Alicante Central Police Station, the only *food* provided to detained persons was sandwiches, regardless of the length of their detention.

None of the permanent law enforcement agency establishments visited had facilities for *outdoor exercise* for detained persons. This is particularly regrettable given that some of the facilities were new.

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35. The CPT recommends that conditions of detention in the establishments visited be reviewed and existing shortcomings remedied, having regard to the remarks made in paragraphs 30 to 33. Particular attention should be paid to cell lighting, ventilation and hygiene; steps must also be taken to ensure that the criteria advocated by the Committee concerning cell sizes and occupancy levels are respected. Further, arrangements are needed to ensure that detained persons have ready access to decent sanitary facilities at all times, including at night. Action is also required to address the deficiencies highlighted in paragraph 34, in particular as regards the provision of facilities for outdoor exercise.

36. The information gathered since the CPT's first visit to Spain in 1991 clearly shows that there is a need for the Spanish authorities to review comprehensively the conditions of detention offered to persons detained by law enforcement agencies. The Committee has repeatedly recommended that the authorities establish standards for law enforcement agencies' detention facilities, taking account of its criteria²⁹. The CPT has noted that the authorities have affirmed their willingness to improve conditions of detention, in keeping, inter alia, with international standards; however, budgetary constraints are cited as a significant obstacle to upgrading law enforcement agency detention facilities³⁰.

In the light of the findings made during the 2003 visit, **the CPT reiterates its recommendation that the Spanish authorities review conditions of detention in the establishments of law enforcement agencies in general and when necessary take steps to improve them, without any further delay. In this connection, the CPT calls upon the authorities to establish standards for law enforcement agency detention facilities, taking account of the Committee's criteria; compliance with those standards and with instructions regarding conditions of detention should be effectively monitored.**

5. Immigration detainees

a. introduction

37. The National Police and Civil Guard detention facilities described above could be - and certain of them were being - used to accommodate immigration detainees. As already mentioned, the CPT's delegation also visited establishments used on an ad hoc basis to accommodate detained foreign nationals when ordinary law enforcement agency detention facilities are full (in case of a sudden influx of larger groups of foreign nationals), namely Isla de las Palomas Civil Guard Holding Facility (housed in a former military barracks within a fortress located on a barren and windswept peninsula off Tarifa) and Las Eras National Police Holding Facility (a purpose-built facility located in Algeciras).

38. The delegation also visited three national police long-term detention centres for foreigners - one in Algeciras and two in Fuerteventura (El Matorral and one located in the former arrivals' terminal at the airport) in which foreign nationals may be detained for up to forty days (cf. paragraph 7).

²⁹ Cells should be clean, of a reasonable size for the number of people they are used to accommodate, and have adequate lighting (i.e. sufficient to read by, sleeping periods excluded) and ventilation; preferably, cells should enjoy natural light. Further, cells should be equipped with a means of rest (for example, a chair or bench) and persons obliged to stay overnight in custody should be provided with a clean mattress and clean blankets. Persons in custody should be allowed to comply with the needs of nature when necessary, in clean and decent conditions, and be offered adequate washing facilities. They should have ready access to drinking water and be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day. Those detained for extended periods (twenty-four hours or more) should, where possible, be offered outdoor exercise every day (cf. CPT/Inf (98) 9, paragraph 49).

³⁰ Cf. CPT/Inf (2000) 6, page 35.

b. safeguards against ill-treatment

39. Immigration detainees should benefit from the safeguards set out in paragraph 17 above in the same way as other categories of persons deprived of their liberty by the law enforcement agencies. They should also be expressly informed, without delay and in a language they understand, of all their rights and of the procedure applicable to them.

40. At Las Eras Holding Facility, the CPT's delegation examined the manner in which Algeciras National Police officers implemented administrative procedures vis-à-vis a large number of recently arrived foreign nationals of sub-Saharan origin. The objective was to assess the operation in practice of the rights of foreign nationals detained by law enforcement agencies³¹. In fact, the proceedings observed revealed a number of shortcomings rendering those rights largely ineffective. The information gathered in Tenerife and Fuerteventura suggests that the approach there was comparable.

41. Police officers prepared files without interviewing the persons concerned, and without properly informing them of their rights and of the procedures applicable to them. There was no hint of individualised casework.

Following their taking into custody, foreign nationals were shown a sheet of paper setting out detainees' basic rights in English³²; some of its contents was subsequently repeated to groups of them in broken English or French by a person acting as an interpreter. No attempt was made to ascertain whether the persons concerned had understood what they were being told.

The delegation was informed that lawyers were called only once the police were ready to inform the persons concerned of their proposal for a decision (expulsion order) to be subsequently transmitted to the competent authority (government or deputy government delegate in the region); this took place some considerable time after the foreign nationals had first been detained. Detainees did not meet with their lawyer outside the presence of law enforcement officials and, in any event, due to linguistic barriers, communication between detainees and lawyers was very poor or non-existent. When the police informed detainees of their proposed decision, in groups of up to six persons at a time, the lawyers made no attempt to explain the steps that would follow.

³¹ As regards the procedures applicable, cf. Organic Law 4/2000 (as amended), Articles 20 to 22 and 50 et seq., as well as Royal Decree 864/2001, Articles 109 et seq.

³² Namely, the rights to notification of custody (including to their consular authorities), to be assisted by a lawyer and by an interpreter, and to be seen by a doctor.

Some of the persons were transferred to a designated detention centre for foreigners (cf. paragraphs 52 et seq.), pending completion of the proceedings. However, the majority were released before the formal taking of a decision in their case. They were provided with documents in Spanish indicating, inter alia, that, within 48 hours, they could make representations concerning the proposed expulsion order³³ and that, if they did not challenge the proposal, the case would automatically be decided as proposed by the police and they would be under an obligation to leave Spain within a certain period of time. The said documents also contained information about appeal possibilities (within the administrative hierarchy and subsequently to the competent courts). However, the fact that appeals against expulsion decisions appear not to have suspensive effect is a source of concern³⁴.

No attempt was made to explain the above to the detainees in a manner which they could understand; the delegation heard the interpreter at Las Eras - forced to try to perform a role properly belonging to the lawyers - giving groups of foreigners incomplete and misleading information about their status and prospects for remaining in Spain.

Throughout these proceedings, the detainees appeared to be confused and intimidated. The situation was made all the more difficult by police officers' aggressive demeanour towards detainees and by their shouting instructions (in Spanish) to foreigners or calling out their names in an incomprehensible way. It should be added that the persons concerned signed wherever they were told to, without understanding either the contents or the implications.

42. The situation described above is unacceptable. The conduct of the police proceedings, aimed at turning around rapidly a very large number of cases in the absence of suitable resources (in terms of immigration staff, lawyers and interpreters), flouts existing formal safeguards, including those designed to prevent the removal of persons to a country where they run a risk of torture or inhuman or degrading treatment or punishment, something which would be in violation of Spain's national and international legal obligations.

43. It should be added that, at the Algeciras Detention Centre for Foreigners, the delegation heard repeated allegations that police officers did not register detained persons under the nationalities indicated by them, apparently so as to facilitate their removal to certain countries amenable to receiving them.

44. The objective should be to ensure that detained foreign nationals are systematically informed fully and accurately in a language they understand of their rights and of the procedures being applied to them. They should also be provided with adequate information in writing; that information should be available in a wide range of relevant languages. Consideration might be given to developing the sheets currently being used which set out detainees' basic rights.

³³ Cf. Organic Law 4/2000 (as amended), Article 63.

³⁴ It should be noted that asylum applications entail the suspension of all other proceedings. That said, the delegation gathered no evidence to suggest any attempts on the part of law enforcement officials to identify potential asylum seekers.

Moreover, detained foreign nationals should have an effective right of access to a lawyer, as from the outset of custody, including the possibility to consult with the lawyer outside the presence of law enforcement officials. Lawyers should be in a position to explain to the persons concerned the options available to them and the lawyer's potential role in the proceedings. Interpreters should possess appropriate professional qualifications in the languages commonly used by the detained foreigners in question and should perform their functions in a satisfactory manner.

The CPT recommends that arrangements for handling cases of unauthorised entry into Spain by foreign nationals, especially cases involving foreign nationals arriving in large numbers (e.g. at the southern coasts of the country and in the Canary Islands), be reviewed as a matter of urgency, in the light of these remarks.

45. Arrangements to provide access to a doctor to detained foreign nationals at the outset of their custody in principle appeared to be satisfactory. However, at the time of the visit, the doctor and nurse attending the Isla de las Palomas Civil Guard facility were both on sick leave, and the detainees met by the delegation at that establishment (and subsequently at Las Eras National Police facility - cf. paragraphs 48 and 49) had only been seen by Red Cross volunteers, including medical students. In view of the often poor state of health of the detained foreign nationals (e.g. hypothermia, exhaustion, injuries, mental disorders), **the CPT would like to receive further information about the arrangements for medical and nursing cover at the above-mentioned two establishments.**

46. The CPT attaches considerable importance to law enforcement officials working with detained foreign nationals being carefully selected and receiving appropriate training. As well as possessing well-developed qualities in the field of interpersonal communication, the staff concerned should possess relevant language skills.

However, the delegation noted that National Police officers at Las Eras carrying out casework and performing custodial functions had not benefited from any specific training. A few officers had some knowledge of English or French. None appeared to know other languages commonly used by the foreign detainees. The vast majority of officers were quite unable to communicate with the persons in their custody; the delegation was told that, if needed, police officers relied upon other detained persons for interpretation.

The CPT recommends that increased emphasis be placed on improving the language skills of police officers assigned to case work or custody duties in respect of immigration detainees. Further, officials working in direct contact with such persons should undergo appropriate in-service training, including in interpersonal communication skills.

47. Having regard to the information gathered in the detention facilities for foreigners visited, the CPT wishes to recall, in this context, the recommendation that law enforcement officials be reminded of the need to keep accurate custody records (cf. paragraph 27).

c. conditions of detention in short-term ad hoc detention facilities

48. **Isla de las Palomas Civil Guard Holding Facility** was holding 43 foreign nationals of sub-Saharan origin (including 18 women and two young babies) apprehended in two groups some 24 and 60 hours earlier when attempting to enter Spain by boat.

The conditions offered to two female detainees with babies were quite acceptable. They were held in a separate unlocked room with good access to natural light and ventilation. The Red Cross had provided sheets, clothing and toys for the babies. However, as was the case in the other rooms in the establishment, the only means of rest consisted of a narrow ledge along the wall and mattresses placed directly on the floor. The room used to accommodate the remaining female detainees also had good access to natural light and ventilation, but artificial lighting appeared to be poor; further, the room was very overcrowded (16 women in 24 m²). The male detainees were distributed in two rooms which felt cool in the summer heat; however, they had poor lighting (both artificial and natural), were dirty and damp, and offered only limited living space (up to 12 persons in 38 m²). The high occupancy rates observed are all the more open to criticism given that, at the time of the visit, other well lit and ventilated premises in the establishment remained unused.

As regards sanitary arrangements, it was unclear whether, or to what extent, detained persons had access to the sanitary and shower facilities located outside the cellular area; they were clean and appeared quite new. By contrast, the lavatories used by the detained foreign nationals in the holding rooms were only partially screened and not all of them were in working order.

49. By the time of the delegation's visit to **Las Eras National Police Holding Facility**, the foreign nationals previously met at the Isla de las Palomas facility had been moved there in order for the National Police to complete the relevant proceedings. Las Eras comprised 7 cells measuring between 6 and 30 m². They were clean and had good access to natural and artificial light; however, ventilation was clearly inadequate. The cells included partially screened sanitation. The means of rest consisted of 60 cm deep ledges along the walls; the delegation was told that any foreign nationals required to stay at Las Eras overnight would be provided with a mattress. The two mothers and babies continued to be held separately in an unlocked cell. The remaining thirty-nine detainees spent some six hours in two cells measuring approximately 27 m² each; even for a few hours, such an occupancy level is excessive.

50. Foreign nationals held in the ad hoc detention facilities visited were not offered outdoor exercise, despite the existence of extensive outdoor premises which could be used for that purpose. The CPT would recall in this connection that all persons deprived of their liberty for a prolonged period (i.e. 24 hours or more) should, where possible, be offered at least one hour of outdoor exercise every day (cf. also footnote No. 29).

51. **The CPT recommends that the conditions of detention in the ad hoc detention facilities visited be reviewed, in the light of the above remarks.**

d. conditions of detention in long-term detention facilities

i. *preliminary remarks*

52. **Algeciras Detention Centre for Foreigners**, open since June 2003, was housed in a former prison and consisted of five units. The centre has a capacity of 192 and, at the time of the visit, was holding 165 foreign nationals - 113 men and 52 women (including some with young children). Most of the detainees were from sub-Saharan Africa.

El Matorral Detention Centre for Foreigners, open since May 2002, was located on the site of a former military barracks in Fuerteventura and consisted of several buildings. With a capacity of 1,035, at the time of the visit, the centre was holding 260 foreign nationals, including five women; the majority were of Saharan and sub-Saharan origin.

Fuerteventura Airport Detention Centre for Foreigners, situated within the former arrivals' terminal, had opened several years previously. Since March 2003, it had remained operational only as an overflow facility for any influx of foreign nationals exceeding the capacity of El Matorral. The Fuerteventura Airport centre has a capacity of 700 places. At the time of the visit, seven detainees were being held there, purely for the purposes of keeping the centre open.

ii. *living conditions*

53. In the CPT's opinion, persons deprived of their liberty for an extended period under aliens legislation should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation, and staffed by suitably-qualified personnel.

Such centres should provide accommodation which is clean, adequately furnished and in a good state of repair and which offers sufficient living space for the numbers involved. Further, care should be taken in the design and layout of the premises to avoid as far as possible any impression of a carceral environment.

54. At the Algeciras centre, the cells/dormitories, measuring 8 to 25 m², had sufficient natural and artificial lighting; however, the ventilation was insufficient. They had a sanitary annex (lavatories and wash basin), but were only furnished with beds. Their state of repair left something to be desired.

The establishment as a whole gave a strong carceral impression. Further, at the time of the visit, only a part of the premises was being used, apparently in order to reduce the number of staff assigned to custodial duties. As a result, the occupancy level of the accommodation actually in use was high (e.g. in the women's units, dormitories measuring 17 m² were being used to accommodate 6 persons), and the number of beds available in other dormitories suggested much higher occupancy levels (10 beds in 17 m²).

