Committee against Torture

Concluding observations on the seventh periodic report of Portugal**

1. The Committee against Torture considered the seventh periodic report of Portugal (CAT/C/PRT/7) at its 1796th and 1799th meetings (see CAT/C/SR.1796 and 1799), held on 19 and 20 November 2019, and adopted the present concluding observations at its 1814th and 1815th meetings, held on 2 December 2019.

A. Introduction

2. The Committee expresses its appreciation to the State party for accepting the simplified reporting procedure, as this allows for a more focused dialogue between the State party and the Committee. It regrets, however, that the report was submitted six months late.

3. The Committee appreciates having had the opportunity to engage in a constructive dialogue with the State party’s delegation, and the responses provided to the questions and concerns raised during the consideration of the report.

B. Positive aspects


5. The Committee also welcomes the State party’s initiatives to revise its legislation in areas of relevance to the Convention, including:

   (a) The criminalization in 2015 of female genital mutilation and forced marriage through Act No. 83/2015;

   (b) The enactment in 2015 of Act No. 130/2015, which amends the Code of Criminal Procedure and is aimed at strengthening the protection of the rights of victims and their relatives;

   (c) The enactment in 2015 of Act No. 142/2015, which amends Act No. 147/99 on the protection of children and young people at risk;

   (d) The enactment in 2017 of Act No. 93/2017, a new anti-discrimination law;

   (e) The enactment in 2017 of Act No. 94/2017, which regulates house arrest under electronic monitoring and abolishes the weekend detention regime;

* Reissued for technical reasons on 20 December 2019.
** Adopted by the Committee at its sixty-eighth session (11 November–6 December 2019).

6. The Committee commends the State party’s initiatives to amend its policies and procedures in order to afford greater protection for human rights and to apply the Convention, in particular:

(a) The adoption of the National Strategy for Equality and Non-Discrimination, in 2018, which includes an action plan (2018–2021) to prevent and combat violence against women and domestic violence;

(b) The adoption of the third and fourth National Plan to Prevent and Combat Trafficking in Human Beings for the periods 2014–2017 and 2018–2021, respectively;

(c) The adoption of a strategy for the restructuring and rehabilitation of the network of penitentiary establishments for 2017–2027;


7. The Committee appreciates that the State party maintains a standing invitation to the special procedure mechanisms of the Human Rights Council, which has allowed independent experts to carry out visits to the country during the reporting period.

C. Principal subjects of concern and recommendations

Pending follow-up issues from the previous reporting cycle

8. In its previous concluding observations (CAT/C/PRT/CO/5-6, para. 24), the Committee requested the State party to provide follow-up information on the steps it had taken to implement the Committee’s recommendations relating to fundamental legal safeguards (para. 8 (b) and (c)); prompt, effective and impartial investigations (para. 9 (a) and (c)); domestic violence (para. 17); and ill-treatment of Roma and other minorities (para. 18). While noting with appreciation the replies submitted by the State party on 4 December 2014 and 27 January 2017 under the follow-up procedure (CAT/C/PRT/CO/5-6/Add.2 and Add.3) and referring to the letter dated 29 August 2019 from the Committee’s Rapporteur for follow-up to concluding observations addressed to the Permanent Representative of Portugal to the United Nations at Geneva, the Committee finds that the recommendations contained in paragraphs 8 (b) and (c) and 9 (a) and (c) of its previous concluding observations have not been implemented (see paras. 13 and 19 below) and that the recommendations contained in paragraphs 17 and 18 of the previous concluding observations have been partially implemented (see paras. 17 and 41 below).

Definition and criminalization of torture

9. While noting the delegation’s assertion that discrimination may constitute an aggravating circumstance under the State party’s criminal legislation, the Committee remains concerned that article 243 of the Criminal Code, which defines torture, still does not mention discrimination of any kind among the purposes for inflicting torture, as outlined in article 1 of the Convention (arts. 1 and 4).

