



**International Covenant on  
Civil and Political Rights**

Distr.: General  
25 September 2012

English only

---

**Human Rights Committee**

**106th session**

15 October – 2 November 2012

Item 6 of the provisional agenda

**Consideration of reports submitted by States parties  
under article 40 of the Covenant**

**List of issues to be taken up in connection with the  
consideration of the fourth periodic report of Portugal  
(CCPR/C/PRT/4)**

**Addendum**

**Replies from the Government of Portugal to the list of issues  
(CCPR/C/PRT/Q/4)\***

[14 September 2012]

---

\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited.

## **Constitutional and legal framework within which the Covenant is implemented (art. 2)**

### **Reply to the issues raised in paragraph 1 of the list of issues (CCPR/C/PRT/Q/4)**

1. No available data. Currently, there is no method in place to accurately trace the number of times the provisions of the International Covenant on Civil and Political Rights were invoked before the domestic courts. Consequently, it is not possible to provide the information requested concerning the period under review.

### **Reply to the issues raised in paragraph 2 of the list of issues**

2. The Portuguese Ombudsman (and A-status National Human Rights Institution) does play a role in the implementation of the Covenant in Portugal.

3. Pursuant to the Portuguese Constitution and the Statute of the Portuguese Ombudsman, the main function of this institution is to defend and promote the rights, freedoms, guarantees and legitimate interests of the citizens, ensuring, through informal means, that public authorities act fairly and in compliance with the law.

4. The concept of “rights, freedoms and guarantees and legitimate interests” is broad, including not only the rights enshrined in the Constitution and other internal law, but also those established by international human rights law, either of customary or conventional origin, which forms part of the Portuguese legal order in the conditions set by article 8 of the Constitution. Specifically, paragraph 2 stipulates that the rules set out in duly ratified or passed international agreements shall come into force in Portuguese internal law once they have been officially published, and shall remain so for as long as they are internationally binding on the Portuguese state.

5. Therefore, international treaties by which Portugal is bound, such as the Covenant, do form part of the legal parameters against which the Ombudsman, either pursuant to complaints or on his own initiative, assesses the legality and fairness of the conduct of public authorities (and, in more limited cases, also private entities).

6. From 2002 to present date, the following explicit mentions to or quotations from the Covenant or Human Rights Committee’s decisions were identified:

- Case opened in 2004 pursuant to complaints against the refusal of access to family and solidarity social security benefits by foreigners holding a stay permit allowing them to legally remain and work in Portugal. The Ombudsman recommended to the Minister of Work and Social Solidarity that the problem – apparently connected to a very strict/literal interpretation of the applicable legal provisions – be solved either through interpretative guidelines or through a legislative amendment. The text of the Recommendation quoted articles 24, paragraph 1, and 26 of the Covenant, as examples of the fact that “...several international treaties to which Portugal is a Party express this idea of universality, especially when referring to the social protection granted to children, as is the case of the family allowance”. The recommendation was accepted, leading to the adoption of a legislative measure.
- Case opened in 2004, regarding the National Social Emergency Line’s refusal of support to an immigrant who was pregnant, temporarily without accommodation and a victim of domestic violence, during the period in which the procedure for renovation of her stay permit was pending in the Aliens and Borders Service. In the decision addressed to the Social Security Institute, the Ombudsman argued that the receipt proving the existence of that pending procedure should be sufficient and that, in any event, in situations of social emergency, humanitarian grounds could justify

an urgent intervention of the competent Social Security services. He noted that there are universal rights enshrined in international law instruments, among which the Covenant, that form part of the Portuguese legal order and are directly and immediately binding on the Portuguese State. The Ombudsman's position was taken up in a technical guideline of the Institute.

- Case opened in 2002, pursuant to a complaint concerning the recognition by EU member states of a same-sex civil marriage celebrated under the law of one of those member states. In the final letter sent to the complainant, the Ombudsman made a detailed analysis of the applicable legal frameworks, but concluded that the resolution of the substantive issue raised by the complainant was a matter that fell outside his scope of competence. At one point, he mentioned that "...the Human Rights Committee (created in the framework of the United Nations, under the International Covenant on Civil and Political Rights of 1966 (ICCPR), to which Portugal is also a Party) argued in the *Joslin* case that the denial by New Zealand's law to authorize a civil marriage between two people of the same sex did not constitute a violation of the ICCPR (see Human Rights Committee, *Joslin et al. v. New Zealand* (communication No. 902/1999), 30 July 2002, Doc. NU CCPR/C/75/D/902/1999 (2002))".
- Three cases opened in 2006, 2008 and 2009, with regard to age discrimination in access to employment. They related, respectively, to the Judiciary Police, Criminal Police, TAP (Portuguese airlines) and CARRIS (Lisbon public transportation). In the case regarding the Criminal Police, there was a legal provision allowing access to the career of criminal investigation personnel only to persons under 30. The Ombudsman addressed a suggestion to the Minister of Justice, to promote a reflection on the need to adopt a different legal solution, in accordance with a strategy to promote equal treatment as regards age in access to those public functions. One of the paragraphs of his letter stated that "As is generally known, age is nowadays an illegitimate ground for discrimination, like other grounds forbidden by international provisions, such as article 26 of the International Covenant on Civil and Political Rights..." The Ombudsman adopted similar initiatives, with the necessary adaptations, in relation to TAP and CARRIS, concerning their recruitment policies for flight attendant/commissioner and driver/brakeman, respectively. In the case of TAP, one of the minimum requirements to be fulfilled by candidates was a maximum age of 26, a criterion that could be changed in each competition. As for CARRIS, while the company did not establish a maximum age as a recruitment requirement for that professional category, it could be questioned whether its practices gave preferential treatment to younger candidates. The Ombudsman encouraged those responsible for the companies in question to value alternative selection methods, capable of attracting a wider diversity of candidates, based on a recruitment and hiring logic based primarily on competences and capacities, rather than on age brackets. While maintaining that their recruitment policies were not discriminatory, but rather oriented to competence profiles required by the functions in question, TAP and CARRIS nevertheless accepted the reflection proposed by the Ombudsman.

7. In some other cases, while no specific mention to the Covenant exists, the Ombudsman invoked other relevant international human rights standards (e.g. Standard Minimum Rules for the Treatment of Prisoners) or, more in general, the international human rights protection.

8. In any event, it is important to highlight that the Portuguese Constitution contains a broad fundamental rights catalogue, with provisions that correspond, in their substance, to those of the Covenant. As such, there are cases in which the Ombudsman does not expressly mention provisions from the Covenant, but rather provisions from the

Constitution and other internal laws, but in practice his intervention will still contribute to strengthening the implementation of the Covenant in Portugal.

9. As an example of areas of activity of the Portuguese Ombudsman that bear relevance to the implementation of the Covenant, we could mention that:

(a) The inspections carried out to prisons and to detention centres for non-admitted foreigners have resulted in recommendations and suggestions relevant to the implementation of articles 7, 9, 10 and 13 of the Covenant. The Ombudsman's efforts to promote the swift ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the designation of the National Preventive Mechanism envisaged therein – a role the Ombudsman has already expressed availability to undertake – may also help to strengthen the effect of those provisions;

(b) The investigation of complaints against illegality / unfairness in the recruitment of workers by Public Administration bodies and departments – a subject matter often addressed to the Ombudsman – have led to interventions relevant to the implementation of article 25 (c) of the Covenant;

(c) The Ombudsman's activity regarding children and young people, notably the inspections carried out to institutions for the placement of children in the Autonomous Regions of Azores and Madeira, has contributed to the implementation of article 24 of the Covenant.

