



**Convention on the  
Rights of the Child**

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**Committee on the Rights of the Child**

**Consideration of Reports submitted by States  
parties under article 8, paragraph 1 of the  
Optional Protocol to the Convention on the Rights  
of the Child on the involvement of children in  
armed conflict**

**Initial reports of States parties due in 2005**

**Portugal\***

[19 January 2011]

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\* In accordance with information transmitted to States parties, this document was not formally edited.

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## I. Introduction

1. This is the report submitted by Portugal following the entry into force of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in Armed conflict (OPCRC-CAC). The Optional Protocol was signed by Portugal on 6 September 2000 and ratified on 19 August 2003 (without any reservations), having entered into force on 19 September 2003. The report thus covers the period from that date up to 19 September 2010.

## II. General measures of implementation

2. This report was elaborated within a working group (WG) coordinated by the Portuguese Ministry for Foreign Affairs and composed of 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 its own research as well as information and comments 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 concerned departments<sup>1</sup>, indicating the documents that should be taken into account when elaborating the replies (namely the text of the Optional Protocol, declarations formulated by Portugal at the time of signature and ratification of OPCRC-CAC and the Committee on the Rights of the Child’s Revised guidelines for the submission of reports under this Protocol (CRC/C/OPAC/2 of 19 October 2007). This report also benefited from the contribution of the Portuguese Ombudsman and of the Portuguese Council for Refugees.

3. In accordance with Article 8 (2) of the Portuguese Constitution (CPR), “[t]he rules set out in duly ratified or passed international agreements shall come into force in Portuguese internal law once they have been officially published, and shall remain so for as long as they are internationally binding on the Portuguese state”. In accordance with the generally accepted hierarchy of sources of law, international treaties take precedence over the provisions of ordinary legislation, although not over the Constitution. Some doctrine even considers that international human rights norms provided for under duly ratified and published international treaties have the same status as fundamental rights norms provided for in the Constitution, since Article 16 (1) CPR (on the scope and interpretation of fundamental rights) stipulates that “[t]he fundamental rights enshrined in [the] Constitution shall not exclude such other rights as may be laid down by law and in the applicable rules of international law”. Furthermore, in accordance with Article 16 CPR, constitutional and legislative provisions “concerning fundamental rights shall be interpreted and construed in accordance with the Universal Declaration of Human Rights”. It is thus clear that this Optional Protocol applies directly in the Portuguese legal order and can be directly invoked before the courts and applied by national authorities.

4. In accordance with Article 6 of the CPR, Portugal is a unitary State (with two autonomous regions – Azores and Madeira) and, although autonomous region system of

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<sup>1</sup> Ministry of Justice, Ministry of Defence, Ministry for Foreign Affairs, Ministry of Education, Ministry of Labour and Social Security, Ministry for Internal Affairs, Presidency of the Council of Ministers – Commission for Citizenship and Gender Equality and Office of the High Commissioner for Immigration and Intercultural Dialogue, as well as the Bureau for Documentation and Comparative Law (Prosecutor-General’s Office).

self-government must be respected, the organisation of the armed forces is unique for the national territory as a whole (Article 275 (2) CPR).

5. Portugal made no reservations to this Optional Protocol.
6. At the moment of signature of the OPCRC-CAC on 6 September 2000, Portugal formulated the following declaration:

“Concerning article 2 of the Protocol, the Portuguese Republic considering that it would have preferred the Protocol to exclude all types or recruitment of persons under the age of 18 years - whether this recruitment is voluntary or not, declares that it will apply its domestic legislation which prohibits the voluntary recruitment of persons under the age of 18 years and will deposit a binding declaration, in conformity with paragraph 2 of article 3 of the Protocol, setting forth 18 years as the minimum age for voluntary recruitment in Portugal.”

7. Thus, at the moment of ratification of this Optional Protocol (19 August 2003) and in accordance with its Article 3 (2), Portugal deposited a binding declaration, under the following terms:

“The Government of Portugal declares, in accordance with article 3, paragraph 2, of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict that the minimum age for any recruitment - including voluntary - of persons into its national armed forces is 18 years. This age limit is already contained in the Portuguese domestic legislation.”

8. It is thus clear that Portugal considers itself bound by an even more stringent standard than that provided for under Article 3 (1) of the Optional Protocol. We also consider that the implementation of this Optional Protocol is fully in line with the general principles of the CRC, including the principles of the best interest of the child and of the child’s right to life, survival and development.

9. Taking into account the subject-matter of this Optional Protocol, the primary responsibility for its implementation in Portugal lies with the Ministry of Defence, although such ministries as the Ministry of Education, the Ministry of Justice and the Ministry for Internal Affairs can also bear some responsibilities in this regard.

10. No specific mechanism was put in place to ensure the implementation of this Optional Protocol and the coordination of concerned departments. Despite this, mention must be made of the National Plan of Action for the Implementation of the UN Security Council resolution No. 1325 (2000), on “Women, Peace and Security (2009-2013)”, adopted on 25 August 2009 by Council of Ministers resolution 71/2009. This Plan was prepared by an inter-ministerial working group created in 2008. A previous public consultation to civil society, NGO’s, research centres and other relevant stakeholders was launched and the drafting working group, including representatives from several concerned Ministries (Foreign Affairs, Presidency of the Council of Ministers, comprising the national mechanism for gender equality, Defence, Internal Affairs and Justice), worked taking into account the input received, including the internal inputs from Ministries. Prior to its adoption, the Plan was again submitted to consultation within Public Administration and then to public consultation.

11. The NAP provides mechanisms and indicators for the implementation, follow-up and evaluation of its goals and measures, which is the responsibility of the Inter-ministerial Working Group responsible for the implementation of the Plan. It involves 30 specific goals and their related activities and establishes five strategic main goals: a) To increase the participation of women and to mainstream gender in all the phases of peace building processes, including at all levels of decision-making; b) To ensure the training of all people

involved in peace building processes, on gender equality, gender based violence and other relevant aspects of UN Security Council Resolutions Nos. 1325(2000), 1820 (2008), 1888 (2009) and 1889 (2009); c) to promote and protect the respect for the human rights of women and girls in conflict and post conflict areas, taking into account the need to: prevent and eliminate gender based violence perpetrated against them; and promote the empowerment of women; d) To deepen and disseminate knowledge on the issue of “Women, peace and security”, including by training and raising the awareness of decision-making entities and of the public at large; e) To promote the participation of civil society in the implementation of UN Security Council Resolution No. 1325 (2000).