10. The Committee reiterates the recommendation contained in its previous concluding observations (CAT/C/PRT/CO/5-6, para. 7), and recommends that the State party bring the content of article 243 of the Criminal Code into conformity with article 1 of the Convention by explicitly identifying discrimination of any kind among the purposes for inflicting torture. In this regard, the Committee draws the State party’s attention to the working definition of ill-treatment adopted by the Inspectorate General of Home Affairs and the Committee’s general comment No. 2 (2007) on the implementation of article 2, in which it is stated that serious discrepancies between the Convention’s definition and that incorporated into domestic law create actual or potential loopholes for impunity.
Statute of limitations

11. The Committee is concerned that the crime of torture is subject to a statute of limitations of 10 years, and that the limitation period for aggravated torture is 15 years. Only acts of torture that amount to a crime against humanity are not time-barred from prosecution.

12. The State party should ensure that the offence of torture is not subject to any statute of limitations, in order to preclude any risk of impunity in relation to the investigation of acts of torture and the prosecution and punishment of perpetrators.

Fundamental legal safeguards

13. The Committee regrets not having received comprehensive information on the results of monitoring activities conducted to ensure compliance in practice with fundamental legal safeguards, or indications as to whether any sanctions have been imposed in cases of non-compliance. In that respect, it has been reported that detainees continue to have difficulties in gaining access to an ex officio lawyer prior to detention hearings. While taking note of the content of recommendation IG-2/2014 of 9 May 2014, of the Inspectorate General of Home Affairs, as well as of assurances given by the State party delegation during the dialogue, the Committee reiterates its concern that the Code of Criminal Procedure still does not explicitly guarantee that the time spent in custody for identification purposes – up to six hours – is counted towards the period of 48 hours within which a detained person must be brought before a judge. Lastly, the Committee notes with concern that only a few police stations are currently equipped with closed-circuit television cameras (art. 2).

14. The State party should ensure that all persons who are arrested or detained are afforded in practice all fundamental safeguards against torture from the very outset of their deprivation of liberty, including the rights to be assisted by a lawyer and to be brought before a judge without delay. In particular, the State party should:

(a) Amend the Code of Criminal Procedure to guarantee that the time spent in custody for identification purposes is considered part of the 48-hour period within which a detained person must be brought before a judge;

(b) Guarantee access to an ex officio lawyer, including during the investigation and interrogation stages;

(c) Continue to install video surveillance equipment in all areas of custody facilities where detainees may be present, except in cases in which detainees’ rights to privacy or to confidential communication with their lawyer or doctor may be violated. Such recordings should be kept in secure facilities, regularly reviewed by internal and external monitoring bodies and made available to investigators, detainees and lawyers.

National preventive mechanism

15. The Committee is concerned about the lack of a specific budget for the work of the Provedor de Justiça (Ombudsperson) as the national preventive mechanism under the Optional Protocol to the Convention, and the absence of a multidisciplinary team of full-time staff assigned exclusively to tasks and activities related to the mechanism. It also remains concerned by reported difficulties the mechanism has had in accessing non-traditional places of deprivation of liberty, such as psychiatric institutions and social institutions, especially those run privately (CAT/OP/PRT/1, para. 24) (art. 2).

16. The State party should ensure the operational autonomy of the national preventive mechanism and provide it with the necessary earmarked financial and personnel resources for the performance of its work, in accordance with article 18 (1) and (3) of the Optional Protocol (see also CAT/OP/12/S, paras. 11–12). Pursuant to article 20 (c) of the Optional Protocol, the State party should grant the national preventive mechanism access to all places of detention and their installations and facilities, as defined in article 4 of the Optional Protocol.
Excessive use of force, including racially motivated violence

17. The Committee is concerned at allegations of excessive use of force and other police abuse, in particular against persons belonging to certain racial and ethnic groups. In that regard, the Committee notes that in May 2019, eight Public Security Police officers were found guilty of falsifying documents and aggravated ill-treatment in relation to actions against six young black men in February 2015 in Cova da Moura district in Amadora, Lisbon; three of the officers were also convicted of aggravated kidnapping. One defendant was sentenced to 18 months in prison, while the seven others received suspended sentences. The victims were granted compensation ranging from €7,500 to €10,000, although an appeal is pending. The Committee notes with concern that the investigative judge in the case rejected the Public Prosecutor’s request that the officers be suspended pending trial, and that all charges of torture and racist motivation were dismissed by the court (arts. 2, 12, 13 and 16).