#### **Reply to the issues raised in paragraph 3 of the list of issues**

10. Regarding the only case in which the Human Rights Committee has taken a decision on the merits concerning a communication presented against Portugal (communication No. 1123/2002, *Correia de Matos v. Portugal*), Portugal is currently analyzing the best solution to respect the Committee's Views.

11. A deep and extensive study on this subject has been conducted and the relevant policy options are now under consideration. They may pass through a change in legislation, like specified by the Committee. In that case, talks with other relevant institutions like the Portuguese Bar Association and the High Council of the Judiciary, will take place.

#### **Non-discrimination and equal rights of men and women (arts. 2, para. 1, 3, 25 and 26)**

##### **Reply to the issues raised in paragraph 4 of the list of issues**

12. The III National Plan for Equality - Gender and Citizenship (2007-2010) (III PNI) established an important strategic framework for the implementation of policies aiming at promoting citizenship and gender equality in Portugal. The III PNI identified the following priorities: education, research and training, economic independence, reconciliation of professional, private family life, inclusion and local development, health, environment and territory, sports and culture. It also gave a special attention to the promotion of women's employability and entrepreneurship, as a means of promoting their economic independence.

13. In order to overcome the structural difficulties to implement gender equality, institutionalized Ministerial Equality Advisers and interdepartmental and Local Equality Advisers, in the municipalities, were established. During the implementation phase of the III Plan, the Equality Advisers were responsible for the implementation of the measures in their area of intervention. The Evaluation Team concluded that the III PNI was generally executed.

14. Following the recommendations of the External Evaluation Team of the III PNI, the IV National Plan for Equality introduced significant structural intervention measures and

created a mechanism allowing the permanent monitoring of the said measures' implementation. These measures include a partnership between Equality Advisers and the coordination team (Commission for Citizenship and Gender Equality). This partnership ensures a synergistic communication process, administration and management of the new Plan.

### Reply to the issues raised in paragraph 5 of the list of issues

15. The participation of women in politics and decision-making positions continues to be an area that may be considered critical in Portugal. Notwithstanding the progress made in three decades of democracy, women's participation on equal terms is far from having been attained and there is a real democratic deficit in this area.

**Table 1. Participation of women in politics and decision-making positions**

JOB/CAREER/GROUP	PUBLIC ADMINISTRATIONS - Total <sup>1</sup> (Central, Regional and Local)			31-Dec-2011		Feminization Rate (%)
	Men	Women	Total	(%)total Men	Women	
Total	264.928	346.487	611.415	43,3	56,7	56,7
Representatives of legislative and executive bodies	2.223	716	2.939	0,4	0,1	24,4
Senior managers <sup>2</sup>	972	478	1.450	0,2	0,1	33,0
Middle managers <sup>3</sup>	4.475	5.157	9.632	0,7	0,8	53,5

16. In the Portuguese Foreign Service, 30 % of its diplomats are women. Women were only allowed to join the Portuguese Foreign Service after 1976, which explains in part this low percentage. As in other sectors of the public sector, the number of women in senior positions is lower than that of men<sup>4</sup>. In recent years there have been an increasing number of women who apply for the diplomatic service. In the last competition (2008/2009), out of a total of 1116 applicants 577 (51.7%) were women. However, of the 30 who passed only 8 were women. No quotas are foreseen for women in the Foreign Service.

17. The Parity law does not apply to the elections of representatives to the Legislative Assemblies of the autonomous regions of the Azores and Madeira for reasons related to the political-administrative regime of the autonomous regions stated in the Constitution of the Portuguese Republic. Thus, issues relating to the election laws of the autonomous regions are subject, in accordance with the Constitution of the Portuguese Republic (Article 226), to a reserve of initiative on the part of the legislative assemblies of each region. As stated in Article 226, paragraph 1, of the Constitution, the laws relating to the election of representatives to the Legislative Assemblies of the Autonomous Regions are prepared by

<sup>1</sup> Sources: DGAEP - SIOE (available data 11-05-2012); DGAEP/DEEP

<sup>2</sup> Data for senior managers includes the Director-General, Deputy Director-General, Inspector-General, Deputy Inspector-General, Secretary-General, Deputy Secretary-General and other equivalents.

<sup>3</sup> Middle managers include all levels of middle management (for example: Head of Department, Head of Division, Team Leader and other middle managers of various levels).

<sup>4</sup> Out of 44 full rank Ambassadors there are 2 women, out of 199 Plenipotentiary Ministers, there are 83 women, out of 140 Counselors, there are 41 women and out of 199 First, Second and Third Secretaries, there are 83 women. (Data provided in the MFA Equality Plan 2012).

them and sent for discussion and approval of the National Parliament. That is, only the Parliaments of each autonomous region have jurisdiction to take the initiative to submit to the National Parliament a project containing amendments to the respective electoral laws, despite the competence to approve it being from the National Parliament.

#### **Reply to the issues raised in paragraph 6 of the list of issues**

18. Portugal approved the Council of Ministers Resolutions No. 49/2007<sup>5</sup>, of 28 March and No. 70/2008<sup>6</sup>, of 22 April calling for the adoption of equality plans for all companies owned by the State. These plans are intended to promote equal treatment and opportunities between women and men, eliminate discrimination, including with regard to the representation of women in decision-making, to eliminate gender pay gap and to promote work-life balance.

19. The Labour Code also reinforces the rule of equal pay for equal work or work of equal value for women and men through specific regulations concerning gender equality and non-discrimination.

20. In 2011, IV National Plan for Equality was approved which, among others, seeks to promote equal opportunities and treatment for women and men in the labour market. Some of the measures are:

(a) To promote the implementation of equality plans in companies under Council of Ministers Resolutions No. 49/2007, of 28 March, and No. 70/2008, of 22 April (Measure 20);

(b) To promote the implementation of equality plans in organizations in general (Measure 25);

(c) To promote good practices in gender equality, namely those aiming to reduce the gender pay gap (Measure 26);

(d) To promote the use of the parental leave by men (Measure 27).

21. The Operational Programme for the Promotion of the Human Potential (POPH)<sup>7</sup>, a specific funding line was created to stimulate and support the implementation of Equality Plans<sup>8</sup> in Local and Central Administration as well as in Public and Private sector Companies in order to, among others, close the gender pay gap and promote the effective implementation of legislation on gender equality in the labour market.

22. Despite the progress, which includes a general trend towards the reduction of inequalities between men and women in employment, the difficulties that women traditionally face in trying to reconcile their family and professional responsibilities and the stereotyped barriers to men's participation in the domestic sphere continue to represent one of the greatest obstacles to gender equality and equal pay in Portugal.

#### **Reply to the issues raised in paragraph 7 of the list of issues**

(a) **Roma**

---

<sup>5</sup> Approves the principles of good corporate governance of the business sector of the State.

<sup>6</sup> Approves the strategic guidelines for the overall business sector of the State.

<sup>7</sup> One of the three thematic Programmes developed under the National Strategic Reference Framework (NSRF) (2007-2013).

<sup>8</sup> In 2009, CIG published 3 Guides as instruments that give guidelines for the integration of the gender dimension in the definition and implementation of plans for equality in local authorities, in Central Public Administration and in private companies.