12. OPCRC-CAC is one of the international instruments which served as a framework for the elaboration of this Plan of Action, which comprises activities such as: the integration, in institutional-building programmes, of concerns relating to the implementation of relevant international instruments; the development of education and training curricula and activities in the area of women, peace and security, namely for military personnel (including those who will participate in international missions), cooperation agents, volunteers and teachers, as well as the inclusion of this issue in school curricula (under the subject-matter of “Education for Citizenship”); the realisation of an awareness-raising campaign on gender violence in Portuguese-speaking countries; the translation into Portuguese of relevant international codes of conduct, namely those of the European Union, United Nations and NATO; the promotion of partnerships with civil society organisations; the creation of a website devoted to the Plan of Action, with a specific section for civil society; the collection of data (namely after each relevant mission); the improvement of statistical indicators in the area of women, peace and security; and the elaboration of a media kit on the subject. The Plan of Action has a five-year implementation period (2009 to 2014).

13. The responsibility for the coordination of this Plan relies mainly on the Government and Public Administration. A working group has been created with the view to implement this Plan. The working group is composed of representatives of the Ministries directly involved in the elaboration of the Plan of Action and coordinated by the Commission for Citizenship and Gender Equality and by the Ministry of Foreign Affairs. It shall ensure close collaboration among those services and departments involved in the realisation of the Plan’s objectives and foreseen activities, and mobilise available financial resources. It may be enlarged to include other entities (the promotion of civil society’s participation in the implementation of Security Council resolution No. 1325 (2000) is one of the five strategic objectives of the Plan of Action). This working group shall present an annual report on implementation and two evaluation reports: one interim and one final.

14. The Portuguese version of OPCRC-CAC is available on-line in the webpage of the Office for Documentation and Comparative Law (GDDC) at [www.gddc.pt](http://www.gddc.pt), together with several dozens of other international human rights and humanitarian law instruments. It was equally included in the largest compilation of human rights instruments available in Portugal (in the section on the rights of the child), also published by GDDC and available free of charge in the same URL. Furthermore, this webpage includes the Portuguese version of a handbook entitled “International Humanitarian Law”, by Michel Deyra, as well as OHCHR Fact Sheets No. 10/Rev.1 (“The Rights of the Child”) and 13 (“International Humanitarian Law and Human Rights”). A number of materials aimed at the professional training of specific target groups are also available, including Professional Training Series handbooks 1 (“Human Rights and Social Service”), 2 (“Human Rights and Elections”), 5 (“Human Rights and Law Enforcement”), 6 (“Human Rights Training”), 8 (“The Istanbul Protocol”) and 9 (“Human Rights in the Administration of Justice”) – most of these include sections on the rights of the child, including an explanation of the meaning and implications of OPCRC-CAC.

15. The training of all military deployed to peacekeeping missions includes a module on human rights and international humanitarian law, covering such aspects as the applicable legal framework and its implementation, the protection of refugees and humanitarian assistance. Furthermore, human rights and humanitarian law are included in the training of Portuguese military: for example, the Institute of High Military Studies includes human rights components in the promotion/qualification courses of military officers and, in 2008/2009, conferences were held on “International politics and the human rights agenda”, “International tribunals”; “International law and the protection of persons” and “Law of the armed conflicts”. Additionally, human rights are included in the training programmes of both the Navy Training System and of the Navy School, namely according to the NATO standards (STANAG 2449 – Training in Law of Armed Conflicts), within the teaching of international humanitarian law (complemented by lectures on the gender perspective). Likewise, the Air Force Academy includes in its curriculum the teaching of International Humanitarian Law and Law of the Armed Conflicts.

16. In Portugal, the minimum age for any recruitment – including voluntary – into its national armed forces is 18 years. In practice, access to these forces – even as students – is in general possible only for those aged 18 and above. The only exception is for non-military applicants to military schools, who do constitute a minority: 0.59% (14) in the Navy School and 23.14% (1368) in the Air Force Academy (in the Masters course on Military Aeronautics). This corresponds to 0.43% of Navy School students and 5.58% of Air Force Academy students under the age of 18, but there is no possibility of these students to participate in an armed conflict. Furthermore, no armed groups operate in Portuguese territory; therefore the question of whether they recruit or use children is not applicable. There are also no cases of children charged for war crimes committed while recruited or used in hostilities.

17. Portugal has an Ombudsman, national human rights institution fully in line with the Paris Principles and accredited with “A” status since 1999. It is an organ expressly provided for under Article 23 of the Constitution, with competence to receive “complaints against actions or omissions by the public authorities” (which of course includes the armed forces) and to address to the competent bodies “such recommendations as may be necessary in order to prevent or make good any injustices” (for further information, please see the third report of Portugal on the implementation of the Convention on the Rights of the Child, as well as our Common Expanded Core Document). Within the scope of his activity, the Ombudsman devotes special attention to children and to the protection and promotion of their rights. Since 1993, the Ombudsman maintains a toll-free telephone hotline entitled “Child Messages” to receive complaints relating to children who might be at risk or in danger, and brought forth either by the children themselves or by an adult on their behalf. In 2004, this Line was placed under the coordination of a Project Unit created to deal specifically with the rights of the child, as well as of elderly persons, persons with disabilities and women. Pursuant to a reorganization process initiated in the second semester of 2009 and still in implementation, this Unit was replaced with a new Department on Children, Elderly Persons and Persons with Disabilities (N-CID), which was placed under the direct supervision of one of the two Deputy Ombudspersons that assist the Portuguese Ombudsman. Similarly to the former Project Unit, this new Department maintains the coordination of the hotline mentioned above, alongside with other activities, such as investigation of complaints, cooperation with relevant entities at national and international level and promotion and provision of information on the content of fundamental rights and the role of the Ombudsman in relation to them.

