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**Human Rights Committee**

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

**Fourth periodic reports**

**Portugal<sup>\*</sup>, <sup>\*\*</sup>**

[10 January 2011]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

\*\* Annexes may be consulted in the files of the secretariat.

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## Introduction

1. This fourth periodic report was elaborated within a working group (WG) coordinated by the Portuguese Ministry for Foreign Affairs and composed by several governmental departments. It was drafted by the Human Rights Department of the Bureau for Documentation and Comparative Law – GDDC (Prosecutor-General's Office) on the basis of information and data provided by concerned departments. Each department appointed a focal point, who was responsible for coordinating its own contribution and that of subordinate bodies. Detailed lists of necessary information were provided to all participants,<sup>1</sup> indicating all documents that should be taken into account when elaborating the replies (text of each Covenant article and General Comments thereon formulated by the Human Rights Committee; information contained in Portugal's third periodic report (CCPR/C/PRT/2002/3); and concluding observations, if any, formulated by the Human Rights Committee upon examination of this report, in relation to each article). This report also benefited from the contribution of the Portuguese Ombudsman.

2. The elaboration of this report was an opportunity for all participants to examine measures taken to implement Portugal's human rights obligations undertaken under the International Covenant on Civil and Political Rights (ICCPR), progresses achieved in this regard and challenges ahead. The information contained in this report covers the period from 1 May 2002 to 31 July 2008. We also draw the Committee's attention to the information contained in the comments submitted by the government of Portugal on the concluding observations of the Human Rights Committee upon examination of the third periodic report of Portugal (CCPR/CO/78/PRT/Add.1).

## Articles 1 and 2

### A. Prohibition of discrimination

3. Two constitutional reforms have taken place in 2004 and 2005. The 2004 constitutional amendment, among other aspects, introduced the prohibition of discrimination on grounds of sexual orientation by explicitly adding this as a prohibited ground of discrimination under article 13 (2) of the Portuguese Constitution (CRP).

4. European Union (EU) Directives related to equality and non discrimination have been transposed into the Portuguese legal system, inter alia by the Labour Code adopted in 2003 and by Acts 35/2004, of 29-7, and 18/2004, of 11-5 (Race Directive). Both direct and indirect discrimination on such grounds as descent, age, sex, sexual orientation, civil status, family situation, genetic heritage, reduced capacity for work, disability, chronic disease, nationality, ethnic origin, religion, political or ideological convictions and trade union membership, as well as homeland, language, race, education, economic situation, origin or social status, is prohibited. Equality and non discrimination in public employment were also

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<sup>1</sup> Parliament, Presidency of the Council of Ministers – Commission for Citizenship and Gender Equality and Office of the High Commissioner for Immigration and Intercultural Dialogue, Ministry of Finances, Ministry of Justice, Ministry of Defence, Ministry for Foreign Affairs, Ministry of Education, Ministry of Science and Higher Education, Ministry of Labour and Social Security, Ministry for Internal Affairs, Ministry of Economy and Innovation, Ministry of Health, Ministry of Public Works, Transports and Communications, Ministry of Agriculture, Rural Development and Fisheries, Ministry of the Environment and Ministry of Culture, as well as the Prosecutor-General's Office and the National Municipalities' Association.

guaranteed by article 5 of Act 99/2003, of 27-8, and are now covered by Act 59/2008, of 11-9. The latter (Legal Framework of Public Employment Labour Contract)<sup>2</sup> put on an equal footing the treatment of such matters in the public and private sectors. Discrimination based on disability and on the existence of an aggravated health risk is punished by Act 46/2006, of 28-8.

5. Breach of the provisions regarding equality is generally punished as a very serious administrative offence and the convictions may be published. Currently, the Authority for Working Conditions (formerly the General Inspectorate of Labour) continues to prevent, monitor and punish discrimination at work. Victims of discrimination, including harassment, are entitled to compensation.

6. Act 18/2004, of 11-5, which transposed Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, establishes infractions and sanctions of an administrative nature, and the possibility to engage the liability in tort for racially motivated acts such as the denial of access to goods and services, as well as to bring to an end any behaviour which would bring prejudice to or which would menace the person. Complaints to this effect can be submitted to, and are examined by, the Commission for Equality and Against Racial Discrimination (see reply to art. 26). Any discriminatory act perpetrated by a natural person constitutes an administrative offence punishable by a graduated fine of between one and 5 times the highest value of the monthly national minimal wage (2 to 10 if committed by a corporation), without prejudice to possible civil liability or the imposition of any other applicable penalty. In the event of a second offence, the minimum and maximum limits are doubled.

7. The 2007 revision of the Criminal Code (CC) enlarged the scope of the crime of discrimination (which previously covered racial or religious discrimination only), by adding thereto discrimination based on gender or sexual orientation. A penalty of one to eight years of imprisonment is applicable to anyone who establishes an organisation or develops organised propaganda activities inciting to discrimination, or who participates therein. Those who publicly provoke acts of violence, defame or slander persons (including through the denial of crimes against Humanity) or threaten people on the basis of any of the above mentioned grounds, are punished with 6 months to five years of imprisonment (art. 240 CC). According to article 246 CC, a person sentenced for the crime of discrimination can be temporarily deprived of his/her active and /or passive electoral capacity, as well as of the capacity to be member of a jury. Discriminatory intent can also be taken into account by the judge when determining the measure of penalty, as an aggravating factor, in accordance with article 71 CC.

8. In 2007, two important changes were introduced into the Code of Civil Procedure (CCP) and the Code of Criminal Procedure (CCP), establishing that both civil and criminal definitive judicial sentences can now be subject to revision in case they are incompatible with a definitive decision of an international adjudicating body binding upon Portugal (arts. 771 (f) and 772 (2) (b) CCP and 449 (1) (g) CCP).

## **B. General implementation measures**

9. Portugal has been adopting several initiatives aimed at fostering equality and countering discrimination. We shall highlight the III National Plan for Equality –

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<sup>2</sup> Entered into force on 1 January 2009.

Citizenship and Gender (2007–2010),<sup>3</sup> the I National Plan against Trafficking in Human Beings (2007–2010),<sup>4</sup> the III National Plan against Domestic Violence (2007–2010),<sup>5</sup> the Plan for Immigrant Integration (2007),<sup>6</sup> the Plan of Action for the Integration of Persons with Disabilities or Incapacity (2006–2009)<sup>7</sup> and three National Plans for Inclusion (2001 to 2008).<sup>8</sup> Furthermore, a national plan was developed to commemorate the European Year of Equal Opportunities for All (2007).<sup>9</sup> In the Major Planning Options for 2008, measures were included to advance the integration of immigrants and ethnic minorities. Other Plans adopted (such as the plans on rural development) also pursue non discrimination in their implementation. More information on these issues can be found in the Expanded Common Core Document (hereinafter “ECCD”, HRI/CORE/PRT/2011) of Portugal. Further information on the plans specifically aimed at countering gender-based forms of discrimination can be found under article 3. See also our replies to articles 24 and 26.

### C. Institutional framework

10. A new Commission for Citizenship and Gender Equality (CIG) was created in 2007 (within the Presidency of the Council of Ministers), replacing the former Commission for Equality and Women’s Rights (CIDM). The other national mechanism for gender equality — the Commission for Equality in Labour and Employment (CITE) — kept its former structure despite extensive restructuring of public administration (see information on these mechanisms below).

11. The High Commission for Immigration and Ethnic Minorities (ACIME), mentioned in the previous report (CCPR/C/PRT/2002/3), was converted into the present High Commission for Immigration and Intercultural Dialogue (ACIDI – Public Institute). This implied restructuring the previous body and its integration with other bodies with competences in the area of fighting discrimination, therefore reinforcing its powers as a public institute and enlarging its areas of activity. ACIDI has administrative autonomy and its mission is to collaborate in the design, implementation and evaluation of public policies, both transversal and sectoral, relevant to integrate immigrants and ethnic minorities, as well as to promote dialogue among different cultures, ethnicities and religions. See more information under articles 22, 26 and 27.

12. As part of its efforts to give effect to the rights recognized in the Covenant, Portugal has established, back in 1995, the General Inspectorate for Internal Affairs – IGAI (Decree Law (DL) 227/95, of 11-9, as amended by DL 154/96, of 31-8 and DL 3/99, of 4-1), as an inspection and supervision unit particularly aimed at safeguarding human rights and improving the quality of police work in accordance with the rule of law. IGAI was created within the Ministry for Internal Affairs (MAI) and, although directly dependant from the respective Minister, is external to security forces and has functional and technical autonomy, reinforced by the requisite that only judges or public prosecutors can be appointed to the posts of General Inspector, Deputy General Inspector and Director of the Internal Affairs Department. The actions of police forces may also be supervised by such

<sup>3</sup> Council of Ministers Resolution 82/2007 of 22-6.

<sup>4</sup> Council of Ministers Resolution 81/2007, of 22-6.

<sup>5</sup> Council of Ministers resolution 83/2007, of 22-6.

<sup>6</sup> Council of Ministers 63-A/2007, of 3 May.

<sup>7</sup> Council of Ministers resolution 120/2006, of 21-9, as revised by Council of Ministers resolution 88/2008, of 29-5.

<sup>8</sup> Council of Ministers resolutions 91/2001, of 6-8, 192/2003, of 23-12, and 166/2006, of 15-12.

<sup>9</sup> Council of Ministers Resolution 88/2006 of 18-7.

external and independent entities such as courts, the Public Prosecution Department and the Ombudsman (see below).

13. IGAI is a high-level inspectorate with jurisdiction over all services subordinate to or supervised by MAI, Civil Governorships and private security entities. It undertakes regular, as well as unannounced, visits to police stations, inspecting their general operation conditions, compliance with applicable legal norms and procedures, conditions of temporary detention and the treatment of detainees, with the view to prevent ill-treatment and other abuses. When verifying that places of detention do not fulfil the minimum requirements of dignity for keeping detainees, it recommends their immediate closure and the use of nearby facilities, until new detention facilities are built or the old ones recovered. IGAI also examines complaints of individuals and can act *ex officio* in case it becomes aware, by any means, of any situation where there are reasons to believe that an illegality has been committed or fundamental rights violated. In more serious cases, such as those of ill-treatment, torture, body injuries or death allegedly committed by the police, IGAI directly undertakes inquiries and disciplinary proceedings and recommends to the Minister the application of individual penalties. When systemic problems are found, it submits proposals to improve services.

14. The National Rehabilitation Institute was created in 2007<sup>10</sup> with the mission to ensure the planning, implementation and co-ordination of national policies with the view to promote the rights of persons with disabilities. For more information on other mechanisms involved in the fight against discrimination, see Parts II and III of the ECCD submitted by Portugal.

#### **D. The Ombudsman**

15. The Ombudsman is an organ expressly provided for under article 23 CRP, with competence to receive “complaints against actions or omissions by the public authorities” and to address to the competent bodies “such recommendations as may be necessary in order to prevent or make good any injustices”. In certain circumstances specified in its Statute, the Ombudsman can also intervene in relations between private entities. The Ombudsman is appointed by Parliament for four-year terms and may be re-elected once. It is fully independent and cannot be dismissed. The Ombudsman’s work is “independent of any acts of grace or legal remedies provided for” in the CRP or in the law. Public authorities have the duty to cooperate with the Ombudsman in the exercise of his or her duties.

16. The Ombudsman acts upon complaints received or by its own initiative. It can request the Constitutional Court to verify compliance with the Constitution of any norm adopted or failure to act on the part of public authorities. The Ombudsman has the power to undertake, with or without notice, inspection visits to any sector of public administration (whether central, regional or local), namely public services and civil or military detention facilities, as well as to any entities subject to the control of public authorities, and to request any information or documents he deems appropriate. The Ombudsman can also undertake any other investigation or inquiry, as he considers necessary, and develops information and awareness-raising activities. In 2004, the Ombudsman has established a Project Unit on the rights of children, the elderly, persons with disability and women, within which two toll-free telephone hotlines operated: *Child Messages* (created in 1993 to receive complaints relating to children who might be at risk or in danger) and *Elderly Citizens Hotline* (created in 1999 to receive complaints against violations of the rights of the elderly and to provide

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<sup>10</sup> Decree Law 217/2007, of 29 May.

information about those rights in such areas as health, social security, housing, facilities and services, and leisure). On 16 July 2009, both these hotlines were temporarily suspended, due to administrative reasons. In the last trimester of the year, the Ombudsman approved a reorganization plan pursuant to which a new Department on Children, Elderly Persons and Persons with Disabilities (N-CID) was put in place, under the direct supervision of one of the two Deputy Ombudspersons. The Project Unit was thus replaced. The two toll-free hotlines *Child Messages* and *Elderly Citizens* were included in the N-CID and their operation was resumed on 1 November of 2009. The main goal of the N-CID is to concentrate the various activities of the Ombudsman in relation to children, elderly persons and persons with disabilities, and to add to the more traditional complaints-based work a regular program of initiatives of promotion, awareness-raising, human rights education and cooperation with other public and private entities, both at national and international level.

17. As regards the activity of the Ombudsman's toll-free hotlines, we note that there was a decrease in the number of calls received by *Child Messages* between 2002 (about 3,000) and 2008 (883). The *Elderly Citizens Hotline* has been consistently receiving more than 3000 calls a year since 2002. With regard to the number of complaints received by the former Project Unit, it increased from 20 in 2004 to 106 in 2008 (after a peak of 168 in 2007), which represented 1.8% of all complaints received by the Ombudsman (in 2008). In 2008, 38% of these complaints pertained to persons with disability (mostly on the education system, in particular as it concerns special education needs, and physical barriers), 35% to children (especially on physical and mental abuse, and on adoption), 25% to elderly persons (mostly on social facilities and abuse) and 2% to women.

18. Overall, the Ombudsman received approximately 41,000 complaints over the reporting period. In 2008, the most frequent issues were nationality (14%), social security (13%), public employment (10%), tax issues (9%), consumer issues (7%), administration of justice (7%), urban planning and housing (4%), foreigners (3%), education and teaching (3%), environment and natural resources (3%), territorial planning (3%), health (2%) and penitentiary issues (2%). The rate of successful resolution of cases submitted to the Ombudsman increased from 76.8% in 2004 to 86.1% in 2008. Within his powers of inspection, the Ombudsman regularly inspects prison units and other services such as centres for children, youth and the elderly, foster homes and mental hospitals (see further information under art. 10).

19. The Ombudsman regularly issues recommendations concerning rights, freedoms and guarantees. As examples of recommendations formulated between 2002 and 2008, we shall highlight those on the following:

(a) Pre-trial detention: in 2004, the Ombudsman recommended that the government legally recognized the possibility of compensating a person serving pre-trial detention who would be found not guilty at the end of the proceedings. This recommendation was accommodated in 2007;

(b) Access to law and courts: in 2005, the Ombudsman addressed a recommendation to government with the view to increase the number of beneficiaries of legal aid. A legislative review undertaken in 2007 accommodated this recommendation;

(c) Rights of political participation: in 2005, a recommendation was addressed to Parliament with the view to allow the early vote, in all elections and referenda, of workers exercising public functions who, in the day of elections or referenda, are in an official visit abroad. This recommendation is yet to be accommodated;

(d) Religious freedom: in 2007, the Ombudsman recommended that the Law Society allow that the training evaluation exam of a candidate member of the Seventh-day Adventist Church took place on a day other than Saturday (the day scheduled for that purpose), given that Saturday is the day of rest for members of such church. It was equally

recommended that, in future, all similar situations were treated the same way. This recommendation was accommodated.

20. The Ombudsman presents annual reports to Parliament, which can be consulted at [www.provedor-jus.pt/relatoriosan.php](http://www.provedor-jus.pt/relatoriosan.php). Other publications issued between 2002 and 2008 include “Democracy and Human Rights at the XXI century” (2003), “The exercise of the right to complain as a form of political participation” (2005), “Human rights and the Ombudsman: paradigm of a century-old institution” (2007) and “Social Reports: Immigration, rights of women, childhood and youth, health protection and the penitentiary system”. Special reports are also published, including on the penitentiary system (1996, 1998 and 2003), and are available at [www.provedor-jus.pt/relatoriosesp.php](http://www.provedor-jus.pt/relatoriosesp.php).

## **E. Liability of the State and other public entities**

21. Act 67/2007, of 31-12, established the legal framework for the non-contractual liability of the State and other public entities for damages resulting from the exercise of its legislative, administrative and judicial functions, including failure to act. Such liability concerns actions by public officials, office-holders and other agents, as well as liability emerging from any legal entity of private law for any action or failure to act in the exercise of public functions or regulated by principles of administrative law.

## **F. Right to an effective remedy and access to justice**

22. The Portuguese system for granting Legal Aid and Access to Justice established by Act 34/2004 of 29-7, was amended by Act 47/2007 of 29-7, and implemented by Ministerial Order 10/2008. Access to justice is considered a State responsibility comprising the access to legal information and to legal protection. Legal protection includes legal advice and legal aid.

23. Legal advice is the provision of legal information on the applicable law concerning a certain issue relating to one’s rights. It is ensured either by legal advice centres created in partnership by the Ministry of Justice (MJ), the Law Society and the Municipalities; and by lawyers and trainees lawyers members of the Bar Association and registered in the legal aid system (whose services the State then remunerates). According to Portuguese law, on the whole, legal aid may encompass exemption from the payment of court fees; appointment and payment of legal counsel; payment by instalments of courts fees and other charges; payment by instalments of the legal counsel or public defence counsel; and appointment of an enforcement agent.