Toiletries and cleaning products were distributed; however, complaints were heard to the effect that they were not available in sufficient quantities.

55. At El Matorral, the accommodation consisted solely of dormitories. Those occupied at the time of the visit measured approximately 30 m². They were adequately lit and ventilated and had sanitary annexes (toilet, wash basin and shower) but were only furnished with beds³⁵.

As was the case for Algeciras, at the time of the visit, only part of El Matorral's premises were being used, resulting in very high occupancy levels (e.g. 16 persons to a 30 m² dormitory). Due to the lack of space, a large number of detained foreigners spent the day lying on their beds. Moreover, at both facilities, detainees did not have permanent access to a place where they could keep their personal belongings.

It should be added that the El Matorral centre also had two huge dormitories with 260 and 290 beds, measuring 420 m² and 490 m², respectively. These were apparently only used when there was a large influx of detainees³⁶. The CPT considers that such dormitories should be replaced by smaller units offering more privacy.

56. Detainees at the Fuerteventura Airport centre were accommodated in a vast hangar - previously a baggage delivery area - containing hundreds of bunk beds. Natural lighting was almost non-existent, and the sanitary installations were in a filthy condition. Further, unlike the other two centres visited, there was no outside courtyard, or indeed any access to the open air.

It is clear that the premises at the airport are suitable only for very short periods of detention. However, of the seven foreign nationals being held at the centre at the time of the visit, some had been there for several weeks. Such a situation is unacceptable.

57. The CPT recommends that the Spanish authorities review without delay the conditions of detention at the Algeciras and El Matorral centres, in the light of the above remarks (paragraphs 53 to 55).

It also recommends that, in their current condition, the premises at Fuerteventura Airport be used to accommodate detained foreigners only in case of emergency and never for periods of longer than 24 hours.

³⁵ At the delegation's suggestion, women being held in the infirmary without medical justification were moved to ordinary accommodation units.

³⁶ A few weeks before the visit, El Matorral had accommodated 790 foreign detainees.

iii. activities

58. The activity programme in a holding centre for foreigners should include outdoor exercise, access to a common room and to radio/television and newspapers/magazines, as well as other appropriate means of recreation (e.g. board games, table tennis). The longer the period for which persons are detained, the more developed should be the activities which are offered to them.

59. In Algeciras, detained foreigners had generous access to the exercise yard and could move freely within the perimeter of their unit the rest of the time; they also had access to common rooms (equipped with tables and chairs) in the evening. However, no organised activities - work, educational or leisure - were provided. Further, there were no books, newspapers or even radio and television sets at the disposal of the detainees.

The situation was worse at El Matorral, where, apart from access to the yard for, at best, two and a half hours a day, the detainees remained locked in their dormitories in the conditions described in paragraph 55 in enforced idleness.

The foreign nationals held at Fuerteventura Airport were not provided with any activity and did not have access to the open air throughout the entire period of their detention. The CPT has already recommended that use of the premises in question in their current condition be restricted to detentions lasting no more than 24 hours (cf. paragraph 57).

60. The CPT recommends that the shortcomings observed with regard to activities at Algeciras and El Matorral Detention Centres for Foreigners be remedied without delay, taking into account the remarks set out in paragraphs 58 and 59.

iv. health care

61. All detention facilities for immigration detainees should provide access to medical care. Particular attention should be paid to the physical and psychological state of health of asylum seekers, some of whom may well have experienced difficult situations and even have been tortured or otherwise ill-treated in the countries from which they have come. In such cases, medical findings may be relevant in the context of asylum proceedings. Further, a medical examination upon arrival would also be advisable from the point of view of preventive medicine, inter alia for the detection and treatment of transmissible diseases.

62. A doctor and a nurse were present at the Algeciras centre for three hours per day, six days a week. The time during which the doctor was present appeared to be sufficient, and the detainees with whom the delegation met confirmed that it was easy to have access to the doctor, upon request. However, a detention centre for foreigners of this size should have the equivalent of at least one full-time nurse and arrangements should be in place for a nurse to attend in case of need outside normal working hours. It should also be noted that there were no systematic medical examinations upon arrival.

At El Matorral, a doctor employed by the centre was present for three hours per day from Monday to Saturday, and a Red Cross doctor and nurse gave consultations in the afternoon from Monday to Friday. The presence of the doctors may be considered adequate in relation to the number of persons detained at the time of the visit. However, reinforcements of medical and nursing staff would be indispensable if the centre were operating at full capacity. As for the medical examination upon admission, it was usually limited to a palpation of the abdomen in the exercise yard following arrival. Unlike at Algeciras, individual medical files were not compiled for detainees, not even for those receiving treatment.

The doctor employed at El Matorral also visited the Fuerteventura Airport centre when necessary.

The premises of the health-care services of the Algeciras and El Matorral centres, each consisting of a treatment/medical consultation room and a nursing room, were satisfactory, as was the room used for medical examinations at the Fuerteventura Airport centre. However, at El Matorral, the dormitories for in-patient care at the infirmary resembled ordinary accommodation.

The CPT recommends that nursing cover at the Algeciras and El Matorral centres be reinforced, in the light of the above remarks; such reinforcement should permit visits by a nurse every day of the week, including weekends. Further, accommodation for detainees receiving in-patient care in the infirmary at El Matorral should be improved.

The CPT also recommends that steps be taken to ensure that every person held in a detention centre for foreigners is physically examined by a doctor as soon as possible after his or her arrival; this examination can also be carried out by a nurse reporting to the doctor. The results of the examination should be placed in an individual medical record kept in the medical service (cf. also paragraphs 24, last sub-paragraph, and 61).

v. *staff*

63. The staff of centres for immigration detainees have a particularly onerous task. Firstly, there will inevitably be communication difficulties caused by language barriers. Secondly, many detained persons will find the fact that they have been deprived of their liberty when they are not suspected of any criminal offence difficult to accept. Thirdly, there is a risk of tension between detainees of different nationalities or ethnic groups.

Consequently, the CPT places a premium upon the supervisory staff in such centres being carefully selected and receiving appropriate training. As well as possessing well-developed qualities in the field of interpersonal communication, the staff concerned should be familiarised with the different cultures of the detainees and at least some of them should have relevant language skills. Further, they should be taught to recognise possible symptoms of stress reactions displayed by detained persons (whether post-traumatic or induced by socio-cultural changes) and to take appropriate action.

64. In the absence of staff specifically recruited for, and assigned to, detention centres for foreign nationals, the establishments visited were staffed exclusively by National Police officers, the majority on temporary detached duty.

At the Algeciras centre, eight police officers, including one woman, were present during the day and, at the Fuerteventura Airport facility, two police officers were present at the time of the visit. The situation was considerably less favourable at El Matorral, where only five officers were present during the day to supervise some 260 detainees; this effectively limited the detainees' movements.

The police officers interviewed by the delegation at the detention centres visited had received no training preparing them to take charge of detained foreign nationals. In fact, according to the information provided to the delegation, with one exception, the police officers spoke no language other than Spanish and there was no interpretation service at the centres' disposal. It appeared that the only person able to communicate with the detainees in the relevant languages was the doctor at El Matorral.

In the light of these observations, **the CPT recommends that the staffing levels at El Matorral be reviewed. Further, steps should be taken to ensure that staff deployed for duty in detention centres for foreigners are suited for the work involved, particular attention being paid to their language skills and training.**

65. Following previous visits, the CPT recommended that police officers not carry batons inside detention centres for foreigners. If batons have to be carried, they should be hidden from view.³⁷ However, at Algeciras, certain officers always had their baton hanging conspicuously from their belt and, at the El Matorral and Fuerteventura Airport centres, even their service weapon. **The CPT reiterates its recommendation on this subject. It should be added that the carrying of firearms within a detention facility is also an intimidating and potentially dangerous practice.**

66. At Algeciras, police officers had adopted the practice of wearing latex gloves and surgical masks whenever they entered the detention facilities. Such behaviour, for which there is no justification from the point of view of staff health protection, can only engender feelings of vexation and rejection among detained foreign nationals. **The CPT recommends that this systematic practice be discontinued.**

vi. other issues

67. Several of the detained foreign nationals interviewed by the delegation complained that they had not received information about the establishment's internal rules. **The CPT recommends that a document setting out these rules be drawn up and distributed, in an appropriate range of languages, in all detention centres for foreign nationals.**

³⁷ Cf. CPT/Inf (96) 9, Part I, paragraph 71, and Part II, paragraph 84.

68. At the Algeciras centre, the delegation noted that members of the same family (parents and children) were not systematically accommodated together. Couples without children were always separated. **The CPT considers that families detained under aliens legislation should, as far as possible, be accommodated together.** In this connection, provision should be made for the protection of persons who might be vulnerable or under pressure, for example in the context of human trafficking.

69. Regarding contacts with the outside world, the CPT noted that the detainees could receive visits and could, in principle, use public telephones. However, at El Matorral, access to a telephone was limited given that there were only two telephones available for the entire centre (with a capacity of over 1,000), and these were situated in a courtyard to which the detainees did not have free access. **The CPT invites the authorities to review the practical arrangements concerning access to telephones at El Matorral.**

70. With regard to inspections of detention centres for foreigners by an independent authority, the information gathered during the visit clearly indicated that these were exceptional. The remarks made in paragraph 29 apply equally to these establishments.

B. Prisons

1. Preliminary remarks

71. The delegation visited Tenerife and Villabona Prisons, as well as the only two penitentiary psychiatric mental health-care facilities in Spain, situated in Alicante and Seville. The latter two establishments will be dealt with under a separate heading (cf. paragraph 108 et seq.).

The delegation paid particular attention to the situation of prisoners considered to be “unadapted to an ordinary prison regime” or “dangerous”³⁸, and that of prisoners separated, mostly at their own request, from the general prison population for their own protection but held in ordinary detention units³⁹.

72. **Tenerife Prison** was built in 1989. Located a few kilometres from Santa Cruz, it consists of eight detention units, seven for men and one for women. At the time of the visit, the prison, which has an official capacity of 1,667 places, was holding 1,411 inmates (including 112 women), of whom slightly over 70% were convicted prisoners. Of the total, 131 were in open-regime sites outside the main establishment.

Twelve male prisoners were being held in segregation under Article 10 of the General Organic Law on Prisons, and another 19 male detainees were being held under Article 75 of the Prison Regulations.

73. **Villabona Prison**, open since February 1993, lies in the middle of the countryside. It consists of seven detention units for men, one for women, and one mixed “drug-free therapeutic” unit. The establishment has an official capacity of 1,577 places, and at the time of the visit was holding 1,261 inmates (including 91 women), of whom slightly over 85% were convicted prisoners. Some 50 inmates were in open-regime sites outside the main establishment.

Twenty-two prisoners (including the women) were being held under Article 10 of the General Organic Law on Prisons - some of them also in disciplinary confinement - and 26 male detainees were being held under Article 75 of the Prison Regulations.

2. Ill-treatment

74. At Tenerife Prison, the delegation heard no allegations of physical ill-treatment of prisoners by prison staff.

75. At Villabona Prison, no allegations were heard concerning the treatment of prisoners in the ordinary detention units. However, some prisoners told the delegation that certain prison officers physically ill-treated prisoners (struck them with batons) held in the disciplinary unit.

³⁸ Cf. General Organic Law on Prisons, Article 10 (1) and (2).

³⁹ Cf. Prison Regulations, Article 75 (2).

The existence of cases of ill-treatment in the disciplinary unit of Villabona Prison was confirmed by several prison officers, who also indicated that the management at Villabona was seeking to put an end to it. **The CPT recommends that steps be taken to increase the supervision of staff in that unit; further, senior management should visit the unit regularly and enter into direct contact with prisoners, in private.**

76. In both prisons visited, the delegation received some allegations from prisoners segregated for their personal protection of abusive language or contemptuous remarks in relation to their particular situation from certain members of the prison staff. **The CPT recommends that the authorities at central and local level deliver the clear message that all forms of ill-treatment of prisoners, including verbal abuse, are not acceptable and will be the subject of severe sanctions. This message should be repeated at regular intervals.**

3. Prisoners subject to special regimes

- a. prisoners considered to be “unadapted to an ordinary prison regime” or “dangerous”

77. In every country, there will be a certain number of prisoners who, for whatever reason, need to be separated from the rest of the prison population. This group of prisoners is of particular concern to the CPT, as the need to take exceptional security measures vis-à-vis such prisoners, usually held in special units, brings with it a greater risk of inhuman and degrading treatment. Moreover, all forms of solitary confinement are likely, in the long term, to have harmful effects leading to the deterioration of mental faculties and social skills.

78. As already mentioned, at the time of the visit, there were 12 prisoners (all male) considered to be either “unadapted to an ordinary prison regime” or “dangerous” at Tenerife Prison, and 22 (including one woman) at Villabona Prison. With a few exceptions⁴⁰, these prisoners were accommodated in the disciplinary unit.

79. The material conditions of detention were acceptable at Villabona. The cells, each occupied by one prisoner, measured about 7.5 m² or 8.5 m²; they were suitably equipped (inter alia, with a call system) and had good access to natural light.

At Tenerife, the material conditions were less satisfactory. The cells, as elsewhere in the prison, were smaller (scarcely 7 m²). More importantly, access to natural light in the cells was insufficient.

⁴⁰ At Tenerife, three of the prisoners concerned were accommodated in the admissions unit, and, at Villabona, two such inmates were accommodated in the drug-free therapeutic unit; the woman held in the latter establishment subject to the provisions of Article 10 of the General Organic Law on Prisons was accommodated in the women’s unit.

80. In both establishments, prisoners considered to be unadapted to an ordinary prison regime were offered four hours of association with other prisoners (the minimum provided for under the Prison Regulations), consisting of outdoor exercise (in groups of five or six), and a further two hours of organised activities.

Prisoners considered to be dangerous were also entitled to the minimum provided for under the Prison Regulations of three hours per day of outdoor exercise (in groups of no more than two) and were offered at most another two hours per day of organised activities (in groups of no more than five).