18. Although on duty military can only complain to the Ombudsman once hierarchic recourses are exhausted – a rule which the Ombudsman has recently recommended to be removed – this does not apply to military students or to students of military schools (Article

5 of Act 19/95, of 13 May). In fact, the Ombudsman has recently carried out some activities concerning military schools: in 2008, upon a complaint received concerning acts of violence committed in the Military School (*Colégio Militar*), several provisions were taken, with contacts both inside and outside this military educational facility<sup>2</sup>. In November 2009 – after receiving complaints from mothers of students of this unit concerning the treatment afforded by the media to facts relating to the prosecution of such students for alleged acts of violence against other students of the same institution – the Ombudsman issued a press release stating that some published or reproduced images of Military School students allow their identification and that, although apparently obtained within public events, were shown out of context, while recognizing that, in the majority of cases, the media depicted students in a manner that did not allow their identification. The complainants were referred to the Entity Regulating the Media.

### III. Prevention (arts. 1, 2, 4, para. 2, and 6, para. 2)

19. There are four modalities of service in the Portuguese Armed Forces (Article 3 of the Act on Military Service<sup>3</sup>):

- (a) Permanent posts;
- (b) Contracted military personnel;
- (c) Volunteers (for 12 months, after which the person can remain in the armed forces as contracted military personnel);
- (d) Conscripted or mobilized military personnel, in case the fundamental needs of the armed forces cannot be met through contract or volunteer recruitment.

20. Conscription and mobilisation are exceptions provided for by law since ordinary military service ceased to be required in 2004 and, in times of peace, military service is based on voluntary recruitment (Article 36 of the Act on National Defence<sup>4</sup>). This exceptional recruitment (conscription or mobilisation) can only be made in relation to citizens aged 18 to 35 (Articles 4, 5 and 18 of the Act on Military Service), and those aged 19 take precedence over those aged 18 (Article 34 (5) (b) of the Act on Military Service). In times of war, only the maximum age limits provided for by law can be changed (Article 6 of the Act on Military Service), not the minimum age limits.

21. Therefore, the compulsory recruitment of children into the Portuguese armed forces is absolutely prohibited and there are no such cases in Portugal.

22. Only citizens above 18 years of age can apply to be admitted into the armed forces under contract or as volunteers (Article 13 of the Act on Military Service and Article 32 (2) (b) of Decree Law 289/2000, of 14 November, as amended by Organic Act 1/2008, of 6 May). The vast majority of recruits are today incorporated under the category of contracted military personnel. In the Navy, for example, this amounts to 91.5% of incorporations and during this period there were no voluntary nor conscripted/mobilised incorporations.

23. The date of reference used to determine whether or not a person is within this age limit is one's date of birth, although military obligations begin on the first day of the year

<sup>2</sup> Ombudsman 2008 Activity Report, p. 641. See further information in paragraphs 46 and 47 of this report.

<sup>3</sup> Act 174/99, of 21 September, as amended by Organic Act 1/2008, of 6 May.

<sup>4</sup> Organic Act 1-B/2009, of 7 July (published in the Official Gazette, I Series, N.º 138, of 20 July 2009).

during which citizens reach 18 years of age (Article 1 (6) of the Act on Military Service). Notwithstanding, this does not apply to actual incorporation into the armed forces, but rather to such duties as the duty to be present on National Defence Day (aimed at raising the awareness of youngsters to the issue of national defence and at disseminating information on the role of the armed forces). Despite this, Act 20/95, of 13 July (regulating the mobilisation of citizens in the interest of national defence) still states that mobilisation may be made in relation to all citizens subject to military obligations (therefore, as from the first day of the year in which they reach 18) – Article 24 (1).

24. Presently, military registration is made *ex officio* by competent public authorities, namely the Institute of Registries and Notaries, IP, which transmits relevant data (including one's date of birth) to the Ministry of Defence. Military registration is based on civil identification and civil registry data of each citizen (Article 16 of Decree Law 289/2000, of 14 November, as amended by Decree Law 52/2009, of 2 March). Furthermore, at the time of candidacy, prospective volunteers must exhibit their identity/citizen card.

25. All forms of military recruitment include psychological and physical examination aimed at determining whether or not the person is fit to perform military service (Articles 16 and 20 (2) of the Act on Military Service).

26. Permanent military posts require application and admission to specific military schools, namely the Military Academy (for Army officers), the Navy School (for the Navy) and the Air Force Academy (for the Air Force) – hereinafter referred to as “military academies”. These are high education military institutions<sup>5</sup> and are subject to the same admission rules as those applicable to other high education institutions, with some specificities as required by the military nature of courses<sup>6</sup>. Pupils are considered military students<sup>7</sup>.

27. Admission to military schools is restricted to contracted or volunteer on-duty military personnel (as seen above, only those aged 18 and above can access these forms of service) and to civilians fulfilling strict criteria, including criteria established to access official high education institutions. In the case of civilians applying to courses equivalent to a Masters or university graduation in military academies, no minimum age limit is established, although applicants must have completed 12 years of schooling (there are also vacancies for university graduates). In practice, and taking into account that primary schooling begins as a rule at 6 years of age, the vast majority of those civilian candidates are in fact above 18 (99.41% to the Navy School and 76.86% to the Masters Course in Military Aeronautics at the Air Force Academy – the later requiring written authorisation from parents/legal guardians in the case of applicants below 18). Of those civilian candidates under the age of 18, 50% were admitted into the Navy School (7 candidates) and

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<sup>5</sup> Article 1 (1) of Decree Law 302/88, of 2 September, as amended by Decree Law 116/93, of 13 April (Military Academy Statutes), and Article 1 (1) of Ordinance 425/91, of 24 May (Military Academy Regulations); Article 1 of Regulatory Decree 22/86, of 11 July, as amended by Regulatory Decrees 55/87, of 8 August, 31/88, of 23 August, and 21/92, of 2 September (Navy School Statutes) and Article 1 of Ordinance 471/86, of 28 August, as amended by Ordinances 739/87, of 28 August, 641/89, of 10 August; 804/90, of 8 September, 780/93, of 6 September, 655/94, of 19 July and 439/2003, of 27 May (Navy School Regulations); Article 1 (1) of Regulatory Decree 32/97, of 6 September (Air Force Academy Statutes) and Article 1 (1) of Ordinance 11/91, of 4 January (Air Force Academy Regulations).