24. Both nationals and EU citizens as well as foreigners and stateless persons with a residence permit from any EU Member State are entitled to benefit from legal aid. Legal aid is granted, upon request, by the local social security services, to persons of proven low-income condition, insufficient to face the court costs, in accordance with the same criteria used for granting social support. In criminal procedures, low-income condition is appreciated by the Court’s Registry. Legal Aid is granted with respect to procedures in every court, no matter the kind of procedure (either criminal, civil, or administrative) and includes the arbitration courts. It can be granted to any party in the proceedings (plaintiff, defendant or other). Concerning legal persons, only non-profit ones can request legal aid, provided their financial limitation is proven. For statistical data on legal aid and legal advice granted between 2002 and 2006, see Charts 1 and 2 in the annexes.

25. In 2005, the Ministries for Internal Affairs, Justice and Work and Social Solidarity signed a protocol with the Portuguese Association for Victim Support (APAV – a private institution of social solidarity working in favour of victims of crime, by providing them

with free and confidential emotional, legal, psychological and social support). This protocol — valid for 3 years and a continuation of another previously in force — aims at promoting cooperation in such areas as contacts and coordination between police stations and victim support offices, referral of victims of crime to competent services following their interview by the police, mutual collaboration in training programmes and technical support to security forces.

26. Since 30 January 2008, complaints of crime can be submitted via Internet, through the Electronic Complaints System. This system is aimed at facilitating the filing of complaints with those police forces dependent from MAI (GNR and PSP, as well the Foreigners and Borders Office), in relation to such crimes as body injuries, domestic violence, ill-treatment, trafficking in persons, exploitation of the prostitution of others, theft, smuggling of migrants and procurement of illegal work. Complaints can be filed by any natural person, duly identified, resident or staying in national territory. Referral to the competent body takes place only after confirmation of the identity of the person using the system. Persons are free to choose whether they wish to use this system or report crimes through traditional reporting and complaint methods. They must continue to use these methods in relation to crimes not covered by the Electronic Complaints System.

### **G. Reparation and compensation of victims**

27. Act 31/2006, of 21-7 (fourth amendment to DL 423/91, of 30-10), implemented Council Directive 2004/80/EC of 29 April 2004 relating to compensation of victims of crime. Under such statute, victims of serious body injuries directly resulting from intentional acts of violence practiced in Portuguese territory are entitled to compensation granted by the State, as well as, in the case of death, persons entitled to alimony and those living in *de facto* union with the deceased.

28. This compensation may be granted provided that the injury has produced a permanent, temporary or absolute working incapacity of thirty days or more, or death; provided there is considerable disturbance of the victims' life, or, in case of death, of the applicant; and the victim fails to obtain proper compensation in a action for damages parallel to prosecution in a criminal case. This law excludes damages resulting from employment accident or caused by motorized vehicle. The request for compensation is submitted to a special Commission for the Protection of Violent Crimes and granted by order of the Minister of Justice.

### **H. Rights to petition, to initiate legislation and of access to information**

29. The right to petition continues to be guaranteed by article 52 CRP. Act 43/90, of 10-8, regulating private persons' access to public authorities, excluding the courts, was amended pursuant to Act 45/2007, of 24-8. The right of petition is granted with the view to defending citizens' rights, the Constitution, the law and the general through petitions, representations, protests or complaints to the bodies that exercise sovereign power or any public authority except the courts. The claim must be legal and must not refer to a court decision.

30. This right is recognized to Portuguese citizens, and to citizens of other States under conditions of reciprocity (particularly within the scope of the EU and of the Community of Portuguese-Speaking Countries). However, foreigners and stateless person with residence in Portugal are granted the right to petition for the defence of their rights and interests.

31. Petitions to Parliament are addressed to its President and appreciated by the competent Parliamentary Commission, which shall draw a report within 60 days stating the

measures found to be adequate. Any petition subscribed by a minimum of 1,000 citizens is, by law, published in the official gazette; when subscribed by more than 4,000 citizens, it must be examined by Parliament in plenary. Parliament may decide to: transmit it to the competent minister for legislative or administrative measures; refer it to the Attorney General, the criminal police or the Ombudsman; initiate an investigation committee; or present a bill on the subject at hand.

32. Act 17/2003, of 4-7, regulates the right of groups of registered electors to initiate legislation, as established in article 167 CRP. The power to initiate legislation and referenda lies with Members of Parliament, parliamentary groups, the Government, and also, subject to the terms and conditions laid down by law, with groups of registered electors. Bills must be subscribed by a minimum of 35000 registered electors and be submitted to the President of Parliament. The submission must contain a specification of its main purpose; a statement of reasons with a summary description of the initiative, foreseeable consequences, statutes to be repealed, social, political, economical or financial motivations, designated representation and signatures.

33. The right of access to administrative documentation and information is today provided for under Act 46/2007, of 27-8, although the basic principles and rules governing such access, and the competence of the Commission on Access to Administrative Documents (CCPR/C/PRT/2002/3, paragraph 2.27) remain unchanged.

## **I. Human rights information, education and training**

34. Efforts aimed at reinforcing human rights information, education and training continued. The Ministry of Education has included “Education for Citizenship” as a cross-cutting area in basic and secondary school curricula. Numerous projects in this area have been developed in schools across the country. For example, in 2006, project “Living Human Rights” was undertaken in partnership with Amnesty International – Portuguese Section, comprising awareness-raising activities in schools, distribution of education materials and presentation of student projects with view to disseminate best practices in human rights education. 34 schools participated and student works were made available on-line<sup>11</sup> together with educative resources to be used in schools. As a result of this project, in 2007 a best practice guide was published, addressing competences to be developed and methodologies to be used, and including selection of student works. A National Coordinator of the Council of Europe Project “Education for Democratic Citizenship and Human Rights” (currently in its third phase 2006–2009) was appointed and several reference documents elaborated with the view to encourage and facilitate, inter alia, the training of teachers and trainers in these areas.

35. The Office for Documentation and Comparative Law has also continued its efforts in this regard. In 2005, a protocol was signed with a Portuguese university (*Universidade Nova*) with the view to provide a human rights course to faculty students. Human rights publications in Portuguese continued to be issued and made available, in full text, at the Office’s website ([www.gddc.pt](http://www.gddc.pt)). Currently, the following are available: Professional Training Series 1, 2, 3, 4, 5 (complete training kit), 6, 8, 9 and 11 (Trainer’s Guide); Human Rights Fact Sheets 2, 3, 4, 6, 7, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 24, 25 and 26; a handbook on international humanitarian law; 2 volumes of the UN Decade Series; and a book with the text of the outcome documents of the III World Conference against Racism and European preparatory conference.

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<sup>11</sup> At <http://www.dgicd.min-edu.pt/>.

36. We shall also highlight that a Compilation of Human Rights Instruments was published, containing the text of more than 150 international human rights instruments (the largest on this subject-matter ever published in Portugal). The Office's website also continues to be used to publish the texts of all reports submitted by Portugal to the United Nations human rights treaty bodies, summary records of the sessions at which they were discussed and concluding observations formulated by the Committees. It equally provides information on the United Nations and Council of Europe human rights machinery, including on how to submit a complaint to the monitoring bodies. The jurisprudence of these bodies – including judgements/views passed and decisions taken in communications brought against Portugal is also made available and attracts considerable attention on the part of lawyers, magistrates and other justice professionals. More than 30 judgements passed by the European Court of Human Rights have been translated and are available in Portuguese.

37. Other government departments also develop similar activities. CIG and ACIDI, for instance, both run active information services (including via their Internet webpages), promote and participate in training activities, workshops, seminars and conferences and develop extensive publication work. For information concerning the Ombudsman, see above.

### **Article 3**

#### **A. Constitutional provisions**

38. The CRP enshrines the principle of equality regardless of one's sex and the promotion of equality between men and women as a fundamental task of the State (arts. 13 and 9 (h)). The State is responsible for promoting, inter alia, equality in the exercise of civic and political rights and non-discrimination on the basis of sex in access to political positions (art. 109).

#### **B. Governmental mechanisms for gender equality**

39. A newly established Commission for Citizenship and Gender Equality (CIG) renewed and increased the staff of the former CIDM and assumed new competences, having important responsibilities in the implementation of three national plans: the Third National Plan for Equality – Citizenship and Gender (2007–2010), the Third National Plan against Domestic Violence (2007–2010) and the First National Plan against Trafficking in Human Beings (2007–2010).

40. The new Commission is mandated to promote citizenship and gender equality, inter alia by participating in the preparation, development and implementation of global and sectoral policies in such areas. It presents views on bills or suggestions to amend the existing regulatory framework, elaborates studies and planning documents, promotes educational, awareness-raising and information activities, technically supervises structures of assistance and care to victims of violence, supports measures carried out by other entities, namely NGO, develops legal advice and psychosocial support services, especially in situations of discrimination and gender violence, and receives complaints from victims of these practices, referring them, when appropriate, to the competent authorities.

41. CIG has a Consultative Council composed by representatives of relevant government departments, 40 NGO which pursue objectives similar objectives to CIG and 10 personalities with expertise in CIG's areas of work. Its structure comprises a training division, a documentation and information division and a juridical and administrative

division (which is in charge of a legal advisory and support office, examines complaints regarding cases of discrimination or violence, and monitors the implementation of applicable international legal instruments and jurisprudence). It has established three multidisciplinary teams on: promotion of citizenship and gender equality; prevention of domestic violence and gender violence; and cooperation with regional and municipal authorities. For a complete description of CIG's mandate and structure, please consult the ECCD of Portugal (Part 2, D (f)).

42. The Commission for Equality in Labour and Employment (CITE) kept its former structure; its tasks were adapted to the new labour regime; and it is currently working under the direction of the Ministry for Labour and Social Solidarity, in articulation with the member of Government in charge of gender equality (DL 79/2005, of 15-4 (modified by DL 201/2006, of 27-10)).

43. CITE examines complaints of discrimination and presents reports thereon, which are sent to interested parties. Employers must request a legal opinion (to be issued within 30 days) from this Commission before the dismissal of pregnant, puerperal or breast-feeding women or fathers in paternity leave, and if they do not agree with requests for reduced or flexible timetables of women or men with small children. If CITE's opinion is negative, only a court of law may authorize the dismissal or deny the employee's request. CITE maintains the register of court decisions with regard to equality and non-discrimination between men and women at work, employment and vocational training, in order to provide information about any final decision. Until June 2007, it could also recommend legislative changes or propose measures related to equal opportunities in employment, work and vocational training.

44. CITE runs a website ([www.cite.gov.pt](http://www.cite.gov.pt)) since 8 March 2002. From 2005 to 2008 it had 2,708,431 users. CITE undertakes training and information activities targeted at the general public and some strategic groups (such as social negotiators, entrepreneurs, trade-unionists, jurists working for associations of employers or trade unions, human resource managers, civil servants, magistrates, lawyers, trainers and local elected officers) in order to achieve mainstreaming. The budget of this Commission increased 6.95 % from 2005 to 2008.

### **C. National Plans for Equality**

45. The Third National Plan for Equality – Citizenship and Gender (2007–2010), adopted in 2007, defines 5 Strategic Intervention Areas (1 – Integrating a Gender Perspective in all policy fields as a requirement of good governance; 2 – Integrating a Gender Perspective in priority policy fields; 3 – Citizenship and gender; 4 – Gender violence; and 5 – Integrating a Gender Perspective in the EU, on an international level and in development cooperation) to be implemented as 32 objectives and 155 measures, linked to established goals and success indicators and to the entities responsible for their execution. The plan aims at promoting equality between women and men and covers a wide range of fields, namely health, education, employment, balance between work and family life, prevention of violence against women and social protection. One of its goals is the setting-up of a gender equality observatory.

46. An ex-post evaluation study of the Second National Plan for Equality (2003–2006) was undertaken by a team of researchers of the Centre for Social Studies of the University of Coimbra. The conclusions highlight the difficulties of the gender equality mainstreaming policy in Portugal, during the period of enforcement of the Second National Plan for Equality: the measures with higher rate of execution were those committed to the two official mechanisms for gender equality – CIDM and CITE; an important part of the implemented measures were awareness-raising activities for gender equality issues, and

occasionally pro-active initiatives leading to effective social change. Political and governmental instability originated a high turnover and a vulnerability to re-structuring of gender equality focal points in most Ministries; the inadequate planning and monitoring of the gender equality plan and the lack of any specific, measurable, accurate, realistic, time-bound (SMART) goals.

47. In general, research shows structural difficulties to implement gender equality policies such as: shortage of human and financial resources; insufficient knowledge and lack of statistical data about men and women's social condition broken down by sex; a widespread limited concept of equality in public opinion, that paves the way for a lack of legitimacy to gender equality claims and intervention; inadequate knowledge about gender equality and adequate tools and techniques to promote it; lack of political commitment, notably at intermediary levels; rigidities of the policy design/decision making processes and reluctance to involve civic society in the governance model. The study includes recommendations to overcome the main obstacles.

#### **D. National Plans against Domestic Violence**

48. The Third National Plan against Domestic Violence (2007–2010) was adopted comprising five strategic areas of intervention: (1) informing, raising awareness and educating; (2) protecting victims and preventing re-victimisation; (3) empowering and reinserting victims of domestic violence; (4) qualifying professionals; (5) learning more about the domestic violence phenomenon. This plan takes a comprehensive approach to domestic violence, providing for measures to protect and empower victims and rehabilitate the perpetrators to prevent re-victimisation. It also has a grid of indicators for all planned measures with their timelines, implementation and success indicators, and bodies involved. The fight against domestic violence focuses on producing positive structural changes and on the quality of responses given. It provides for concerted action between public authorities and NGOs.

49. An external evaluation of the execution of the Second National Plan against Domestic Violence (2003–2006) was also conducted, in order to assess the levels of execution and efficacy of this Plan. In overall terms it was concluded that a significant level of both execution and efficacy was achieved in most axes and measures. Of particular note are the strengthening of the network of victim support services, with an increase in the number of shelters and other information and reception units; standardisation of shelter operation; strengthening of the technical competences of concerned professionals; increase in the knowledge of domestic violence as a result of several studies; and the incorporation of the concept of domestic violence in the new legislative framework.

#### **E. Nationality**

50. Portuguese Law guarantees equal rights to women and men as regards the acquisition, change or retention of nationality, as stated in the previous Portuguese reports. The Portuguese Law on Nationality was revised in 2004, facilitating the process of reacquisition of Portuguese nationality, as from the date of marriage, by any woman who, under legislation previously in force, has lost it due to such marriage. A foreigner living in de facto union with a Portuguese for more than 3 years may acquire Portuguese nationality, after recognition of this situation by a civil court.<sup>12</sup>

<sup>12</sup> This possibility was established by Organic Act 2/2006, of 17-41) but only entered into force with DL

51 Regarding all the processes of naturalisation of aliens taken up by the Aliens and Borders Service (SEF), 39% to 41% of the cases taken up between 2004 and 2006 are from women, and 39% to 43% of the cases granted are also from women (Chart 3). Numbers of cases rejected and filed indicate a trend to a decrease in these outcomes for women: 36% to 24% and 36% to 31%, respectively.

## **F. Discrimination at work, in employment and in vocational training**

52. Although the CRP and the Labour Code forbid any discrimination between women and men at work and in employment, some discrimination still persists in practice and a number of measures have been put in place to combat it. Due to space constraints, we are unable to provide a detailed description of all such measures and indicators, and will highlight only a few. Further information can be obtained in the reports submitted by Portugal to the Committee on the Elimination of Discrimination against Women and to the Committee on Economic, Social and Cultural Rights.

53. To ensure the right to equal pay for work of equal value, CITE is participating since 2005 in the project "Revalue work to promote gender equality", which aims at developing and testing a job evaluation method free from gender bias, applicable to various sectors of activity. This project involved the following activities: development and application of a questionnaire to study the situation of women in the restaurant and beverages sector; holding of two workshops; development of a methodology for assessing the value of work without gender bias and of a training curriculum for its implementation; holding of a training course on "Equal Pay for Women and Men" in 2008.

54. Measures have also been adopted for mainstreaming equal opportunities for men and women in vocational training and trainer training programmes, inter alia within the activities of the Institute for Employment and Vocational Training, inter alia the grant of a child or dependent care allowance to all beneficiaries of employment and training measures and programmes. The Institute's permanent training programme includes a module/referential on "Towards an active citizenship: Equality between men and women" (since December 2004) and an e-learning module based on that referential (since November 2006).

55. The Employment, Training and Social Development Operational Programme (POEFDS) seeks to promote gender equality via both positive actions and the mainstreaming of gender equality in all areas of activity. The aim is to support actions that promote the balanced participation of men and women in work, family life and decision-making processes, and to create conditions to change the existing social roles paradigm. Furthermore, measures were taken to promote female entrepreneurship, namely through training activities.

56. On 9 May 2007, the Government presented to Parliament the Annual Report on the Progress of Equality between Men and Women in Work, Employment and Vocational Training 2005. Although mandatory since 2001, it had never been made before. Briefly it highlighted a strong growth in female employment alongside the persistence of a higher female unemployment rate compared to male; there is still a gender imbalance in sectors and occupations; the gender pay gap persists and is particularly felt at high skills levels; and women's access to the education and training system is increasing steadily.

57. Since June 2007, CIG can receive complaints in the area of equality and non-discrimination at work, employment and vocational training. However, it continues to be

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237-A/2006, of 14-12, that regulates such Organic Act.

incumbent upon CITE to offer mandatory prior opinions in cases of dismissal of pregnant, puerperal or breast-feeding women or fathers on paternity leave, and in cases of denial by employers of requests for reduced work schedules presented by workers with children under 12 (see above).

58. The discrimination suffered by women in recruitment, employment, career advancement and payment is mainly grounded in maternity and in the fact that women are still the main responsible for the family care. In this connection, please see the information provided on the implementation of article 23.