81. Following its 1998 visit⁴¹, the CPT recommended that the regimes offered to all prisoners subject to the provisions of Article 10 of the General Organic Law on Prisons be developed. The findings made during the 2003 visit clearly indicate that this recommendation has not been implemented. The regime offered to these prisoners in the establishments visited was comparable to that observed during the previous visit.

Prisoners subject to the above-mentioned provisions should enjoy a relatively relaxed regime within their detention unit, by way of compensation for their severe custodial situation. In particular, they should be able to meet their fellow prisoners in the unit and be granted a good deal of choice about activities. The existence of a satisfactory programme of activities is just as important - if not more so - in a high security unit as on normal location. It can do much to counter the deleterious effects upon a prisoner's personality of living in such a unit. The activities provided should be as diverse as possible (education, sport, work of vocational value, etc.).

As regards, in particular, work activities, it is clear that security considerations may preclude many types of work which are found on normal prison location. Nevertheless, this should not mean that only work of a tedious nature is provided for prisoners. In this connection, reference should be made to the suggestions contained in paragraph 87 of the Explanatory Report to Recommendation No. R (82) of the Committee of Ministers of the Council of Europe.

Consequently, the CPT reiterates its recommendation that the regimes offered to all prisoners subject to the provisions of Article 10 of the General Organic Law on Prisons be developed, including in Tenerife and Villabona Prisons, having regard to the above remarks.

82. The quality of relations between staff and prisoners considered to be "unadapted to an ordinary prison regime" or "dangerous" is another source of concern to the CPT.

As had been the case in the establishments visited by the CPT in 1998, direct contact between staff and the prisoners subject to this regime in Tenerife and Villabona Prisons was found to be virtually non-existent; prisoners and staff were systematically separated by screens or grilles. The policy at Villabona was particularly strict in this regard: some of the prisoners' movements were even monitored electronically, thus further reducing direct contact.

⁴¹ Cf. CPT/Inf (2000) 5, paragraphs 65 to 70.

Such an approach is not conducive to the building of positive relations between staff and prisoners which, in the interests of the humane and decent treatment of prisoners, should be based on a spirit of communication and assistance, without neglecting the implementation of supervisory and staff safety measures. **The CPT recommends that the authorities take all necessary measures to encourage, as far as possible, direct contact (without screens or grilles) between prisoners subject to the provisions of Article 10 of the General Organic Law on Prisons and the different categories of staff who have dealings with them.**

83. **The CPT also wishes to stress that it would be preferable that prisoners subject to the provisions of Article 10 of the General Organic Law on Prisons are not held in the same unit as prisoners undergoing segregation as a disciplinary measure⁴².** Such an approach, which would appear consistent with the applicable legal provisions, would permit prison staff in general to have a more positive perception of the inmates concerned and would therefore contribute towards improving relations between staff and prisoners. It would also facilitate the delivery of developed regimes as recommended in paragraph 81.

- b. prisoners separated from the general prison population for their own protection

84. At Tenerife, 19 prisoners were being held in segregation for their own protection, and at Villabona, 26; these prisoners were accommodated in ordinary detention units. Their material conditions of detention were equivalent, in both establishments, to those of the general prison population; they are not a source of particular concern to the CPT (cf. nonetheless paragraph 87). However, the same cannot be said of the very restrictive regime applied to this category of inmates.

85. Having to use the same exercise yards as other inmates, the prisoners segregated for their own protection only had access to such facilities when the other inmates were locked in their cells, i.e. at best two and a half hours per day. They had no opportunities for work or vocational training. Further, they were not offered any recreational, socio-educational or sports activities.

86. To sum up, these prisoners, who were seeking protection, were locked in their cells for 21 and a half hours per day, a situation which lasted for months, or indeed, in one case at Tenerife, for years. In the CPT's opinion, such a situation is unacceptable. The Committee is aware of the difficulties involved in developing a varied regime for these prisoners in view of their small numbers. Nevertheless, it is also convinced that improvements are feasible in this area.

The CPT recommends that additional efforts be made to provide prisoners segregated for their own protection with an environment allowing them to participate in as normal a regime as possible.

⁴² Unless, of course, the prisoners concerned are also undergoing segregation as a disciplinary sanction.

4. Conditions of detention

a. material conditions

87. At both prisons, material conditions for the general inmate population were in principle acceptable. Cells designed for one prisoner measured between 7 m² (at Tenerife) and 8.5 m² (at Villabona), had sufficient artificial lighting and ventilation, were adequately furnished and equipped with in-cell sanitation which, at Tenerife, included a shower. The living areas were in a satisfactory state of repair, and communal facilities were of a good standard; particular reference might be made to the efforts made at Villabona to render the premises convivial.

However, in both prisons, the above-mentioned cells were being used to hold two prisoners each, despite the inmate populations of the establishments being within their respective functional capacities. In the CPT's opinion, a cell measuring 7 m² should never be used to accommodate more than one person, except in exceptional cases when it would be inadvisable for a prisoner to be left alone. Moreover, cells measuring 8.5 m² offer limited living space for two people⁴³, even if they are able to spend the greater part of the day outside their cells. Moreover, access to natural light in cells at Tenerife left something to be desired and, at both establishments, in-cell sanitation was insufficiently partitioned.

88. At the time of the 1998 visit, the stated aim of the Spanish authorities was to bring the number of prison places (calculated on the basis of one prisoner to a cell) and the number of inmates into balance in the course of the year 2000. Significant progress had apparently already been made towards that goal, and additional progress was envisaged through further reductions in the number of persons held in prison under ordinary conditions, inter alia, by having more recourse to open regimes, weekend detention and alternatives to imprisonment. However, the information gathered during the 2003 visit shows that prison overcrowding persists.

The Committee would point out that, even with an occupancy level of 95% of the total design capacity of a prison estate, it becomes practically impossible for a prison service to deliver what is required of it, and, more particularly, to ensure respect for inmates' human dignity. Use of custody must therefore be matched by the necessary infrastructure in the form of an appropriate prison estate and sufficient financial and staff resources.

⁴³ Cf. CPT/Inf (2000) 5, paragraph 72.

It might be added that, in those European countries which enjoy uncrowded prison systems, the existence of appropriate policies to limit and/or modulate the number of persons being sent to prison has tended to be an important factor in maintaining the prison population at a manageable level. The CPT remains unconvinced that providing additional accommodation will, alone, offer a lasting solution to the problem of overcrowding; to address that problem successfully will almost certainly also require solutions to be sought at the legislative and sentencing levels.⁴⁴

The CPT recommends that the Spanish authorities redouble their efforts to bring the number of prison places and the number of inmates into balance at the earliest opportunity. The Committee would like to receive up-to-date statistical information on the Spanish prison system, including its overall design capacity (*optimal*), on the basis of one prisoner to a cell, operational capacity (*functional*) and current occupancy level⁴⁵; it would like to receive similar information in respect of the Catalan prison service.

89. The CPT recommends that all necessary measures be taken to remedy the shortcomings described in paragraph 87. In particular, steps should be taken immediately to ensure that the cells measuring 7 m² at Tenerife Prison - as well as in any other Spanish prison where similar conditions prevail - are not used to accommodate more than one prisoner. Efforts should also be made to reduce occupancy of cells measuring 8.5 m² to one person.

b. regime activities

90. The majority of detainees in both establishments spent a considerable amount of time outside their cells (up to 12 hours a day in some cases). However, only a minority of them were offered organised activities.

⁴⁴ Reference might be made to Committee of Ministers' Recommendation R (99) 22 concerning prison overcrowding and population inflation and more particularly to recommendations 11 and 12, according to which "the application of pre-trial detention and its length should be reduced to the minimum compatible with the interests of justice. [...] The widest possible use should be made of alternatives to pre-trial detention, such as the requirement of the suspected offender to reside at a specified address, a restriction on leaving or entering a specified place without authorisation, the provision of bail or supervision and assistance by an agency specified by the judicial authority. In this connection, attention should be paid to the possibilities for supervising a requirement to remain in a specified place through electronic surveillance devices." Further, recommendation 20 states that "rationales for sentencing should be set by the legislator or other competent authorities, with a view to, inter alia, reducing the use of imprisonment, expanding the use of community sanctions and measures, and to using measures of diversion such as mediation or the compensation of the victim."

⁴⁵ According to written information provided by the Spanish authorities, the "functional" capacity is assigned to an establishment having regard to the structure of its individual and common spaces; it is higher than the so-called "optimal" capacity, which is based on one inmate per cell.

At Villabona Prison, out of 1,261 inmates, only 96 were offered “productive paid work” (ceramic objects, aluminium coat hooks), 102 had a paid job in the prison’s general services (maintenance, kitchen, canteen, laundry) and 240 were attending training courses for two to four hours per day (painting, gardening, machine assembly, ceramics, textiles, leatherwork, greenhouse gardening, clothes-making, cabinet-making and tiling). There were also a number of prisoners who were doing unpaid cleaning work (27) or who were offered a weekly occupational activity by outside operators (nearly 300). However, the time taken up by these activities in the day or the week was negligible.

At Tenerife Prison, the situation was even less favourable. Apart from unpaid activities of a general nature accounting for only a very limited amount of time (involving some 400 prisoners), out of 1,411 inmates, 153 were doing paid work (laundry, general maintenance, canteen), 176 were participating in vocational training, and 84 were receiving special socio-educational care on a daily basis under the drug-free therapeutic programme.

To sum up, in the two establishments visited, scarcely a third of the prisoners had access to any sustained, motivating activity. The others spent most of their time in complete idleness. Such a state of affairs would be unsatisfactory in any prison, and is clearly unacceptable in establishments which hold primarily sentenced prisoners. Under the present circumstances, the goals of re-education and social rehabilitation of prisoners proclaimed in Article 25 (2) of the Spanish Constitution are likely to remain illusory.

91. The CPT recommends that measures be taken to increase the number of work places available to prisoners in Tenerife and Villabona Prisons and that efforts to develop other regime activities for prisoners be stepped up⁴⁶.

5. Health-care services

92. As was the case during the CPT’s previous visits, the delegation found that the medical services available to inmates in the prisons visited were generally of an acceptable standard. However, this largely favourable situation was marred to some extent by certain shortcomings similar to those observed in the past.

93. In both establishments, the number of generalist medical staff (e.g. nine general practitioners, nine qualified nurses and five assistant nurses at Tenerife) was on the whole satisfactory and the care provided in this field adequate.

The delegation was told that a brief medical examination was carried out upon admission, usually within a few hours of a prisoner’s arrival. It noted that a particular effort was made in the area of prevention, as regards both suicide and infectious diseases. The CPT welcomes the efforts made in this field.

⁴⁶ Cf. CPT/Inf (2000) 5, paragraph 78.

However, at Villabona Prison, the delegation noted that, while the existence of injuries upon arrival in the prison was scrupulously noted in the admissions register, the injuries were not recorded in the initial medical report, and no certificate was drawn up in this connection. At Tenerife, no records were kept of injuries displayed by prisoners upon admission.

As the CPT has repeatedly indicated, prison health-care services can contribute to the prevention of violence against detained persons, through the systematic recording of injuries and, if appropriate, the provision of general information to the relevant authorities. In this connection, at the time of the 1998 visit, consideration was being given to developing a new form for use by prison doctors in this context; however, by July 2003, it was not yet in use. **The CPT reiterates its recommendation that such a new form be developed without delay and that, in addition to the doctor's objective medical findings, the form provide for the recording of any relevant statements by the prisoner and the doctor's conclusions⁴⁷.**

94. The situation as regards dental care was a source of concern in both establishments.

At Villabona, the dentist, responsible for over 1,200 patients, was present at most three times a month for a total of 120 consultations.

The situation was also far from satisfactory at Tenerife, where the dentist's last visit to the prison had taken place four weeks earlier. When interviewed by the delegation, the competent supervisory judge had no hesitation in referring to a "serious health problem", adding that, for over a year, many of the complaints lodged by prisoners involved the impossibility of receiving adequate dental care at the prison.

In the CPT's opinion, given its inmate population and high turnover (including many drug users), an establishment such as Villabona should have a full-time dentist; the needs at Tenerife are at least equivalent. **The CPT recommends that the provision of dental care in both establishments be reviewed accordingly.**

95. As the CPT has already had occasion to point out⁴⁸, in comparison with the general population, there is a high incidence of psychiatric symptoms among prisoners. Consequently, a doctor qualified in psychiatry should be attached to the health-care service of each prison, and some of the nurses employed there should have had training in this field.

Ambulatory psychiatric care was provided in both prisons by part-time psychiatrists. At Tenerife, the psychiatrist provided consultations twice a month, and at Villabona, the psychiatrist was paid for 80 consultations a month. Such inputs are clearly insufficient to meet the needs of establishments of the size of Tenerife and Villabona Prisons. **The CPT recommends that the provision of psychiatrist care in both establishments be significantly increased.**

⁴⁷ Cf. CPT/Inf (2000) 5, paragraph 92.

⁴⁸ Cf. CPT/Inf (2000) 5, paragraph 84.

6. Prisoners with drug-related problems

a. introduction

96. In previous visit reports, the CPT has welcomed the efforts being made in Spain in the context of care offered to prisoners with drug problems⁴⁹. The 2003 visit provided an opportunity to examine this matter in further detail.

97. Admission to prison provides an opportunity to address a person's drug-related problems. It is clear that prisoners need to be provided with an environment which permits and encourages them to lead a healthy or healthier life. This requires suitable screening and assessment of prisoners upon admission; it also calls for the provision of information to prisoners about health-related matters and about the programmes available to those who have drug problems.

A full range of activities should be offered to all prisoners treated for drug abuse, including vocational training leading to the acquisition of a recognised qualification. This will increase the inmate's possibilities to lead a socially adapted life after release. Of course, the provision of paid work and appropriate leisure activities are also important elements in the rehabilitation of prisoners with drug problems.

98. As regards the health care and psycho-socio-educational services of establishments accommodating significant numbers of prisoners with drug-related problems, they should be adequately staffed with a closely knit inter-disciplinary team of persons having appropriate training and expertise; in this context, a contribution can be made by prison officers. Moreover, contacts and cooperation between prison services and persons working in community-based organisations providing care, assistance and support to persons with drug problems should be fostered. This is particularly important as regards the preparation for release and the coordination of treatment after release.

b. programmes for prisoners with drug-related problems in the establishments visited

99. One hundred and nine prisoners at Tenerife Prison and 170 at Villabona Prison were participating in drug-free therapeutic programmes. They were held in special units, separate from the other prisoners. In both establishments, community-based organisations were involved either in the direct management of the programme or in "preparation for release" projects. Prisoners were offered a "contract" comprising urine analysis, psychotherapeutic support and varied socio-educational activities and, in some cases, vocational training (twenty-five prisoners were participating in such training at Tenerife and five at Villabona). However, at Tenerife, socio-educational activities were only available in the morning.