<sup>6</sup> Article 106 (1) of the Military Academy Regulations, Article 16 (1) of the Navy School Statutes; Article 25 of the Air Force Academy Statutes.

<sup>7</sup> Articles 137 (1) and 143 of the Military Academy Regulations, Articles 18 and 19 of the Navy School Statutes; Articles 27 and 28 of the Air Force Academy Statutes.

only 3.44% were accepted in the Masters Course on Military Aeronautics (47 admitted civilian students under the age of 18 out of 1368 applicants).

28. Not only are these applications genuinely volunteer, but admission to military academies is quite difficult and the number of successful candidates much smaller than that of applicants. Candidates must successfully pass several stages of a competitive procedure, which may differ slightly depending on the academy in question (Military Academy/Navy School/Air Force Academy). Only 20% of the total number of applicants to the Navy School were admitted and the rate of acceptance to the Masters course on military aeronautics (Air Force Academy) was only 4.74% (280 out of 5912 applicants).

29. In the Military Academy, for instance, candidacies are submitted by filling in a specific application, which must be accompanied by several other documents, including a questionnaire, parents' authorisation (for candidates below 18), copy of one's identity card/citizen card, birth registration certificate, proof of enrolment in national exams for access to higher education and a term of responsibility certifying that the candidate is aware that, if admitted, he or she will be obliged not to take part in any political activities (Articles 13, 14 or 15 of Military Discipline Regulation). All necessary forms are available on-line and may be downloaded, but applications must be submitted by post or in person. Later in the process, candidates must submit a medical statement certifying that they are robust enough and able to undertake physical exams, as well as their classification of access to higher education.

30. Should all these requisites be fulfilled, candidates must then be submitted to medical inspection, psychological evaluation, physical aptitude and military aptitude tests. Medical inspection is aimed at evaluating whether or not candidates suffer from any disease or disability that could prevent them from performing the duties of military officers. Psychological evaluation includes components of intellectual, vocational, personality, command and leadership evaluation, as well as an interview. Physical aptitude tests aim at evaluating whether or not candidates possess the necessary physical skills to perform the duties of military officers. The military aptitude test constitutes the final stage of the competitive procedure and requires spending three weeks in a military facility, during which time candidates continue to be subject to psychological evaluation. It aims at informing candidates of the nature, main characteristics and conditions of life in the military institution; confirming their psychological skills and aptitudes; familiarize candidates with and facilitate their adaptation to the procedures and rules of conduct associated with military life; and evaluating their specific aptitude to the career of military officer.

31. Successful candidates in all these stages will – by an order defined on the basis of the higher results obtained – be admitted to the first year of Military Academy (up to the number of vacancies open each year). Internship and the wearing of uniform are mandatory in military academies<sup>8</sup> and pupils are considered military students<sup>9</sup>. They cannot, however, be “actively used” in hostilities in times of war, as this would constitute a war crime, as provided for under Article 41 (1) (h) of the Code of Military Justice (and also under Article 10 (1) (h) of Act 31/2004, of 22 July, which adapted Portuguese legislation to the Statute of the International Criminal Court) – see Chapter III, below.

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<sup>8</sup> Article 138 (1) of the Military Academy Regulations; Articles 215 and 203 (2) of the Navy School Regulations; Articles 145 and 138 of the Air Force Academy Regulations.

<sup>9</sup> Articles 137 (1) and 143 of the Military Academy Regulations, Articles 18 and 19 of the Navy School Statutes; and Article 27 of the Air Force Academy Statutes.

32. The armed forces strive to make available to candidates and their parents all necessary information to allow them to make an informed choice about admission to military academies: the Military Academy, Air Force Academy and Navy School all run websites<sup>10</sup> where candidates may find such information as the rights and duties of candidates and military personnel. The Military Academy and the Air Force Academy have developed brochures for prospective applicants<sup>11</sup> and allow candidates to take a guided tour of the facilities, as well as to enrol in training in preparation for physical aptitude tests. The Navy School has created a “Welcoming Book”, as well as an interactive CD-Rom, for students explaining their rights and duties. Guided tours of the facilities are also allowed.

33. In the military academies, the length and curricular structure of courses are defined by joint ordinance of the Ministries of Defence and of Science, Technology and Higher Education, upon proposal of the Commander-in-Chief of each Branch (who approves the concrete curricula of each course, after consulting the academy’s Academic Council<sup>12</sup>). There are both civilian and military teachers and instructors<sup>13</sup>. Courses last from five to seven academic years and include components of academic education (including, in some instances, a module on international humanitarian law and armed conflicts), behaviour training and military training, ending with a period of practical training (*tirocínio*).

34. In military academies, students are subject to both the Code of Military Justice<sup>14</sup> and the Regulations on Military Discipline<sup>15</sup>, as well as to the disciplinary regulations of each academy for facts committed within the school setting. Concerning the Navy School, mention should be made of Article 20 of the Statutes of this School, which establishes that, once incorporated, students are considered as adults exclusively for purposes related to military activities.