23. Roma communities have had Portuguese citizenship for centuries<sup>9</sup>. As national citizens, they are covered by the measures accessible to the general population and have access to an important set of programmes and measures that are aimed at individuals and groups living in situations of poverty and exclusion. Among those measures are the Integration Social Income, housing programmes, measures for social protection and school social action.

24. Furthermore, the High Commission for Immigration and Intercultural Dialogue (ACIDI, IP) has several important measures and services specially targeting Roma communities. Among these is the Office to Support Roma Communities, created in 2007, that has a number of activities aimed at the promotion and social inclusion of Roma communities, in articulation with several public and private entities working in this area.

25. ACIDI has also created, in partnership with the Institute of Social Security, a Pilot Project for Municipal Roma Mediators to provide intercultural training (until September 2012) in the fields of Mediation, Public Institutions Functioning and Communication. This project aims to capacitate fifteen Roma mediators and insert them in 18 local municipalities to provide Roma inclusion related services, guaranteeing the establishment of a close relation between local services and organisations and local Roma communities. At the end of its first year of implementation, an evaluation report is expected in order to assess if the Project has improved Roma communities' situation in Portugal and if the pilot project should be widened to other municipalities.

26. The Office to Support Roma Communities also launched in 2007, a website dedicated to Roma communities [www.ciga-nos.pt](http://www.ciga-nos.pt) ("Follow us Roma!"). This website includes several scientific studies and publications of the Office. The focus of this website is dissemination and sharing of information, creation of working nets, dissemination of field projects, promotion of a positive image of the Roma community and a better knowledge of their history and their culture. The overall objective is to further integrate Roma communities.

27. The importance of adopting additional measures especially aimed at Roma communities has been recognised. The third priority of the National Action Plan for Inclusion 2008-2010 contemplates a mechanism to monitor the degree of integration of these communities, with a special emphasis on education, health, employment and housing.

28. Finally, the Portuguese Government launched in 2011, for public discussion, a National Strategy for Inclusion of the Roma Communities. This is a very important instrument, which we firmly believe can help us in better integrating Roma Communities and eliminating prejudices and misconceptions. The main areas of the strategy are education, health, housing and employment. Beyond the recommendations of the European Commission, the Strategy includes the fight against discrimination and a gender perspective as transversal areas.

29. Once the final version of the Portuguese Strategy is formally approved by the Portuguese Government we will send the final version to the Committee.

30. There is still a lot to be done to diminish stigma towards Roma people and to grant these communities the full enjoyment of their human rights, namely in what concerns the access without discrimination to decent housing or to water and sanitation. This requires coordinated action at all levels (national, regional and local). We believe that the National Strategy for the Roma Communities will provide us with the necessary tools and guidance to attain this objective.

---

<sup>9</sup> It has been estimated that Roma communities in Portugal comprise between 40,000 to 50,000 individuals.

**(b) Immigrant integration**

31. Portugal, one of the leading countries in integration policies, has been making considerable efforts and investments in order to combat all forms of racial discrimination and to integrate all the groups included in the Portuguese multicultural society, ensuring the full enjoyment of all human rights, civil, cultural, economic, political and social rights. In 2011, the Migrant Integration Policy Index, sponsored by the European Commission, ranked Portugal second amongst 31 developed countries for its policies migrant integration policies.

32. The Action Plan for Immigrant Integration (PII) was created by the Resolution of the Council of Ministers No. 63-A/2007, of 3 May. In all, there are 122 measures involving 13 Ministries, seeking to reach higher levels of integration, in the areas of Employment, Housing, Health and Education. The plan has a cross-cutting perspective in relation to issues of racism and discrimination, gender equality and citizenship. In this sense, the document represents a statement of political principles and seeks to be a programme of reference for the State and for Civil Society, to be implemented before the end of the current legislature. The PII ended with a compliance rate greater than 80%.

33. The Portuguese government approved a second action plan for 2010-2013.

**(c) Access to employment**

34. Both direct and indirect discrimination based on such grounds as race or ethnic origin, descent, genetic heritage, nationality and territory of origin are prohibited. The burden of proof of non-discrimination lies with the employer (this reverses the ordinary principle of evidence foreseen in the Penal Procedure Code (PPC)). The breach of this provision constitutes a very serious misdemeanor and entitles the victim to compensation for patrimonial and non-patrimonial damages. Convictions can be published. Victims of discrimination, including harassment, are entitled to compensation.

35. The Authority for the Conditions of Work is responsible for analysing all complaints received about alleged cases of racial discrimination in employment or in access to employment.

36. There was also, a specific Intervention Programme for Unemployed Immigrants, operated by the Employment and Vocational Training Institute, which strives to facilitate social, cultural and professional insertion of the immigrant population legally residing in Portugal through special vocational training, adult Education and training courses, occupational programmes and access to the Job Centre services. During 2008 and until August 2009, over 14,000 immigrants were covered by this Programme. There are also Employment Support Offices in the three National Centres for Supporting Immigrants in Lisbon, Oporto and Faro. These seek to support job offers and professional training to immigrants.

**(d) Education**

37. According to Decree-Law No. 67/2004 the right to education is granted to every child in Portugal including those without a legal status (i.e. The right to education cannot be denied on the basis of the irregular status of the parent (s)).

38. The National Plan for the Integration of Immigrants, initially established for the 2007-2009 period and later reworked, foresees the following measures in the field of Education:

- Teacher training on Intercultural issues;

- Appropriateness, in the school context, of welcoming strategies targeting specificities of student of migrant background, namely through the involvement of families;
- Enhancement of the teaching in schools of Portuguese as a foreign language and promotion of technical Portuguese courses for adults;
- Involvement of socio-cultural mediators, in the school context, and create the conditions for their training.

39. The Programme “Choices” is a governmental programme, managed and coordinated by the High Commission for Immigration and Intercultural Dialogue, which targets children and young people between the ages of 6 and 24 from disadvantaged social backgrounds, many of which are immigrant descendants and members of ethnic minorities (Roma Communities) living in vulnerable places, in order to promote their social integration.

40. The Programme has existed since 2001 and is currently in its third phase, having a total budget of 25.000.000,00 euros. It supports projects managed by local partnerships involving schools, local authorities, Non-profit Organizations and the Commissions for the Protection of Children and Youngsters, in the areas of educational inclusion and non-formal education, vocational training and employability, civic and community participation and digital inclusion.

41. The work done by Programme Choices has been internationally acknowledged, receiving recognition as a best practice in several occasions: in 2003, it received the European Union Award on Criminality Prevention; in 2007, it was referred as a good practice in the European Union “Handbook for Integration”; it was equally considered a good practice in the first “International Report on Criminality Prevention and Community Safety”, produced by the Centre for the Prevention of Crime (ICPC), with headquarters in Canada.

42. In view of its good results, the Choices program is in its fourth phase (2010-2013) and supports 130 local projects that involve schools, municipalities, non-profit Organizations and the Commissions for the Protection of Children and Youngsters with a total budget of 38 million euros.

**(e) Housing**

43. Housing accessibility and affordability by immigrants and minority groups is a special concern of the Portuguese Government which has been proceeding to outline various policies and programmes aimed of ensuring the right to housing. These include the National Strategy for Social Protection (2008-2010) and the National Action Plan for Social Inclusion (2008-2010).