⁴⁹ Cf. CPT/Inf (2000) 5, paragraph 101.

The delegation was particularly impressed by the original way in which the Villabona programme operated. The programme was open to both men and women. The unit's prison officers were closely involved alongside the care staff. The prisoners were divided into eleven groups, and each of the twenty-one prison officers deployed in the unit was specifically assigned to one group. The officers concerned were regarded as tutors whose role was to support the prisoner-patient abstaining from taking drugs and were admitted to group meetings. This approach led to a relaxed atmosphere in the unit and a spirit of communication both among prisoners and between prisoners and prison officers, thus contributing to the smooth running of the programme.

The number of staff in the psycho-socio-educational teams attached to Villabona's drug-free unit was satisfactory⁵⁰. At Tenerife, the delegation was unable to form a precise idea of the exact number of social workers and educators involved in the programme.

100. As regards other prisoners with drug problems, 326 inmates at Tenerife Prison and 302 at Villabona Prison were enrolled in substitution programmes, and a small number of prisoners, six at Tenerife and four at Villabona, were participating in antagonist programmes; those prisoners were held in the same units as other inmates. At both establishments, the operation of these programmes was marred by poor monitoring and psycho-socio-educational interventions.

101. The CPT welcomes the existence of a needle exchange programme in both establishments. Thirteen prisoners were participating in such a programme at Tenerife Prison and 19 at Villabona Prison. There were no particular requirements for enrolment, and the programmes were operating in a satisfactory manner and without incident since they had been set up.

As regards more generally preventing the risk of transmitting infectious diseases in the context of drug-taking, hygiene packs (containing, inter alia, bleach) were distributed to prisoners upon arrival, and renewed at regular intervals, thus providing all prisoners with the possibility to sterilise syringes.

102. To sum up, in the two prisons visited, inmates with drug-related problems were offered a wide range of options, responding to the various difficulties encountered by them; one prisoner out of every three participated in one of the programmes available. The well-structured policy for preventing infectious disease transmission merits particular approval. Nevertheless, **the CPT invites the authorities to consider developing specific programmes for female prisoners with drug-related problems.**

⁵⁰ Two psychologists, two teachers, one social worker, one educator and one instructor. A further three instructors from outside the prison were also involved on a regular basis.

7. Other issues

103. In the report on its 1998 visit, the CPT emphasised the efforts made by the Spanish authorities to enable prisoners to maintain contacts with the outside world⁵¹. The favourable situation observed previously was confirmed during the 2003 visit; the CPT welcomes the possibilities available to prisoners in this field, particularly with regard to visits.

At Villabona Prison, for example, each prisoner was entitled to a weekly 40-minute closed visit (in a booth), a monthly two-hour open visit (with up to four close relatives) and a further monthly visit of an intimate nature (i.e. permitting sexual relations); a further family visit, lasting a maximum of six hours, could bring together the prisoner's close relatives (including children under 10) every three months.

In both establishments, use of the telephone was limited to two five-minute calls per week; however, in the event of a prisoner being unable to receive visits, the number of weekly telephone calls could be increased to five.

104. In the course of its visit, the delegation found that prison officers in the ordinary detention units had little contact with prisoners. At Villabona Prison, for example, the delegation did not observe any officers entering into direct contact with the prisoners in the exercise yards, the place where many prisoners spent most of their time. It would appear that this was due, at least in part, to the insufficient number of prison officers available in the two establishments; at Tenerife Prison, staff resources apparently did not permit to allocate more than two officers during the day to each unit housing approximately 150 prisoners.

In the CPT's opinion, the development of constructive and positive relations between prison staff and prisoners will both reduce the risk of ill-treatment and enhance control and security. In turn, it will render the work of prison staff far more rewarding. Ensuring positive staff-inmate relations will depend greatly on having an adequate number of staff present at any given time in detention areas and in facilities used by prisoners for activities. An overall low staff complement and/or specific staff attendance systems which diminish the possibilities of direct contact with prisoners will certainly impede the development of positive relations; more generally, they will generate an insecure environment for both staff and prisoners.

In view of the delegation's findings, the CPT would add that it would be preferable that prison officers wear name or number tags permitting their identification.

The CPT would like to receive the authorities' comments on these subjects.

⁵¹ Cf. CPT/Inf (2000) 5, paragraph 98.

105. The delegation was led to believe that in-service training of prison staff was virtually non-existent in both establishments, mainly because of the difficulties involved in replacing staff undergoing training. This situation was all the more regrettable for newly recruited prison officers, as they had no opportunity to discuss the problems encountered during their initial practical experience, and therefore had to find their own answers to certain of the difficulties they were confronted with.

The CPT would like to know what arrangements are made for in-service training at Tenerife and Villabona Prisons.

106. The CPT has already emphasised the importance of systems for inspection of prisons by an independent body⁵² and, in particular, the need for such a body to be “visible” both to the prison management and staff and to the prisoners.

In both establishments, such visits were carried out by the supervisory judges. However, the delegation found that, as had been the case during previous visits, these judges spent almost all their time responding to individual requests and rarely visited the detention areas to enter into direct contact with the prisoners and undertake proactive work. Consequently, **the CPT reiterates its recommendation that, during their visits, the competent supervisory judges inspect all of the detention units and enter into direct contact with the prisoners and with prison staff.**

107. The delegation noted that efforts were being made in the two establishments visited as regards the allocation of inmates (e.g. accommodating together those speaking the same language). However, remand prisoners were not systematically held separately from sentenced prisoners.⁵³

⁵² Cf. inter alia CPT/Inf (98) 9, paragraphs 41 and 42.

⁵³ Cf. European Prison Rules, Rule 11.3.

C. Penitentiary mental health-care facilities

1. Preliminary remarks

108. The delegation visited the Penitentiary Psychiatric Hospitals in Alicante and Seville, the only two penitentiary mental health-care facilities in Spain⁵⁴.

109. **Alicante Penitentiary Psychiatric Hospital**, which opened in 1984, is located on the outskirts of the town, within the perimeter of the Fontcalent Prison Complex. It has an official capacity of 367 and, on the first day of the visit, was caring for 306 patients (including 25 women) aged 23 to over 80. There were 292 patients declared criminally irresponsible by reason of mental disorder, 11 remand prisoners undergoing assessment and 3 sentenced prisoners transferred for treatment.

110. **Seville Penitentiary Psychiatric Hospital**, which opened in 1990, is located within the perimeter of Seville Prison. It has an official capacity of 112 and, on the first day of the visit, was caring for 155 male patients aged 20 to 70. There were 142 patients declared criminally irresponsible by reason of mental disorder, 11 remand prisoners undergoing assessment and 2 sentenced prisoners transferred for treatment.

111. The care and custody of persons subject to placement in a penitentiary mental health-care facility as a security measure should be based on treatment and rehabilitation, while taking account of the necessary security considerations. This approach should be reflected in the living conditions and other facilities offered to this particular patient population, as well as in their treatment and activities. Further, the establishments should be staffed by suitably trained health-care personnel who are able to develop positive relations with the patients by entering into direct contact with them. The delegation found that these fundamental requirements were not being met at either establishment. The CPT has particular misgivings about the situation at Alicante Penitentiary Psychiatric Hospital.

It should be noted in this connection that penitentiary mental health-care facilities are under the responsibility of the Prison Service within the Ministry of Interior. The CPT is concerned about the lack of institutional and functional separation between these facilities and prisons, and its impact upon the ethos and approach prevailing in the penitentiary mental health-care facilities (cf. paragraph 116). **The Committee would like to receive the authorities' comments on this matter.**

⁵⁴ Penitentiary mental health-care facilities accommodate persons who, in the context of criminal proceedings, have been found by a court not to be responsible for an offence by reason of mental disorder (cf. Criminal Code, Articles 20, 96 and 101). Upon the decision of a judge, remand prisoners may also be placed in such facilities for assessment, and sentenced prisoners may be transferred to them for treatment (cf. Code of Criminal Procedure, Articles 381 and 991 to 994).

2. Ill-treatment

112. The delegation heard no allegations, and gathered no other evidence, of ill-treatment of patients by staff in the Seville Penitentiary Psychiatric Hospital (cf. however, paragraph 125). The attitude of staff working in close contact with patients was found to be professional and caring, and staff spoke with sensitivity about their work.

However, at **Alicante Penitentiary Psychiatric Hospital**, some isolated allegations were heard of prison officers hitting patients with their hands, as well as with batons; this was said to happen especially at night and, on occasion, while staff were under the influence of alcohol.

The CPT recommends that prison officers at Alicante Penitentiary Psychiatric Hospital be reminded that all forms of ill-treatment of patients are unacceptable and will be the subject of severe sanctions.

113. The allegations received by the delegation at the Alicante penitentiary mental health-care facility underline the importance of ensuring that psychiatric institutions, whether they provide care to civil or criminal justice patients, are appropriately staffed.

Staff in such institutions must be carefully selected and have appropriate qualifications and training. Custodial and security duties within a mental health-care facility should be considered as forming part of a holistic therapeutic approach and should therefore in principle be entrusted to nursing staff with psychiatric training. Recourse to other staff, e.g. prison officers, should be exceptional and subject to supervision and control by health-care staff; this will reduce the risk of use of inappropriate means vis-à-vis mentally ill patients.

Further, all staff in psychiatric establishments should receive training in both non-physical and manual control techniques vis-à-vis agitated or violent patients. The possession of such skills will enable staff to choose the most appropriate response when confronted by difficult situations, thereby significantly reducing the risk of injuries to patients and staff.

The CPT recommends that the tasks assigned to prison officers in the penitentiary mental health-care facilities, and the training provided to all staff in such facilities, be reviewed accordingly (cf. also in this connection, paragraph 130).

3. Living conditions of patients

114. Following its 1998 visit, the CPT set out the material conditions which should be offered to patients in psychiatric institutions⁵⁵. It might be recalled that this involves first of all providing sufficient living space per patient, as well as adequate lighting, heating and ventilation, maintaining the establishment in a satisfactory state of repair and meeting general hygiene requirements.

⁵⁵ Cf. CPT/Inf (2000) 5, paragraph 109.

Attention should also be given to the decoration of patients' rooms and recreation areas. The provision of bedside tables and wardrobes is highly desirable, and patients should be allowed to keep certain personal belongings (photographs, books, etc.). It is also important that patients be provided with a lockable space in which they can keep their belongings; the failure to provide such a facility can impinge upon a patient's sense of security and autonomy.

These criteria apply irrespective of whether the establishment in question is a civil facility or one used in the context of criminal proceedings.

115. Alicante Penitentiary Psychiatric Hospital consists of three main residential pavilions. Patients were being held in good-sized single or double cells which had satisfactory access to natural light and were well ventilated. Most cells were equipped with beds, tables, cupboards and chairs; however, those in the acute ward were furnished only with beds. Further, in all pavilions, in-cell sanitation (lavatory, wash basin) was not partitioned. Some parts of the facility's communal areas were quite dilapidated (e.g. in Pavilion 3).

Seville Penitentiary Psychiatric Hospital comprises four wards located on two floors. Patients were held in well-lit and ventilated cells equipped with a bed and a television, and a partitioned lavatory. Despite the fact that the establishment was operating above its capacity (cf. paragraph 110), cells appeared to be sufficiently spacious for the number of persons they were accommodating (e.g. one person in 11 m², 3 persons in 15 m² and 4 persons in 22 m²). However, patients were not provided with a lockable space. As at Alicante, cells were not equipped with call bells.

The accommodation and communal areas in both establishments were impersonal and their carceral nature unmistakable. **The CPT recommends that efforts be made to provide patients with material conditions which are conducive to their treatment and welfare. Steps should also be taken to keep the premises in a satisfactory state of repair.**

116. Efforts were clearly being made at Seville to nurture an environment based on care and treatment. However, at both penitentiary mental health-care facilities, the predominance of custodial staff (prison officers) as opposed to health-care staff enhanced the prison-like atmosphere. This was particularly the case at Alicante, where emphasis appeared to be placed on security rather than care, with limited interaction between health-care staff and patients.

The CPT recommends that efforts be made to enhance the treatment and care dimension within the two establishments and, particularly at the Alicante Penitentiary Psychiatric Hospital, to reduce the carceral atmosphere. Such efforts are especially important in order to outweigh the implications of the establishments being located within prisons.

117. Patients had free access during the day to the large patios attached to the three pavilions and the infirmary and admission unit at Alicante, and to a sizeable exercise yard at Seville. However, some patients were less mobile and were unable to go outside without assistance. **The CPT would recall that, unless there are medical reasons to the contrary, all patients subject to involuntary placement in a psychiatric establishment should be offered at least one hour of outdoor exercise every day.**

4. Treatment

118. Psychiatric treatment should be based on an individualised approach; this implies the drawing up of a treatment plan for each patient which should be reviewed regularly. Further, in addition to any pharmaceutical intervention, the treatment should involve a wide range of therapeutic and rehabilitative activities, including access to individual psychotherapy, group therapy, occupational therapy, art, drama, music and sports. It is also desirable that, in appropriate cases, patients be offered education and work. In facilities accommodating patients placed in the context of criminal proceedings, treatment methods should include programmes aimed at reducing the risk of committing criminal offences.

119. The delegation found no signs of overmedication in either of the two establishments visited. Further, the medical records examined were detailed, precise and easily readable, and medical confidentiality was respected.

The four multi-disciplinary teams at the Seville penitentiary mental health-care facility appeared to function well. An individualised treatment plan was drawn up for each patient who was also assigned a key worker. Treatment included group therapy, as well as health education and psycho-educative programmes focusing on raising patients' awareness of their illness in order to address their behaviour.