## **G. Health education, sex education and family planning**

59. The promotion of equality between men and women in the enjoyment of human rights also implies the adoption of measures in the fields of health education (including sex education) and family planning. During the reporting period, Portugal reinforced its efforts to promote sex education, and a working group to propose and assess parameters for sexual education at schools was set up in September 2005.<sup>13</sup> Activities have been undertaken by schools in partnership with specialists, health centres, NGOs and other community services, targeting students, as well as parents, non-teaching staff and the general community. Many schools have student support offices to provide health and family planning counselling.

60. In the area of family planning, efforts were undertaken to: ensure that all contraceptive methods provided for under the law are available in all pharmacies of all means of contraception provided for by the legislation in force; promote an effective interaction between youth care centres, hospitals and outpatient units with a view to extending the scope of family planning and maternal health consultations to reach adolescents and young people; improve access to contraceptives in order to prevent unwanted pregnancies, especially in particularly vulnerable groups; and reduce waiting times for ligation or vasectomy operations. Several improvements were put in place, namely a better storage and distribution of contraceptives at the Health Centres and at Regional Health Administrations (ARS), distribution of oral contraceptives for 6 months, according to women's needs, and the publication of a technical book for health professionals, with updated guidelines on all types of contraception. Access to reproductive healthcare in Portugal is universal and free of charge, regardless of nationality and legal status. Immigrants and minorities (ethnic or socio-economic), are viewed as target groups for action. There is a special intervention programme to be carried out by mobile task forces acting upon poverty clusters throughout the country.

61. Statistics show an overall increase in the availability of family planning services (see Chart 4 in the annexes). Emphasis has been put into improving access to emergency contraception as it is understood to play a key role in reducing unwanted pregnancy and abortion. The total percentage of fertile women (15–49 years old) using contraceptive methods is 86.8%. The pill continues to be the method most used by Portuguese women (67.7% in 2006, compared with only 30% in 1980) and the condom is beginning to be widely used by the youngest generations (rising from 8% in 1980 to 12.9% in 2006) (Chart 5 in the annexes).

62. One of the objectives set out in the Third National Plan for Equality – Citizenship and Gender was to reduce adolescent pregnancy. According to the High Commissariat for Health, the rate of adolescent mothers in total births in Portugal fell from 5.9% in 2001 to 4.8% in 2005. Actions concerning family planning were important and helped to reduce the

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<sup>13</sup> By Dispatch 19737/2005, of 13-9.

percentage of live births by adolescents mothers (from 10.6% in 1979 to 4.7% in 2007). Most teenage mothers are above 15 years – see Charts 6, 7 and 8 in the annexes. The majority of these teenagers are from social groups with short financial resources, ethnical minorities and migrants, low grade studies (mostly less than sixth grade) and high school drop-out rates. There is no general lack of access to health services but rather a combination of social and economic issues within the purview of the Ministries of Labor, Youth and Education.

63. In February 2007 a referendum took place on the legalisation of abortion up to ten weeks. Of Portuguese voters, 59.24% were in favour of this proposal (only 43.6% of registered voters participated). Act 16/2007, of 17 April 2007, permits the voluntary interruption of pregnancy during the first 10 weeks of pregnancy, free of charge at a public hospital. Thus, in the first 10 weeks of an unwanted pregnancy, women will be able to seek safe abortion services without fear of criminal prosecution.

64. The legal instrument regulating the application of Act 16/2007 was approved in June 2007 and established the conditions, administrative procedures, technical and logistic conditions and relevant information to be provided to pregnant women, in official or officially-recognised health units. In the National Health System, women seeking abortion are exempted from the service fees. A reflexion period of 72 hours is imposed, and within 2 weeks after the abortion these women must attend family planning education sessions to receive information on contraceptive methods.

## **H. Social and economic benefits**

65. The new Act on General Bases of the Welfare System<sup>14</sup> establishes the principles of equality and non discrimination on the grounds of, inter alia, sex, as one of the main guidelines for the whole social security system. It also requires the creation of special conditions for the promotion of births by favouring a balance between private, family and working life and particularly taking into account the necessary time to care for children. The Social Security system (comprising contributory and non contributory schemes) covers sickness, maternity, occupational illnesses, unemployment, family responsibilities, disability, old age and death, but the range of protection varies from scheme to scheme. Data from 2004 to 2007 show that women represent about 57% of all the beneficiaries by the social security schemes under the non-contributory system, and about 46% under the contributory system, highlighting their particular vulnerability to poverty (see Chart 9 in the annexes).

66. In 2003, the legal framework on the “Social Reinsertion Income”<sup>15</sup> entered into force, replacing the former “Guaranteed Minimum Income”. Some of the changes introduced relate to the social insertion component of the foreseen measures, which aim at adjusting programmes to the situation of each person and respective family size. It may include complementary support for healthcare, education, transport and housing. The “Social Reinsertion Income” consists of a payment included in the solidarity subsystem and a social insertion programme aimed at ensuring that people and their families have the resources to satisfy their minimum needs and favouring progressive insertion into social

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<sup>14</sup> Approved by Act 4/2007, of 16-1, which maintains the legal and regulatory norms approved under Acts 28/84, of 14-8, 17/2000, of 8-8, and 32/2002, of 20-12.

<sup>15</sup> Act 13/2003, of 21-5 (rectified and republished by the Declaration of rectification 7/2003, of 29-5; modified by Act 45/2005, of 29-8, rectified by the Declaration of rectification 76/2005, of 25-10). This Act is regulated by DL 283/2003, of 8-11, whose full text is published in annex to DL 42/2006, of 23-2.

life, work and the community. In the case of persons under 18, only pregnant women or persons with children under their exclusive care are entitled to this benefit.

67. According to data for 2004–2007, women represent about 53.5% of all beneficiaries of this income (see Chart 10 in the annexes). In 2004, 36% of the families receiving “Guaranteed Minimum Income” were either women alone or women supporting children (see Chart 11 in the annexes). In 2006 and 2007, there was a significant increase in mixed families among the beneficiaries – see Chart 12 in the annexes. The “Social Insertion Income” provides for special benefits for the families of the physically or mentally disabled or people with chronic diseases or highly dependent elderly people. The amounts of these benefits are defined in Ministerial Order 105/2004, of 26-1.

## Article 4

68. The information contained in the third period report of Portugal (CCPR/C/PRT/2002/3) is still valid.

## Article 5

69. The information supplied in the third periodic report of Portugal (CCPR/C/PRT/2002/3) is still valid.

## Article 6

### A. Right to life

70. The right to life continues to be guaranteed under article 24 CRP, which also prohibits the death penalty in all circumstances. International legal cooperation (including for extradition purposes) shall be refused in case, in the requesting State, facts are punishable with this penalty. This is specifically stated in Act 144/99,<sup>16</sup> and has also been safeguarded in bilateral extradition treaties celebrated with retentionist States. Legislation on abortion has been amended (see reply to art. 3).

71. The Criminal Code (CC) has undergone 11 amendments over the reporting period. Pursuant to Act 59/2007, of 4-9, the fact that the victim of murder is a spouse of or lives in *de facto* union with the perpetrator (including in the case of same sex couples) and the fact that the murder is motivated by hatred on basis of the victim’s colour, ethnic or national origin, gender or sexual orientation have been included as aggravating circumstances of such crime and of other serious crimes like torture.

72. Articles 236 (incitement to war), 238 (recruitment of mercenaries), 239 (genocide) and 241 (crimes of war against civilians) of the CC have been eliminated there from and included in Act 31/2004, of 22-7, which adapted Portuguese legislation to the Statute of the International Criminal Court and typified those conducts which constitute a violation of international humanitarian law. Contrary to the general rules of Portuguese criminal law, no statute of limitations applies to crimes of genocide, crimes of war and crimes against Humanity. The penalisation of genocide (12 to 25 years of imprisonment) was maintained. The typification of crimes of war was greatly enlarged and these crimes are now punished, in most cases, with 10 to 25 years of imprisonment. A new criminal type — crimes against

<sup>16</sup> As amended by Acts 104/2001, of 25-8, 48/2003, of 22-8, and 48/2007, of 29-8.

humanity — was included, penalising with 12 to 25 years of imprisonment those acts described in article 7 of the Rome Statute.

73. For information on the life indicators in Portugal, please consult our ECCD.

## **B. Deaths caused by the police**

74. According to the data communicated to the European Committee for the Prevention of Torture following its visit to Portugal in January 2008, in 2007 there was 1 case of death caused by police officers. The death case gave rise to a criminal investigation that is pending under a court ruling. As to the 2008 statistics, there were 5 deaths that resulted in 1 inquiry proceeding, 4 inquiries, two disciplinary proceedings and the 5 cases are pending.

75. Portugal continues to undertake great efforts to eradicate police violence and, in this connection, various institutional, legislative, procedural, administrative and training measures have been taken.

76. Firstly, we have been striving to improve the human rights training of law enforcement officials. For those dependent from the MAI (National Republican Guard — GNR, Public Security Police — PSP, and SEF), human rights components have been included in the curricula of all initial and on-going professional training, as well as in specialisation and improvement activities and seminars. For example, training modules on “Fundamental Rights and Human Rights” (60 hours) and “Ethics” (45 hours) were included in the training course for police officials offered by the High Institute of Police Sciences and Homeland Security. Professional ethics (30 hours) and the use of firearms (55 hours) are covered in the initial training of police officers, while deputy chiefs must follow mandatory 30-hour courses on fundamental rights and ethics of command and leadership. On the occasion of the sixtieth anniversary of the UDHR, a seminar was held on “Human Rights and Police Practices”. The training of these police forces — including training provided in their own vocational training institutes — is aimed at guaranteeing respect for fundamental rights and based on the principles proportionality, adequacy and necessity that must preside over any police activity.

77. In what concerns the MJ, these matters are included, on a regular basis, in the training curricula ministered by the High Institute of the Judicial Police and Criminal Sciences (either in the initial course for trainees-officers, or in the upgrading courses for criminal investigators, or even in the continuous training of Judiciary Police (PJ) inspectors). Human rights matters are an integral part of the evaluation of candidates within the recruitment for PJ. In recent times, these matters were part of the written exam and of the candidates’ interview. A seminar on “Criminal Investigation and Human Rights” is held as part of the initial and continuous training of police officers, usually on a yearly basis. The Portuguese Judge and the Agent of Portugal at the European Court of Human Rights are among the instructors. Human rights issues are also part of the curricula in the training of prison officers, as ministered by the Centre of Penitentiary Training. During the last initial training for prison officers, which lasted for 6 months, a specific seminar was held with the participation of the Portuguese Member of the CPT.

78. Several materials aimed at facilitating the human rights training of law enforcement officials have been published and are available on-line at [www.gddc.pt](http://www.gddc.pt), including the OHCHR’s training kit for these officers. This webpage includes a specific thematic sub-section on the prevention of torture (see reply to art. 2).

79. The legal framework indicated in our third periodic report (CCPR/C/PRT/2002/3) concerning the use of force and firearms by law enforcement officials remains in force. Furthermore, a Code of Conduct for the Police Service was adopted in 2002 (Council of

Ministers resolution 37/2002, of 28-02) containing, among others, norms on the respect for fundamental rights and the adequacy, necessity and proportionality in the use of force.

80. Article 8 of this Code of Conduct establishes that law enforcement officials shall use coercive means adequate to reinstate legality and public order, security and tranquillity only when such means are strictly indispensable, necessary and sufficient to the fulfilment of their duties and once all persuasion and dialogue means have been exhausted. Furthermore, they shall refrain from using the force, except in those cases expressly provided for by law and when such use of force is strictly necessary, adequate and proportional to the legitimate aim pursued. Firearms are to be used only as an extreme measure of last resort, when absolutely necessary and adequate, in those cases where there is a proven danger for their own lives or to the lives of others, and in other cases expressly provided for by law.

81. In accordance with article 16 of Act 45/2004, of 19-8 (Legal Provisions on Forensic Expertises), in the case of deaths occurring outside health institutions (applicable to “all deaths of persons under detention at a prison establishment, police station or other facilities of police forces”) it is always necessary to: (1) inspect the location and preserve the scene; (2) immediately communicate such fact to the competent judiciary authority providing relevant data for the investigation of the cause and circumstances of death; (3) to ensure the presence of a forensic expert, in the case of felony or suspicion thereof. The forensic expert shall verify the death, in case no other doctor has previously done so, and examine the location, without prejudice for the legal jurisdiction of police authorities. These legal rules have been systematically applied to all deaths occurring within prison facilities.

82. According to article 13 (2) of the same Act, there must be an expert on duty every day to ensure urgent examinations, who shall process the body at the scene and inspect the scene itself. The body must be carefully examined in search of possible traumatic injuries, signs of natural diseases and any other traces relevant to understand the circumstances of death. The expert shall then elaborate a written report with his findings and immediately transmit it to the judiciary authority, who shall order, as of routine, forensic autopsy whenever there are any signs of violent death (whether by suicide, homicide or accident), as well as in all cases in which the cause of death is unknown, the body being then removed to the closest forensic services for autopsy. It should be noted that the National Institute of Legal Medicine is scientifically and technically autonomous and independent.

83. Both IGAI and the Ombudsman can — and do — receive complaints of abuse and inspect police stations. In 2007, for instance, IGAI made 200 unannounced inspection visits to police facilities. See more information under articles 2 and 10.

### **C. Missing persons**

84. In 2004, a protocol was signed between MAI and the NGO Institute for Child Support (IAC – Private Institution of Social Solidarity aimed at promoting the rights of the child) with the view to improve responses that allow for the timely and safe recovery of missing and/or sexually exploited children, as well as to combat these phenomena. Through this protocol, the following IAC activities are supported:

- (a) Creation of a telephone hotline to be used in such cases (phone number 116 000 – similar to that existing in other EU member States), which began operating on 25 June 2008;
- (b) Provision of information and counselling to, and support and referral to competent services of, child victims and/or their families or legal representatives;
- (c) Collaboration with security forces and services with the view to disseminate missing child alerts and to effective search runaway children in Lisbon;

- (d) Referral to MAI of appeals relating to missing and/or sexually exploited children that reach SOS-Children/Street Project outside working hours;
- (e) Participation in the training of security forces and services;
- (f) Promotion of awareness-raising campaigns in the area of mission and/or sexually exploited children;
- (g) Permanent updating of the National List of institutions working in this area.

## Article 7

85. The Constitutional and legal framework aimed at prohibiting and preventing torture and ill treatment has not been changed, but motivations based on the victim's colour, ethnic or national origin, gender or sexual orientation have been added as aggravating circumstances of such crime. Acts of torture or prohibited medical or scientific experimentation which constitute a violation of international humanitarian law are now punished in accordance with Act 31/2004, of 22-7. Further information on measures taken to combat abuses perpetrated by law enforcement officials can be found under articles 6, 9 and 10.

86. In addition to the data indicated in reply to Article 6, we shall indicate further data communicated to the European Committee for the Prevention of Torture following its visit to Portugal in January 2008. In what concerns the Judicial Police, there were 10 disciplinary proceedings for alleged ill-treatment in 2007 and 6 in 2008 (from January until the end of August). Out of these 10 cases, 7 were filed and 3 are still pending. Out of those 10 cases, 5 resulted in criminal proceedings. The 6 cases initiated in 2008 are all still pending. Until 30 June 2008, one case resulted in a criminal proceeding.

87. As regards complaints presented to IGSJ (or investigated by it), no complaints were filled in 2007 on ill-treatment by the Judicial Police officials and in 2008 there was one complaint on those very same grounds concerning facts occurred in 2004; the case resulted in criminal proceedings.

88. In what concerns the Public Security Police, a total amount of 332 disciplinary procedures on the grounds of assault were initiated in 2007. Of the 332 proceedings started in 2007, 196 were shelved with no penalty being imposed, 135 are at the enquiry stage and one resulted in a penalty (a five-day fine in accordance with the Disciplinary Regulation of PSP). During 2007, there were 76 criminal lawsuits, of which 32 were shelved and 44 are at the enquiry stage. In the first semester of 2008, 169 disciplinary proceedings were open, out of which 37 were shelved with no penalty being imposed, 132 are at the preparatory inquiries stage. In the first semester of 2008, there were 19 criminal lawsuits, of which 5 were shelved and 14 are at the enquiry stage.

89. Regarding the National Republican Guard, a total amount of 304 disciplinary proceedings for assault were started from 1 January 2007 to 30 June 2008, out of which 192 were shelved, 73 are ongoing or were stayed, 14 were punished. There were 153 criminal lawsuits.

90. In what concerns complaints lodged at the Inspectorate General of Home Affairs a total amount of 16 enquiry proceedings on the grounds of assault were started in 2007, out of which 7 gave rise to criminal investigation and 10 to disciplinary proceedings. Of the 16 proceedings that have been initiated, 11 are now shelved and 3 are ongoing. Of the disciplinary proceedings, one resulted in a penalty (severe written reprimand). In the first semester of 2008, a total amount of 6 enquiry proceedings on the grounds of assault was started, out of which 2 gave rise to criminal investigations and 2 to disciplinary

proceedings. Of the 6 enquiry proceedings, 1 is with the Cabinet of the Minister of Interior, 4 have been shelved and 1 is ongoing. During this time a criminal investigation and a disciplinary proceeding were also started.

91. According to the data communicated to the European Committee for the Prevention of Torture following its visit to Portugal in January 2008, in 2007, there were 19 cases of assault and 6 cases of injuries caused by firearms. The 19 cases of assault gave rise to 13 enquiry proceedings, 13 criminal investigations and 9 disciplinary proceedings. Of the 19 cases, 14 were shelved and 5 are pending. The 6 cases of injuries caused by firearms gave rise to 6 criminal investigations, 4 disciplinary proceedings, one penalty, 5 have been shelved and 2 are pending.