18. The State party should:
   (a) Ensure that all allegations of excessive use of force and racially motivated misconduct by the police are investigated promptly, thoroughly and impartially, and that perpetrators are duly tried and, if found guilty, punished in a manner commensurate with the gravity of their acts;
   (b) Increase efforts to systematically provide training to all law enforcement officers on the use of force, taking into account the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Prompt, thorough and impartial investigations

19. The Committee is concerned that the State party has not furnished complete information on the number of complaints of torture or ill-treatment, including excessive use of force, or on the corresponding investigations and prosecutions during the reporting period. According to the limited additional information provided by the delegation, between January 2018 and October 2019 the Inspectorate General of Home Affairs had registered 1,715 administrative proceedings, including 544 cases of ill-treatment, and had directly carried out 30 investigations and 43 disciplinary proceedings. However, the Committee has not received comprehensive information about the disciplinary and/or criminal sanctions imposed on the offenders, nor an indication whether the alleged perpetrators of those acts have been removed from public service pending the outcome of the investigation of the complaints (arts. 2, 12, 13 and 16).

20. The State party should:
   (a) Ensure that all complaints of torture and ill-treatment are promptly investigated in an impartial manner by an independent body, and that there is no institutional or hierarchical relationship between that body’s investigators and the suspected perpetrators of such acts;
   (b) Ensure that the authorities launch investigations whenever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed;
   (c) Ensure that, in cases of alleged torture or ill-treatment, suspected perpetrators are suspended from duty immediately for the duration of the investigation, particularly when there is a risk that they might otherwise be in a position to repeat the alleged act, commit reprisals against the alleged victim or obstruct the investigation;
   (d) Compile and publish comprehensive disaggregated statistical information relevant to all complaints and reports received of torture or ill-treatment, including information as to whether such complaints led to investigations and, if so, by which authority, whether the investigation resulted in the imposition of disciplinary measures and/or prosecutions and whether the victims obtained redress in a manner that will enable the State party to provide such information to the Committee and other relevant monitors in the future.
Conditions of detention

21. The Committee is concerned about poor conditions of detention in multiple places of deprivation of liberty, including prisons and police stations. While appreciating the measures taken by the State party to reduce prison overcrowding, such as the planned construction of two new prisons, as well as the efforts made to limit the use of pretrial detention, the Committee notes with concern the high occupancy rates in some penitentiary establishments. Furthermore, the shortage of prison staff, including health-care personnel, despite efforts to augment their numbers, and the deficiencies in the mental health-care services remain serious problems in the prison system (arts. 11 and 16).

22. The State party should:
   (a) Continue its efforts to improve conditions of detention and seek to eliminate overcrowding in penitentiary institutions and other detention facilities, including through the application of non-custodial measures. In that connection, the Committee draws the State party’s attention to the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);
   (b) Recruit and train a sufficient number of prison personnel to ensure the adequate treatment of detainees;
   (c) Ensure the allocation of the necessary human and material resources for the proper medical and health care of prisoners, in accordance with rules 24 to 35 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

Juvenile justice

23. While appreciating the measures taken by the State party to improve conditions of detention in the national network of educational guardianship centres, including the facilitation of contact between detained juveniles and their relatives, and by putting an end to strip-searches, hair cutting and confiscation of personal clothes, the Committee remains concerned at the absence of therapeutic units and specialized staff in these establishments. In that regard, the Committee welcomes the assurances provided by the delegation that public funding had already been budgeted for that purpose. The Committee is also concerned at reports indicating that the strict separation of minors from adults in detention facilities is not always guaranteed (arts. 11 and 16).

24. The State party should:
   (a) Complete the establishment of therapeutic units in all juvenile detention centres;
   (b) Take appropriate action to ensure the separation of adults and minors in detention facilities.