At the Alicante facility, senior management, who were not in regular direct contact with the patients, made up the only so-called multi-disciplinary team; the number of cases dealt with by this team precluded an individualised approach. The delegation was told that some individual psychotherapy and group therapy was provided, and a substitution programme was available for patients with drug-related problems who had been enrolled in such a programme before their admission to the mental health-care facility. However, no other programmes or therapies were provided, and treatment plans were not systematically drawn up for each patient. **The CPT invites the authorities to develop therapeutic programmes at Alicante Penitentiary Psychiatric Hospital.** Further, **individual treatment plans should be drawn up for all patients in that establishment.**

120. Activities for patients at the Seville facility included vocational training in gardening, painting, building and ceramics. Sports activities were organised three times per week and there was photography and a drama workshop, as well as training in life skills, health and relaxation.

Efforts were also being made at the Alicante facility to provide vocational training (e.g. gardening) and leisure activities (e.g. ceramics, leather work, music and sports) to a small group of patients. Training courses were open to up to twelve patients per course. However, the delegation was informed that the courses were intensive (300 to 530 hours per course, four hours per day) and, for lack of suitable candidates, the same patients would be enrolled in several consecutive courses; a third of participants was usually unable to complete the courses. A significant proportion of the patients in this establishment (over two thirds at the time of the visit) did not participate in organised activities; they spent most of their time in enforced idleness.

The CPT recommends that further efforts be made to provide all patients at Alicante with a structured daily programme of therapeutic and rehabilitative activities, based on their individual needs and capacities. In this connection, consideration should be given to broadening the scope of the education activities in order to involve a higher proportion of patients and better suit the needs of the patients concerned.

121. As part of a gradated approach towards patients' rehabilitation, the two establishments had developed programmes of therapeutic outings with staff, usually for a day either in a group or individually, as well as longer unaccompanied periods of leave, in a progression towards discharge. At Alicante for example, 222 patients had taken part in a total of 4,672 outings or periods of leave in 2002. During the first half of 2003, there had been 2,309 outings or periods of leave, a small number of patients (13) accounting for nearly half of them.

The CPT welcomes these efforts. However, all decisions in relation to outings and periods of leave were made by the sentencing judge, upon the recommendation of the supervisory judge. This made for a complex and time-consuming process. **Consideration should be given to streamlining that process by placing responsibility in this context fully with those professionals closest to the patient, i.e. the psychiatrists and the supervisory judge.**

122. Foreign nationals not able to communicate in Spanish appeared to be at a particular disadvantage in a number of respects (e.g. regime, assessments, contacts with the outside world). **The CPT invites the authorities to improve the specific provision being made for this category of patients, in particular as regards the language in which psychiatric assessments are carried out.** It might be added that many foreign patients complained of significant delays in securing transfers to their home countries.

5. Restraint and seclusion

123. In any psychiatric facility, the restraint of agitated and/or violent patients may on occasion be necessary. This is a subject of particular concern to the CPT, given the potential for abuse and ill-treatment.

124. At the Alicante and Seville penitentiary mental health-care facilities, resort to means of physical restraint had to be authorised by a doctor, and the time of the beginning and end of the measure, the reasons for it and the name of the prescribing doctor were recorded. Further, all measures of restraint had to be countersigned at the outset and at the end by the director of the establishment and notified to the supervising judge⁵⁶. This is to be welcomed.

⁵⁶ Cf. Prison Regulations, Article 188 (3).

125. According to the records examined by the delegation, resort to means of physical restraint (belts) was not excessive at Alicante.

At Seville, the records showed that restraint measures were in most cases of short duration (38 episodes during the first six months of 2003, lasting usually 1 to 12 hours), monitored regularly and carefully recorded. However, during the same period, two patients had been restrained for 4 and 5 days, respectively. In this connection, the CPT wishes to stress that if, exceptionally, recourse is had to instruments of physical restraint, they should be removed at the earliest opportunity. Applying instruments of physical restraint to psychiatric patients for a period of days amounts, in the CPT's view, to ill-treatment.

Consequently, **the CPT recommends that the practice of immobilising patients be reviewed at the Seville facility.**

126. It is essential that the restraint of patients be the subject of a clearly defined policy. That policy should make clear that initial attempts to restrain agitated or violent patients should, as far as possible, be non-physical (e.g. verbal instruction) and that, where physical restraint is necessary, it should in principle be limited to manual control. **The CPT recommends that a clearly defined policy be drawn up for both establishments.**

127. Seclusion of patients was recorded and in most cases lasted less than one day. However, it could last several days and in Alicante, on occasion, up to three weeks. Seclusion should be the subject of a detailed policy spelling out in particular: the types of cases in which it may be used; the objectives sought; its duration and the need for regular reviews; the existence of appropriate human contact; the need for staff to be especially attentive⁵⁷. **The CPT recommends that appropriate steps be taken to ensure that patients are not held in seclusion for long periods and that a detailed policy on the use of seclusion, as described above, is drawn up.**

It might be added that the delegation met two patients in Alicante who had been segregated for 2½ and 3 years, respectively, due to their violent and unpredictable behaviour. During this time, certain restrictions were applied to them in respect of access to the yard (only in the presence of guards), visits and being allowed to go on outings and/or leave. Health-care staff acknowledged that segregation had not significantly improved their condition.

6. Staff resources

128. Staff resources in a psychiatric establishment should be adequate in terms of numbers, categories of staff (psychiatrists, general practitioners, nurses, psychologists, occupational therapists, social workers, etc.), and experience and training. Deficiencies in staff resources will often seriously undermine efforts to offer activities or provide a high standard of care.

⁵⁷ Cf. CPT/Inf (2000) 5, paragraph 89.

129. With a capacity of 367 and caring for 306 patients, health-care staff at Alicante included 7 senior managers (medically trained but not treating patients), 9 treating doctors (of whom 5 were psychiatrists), 10 nurses, 28 assistant nurses, 30 care staff and 3 psychologists; at the time of the visit, 17 further nursing posts were vacant. There were also 5 occupational therapists, 4 social workers and a pharmacist. The delegation was informed that an external dentist attended from time to time.

Health-care staff at Seville, with a capacity of 112 and caring for 154 patients, comprised 7 treating doctors (of whom 3 were psychiatrists), 7 nurses, 17 care staff and a psychologist. In addition, there were 3 occupational therapists, a social worker, and 2 educators. External general practitioners and dentists attended as needed.

In practice, apart from during the morning and early afternoon, health-care staff cover at both facilities was very low. Alicante was staffed by three nurses in the afternoon, a doctor and a nurse during the night and a doctor and two nurses during weekends; at Seville a psychiatrist, a doctor and a nurse were on duty at these times.

130. The CPT is further concerned about the conspicuous permanent presence of a significant number of prison officers at the two mental health-care facilities. At Alicante, there was a complement of 100 prison officers and at Seville, 71. The director at Alicante expressed himself the view that the officers deployed in the establishment were not always ideally suited to working closely with psychiatric patients.

The CPT recognises that these facilities require the presence of staff providing perimeter security. However, as already indicated, within the mental-health facilities themselves, any custodial duties should in principle be performed by staff with health-care qualifications. If, exceptionally, prison officers are assigned to such tasks, they should be closely supervised by - and subject to the authority of - qualified health-care staff.

The CPT recommends that health-care staffing levels in the two penitentiary mental health-care facilities be reviewed. In particular, the presence of psychiatrists and psychologists should be increased; in addition, nursing cover in the evening, at night and at weekends should be strengthened. Furthermore, it would be desirable to replace the prison officers by nursing staff with specialist training (cf. paragraph 113).

7. Suicide prevention

131. A State owes a duty of care towards all persons it deprives of their liberty. In respect of involuntary psychiatric patients, this duty of care calls for effective measures to prevent patients from causing themselves harm. Failure by the authorities to identify persons at risk of suicide, or to deal adequately with those identified as being at risk, would constitute therapeutic neglect.

132. At Seville Penitentiary Psychiatric Hospital, two patients had committed suicide during the first seven months of 2003. At Alicante, there had been two suicides among patients in 2002 and three during the first seven months of 2003. Possible means of preventing suicides had been identified in the latter establishment; however, it appeared that they were not being implemented. The special observation room had been taken out of use; the room used in its place for that purpose was not equipped with a call bell.

Further, neither establishment carried out any debriefing of patients - or staff - following suicides or suicide attempts. Patients interviewed by the delegation stated that the incidents left them feeling frightened and unsafe.

An investigation was under way into the circumstances surrounding one of the suicide cases at Alicante, and the examining court had ordered a second autopsy to be carried out. Fellow patients claimed that, on the day of his death, the patient had repeatedly requested to be seen by a psychiatrist but that none had been present in the establishment at the time.

133. All staff in a mental health-care facility, whatever their particular job, should be on the lookout for (which implies being trained in recognising) indications of risk of suicide. A person identified as a suicide risk should, for as long as necessary, be kept under a special observation scheme with appropriate psychological support. Further, patients in general should not have easy access to means of harming themselves. It should be noted in this connection that the suicides in the two establishments had all been committed by patients hanging themselves from the window bars in their cells.

Steps should also be taken to ensure a proper flow of information within the establishment concerning persons who have been identified as potentially at risk. Furthermore, a full debriefing of relevant staff and patients should be conducted after a suicide or a suicide attempt, and staff and patients offered appropriate counselling.

The CPT recommends that a full suicide prevention policy be developed and implemented without delay at Alicante and Seville Penitentiary Psychiatric Hospitals, having regard to the above remarks. Further, the CPT would like to receive in due course the results of the investigation mentioned in paragraph 132.

8. Safeguards

- a. placement and discharge

134. On account of their vulnerability, the mentally ill and mentally disabled warrant much attention in order to prevent any form of conduct - or avoid any omission - contrary to their well-being. It follows that involuntary placement in a psychiatric establishment should always be surrounded by appropriate safeguards.

135. Patients subject to placement in connection with criminal proceedings, whether declared criminally irresponsible or on remand, were assisted by a state-appointed lawyer. **The CPT would like to be informed if sentenced prisoners transferred for treatment are also provided with legal assistance.**

136. Under Spanish law⁵⁸, persons declared criminally irresponsible by reason of mental disorder may, as a security measure, be placed in a penitentiary psychiatric hospital for a period not exceeding the maximum sentence imposed for the offence committed; this term is determined in the individual case by the court.

Developments in the person's condition may lead to the placement being discontinued or replaced by another security measure, also by decision of the court. Patients in need of continued treatment at the end of the term of the security measure may be subject to involuntary placement in a civil establishment.

137. In the CPT's opinion, involuntary placement in a psychiatric establishment should cease as soon as it is no longer required. Consequently, there should be an automatic review at regular intervals of the need to continue the placement. In addition, the patient him- or herself should be able to request at reasonable intervals that the necessity for placement be considered by a judicial authority.

However, the information gathered by the delegation suggests that, while multi-disciplinary teams are required to draw up reports on the condition and progress of patients in penitentiary mental health-care facilities at least every six months (which are to be submitted to the prosecution service for use by the relevant judicial authorities⁵⁹), the legal provisions in force do not envisage the automatic review at regular intervals of the need for continued placement. It appeared that, in practice, it was extremely rare for patients to be discharged from the mental health-care facility before the end of the term of their security measure. It might be added that the delegation observed that, at Alicante, record-keeping was minimal and there were delays of 2 to 3 months in drawing up the obligatory reports by the multi-disciplinary team. Further, patients complained that they were not informed of the contents of these reports.

In the light of the above remarks, **the CPT recommends that the authorities ensure that the need for continued placement in penitentiary mental health-care facilities is the subject of regular substantive reviews. The patient should be informed in writing of the outcome of these reviews; if the patient concerned agrees, such information should also be provided to his/her lawyer or other representative.**

⁵⁸ Cf. Criminal Code, Article 101 (1).

⁵⁹ Cf. Prison Regulations, Article 187 (1).

b. other safeguards

138. Patients at Alicante and Seville received no written information explaining their situation and rights and outlining the facility's internal regulations. The situation was particularly difficult for patients of foreign origin who did not speak Spanish. The delegation was informed that an information leaflet was under preparation at Seville.

The CPT recommends that an information brochure, available in an appropriate range of languages, setting out the facility's routine and patients' rights - including information on legal assistance, review of placement (and the patient's right to challenge this), consent to treatment and complaints procedures - be drawn up and issued to all patients on admission, as well as to their families. Patients unable to understand this brochure should receive appropriate assistance.

Further efforts should be made to provide information to foreign patients on their treatment and situation in a language which they can understand.

139. Effective complaints procedures are basic safeguards against ill-treatment in psychiatric institutions. Patients should have avenues of complaint open to them both within the establishment's system and to outside bodies and be able to have confidential access to an appropriate authority.

Patients in the establishments visited could complain to staff or through the internal hierarchical system of the Prison Service. However, many patients at Alicante claimed that they had not received a response to the complaints they had submitted. **The CPT would like to receive the authorities' comments on this issue.**

Patients could also address themselves to the Ombudsman. Further, the supervisory judge saw patients on request and, at Alicante, had taken up certain issues raised by them (e.g. excessive use of force by staff, the quality of the visiting facilities). This is to be welcomed. However, **the CPT would like to be informed of the precise powers of the supervisory judge in respect of patients' complaints.**

140. The CPT also attaches importance to psychiatric establishments being visited on a regular basis by an independent outside mechanism responsible for the inspection of patients' care. Such a mechanism should be authorised to talk in private with patients, to receive directly any complaints and to make recommendations.

Penitentiary mental health-care facilities can be visited by the Ombudsman; however, these visits take place at intervals of several years. The relevant supervisory judges visited each establishment on a fortnightly basis, but they are not currently in a position to perform a full inspection function⁶⁰. **The CPT invites the Spanish authorities to provide the necessary resources for supervisory judges to assume a full inspection function in the penitentiary mental health-care facilities.**

⁶⁰ The supervisory judge at Alicante was responsible for two prisons, in addition to the penitentiary psychiatric hospital.

D. Detention facilities for children

1. Preliminary remarks

141. Since the CPT last considered the situation of detained children, the relevant Spanish legislation has been amended.⁶¹ The age of criminal responsibility has been raised to 18⁶².

However, re-education measures may be ordered in respect of a child aged 14 or over who has committed a criminal offence. Such measures may be implemented within the family or under the supervision of the social services; in the most serious cases, the child may be placed in detention for a maximum period of five years and may be required to undergo monitoring upon his or her release.⁶³ Measures involving the detention of a child are implemented in establishments run by the regional authorities (i.e. the governments of the autonomous communities).