44. The promotion of social housing in Portugal is pursued through cooperation between the Central Government, Autonomous Regions, and Municipalities. It is the State’s function to provide financial assistance to projects proposed by the Autonomous Regions and Municipalities, which are then responsible for ensuring the offer of decent housing to certain social strata. The Institute of Housing and Urban Rehabilitation (IHRU) is responsible for granting technical support to local authorities.

45. IHRU manages financial assistance through the programmes PROHABITA PER, and Porta65-jovem. It is estimated that around 6% of families that had access to public

housing were immigrants (Programs PROHABITA<sup>10</sup> and PER<sup>11</sup>) and that 6% of young persons that had access to grants to rent a house were immigrants (Porta 65 -Jovem<sup>12</sup>).

**(f) Health care**

46. Regular immigrants have the same rights as national citizens. Furthermore irregular immigrants who are in Portugal for more than 90 days cannot be discriminated in acceding to public health care, although, they may have to pay the real costs. Exceptions are nonetheless foreseen, for instance, in cases were urgent and vital care is needed or in cases of transmissible diseases that endanger or threaten public health.

**(g) Law enforcement personnel**

47. The Portuguese Security Forces and Services have made a significant effort to improve training relating to addressing and preventing racial discrimination. A human rights approach has been followed, focussing on the need to combat discriminatory practises that are a clear violation of principal of equality established in Constitutional Law. The Portuguese Security Forces and Services have also increased awareness-raising among law enforcement officers of the need to avoid all forms of discriminatory behaviour on the basis of racial or ethnic origins. Law enforcement officers have also been made aware of the need to pay special attention to minority and cultural diverse groups, as well as to the implementation of the legislation concerning racist offences (Article No. 240 of the Penal Code).

48. The impact of education and training may be assessed by the number of occurrences of infractions, by agents of the Criminal Police or prison guards (concerning the Ministry of Justice), related to racial discrimination:

- In the period between 2007 and 2012, the Directorate-General for Prison Services has not received any complaint based on racial discrimination.
- In the Criminal Police, since 2007, there is only one occurrence registered: one officer of Guinean origin complained of his superior for racial discrimination. A disciplinary procedure was opened, but the accusation was considered unfounded.
- The Inspectorate-General for the Justice Services has no record of complaints for infractions of members of the Criminal Police related to racial discrimination. It has received, in 2010, 3 complaints against prison guards for discrimination.

49. Although the number of occurrences of discriminatory conduct by law enforcement officials (depending of the Ministry of Justice) is inexpressive, efforts continue to be made in the field of education and training of police staff, including professional deontology, ethics and human rights:

- Since 2000, a law degree (or other university degree with a law component) is one of the prerequisites to become an agent of the Criminal Police.
- Human rights standards are taught both within the initial training and the training for promotion.

---

<sup>10</sup> PROHABITA – a national program that finances and grants housing provision with social purposes for families with housing needs. This program allows mainly municipalities to build, buy, rehabilitate or rent houses framed by a social policy for housing

<sup>11</sup> PER – National Special Re-housing Programme held since 1993 to eradicate slums in Lisbon and Oporto Metropolitan Areas

<sup>12</sup> PORTA 65-JOVEM” – program that affords direct subsidies for youth (18-30) in access to rental housing market

- It is under approval an Ethical Code for the Criminal Police officials, where the principles of equality and non-discrimination on the basis of ascendancy, gender, race, language, national origin, religious, political or ideological convictions, education, economic situation or social condition are reaffirmed and detailed.
- The initial six months training courses for the personnel working in prisons include several subjects, such as human rights standards, international norms and principles on the enforcement of measures involving deprivation of liberty as well as the main international control mechanisms. The principle of non discrimination is taught in the context of different thematic, in particular the Code on the Enforcement of Sanctions and Measures Involving Deprivation of Liberty or the General Regulation of Prisons.

## **Counter-terrorism measures**

### **Reply to the issues raised in paragraph 8 of the list of issues**

50. Criminal law and criminal procedural law are domains where the justified restriction of rights may be required in order to protect and reaffirm societal values of the highest importance.

51. As crimes directed against democracy, internal and international security and the rights of the whole community in general, terrorism and related activities may, such as highly organized and violent crime, require the availability of special procedural measures, including on what concerns the obtaining of evidence and rights of defense. These special measures are supported by several safeguards, both constitutional and legal, that ensure their compatibility with Articles 9, 15 and 17 of the ICCPR. As far as constitutional safeguards are concerned, Article 32 (8) determines that all evidence obtained by means of torture, coercion, offense to physical or moral integrity, abusive interference in private life, home, mail or communications are null and void.

52. In addition, all exceptional measures concerning exceptionally serious crime, including terrorism, are balanced by legal safeguards.

53. The admissibility of inspections and searches carried out without the previous authorization of the competent judiciary authority or his/her presence in cases of terrorism or the performance of house searches between 9 pm and 7am need to be immediately reported to the investigation judge for validation (Articles 34 (3) of the Portuguese Constitution, Articles 174(5) and 177 (5) of the PPC). Moreover, phone tapping in cases of terrorism, which may be exceptionally authorized by the judge with jurisdiction on the territory where the conversation or communication may take place, is brought to the knowledge of the competent judge within 72 hours (Article 187 (3) PPC).

54. All of these measures, although potentially conflicting with the right to privacy, are strictly regulated and grounded on substantial reasons (non arbitrary) and are lawful. According to the Portuguese Constitution (Article 18 (3)), restrictions to the exercise of rights, liberties and guarantees need to be expressly set forth in the Constitution and must be limited by a principle of necessity. Furthermore, any restrictive law must be of a general and abstract nature, non retroactive in its effects and non detrimental to the scope and range of the essential content of constitutional provisions.

55. Mild limitations to the right of defense (such as restrictions on the right to communicate with third persons set forth in Article 143 (4) PPC, on the right to communicate in private with the defense lawyer set forth in Article 61 (2) PPC, on the prohibition to apprehend mail or on the prohibition to intercept and record conversations and communications between the defendant and his/her defense lawyer admitted by

Articles 34(4) CPR, Articles 179 (2) PPC and Article 187(3) PPC, are justified by the extraordinary public danger inherent to terrorism.

56. The same can be said of the use of special investigative measures and techniques such as undercover agents.

**Reply to the issues raised in paragraph 9 of the list of issues**

57. The Portuguese law does not allow for incommunicado detention. There are however certain cases where the right of the detainee to contact some persons or to disclose/to have access to information can be limited due to security demands or due to the duty of secrecy during the criminal procedure (especially during the investigation phase).

58. In the cases of terrorism, violent and highly organized crime article 143 of the PPC explicitly foresees that, by order of a Public Prosecutor, the offender may be prevented from communicating with other persons before the first judicial interrogation, except for his/her lawyer.

**Reply to the issues raised in paragraph 10 of the list of issues**

59. An inquiry into suspected rendition flights was opened in February 2007 and conducted by the Central Department for Criminal Investigation and Prosecution, which is the body operating under the Prosecutor General's Office, responsible for the coordination, investigation and prevention of violent, highly organised or particularly complex crimes. The aforementioned inquiry was concluded in June 2009 due to lack of evidence.

**Prohibition of torture and cruel, inhuman or degrading treatment or punishment, right to liberty and security of person, and treatment of persons deprived of their liberty (arts. 7, 9, 10)**

**Reply to the issues raised in paragraph 11 of the list of issues**

60. In the Portuguese criminal procedural law pretrial detention is a coercive measure of exceptional nature, limited to precise cases and following a number of requisites, set forth in Article 202 of PPC (as amended by Law No. 26/2010, of 30 August).