Solitary confinement

25. While taking note of the information provided by the State party’s delegation that an internal recommendation was made that correctional services adhere to the 15-day limit on solitary confinement set by the Nelson Mandela Rules, the Committee is concerned that applicable regulations still allow for solitary confinement of up to 21 consecutive days as a disciplinary measure, or up to 30 days when it concerns several serious offences that have taken place at the same time (arts. 105 and 113, paragraph 3, of Act No. 115/2009). Moreover, solitary confinement continues to be applied to individuals under the age of 18 (arts. 11 and 16).

26. Recalling its previous recommendation (CAT/C/PRT/CO/5-6, para. 12), the Committee recommends that the State party:
   (a) Bring its legislation and practice regarding solitary confinement into line with international standards, particularly rules 43 to 46 of the Nelson Mandela Rules;
Observe the prohibition on imposing solitary confinement and similar measures on minors (see rule 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and rule 45, paragraph 2, of the Nelson Mandela Rules).

Deaths in custody
27. According to the scant official data available, between January 2017 and October 2019 there were 177 deaths of persons deprived of liberty, including 35 cases of suicide, in penitentiary institutions. The Committee regrets that the State party did not submit complete statistical information for the entire period under review, disaggregated by place of detention, sex, age and ethnicity or nationality of the deceased, and cause of death (arts. 2, 11 and 16).

28. The State party should:
(a) Compile and provide to the Committee detailed information on the cases of death in custody and the causes of those deaths;
(b) Ensure that all instances of death in custody are promptly and impartially investigated by an independent entity and, where appropriate, apply the corresponding sanctions;
(c) Review the effectiveness of strategies and programmes for the prevention of suicide and self-harm. It should also assess and evaluate the existing programmes for the prevention, detection and treatment of chronic, degenerative and infectious diseases in prisons.

Electrical discharge weapons
29. While commending the State party for banning the use of electric discharge weapons (Tasers) in prisons, and welcoming assurances that only specially trained personnel bear such weapons and every instance of their use is recorded, the Committee nonetheless regrets the absence of information on incidents relating to the potential misuse of such devices by law enforcement officials, and on the outcomes of any investigations into those cases (arts. 2, 12, 13 and 16).

30. The Committee reiterates the recommendation contained in its previous concluding observations that the State party should monitor and supervise the use of electric discharge weapons (CAT/C/PRT/CO/5-6, para. 15), and also recommends that the State party ensure that such use is strictly compliant with the principles of necessity, proportionality, advance warning (where feasible) and precaution. The State party should also ensure that all alleged instances of excessive use of force resulting from the misuse of electric discharge weapons are investigated promptly, thoroughly and impartially.

Redress
31. While noting the State party’s assertion that its legislation provides for redress for victims of torture and ill-treatment, the Committee regrets that the delegation did not provide specific information on redress, including compensation measures ordered by the courts or other State bodies and actually provided to the victims of torture or their families since the consideration of the previous periodic report. It also notes with concern that the State party has presented no information on reparation programmes or on measures taken to support and facilitate the work of non-governmental organizations that seek to provide rehabilitation to victims of torture and ill-treatment (art. 14).

32. The State party should ensure that all victims of torture and ill-treatment obtain redress, including an enforceable right to fair and adequate compensation and the means for as full a rehabilitation as possible. The Committee draws the attention of the State party to general comment No. 3 (2012) on the implementation of article 14, in which the Committee explains the content and scope of the obligations of States parties to provide full redress to victims of torture. The State party should compile and provide to the Committee information on redress and on compensation measures, including means of rehabilitation, ordered by the courts or other State bodies and actually provided to victims of torture or ill-treatment.
Confessions obtained through torture or ill-treatment

33. While taking note of the guarantees set forth in article 32, paragraph 8, of the Constitution and 126 of the Code of Criminal Procedure regarding the inadmissibility of evidence obtained by torture, coercion and infringement of personal, physical or moral integrity, the Committee regrets that the State party has not provided it with examples of cases dismissed by the courts because of the submission of evidence or testimony obtained by means of torture or ill-treatment (art. 15).