Children under the age of 14 who have committed a criminal offence may be taken into care by the regional or local authorities⁶⁴. In the most serious cases, this may involve placement in secure residential accommodation.

Unaccompanied foreign children present on Spanish territory in violation of aliens legislation may be placed in appropriate child welfare centres⁶⁵.

142. Based on the delegation's observations in Ceuta, the CPT is concerned that there was nothing to ensure the application in practice of specific safeguards provided for in respect of expulsion procedures involving foreign minors (e.g. ascertaining a person's age before removal, identifying a minor's relatives in his or her country of origin, placing the expelled minor in the care of a suitable relative or appropriate authority); it would appear that such requirements are not always being met. **The CPT would like to receive the authorities' comments on this subject.**

143. The delegation visited Nivaria Closed Detention Centre for Children in Tenerife, a facility for children detained under the law on the criminal responsibility of minors. Further, the delegation visited establishments for unaccompanied foreign children, namely, San Antonio Centre for Children in Ceuta, and Llanos Pelados Immediate Admission Centre for Foreign Children in Fuerteventura. It also paid brief visits to Casillas del Angel Children's Home in Fuerteventura and to the facilities run by the Order of the Hermanos Franciscanos de Cruz Blanca in Algeciras; these last two establishments do not call for any particular comments by the CPT.

⁶¹ Cf. CPT/Inf (96) 9, paragraph 186.

⁶² Cf. Criminal Code, Article 19.

⁶³ Cf. Organic Law 5/2000 on the criminal responsibility of minors, Article 9 (5).

⁶⁴ Cf. Organic Law 5/2000, Article 3, Civil Code, Article 172, and Organic Law 1/1996 on the legal protection of minors, Article 12 et seq.

⁶⁵ Cf. Organic Law 4/2000 (as amended), Article 35.

2. Ill-treatment

144. The delegation received no allegations of physical ill-treatment of children by the staff in the establishments visited.

However, in the months preceding the visit, the CPT received reports alleging ill-treatment (beatings, overmedication) of children by staff in closed facilities for children detained under the provisions of the law on criminal responsibility of minors, as well as in centres for unaccompanied foreign children.

In order to have an overview of the situation, **the CPT would like to receive the following information for 2002 and 2003:**

- **the number of complaints lodged of ill-treatment by staff in detention facilities for children in Spain;**
- **the number of disciplinary and/or criminal proceedings initiated as a result of those complaints and the outcome of the proceedings (findings of the relevant court or other body, sentence/sanction).**

145. At Llanos Pelados Immediate Admission Centre, the delegation heard allegations of episodes of violence between children involving the use of stones, iron bars and, on rare occasions, knives. Staff, who were insufficient in number (cf. paragraph 158), intimidated that they tried with varying degree of success to control the situation. It was claimed that the police sometimes refused to go to the centre when called by members of staff.

The local authorities' obligation to care for children includes the responsibility to protect them from other children who wish to cause them harm. This requires, inter alia, that staff be sufficient in number and both resolved and properly trained to intervene when necessary. It is also necessary to ensure an appropriate staff presence at all times, including nights and weekends. **The CPT recommends that the Spanish authorities take all necessary measures to address the problem of violence between children at the Llanos Pelados centre, having regard to the above remarks.**

3. Nivaria Closed Detention Centre for Children

146. Nivaria Closed Detention Centre for Children, located in a pine forest on the outskirts of Santa Cruz, had an official capacity of 20; at the time of the visit, the centre was holding 32 male residents (including some of age who had been admitted to the establishment as minors) for periods ranging from one month to two years; the vast majority had already been tried. Fifteen residents had been transferred from other islands of the Canary Archipelago.

147. As regards material conditions, residents were accommodated in cells with satisfactory lighting, including natural light, and ventilation. The cells' furniture consisted mostly of beds, but a number of children were sleeping on mattresses placed directly on the floor. Cells were equipped with call bells.

Overcrowding was having an adverse effect on the establishment (which had experienced even higher occupancy levels a few weeks before the visit). The situation was exacerbated by residents not having ready access to lavatories while locked in their cells; the use of buckets/chamber pots was common practice.

On a more positive note, residents had ready access to sanitary facilities, including showers, when they were outside their cells. The delegation also observed that work to enlarge the establishment had begun.

The CPT recommends that measures be taken to ensure that the official capacity of Nivaria Closed Detention Centre for Children is always respected. Furthermore, residents should have ready access to sanitary facilities under decent conditions at all times.

148. The activities offered were generally satisfactory and the staff sufficient in number to supervise them (seven tutors, including three psychologists). Residents attended classes and participated in vocational training (in subjects such as car bodywork, carpentry or painting), and sports activities were also available. They were constantly occupied while they were outside their cells. However, they spent thirteen and a half hours locked in their cells without any activity; moreover, the centre's management were themselves of the view that the space available for conducting classes and other activities was insufficient. **The CPT would like to have the Spanish authorities' comments on these points.**

149. The level of health care appeared on the whole to be adequate. A doctor was present for seven hours per day from Monday to Thursday and on call at other times. Further, there were two full-time psychologists who held regular consultations, and a psychiatrist visited the establishment approximately once a month.

150. The CPT attaches considerable importance to the maintenance of good contacts with the outside world for all persons deprived of their liberty. The guiding principle should be to promote contact with the outside world; any restrictions on such contacts should be based exclusively on security concerns or considerations linked to available resources. The active promotion of such contacts can be especially beneficial to children deprived of their liberty.

On the whole, these principles were being complied with at Nivaria Closed Detention Centre for Children. Every week, residents could make two free phone calls of about ten minutes and receive a visit from members of their family. However, the delegation was told that, as regards many of the fifteen children who were not from Tenerife, the cost of travel made it difficult for relatives to visit them. It would appear that financial assistance had previously been available for this purpose, but had been discontinued.

The CPT recommends that the Spanish authorities take steps to enable all children without exception to receive, if they so wish, one visit a week from their relatives.

151. The CPT attaches particular importance to regular visits to all places of detention for children by an independent body (for example, a visiting committee or a judge) with authority to receive - and, if necessary, take action on - complaints from children and to inspect the premises.

At Nivaria Closed Detention Centre for Children, this question was examined in detail. The CPT is pleased to note that a representative of the Directorate General for the Protection of Minors of the Government of the Canary Islands visited the establishment on a regular basis. However, the role of such a representative cannot replace an independent body as advocated by the CPT.

The CPT recommends that Nivaria Closed Detention Centre for Children, as well as all other establishments in Spain accommodating children deprived of their liberty, be visited regularly by an independent body as described above; this body should enter into direct contact both with the detained children and with staff.

4. Centres for unaccompanied foreign minors

a. living conditions

152. **San Antonio Centre for Children**, located on the outskirts of the city of Ceuta, had an official capacity of 80; at the time of the visit, it was holding 58 boys. The centre was housed in several prefabricated units and, on the whole, offered adequate conditions. However, **certain sanitary facilities were in need of renovation.**

The majority of the children accommodated at San Antonio attended school or followed vocational training. However, the establishment offered no other organised activities, and recreational activities were limited to playing table football or running in the courtyard. Except for the dining room, there was no other association or common room. **The CPT urges the Spanish authorities to organise sporting and recreational activities for children detained at San Antonio, in particular during periods when school is not operating. It also encourages the authorities to provide a common room with board games and reading materials.**

153. By contrast, the situation was far from satisfactory at **Llanos Pelados Immediate Admission Centre for Foreign Children**. It is situated close to a public refuse dump, in an isolated location in the centre of the island of Fuerteventura, a few kilometres from the nearest town and far from any public transport. The atmosphere there was anything but warm and family-like (cf. also paragraph 145).

At the time of the visit, the establishment, which had an official capacity of 30, accommodated 32 boys in small prefabricated units. The rooms were suitably equipped, but their occupancy rates were on occasion somewhat high, and had most likely been even higher in the past (on 15 May 2003, 48 children were registered at Llanos Pelados). Further, the delegation observed that some children lacked suitable clothing, especially shoes. The establishment's management explained that the boys were occasionally given shoes but sold them to obtain pocket money; nevertheless, **provision should be made for all the children to have shoes.**

The situation with regard to activities gave even more cause for concern. In all, a mere six hours of classes per week were organised, and only two of the children were receiving vocational training outside the centre (the delegation noted, however, that steps were being taken to offer horticultural activities in nearby greenhouses). No organised sports activities were offered and, owing to the lack of transport, staff were unable to take the children to use public facilities. Recreational activities were confined to watching television.

To relieve boredom and prevent fighting (cf. paragraph 145), staff in charge had no alternative but to allow the children out of the centre under instructions to return at a specific time. As a result, a number of them lingered outside the establishment, in complete idleness and without any supervision whatsoever. The children had been subjected to this situation for months, and in some cases for over a year. **The CPT trusts that the vehicles at the centre's disposal are now being used, and that the problems preventing use of the computer room have been resolved.**

154. In the CPT's opinion, the manner in which children are cared for at Llanos Pelados centre is unacceptable; moreover, the situation found by the delegation would appear to be in violation of current Spanish legislation⁶⁶.

In the light of the above remarks, **the CPT recommends that living conditions at Llanos Pelados Immediate Admission Centre for Foreign Children be reviewed.** Further, **the Committee recommends that the authorities take without delay all necessary measures to ensure that, in accordance with the legislation in force, every child at Llanos Pelados participates in education and/or vocational training. It goes without saying that this recommendation applies to all other centres for foreign children where a similar situation prevails.** In addition, **the CPT recommends that the authorities ensure that sports and recreational activities are organised at Llanos Pelados.**

155. According to Spanish legislation, an unaccompanied foreign child who cannot be returned to his family or to his country of origin must be given a residence permit after having been in the care of the authorities for nine months⁶⁷. The delegation was told at Llanos Pelados that this provision was not being applied. **The CPT wishes to receive the authorities' comments on this matter.**

b. health care

156. At San Antonio Centre for Children, a nurse was present in the morning from Monday to Friday. In her absence, the doctors at the town's hospital were called in case of emergency. Medical files were well kept. A psychologist and a social worker also attended the establishment.

⁶⁶ Article 9 of Organic Law 4/2000 (as amended) stipulates that every foreign national under 18 years of age has the right and duty to receive an education under the same conditions as Spanish citizens, including access to free compulsory primary education, to obtaining the corresponding educational qualifications, and to the public system of financial assistance and grants.

⁶⁷ Cf. Organic Law 4/2000 (as amended), Article 35, and Royal Decree 864/2001, Article 62.

157. By contrast, at the Llanos Pelados centre, there were no arrangements in place for attendance by doctors or nurses. Children were not medically examined or interviewed by health care staff at the centre, and there was no provision for on-site health care. It would appear that, in case of need, staff from the centre had to take children in their own vehicles to an outside health-care facility.

The CPT recommends that the Spanish authorities take all necessary measures to ensure that the children at Llanos Pelados Immediate Admission Centre have access to appropriate medical care at all times. More particularly, immediate steps must be taken to ensure that the establishment is visited on a daily basis by a nurse.

c. staff issues

158. At San Antonio, special efforts were being made by the new management to put together a team of well-qualified and motivated staff.

At Llanos Pelados, the shortage of staff was blatant. It consisted of one director, three teachers and sixteen supervisory/custodial staff. In practice, the staff present during each 24-hour period consisted of one teacher and four custodial staff to supervise over 30 children and to carry out other duties relating to the establishment. Further, the majority of the staff did not possess any particular qualifications for working with children; the turnover of staff was extremely high (100% in the first half of 2003).

Given this staffing situation, it is not surprising that Llanos Pelados cannot provide organised activities and that staff are unable to take appropriate action to prevent violence between children (cf. paragraphs 145 and 153), or to prevent them from absconding; the latter had been happening on a very large and constantly increasing scale since 1999⁶⁸.

159. It should be stressed that the staff in a centre for children deprived of their liberty should be carefully selected for their personal maturity and ability to cope with the challenges of working with - and safeguarding the welfare of - this age group. More particularly, they should be committed to working with young people, and be capable of guiding and motivating the children in their charge.

All such staff, including those with purely custodial duties, should receive professional training both during induction and on an on-going basis and benefit from appropriate external support and supervision in the exercise of their duties.

Moreover, the management of such centres should be entrusted to persons with advanced leadership skills, who have the capacity to respond in an effective manner to the complex and competing demands placed upon them, both by children and staff.

160. The CPT recommends that the complement, recruitment and training of staff at the Llanos Pelados and San Antonio centres be reviewed, in the light of the remarks made in paragraphs 158 and 159.

⁶⁸ Fifty-seven cases in 1999; 77 in 2000; 114 in 2001 and 253 in 2002.

III. RECAPITULATION AND CONCLUSIONS

A. Law enforcement agency establishments

161. Most persons with whom the CPT's delegation spoke indicated that they had been correctly treated while in the custody of the law enforcement agencies. However, some detained criminal suspects interviewed by the delegation indicated that they had been physically ill-treated by Civil Guard or by Local Police officers. The allegations involved in the main slaps, punches and kicks to various parts of the body. Most of the allegations related to the time of arrest (including after the person had been brought under control), or during transport to a law enforcement agency establishment. In certain cases, the delegation's doctors found that the persons concerned bore injuries consistent with their allegations. The delegation also interviewed one immigration detainee who alleged that he had been ill-treated (struck with a baton on the legs) by National Police officers.

162. The CPT has reiterated the recommendation that law enforcement officials be reminded regularly and in an appropriate manner that the ill-treatment of detained persons is not acceptable and will be the subject of severe sanctions. They should also be reminded that no more force than is reasonably necessary should be used when effecting an arrest, and that once apprehended persons have been brought under control, there can be no justification for their being struck. Further, the Committee has recommended that the Spanish authorities integrate human rights concepts into practical professional training for high-risk situations, such as the arrest and interrogation of suspects.

163. The persons responsible for overseeing and carrying out investigations into possible ill-treatment by law enforcement officials should be independent from those implicated in the events, and such investigations should offer guarantees of effectiveness, promptness and expeditiousness. The CPT has reiterated its recommendation that consideration be given to creating a fully independent investigating agency to process complaints against law enforcement officials.

