



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

Distr.
GENERAL

CAT/C/SR.795
7 December 2007

Original: ENGLISH

COMMITTEE AGAINST TORTURE

Thirty-ninth session

SUMMARY RECORD OF THE 795th MEETING

Held at the Palais Wilson, Geneva,
on Wednesday, 14 November 2007, at 10 a.m.

Chairperson: Mr. MAVROMMATIS

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (continued)

Fourth periodic report of Portugal

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Editing Unit, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (continued)

Fourth periodic report of Portugal (CAT/C/67/Add.6; CAT/C/PRT/Q/4 and Add.1;
HRI/CORE/1/Add.73)

1. At the invitation of the Chairperson, the members of the delegation of Portugal took places at the Committee table.
2. Mr. XAVIER ESTEVES (Portugal), introducing his country's fourth periodic report (CAT/C/67/Add.6), said that its reports, and indeed its written replies to questions put by members of the Committee concerning the fourth report (CAT/C/PRT/Q/4/Add.1), testified to its continuing efforts to respond to the Committee's concerns and suggestions.
3. In Portugal, the Public Prosecutor's Office and its Documentation and Comparative Law Unit, which had prepared the report, were both independent of the Government. Since 2004, a number of changes had taken place in the areas of law and practice relevant to the Committee's concerns. Legislation had been adopted in 2007 to restructure two police forces, the Public Security Police (PSP) and the National Republican Guard (GNR), so as to ensure stricter observance of human rights. The police code of ethics had been in force since 2002, and new rules had since been introduced to govern the use of firearms by the police. The Committee had recommended that Portugal pay greater attention to the handling of complaints of police violence. In response, there were now teams of inspectors empowered to initiate disciplinary proceedings against police officers. Disciplinary powers vis-à-vis the police were also exercised by the Inspectorate-General of Internal Administration (IGAI), which was responsible for ensuring that police action was lawful and in conformity with human rights requirements. The IGAI was subordinate to the Ministry of the Interior but had complete functional independence, being comprised of nine judges under the chairmanship of a judge of the Lisbon Court of Appeal. The inspectors made regular unannounced visits to police stations to check on their activities, including the conditions in which detainees were held. Any criminal abuse of authority detected by the inspectors must be investigated by the Public Prosecutor.
4. The Judicial Police formed part of the Ministry of Justice, but its work in criminal proceedings was coordinated by the Public Prosecutor's Office. The prison service, which had its own inspection arrangements, was run by the Ministry of Justice. There were three inspection teams covering the whole country, each team being coordinated by a member of the Public Prosecutor's Office. The Ministry of Justice had set up an inspectorate to monitor the activities of several of its departments, including the prison service. In 1993, the Attorney-General had ordered the establishment of a database showing the state of progress of all criminal proceedings against law enforcement officials. Notice of proceedings against such officials was also given to the prison service and the IGAI to enable them to take disciplinary action against the individuals concerned. In 2006, the Attorney-General had instructed his staff to monitor closely the investigations of any deaths in prisons.

5. In the light of the problems raised in connection with previous reports to the Committee, special attention had been paid to the use of firearms by the police. A decree-law adopted in September 1999 had introduced uniform rules, based on the principles of absolute necessity and proportionality. The PSP had its own detailed regulations, dating from 2004, and the use of firearms by GNR officers was governed by an operations manual which had been regularly updated since 1996. Firearms could only be used in the three situations envisaged in the ninth of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. An officer using a firearm must also give prior warning, offer assistance and prepare a report on the incident for the Public Prosecutor's Office. An inquiry must be opened in the event of death or serious injury.

6. A ministerial decree had been issued in 1999 to regulate the conditions of detention in police stations, and was applicable to all persons held for periods of up to 48 hours, including for the purposes of identification. Detailed rules governed the conditions of hygiene and comfort in cells. Existing cells were to be upgraded, and 140 places of detention where conditions were unsatisfactory had been closed. The decree also specified detailed registration and recording procedures to be followed in every case of detention. Detainees had the right to contact a lawyer and family members, including by telephone, and to speak with their lawyer in private. They could ask for a medical examination and must be taken to hospital if they suffered a serious injury. Places of detention could be visited at any hour of the day or night by IGAI inspectors, who must immediately report any deaths and any cases of violence or inhuman or degrading treatment. The inspectors also questioned detainees about their conditions.