61. In addition to a general requisite regarding the insufficiency of other, less serious, coercive measures, pretrial detention may only be ordered in the following cases: when it is strongly suspected that the individual is the intentional perpetrator of a crime punishable with a an imprisonment penalty of more than 5 years, violent crime, terrorism or highly organized crime punishable with an imprisonment penalty of more than 3 years; aggravated bodily injury, aggravated theft, computer and communications fraud, receiving of stolen property, falsification or counterfeiting of documents or endangering the safety of road transport punishable with an imprisonment penalty of more than 3 years; possession of a prohibited weapon, or other weapons and devices, punishable with an imprisonment penalty of more than 3 years. Finally, pretrial detention may also be used in the case where the perpetrator has irregularly entered or stayed in Portuguese territory or is the object of a request of extradition or expulsion.

62. Within the Portuguese prison system there are prison facilities and special detention units for pretrial detainees, in compliance with Article 123 of the Code on the Execution of Penalties and Preventive Measures of Freedom (Law No. 115/2009, of 12 October) and Articles 221 to 225 of the General Regulation of Prison Facilities (Decree-Law No. 51/2011, of 11 April).

63. On 15th August 2012, there were 2586 individuals in pretrial detention, for a total population of 13402 prisoners.

**Reply to the issues raised in paragraph 12 of the list of issues**

64. The detention of an individual for identification purposes (Article 250 PPC) should not be mistaken for a coercive measure per se. Indeed, detention for identification purposes is a police measure that consists in taking a person to the nearest police station following the frustration of regular identification by means of personal official documents, such as an ID, and constraining him/her to remain there for a limited period of time (up to 6 hours) in order to perform the procedures allowing for his/her identification (fingerprints, DNA).

65. After this maximal period of 6 hours or whenever it is deemed necessary to hold a person in custody, the regime of detention as a coercive measure shall apply and all detentions shall be submitted to judicial scrutiny with a view to either the detainee's release or the imposition of an appropriate coercive measure. According to Article 80 of the Penal Code, both the time spent in detention and in preventive imprisonment shall be deducted from the duration of the sentence.

66. Moreover, the strict observation of the legal delays is guaranteed by a number of provisions: the PPC determines the immediate release of the detained individual whenever such detention is illegal (Article 261(3) PPC); there are internal mechanisms of control within the Portuguese Criminal Police imposing upon its officials the duty to fully respect the delays and requirements set forth by the law on what concerns detention for identification purposes (Article 14 d) of Law No. 37/2008, of 6 August).

67. In addition, an individual who was illegally detained has the right to be compensated according to the Regulation on the Conditions of Detention in the Criminal Police Facilities (RCDCPF), Article 3(2). Finally, the competent judicial authority has the power to control the legality of the detention, of which it is mandatorily informed as soon as it takes place (Article 259 PPC), a request of habeas corpus is always possible as a form of reaction against an illegal detention and the illegal detention is criminally framed as abduction (Article 158 PC).

**Reply to the issues raised in paragraph 13 of the list of issues**

68. According to Article 58 of the Penal Code, a person who is detained is granted status of *arguido* (suspect with the status of party to the criminal process) in order to enjoy certain rights, including the right to be assisted by a counsel of his own choosing. The individual is mandatorily informed of the acquisition of such criminal procedural status and of what it implies in terms of rights and duties, including the right to be assisted by a counsel.

69. As referred to in Article 3 of the RCDCPF, applicable to all detention facilities existing within the Criminal Police and under its administration, every person deprived of liberty should be immediately informed, in a comprehensible manner, of the reasons of the detention and on his/her rights. These rights can be exercised from the immediate moment of detention. In addition, they are visibly posted in an information panel in all detention facilities and are compiled in a leaflet available in various languages and handed by the Criminal Police to anyone who is detained.

70. The information on the right to a counsel and to communicate with a family member, person of trust, embassy or consulate as well as the delivery of the information leaflet must be documented by means of a statement signed by the detainee indicating that he/she has been informed. In order to allow for the communication with the counsel, the Criminal Police has to provide the detainee with the use of a telephone. Finally, Article 30 (1) of the Regulation expressly refers to the right of the detainee to contact his counsel, orally or in writing at any time of day or night.

**Reply to the issues raised in paragraph 14 of the list of issues**

71. All Portuguese law enforcement officials are permanently subject to awareness raising actions regarding relevant human rights questions such as racial discrimination, the use of violence and the constitutional and legal principles of necessity, adequacy and proportionality in the performance of its tasks. Such matters are included in the curricula of the training courses provided by the Criminal Police School both in the initial training and advanced training as well as in the permanent training sessions of the Criminal Police Inspectors. The knowledge of human rights issues is included in the evaluation and selection of candidates to the Criminal Police.

72. Furthermore, the activities of the Criminal Police are carried out with respect for constitutional principles (Article 29(5) and 32 of the Constitution of the Portuguese Republic), international and European Human Rights Law as well as for the procedural rights of all defendants. The adoption of the RCDCPF (Order No. 12786/2009, of 29 May) underlines the duty of the Criminal Police staff to treat all detained individuals with respect for their human dignity and in a non-discriminatory way (Article 24 (2) of the Regulation). In addition to this, any official who witnesses an act of violence or any degrading treatment of a detained person has a duty to put an end to the behavior and to report it to his/her superior, who subsequently forwards the report to the Inspectorate-General for Justice Services (without prejudice to a mandatory report to the public prosecution services (Article 33 of the Regulation and Article 242 of CCP).

73. The Security Forces and Services under the responsibility of the Ministry of Home Affairs (military, police agents and inspectors) are also permanently subject to training and awareness raising actions regarding relevant human rights questions such as racial discrimination, the use of violence and the constitutional and legal principles of necessity, adequacy and proportionality in the performance of its tasks. The Security Forces and Services have their specific training institutions that offer the initial and the in-service training to their military, police agents and inspectors.

74. Excessive use of force, mistreatment and abuse by Security Forces and Services under the responsibility of the Ministry of Home Affairs is prohibited. Extensive documentation to prevent this kind of reprovved behavior is available. This includes, inter alia, specific rules on the use of firearms, instructions for critical situations (based on the principles of proportionality, necessity and appropriateness – principles that must govern any action), police regulations on places of detention, rules for the use of coercive measures, clear legal regulations to ensure the communication of the rights and obligations of detainees, rules on the requirements to be fulfilled for the application of arrest warrants, norms for the transportation of inmates and rules about the register book of detainees.

75. As regards the protection of individuals within the Portuguese Prison System, the Code on the Execution of Penalties and Measures of Deprivation of Freedom (Law No. 115/2009, of 12 October) draws a distinction between common security measures (surveillance, personal inspection, search, control of presences, control by means of detection devices, electronic and biometric systems of surveillance) and special security measures (prohibition of use and apprehension of objects, surveillance during night time, limitation or deprivation of contact with other inmates or access to common spaces, use of handcuffs, separate cells, security rooms (Articles 147 to 161 of Law No. 115/2009) whose terms of use are clearly described in the General Regulation of Prison Facilities (Articles 147 to 161).