35. The Code of Military Justice is applicable to crimes of a strictly military nature<sup>16</sup> and it abolished military tribunals in times of peace, transferring 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). This Code punishes such crimes as military service in enemy armed forces, war crimes and espionage. The main penalty provided for is imprisonment (from 1 month to 25 years, depending on the crime at stake), but accessory penalties can also be applied, namely fines, compulsory retirement, expulsion and suspension of the exercise of military duties. In relation to military officers (the careers military academy students will be incorporated into), desertion is punished, under Articles 72 and 74 of this Code, with imprisonment of 1 to 4 years (in times of peace) and of 5 to 12 years (in times of war). However, given that Article 74 (1) mentions “officers” only, and that Article 4 (2) makes the rank of “officer candidates” equivalent to that of officers for criminal purposes, one must conclude that only as from the fifth year of study in the military academies can students be held accountable under such provisions, since it is only then that they are considered “officer candidates”<sup>17</sup>. In the Air Force Academy, however, the same norm is interpreted as being applicable to students as from the second year of

<sup>10</sup> [www.academiamilitar.pt](http://www.academiamilitar.pt); <http://www.emfa.pt/www/po/afa/index.php?idmenu=001&lng=pt&op=0>; <http://escolanaval.marinha.pt/EscolaNaval/site/pt>.

<sup>11</sup> For the Military Academy brochure, see: <http://www.academiamilitar.pt/o-concurso.html>.

<sup>12</sup> For instance, article 6 (1) (g) of the Military Academy Regulations.

<sup>13</sup> For instance, Article 73 of the Military Academy Regulations.

<sup>14</sup> Article 4 (1) (c) of the Code of Military Justice (Act 100/2003, of 15 November).

<sup>15</sup> Article 6 (2) of the Regulations on Military Discipline (Organic Act 2/2009, of 22 July).

<sup>16</sup> Article 1 (1) of the Code of Military Justice.

<sup>17</sup> Article 139 (3) (b) of the Military Academy Regulations; Article 195 (1) of the Navy School Regulations; Article 131 (8) of the Air Force Academy Regulations.

study. There are, however, no registered cases of application of the Code of Military Justice to persons below the age of 18 during the reporting period, either in the Navy School or in the Air Force Academy.

36. The Regulations on Military Discipline impose such duties as the duty of obeisance, authority (promotion of discipline, cohesion, safety, worth and efficiency within the armed forces), availability, ward (to zeal for the interests of subordinates), loyalty, zeal, comradeship, responsibility, political exemption, secrecy, honesty, politeness and poise<sup>18</sup>. It foresees the granting of benefits to reward relevant conduct that goes beyond the normal fulfilment of duties<sup>19</sup>, as well as sanctions for violations of such duties. There is a special provision for military students who were civilian at the time of admission: these can only be punished with reprimand, aggravated reprimand or prohibition of exit from the military facility (for up to 20 days)<sup>20</sup>. During the reporting period, two military aged 17 were punished with one and two days of detention under such Regulations, respectively, in 2006 and 2004. Concerning the Air Force Academy, students can only be punished under the Regulations on Military Discipline since 22 July 2009 (Organic Act 2/2009) and two such students were subject to disciplinary sanctions under such Regulations since then. The rule of thumb is that hierarchical superiors have disciplinary power over their subordinates<sup>21</sup>, but the rank of superiors varies in accordance with the severity of the penalty imposed (for example, the prohibition of exit from the military facility for up to 5 days can be imposed by a Captain, but for up to 10 days must be decided by a Major/Lieutenant-Colonel, and for up to 15 days by a Colonel). The accused has the right to be heard about the facts of the accusation (otherwise the procedure is null and void<sup>22</sup>), as well as the right to appoint an advocate (civil or military officer<sup>23</sup>). He or she shall present his or her defence in writing within 10 days (extendable up to 45) after the notification of accusation, may consult the file and can request the production of evidence, including witnesses<sup>24</sup>. Disciplinary decisions can be the object of hierarchical appeal to the Commander-in-Chief of each Branch<sup>25</sup>, and the person then has the right of appeal to a court<sup>26</sup>.

37. Infractions punished by the academies' disciplinary regulations produce no effects after incorporation into permanent ranks<sup>27</sup>. At the time of admission into the Military Academy, students must sign a declaration stating that they are aware of applicable regulations<sup>28</sup>. The Military Academy, the Air Force Academy and the Navy School provide each student with a handbook indicating all the duties of students<sup>29</sup>. Penalties range from school reprimand to expulsion, encompassing also aggravated school reprimand, school

<sup>18</sup> Articles 11-24 of the Regulations on Military Discipline.

<sup>19</sup> Articles 25-28 of the Regulations on Military Discipline.

<sup>20</sup> Article 30 (5) of the Regulations on Military Discipline.

<sup>21</sup> Article 64 of the Regulations on Military Discipline.

<sup>22</sup> Article 78 (1) (a) of the Regulations on Military Discipline. Article 78 (1) (a) of the Regulations on Military Discipline.

<sup>23</sup> Article 77 of the Regulations on Military Discipline.

<sup>24</sup> Article 99 to 103 of the Regulations on Military Discipline.

<sup>25</sup> Articles 122 and 125 of the Regulations on Military Discipline.

<sup>26</sup> Article 133 of the Regulations on Military Discipline.

<sup>27</sup> Article 23 of the Military Academy Statutes and Article 152 (1) of the Military Academy Regulations; Article 21 of the Navy School Statutes and Article 234 of the Navy School Regulations; Article 161 of the Air Force Academy Regulations.

<sup>28</sup> Article 137 (2) of the Military Academy Regulations.

<sup>29</sup> Article 155 (1) of the Air Force Academy Regulations. The Military Academy's "Resident's Manual" is available on-line at: [http://www.academiamilitar.pt/images/stories/publicacoes/manual\\_acolhimento.pdf](http://www.academiamilitar.pt/images/stories/publicacoes/manual_acolhimento.pdf).

detention and school imprisonment<sup>30</sup>. Military Academy Regulations expressly provide that students always have the right to be heard, are given notice of the facts they are accused of and may submit their defence in writing within three days<sup>31</sup>. Disciplinary decisions can be the object of an appeal to the Commander each military academy, whose decision is final. Each academy has a disciplinary board to advise on, inter alia, the lifting of detention penalties to students who improve their behaviour and on the expulsion of students due to disciplinary reasons<sup>32</sup>. During the reporting period, seven cadets under 18 were subject to disciplinary sanctions under the disciplinary regulations of the Navy School and 47 under the disciplinary regulations of the Air Force Academy.