7. Concerning prison conditions, the Ombudsman had made two thorough rounds of inspection in 1996 and 1999, and had submitted almost 200 recommendations to the Ministry of Justice. During the second inspection he had noted certain improvements, and his staff were continuing to visit certain prisons. Several prison visits had also been made by the European Committee for the Prevention of Torture, which had likewise noted significant improvements in conditions.

8. The Action Programme for the Prison System, introduced in 1996, had resulted in a number of changes. The prison occupancy rate was now 97 per cent, as compared with 57 per cent overcrowding in 1996. That was due to the courts making more frequent use of alternatives to custodial sentences, including electronic surveillance, and to the building of new prisons and the refurbishment of existing ones. Physical conditions in prisons had improved with the introduction of sanitary facilities in the cells, the provision of gymnasiums, and the upgrading of kitchens and communal areas. Because of the scale of the drug problem in prisons, drug-free units had been set up in five prisons, and methadone, vaccination and other programmes had been instituted for prisoners. Other measures to improve health conditions included the construction of new health units and the introduction of a syringe exchange programme. The prison regime had been improved through additional educational and training facilities, cultural and sporting activities, and vocational training and employment opportunities for those in open prisons. In four prisons, those serving sentences of over three years could receive spousal visits. The prison inspectors visited frequently, as did members of the Inspectorate-General for Justice Services and the Ombudsman's Office, inter alia. Legislative reforms now being planned would introduce a list of the rights and duties of prisoners and create

mixed units for married or cohabiting prisoners. It would also reinforce the inspection powers of the court of enforcement of penalties, and the rights of prisoners involved in disciplinary proceedings. Fewer juveniles were now being convicted, and 84 per cent of them were serving their sentences in the community.

9. Police training had been reformed in 1999 through the establishment of two police colleges, and representatives of civil society and the universities now participated in the consultative body for police training. Both the PSP and the GNR had opportunities for continuing professional development.

10. Information about the Convention against Torture and the participation of Portugal in the work of the Committee was disseminated through the website set up by the Portuguese Commission for the United Nations Decade for Human Rights Education. United Nations material on human rights had been translated into Portuguese and distributed widely in the various Portuguese-speaking countries.

11. Legislation had been introduced in July 2007 to ensure Portugal's compliance with its obligations vis-à-vis refugees and asylum-seekers. Visa regulations had been relaxed somewhat and family reunification facilitated; special arrangements had been made to grant residence rights to victims of trafficking or illegal emigration, and in emergency cases. Help was provided for voluntary repatriation, in conjunction with IOM. Sanctions against those responsible for exploiting illegal immigrants were being increased.

12. Mr. MARIÑO MENENDEZ, Country Rapporteur, praised the quality of the periodic report, written replies and presentation. He asked whether Portuguese human rights organizations had been involved in the preparation of the report.

13. His questions would cover articles 1 to 9 of the Convention. Starting with article 1, he expressed concern that the definition of torture reflected in the documents submitted did not cover all forms of torture. For example, paragraph 4 of the periodic report, concerning article 243 of the Penal Code, appeared to focus on the aspect of torture as a crime against humanity. He asked whether torture was also defined as an independent crime in Portuguese legislation. Also, given that discrimination could be a motivating factor in an act of torture, he asked why there was no mention of discrimination in the definition.

14. With regard to article 2, he asked for further information on how distinctions were made between detention in general, detention for identification purposes and pretrial detention. He asked whether a specific body was responsible for initiating investigations of persons suspected of committing a crime, and how those persons were informed of their status. He asked whether a detainee's right to legal counsel was enshrined in statutory legislation or only in lower-level enactments; if the latter was the case, detainees could suffer from a lack of protection. Similarly, the right of detainees complaining of ill-treatment to see a doctor did not appear to be enshrined in legislation. He would appreciate clarification of that matter.