92. As to the 2008 statistics, there were 8 cases of assault and 2 cases of injury caused by firearms. Of the assault cases, there were 7 inquiry proceedings and 3 disciplinary proceedings. Also, as regards assault, 4 cases are pending and 4 have been shelved. Of the cases of injury with firearms there were 2 inquiry proceedings and an enquiry; one is pending and the other has been shelved.

93. As regards the punishment orders, issued by the Minister of Interior in 2007 and in the first semester of 2008, 16 orders were issued, ordering days of suspension, fines, verbal admonitions and severe written reprimand.

94. The prohibition of extradition, expulsion or refoulement to a country where there are reasons to believe that a person can be subjected to torture or inhuman or degrading treatment was reinforced, in relation to refugees and asylum-seekers, with Act 27/2008, of 30-6, which establishes the grounds and proceedings for granting asylum or subsidiary protection, and defines the statute of asylum-seekers. Beneficiaries of international protection cannot be sent to a territory where their liberty might be at risk due to any reason that could be a ground for asylum or that somehow violates the prohibition of expulsion or refoulement in accordance with the international obligations of Portugal. The removal, extradition or expulsion to a country where the person can be subjected to torture or cruel or degrading treatment is expressly prohibited. A major change occurred in the transition of the administrative to the judicial phase of the proceeding for granting asylum: appeals lodged with judicial authorities against decisions of the administration that reject asylum requests now have suspensive effect – an amendment called for years by national NGO and independent experts.

95. Within the National Plan for Equality, a programme of action to eliminate female genital mutilation was adopted, comprising measures aimed at studying the problem in Portugal, raising awareness thereto, creating networks against it and developing other preventive measures such as education and training activities.

96. It should also be noted that the 2007 revision of the CC typified the crimes of domestic violence (art. 152) and ill treatment (art. 152-A). The former punishes physic or psychological ill-treatment, including corporal punishment, deprivation of liberty or sexual abuse committed against a spouse or person living in *de facto* union (including in same sex couples) with imprisonment of up to 10 years. Offenders can be prohibited from contacting the victim (which can be ascertained through electronic devices) and from carrying weapons, or be obliged to attend domestic violence prevention courses. They can also be deprived of the exercise of parental rights. The crime of ill-treatment encompasses the above mentioned acts, as well as employment in dangerous, inhuman or prohibited activities and overload with excessive work, perpetrated against a child or particularly defenceless person under the guardianship of the perpetrator. Penalties can also go up to 10 years of imprisonment.

## Article 8

### A. Criminalization of slavery and slavery-like practices

97. In this connection, it should be noted that Portugal ratified, on 1 June 2008, the Council of Europe Convention on Action against Trafficking in Human Beings. The 2007 revision of the CC amended provisions relating to trafficking in persons and sexual exploitation and abuse of children. For acts which constitute violations of international humanitarian law, see article 6.

98. Slavery is punished with 5 to 15 years of imprisonment. Trafficking in human beings is punished with 3 to 10 years of imprisonment, applying to whoever offers, delivers, allures, accepts, carries, accommodates or receives a person for purposes of sexual exploitation, work exploitation or removal of organs, using the following means: violence, kidnapping or serious threat; deceit or fraudulent manoeuvre; abuse of authority resulting from a relation of hierarchical, economic, working or familiar dependence; taking advantage of the victim's mental incapacity or of situation of special vulnerability; obtaining the consent of the person who has control over the victim.

99. If the victim is a child, the said penalty applies even if none of the above means is used. If this is the case — or if the agent acts professionally or with the intent of profit — then the penalty is aggravated to 3 to 12 years of imprisonment. Those who, aware the practice of any of the above crimes, use the victim's services or organs, are punished with 1 to 5 years of imprisonment. And those who withhold, conceal, damage or destroy the victim's identity or travel documents, are punished with up to 3 years of imprisonment.

100. In the field of sexual exploitation and abuse of children, amendments were introduced regarding the following crimes:

(a) Sexual abuse of children (art. 171) – relevant sexual acts with children under 14: up to 10 years of imprisonment;

(b) Sexual abuse of dependant children (art. 172) – relevant sexual acts with dependent children aged 14 to 18: up to 8 years of imprisonment;

(c) Sexual intercourse with adolescents (art. 173) – relevant sexual acts with children aged 14 to 16, abusing their inexperience: up to 3 years of imprisonment;

(d) Resort to child prostitution (art. 174) with children aged 14 to 18 (which is a new crime): up to 3 years of imprisonment;

(e) Procurement of child prostitution (art. 175), which now protects all children, not just those under 16 or 14 years of age: up to 10 years of imprisonment;

(f) Child pornography (art. 176) – a provision similarly widened to protect all children: up to 8 years of imprisonment.

101. The criminal liability of legal persons was introduced, namely for crimes against sexual self-determination and for trafficking in human beings (art. 11 CC). In cases of slavery, trafficking in persons, procurement of prostitution, sexual abuse of dependent minors, sexual acts with adolescents and child pornography, Portuguese law applies even if facts are committed outside national territory, if the agent is found in Portugal and cannot be extradited or surrendered in execution of an European arrest warrant or other international cooperation instrument binding upon Portugal.

102. On the other hand, in crimes against sexual liberty and self-determination of children, the criminal procedure is not ceased, as a result of statutory limitations, before the offended party completes 23 years of age (art. 118 (5) CC). All these crimes, except the

crime of sexual intercourse with adolescents, are now prosecuted *ex officio*. Persons convicted for the practice of such crimes can be subjected to the accessory penalty of prohibition of the performance of profession, duty or activity implying responsibility over minors, their education, treatment or surveillance.

103. Concerning the adoption of children, Act 31/2003, of 22-8, introduced some changes in the Civil Code, namely in its article 1974, clearly to state that adoption shall pursue the best interest of the child. Under the CC provision criminalising trafficking in persons, whoever, against payment or other compensation, offers, delivers requests or accepts a child, or obtains or grants consent for his or her adoption, is punished with 1 to 5 years of imprisonment.

## **B. Protection of victims of trafficking**

104. The protection of victims of contemporary forms of slavery was reinforced with the entry into force of DL 368/2007, of 5-11, providing for a special regime for granting residence permits to victims of trafficking in persons. These victims also have the right to free legal support, as well as to social and medical support. In 2008, Portugal ratified the Council of Europe Convention on Action against Trafficking in Human Beings, which entered into force on 1 June 2008.

105. A Monitoring Centre on Trafficking in Human Beings was created also in 2008 (DL 229/2008, of 27-11), within MAI, with the mandate to elaborate, collect, process and diffuse information and knowledge on trafficking in persons. MAI (General Directorate for Internal Affairs) is also coordinating a project aimed at establishing a Transnational System for the Management of Harmonised Information on Trafficking in Human Beings. The development of this project began in May 2008 and shall be on-going until October 2009, with the participation of the Ministries for Internal Affairs of Slovakia, Poland and the Czech Republic.

106. The First National Plan against Trafficking of Human Beings (2007–2010) was adopted with the view to implement global approach to combat this scourge in an effective manner. It covers trafficking for purposes of both sexual and labour exploitation. The Plan relies on four strategic areas of intervention ((1) Recognition and dissemination of information; (2) Prevention, awareness-raising and training; (3) Protection, support and integration; (4) Criminal Investigation and Punishment of trafficking) each with its own implementation measures. To all these measures are assigned the entities responsible for their implementation and process and result indicators.

107. This Plan's key structuring element is the symbiosis between the repressive approach to the combat of human trafficking and the promotion of human rights through the adoption of strategies to prevent, support, raise awareness, empower and include the victims. It also contemplates an array of national mechanisms to identify specific contours, harmonise procedures and disseminate best practice.

108. The highlights of this Plan are: implementing a register to be used by NGOs and by the criminal police; creating an observatory regarding issues of trafficking; and holding an annual extensive forum encompassing all agents involved in this phenomenon. The promotion of an active, aware and conscious society as regards this reality is also an essential aspect. The protection, support and integration of victims of trafficking are emphasised as areas of vital importance in this Plan. The concession of a period of reflection offering psychological, medical and judicial assistance, with the help of an interpreter, and the possibility of attributing a residence permit with access to official programmes leading to social integration, are imperative elements for an effective human rights policy. Finally, criminal investigation and repression of trafficking are indispensable

factors given the transnational and constantly-changing aspect which requires cooperation with international institutions as well as the allocation of financial and human resources to address this phenomenon.

### **C. Military service**

109. Ordinary military service ceased to be required in 2004. However, exceptional recruitment is still possible, in case the fundamental needs of the armed forces cannot be met through contract or volunteer recruitment (Act 174/92, of 21-9, as amended by Organic Act 1/2008, of 6-5). All citizens who turn 18 in a given year must be present at the commemorations of National Defence Day. See also article 18.

## **Article 9**

### **A. Measures to register arrests and detentions**

110. Registration of arrests and detentions is ruled by a Ministerial Decree of April 2009, which establishes that there must be an official registration book in every detention facility, where the following information is included, in relation to each detainee and by order of arrival:

- (a) Identification of the detainee;
- (b) Date and time of detention and of presentation to a judicial authority;
- (c) Place of detention;
- (d) Identity of the officials involved in the detention;
- (e) Identification of the fact that motivated the detention and of the circumstances that legally justify it.

111. Furthermore, an individual file shall be organised for each detainee, with the view to register all circumstances and measures relating to the person, inter alia the time and cause of deprivation of liberty, time of information about his or her rights, signs of injuries, contacts with family members, friends or lawyer, incidents occurred during detention, time of appearance before a judicial authority and time of release. Such file must be signed by the intervening police officers and by the detainee.

### **B. Pretrial detention**

112. The Code of Criminal Procedure (CPP) was amended by Act 48/2007, of 29-8, and entered into force on 15 September 2007. Significant amendments were introduced into, among others, rules concerning pre-trial detention, in order to reduce the application of this measure and ensure that it is applied only as a measure of last resort, in accordance with its subsidiary character. Pre-trial detention can only be applied if other measures prove to be inadequate or insufficient, and preference has to be given to house arrest (namely monitored through electronic surveillance), in line with article 28 of the CRP according to which pre-trial detention may not be ordered or maintained where it can be replaced by bail or some other more favourable measure available under the law. A trial programme on electronic surveillance was implemented in 2002–2004, leading to an increase in the application of this measure (from 44 cases in December 2002 to 522 cases in December 2008).

113. The application of pre-trial detention also requires the fulfilment of the following requisites: that the crime has been intentional and is punishable with more than five years of imprisonment (as opposed to three years in the previous version), or with more than three years if it is a crime of terrorism, organized or highly violent criminality; or if the alleged offender has illegally entered or is illegally staying in national territory and a process for his or her extradition or expulsion is underway. As from September 2007, the maximum time of pre-trial detention (under CPP art. 215) is 4 months without accusation (previously 6 months), 8 months without a decision by an *instrutor* (previously 10 months), 14 months without condemnation in first instance (previously 18 months) and 18 months without condemnation by final sentence (*res judicata* – previously 2 years).

114. These limits are higher in the case of crimes of terrorism, violent or highly organised crime (six months, ten months, 18 months and 2 years, respectively, compared with eight months, one year, two years and 30 months until September 2007). In case these crimes are especially complex, such limits can once again be extended (to one year, 16 months, two and a half years and three years and four months, respectively). The special complexity of the case must be decreed by a judge at first instance, *ex officio* or at the request of Public Prosecution.

115. According to the amendments in force as from September 2007, the investigation judge (in the inquiry phase) cannot order a more serious coercive or pecuniary measure than the one requested by Public Prosecution. Should this rule be breached, the act is considered null. Under article 219 CPP, there is no right to appeal against a decision of the examining judge that decides to apply a less serious coercive measure than the one requested by Public Prosecution or no coercive measure at all, since Public Prosecution's power to appeal is subject to the interest of the accused.

116. Act 48/2007 also amended rules concerning re-examination of the requirements for the imposition of pre-trial detention. Previously, the judge should, *ex officio*, every three months, re-examine the need for such a measure and decide whether it should be maintained or, conversely, if it should be substituted or revoked. At present, both pre-trial detention and house arrest shall be re-examined *ex officio* at any time regardless of a prior request from the accused or Public Prosecution and the examination is mandatory whenever the accusation has been issued. For more information, please consult the ECCD of Portugal.

### **C. New rules aiming at controlling the time limits of the inquiry and achieving a rapid issue of the accusation**

117. The above mentioned Act altered the principle according to which every criminal case was under secrecy until the issue of the accusation. At present, the inquiry (investigation phase) is in principle public. The instructing judge can, however, decide to subject the criminal case to the duty of secrecy after hearing the accused and Public Prosecution. In addition, also the Public Prosecutor can subject the case to secrecy during the inquiry following validation by the instructing judge if he or she believes it to be important for the investigation or for the rights of the involved persons.

118. Time-limits to conclude the inquiry can be postponed up to a maximum of 3 months, extendable only once if the case refers to allegations of terrorism, highly organized crime, violent crime and especially violent crime. In this last case the time-limit should be objectively determined as crucial to the investigation. These new rules were approved in order to ensure that the inquiry is undertaken in the shortest possible time and that, in compliance with legal deadlines, the case is filed or an accusation is issued. See article 14 for further measures to reduce judicial backlogs.

## D. Special rules concerning terrorism

119. Terrorism, financing of terrorism and terrorist organisations are now punished by Act 52/2003, of 22-8,<sup>17</sup> with penalties of up to 20 years of imprisonment. Procedurally, cases of terrorism are dealt with under the general procedures established by CPP. This legislation does not subvert the basic principles of Portuguese criminal law or their conformity with ICCPR and other human rights obligations of Portugal, including the principle of non retroactivity of penal law.

120. Due to the seriousness of some offences, there are special rules regarding terrorism, violent crimes, organized crime and other serious crimes (such as trafficking in persons). Here are some examples:

(a) Possibility of engaging in undercover operations for investigation purposes, with mandatory judicial authorisation (Act 101/2001, of 25-8);

(b) Special measures to combat organized crime and economic and financial crime regarding the gathering of evidence, breach of professional secrecy and confiscation of assets (Act 5/2002, of 11-1);

(c) Criminal liability of legal persons, as determined by the judge;

(d) Possibility of surrender under the European Arrest Warrant (Act 65/2003, of 23-8);

(e) Imposition of obligations upon financial and other entities (such as casinos, real estate and insurance companies) with the view to prevent and repress money laundering and the financing of terrorism, namely the duty to report suspicious transactions directly and simultaneously to Public Prosecution and to the Judiciary Police (Act 25/2008, of 5-6);

(f) Possibility to extend the maximum deadlines applicable to the inquiry stage and pre-trial detention, although these deadlines have been reduced (see above). The maximum a suspect of terrorism can serve in pre-trial detention without accusation is 6 months, compared with 8 months until September 2007;

(g) Possibility to intercept and record conversations or phone calls, but these special measures must be authorized and ratified by the examining judge;

(h) Possibility to undertake house searches between 9 p.m. and 7 a.m. (which as a rule are prohibited). There is a duty to seek a previous search warrant before undertaking a search, although in special urgent cases the police can search both people and places without previous judicial authorization. These searches must however be immediately submitted to the approval of judicial authorities.

121. Regarding the concern that exceptional provisions are not abused by State officials we stress the fact that the CCP contains specific rules to ensure the legality of such measures, including the powers of the examining judge, which controls legality during the inquiry and instruction phases. At the investigation stage the inquiry is conducted by Public Prosecution. The powers of the examining judge are limited to those acts pertaining to fundamental rights. He has a jurisdictional and passive role and his mission is to safeguard the rights and freedoms of the accused as well as to ensure the lawfulness of the acts. The role of the examining judge is to try to diminish, as much as possible, the initial unbalance in the “equality of arms” between Public Prosecution and the accused regarding the knowledge of the investigated facts and evidence gathered. There is also the possibility to

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<sup>17</sup> As amended by Rectification 16/2003, of 29-10, and Acts 59/2007, of 4-9, and 25/2008, of 25-6.

appeal against legal decisions under the general rules of procedure. Another form of control is exercised through the disciplinary rules binding upon law enforcement agents, as well as through the specific roles and duties of the High Council of the Bench and High Council of Public Prosecution regarding their members (judges and Public Prosecutors).

## Article 10

### A. Arrest and detention

122. The treatment of detainees and arrested persons by the security forces under the supervision of the MAI (GNR and PSP) is governed by the provisions of Ministerial Decree 8684/99, of 20-04. Also applicable in this regard is the Code of Conduct for the Police Service (adopted in 2002), whose article 4 deals with the fundamental rights of the detainee, foreseeing that: “the members of the police forces have the special duty to ensure respect for the life, physical and psychological integrity, honour and dignity of those persons under their custody; members of the police forces must watch over the health of persons under their guard and must take immediate measures to ensure that they be given the necessary medical care”.

123. Whenever, by reasons of security or public health, any personal property or clothing is apprehended from an arrested person, the deposit of such property shall be registered, numbered and identified as related to such detention, as well as signed by the detainee and by the arresting officer. Personal searches shall be made in a reserved space, whenever possible by a person of the same sex, without prejudice to special measures that can be taken in relation to dangerous detainees. All personal property of the detainee must be kept in a safe place until return, and this return must also be registered.

124. Relatives in charge of the arrested person, namely children, shall receive the necessary assistance. The police station commander shall take the necessary provisions to ensure that social security services care for unaccompanied children. The arrested person must be informed of the death or serious disease of any close relative.