38. There is no requirement of effective minimum service at military academies: students may leave at any time, by their own choice, and are not obliged to pursue a military career<sup>33</sup>, although they may be required to compensate the State for the amounts spent on their training<sup>34</sup> - this does not however apply to 1<sup>st</sup>-year students who decide to leave any of the academies by their own choice<sup>35</sup>. Students are formally incorporated into the permanent military posts upon successful completion of their course<sup>36</sup>. In the Navy, they must then serve for a period of eight years<sup>37</sup>.

39. The career prospect is an important incentive to admission into the military academies. Furthermore, students are also entitled to remuneration (which increases each school year), accommodation, food, uniforms, medical care and assistance, pharmaceutical supplies and educational materials, as well as to social security and support under identical conditions as those enjoyed by on-duty military. They are also exempt from tuition fees and may have other rights derived from the legal framework on military remuneration<sup>38</sup>. Other incentives include the recognized high quality of teaching in the military academies, as well as a wide range of extra-curricular activities available (for example, sports activities and competitions, visits and exchanges of students with national and foreign academies, and summer courses).

40. Apart from these three high education military institutions, there are three schools under the control of the Ministry of Defence that receive students below 18 years of age: the Military School (*Colégio Militar*), the Army Pupils (*Pupilos do Exército* – for boys and girls, although only boys can attend as interns) and Odivelas Institute (*Instituto de Odivelas*).

41. These students are not members of the armed forces and cannot be mobilized even in the event of an armed conflict, genuine military need or any other emergency situation.

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<sup>30</sup> Article 153 of the Military Academy Regulations; Article 227 (4) of the Navy School Regulations; Article 155 (4) of the Air Force Academy Regulations.

<sup>31</sup> Article 161 of the Military Academy Regulations.

<sup>32</sup> Article 17 of the Military Academy Regulations.

<sup>33</sup> Article 24 (1) (a) of the Military Academy Statutes and Article 164 of the Military Academy Regulations; Article 211 of the Navy School Regulations; Article 141 of the Air Force Academy Regulations.

<sup>34</sup> Article 170 of the Military Academy Regulations; Article 208 of the Navy School Regulations; Article 150 of the Air Force Academy Regulations.

<sup>35</sup> Article 170 (3) (a) of the Military Academy Regulations; Article 208 of the Navy School Regulations; Article 150 of the Air Force Academy Regulations.

<sup>36</sup> Article 142 of the Military Academy Regulations; Article 240 (1) of the Navy School Regulations; Article 168 (1) (a) of the Air Force Academy Regulations.

<sup>37</sup> Article 201 of the Navy School Regulations.

<sup>38</sup> Articles 147-149 of the Military Academy Regulations; Articles 210-214 of the Navy School Regulations; Articles 140-144 of the Air Force Academy Regulations.

They have the right to leave these schools at any time and of not pursuing any military career.

42. The above are public schools, dependent on the Ministry of Defence and under the responsibility of the Army (although the basic curricula are defined by the Ministry of Education), providing 2<sup>nd</sup> and 3<sup>rd</sup> cycle basic schooling (5<sup>th</sup> to 9<sup>th</sup> grade, aimed at children aged 10 to 14) and secondary schooling (10<sup>th</sup> to 12<sup>th</sup> grade, aimed at children aged 15 to 17) to children of both military personnel and of civilians. The Army Pupils (*Pupilos do Exército*) also provides professional and post-secondary courses. Students can attend such schools as interns or in day school and there are both civilian and military teachers.

43. Besides the school curricula mandatory for all pupils as defined by the Ministry of Education (comprising both disciplinary and non-disciplinary subjects such as study support and civic training), military schools offer specific subjects to their students, namely a wide range of sports activities and military training. In the Military School (*Colégio Militar*), military training is mandatory and taken into account for school progression. In the Army Pupils (*Pupilos do Exército*) it is also mandatory, but not taken into account for school progression. In the Odivelas Institute (*Instituto de Odivelas*) it is voluntary and also not taken into account for school progression. Military training in these schools is provided in accordance with guidelines issued by the Army Commander-in-Chief, upon proposal of the school's director.

44. Military training in the Military School (*Colégio Militar*) seeks to guarantee the basic military training of pupils and to provide students at the end of 11<sup>th</sup> grade with the knowledge conveyed in the basic training courses for officers and sergeants. This area is planned and managed by the Chief of the Military Instruction Section. Students are required to do one written test per term and, as from the 11<sup>th</sup> grade, evaluation is made through practical tests. In all grades, students are required to have 48 classes or educational activities/sports per week (45 min each). From 5<sup>th</sup> to 10<sup>th</sup> grades, one such class is devoted to military training. In 11<sup>th</sup> and 12<sup>th</sup> grades, 2 and 3 classes a week, respectively, are devoted to such subject.

45. Military schools are known for the high quality of their facilities, which include specific classrooms for a number of disciplines (arts, information and communication technologies, music, history, geography), auditoriums, libraries, quality laboratorial equipment and sports facilities such as gymnasiums, sports fields and swimming pools. The Military School (*Colégio Militar*) has covered and uncovered horse riding rings and stables. Several complementary activities are also offered, inter alia music, cinema, theatre, mechanics and a wide range of sports (fencing, swimming, shooting, gymnastics, modern pentathlon, athletics, handball, basketball, football, volleyball and rowing).

46. Both the Military School (*Colégio Militar*) and Army Pupils (*Pupilos do Exército*) have their own Internal Regulations, compiled in a "Student's Guide" which is distributed to all students upon admission (as well as any amendments thereto at the beginning of each school year). The students and parents or tutors must sign a declaration stating their full acceptance of such Regulations. The disciplinary norms are based on those applicable to all other non-university schools (Act 3/2008 of 18 January) and expressly establish that no disciplinary measure can, in any manner, adversely impact on the student's physical, moral or psychic integrity. Parents or tutors have the primary responsibility for the student's education. Students have the duty to respect the physical and moral integrity of all members of the educational community (therefore, including other students).