34. The State party should:
   (a) Take effective steps to ensure in practice that confessions obtained through torture or ill-treatment are ruled inadmissible and investigated;
   (b) Expand specialized training programmes for both judges and prosecutors so as to ensure their ability to effectively identify torture and ill-treatment and investigate all allegations of such acts;
   (c) Develop training modules for the police and other law enforcement officers on non-coercive interviewing and investigation techniques;
   (d) Provide the Committee with information on any cases in which confessions were deemed inadmissible on the grounds that they had been obtained through torture or ill-treatment, and indicate whether any officials have been prosecuted and punished for extracting such confessions.

Psychiatric institutions

35. As the delegation acknowledged, there are logistic problems in the State party’s psychiatric forensic units. The Committee therefore appreciates the efforts made by the State party to open new units, recruit additional staff and develop a “step-down” model of care. It also notes that the State party is currently reviewing its rules on the use of restraints in psychiatric establishments in light of the recommendations contained in the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment on its 2016 visit to Portugal (arts. 11 and 16).

36. The State party should:
   (a) Ensure that involuntary psychiatric hospitalization is strictly necessary and proportionate and is applied as a measure of last resort and under the effective supervision and independent monitoring of judicial organs;
   (b) Guarantee legal safeguards for persons hospitalized involuntarily in psychiatric institutions;
   (c) Ensure that mental health services in the community are sufficient and adequately funded;
   (d) Ensure that means of restraint are used only as a last resort to prevent the risk of harm to the individual or others and only when all other reasonable options would fail to satisfactorily contain the risk.

Asylum system and non-refoulement

37. The Committee takes note of the data provided by the delegation on the number of asylum applications received since 2016 and the corresponding recognition rates, which increased from 25.19 per cent in 2016 to 54.32 per cent in 2019. It also takes note of the information provided by the delegation on the number of persons returned between 2016 and 2018: 1,045, including deportees and returnees. It notes, however, that the State party did not indicate whether any appeals were lodged or provide information on the outcomes of any such appeals. The Committee is concerned that Portugal failed to meet its commitment to relocate 4,274 asylum seekers from Italy and Greece under a European Union relocation programme, since the State party accepted only 1,552 asylum seekers between 2015 and 2017 under the programme. The Committee regrets that the State party has not provided complete information on the procedures in place for the timely identification of victims of torture among asylum seekers (art. 3).
38. The State party should:
   (a) Ensure that, in practice, no one may be expelled, returned or extradited to another State where there are substantial grounds for believing that he or she would run a personal and foreseeable risk of being subjected to torture and ill-treatment;
   (b) Ensure that procedural safeguards against refoulement are in place and that effective remedies with respect to refoulement claims in removal proceedings are available, including reviews of rejections by an independent judicial body, in particular on appeal;
   (c) Take measures to increase reception capacity and enable the relocation of pending relocation requests;
   (d) Ensure the establishment of effective mechanisms to promptly identify victims of torture among asylum seekers.

Immigration detention

39. The Committee notes with concern reports of excessive retention of asylum seekers, including immigration retention orders being issued without individualized assessment or consideration of alternative measures. Pre-removal and transit facilities at airports are reportedly not equipped for extended retention, especially for unaccompanied and separated children, families with children and pregnant women. Also of concern is the entrance fee for the airport terminal, charged by a private company, which impedes access by lawyers and medics to individuals held in detention facilities at airports (arts. 2 and 11).

40. The State party should:
   (a) Refrain from retaining asylum seekers and irregular migrants for prolonged periods, use retention as a measure of last resort and only for as short a period as possible, by ensuring individualized assessments, and promote the application of non-custodial measures;
   (b) Ensure that unaccompanied and separated children and families with children are not retained solely because of their immigration status;
   (c) Take the measures necessary to ensure appropriate reception conditions for asylum seekers and irregular migrants, and strengthen its efforts to ensure adequate living conditions in all immigration centres;
   (d) Guarantee that retained asylum seekers and irregular migrants have unhindered, prompt and adequate access to counsel, including legal aid services.