125. Arrested persons must be escorted to and from the police station in a discreet manner in accordance with such security rules as may be necessary in light of foreseeable risks. When escorting detainees in visits to sick family members or funerals of relatives, officers shall adopt such measures as are strictly necessary to avoid risks of evasion or accident, by reconciling, as far as possible, safety concerns with human attitudes as required by the circumstances.

126. All arrested persons must, without prejudice to the right to be examined by a doctor of their own choice, be submitted to medical examination as soon as possible and as required by the circumstances, namely if they appear to be injured or in light of their health conditions, in order to diagnose diseases or physical or mental problems which may require immediate special measures. Sick detainees in need of specialised care must be transferred to adequate health facilities or provided with previously prescribed medicines; all measures shall be taken to protect the life and health of detainees. Medical examinations of detainees must be made in a reserved location, except if otherwise indicated by the doctor, without prejudice to those security measures as may be required by the circumstances.

127. In the case of death of the detainee, the police station commander must immediately report such fact to the Public Prosecution Services, to IGAI and to the closest known relative. The results of the investigation or administrative inquiry shall be communicated to the detainee’s closest known relative.

128. A working group has been established to elaborate formal regulations concerning conditions of detention at the Judiciary Police and court premises, drawn upon regulations in force for PSP and GNR and encompassing recommendations formulated by the European Committee for the Prevention of Torture. A study carried out together with the National Laboratory for Civil Engineering (LNEC) issued Technical Recommendations for the police forces' facilities (RTIF) that shall be taken into account in 2009, in line with the Law on the Program establishing the facilities and equipment of the police forces. This "XXI Century police station" model pursues objectives such as to improve, modernize and humanise police facilities, and guarantee the access thereto of persons with disabilities.

## **B. Reduction of overpopulation in prisons**

129. There has been a significant decrease in the imprisonment rate in Portugal due, not only to the increase in the capacity of detention centres, but also to the legislative amendments introduced in 2007 in the Criminal and Criminal Procedure Codes, which increased the scope of application of measures alternative to imprisonment, by: setting up in-house electronic surveillance; reducing the cases in which pre-trial detention is applicable; reducing the maximum length of this measure; and streamlining the system of conditional release. Thus, the number of inmates in Portuguese prisons dropped from 13,984 on 31 December 2002 to 10,648 on 31 December 2008, with an overall occupancy rate of 87.1%.

## **C. Separation of categories of detainees and material conditions of detention**

130. The draft Code on the Execution of Sentences and Security Measures (Bill 252/X) is currently under discussion,<sup>18</sup> containing provisions regarding the creation of units within each prison establishment to accommodate different categories of detainees, and even of separate establishments for the same purpose. Compliance with these rules shall be enhanced through the Project "Model of Prison Establishment", conceived within the scope of the Reform of the Penitentiary Setting, which shall manage the construction of new prison establishments and foresees a modular-structure, with autonomous units within each establishment for the accommodation of certain categories of detainees.

131. Efforts are also underway to improve the material conditions of detention centres: one example is the plan to eradicate the use of buckets for discharging human waste, completed in 2009, which enabled all prisoners to have access to sanitary installations.

## **D. Medical care of detainees**

132. In accordance with the rules of the Portuguese Prison System, the time established for the first medical screening of an inmate is 72 hours. Such does not, however, preclude other medical personnel from screening the inmates within a shorter time or in urgent circumstances.

133. The allocation of medical staff to each prison facility depends upon the respective capacity and occupancy rate. In small prison units, it is mandatory that a doctor is present three times a week and a nurse two hours per day, in order to ensure the care considered necessary as well as the preparation and distribution of medication. In larger prison

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<sup>18</sup> It was approved by Act 115/2009, of 12-10, as is due to enter into force on 12.04.2010.

establishments, there must be a doctor and a nurse daily, from 8 a.m. to 10 p.m., as well as doctors holding different specialities, such as dental care, infectious diseases, psychiatric or gynaecologic care (in the feminine establishments) and also psychological care in direct proportion to the number of inmates at stake. The inmates of prison establishments that do not have all these resources may be followed up in those which have them.

134. It is foreseen that healthcare services in prisons be transferred from the supervision of MJ to the Ministry of Health, and that a number of measures are taken to improve healthcare in prisons, such as the creation of a unit for continuous healthcare in the prison context and of security wards in general hospitals. The new Code on the Execution of Sentences establishes that all prisoners are considered users of the National Health Service.

## **E. Drugs in prisons**

135. Portuguese authorities, and especially the Directorate-General of Prison Services, make permanent efforts to fight against the entering and circulation of drugs in prison premises. Thus, in 2008 a report on this issue was elaborated, while inspections and searches very significantly increased.

136. On the other hand, offers of treatment for drug users have increased and so has the number of inmates benefiting thereof: from 1,116 at the end of 2005 to 1,398 at the end of 2007. It is also foreseen that conditions be developed so as to render more useful the existing Units, in order to increase the prison system capacity to act in this field.

137. A Pilot-Program on Needle Exchange has been implemented, encompassing the disclosure and dissemination of information and counselling sessions directed to prison staff and prisoners. The Regulation of the Program was approved and, in each Prison Establishment involved, the respective Internal Rules of Procedure were endorsed. The monitoring and evaluation proceedings are being ensured, encompassing the drafting of questionnaires to prisoners and prison staff. This program is still in trial period, at the end of which the results obtained will be evaluated and readjustments considered.

## **F. Education, training, work and leisure; reintegration in society**

138. In general, and bearing in mind the prison system as a whole, it must be highlighted that around 8,200 inmates (which corresponds to 75% of the prison population) are in school and professional training programs (3,100 inmates) and in work programs (5,100 inmates).

139. Given the need to adapt education programmes to the educational needs of inmates, each prison establishment submits the educational project it wishes to implement to the corresponding Regional Education Directorate. The project, adequately adapted to the recipients' profiles and existing facilities, includes the curriculum plans, the programmes and the evaluation system of (adult) Recurrent Education — from basic education (first to ninth grade, corresponding to the first, second and third cycles, up to lower secondary education) to secondary education (tenth to twelfth grades) — and some other activities, including extracurricular, sports and socio-cultural activities. The educational project may also include some further activities, such as out-of-school education and literacy, socio-educational and socio-professional programmes, Portuguese language and culture courses targeted at people from different nationalities and ethnic groups, and vocational training courses.

140. The project is developed by an associated school which designates an education coordinator and a mediator who acts as a link between the prison establishment and those

involved in the educational process. The school also appoints the teachers, priority being given to those with experience in adult education and work in prison units.

141. Basic education may also be offered with alternative curricula. If necessary, the teaching time for each of the subjects may be increased, as well as educational support. Lately, some adult education and training double certification courses have been successfully introduced (*Cursos de Educação e Formação de Adultos – EFA*). Extra-curricular activities have been converted in modular training opportunities (*Formações Modulares*), whenever the target population's profile is not adequate to EFA courses.

142. Education Centres organise first and second first and second cycle basic education courses, teachers of local schools being in charge of teaching activities. Third cycle basic education courses are organised by the school of the area. For these purposes, Centres and local schools sign cooperation agreements. Students are enrolled and attend local schools, whenever their custody status and particular educational needs so allow and justify. Schools and Centres may present proposals for alternative education or education/vocational processes, including other educational, occupational, counselling or sports activities, leading to certification in a shorter period for students aged 15 or above.

143. Students no longer eligible for compulsory education can still be eligible for the following special types of education: adult recurrent education, aiming at obtaining school certifications; adult education and training courses, aiming at obtaining double certification (educational and vocational), for students over 18. Students having completed the ninth grade can enrol in secondary education and also have access to courses conferring an educational/vocational qualification, with a view to entering active life. Some Centres also have as of recent times offered Education/Training courses (*Cursos de Educação e Formação – CEF*).

144. In whichever situation — prison establishment or education centres — students no longer eligible for compulsory education can always request to be submitted to a final exam. For that purpose, a jury is organized, be it in normal or extraordinary periods.

145. In addition, there are also organised and regular sports activities in most prison establishments, involving approximately 43.5% of the inmates in 2007 (compared with only 34.9% in 2006). Some prison units undertake regular activities in the fields of music, theatre, arts or handicrafts. There are also numerous socio-cultural initiatives, such as theatre, music shows and literary programs.

146. One of the strategies that have been carried out in order to increase the offer of jobs is the signing of protocols with private companies. The Prison Services' objectives for 2008 included the signing of 37 new protocols, 42 having been signed. In addition, it shall be launched, in a short term, a project to set up a new dynamic as regards voluntary work in prison settings, with which we hope to increase the inmates' activity in purposeful projects aimed at their social rehabilitation.

147. Portuguese authorities are investing in individualised custody plans of re-adaption, considered as a very useful device for the re-socialization of prisoners, especially those serving long sentences. On 31 December 2007, there were 577 prisoners serving their sentences in accordance with such plans; the increase in 5% of this number, set as an objective for 2008, was attained and surpassed.

148. Portuguese authorities are also engaged in the implementation of specific programs addressed to certain groups of prisoners or to specific criminal problems. Programs regarding sexual crimes and road crimes are already in place, at an experimental level, and interventions aimed primarily at prisoners serving long-term sentences are foreseen.

## **G. Foreign inmates**

149. Over the last years, the Portuguese prison system has registered quite a significant increase of foreign inmates. Thus, in order to prevent the exclusion of these prisoners, a Project to Support Foreign Inmates is underway, in close articulation with the diplomatic and consular authorities of the countries of origin of the majority of them. The aim is to help them during their term of imprisonment and after they are released, mainly through the provision of books, organisation of socio-cultural events and individual support.

150. In addition, a protocol is being prepared with SEF, with the view to streamline procedures bearing in mind the legalisation of their stay in Portugal upon release. In the last school-term, 17 Portuguese language courses for foreign prisoners were held, involving around 250 inmates.

## **H. Discipline, complaints and inspections**

151. Concerning the use of solitary confinement, an Internal Order was issued on 2003 to make a clearer distinction between special security measures and disciplinary measures. This Order clearly states the purposes and rulings specific to each one of the measures at stake and establishes a set of precautionary procedures in order to better ensure their enforcement.

152. Discipline is one of the subjects which will undergo more amendments with the new Code on the Execution of Sentences and Security Measures. The entire disciplinary procedure will be reformulated and inmates guarantees enhanced: for example, the application of any disciplinary measure (except mere reprimand) shall have to be preceded by a written or recorded procedure, and the procedure will have to be completed within 10 days; the detainee will have the right to be assisted by an attorney; and he or she will have the right to appeal (with staying effect) to the Enforcement of Sanctions Court against any measures of compulsory confinement or commitment to a disciplinary cell (and not only of those prescribing isolation for over 8 days). In order to avoid damage to those detainees who are studying or attending training courses, the possibility of applying measures of confinement over intercalary periods has been introduced. The length of stay in a disciplinary cell decreased from 30 to a maximum of 21 days.

153. Regulations on the Use of Coercive Means were published in September 2009, prescribing procedures which are considered to have a very positive impact on the prevention of ill-treatment.

154. The new Code on the Execution of Sentences and Security Measures shall also reinforce the powers of Enforcement of Sanctions Courts, insofar as it provides for greater control over the decisions of prison authorities; such decisions (namely on the placement of inmates in open regime or in security regime) will be sent to Public Prosecution services within such courts for legality control.

155. Prisoners have the right (and often use it) to file a complaint to the Audit and Inspection Service (S.A.I.) of the DGSP and to the IGSJ (both within the MJ), as well as to such independent bodies as the Ombudsman, the Bar Association and NGO, which originates investigations on the motives for disciplinary action, frequently carried out by independent bodies. If crimes are at stake, the courts and public prosecution services — with constitutionally enshrined independence — will intervene. All reports of ill-treatment by prison staff are systematically and thoroughly examined by the competent authorities.

156. IGSJ also attaches the highest priority to the training of prison staff. Hence, in all the initial and continuous training courses for this staff, subjects related to the enforcement of

imprisonment measures and human rights, main national and international mechanisms to protect the rights of persons deprived of liberty, as well as behavioural issues (namely concerning conflict management and interpersonal relationship) are addressed.

157. Places of detention are inspected by various entities, namely the Office of the Ombudsman, the General Inspectorate of Justice Services (IGSJ), S.A.I. and sanction enforcement courts. The Ombudsman regularly inspects prison facilities throughout the county and elaborates reports describing the situation and formulating recommendations thereon. The last such report was submitted in 2003, following the completion of the third cycle of visits to all prison establishments undertaken in 2002 (55 units), and contained 950 recommendations addressed to government and to particular prison units. Periodic inspections are also undertaken on the basis of individual or collective complaints presented by or on behalf of detainees, as well as of news reported in the media or of other criteria defined on a case-by-case basis.

158. From 2006 onwards, the Office of the Ombudsman developed a plan of unannounced visits to a significant number of prison establishments, covering 82% of the global prison population. The visits were unannounced and lasted one or two days, involving two or three elements. Besides visiting the facilities and tasting food, contacts were made with the Board of Directors, officials, prison officers, health care staff and prisoners, the latter chosen at random but allowing them to have private contact with whomever so wished it. The visit also included a random analysis of recent inquests made on prisoners giving special attention to disciplinary mechanisms.

159. Recommendations and other observations made pertain to all matters of prison life, including accommodation, security and safety, discipline, food, occupation, health, leisure, education and contacts with the outside world, as well as, if applicable, alleged abuses of power of prison officials over detainees. They are addressed to those entities with power to decide, as appropriate: to the prison's director, Directorate-General or Government (in relation to administrative issues); or to Government or Parliament (in relation to legislative issues).

160. S.A.I. is particularly geared towards overseeing the organisation and functioning of prison wards, as a crucial element to maintain order, discipline and organisation within prisons, particularly as it concerns such specific areas as penitentiary treatment, economic activities, management of prison population, security and administrative management. This service has jurisdiction over the whole of national territory and comprises three delegations to ensure greater operational capacity and efficiency of services by enhancing proximity with prison facilities. The coordination of delegations is ensured by appointed Public Prosecutors. S.A.I. undertakes unannounced visits to prisons: in 2008, it made 8 such inspections, mainly focused on compliance with those procedures applicable to visits to inmates.

161. Prison facilities are also inspected by the IGSJ, which is a body of internal control of the MJ (while the Ombudsman is fully independent). Inspections carried out by the Ombudsman usually have a systemic and global scope, while the IGSJ, in pursuit of a resources synergy, has chosen to make sectional inspections, restraining its action to certain aspects only, in order to achieve a more in-depth appraisal of such issues as the application of special security means and the functioning of security sections. In 2007 and 2008, the IGSJ has also made inspections to uncover financial irregularities within prison establishments (a matter on which the Ombudsman usually does not intervene). Naturally, the IGSJ is subject to a duty of cooperation with the Ombudsman, as well as with the remaining public services, and its activity takes into account the reports on the prisons drafted by the Ombudsman's Office.

162. There is coordination among the different inspection authorities: in 2008, for instance, S.A.I. undertook four audits on the degree of implementation of recommendations made by IGSJ concerning special security measures.

163. Furthermore, we may add that, whenever an inmate dies, the causes and the circumstances of the death are duly investigated and a file may be opened (should suspicions arise as to the situation in which the death occurred) or may take place in a less formal way (*expediente avulso*) if there are no suspicions of crime or of disciplinary responsibility. In any case, a copy of the autopsy report is always collected, for a better and more thorough elucidation on the causes of death. Deaths in custody have a tendency to decrease: from 106 in 2001 to 77 in 2007 and 68 in 2008 (see Chart 13 in the annexes). See also article 6.

164. In relation to the request that Portugal keeps the Committee informed about the outcome of the proceedings conducted as a result of the violent death of two prisoners in October 2001 in the prison in Vale de Judeus and of responses to allegations of ill-treatment by prison staff in the prisons of Custóias and of Linhó (Sintra), we hereby report the following:

(a) Concerning deaths occurred in October 2001 in Vale de Judeus, disciplinary proceedings were initiated and then filed, given that one inmate was responsible for such deaths;

(b) In Linhó (Sintra), two situations of ill treatment were recently reported and investigated. These cases were filed by S.A.I. due to lack of evidence;

(c) In Custóias, the reported case led to the initiation of both disciplinary and criminal proceedings. The prison official was dismissed and condemned to two years of imprisonment (suspended penalty), as well as to the payment of €15,000 compensation to the inmate.

## **I. Detention of illegal migrants**

165. Housing units have been created to accommodate foreigners illegally staying in Portugal to whom a measure of removal from national territory has been applied. In O'Porto, for example, a model temporary housing unit (UHSA) was created for this purpose, in accordance with international guidelines for the detention of persons in a dignified and humane manner, based on transparent criteria. All persons lodged at UHSA are submitted to an initial evaluation to gauge all available elements on one's personal situation so that each person's needs can be met in a humane manner and that possible vulnerable situations can be detected. In accordance with DL 44/2006, of 24-2, UHSA is considered a centre for the temporary settlement of foreigners and stateless persons, and the legal framework provided for under DL 85/2000, of 12-5, and articles 5 to 8 of DL 141/2004, of 11-6, apply (a similar centre is due to be established in Sintra).

166. UHSA is run in partnership with three entities, which also evaluate and monitor its functioning, in accordance with a protocol signed on 13 February 2006: SEF (that ensures the daily management) the International Organisation for Migration – OIM (responsible for the training of all personnel in contact with detainees, and for the translation of leaflets to be distributed with information on the rights of detainees and legal avenues for migration and their benefits as an alternative to illegal migration); and the Jesuit Refugee Service (responsible for providing social support to detainees and for the distribution of information leaflets).