47. The disciplinary regulations provide for both rewards for excellence and penalties for violations of the duties of students. Corporal punishment and other cruel or degrading forms of punishment are of course not admitted and were in fact criminalised by the 2007 revision of the Criminal Code, (Article 152-A), whether or not committed in a reiterated

manner. Applicable disciplinary measures include reprimand, admonition, aggravated reprimand, public reprimand, prohibition of exiting the school in certain days, suspension of school attendance and school transfer, as well as the performance of activities to integrate the student into the educational community. The student always has the right to be heard and serious infractions require that a written procedure is undertaken. An appeal against a disciplinary measure can be submitted to the school director, whose decisions are final (no hierarchical recourse is allowed).

48. Students can also complain to such independent complaint mechanisms as the Ombudsman. In 2008, the Ombudsman received a complaint alleging that, at the Military School (*Colégio Militar*), some graduate students (selected older students members of the school's battalion) inflicted violent punishments to younger students considered as having violated school duties. In some cases, younger students had sustained serious physical injuries, allegedly as a result of such practices. The Ombudsman undertook three visits to the Military School (*Colégio Militar*), having heard the Board of Directors, officers in command of the students' corps, the doctor, psychologist and representatives of the Parents' Association and of the Association of Former Students. Other persons, including former students and former students' parents, also testified. Finally, some inquiry procedures concerning violent acts were consulted, within a time frame the Ombudsman considered adequate and sufficient.

49. Upon these procedures, the Ombudsman addressed several comments and proposals to the School's Board and Army Commander-in-Chief, both concerning the improvement of procedures and the allocation of adequate human resources to the regular development of school life. This situation is still being followed-up, namely through the observation of measures resulting from the inquiries undertaken by the General Inspections of Education and National Defence.

50. No armed forces distinct from the State operate in Portugal. The information requested under paragraph 14 of the Committee's guidelines is therefore not applicable. We also believe that no children in Portugal are especially vulnerable to practices contrary to the Optional Protocol, and therefore have nothing to report under paragraph 15 of the same document.

51. Measures that must be taken to prevent attacks on civilian objects protected under international humanitarian law, including places that generally have a significant presence of children, such as schools and hospitals, are covered by International Humanitarian Law courses during the training period, namely at the Navy School.

52. In addition to the information provided in Section I of this report, we wish to highlight that Portugal has been making efforts to improve human rights information, education and training. Raising human rights awareness through educational programmes is one of the guidelines in the normative documents on the national Education System, namely:

(a) The Framework Education Act (Legislation: Law no. 46/86, 14th October), informed by a global active citizenship perspective which aims at preparing students for critical and independent thought on spiritual, aesthetic, moral and civic values; and at allowing for their balanced and harmonious development, both at physical, moral and civic levels, that is, aiming at educating students to be responsible citizens, capable of autonomous attitudes.

(b) The general curriculum guidelines for Pre-school Education (Legislation: Order no. 5220/97, 4th August) stress the need of promoting children's personal and social development, based on situations of democratic daily life, in the perspective of Education for Citizenship.

(c) In the general curriculum guidelines for Basic Education, Education for Citizenship (Legislation: Decree law no. 6/2001 18th January) is considered a cross-curriculum area. These guidelines also set up a non-disciplinary area – Education for Citizenship – aiming at children’s integrated development. Another non-curriculum area – *Área de Projecto* – provides the opportunity for the development of citizenship and human rights projects.

(d) The curriculum guidelines for Secondary Education (Legislation: Decree law no. 74/2004, 26th March) also refer to Education for Citizenship as a curriculum cross-cutting area. In addition, schools organise activities around this theme, favouring and valuing students’ participation. These activities also aim at supporting the personal and social development of students, namely, by promoting health awareness and preventing risk behaviour.

53. Teacher initial training for pre-school, basic and secondary education includes cultural, social and ethic components and learning /awareness of the problems of present times. In-service teacher training has been developing training options in the area of Education for Citizenship and Human Rights. Several support materials have been published by the Ministry of Education or co-published by the ministry and other private and public services, namely on Human Rights in a school context.

54. Numerous projects in the area of “Education for Citizenship” have been developed in schools across the country. For example, in 2006, the 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 the view to disseminate best practices in the area of human rights education. 34 schools participated and student works were made available on-line<sup>39</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 a selection of students’ 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.

#### **IV. Prohibition and related issues (arts. 1, 2, 4, paras. 1 and 2)**

55. Article 10 (h) of Act 31/2004, of 22 July (which adapted the Portuguese penal legislation to the Statute of the International Criminal Court, by typifying the conducts which constitute crimes by violation of international humanitarian law) punishes the “recruitment or enlistment of children in armed forces, military or paramilitary forces of a State, or in armed groups distinct from the armed forces, military forces or paramilitary forces of a State, or their use to participate in hostilities”, when committed within an international or non international armed conflict against a person protected by international humanitarian law, with 10 to 25 years of imprisonment. Thus, all recruitment is punished, both voluntary and compulsory, as well as all use of children to participate in hostilities, whether directly or indirectly. This crime is defined as a war crime against persons. Children are specifically defined as “all human beings below 18 years of age, in accordance with the Convention on the Rights of the Child” (Article 2 (g) of Act 31/2004, of 22 July). Persons condemned for such crime can also be declared unfit to elect or be elected

<sup>39</sup> At <http://www.dgidc.min-edu.pt/>.

President of the Republic, member of Parliament, member of the European Parliament, members of regional legislative assemblies or holders of public office in local authorities, or to be jurors (Article 19 of Act 31/2004, of 22 July, as amended by Act 59/2007, of 4 September).