76. The use of coercive means (physical coercion, use of weapons) may be exceptionally exerted (for instance, in order to put an end to a riot or to avoid an escape or physical or material danger for the prisoner and others) always with respect for the principles of human dignity and proportionality. The procedures regarding the use of coercive measures and the reporting of such use to the Audit and Inspection Service of

Prisons are laid down in the Regulation for the Use of Coercive Means in Prison Facilities (approved by an Order of the Minister of Justice, of 3 September 2009). Furthermore, the regime applicable to the use of weapons and electric devices was set in a Regulation approved by and Order of 28 March 2011 and the mandatory procedures framing its use were defined in the Internal Order No. 1/2011.

77. According to the data reported by the Auditing and Inspection Services of the Directorate-General for Prisons, there were 145 complaints for abuse of force since 2009, of which 125 were filed, 5 were subject to punishing measures and 15 are still under consideration.

78. The Inspectorate General for Home Affairs (IGAI) is the central high level body of inspection and supervision of all the forces and entities under the Ministry of Home Affairs (MAI), namely the National Republican Guard (GNR – Guarda Nacional Republicana), the Public Security Police (PSP – Polícia de Segurança Pública) and the Immigration and Borders Service (SEF – Serviço de Estrangeiros e Fronteiras). It carries out inspections without prior notice to police stations and other sites in order to ensure the rights of citizens in detention and compliance with legal rules. Additionally, all Security Forces and Services have specific internal inspection departments. These departments investigate any eventual irregularity that, in case of being proved, can lead to adequate disciplinary sanctions and, if need be, can also lead to a criminal investigation that in turn can lead to a conviction.

**Table 2. Complaints against the GNR for the years 2009-2011**

<i>Year</i>	<i>Number of complaints</i>	<i>Criminal Process</i>	<i>Disciplinary Process</i>
2009	26	Of the 26 cases filed in court, 11 are under instruction and 15 were filed.	Of the 25 internal processes (disciplinary / investigation), 14 were filed.
2010	28	Of the 26 cases filed in court, 17 are under instruction and 9 were filed.	Of the 28 internal processes (disciplinary / investigation), 18 were suspended and 10 were filed.
2011	31	Of the 31 cases filed in court, 28 are under instruction and 3 were filed.	Of the 31 internal processes (disciplinary / investigation), 13 are under instruction, 9 are suspended and 9 were filed.

79. Regarding the Public Security Police, for reports of the number of punishments for abuse of authority since 2009, see the following table:

**Table 3. Reports of the number of punishments for abuse of authority since 2009**

<i>Year</i>	<i>Suspensions</i>	<i>Fines</i>
2009	9	15
2010	4	9
2011	3	0

80. A total of 190 complaints (situations involving harm to physical integrity and abuse of force) were received by IGAI since 2009 till the present day, 17 complaints led to disciplinary procedures and 110 days of service suspension.

81. The Ombudsman also carries out inspections to places of detention and investigates cases, either pursuant to complaints or on his own initiative.

**Reply to the issues raised in paragraph 15 of the list of issues**

82. The issue of overcrowding in prisons is being addressed through the remodeling and extension works currently taking place in the prison facilities of Alcoentre, Caxias, Linhó and São José do Campo in order to increase their occupation capacity. Moreover a new prison is being built in Angra do Heroísmo and there are other measures envisaged in the short term.

83. Regarding the problem of HIV/AIDS and hepatitis C, prisoners are full right users of the National Health System and proper health care to prisoners is ensured in prison facilities in articulation with the National Security Service. The Prison Hospital of São João de Deus provides assistance in various medical specialties and it has four internment services: Medical Specialties, Chirurgical Specialties, Infectious Diseases and Psychiatry.

84. In addition to this, there are several programs in place with regard to the abuse of drugs and other substances: there are drug-free facilities in 5 Portuguese prisons, with 116 users as of 11 December 2011, functioning as independent residential units where inmates can be rehabilitated; pharmacological programs are in place, whose main purpose is to prevent physical deterioration caused by drug abuse when there are no conditions for the implementation of a rehabilitation program and to provide some sort of psychological support when the patient cannot or will not stop drug abuse or is gravely ill. As for HIV and hepatitis, upon positive testing, prisoners are given individual and specific plans of clinical intervention.

85. In 2008, a Project addressed to prison inmates who inject drugs was implemented in two prisons (Paços de Ferreira and Lisbon), in order to guarantee access to the prevention methods defined in the Program for Fighting the Propagation of Infectious Diseases in Prisons. A Syringe Exchange Program was made available in these two prisons. However, and although the project was carried on through the year of 2009, it was cancelled in 2010 due to lack of demand.

**Reply to the issues raised in paragraph 16 of the list of issues**

86. All custodial measures referred to in Article 145 of the Educational Guardianship Law (Law No. 166/99, of 14 September) are fulfilled in Educational Centers. In Portugal, young people from 12 up to 16 years old who are indicted for the commission of crimes are detained in special facilities, separated from adults and benefiting from a specific intervention prioritizing the right to education, training and acquisition of skills with a view to integration in society.

87. Although the majority is set at 18 years old, juvenile offenders from 16 to 21 years old benefit from a special regime and are separated from adult offenders as a rule. The prison of Leiria was especially set up for juvenile offenders' population and there are frequently special wings for juvenile offenders in other prison facilities.

**Reply to the issues raised in paragraph 17 of the list of issues**

**(a) Measures taken to ensure that acts of domestic violence against women and children are effectively prohibited and laws enforced**

88. With the 2007 revision of the Penal Code, under Article 152, domestic violence became an autonomous crime punishable with 1 to 5 years of imprisonment. This penalty can be further aggravated to a maximum of 10 years under certain circumstances. The revised Penal Code (PC) clearly defines physical and psychological abuse. Furthermore, the

concept of victim was widened in order to include violence against ex-spouses or persons with whom the aggressor maintains or has maintained a spousal relationship even if living in separate households.

89. The legal framework was further developed in September 2009 with the adoption of a Law on compensation to victims of violent crimes and domestic violence (Law No. 104/2009, of 14 September) and another Law on the legal regime applicable to the prevention of domestic violence and to the protection and assistance to its victims (Law No. 112/2009, of 16 September).

90. Portugal is strongly committed to obtaining better results in law enforcement following the recent improvements in the legal treatment of the phenomenon of domestic violence. The Law on the legal regime applicable to the prevention of domestic violence and to the protection and assistance to its victims (Law No. 112/2009,) intends to prevent and repress domestic violence and to support and promote the autonomy and empowerment of the victims. It seeks to provide a more adequate answer unifying the laws regarding this matter and also to address the need to ensure adequate and timely prosecution and conviction of perpetrators. Furthermore, domestic violence has also figured consistently among the priorities of criminal investigation and prevention since 2007.

91. The Centre for Judicial Studies (CEJ), which provides the initial and ongoing training for all magistrates (judges and public prosecutors), has also been promoting a proactive approach on the subject of domestic violence and raising this issue among legal operators. A specialization action on “violence against persons: domestic violence, violence against children, persons with disabilities, elders and in school environment” took place in February and March 2009. Other actions also took place, namely following the changes of the Penal Code. In the CEJ magazine (addressed to magistrates, but also to law enforcers in general) several articles have been published on the domestic violence phenomenon.

**(b) Prosecution and conviction of perpetrators**

92. Taking into account all the recent development in the legal system within the domestic violence context, we must highlight that these developments have led to an increase in the number of complaints year after year and until 2010. Since then, there was a slightly decrease till the present. Since 2008 and till the end of the first semester of 2012, there were 189 convictions.