167. The daily operation of UHSA is ensured by a multidisciplinary staff, including: a coordinator (with the rank of main associate inspector of SEF), assisted by a team of

associate inspectors; a social worker to follow-up on the situations of greater vulnerability, in particular of children, by helping to ensure the necessary psychological, social and educational support during the stay of parents at UHSA; a chaplain; a team of cultural mediators who provide support to detainees and ensure the organisation of a variety of social and cultural activities; a group of volunteers in the areas of health, psychology, sports and social and cultural animation; and security staff.

168. The NGO *Médicos do Mundo* (“World Doctors”) provides primary healthcare to detainees, who also benefit from free medical, legal, psychological and social support. Upon admission, detainees receive information on the operation of the Centre and its regulations, in their mother tongue, as well as information concerning regular migration channels and risks associated with irregular migration. Information leaflets are available in Portuguese, English, Spanish, French, Romanian, Russian, Arabic and Chinese. Whenever the detainees cannot read or write, all information is provided orally.

169. Detainees also receive disposable basic hygiene supplies upon arrival. Accommodation is provided in individual rooms and detainees can choose their daily meals from a list of three main courses. The Centre provides clothing and washing facilities for those detainees who do not have enough clothes. Families are not separated and due privacy is guaranteed to them in an adequate space created for that purpose. Families with children are considered to be in a priority situation, and stay at UHSA for the shortest time possible.

## Article 11

170. Information contained in the third periodic report of Portugal (CCPR/C/PRT/2002/3) is still valid.

## Article 12

171. The legal framework on the entry, stay, exiting and removal of foreigners from national territory has been amended pursuant to Act 23/2007, of 4-7, regulated by Regulatory Decree 84/2007, of 5-11. The personal scope of application has been clarified: the new regime excludes Portuguese and EU citizens and their relatives, as well as Swiss citizens, whose circulation is ruled by European Community Law (and by Act 37/2006, of 9-8). New provisions include the reinforcement of rights of non-admitted foreign citizens, namely children. Unaccompanied children awaiting a decision on their entry into national territory must be given all material support and assistance as may be necessary to meet their basic needs concerning food, hygiene, accommodation and medical assistance. They can be repatriated to their country of origin or to a third country willing to receive them only if there are guarantees that they will be received and taken care of in an appropriate manner.

172. Applicable procedures have been simplified and some can be performed on-line. Autonomous Regions were given powers to define employment opportunities in their Regions in order to enhance job opportunities for migrants. The automatic refusal of entry to all those condemned to deprivation of liberty for more than one year has been eliminated, and it is now not possible to refuse entry to those foreigners who have been born in Portugal or have habitual residence therein, as well as to those effectively in charge of children of Portuguese nationality or legally resident in Portugal. The possibility of refusing entry due to reasons of public health has been introduced, but there is now legal basis for non admitted persons to request legal aid.

173. Previous six types of permanent visa were replaced by a single visa, which allows entry into national territory for residence purposes with a specific objective (either exercise of professional activity, family reunification or studies). Visas granted for the admission of

migrant workers allow the entry, not only of those with a work contract, but also of candidates qualified to fulfil existing job opportunities, provided that the prospective employer has shown an interest.

174. A new legal framework for temporary migration was introduced, with a visa for temporary stay with the view to exercise a seasonal activity, and a simplified procedure for the temporary stay of workers temporarily assigned to companies of WTO member countries operating in Portugal. Similarly, new regimes were introduced to promote the admission of scientists, professors and highly qualified foreigners wishing to work in Portugal, as well as of entrepreneur migrants willing to invest in Portugal.

175. The granting of residence permits is now subordinate to general requirements (such as the fact that the person has not been the object of relevant criminal sentences, possesses a residence visa, subsistence means — as determined by governmental order 1563/2007, of 11-12 — and accommodation, and is enrolled in social security, if applicable) and to specific requirements, according to the category in question (worker, student or family member). Residence permits can be refused due to reasons of public order, security and health. The validity of the first residence permit was reduced to one year, renewable for two years, but the time of residence necessary to obtain a permanent residence permit or acquire the status of long-term resident is now of five years, for all legal residents. See article 23 for information regarding residence permits for purposes of family reunification. The legal status of holders of residence permits has been clarified, with the formal recognition of such rights as the rights to education, exercise of subordinate and independent professional activity, professional guidance and training, health care, and access to law and courts.

176. Persons legally residing in Portugal for five years or more can be granted the status of long-term residents, which gives them freedom to circulate in the European space and to choose residence therein. Furthermore, they shall enjoy equality of treatment with nationals in an important number of areas, inter alia work and employment, education and professional training (including the award of grants), recognition of professional qualifications, social security, assistance and protection, tax benefits, health care, access to publicly available goods and services, including procedures for obtaining accommodation, trade union rights and free access to the entire national territory.

177. Furthermore, the possibility of obtaining a residence permit in the absence of a visa has been extended to: children born in Portugal, even if they stayed illegally, and who are enrolled in pre-school, basic, secondary or professional education, as well as to the parents with effective custody over them; foreign children of legal migrants who reached majority and stayed in Portugal as from 10 years of age; foreigners who lost Portuguese nationality and illegally stayed in the country for the past 15 years; victims of trafficking in persons who lived in Portugal as such; migrant workers in irregular situation who are victims of serious labour exploitation and cooperate with authorities; scientists and highly qualified professionals admitted with short-stay visas wishing to continue their activities in Portugal. Also, motives for the exceptional granting of residence permits have been extended to include humanitarian reasons and reasons of public interest related to the exercise of a relevant scientific, cultural, sports, economic or social activity.

178. The fight against illegal migration was enhanced with the following measures:

(a) Penalties for the smuggling of migrants with the intent of profit were increased: a penalty of one to four years of imprisonment is now applicable, as well as accessory penalties of prohibition or suspension of the exercise of public functions. Coercive measures provided for under the CPP are also applicable. The new law also clarified the concept of ill-treatment of migrants: if migrants are transported or kept in inhuman or degrading conditions or in a manner that may put their life at danger or cause serious injury or death, agents are punished with 2 to 8 years of imprisonment;

(b) Criminalisation of convenience marriages and procurement thereof (with imprisonment of 2 to 5 years), as a means to dissuade this method of evading immigration laws;

(c) Increase in the amount of fines applicable to employers of illegal migrants and their calculation on the basis of the number of employed workers, rather than the company's dimension;

(d) Granting of residence permits to victims of trafficking in persons and smuggling of migrants who cooperate with justice (in accordance with DL 368/2007, of 5-11);

(e) Measures to increase the efficiency in the execution of expulsion orders: migrants in such a situation are put under the custody of SEF, without prejudice of the possibility of being granted a deadline to abandon national territory or of being placed in a temporary settlement centre or under electronic surveillance in case immediate execution is not feasible.

179. For statistical information on foreign citizens who requested the status of residents in Portugal from 2002 to 2007, see annexes 3 to 10.

## **Article 13**

180. In accordance with the CRP (art. 33) and with Act 23/2007, of 4-7, expulsion from national territory can only be ordered by an authority legally empowered to do so. This applies to foreigners only, as national citizens cannot be expelled from Portugal. Administrative expulsion can only be based on the illegal entry or stay in national territory. Expulsion of foreign citizens who legally entered or are legally staying in Portugal must be ordered by a judicial authority. A number of procedural safeguards are guaranteed to persons facing expulsion proceedings, namely the right to be heard.

181. The following foreign citizens cannot be expelled from national territory: those born in Portugal and resident therein; those effectively in charge of minor children of Portuguese nationality residing in Portugal; those with effective custody over minor children, nationals of another State, whose maintenance and education they ensure; those staying in Portugal since before ten years of age and resident therein. Long-term residents enjoy increased protection against expulsion: they can only be expelled if they pose a real and sufficiently serious threat to public order or security, and their expulsion cannot be based on economic reasons. Before a decision is taken on their case, such elements as the length of their stay in the country, age, consequences for one's self and family, and ties with the country of residence — or absence of ties with the country of origin — shall be taken into account. Legal appeal suspends the execution of an expulsion order.

182. Pre-trial detention can no longer be imposed within expulsion proceedings to persons who have committed no crime. They can, however, be detained in temporary settlement centres or subjected to electronic surveillance. The penalty of prohibition of entry is now applied only to persons forcibly removed from Portugal, which encourages voluntary return of those in an irregular situation, who can later migrate legally. Those who choose to do so within three years must however reimburse the State of the amounts spent with their return. Persons to be expelled are taken to a frontier post under the custody of SEF, without prejudice to the establishment of a deadline for leaving national territory.

183. Asylum-seekers enjoy a number of procedural guarantees, namely the rights to information, access to an interpreter and legal aid, and their protection has been enhanced with Act 27/2008, of 30-7. See article 7 for further details.

## Article 14

184. See Part I of the ECCD of Portugal for an updated and complete description of the Portuguese justice system.

### A. Legal assistance

185. Concerning the right to legal assistance, it should be mentioned that the 2008 revision of the CCP has extended this right (previously recognized only as from the “first judicial examination of detainee”) to include all the defendant’s examinations carried out at the inquest phase, by the Public Prosecution, and in all the remaining phases of the procedure, by the judge (CPP articles 64 (1) (a) and 144 (3) and (4)).

### B. Reduction of judicial backlogs

186. Council of Ministers resolution 100/2005, of 30-5, has approved a Plan to Reduce Pending Court Cases, comprising, inter alia, a reduction of magistrates’ holidays, the creation of judges of peace and amendments of the legal frameworks on checks on unprovisioned banks and the payment of insurance prizes. This has led to an effective increase in judicial efficiency: the rate of resolution of judicial cases increased from 84.9% in 2004 to 105.6% in 2008; judicial backlogs increased an average 9.9% from 1995 to 2005 (more 100,000 files each year), and decreased 1.7% in 2006/2008 (best result — 2.7% — was achieved in 2008), with an average reduction of 26,700 cases per year.

### C. Military tribunals

187. The Code of Military Justice (approved by Act 100/2003, and entered into force on 14 September 2004), abolished military tribunals in times of peace and transferred their competences to ordinary criminal courts. In times of war, ordinary military tribunals can be established, as well as, in exceptional circumstances, extraordinary military tribunals (conveyed by the Commander-in-Chief of the Portuguese Armed Forces).

188. Mixed courts of law (whose composition includes military judges) and military tribunals can try strictly military crimes only (defined, illicit and felony act which compromises military interests of national defence and other interests pursued by the armed forces in accordance with the CRP and the law – therefore protecting exclusively military interests and assets). “Essentially military and equivalent crimes” (protecting interests not entirely military) are no longer tried by such courts or tribunals.

189. Both in times of peace and in times of war, the main principles of criminal military law and ordinary criminal law are the same and the CC is now the main instrument regulating military justice. The assistance of a lawyer is mandatory, both in times of peace and in times of war.

190. Disciplinary penalties are still immediately applicable and Act 34/2007, of 13-8, established criteria for precautionary measures filed against disciplinary decisions. See article 9 for further details.

## Article 15

191. Concerning the observation made by the Committee upon examination of the third periodic report of Portugal, we emphasise that the special norms regarding terrorism do not

infringe the prohibition of retroactivity of criminal law, guaranteed inter alia by article 29 (1) of the CRP and by articles 1 and 2 of the CC. See article 9 for further information.

## Article 16

192. Portuguese constitutional and legislative framework concerning the recognition as a person before the law, as indicated in our third periodic report (CCPR/C/PRT/2002/3), continues to be valid. Every birth occurring in Portuguese territory must be declared with the view to registration (articles 96ss of the Portuguese Civil Registry Code – CRC).

193. Under the National Program “To be born a Citizen” (*Nascer Cidadão*) — in operation since March 2008 and currently operational in 46 health units in Portugal — the abovementioned declaration is mandatory, not only for parents and relatives, but also for people working in the health unit where the child is born (where such declaration can be made). Birth registration is drawn up immediately after the declaration (art. 102 CRC). If, within 20 days after birth, or until the mother is released from the health unit, the birth is not declared, the administrative and police authorities, as well as any other person, even if deprived of any particular interest, will report the fact to Public Prosecution, who must act to overcome such failure (*ex officio* birth registration).

194. Failure to declare the birth of a child is punishable with fine (50€ to 400€, in accordance with art. 295 CRC), and any registry worker who fails to comply with the CRC, including by registering any false facts, is liable for the damages caused, under the civil liability clause (art. 194). In the first 7 months of operation of this programme, more than 73.000 children were registered through this mechanism, representing already 45% of the total number of births usually declared in the Civil Registry.

195. Also of relevance in this regard is the decision taken by the Lisbon Court of Appeal on 22 June 2004, considering that Civil Registry should state the real situation of the person, and that therefore there would be no reason to deny someone who had altered his or her sex the possibility of altering the corresponding fact in his or her birth certificate.

## Article 17

196. For information concerning measures applicable to terrorism, see reply to article 9. For information on measures taken to ensure the protection of the family life of aliens who may be subject to expulsion, see reply to article 13.

197. Rules on professional secrecy have been amended and clarified by Act 48/2007, which entered into force on 15 September 2007. Under the CCP (art. 135), lawyers and medical doctors (among others), when becoming aware of facts covered by professional secrecy or in the course of their duties, may request exemption from the duty to bear witness on the facts related to such secret. Should doubts arise as to the legitimacy of such a request for exemption, the judicial authority may proceed with inquiries and, if the request is found to be illegitimate, shall inform the court, which may then order the statement to be made.

198. The decision to order testimony in such circumstances must be taken by a court higher than the court examining the case. The higher court takes its decision in light of the principle of the prevailing interest and taking into account the absolute necessity of such testimony to finding the truth, the seriousness of the crime and the need to protect legal goods, after hearing the body representative of the profession at stake. According to the prior wording of this paragraph, the higher court could order a person to testify in breach of

professional secrecy whenever this was deemed justified under the applicable rules and principles of criminal law, namely the principle of prevailing interest.

## Article 18

199. The information concerning the Portuguese constitutional rules on this matter is still valid. Concerning the religious communities present in Portugal, the Minister of Justice has recently considered, by Decree of 14 September 2006, both the Israeli and the Islamic Communities in Lisbon as “established” in Portugal. There are five types of religious communities.

200. The Roman Catholic Church exists as an international institution. On 18.05.2004, Portugal and the Holy See celebrated a Concordat replacing the previous one, from 1940. Approved for ratification by Resolution 74/2004 and ratified by Decree 80/2004, the new Concordat entered into force on 18 December 2004, establishing innovations such as:

(a) Equality of treatment in tax matters for both the Catholic Church and other religious communities (as opposed to total exemption from taxation of all ecclesiastic members and Catholic temples);

(b) Religious and moral education in public schools is now subordinated to the Portuguese education system, as a choice necessarily made by the child and/or the parents;

(c) Religious assistance in the armed forces, integrated in the respective career systems, is now optional;

(d) The nomination of a bishop no longer has to be communicated to Government: ecclesiastic secrecy is thus respected;

(e) Recognition of the Portuguese Episcopal Conference as a person before the law;

(f) Creation of two joint committees to ensure the correct implementation of the 2004 Concordat;

(g) Need for canonical persons to register with the State in order to be able to engage in legal commercial and civil transactions;

(h) The need for ecclesiastical court decisions for marriage annulment to go through the Portuguese process of confirmation and revision of foreign decisions in order to be effective under the terms of civil law.

201. The 2004 Concordat, however, has not been fully regulated yet, as required by some of its rules, namely article 18, concerning religious assistance in hospitals and jails. Work is now underway to legislate on these affairs.

202. Established religious communities (*radicadas*) — recognized as such by the MJ, upon advice from Commission on Religious Freedom (CRF) — are given a statute very similar to that recognized to the Catholic Church under the Concordat, so that they can negotiate internal agreements with Government. These communities are considered to fulfil an important role, even if only at a regional or strictly local level, and must have settled in national territory for at least 30 years. They benefit from rights related to tax issues, marriage and representation in the CRF. This is already the case of Islamic and Israeli communities, as well as of many Protestant churches.

203. There are also registered churches, which benefit from all the general rights on religious freedom; foreign churches and their Portuguese communities on national territory, that choose to keep their foreign nature (e.g. Church of England), instead of constituting a

Portuguese corporation; and simple religious societies, much more related to freedom of association than religious rights.

204. The Act on Religious Freedom (Act 16/2001, of 22-6, already mentioned in the previous report) was further regulated, inter alia by the following legislation:

(a) DL 308/2003, of 28-7, as amended by DL 204/2007, of 28-5, which regulates the CRF, including rules on its powers and responsibilities, legal status of its members and operation conditions. The CRF was created by Decree of the Minister of Justice of 12 February 2004;

(b) DL 134/2003, of 28-7, which regulates the registry of religious legal persons;

(c) DL 324/2007, of 28-9, which amends such civil legislation as the Civil, Civil Registry and Notary Codes in order to grant civil effects to all marriages celebrated religiously before the minister of a church or religious community, under the terms set forth by the Civil Registry Code;

(d) DL 100/2009, of 11-5, which amends the Civil and Civil Registry Codes, in accordance with the 2004 Concordat.

205. Information provided in the previous reports, relating to the right to religious assistance for prisoners as provided for under Act on Religious Freedom (CCPR/C/PRT/2002/3, paragraph 10.3) is still valid. This issue is also dealt with under the 2004 Concordat (see above). Furthermore, the new Code on the Execution of Sentences and Security Measures (soon to enter into force) guarantees to all prisoners the right to religious assistance. Decree Law 252/2009, of 23 September, approved the regulation of religious assistance in prisons and guarantees this right.