Sexual and gender-based violence

41. The Committee is concerned at reports of lenient sentences imposed on perpetrators of acts of gender-based violence. In that connection, it takes note of the disciplinary proceedings opened against judges in this respect during the period under review. The Committee regrets that the State party has not provided complete information on the number of complaints, investigations, prosecutions, convictions and sentences imposed in cases of gender-based violence against women and children, including domestic violence, since the adoption of the previous concluding observations. Regarding female genital mutilation during the reporting period, the Committee notes with concern that, according to the information provided by the delegation, there were no criminal complaints relating to this crime during the period 2017–2018, while 117 possible cases (“situations”) were flagged between January 2018 and September 2019 (arts. 2 and 16).

42. The State party should:
   (a) Ensure that all cases of gender-based violence, especially those involving actions or omissions by State authorities or other entities which engage the international responsibility of the State party under the Convention, are thoroughly investigated, that the alleged perpetrators are prosecuted and, if convicted, punished appropriately, and that the victims or their families receive redress, including adequate compensation;
(b) Provide mandatory training on the prosecution of gender-based violence to all justice officials and law enforcement personnel and continue awareness-raising campaigns on all forms of violence against women;

(c) Compile and provide to the Committee statistical data, disaggregated by the age and ethnicity or nationality of the victim, on the number of complaints, investigations, prosecutions, convictions and sentences recorded in cases of gender-based violence, as well as on the measures adopted to ensure that victims have access to effective remedies and reparation;

(d) Review the effectiveness of preventive and protection measures in place for girls at risk of female genital mutilation in the State party.

Trafficking in persons

43. While valuing the efforts by the State party to combat trafficking in persons during the period under review, the Committee remains concerned by reports that law enforcement officers are not adequately trained in identifying victims of trafficking, and also by reports of delays in the issuance of temporary residence permits for victims (arts. 2 and 16).

44. The State party should:

(a) Intensify its efforts to prevent and combat trafficking in persons, including by putting in place effective procedures for the identification and referral of victims among vulnerable groups, such as asylum seekers and irregular migrants;

(b) Improve the training of law enforcement officers and other first respondents by including statutory training on the identification of potential victims of trafficking in persons;

(c) Ensure access to adequate protection and support, including temporary residence permits, for all victims of trafficking, irrespective of their ability to cooperate in legal proceedings against traffickers.

Training

45. While acknowledging the efforts made by the State party to develop and implement human rights training programmes for law enforcement officials, military personnel, judges and prosecutors, which include modules on the use of coercive measures in prison, the prohibition of discriminatory practices, domestic violence and trafficking in persons, the Committee is concerned by the absence of specific training on the content of the Convention, and the lack of information on evaluations of the impact of those programmes. The Committee also takes note of the training on the identification of victims of torture or ill-treatment provided to prison health professionals by the National Institute of Legal Medicine and Forensic Sciences (art. 10).

46. The State party should:

(a) Further develop mandatory initial and in-service training programmes to ensure that all public officials are well acquainted with the provisions of the Convention, especially the absolute prohibition of torture, and that they are fully aware that violations will not be tolerated and will be investigated and that those responsible will be prosecuted and, on conviction, appropriately punished;

(b) Continue to ensure that all relevant staff, including medical personnel, are specifically trained to identify cases of torture and ill-treatment, in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol);

(c) Develop a methodology for assessing the effectiveness of training programmes in reducing the number of cases of torture and ill-treatment and in ensuring the identification, documentation and investigation of such acts, as well as the prosecution of those responsible.
Follow-up procedure

47. The Committee requests the State party to provide, by 6 December 2020, information on follow-up to the Committee’s recommendations on: the national preventive mechanism; allegations of excessive use of force, including racially motivated violence; and conditions of detention (see paras. 16, 18 (a) and 22 (a) above). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations of the concluding observations.

Other issues

48. The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations and to inform the Committee about its disseminating activities.

49. The Committee requests the State party to submit its next periodic report, which will be its eighth, by 6 December 2023. For that purpose, and in view of the fact that the State party has agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting. The State party’s replies to that list of issues will constitute its eighth periodic report under article 19 of the Convention.