164. As regards the three fundamental safeguards against ill-treatment advocated by the CPT, namely the rights of detained persons to inform a close relative or another third party of their choice of their situation, to have access to a lawyer, and to have access to a doctor, the Committee concluded that these rights are still not fully guaranteed in practice; in particular, detained persons were only allowed to consult with a lawyer in private after making a formal statement. The CPT has expressed satisfaction at the Spanish Government's renewed commitment to take all necessary steps to ensure that detained persons' fundamental rights are guaranteed as from the very outset of custody.

While the right for detained persons to have access to a doctor appeared on the whole to function in a satisfactory manner, the CPT has recommended that measures be adopted to ensure that medical confidentiality is fully respected in practice. Further, the results of every examination should be recorded in writing by the doctor and made available to the detained person concerned. The Committee has also recalled its recommendation that persons held *incommunicado* be guaranteed the right to be examined by a doctor of their own choice (at their own expense).

The CPT has recommended that a form setting out detained persons' rights be systematically given to such persons at the very outset of custody and has made certain remarks concerning the content of the form.

165. Law enforcement officials should be reminded of the need to keep accurate custody records. Furthermore, the CPT has invited the authorities to establish a system of frequent and unannounced inspections to law enforcement agency detention facilities by an independent authority.

166. The CPT has recommended that the conditions of detention in the law enforcement agency establishments visited be reviewed and existing shortcomings remedied. Further, the criteria advocated by the Committee concerning cell sizes and occupancy levels must be respected. Arrangements are also needed to ensure that detained persons have ready access to decent sanitary facilities at all times.

The CPT has reiterated its recommendation that the authorities review generally conditions of detention in the establishments of law enforcement agencies and take the necessary steps to improve them, without any further delay. Further, the Committee has called upon the authorities to establish standards for law enforcement agency detention facilities, taking account of its criteria.

167. The CPT has stressed that immigration detainees should be informed fully and accurately in a language they understand of their rights and the procedure applied to them, and should have an effective right of access to a lawyer, as from the outset of custody, including the possibility to consult with a lawyer in private. The Committee has recommended that arrangements for handling cases of unauthorised entry into Spain by foreign nationals be reviewed as a matter of urgency. In-service training should be provided to officers working with immigration detainees and increased emphasis placed on improving officers' language skills.

Conditions of detention in the ad hoc law enforcement agency facilities visited used for the short-term detention of foreign nationals should be reviewed. This also applies to the Algeciras and El Matorral long-term detention centres, which were overcrowded. As regards the detention centre at Fuerteventura Airport, the CPT has recommended that, in its current condition, the centre be used only in case of emergency and for short periods of detention. It has further recommended that the absence of organised activities at the long-term detention centres be remedied without delay.

Staffing levels at the El Matorral centre should be reviewed. Further, measures are needed to ensure that staff deployed for duty in detention centres are suited for the work involved, particular attention being paid to their language skills and training.

The CPT has also recommended that a document setting out the centres' internal rules be drawn up and distributed, in an appropriate range of languages, and has stressed that families detained under aliens legislation should, as far as possible, be accommodated together.

B. Prisons

168. The delegation heard no allegations of physical ill-treatment of inmates by prison staff at Tenerife Prison. By contrast, at Villabona Prison, prison officers confirmed the existence of cases of ill-treatment (baton blows) in the disciplinary unit. Further, in both prisons, some allegations were received from inmates placed in segregation for their own protection of abusive language or contemptuous remarks from certain members of staff.

The CPT has recommended that the supervision of staff in Villabona's disciplinary unit be increased; senior management should visit the unit regularly and enter into direct contact with prisoners, in private. More generally, the Committee has recommended that the authorities deliver at regular intervals the clear message that all forms of ill-treatment of prisoners, including verbal abuse, are not acceptable and will be the subject of severe sanctions.

169. As regards prisoners under special regimes, the CPT has recommended that the programmes of activities for prisoners subject to the provisions of Article 10 of the General Organic Law on Prisons be developed and that direct contact between these prisoners and staff be encouraged. The situation of prisoners separated from the mainstream population for their own protection was also found to be unacceptable. Additional efforts should be made to provide these prisoners with an environment allowing them to participate in as normal a regime as possible.

170. Material conditions for the general inmate population in the prisons visited were in principle acceptable. However, as regards prison overcrowding, the CPT has recommended that the authorities redouble their efforts to bring the number of prison places and inmates into balance at the earliest opportunity and, more particularly, that immediate steps be taken to ensure that 7 m² cells are never used to accommodate more than one person, except in exceptional cases when it would be inadvisable for a prisoner to be left alone.

As regards regime activities, the CPT has recommended that the number of work places available to prisoners be increased and that efforts to develop other activities be stepped up.

171. The health care available to prisoners was on the whole of an acceptable standard. On the other hand, the CPT has reiterated its recommendation that a new form for use by doctors for the systematic recording of injuries be developed without delay and that, in addition to the doctor's objective medical findings, the form provide for the recording of any relevant statements by the prisoner and the doctor's conclusions. Further, the provision of dental care should be reviewed in the two prisons visited and the cover of the psychiatrist significantly increased.

172. The CPT was on the whole impressed by the efforts being made in the two prisons visited to care for prisoners with drug-related problems. Nevertheless, the Committee has invited the authorities to consider developing specific programmes for female drug-dependent prisoners.

C. Penitentiary mental health-care facilities

173. The delegation heard no allegations, and gathered no other evidence, of ill-treatment of patients by staff in the Seville Penitentiary Psychiatric Hospital. The attitude of staff working in close contact with patients was found to be professional and caring, and staff spoke with sensitivity about their work.

However, at Alicante Penitentiary Psychiatric Hospital, some isolated allegations were heard of prison officers hitting patients with their hands, as well as with batons. The CPT has recommended that prison officers at this establishment be reminded that all forms of ill-treatment of patients are unacceptable and will be the subject of severe sanctions. Further, the tasks assigned to prison officers and the training provided to all staff in the penitentiary mental health-care facilities should be reviewed.

174. In the light of its delegation's observations, the CPT has recommended that efforts be made to provide patients with living conditions which are conducive to their treatment and welfare and that steps be taken to keep the premises in a satisfactory state of repair.

As regards treatment, there were no signs of overmedication, medical records were precise and detailed, and medical confidentiality was respected. However, the treatment and care dimension should be enhanced and, especially at Alicante, the carceral atmosphere reduced. Further, the CPT has recommended that, at Alicante, patients be provided with a structured daily programme of therapeutic and rehabilitative activities, individual treatment plans be drawn up for all patients, and consideration be given to broadening the scope of the education activities.

The CPT has also recommended that clearly defined policies on the restraint and the seclusion of patients, as well as a suicide prevention policy, be drawn up for the two penitentiary mental health-care facilities.

175. The CPT has expressed concern about the very low presence of health-care staff outside normal working hours, and the conspicuous permanent presence of a significant number of prison officers in the two mental health-care facilities. The Committee has recommended that health-care staffing levels be reviewed; in particular, the presence of psychiatrists and psychologists should be increased and nursing cover in the evening, at night and at weekends should be strengthened.

176. As regards safeguards, the CPT has recommended that the authorities ensure regular reviews of the need for continued placement in penitentiary mental health-care facilities, and that an introductory brochure, available in an appropriate range of languages, be issued to all patients on admission. More generally, efforts are needed to provide information to foreign patients on their treatment and situation in a language they can understand. The authorities have also been invited to ensure that supervisory judges assume a full inspection function in the penitentiary mental health-care facilities.

D. Detention facilities for children

177. The delegation received no allegations of physical ill-treatment of children by the staff in the establishments visited. However, in the months preceding the visit, the CPT received reports alleging ill-treatment (beatings, overmedication) of children by staff in closed detention facilities for children, as well as in centres for unaccompanied foreign children.

At Llanos Pelados Immediate Admission Centre for Foreign Children, the delegation heard allegations of episodes of violence between children involving the use of stones, iron bars and, on rare occasions, knives. The CPT has recommended that the authorities take all necessary measures to address this problem.

178. Nivaria Closed Detention Centre for Children was overcrowded and, in the absence of access to a lavatory during certain periods, the use of buckets/chamber pots was common practice. The CPT has recommended that measures be taken to ensure that the centre's official capacity is always respected. Furthermore, all detained children should have ready access at all times to sanitary facilities in decent conditions. Steps should also be taken to enable all children to receive one visit a week from family members. Further, the Committee has recommended that Nivaria, as well as all other detention centres for children, be visited regularly by an independent body which enters into direct contact with both the detainees and staff.

179. As regards centres for unaccompanied foreign children, the CPT has expressed considerable concern about the situation found at the Llanos Pelados Centre; the manner in which children were cared for at that establishment was unacceptable. The CPT has recommended that living conditions at the centre be reviewed and that the authorities ensure that, in accordance with the legislation in force, every child participates in education and/or vocational training. Children at Llanos Pelados should also be guaranteed access to health care at all times, and immediate steps must be taken to ensure that the centre is visited daily by a nurse.

The situation at the San Antonio Centre for Children was far better. Material conditions were on the whole adequate and the majority of the children attended school or followed vocational training. Health-care arrangements were also adequate.

E. Action on the CPT's recommendations, comments and requests for information

180. The various recommendations, comments and requests for information formulated by the CPT are listed in Appendix I.

181. As regards more particularly the CPT's recommendations, having regard to Article 10 of the Convention, the CPT requests the Spanish authorities to provide within **six months** a response giving a full account of action taken to implement them.

The CPT trusts that it will also be possible for the Spanish authorities to provide in the above-mentioned response reactions to the comments formulated in this report which are listed in Appendix I, as well as replies to the requests for information made.

APPENDIX I

LIST OF THE CPT'S RECOMMENDATIONS, COMMENTS AND REQUESTS FOR INFORMATION

A. Law enforcement agency establishments

Ill-treatment

recommendations

- law enforcement officials to be reminded regularly and in an appropriate manner that the ill-treatment of detained persons is not acceptable and will be the subject of severe sanctions (paragraph 14);
- human rights concepts to be integrated into practical professional training for high-risk situations, such as the arrest and interrogation of suspects; this will prove more effective than separate courses on human rights (paragraph 15);
- consideration to be given to creating a fully independent investigating agency to process complaints against law enforcement officials; such a body should have the power to instigate disciplinary proceedings against law enforcement officials and to refer cases to the judicial authorities which are competent to consider whether criminal proceedings should be brought (paragraph 16).

comments

- law enforcement officials should be reminded that no more force than is reasonably necessary is to be used when effecting an arrest and that, once apprehended persons have been brought under control, there can be no justification for their being struck (paragraph 14).

Safeguards against ill-treatment

recommendations

- measures to be adopted to ensure that medical confidentiality is fully respected in practice; medical examinations of detained persons to be conducted out of the hearing and, unless the doctor concerned expressly requests otherwise in a given case, out of the sight of law enforcement officials (paragraph 24);
- persons held incommunicado to be guaranteed the right to be examined by a doctor of their own choice, it being understood that such a second examination may take place in the presence of a state-appointed doctor (paragraph 25);

- a form setting out detained persons' rights in a straightforward manner to be systematically given to such persons at the very outset of their deprivation of liberty; the form to be available in an appropriate range of languages (paragraph 26);
- the form currently being used to inform detained persons of their rights to be amended in order to ensure that all detained persons (including those being held incommunicado) are expressly informed of their right to be examined by a doctor of their own choice (at their own expense) (paragraph 26);
- law enforcement officials to be reminded of the need to keep accurate custody records (paragraph 27);
- the authorities to develop a single and comprehensive custody record to be kept for all persons held in law enforcement agency establishments (paragraph 27).

comments

- the results of every examination, as well as any relevant statements by the person in custody and the doctor's conclusions, should be recorded in writing by the doctor and made available to the person in custody and his lawyer (paragraph 24);
- the form setting out detained persons' rights should indicate unequivocally that a state-appointed lawyer is free of charge for the detained person (paragraph 26);
- the Spanish authorities are invited to explore the possibility of attributing the responsibility for the custody of detained persons to custody officers who are specifically selected and trained for that post (paragraph 28);
- the Spanish authorities are invited to establish a system of frequent and unannounced visits to law enforcement agency detention facilities by an independent authority (paragraph 29).

requests for information

- the concrete measures being taken pursuant to the firm and unambiguous commitment by the Spanish Government to implement in full the CPT's recommendations concerning the rights of access to a lawyer and notification of custody for detained persons (paragraph 23);
- action taken to adopt the CPT's proposed amendments to the form used by doctors performing forensic functions, and to ensure that the form is actually used by such doctors (paragraph 25).

Conditions of detention

recommendations

- conditions of detention in the establishments visited to be reviewed and existing shortcomings remedied, having regard to the remarks made in paragraphs 30 to 33; particular attention to be paid to cell lighting, ventilation and hygiene; steps to be taken to ensure that the criteria advocated by the Committee concerning cell sizes and occupancy levels are respected (paragraph 35);
- arrangements to be made to ensure that detained persons have ready access to decent sanitary facilities at all times, including at night (paragraph 35);
- action to be taken to address the deficiencies highlighted in paragraph 34, in particular as regards the provision of facilities for outdoor exercise (paragraph 35);
- conditions of detention to be reviewed in the establishments of law enforcement agencies in general and when necessary steps taken to improve them, without any further delay (paragraph 36);
- standards for law enforcement agency detention facilities to be established, taking account of the CPT's criteria; compliance with those standards and with instructions regarding conditions of detention to be effectively monitored (paragraph 36).