206. Concerning religious education in the school system, the three-cycle basic education curricular reorganization and the curricular revision of general and technologic secondary education approved include in the official curriculum a course on Moral and Religious Education, which schools must offer. However, attendance to this course is optional, at all levels. Parents or students above 16 should clearly indicate, at the time of enrolment, whether or not they wish to attend such classes. If they do, they should also indicate their religious affiliation.

207. Also of relevance to this subject-matter is the judgement passed by the O'Porto Court of Appeal on 19 February 2008 which decided on the limits, for the purposes of administration of justice, of the right to privacy in relation to one's religious beliefs.

208. The right to objection of conscience still applies to military obligations imposed upon Portuguese citizens (see art. 8).

## Article 19

209. In relation to the information supplied in the third periodic report (CCPR/C/PRT/2002/3), we wish to indicate that the High Authority for the Media has been replaced by ERC – Regulating Entity for the Media (Act 53/2005, of 8-11). Supervision powers previously exercised by the High Authority in relation to the Media have now been transferred to ERC. See the ECCD for a description of its purposes and membership.

210. There is a new Act on Television (Act 27/2007, of 30-7), establishing inter alia that TV operation is subject to licensing following public *concour* (if using hertz frequencies) or to authorisation (other). Freedom of programming and information is expressly guaranteed and no administrative or sovereign body, except a court, can prevent, condition or impose any broadcasting. Article 27 of this Act establishes that TV programming should respect

the dignity of the human being and fundamental rights, freedoms and guarantees. Broadcasting of programmes likely to seriously and manifestly undermine the forming of child personality, such as pornography, is prohibited in free access television. Other potentially damaging programmes for children can only be transmitted from 22:30 to 6:00, except in the case of pieces of news with journalistic interest, provided they are presented in conformity with the professional norms of ethics and preceded by a clear warning about their nature. The elaboration of codes of conduct by TV operators is encouraged.

## Article 20

211. The information contained in the previous report (CCPR/C/PRT/2002/3), concerning the prohibition of military, militarised and paramilitary associations, as well as of racist or fascist associations (art. 46 (4) of CRP and — in relation to associations advocating fascism — Act 64/78, of 6-10) is still valid.

212. The crimes of incitement to war and recruitment of mercenaries are now punished by articles 17 and 18 of Act 31/2004, of 22-7 (see reply to art. 6). The punishment of incitement to war was aggravated as a penalty of 1 to 5 years is now applicable (as opposed to 6 months to 3 years).

213. Articles 237 (Solicitation of armed forces) and 309 to 315 (military service in enemy armed forces, conspiracy with foreigner to cause war, practice of acts adequate to cause war, conspiracy with foreigner to constrain the Portuguese State, assistance to enemy armed forces, campaign against war effort and sabotage of national defence) of the CC were revoked by Act 100/2003, of 15-11, which adopted the Military Justice Code. This Code defines the penalties for those crimes, characterized as “strictly military crimes” (see also reply to art. 14).

## Article 21

214. The information provided in the previous report (CCPR/C/PRT/2002/3) is still valid.

## Article 22

215. The Constitutional framework on this issue is unchanged. Regarding immigrant associations, Act 18/2004, of 11-5, allows anti-racism associations to become assistants in criminal proceedings involving criminal liability for racist acts; such associations can now act in representation and support of the victims.

216. ACIDI plays a fundamental role in the creation and development of immigrant associations, namely through the National Immigrant Support Centres (CNAI)<sup>19</sup> – the Portuguese One-Stop-Shops,<sup>20</sup> which comprise a “Technical Support Office for Immigrant Associations” working in close cooperation with immigrant communities. Around 100 associations are officially recognised by ACIDI, IP at the local, regional or national level, receiving technical support, namely training for their leaders, as well as financial support for their activities (in 2008, around € 700,000). Immigrant associations have, since the

<sup>19</sup> Detailed information on the establishment of the CNAIs in 2004 is available in Chapter 3 of the ACIDI Activities Report (English version) – available to download at: [http://www.acidi.gov.pt/docs/Publicacoes/RelatorioActividades\\_ING/activity\\_report\\_short.pdf](http://www.acidi.gov.pt/docs/Publicacoes/RelatorioActividades_ING/activity_report_short.pdf).

<sup>20</sup> Further at the One-Stop-Shop approach in [www.oss.inti.acidi.gov.pt](http://www.oss.inti.acidi.gov.pt).

beginning, been involved in the operation of CNAI by supplying cultural mediators that provide counselling to immigrants, including in their native languages.

217. Immigrant associations have 10 representatives in the Consultative Council for Immigrations Affairs (COCAI), which advises the Government on issues of immigration, with the view to ensure consultation and dialogue with organisations that represent immigrants and ethnic minorities. COCAI also plays a central role in the recognition of and financial support to immigrant associations, and its competences include making statements regarding immigrant rights, participating in policy-making for the social integration of immigrants, improving living conditions and advocating immigrant rights.

218. The Consultative Council of CIG includes 24 representatives of Women's Rights NGO (60% of its members), which means most women's rights NGO existing in the country (except those affiliated to a political party). They also have seats in the National Education Council (an independent body whose presidency is appointed by Parliament) and in the Economic and Social Council (a constitutional body with consultative, participatory and social negotiation powers in the field of social and economic policies).

219. Women's NGOs continue to be entitled to a financial support from Government for the development of projects. The total amount currently made available is of € 45.000 and applications are submitted to CIG. Under the Employment, Training and Social Development Programme, a technical and financial support system for NGO was set up for the period 2003–2006 to “promote equal opportunities for men and women by increasing positive action and mainstreaming in all fields of activity by developing integrated strategies to promote the balanced participation of men and women in work, family life and decision-making and to create the right conditions for a change in the paradigm of social roles existing in our culture”.<sup>21</sup> Between 2003 and 2006, 13 Women's NGOs received financial and technical support under this programme.

220. Within the education system, parents associations benefit from favourable conditions for their establishment, in recognition of their special statute. They are registered at the Ministry for Education through a simple procedure and publish their statutes free of charge. Still, CONFAP (Confederation of Parents Associations) believes that the establishment of these associations could be further facilitated, namely by reinstating the exemption from or reduction in payment of registration fees (in force until 2002) and by eliminating the requirement that each school authorises the use of its name in the denomination of the corresponding parents association.

221. Military personnel has the right to establish professional associations to represent them at the institutional level, for assistance, ethical and socio-professional purposes, in accordance with Organic Act 3/2001, of 29-8. Heads of associations are entitled to leaves for participation in associative meetings and other activities, without losing remuneration or other benefits; only a maximum time per month is established, varying in accordance with the membership of each association (DL 295/2007, of 22-8).

## **Article 23**

### **A. Family reunification**

222. The new legal framework concerning the entry, stay, exiting and removal of foreigners from national territory guarantees the right to family reunification to persons

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<sup>21</sup> Joint dispatch 186/2002, of 12-3.

with a valid residence permit, as well as to persons legally entering into national territory (regardless of the legality of their permanence) who are dependent from or live with a person with a valid residence permit. Refugees are equally entitled to family reunification. As a result of the unification of status of legally resident foreigners, many of previously excluded persons can now benefit from this right (in particular holders of work visas and holders of permanence permits).

223. The following relatives can claim the right to family reunification: spouses and persons living in *de facto* union; minor dependent children (including *de facto* partner's children); single and dependent adult children studying in a Portuguese school; dependent parents; minor brothers or sisters under the guardianship of the resident. The parents, legal guardians or other relatives of unaccompanied refugee children can also claim the right to family reunification. Requests for family reunification can now be jointly examined and their granting implies the automatic granting of visas to family members staying abroad. Children of migrants holding residence permits are exempt from visa fees. See replies to articles 12 and 13.

## **B. Reconciliation of work with family life**

224. The sixth revision of the CRP (2004) expressly laid down that it is up to the State to promote a balance between work and family life through coordination of different sectoral policies. In 2006, two Programmes were launched in order to increase the availability of care infrastructures: the Expansion Programme of the Social Equipment Network (PARES), aiming at supporting the enlargement, development and consolidation of the equipments and social facilities network for children, elderly and people with disabilities; and the Support Programme to Investment in Social Equipments (PAIES) aiming at stimulating investment in social equipments by supporting private initiative.

225. Also with a view to facilitating reconciliation for parents, it determined that pre-schools and primary schools must remain open until at least 5.30 p.m. and a minimum of eight hours a day (Dispatch 12591/2006, of 16-06). Furthermore, a resolution was adopted (Council of Ministers Resolution 49/2007, of 28-3), approving the principles of good governance in State-owned enterprises and requiring them to adopt equality plans designed to achieve real equality of treatment and opportunities for men and women, eliminate gender-based discrimination and allow a balance between private, family and working life.

226. To tackle gender discrimination in the labour market and to promote gender equality, CITE is promoting since 2006 the project "Social Dialogue and Equality in Enterprises" co-financed by the EQUAL Programme and developed in partnership with social partners, public authorities, state-owned enterprises, universities, associations, research centres and nine affiliate private enterprises. It aims at supporting enterprises to implement and promote good practices in the fields of equality and non-discrimination between women and men in the labour market, the protection of maternity and paternity and the reconciliation between professional, private and family life, and enhance gender equality in the context of corporate social responsibility. Within this project, instruments were developed for the above mentioned purposes, good practices in companies encouraged, self-evaluation and monitoring instruments conceived and tested, and strategies and instruments developed to support the incorporation of gender equality in corporate social responsibility. The tools and methodologies developed intend to support action plans to promote gender equality in business. CITE also attributes prestige awards to companies that excel in the promotion of gender equality at work ("Equality is Quality" Award). Since the 2005–2006 edition, 14 entities were distinguished (six awards and eight honourable mentions).

227. Working women have the right to maternity leave paid by social security scheme (in the general scheme, this corresponds to 80% of the reference remuneration of the beneficiary). The Labour Code approved in 2003 and its implementing Regulation of 2004 stipulated that the maternity leave may last for 120 to 150 days at the choice of working mother and may be shared with the father (but the first six weeks are exclusively for the mother). Fathers are entitled to 5 days of paternity leave right after the birth and to two more weeks fully paid if they take the leave right after the end of the first 5 days (parental leave). During maternity and paternity leave, women and men are protected by law against dismissal. To reconcile work with family life, the law establishes that working mothers and fathers with small children have the right to other parental leaves and may request reduced or flexible timetables.

228. According to data from Statistics Portugal (Gender Profiles), the number of maternity leaves taken increased from 72,566 in 2002 to 76,127 in 2005, after a peak of 78,672 in 2003. There were 42,982 paternity leaves taken in 2005, compared with 40,800 in 2004. Parental leaves increased from 16,282 in 2002 to 32,945 in 2005.

229. As examples of relevant jurisprudence in the area of family protection, we shall refer: a judgement passed by the High Court of Justice on 16 April 2002, which emphasised the court's freedom to assess evidence in paternity cases; a judgement of the Court of Appeal of Évora passed on 30 January 2003 that underlined the public interest in *ex officio* paternity investigation cases. Finally, whereas cases of alimony to children fall within the competence of civil registries should the parties agree thereto (which accelerates the procedure), the Court of Appeal of Guimarães decided on 1 February 2007 that if there is no such agreement, the case can be filed directly in a court of law.

### **C. Equality in marriage and family law**

230. Ministerial Order 701/2006, of 13-7, regulated the enrolment of people who live or have lived in *de facto* union with the beneficiary, even if the latter has already deceased, in the civil servants' social protection system as family beneficiaries.

231. A Plan entitled "100 commitments to family policy (2004–2006)"<sup>22</sup> was adopted, establishing as its goals the recognition of the family as a basic social unit, an increase in the global, integrated nature of sectoral policies affecting the family, the promotion of family's presence in society, the fostering of inter-generation solidarity and shared responsibilities, the promotion of the development of the family life cycle and family stability, the encouragement of balance between family and work responsibilities and support for families with special needs.

232. DL 155/2006, of 7-8, set up the Family Policy Commission and Family Advisory Council to ensure the involvement of the different ministries and NGO representatives in the assessment, design and implementation of policy measures impacting on the family. The commission reports to the minister in charge of labour and social solidarity in strategic articulation with the minister responsible for gender equality, who it can submit recommendations to.

## **Article 24**

233. The Plan to Prevent and Eliminate the Exploitation of Child Labour (PETI) was adopted through Council of Ministers resolution 37/2004, of 20-3, in replacement of the

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<sup>22</sup> Council of Ministers Resolution 50/2004, of 13 April.

previously existing PEETI. Indicators show a decrease in the prevalence of child labour in Portugal: in 2006, inspections detected 13 cases of prohibited child labour (compared with 91 cases in 2001), representing 3.4 children per 1,000 visits (compared with 12.82 cases in 2001) – see Chart 14 in the annexes. Over the same period, the number of infringement fines related to child labour also decreased: from 157 in 2001 to 64 in 2006 (see Chart 15 in the annexes).

234. PETI includes an Integrated Programme of Education and Training (PIEF) with the following objectives: to enable children aged 15 and above exploited as cheap labour, namely under the worst forms mentioned in ILO Convention No. 182, to obtain a school leaving certificate and/or professional training; and to enable children aged 16 and above to complete compulsory education associated to professional training leading to work contracts. PIEF is implemented through the elaboration of an individualised, flexible Education and Training Plan (PEF) for each child. For more information on the measures taken, please consult the report of Portugal on the implementation of the Convention on the Rights of the Child.

235. It should also be noted that, pursuant to DL 67/2004, of 25-3, no child can be refused access to healthcare or public schooling due to the irregular situation of his or her parents. The registry of irregular minors is confidential.

236. With the view to extend and consolidate pre-school education, a survey was done of the neediest municipalities and those furthest away from the towns and cities in which 100% coverage has not yet been achieved. As a result, the *Programme for Support with Extending the Pre-School Education Network* was launched in 2008, in order to increase the number of places for children aged 3 to 5.

237. Efforts to combat school failure continued by re-launching TEIP projects — *Educational Territories for Priority Intervention* — that involve a wide range of measures in the school and in the community geared to reinserting the pupil into school. 35 programme-contracts were signed in TEIP schools, covering around 50,000 pupils. This measure has a direct impact on increasing equality of opportunity and in promoting inclusiveness at school.

238. The number of beneficiaries of *School Social Action* has almost tripled from 240,000 to more than 700,000, and more funds were made available for books, school material, accommodation for pupils in the second and third cycle of basic and secondary education, as well as for financial help for pupils most in need. Measures to prevent early school drop-out and reduce school failure also include the *Programme for the General Provision of School Meals* in the first cycle (developed with the collaboration of the municipalities) and the introduction of the school social pass.

239. With the aim of improving equality of opportunity in the education system, guidelines were developed for *Portuguese as a Non-Mother Tongue in the third cycle of basic education and for Portuguese as a Foreign Language* in secondary education, both aiming at the new pupils from migratory flows and other specific public schools. Along the same policy lines, a new legal framework for providing special care for children and young people with special educational needs was adopted, as well as measures aimed at pupils who are blind, partially sighted, deaf or suffering from multiple handicaps.

## Article 25

### A. Elections

240. For comprehensive information and data on the Portuguese electoral system, see the ECCD of Portugal. As important developments introduced since 2002, we shall highlight the Act on Sex Parity (Organic Act 3/2006, of 21-8, as corrected by Corrective Declaration 71/2006, of 4-10), which establishes that any list of three or more candidates (for Parliament, the European Parliament and Local Authorities) must ensure a minimum participation of 33% of each sex and that, for the Portuguese and European Parliaments, the lists should not include more than two persons of the same sex successively. If candidates lists not complying with these norms are not reviewed and corrected, public financing of electoral campaigns will be compulsorily reduced. In 2011, Parliament will evaluate the impact of this Act in the promotion of equal participation of women and men, and revise it as necessary.

241. Act 46/2005, of 29-8, established a limit of three terms for the successive election of mayors and heads of parish cabinets. In accordance with Declaration 9/2005, of 29-8, nationals of EU member States, Brazil and Cape Verde may vote and be elected in local elections, while nationals of Norway, Iceland, Uruguay, the Bolivarian Republic of Venezuela, Chile and Argentina may vote in the same elections (the concession of this right to foreign nationals is subordinate to reciprocity).

242. Electoral registration is now governed by Act 13/99, of 22-3, as amended by Act 3/2002, of 8-1, Organic Acts 4/2005 and 5/2005, of 8-9, and Act 47/2008, of 27-8. The latter simplifies and updates registration procedures, and ensures permanent updating of electoral registration: voters are automatically included in the registration lists, including 17-year-old persons who may vote if, at the moment elections take place, they have already completed 18 years of age.

243. MAI launched a campaign entitled “Know where to vote. Consult”, with the view to inform citizens on the amendments introduced by automatic registration and to help informing them on the correct polling site. Posters were exhibited in buses, subway and train stations and carriages. Two TV spots were produced, one aimed at holders of the new “Citizen Card” and the other at young voters, who are now automatically registered. Citizens may learn where to vote in the Internet, via SMS, via a telephone hotline and in parish cabinets. Another campaign (“Voting is Easy”) was launched in partnership with the Portuguese Youth Institute to appeal to young voting, comprising the creation of a website and of a telephone hotline to provide information to young voters about the new electoral registration system.

### B. Participation in other sectors of political and public life

244. Acknowledging the persistence of a low representation of women in decision making, the III National Plan for Citizenship and Gender Equality set as one of its goals the promotion of an equal representation of women and men in decision making. To achieve it, the Plan foresees: (i) awareness raising actions on the advantages of broadening the principles of the Parity Law and of adopting positive and temporary special actions in other public and private sectors and (ii) training actions for women, aimed at developing skills for the participation in public and political life.