15. He sought clarification of the written replies to question 12 of the list of issues. In particular, what was the maximum period that a person in preventive detention could be held incommunicado, and who was responsible for monitoring such incommunicado detention?

He expressed concern that the list of crimes that could be investigated by the Judicial Police, as set out in paragraph 102 of the report, did not include torture, although the list did include crimes against peace and humanity. He would be interested to know why that was.

16. With regard to the temporary detention of individuals at borders, and particularly at airports, he asked what the role of the border police was when those individuals were suspected of offences such as smuggling or drug-trafficking. What was the procedure for charging such individuals, and how long could they be kept in custody by the border police? Did the border police comply with the requirement to inform the Public Prosecutor's Office of such cases as soon as possible? If he had understood correctly, it was for the Public Prosecutor's Office to subsequently decide whether or not to initiate legal proceedings. He asked whether that procedure was followed in practice.

17. Concerning the issue of monitoring the actions of law enforcement officials, he asked how the Inspector-General of Internal Administration was appointed. Was it a political office? The IGAI was also responsible for the supervision of private bodies working in the area of public security. Did such supervision actually take place? He asked for information on the relationship between the IGAI and the Public Prosecutor's Office.

18. Turning to article 3, he asked for confirmation that an appeal made during the consideration of an asylum request had suspensive effect, as stated in paragraph 12 of the written replies to the list of issues. Were there any provisions governing asylum requests by, or the asylum of, unaccompanied minors? He asked how aliens who were not interested in applying for refugee status and entered Portugal unlawfully were dealt with. He would appreciate information on whether preventive detention was ordered in such cases, and if so, on what basis.

19. He asked whether the State party had experienced any reciprocity problems with the application of the European Arrest Warrant. He would appreciate information on how diplomatic assurances were obtained from a third State to which it was planned to return or expel an individual in view of the information provided in paragraph 24, footnote 3, of the written replies. He would also welcome statistics relating to the countries to which aliens were returned.

20. With regard to article 4, he asked how acts that constituted a form of inhuman treatment or torture, such as sexual abuse of minors and human trafficking, were classified in the Penal Code. He would appreciate statistics for domestic violence, and information on corresponding convictions and sentences.

21. Turning to article 5, he asked whether the crime of torture was included in the list of crimes for which Portugal acknowledged that it had universal jurisdiction, as set out in paragraph 49 of the report. He asked for more information concerning the case mentioned in paragraph 55 involving five members of the Indonesian army; in particular, he would welcome details of the grounds on which the Attorney-General's Office had considered that the presumptions on which the exercise of universal jurisdiction was based had not been proven.

22. He asked for confirmation that the Optional Protocol to the Convention had been signed in 2006, for information on the status of the ratification procedure, and for details of any national mechanisms for periodic visits to places of detention.

23. With regard to the illegal detention of suspected terrorists, he recalled the investigations and reports of the European Union and the Council of Europe concerning “extraordinary rendition” flights. He asked whether Portugal had taken any measures to monitor that practice, whether any such flights had been detected, and whether any proceedings had been initiated. Even when carried out by foreigners, would such a practice be considered a crime in Portugal? He would be interested to hear the views of the Portuguese Government on that issue.

24. Mr. CAMARA, Alternate Country Rapporteur, thanked the delegation for providing a wide range of highly pertinent additional information. He had been a member of the Committee when it had reviewed Portugal’s third periodic report and was impressed with the progress that the State party had made in the meantime towards full compliance with the Convention.

25. In its reply to question 15 of the list of issues, the State party maintained that taser weapons offered the advantage of emitting an electric charge that caused pain to and temporarily immobilized the targeted person while not causing injury, thus averting struggles between the target and the police. It should be borne in mind, however, that the question as to whether pain was “severe” within the meaning of article 1 of the Convention was largely subjective. Had the State party considered the possibility that the use of such weapons under certain circumstances might breach article 1?

26. According to the report, the body that decided whether a situation called for the exercise of universal jurisdiction was the Office of the Attorney-General. While that Office doubtless enjoyed a certain autonomy, it nevertheless formed part of the Executive and applied the Government’s policy. It would be preferable, in his view, to assign the task to an independent body such as the Court of Appeal.