**(c) Access to physical and psychological rehabilitation for victims**

93. A considerable investment has been made in the quantity and quality of psychosocial responses through crisis centres, emergency help lines and shelters by public bodies and civil society. A free domestic violence victim information helpline has been in operation since 1998 to provide victims with information, support and advice.

94. A National Network of Domestic Violence Centres was set up in 2005 to provide an integrated response to cases of domestic violence and to improve existing resources. National coverage was achieved on January 2009 (18 districts) and currently there are 36 shelters with capacity for accommodation of about 619 women victims of domestic violence and their children. Portugal has also been working on minimum standards for victims’ support.

95. The National Republican Guard (GNR) considers the crimes committed against women, children, elderly and other especially vulnerable populations as the most delicate incidents that the criminal investigation departments must deal with. The biggest challenge to the investigators is how to obtain enough evidence in order to produce adequate proof to accuse the suspects. Therefore a specific Project - “Investigation and Support to Especially Vulnerable Victims (IAVE) – was created to deal with these cases. The IAVE Project is

based on a concept of community policing, with a view to better integrating the police forces in their communities to enable more interaction and partnership building. The project has led to the creation of the new specialized teams (NIAVE Investigation and Support to Especially Vulnerable Victims Teams), in every district. The main responsibility of the NIAVE daily work is to investigate all crimes committed against particularly vulnerable victims and to promote all needed actions in order to support the victims; In terms of organization, the elements with IAVE training are distributed in 24 specialized teams (18 in District Capitals, and 6 decentralized, with a ratio of 3-4 per Team), complemented with a minimum of 254 specialized investigators, at the rate of 1 per GNR Post. Currently the headcount is 310 investigators, 78 within the IAVE Teams and 232 within the GNR Posts. The IAVE specialists are recruited on a voluntary basis, amongst criminal investigators, with field service experience. The training of these specialists, in addition to the criminal investigation course and a previous experience as an Investigator, is complemented with a specific sub-specialization at the GNR School. This training includes matters directly related to victim support.

96. The NGOs who fight violence against women play an important role, granted by the state, in the legal field, by providing the victims with support towards an easier access to the Justice (in harmony with Article 20 of the Portuguese Constitution). These organizations not only provide psychological and social assistance but also legal assistance often performing the function of being the very first contact of the victims with their rights and legal information in an effort of regain their autonomy and independence.

97. Assistance to victims within the Criminal Police was improved with the signature of a Protocol of Cooperation with the Portuguese Association for Victim Support (APAV). According to this Protocol, the Criminal Police can refer victims to the APAV in order for them to have psychological and other types of support. The Protocol establishes a set of guidelines for receiving and accompanying the victims, including victims of domestic violence.

**(d) Information on the impact of the III National Plan against Domestic Violence (2007-2010)**

98. The Evaluation of the III National Plan against Domestic Violence (2007-2010) was made in 2011. The recommendations of the III National Plan against Domestic Violence Evaluation Report were all included in the IV National Plan against Domestic Violence. An external evaluation was also carried.

99. The III Plan allow increased awareness and changed mentalities, on one hand giving visibility to the phenomenon and, on the other hand integrating new effective responses to support victims of domestic violence. Overall, the legislative changes made over the lifetime of the Plan towards protecting and promoting the safety of victims must be highlighted. Other important steps were taken to improve data collection instruments and procedures and statistical information. Training sessions for the different actors involved were also very important during the execution of the plan. The role of health issues within this Plan and its importance in protecting the victim were also a key use during the implementation of the III Plan.

100. The overall assessment is that, even if there is a need to continue and strengthen the measures in combating the phenomenon of domestic violence, much was achieved. The impact of measures implemented can be measured by the greater number of victims using support services, benefiting from available resources and a greater number of victims and offenders targeted for specialized technical support.”

101. The National Commission for Citizenship and Gender Equality (CIG) is currently coordinating the implementation of the Fourth National Action Plan against Domestic Violence 2011-2013<sup>13</sup>. This Plan focuses on violence inflicted on women, irrespective of their race or ethnic origin, age, religion, disability or sexual orientation, in their domestic environment and integrates policies to prevent and combat this phenomenon. It takes a cross-cutting approach with a particular emphasis on awareness and information campaigns to promote a culture for citizenship and equality, training, and support and shelter of the victims aiming at the reintegration and autonomy. The Plan provides for concerted action between public authorities and NGOs and has five strategic areas of intervention: 1) Informing, raising awareness and educating; 2) Protecting victims and promoting social integration; 3) preventing future crimes - intervention with offenders 4) Qualifying professionals; 5) Investigating and monitoring the domestic violence phenomenon.

**Reply to the issues raised in paragraph 18 of the list of issues**

102. One of the most significant steps was the criminalization of all forms of corporal punishment against children in the national legislation. The Penal Code was revised in 2007 with the aim of explicitly prohibiting all forms of corporal punishment against children. Its Article 152 states that “Whoever repeatedly, or not, inflicts physical or psychological ill-treatment, including corporal punishment, deprivation of liberty and sexual offences, is punished with 1 to 5 years of imprisonment”.

103. With this revision, Portugal joins the group of States that have been contemplating the prohibition of corporal punishment in their legislation whatever the circumstances, including within the family.

104. Portugal has endorsed and implemented several measures, especially concerning the legal improvement on this matter and awareness-raising of families, civil society, professionals, public and private authorities.

105. The following legislation aiming to protect children against violence and abuse was also approved:

- Decree-Law No. 12/2008, of 17 January, establishes the enforcement regime of the measures for the promotion and protection of children and youth at risk, provided in Articles 39, 40, 43 and 45 of the Annex to Law No. 147/99, of 1 September, the Law on Protection of Children and Youth in Risk;
- Law No. 112/2009, of 16 September establishes the legal regime for the prevention of domestic violence protection and assistance of victims;
- Law No. 113/2009, of 17 September, which establishes measures to protect children, in compliance with Article 5 of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and imposes the definition of an idoneous profile for professionals working with children, making compulsory the presentation of criminal records when applying to jobs where there is contact with children.

106. Portugal also endorsed the Council of Europe’s campaign against corporal punishment and a national campaign “Raise your hand against smacking!” took place last January 2010, which targeted parents, teachers, other professionals and children.

<sup>13</sup> Council of Ministers Resolution nr. 100/2010).

## **Elimination of slavery and servitude (art. 8)**

### **Reply to the issues raised in paragraph 19 of the list of issues**

#### **(a) Data**

107. According to the statistical data available, the number of victims of trafficking in persons registered by the police authorities in the relevant period was 25 in 2008 (12 male and 13 female victims); 24 in 2009 (12 male and 12 female); 6 victims (male) in 2010 and 15 victims (male) in 2011.

108. It should be noted that in some cases, due to statistical treatment rules, cases of procurement of persons for prostitution and procurement of minors for prostitution may be included in the data related to trafficking.

109. We cannot provide information on the number of cases of trafficking in human beings tried as a sole crime against personal freedom between the years of 2008 and 2010, but there were cases of trafficking in persons and procurement (59 tried cases in 2008; 63 tried cases in 2009; 56 tried cases in 2010) and trafficking and procurement of minors (3 in 2008 and 4 in 2009).

110. There were 5 convicted persons for the crime of trafficking in human beings in 2008; 113 convicted persons for the crime of trafficking in persons and procurement in 2009; 91 in 2008 and 94 in 2010; as for the crime of trafficking in minors and procurement, there were 4 convicted persons in 2008 and 3 in 2009. Data concerning the year of 2011 will only become available on the 31st of October 2012.