245. A research project on gender equality in Central Public Administration was carried out in 2004/2005,<sup>23</sup> with the view to, inter alia, increasing knowledge about interactions between gender issues, the dominant organisational culture patterns and governance. Portuguese Central Public Administration is highly feminised. In 2004, in all Ministries (excluding the Armed and Security Forces), the feminisation rate was 70.8%. Only in the armed and security forces was the presence of women very low (11.7%). Only in the Ministries of Education and Culture, where the participation of women is high, is the feminisation rate in the higher wage levels equivalent to the overall feminisation rate (80% and 50%, respectively, for the >€5200.00 level). In some ministries there are no women at all in the >€5200.00 level: National Defence, Tourism, Environment and Territory Management, and Social Security, Family and Child Affairs (the latter having the highest feminisation rate: 80%) – see Chart 16 in the annexes.

246. DL 426/88, of 18-11, mentioned in the previous report (CCPR/C/PRT/2002/3, aras. 25.64 ff) remains in force. However, Act 59/2008, of 11-9, which approved the Legal Framework of Public Employment Labour Contract,<sup>24</sup> establishes a set of rules on equality and non discrimination which, despite not being innovative within public administration, put on an equal footing the treatment of such matters in the public and private sectors. This Act provides for the principle of equality in access to employment, training, career advancement and labour condition, and prohibits direct and indirect discrimination on such grounds as descent, age, sex, sexual orientation, marital status, family situation and genetic heritage (arts. 13 and 14). Harassment — unwanted behaviour related to any of the factors of non discrimination affecting the dignity of the person or creating an intimidation, hostile, degrading or humiliating environment — is considered a form of discrimination and entitles the injured party to compensation for patrimonial and non patrimonial damage (arts. 15 and 17).

247. There are special rules concerning gender discrimination, which is prohibited both in access to public employment and in access to the necessary training thereto. Equality of labour conditions is ensured, in particular as it concerns remuneration (art. 19). Workers of both sexes enjoy the same right to the full development of professional careers (art. 20). Furthermore, in order to ensure women's participation in public administration, a Council of Ministers Resolution has enshrined the active promotion by the public sector, as employer, of a policy of equal opportunities between men and women, when it comes to the direct or indirect replacement of employees leaving the administration.<sup>25</sup>

248. There has been a significant increase in the representation of women in all legal professions, with women outnumbering men as public prosecutors, lawyers, solicitors and justice officials (see Chart 17 in the annexes). Concerning the participation of women in the military and police forces, the situation is as follows:

(a) In 2005 women entered for the first time to the Operational Battalion (specialised in public order) of GNR and at present four women have such functions. Since 2005 women can be integrated in GNR's Special Operations Company, although none have yet done so;

(b) The number of women who apply to join GNR has been increasing: 3,027 in 2004, and 3,461 in 2006. In 2005, only 299 women applied. This resulted from the requirement, in that year, of having compulsory military service before entering the service. Admissions of women to GNR are also increasing: from 94 in 2004 to 144 in 2006.

<sup>23</sup> Rato, H. (coord.) et al (2007) *Gender Equality in Portuguese Central Public Administration*. Oeiras: INA.

<sup>24</sup> Entered into force on 01.01.2009.

<sup>25</sup> Council of Ministers Resolution 38/2006, of 18 April.

Consequently, the female rate in GNR is rising: from 1.51% in 2003 to 3.14% in 2006. Among officers the rate is 1.87% (2006). Since the incorporation of the first women in 1993, GNR has undertaken efforts to build or physically adapt its structures, to meet the requirements of the professional performance of both sexes;

(c) Between 2004 and 2007 the percentage of women in PSP was around 10% (9.34% in 2007). In 2006, the percentage of women in policing functions in PSP was 6.8%;

(d) In SEF, the percentage of women is currently around 45%. In management ranks, there was 47% of women in 2004, but this rate fell in the following years: in June 2007 there was only 41%. In the investigation career, there was 19% of women in 2004 and 20% in 2007).

249. In 2006, the advertising for admission to GNR ranks began to include pictures of women. In the advertising materials for the recruitment of new officers, such measure had already been undertaken. GNR, PSP and SEF all depict women officials in their websites.

250. As regards the participation of women in trade unions, in 2006 the percentage of women who were effective members of the board of the two union federations in Portugal was as follows: UGT — 24.3% and CGTP-IN — 24.2%. Data for 2006 indicates that the representation of women was of 30.8% in the Constitutional Court, 26.9% in the National Board of Education, 23.8% in the National Council of Ethics for the Sciences of Life, 11.1% in the Magistrates High Council and 5% in the Council of State (see Chart 18 in the annexes).

251. During the period under consideration, no active measures were taken to promote the participation of women in the international representation of the State. Nevertheless, the Ministry for Foreign Affairs (MFA) implements the principle of non discrimination on the grounds of sex, both in applications to enter the diplomatic service and during the career. Over this period, two diplomatic service entry competitions were held. In 2005, 18 women were successful among 30 applicants. In 2007, 9 women were successful among 20 applicants. According to data for 2007, in the MFA women outnumbered men as technical senior officials (70.6%) and heads of department (56.7%), but accounted for only 29.4% of diplomatic personnel and 14% of heads of mission (see Chart 19 in the annexes).

252. From 2004 to June 2007, 1,409 members of PSP, GNR and SEF participated in international missions, including 37 women. PSP and GNR have no women leading international missions. Female officers in the national police forces have not yet reached ranks for such leading positions. In SEF, 3 of the 5 officers in leading positions currently on service abroad are women. GNR is the only Portuguese organisation represented in the European Network of Policewomen. In 2005 and 2006, women represented 44 and 40%, respectively, of all nominations made by Portugal for seconded posts in OSCE field operations, secretariat and institutions (see Chart 20 in the annexes). As seconded staff in OSCE missions, the percentage of women increased from 17% in 2005 to 33% in 2007 (see Chart 21 in the annexes).

### **C. Exercise of political office**

253. A set of measures has been adopted with the view to achieve transparency in the exercise of political and public office, inter alia by regulating such issues as membership of Parliament, public examination of the assets of holders of public office, remuneration of holders of public office, financing of political parties and electoral campaigns, and the legal framework concerning incompatibilities and impediments for holders of political office or other important public office.

254. The Statutes of Members of Parliament (MPs) (Act 7/93, of 1-3, last amended by Act 43/2007, of 24-8) establishes several incompatibilities with the exercise of this office, namely the prohibition of celebrating contracts with the State or public legal entities and of participating in any way in acts of commercial publicity, as well as the obligation to make a prior declaration of any personal interest when introducing draft legislation or participating in any parliamentary work. A register of interests — public and accessible to all — has been set up in Parliament, and any activities or acts liable to give rise to incompatibilities, impediments, financial benefits or conflicts of interest must be registered. The Parliamentary Ethics Commission examines cases of incompatibility, incapacity, impediments and conflicts of interest involving MPs.

255. Act 64/93, of 26-8 (last amended by Act 71/2007, of 27-3) establishes the legal framework on incompatibilities and impediments of holders of political office or senior public office and establishes a register of interests in Parliament. The incompatibilities and impediments of office-holders in local authorities are governed by Act 12/98, of 24-2. Act 4/83, of 2-4 (last amended by Act 25/95) provides for the public examination of the assets of holders of political office. These are required to declare their earnings and assets, as well as social security contributions, to the Constitutional Court within 60 days after they take office. This declaration must be renewed upon termination of office or re-election.

256. Concerning the financing of political parties, Act 19/2003, of 20-6 (as amended by Act 287/2003, of 12-11) establishes that they can be funded by their own revenue (including public subsidies) and by private sources, by only private individuals (and not legal entities) may make contributions.

## Article 26

### A. High Commission for Immigration and Intercultural Dialogue

257. As stated before, the creation of ACIDI to replace the former High Commission for Immigration and Ethnic Minorities (ACIME) represented a reinforcement of the powers of the public body working in the area of combating discrimination against and promoting the inclusion of immigrants and members of disadvantaged communities. ACIDI (established by DL 167/2007, of 3-5) reports to the Prime Minister — therefore seeing the rights of immigrants in a holistic perspective, interlinking the different ministries — and its mission is to cooperate in the design, implementation and evaluation of transversal and sectoral public policies relevant to integrate immigrants and ethnic minorities, as well as to promote dialogue among different cultures, ethnicities and religions (in this connection, it was appointed as national coordinator of the European Year of Intercultural Dialogue).

258. ACIDI put in place a range of measures to welcome migrants and facilitate their integration, such as National Immigrant Support Centres (CNAI) — see reply to article 22 — and Local Immigrant Support Centres, as well as the National Network of Information to the Immigrant. It also develops extensive work to provide information to immigrants through written means (brochures), the telephone (SOS phone line to immigrants and telephone translation service), electronic means ([www.acidi.gov.pt](http://www.acidi.gov.pt)) or by personal reception (with socio-cultural mediators). Activities are undertaken to promote the teaching of Portuguese language and culture among immigrants.

259. Policy measures were also taken in the fields of labour, housing, health, education, social security and solidarity, culture and language (as an example of the last, program “Portugal Welcomes” – *Portugal Acolhe*), justice, information society, sport, insertion of immigrant descendants and family reunion. Furthermore, there are measures concerning racism and discrimination, religious freedom, immigrant associativism, media, citizenship

and politic rights, as well as measures to promote gender equality and the fight against human trafficking. Program Choices (see reply to art. 27) seeks to promote the social inclusion of children and youngsters from more vulnerable socio-economic contexts.

260. An Immigration Observatory ([www.oi.acidi.gov.pt](http://www.oi.acidi.gov.pt)) was created to increase knowledge of the realities of immigration, and efforts are also undertaken to raise awareness to tolerance and diversity and to galvanise the mass media into making a contribution towards the integration of and fight against the stigmatisation of immigrants and members of ethnic minorities (namely through the Journalism for Tolerance Prize).

261. As a result of this investment in integration policies Portugal has achieved the second place out of a ranking of 28 countries made by the British Council and the EU Migration Policy Group, the “Migration Policy Index” for 2007.

## **B. Commission for Equality and Against Racial Discrimination (CICDR)**

262. CICDR is an independent commission which examines complaints of administrative infractions in the framework of Acts 134/99 and 18/2004 (see reply to art. 2). It is namely incumbent on this Commission to gather all information relating to the perpetration of discriminatory acts and to enforce the application of the corresponding sanctions, to recommend the adoption of legislative, regulatory and administrative measures deemed necessary to prevent discrimination based on race, colour, nationality or ethnic origin, to promote the realisation of studies and research works related to the problem of racial discrimination, to make public by all means at its disposal the cases of effective violation of the law, to elaborate and make public a report on the situation of equality and racial discrimination in Portugal.

263. CICDR is chaired by the High Commissioner for Immigration and Intercultural Dialogue and composed also by two representatives of each of the following entities: Parliament; Government (chosen by the departments responsible for employment, solidarity and social security, and education); immigrants associations; anti-racist associations; trade unions; employers associations; and human rights organizations. These members designate three further Commission members.

## **C. Other measures to combat discrimination**

264. In addition to the information provided under articles 2 and 3, we would like to draw attention to the following measures:

(a) The reform of the Act on Portuguese Nationality through Organic Act 2/2006, of 17-04 ensures, inter alia, a more favourable legal framework as it concerns second or third generation migrants, by allowing these citizens to acquire Portuguese nationality, under certain conditions, and contributing to bring Portugal closer to a regime of *jus soli* nationality;

(b) The General Direction for Health of the Health Ministry issued Circular 12/DQS/DMD, of 7 May 2009, which clarifies an orientation followed since 2001, according to which irregular immigrants staying in Portugal for over 90 days cannot be discriminated in access to public healthcare, although, in general terms, they might have to bear its real costs. Exceptions are, however, provided for, such as cases where urgent and vital care is needed, or in case of transmissible diseases that endanger or threaten public health: in these cases, all immigrants, even in an irregular situation, shall have access to health care. Regular immigrants have the same rights as national citizens on this matter.

## Article 27

265. Roma Communities are an integral part of Portuguese society, and their participation is promoted and supported through politics of inclusion that aim at empowering and integrating these citizens, by valuing their cultural heritage.

266. Acknowledging the need to give a more systematic and effective support to the Roma communities in Portugal and having made an objective diagnostic of their situation in the most needed areas — education, housing, work and health — ACIDI created in January 2007 the Roma communities support office (GACI). This Office structures its mission around three major lines of action: reinforcement of intercultural dialogue; promotion of education for citizenship; and promotion of the Roma culture and identity. Some members of the Roma community with associative and mediation experience were invited to integrate GACI as consultants.

267. In the framework of its activities, ACIDI launched, in June 2007, the website “Ciganos!”, accessible at [www.ciga-nos.pt](http://www.ciga-nos.pt). This is aimed at promoting the dissemination and sharing of information (inter alia on ongoing field projects), notably through the creation of working networks, and at promoting a positive image of the Roma community and a better knowledge of their history and culture.

268. Other measures taken concerning the promotion of the human rights of Roma people include a pilot program to stop the absenteeism of Roma children from school; the preparation of a teacher’s guide for the first cycle and secondary education, containing useful suggestions on teaching approaches for children from Roma communities; the mandatory enrolment of children in school for families that benefit from the Social Reinsertion Income; and the creation of special school classes for Roma children, in order to provide a specialized education, according to one’s cultural and educational characteristics.

269. Furthermore, special and practical measures adopted in the social, economic and cultural fields must be mentioned. *Programa Escolhas* (Program Choices) is a mainstream governmental programme, created in 2001 and managed and coordinated by ACIDI, with the aim to promote the social integration of children and youngsters from disadvantaged social backgrounds – many of which are immigrant descendants and members of Roma communities. The general objective of this programme is to promote equality of chances and the social inclusion of its beneficiaries, and it is targeted at children and youngsters aged 6 to 24 in situations of early school leaving, without completing basic education (9 years of schooling) and/or at risk. Presently, Program Choices is in its third phase (2007–2009) and supports 120 local projects with a total budget of €25 million. The principal domains of the programme are educational inclusion and non formal education, vocational training and employability, civic and community participation and digital inclusion. Choices Programme aims at the development of school success, as well as at the building of social and professional skills, reducing the competitive disadvantages and increasing self esteem. These projects are managed by local partnerships that involving 780 local partners, namely schools (145 participating in the 120 projects), local governments (158 municipalities), Non-profit Organizations (IPSS) and the Commissions for the Protection of Children and Youngsters. The program already covers 80460 persons, while the prevision for the triennium 2007–2009 was of 39,732 participants.

270. Due to the good results obtained in the third phase (2007/2009), Program Choices will enter in its fourth implementation period and receive an increased budget, with the view to support more projects implemented upon new priorities such as the promotion of entrepreneurship and capacity building.

271. Finally, we wish to highlight that, in 2008, CICDR received two important complaints regarding the refusal of a real estate company to sell a house to a Roma citizen. During the instruction of the case, the parties reached an agreement and both complaints were therefore dismissed.

### **A. First Optional Protocol to the International Covenant on Civil and Political Rights**

272. Communication No. 1123/02 (*Carlos Correia de Matos v. Portugal*) is, so far, the only case in which the Human Rights Committee has taken a decision on the merits concerning a communication presented against Portugal. The Committee recommended that Portugal amended its legislation in order to provide for the possibility of, under certain circumstances, an accused in criminal proceedings to be able to defend him or herself in person.

273. The CCP (last amended by DL 181/2008, of 28-8) establishes that the defendant can appoint a lawyer at any stage of the proceedings, and that the assistance of a lawyer is mandatory in a number of acts (such as interrogations of detained or imprisoned defendants) and in all cases after prosecution. This does not, in our view, affect the accused's freedom to appoint a lawyer of his own choosing because, only if he or she fails to do so at a stage when the assistance of a counsel is mandatory, will an *ex officio* counsel be appointed on his or her behalf. It is not permitted, however, that the accused defends him or herself in person in those cases, since it continues to be the view of Portuguese authorities that the requirement for a lawyer to act at certain stages of the proceedings is a sufficient and proportionate means for States to employ in order to provide greater guarantees and more strictly defend the accused, given the type and specific nature of the issues raised in criminal proceedings.

274. We recall that, pronouncing itself on the same question, the European Court of Human Rights (ECHR) has, on 14 September 2000, found no violation of article 6 (3) (c) of the European Convention on Human Rights, whose wording is, concerning the matter at stake, similar to article 14 (3) (d) of ICCPR. Thus, there is, on part of the Portuguese authorities, an actual concern about the differences arising between the case law of the ECHR and the decision of the Human Rights Committee in this case, which place Portugal in a very awkward position regarding the fulfilment of its international human rights obligations. This situation was the subject matter of an article by Michael O'Boyle entitled "*Ne bis in idem* for the benefit of States" and published in *Liber Amicorum Lucius Wildhaber Human Rights – Strasbourg Views* [Lucius caflish, Johan Callwaert, Roderick Liddell, Paul Mahoney, Mark Villiger (Eds.), N.P. Engel, Publisher, Germany, 2007, pp. 327–246].

275. Still, the decision of the Human Rights Committee was transmitted to the competent Portuguese authorities, namely the Attorney General and the Minister of Justice. It was also announced and published on-line in the webpage of the Office for Documentation and Comparative Law ([www.gddc.pt](http://www.gddc.pt)), together with other decisions taken by international adjudicating bodies in cases brought against Portugal, having attracted considerable attention on the part of Portuguese lawyers and magistrates, who requested copies thereof.

### **B. Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty**

276. The information previously provided to the Committee is still valid. See also chapter III.C.6 of the ECCD of Portugal.

277. Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances, was ratified by Portugal on 3 October 2003 and entered into force in Portugal on 1 February 2004.

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