Immigration detainees

recommendations

- arrangements for handling cases of unauthorised entry into Spain by foreign nationals, especially cases involving foreign nationals arriving in large numbers (e.g. at the southern coasts of the country and in the Canary Islands), to be reviewed as a matter of urgency, in the light of the CPT's remarks (paragraph 44);
- increased emphasis to be placed on improving the language skills of police officers assigned to case work or custody duties in respect of immigration detainees (paragraph 46);
- conditions of detention in the Isla de las Palomas and Las Eras holding facilities to be reviewed, in the light of the CPT's remarks (paragraph 51);
- conditions of detention at the Algeciras and El Matorral detention centres for foreigners to be reviewed without delay, in the light of the remarks made in paragraphs 53 to 55 (paragraph 57);
- in their current condition, the premises of the detention centre for foreigners at Fuerteventura Airport, to be used only in case of emergency and never for periods of longer than 24 hours (paragraph 57);

- the shortcomings observed with regard to activities at Algeciras and El Matorral Detention Centres for Foreigners to be remedied without delay, taking into account the remarks made in paragraphs 58 and 59 (paragraph 60);
- the nursing cover at the Algeciras and El Matorral Detention Centres for Foreigners to be reinforced in the light of the CPT's remarks; such reinforcement should permit visits by a nurse every day of the week, including weekends (paragraph 62);
- steps to be taken to ensure that every person held in a detention centre for foreigners is physically examined by a doctor as soon as possible after his or her arrival; this examination can also be carried out by a nurse reporting to the doctor; the results of the examination to be placed in an individual medical record kept in the medical service (paragraph 62);
- staffing levels at El Matorral Detention Centre for Foreigners to be reviewed (paragraph 64);
- police officers not to carry batons inside detention centres for foreigners; if batons have to be carried, they should be hidden from view; the carrying of firearms within a detention facility is also an intimidating and potentially dangerous practice (paragraph 65);
- police officers at Algeciras Detention Centre for Foreigners to discontinue the systematic practice of wearing latex gloves and surgical masks whenever they enter the detention facilities (paragraph 66);
- a document setting out the establishments' rules to be drawn up and distributed, in an appropriate range of languages, in all detention centres for foreign nationals (paragraph 67).

comments

- officials working in direct contact with immigration detainees should undergo appropriate in-service training, including in interpersonal communication skills (paragraph 46);
- accommodation for detainees receiving in-patient care in the infirmary at El Matorral Detention Centre for Foreigners should be improved (paragraph 62);
- steps should be taken to ensure that staff deployed for duty in detention centres for foreigners are suited for the work involved, particular attention being paid to their language skills and training (paragraph 64);
- families detained under aliens legislation should, as far as possible, be accommodated together (paragraph 68);
- the authorities are invited to review the practical arrangements concerning access to telephones at the El Matorral detention centre for foreigners (paragraph 69).

requests for information

- the arrangements for medical and nursing cover by the doctor and the nurse at Isla de las Palomas and Las Eras Holding Facilities for Foreigners (paragraph 45).

B. Prisons

Ill-treatment

recommendations

- steps to be taken to increase the supervision of staff in the disciplinary unit of Villabona Prison; senior management to visit the unit regularly and enter into direct contact with prisoners, in private (paragraph 75);
- the authorities at central and local level to deliver the clear message that all forms of ill-treatment of prisoners, including verbal abuse, are not acceptable and will be the subject of severe sanctions; this message to be repeated at regular intervals (paragraph 76).

Prisoners subject to special regimes

recommendations

- the regimes offered to all prisoners subject to the provisions of Article 10 of the General Organic Law on Prisons to be developed, including in Tenerife and Villabona Prisons, having regard to the CPT's remarks (paragraph 81);
- all necessary measures to be taken to encourage, as far as possible, direct contact (without screens or grilles) between prisoners subject to the provisions of Article 10 of the General Organic Law on Prisons and the different categories of staff who have dealings with them (paragraph 82);
- additional efforts to be made to provide prisoners segregated for their own protection with an environment allowing them to participate in as normal a regime as possible (paragraph 86).

comments

- it would be preferable that prisoners subject to the provisions of Article 10 of the General Organic Law on Prisons are not held in the same unit as prisoners undergoing segregation as a disciplinary measure (paragraph 83).

Conditions of detention

recommendations

- efforts to be redoubled to bring the number of prison places and the number of inmates into balance at the earliest opportunity (paragraph 88);
- all necessary measures to be taken to remedy the shortcomings described in paragraph 87 (paragraph 89);
- steps to be taken immediately to ensure that the cells measuring 7 m² at Tenerife Prison - as well as in any other Spanish prison where similar conditions prevail - are not used to accommodate more than one prisoner; efforts to be made to reduce occupancy of cells measuring 8.5 m² to one person (paragraph 89);
- measures to be taken to increase the number of work places available to prisoners in Tenerife and Villabona Prisons and efforts to develop other regime activities for prisoners to be stepped up (paragraph 91).

requests for information

- up-to-date statistical information on the Spanish prison system, including its overall design capacity (*optimal*), on the basis of one prisoner to a cell, operational capacity (*functional*) and current occupancy level; similar information in respect of the Catalan prison service (paragraph 88).

Health-care services

recommendations

- a new form for the systematic recording of injuries for use by prison doctors to be developed without delay; in addition to the doctor's objective medical findings, the form to provide for the recording of any relevant statements by the prisoner and the doctor's conclusions (paragraph 93);
- the provision of dental care at Villabona and Tenerife Prisons to be reviewed (paragraph 94);
- provision of psychiatrist care at Villabona and Tenerife Prisons to be significantly increased (paragraph 95).

Care of drug-dependent prisoners

comments

- the authorities are invited to consider developing specific programmes for female prisoners with drug-related problems (paragraph 102).

Other issues

recommendations

- the competent supervisory judges to inspect all of the detention units and to enter into direct contact with the prisoners and with prison staff (paragraph 106).

requests for information

- comments on the staff-related issues raised in paragraph 104 (relations between prison staff and prisoners; staffing levels; identification tags) (paragraph 104);
- the arrangements made for in-service training at Tenerife and Villabona Prisons (paragraph 105).

C. Penitentiary mental health-care facilities

Preliminary remarks

requests for information

- comments on the lack of institutional and functional separation between penitentiary mental health-care facilities and prisons, and its impact upon the ethos and approach prevailing in the penitentiary mental health-care facilities (paragraph 111).

Ill-treatment

recommendations

- prison officers at Alicante Penitentiary Psychiatric Hospital to be reminded that all forms of ill-treatment of patients are unacceptable and will be the subject of severe sanctions (paragraph 112);
- the tasks assigned to prison officers in the penitentiary mental health-care facilities, and the training provided to all staff in such facilities, to be reviewed, in the light of the CPT's remarks (paragraph 113).

Living conditions of patients

recommendations

- efforts to be made to provide patients with material conditions which are conducive to their treatment and welfare; steps to be taken to keep the premises in a satisfactory state of repair (paragraph 115);

- efforts to be made to enhance the treatment and care dimension within the two penitentiary mental health-care facilities and, particularly at the Alicante Penitentiary Psychiatric Hospital, to reduce the carceral atmosphere (paragraph 116).

comments

- unless there are medical reasons to the contrary, all patients subject to involuntary placement in a psychiatric establishment should be offered at least one hour of outdoor exercise every day (paragraph 117).

Treatment

recommendations

- further efforts to be made to provide all patients at Alicante Penitentiary Psychiatric Hospital with a structured daily programme of therapeutic and rehabilitative activities, based on their individual needs and capacities (paragraph 120).

comments

- the authorities are invited to develop therapeutic programmes at Alicante Penitentiary Psychiatric Hospital (paragraph 119);
- individual treatment plans should be drawn up for all patients at Alicante Penitentiary Psychiatric Hospital (paragraph 119);
- consideration should be given to broadening the scope of the education activities in order to involve a higher proportion of patients and better suit the needs of the patients concerned (paragraph 120);
- consideration should be given to streamlining the decision-making process as regards patients' outings and periods of leave by placing responsibility in this context fully with those professionals closest to the patient, i.e. the psychiatrists and the supervisory judge (paragraph 121);
- the authorities are invited to improve the specific provision being made for foreign patients, in particular as regards the language in which psychiatric assessments are carried out (paragraph 122).

Restraint and seclusion

recommendations

- the practice of immobilising patients to be reviewed at the Seville Penitentiary Psychiatric Hospital (paragraph 125);

- a clearly defined policy concerning the restraint of patients to be drawn up for both penitentiary mental health-care facilities (paragraph 126);
- appropriate steps to be taken to ensure that patients are not held in seclusion for long periods and that a detailed policy on the use of seclusion is drawn up (paragraph 127).

Staff resources

recommendations

- health-care staffing levels in the two penitentiary mental health-care facilities to be reviewed; in particular, the presence of psychiatrists and psychologists to be increased, and nursing cover in the evening, at night and at weekends to be strengthened (paragraph 130).

comments

- it would be desirable to replace the prison officers by nursing staff with specialist training (paragraph 130).

Suicide prevention

recommendations

- a full suicide prevention policy to be developed and implemented without delay at Alicante and Seville Penitentiary Psychiatric Hospitals, taking into account the CPT's remarks (paragraph 133).

requests for information

- the results of the investigation into the circumstances surrounding the suicide at Alicante Penitentiary Psychiatric Hospital referred to in paragraph 132 (paragraph 133).

Safeguards

recommendations

- the need for continued placement in penitentiary mental health-care facilities to be the subject of regular substantive reviews; the patient to be informed in writing of the outcome of these reviews and, if the patient concerned agrees, such information also to be provided to his/her lawyer or other representative (paragraph 137);

- an information brochure, available in an appropriate range of languages, setting out the facility's routine and patients' rights - including information on legal assistance, review of placement (and the patient's right to challenge this), consent to treatment and complaints procedures - to be drawn up and issued to all patients on admission, as well as to their families; patients unable to understand this brochure to receive appropriate assistance (paragraph 138).

comments

- further efforts should be made to provide information to foreign patients on their treatment and situation in a language which they can understand (paragraph 138);
- the Spanish authorities are invited to provide the necessary resources for supervisory judges to assume a full inspection function in the penitentiary mental health-care facilities (paragraph 140).

requests for information

- whether sentenced prisoners transferred to a penitentiary mental health-care facility for treatment are also provided with legal assistance (paragraph 135);
- comments on the claims by patients at Alicante Penitentiary Psychiatric Hospital that they had not received a response to their complaints (paragraph 139);
- the precise powers of the supervisory judge in respect of patients' complaints (paragraph 139).

D. Detention facilities for children

Preliminary remarks

requests for information

- comments on the application in practice of the specific safeguards foreseen in respect of expulsion procedures involving minors (e.g. ascertaining a person's age before removal, identifying a minor's relatives in his or her country of origin, placing the expelled minor in the care of a suitable relative or appropriate authority) (paragraph 142).

Ill-treatment

recommendations

- all necessary measures to be taken to address the problem of violence between children at Llanos Pelados Immediate Admission Centre for Foreign Children (paragraph 145).

requests for information

- for 2002 and 2003:
 - the number of complaints lodged of ill-treatment by staff in detention facilities for children in Spain;
 - the number of disciplinary and/or criminal proceedings initiated as a result of those complaints and the outcome of the proceedings (findings of the relevant court or other body, sentence/sanction)
- (paragraph 144).

Nivaria Closed Detention Centre for Children

recommendations

- measures to be taken to ensure that the official capacity of Nivaria Closed Detention Centre for Children is always respected (paragraph 147);
- steps to be taken to enable all children without exception to receive, if they so wish, one visit a week from their relatives (paragraph 150);
- Nivaria Closed Detention Centre for Children, as well as all other establishments in Spain accommodating children deprived of their liberty, to be visited regularly by an independent body with the authority to receive - and, if necessary, take action on - complaints from children and to inspect the premises; this body to enter into direct contact both with the detained children and with staff (paragraph 151).

comments

- residents should have ready access to sanitary facilities under decent conditions at all times (paragraph 147).

requests for information

- comments on the amount of time spent by children locked up in their cells without any activity and on the insufficiency of the space available for conducting classes and other activities (paragraph 148).

Centres for unaccompanied foreign minors

recommendations

- sporting and recreational activities to be organised for children detained at San Antonio Centre, in particular during periods when school is not operating (paragraph 152);
- living conditions at Llanos Pelados Immediate Admission Centre to be reviewed (paragraph 154);
- all necessary measures to be taken without delay to ensure that, in accordance with the legislation in force, every child at Llanos Pelados participates in education and/or vocational training; this recommendation applies to all other centres for foreign children where a similar situation prevails (paragraph 154);
- sports and recreational activities to be organised at Llanos Pelados (paragraph 154);
- all necessary measures to be taken to ensure that the children at Llanos Pelados have access to appropriate medical care at all times; immediate steps must be taken to ensure that the establishment is visited on a daily basis by a nurse (paragraph 157);
- the complement, recruitment and training of staff at the Llanos Pelados and San Antonio centres to be reviewed, in the light of the remarks made in paragraphs 158 and 159 (paragraph 160).

comments

- certain sanitary facilities at San Antonio Centre for Children were in need of renovation (paragraph 152);
- a common room with board games and reading materials should be provided at the San Antonio Centre (paragraph 152);
- provision should be made for all children at Llanos Pelados Immediate Admission Centre to have shoes (paragraph 153);
- the CPT trusts that the vehicles at the disposal of Llanos Pelados Immediate Admission Centre are now being used and that the problems preventing use of the computer room have been resolved (paragraph 153).

requests for information

- comments on the provision of residence permits to unaccompanied foreign minors who cannot be returned to their family or country of origin after having been in the care of the authorities for a period of nine months (paragraph 155).

APPENDIX II

**LIST OF THE AUTHORITIES AND NON-GOVERNMENTAL ORGANISATIONS
WITH WHICH THE CPT'S DELEGATION HELD CONSULTATIONS**

A. Ministerial authorities

Ministry of the Interior

Angel ACEBES PANIAGUA	Minister for the Interior
Ignacio ASTARLOA HUARTE-MENDICOA	Secretary of State for Security
Jaime Ignacio GONZALEZ GONZALEZ	Government Representative for Foreigners and Immigration
María Dolores de COSPEDAL GARCIA	Undersecretary of State
Fernando MANZANEDO GONZALEZ	Technical General Secretary
Angel Yuste CASTILLEJOS	Director General of Prison Services

Ministry of Justice

Rafael CATALA POLO	Secretary of State
Félix FERNANDEZ-SHAW TODA	Director General for Legislative Policy and International Legal Cooperation

B. Other national authorities

Office of the General Public Prosecutor

Jaime MORENO VERDEJO	
Manuel MARCHENA GOMEZ	

Office of the Ombudsman (Defensor del Pueblo)

Enrique MUGICA HERZOG	Ombudsman
Luisa CAVA DE LLANO Y CARRIO	First Deputy

C. Non-governmental organisations

Association Against Torture (ACT)

Madrid Free Lawyers Association (ALA)

Spanish Association for Human Rights (APDHE)

Spanish Commission for Assistance to Refugees (CEAR)