#### **(b) First National Plan against Trafficking in Human Beings**

111. The major objective of the first National Plan against Trafficking in Human Beings (I PNCTSH) was the construction and consolidation of a comprehensive national referral mechanism to assist and protect victims of trafficking. As a result of the legal documents published (in particular Law No. 23/2007, of 4 July, which regulates the legal regime of the entry, stay, exit and removal of foreigners from national territory) and strengthened the flagging-identification-integration model, Portugal has a protection mechanism aimed at addressing the special needs of victims of trafficking and which meets the requirements of the international community concerning the fight against human trafficking. The national model is based on the primacy of fundamental rights and on the cooperation between different actors.

112. The creation of a Shelter and Protection Centre (CAP) also constitutes a structuring element in approaching this reality from a human rights perspective. This support is very comprehensive having, among others, protection/safety, medical, legal and psychological assistance, translation and access to official programmes. This intervention is directed to support victims and their reintegration process.

113. In 2008, a monitoring system, the Observatory on Trafficking in Human Beings was created, under the Ministry of Home Affairs, with the goal to analyse and disseminate quantitative and qualitative data to the various institutions working in the field of trafficking in human beings. The OTSH is a fundamental instrument for the effective and suitable approach of this reality.

114. In effect, the implementation of the OTSH (carried out during the first PNCTSH) allows a greater knowledge about this reality, which until now remained a hidden phenomenon.

115. One of the most important advantages of implementing the first PNCTSH, as emphasized in the evaluation report, was the investment made in intervention areas

concerning prevention, awareness-raising, training and investigation. Such conclusion raises, moreover, the need to give adequate continuity in order to guarantee its consolidation.

116. The introduction and consolidation of the subject in the public and political agenda represent one of the more significant results after implementing the first PNCTSH.

117. In fact, the first PNCTSH contributed significantly to draw public opinion and the political power attention to the phenomenon of human trafficking. The first PNCTSH has accomplished two major challenges: awareness-raising and political responsibility concerning the prevention and fight against human trafficking.

118. To complement the information on this topic, it should be said that a study on trafficking in women for the purpose of sexual exploitation was conducted in 2007 and was published in 2009.

119. Also, Portugal ratified the United Nations Convention against Transnational Organised Crime and its additional Protocols, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children as well as the Council of Europe Convention on Action against Trafficking in Human Beings (27th of February 2008).

## **Measures for the protection of minors (arts. 24 and 26)**

### **Reply to the issues raised in paragraph 20 of the list of issues**

120. The Portuguese Institute for Rehabilitation has developed a Guide with recommendations to promote alternatives to institutionalization of children with disabilities<sup>14</sup>.

121. Another recent Project is the Sistema Nacional de Intervenção Precoce na Infância (SNIPI) – National Early Intervention System for Children, a network of services and supports provided in the community where the families with children with special needs live<sup>15</sup>.

122. The framework law of the Education System establishes the right of integration for pupils with special needs, whether mental or physical, and the modality of Special Education as an integral part of the education system. Children and youngsters with special educational needs are entitled to specialized support in pre-school education, compulsory school and secondary school in the public, private and cooperative sectors.

123. The Portuguese National Qualification (Skills) System also grants the right to people with disabilities to effective access to qualifications, with the aim of a double certification – school and professional.

124. The Portuguese Institute of Social Security (ISS.IP) supports initiatives for the promotion of equal opportunities, particularly for children, youth, older persons, dependents, migrants, ethnic minorities and other groups in vulnerable situations.

125. The following are some of the measures promoted for the deinstitutionalization of children with disabilities:

<sup>14</sup> <http://www.inr.pt/content/1/1054/desinstitucionalizacao-de-criancas-jovens-com-deficiencia>

<sup>15</sup> <http://www.dgs.pt/ms/12/default.aspx?pl=&id=5525&access=0>

- (a) Assistance for Children with Chronic Illness or Disability (financial support to one of the parents who takes leave from work to care for a child with disabilities or chronic illness for 6 months extendable up to 4 years);
- (b) Allowance for the Attendance of Special Education Establishments to offset expenses of attendance at private special education establishments or regular daycare or kindergarten with individual and specialized support);
- (c) Disability Bonus for children or young people with disabilities;
- (d) Allowance for Third Person Support (monthly financial support for children or adults with disabilities who require continuous assistance of a third person);
- (e) Early Intervention services for children up to 6 years, especially from 0-3, with disabilities or at risk of severe developmental handicaps with support provided in the areas of education, health, and social action;
- (f) The Home Support Service to help those who can not care for themselves or undertake normal daily activities
- (g) 3Centers for Socio Cultural Activities (places where people with disabilities and their families can receive guidance and support and participate in socio cultural activities to promote their autonomy);
- (h) Occupational Activity Center (support centers for youth and adults with severe disabilities where they carry out occupational activities);

126. The Supplementary System for Decentralized Financing and Technical Aids is the State's response regarding the supply, adjustment, maintenance or renewal of technical aids for greater autonomy and adequate integration of people with disabilities through the provision of free and universal products.

127. The Local Social Security Services supply products prescribed by Health Centers and Specialized Centers and conduct evaluations to assess their impact on the daily life of the applicant. This system has been replaced, since 2009, by a new system for the assignment of products ensuring on the one hand, increased coverage and on the other, improved efficiency and functionality of existing mechanisms.

128. As for the Care for People with Special Needs (APNE), under the Plan of Action for the Integration of Persons with Disabilities (PAIPDI 2006-2009), established by the Resolution of the Council of Ministers No. 120/2006 of 21 September and revised by Resolution of the Council of Ministers No. 88/2008, of May 29, services for specific assistance for people with special needs were created in the 18 District Centres of Social Security.

129. These services that provide information in person, by telephone, or via the Internet, offer guidance to persons with disabilities and their families as well as the necessary support to establish contacts with other competent bodies of Public Administration in the fields of disability and rehabilitation. In some cases they undertake training and measures to ensure physical accessibility.

## **Dissemination of information relating to the Covenant and the Optional Protocol (art. 2)**

### **Reply to the issues raised in paragraph 21 of the list of issues**

130. A National Human Rights Commission (NHRC) was created in March 2010 in order, inter alia, to work as a permanent structure to prepare national reports and examination processes by international human rights bodies, and to ensure continuous

follow-up to recommendations addressed to Portugal by human rights mechanisms. This Commission coordinated the present list of answers.

131. The NHRC disseminates human rights information through a specific section created in the MFA website. This includes information on the International Covenant on Civil and Political Rights and the two Optional Protocols.

132. NHRC is an intergovernmental body composed by representatives of different public administration bodies and entities, including the Ombudsman (in its capacity as national human rights institution) and the Prosecutor General's Office.

133. The involvement of civil society has also been a priority, and thus NCHR meets at least once a year in plenary format with NGO representatives. The NCHR also meets regularly with civil society to discuss national reports to the United Nations human rights treaty bodies<sup>16</sup>.

134. When drafting the present document, the NCHR contacted civil society and requested its input. The Prosecutor General's Website also published the fourth periodic report of Portugal to the Human Rights Committee.

---

---

<sup>16</sup> The last such meeting took place in mid-July 2012 to discuss the fifth and sixth periodic reports of Portugal to the Committee against Torture.