27. In its response to question 10, the State party provided figures for the maximum period of custody in a police station for coercive identification purposes. Persons who were required to produce an identity document were usually suspected of having committed an offence, and the police could be expected to delay their release or transfer into formal police custody for as long as possible. Some countries deducted the period of detention for identification purposes from the maximum period of formal police custody. He asked whether that was the case in Portugal.

28. In response to question 14 on counter-terrorist legislation, the State party referred to European Council Framework Decision 2002/475/JAI, which emphasized that all such legislation must respect human rights as guaranteed in the European Convention on Human Rights. He asked which authority was responsible for monitoring compliance with the provisions of the Framework Decision.

29. Paragraph 81 of the replies to the list of issues referred to a case in which a prison guard who had attacked an inmate had, inter alia, been fined 50,000 euros. In such cases was the fine paid by the individual offender, who was a public official, or by the State?

30. Mr. GROSSMAN said that he was impressed by the progress reflected in the State party’s fourth periodic report.

31. He asked what body was responsible for monitoring compliance with the police code of ethics adopted by the GNR and PSP in 2002. The code required police officers to refrain in all circumstances from inflicting, instigating or tolerating cruel, inhuman or degrading acts.
32. On 23 May 2007, the European Committee of Social Rights had found that Portugal was in breach of its human rights obligations under the European Social Charter because it had not banned all corporal punishment of children in the home and alternative care. According to the European Committee, a recent interpretation by the Portuguese Supreme Court of the articles of the Penal Code prohibiting corporal punishment of children indicated that the Code failed to provide full protection against bodily harm. He asked whether any steps had been taken to remedy the situation.
33. According to the State party, the period of detention of foreigners pending expulsion should not exceed what was “reasonable”. He wished to know what legal criteria were applied in determining what constituted a reasonable period.
34. He asked what procedure was followed when the State party requested diplomatic assurances from a third State to which it planned to extradite, return or expel an individual. Did it, for instance, involve visits from Portuguese diplomats to the authorities of the State concerned?
35. He would also welcome further information about the procedure for ensuring that asylum-seekers had access to legal counsel and interpreters. What body, for instance, was responsible for providing them with legal assistance?
36. He asked whether investigations into allegations of extraordinary renditions were being conducted in Portugal and, if so, whether any cases were currently being heard before the civil or criminal courts.
37. The word torture did not appear in the list of crimes that the Judicial Police was responsible for investigating pursuant to Criminal Investigations Organization Act No. 21/2000. Who was therefore responsible for investigating cases in which a person was suspected of having committed acts of torture?
38. According to the reply to question 12 of the list of issues, the IGAI had referred in its 2005 report to some relatively serious shortcomings in the registers of detainees, but the reference in the following paragraph to the IGAI report for 2006 failed to mention whether the shortcomings had been remedied.
39. In response to the same question, paragraph 54 stated that incommunicado detention was prohibited under all circumstances, but paragraph 55 stated that persons in pretrial detention could be held incommunicado on the orders of the competent authority and in accordance with the terms of the Code of Criminal Procedure. The competent authority was required to balance the right to freedom of expression against the need to safeguard secrecy in judicial proceedings. He asked whether any legal criteria had been identified that would offer guidance to those taking such decisions.

40. Had any provision been made in Portugal's counter-terrorist legislation for individual complaints? He would welcome additional information about the monitoring and procedural mechanisms that had been established.

41. Stressing the importance of ensuring that police officers were brought to justice when they violated their code of conduct, he asked what stage had been reached in the investigation of a car chase by the police on 3 October 2006, as a result of which one person had died and another had been seriously injured. Had the police officer concerned been charged or convicted?

42. The United Nations Human Rights Committee had referred in its list of issues in connection with Portugal's third periodic report (CCPR/C/78/L/PRT) to allegations of police violence, mentioning specific cases, in particular the deaths of Paulo Silva, Alvaro Rosa Cardoso and Antonio Mendes in 2000 and of Antonio Pereira in 2002. Had those cases been investigated and had anyone been convicted?

43. According to an investigation undertaken by Amnesty International in 2006, 39 women had died in Portugal between November 2005 and November 2006 as a result of domestic violence. If the information was accurate, what action was being taken to address the problem, bearing in mind that many cases of domestic violence were not reported and that retaliation was a distinct possibility in many cases that were reported. How many convictions had there been in recent years?

44. Ms. GAER requested updated information on the prevalence of inter-prisoner violence, particularly sexual violence. Given the large number of deaths in prisons, she asked whether the State party gathered data on such violence and the potential link with the spread of HIV/AIDS. She asked what measures the State party was taking to combat such violence. It would be useful to learn whether any research had been conducted into the reasons behind suicide in custody, and what measures the State party took to prevent those suicides. She asked whether overcrowding in Tires women's prison had been resolved as a result of the opening of new women's prisons or whether the female prison population had decreased for other reasons. She requested updated information on the criminal investigation into the beating of Albino Libânio (2003) in Lisbon in November 2003. It would be useful to learn whether the disciplinary proceedings brought against several prison officers in that case were ongoing, and if not, what the outcomes had been.

45. She asked how trafficking in persons was criminalized, and whether the high number of suspended sentences in 2004 prosecutions for trafficking was commensurate with that crime.

46. Further details of the organ donation and transplant system should be provided. In particular, she asked whether there had been a review to provide individuals with an adequate opportunity to consent to organ donation, and if so, what measures had been taken to publicize that review. The Committee wished to know who provided the organs the State party donated to Spain in exchange for lung and heart transplants performed on Portuguese children under the bilateral agreement between the two countries. She asked whether that was a private or public agreement and whether people had the opportunity to refuse to participate in the practice.

47. She requested additional information on the recruitment of members of minority groups and women into the police.

48. It would be useful to learn whether the Government planned to update its core document, which had been submitted in 1993.
49. Ms. BELMIR asked why the terminology used to define torture and other cruel, inhuman or degrading treatment or punishment in paragraph 243 of the Penal Code had not been brought into line with article 1 of the Convention. She requested clarification of the term “ill-treatment” as explained in paragraph 60 of the written replies, and of the different types of detention described in the report. She asked whether it was appropriate that complaints about torture and ill-treatment in detention should primarily be addressed to the Public Prosecutor’s Office. It would be useful to know what role the Ministry of Justice and the courts played in monitoring the occurrence of acts of torture or ill-treatment in detention centres. She cautioned against the extensive use of taser weapons, as suggested by the written reply to question 15, since people had been killed by those weapons in other countries. She asked whether the State party was developing and implementing a strategy to combat violence against women and children.
50. Ms. SVEAASS said that, in view of the relatively low number of asylum applications and the high number of expulsions, it would be useful to know whether there was a problem with the asylum application procedure. She asked whether there was any routine procedure for documenting allegations of torture when asylum-seekers arrived in the State party. Additional information on the enjoyment of social rights and the integration of the Roma population would be useful. The Committee would appreciate further details of investigations and treatment of perpetrators of gender violence. She asked whether the police received specific training on the issue of domestic violence. It would be useful to learn whether there was a mandatory obligation on health workers and social workers to report child abuse and whether data was gathered on child abuse. She wished to know whether the list of crimes in paragraph 26 of the periodic report was a European Union list. She failed to understand why there was no data available on complaints received since 2000 concerning acts of torture and cruel, inhuman or degrading treatment.
51. Mr. KOVALEV asked what measures the State party planned to take in order to resolve the problem of prison overcrowding in both mainland Portugal and the autonomous regions (Azores and Madeira), and what the timescale for implementation of such measures would be.
52. Mr. GALLEGOS CHIRIBOGA asked what steps the State party planned to take in order to tackle the problems relating to migration in Europe, particularly as it currently held the European Union presidency. The delegation should comment on the tendency towards xenophobia in Europe, demographic factors such as Europe’s ageing population, and the need for better social integration and education.
53. The CHAIRPERSON, speaking in a personal capacity, asked what measures the State party was taking to ensure that arrests for identification purposes did not violate the principle that arrests and identification should be carried out on an individual basis.

The meeting rose at 12.25 p.m.