56. The Code of Military Justice (which would also be applicable in the case of crimes related to the military interests of defence of the Portuguese State and others granted by the Constitution to the Portuguese Armed Forces) also punishes (as a war crime against persons) “the recruitment or enlisting of under 18-year olds in the national armed forces or their active use in hostilities” committed by any Portuguese, foreigner or stateless person residing or staying in Portugal, or against any such person, in times of war, with 10 to 25 years of imprisonment (Article 41 (h)). The concept of “active use” is not defined, and would therefore have to be determined by the judge. Accessory penalties could also be imposed to condemned military, namely compulsory reservation and expulsion from the armed forces (Articles 18 and 19 of the Code of Military Justice).

57. Article 41 of the Code of Military Justice punishes both those who commit and those who order the commission of this crime. Furthermore, military chiefs and other superiors can also be punished (with the same penalty) if it is found that they knew, or should have known, that subordinates under their effective authority and control were committing or ready to commit any such crime, and they did not take all necessary and adequate measures to prevent or repress that practice or immediately to report it to competent authorities (Article 6 of Act 31/2004, of 22 July, and Article 48 of the Code of Military Justice). Superior orders could not be invoked as a justification for any of these crimes, since the duty of hierarchical obedience ceases to exist when it leads to the commission of a crime (Article 36 of the Criminal Code). This is also the case with the military, as provided for under Article 12 (1) of the Regulations on Military Discipline.

58. Attempts to commit such crimes would always be punishable: Article 23 (1) of the Criminal Code establishes that an attempt is punishable in case the crime is punished with a more severe punishment than 3 years of imprisonment and Article 12 of the Code of Military Justice goes beyond that, stating that attempts to commit strictly military crimes are punishable irrespectively of the penalty applicable to the consummated crime. The penalty would be the same, although “especially attenuated”, as established by Article 23 (2) of the Criminal Code (whose provisions apply in a subsidiary manner). Each person participating in the said offences would be punished in accordance with his or her guilt, irrespectively of the degree of guilt of other participants (Article 29 of the Criminal Code). Those who, with intent, would in any manner materially or morally support the practice of such crimes would be punished as accomplices, with the same penalty as established for the author, albeit “especially attenuated” (Article 27 of the Criminal Code).

59. Given that 25 years is the maximum limit for any penalty of imprisonment in Portugal (Article 41 (2) and (3) of the Criminal Code and Article 14 of the Code of Military Justice), there are no specific aggravating circumstances for these crimes. Only Article 41 (2) of the Code of Military Justice (applicable to all war crimes against persons) establishes that the penalty shall be aggravated in one fifth of its minimum limit in case the acts are practiced against members of a humanitarian institution – which would hardly be the case with recruitment of children into armed forces or their active use in hostilities. Also, there are no specific defences that could be invoked, other than defences provided for under the Criminal Code and applicable to all crimes (such as self defence and the right of necessity). Thus, as in all cases, the concrete penalty would be fixed by court taking into account all circumstances in favour and against the agent, namely his or her degree of guilt, the consequences of the crime, the degree of violation of one’s duties, reasons leading to the crime and the agent’s conduct when and after committing the crime, namely efforts to ensure reparation for its consequences (Article 71 of the Criminal Code). The Code of

Military Justice furthermore establishes in its Article 22 that, in addition to these factors, the following shall be taken into account when determining the penalty in the case of strictly military crimes: previous military behaviour; time of effective service; whether the crime was committed in times of war, in the exercise of duties or because of such duties or by a commander or chief; whether it was witnessed by 10 or more military not having participated therein, or by a superior with the rank equal to or higher than sergeant; the higher graduation or seniority in the post in the case of co-participation; action in fulfilment of superior orders (which does not exclude responsibility); and the performance of relevant services and valuable acts.

60. According to Article 7 of Act 31/2004, of 22 July, no statute of limitations applies to either criminal proceedings or penalties in the case of crimes of genocide, crimes against humanity and crimes of war (such as the recruitment and use of children in armed conflict). This is an exception to the general principle in force in Portugal, according to which there is a statute of limitation of 15 years for crimes punishable with more than 10 years of imprisonment (Article 118 (a) of the Criminal Code).

61. Act 31/2004, of 22 July, defines other crimes in order to adapt Portuguese criminal legislation to the provisions of the Rome Statute of the International Criminal Court: for example, crimes of genocide and incitement to genocide (Article 8); crimes against humanity (Article 9 – comprising, among many others, slavery, enforced disappearance, torture and inhuman acts); crimes of war against persons (Article 10 – which, as said above, comprises the recruitment or enlisting of children in State or non-State armed forces, military forces or paramilitary forces, and their use to participate in hostilities, but also several other crimes as provided for under the Rome Statute); crimes of war due to the use of prohibited methods of war (including attacks on the civil population or civil objects – Article 11); crimes of war due to the use of prohibited means of war (including poisonous weapons, chemical weapons and antipersonnel landmines – Article 12); crimes of war against objects protected by distinctive insignia or emblems and the undue use of such insignia or emblems (Articles 13 and 14); crimes of war against property (Article 15); incitement to war (Article 17); and the recruitment of mercenaries (Article 18).

62. At the time of ratification of the OPCRC-CAC, it was felt that the provisions of the Act on Military Service (see above) already complied with the requirements of this instrument. The adoption of Act 31/2004, of 22 July, and of the Code of Military Justice (Act 100/2003, of 15 November) completed the legal framework regarding the crimes defined in the Optional Protocol. Furthermore, violations of international humanitarian law have to be tried, pursuant to the 2007 revision of the Code of Criminal Procedure, by a collective court or, if requested by Public Prosecution, by the Defendant or by the assistant (often the victim), by a jury (Articles 13 and 14 of the Code of Criminal Procedure). They have also been included among the offences that can give rise to the tapping and recording of conversations or telephone communications (Article 187 (2) (c) of the Code of Criminal Procedure) and their investigation is of the exclusive competence of the Judiciary Police (Article 7 of Act 49/2008, of 27 August). Given that acts prohibited by the Optional Protocol are not taking place in Portugal, there is no significant jurisprudence adopted by Portuguese courts in this regard. For jurisprudence concerning the application of the Convention on the Rights of the Child, please consult the third periodic report of Portugal on the implementation of this Convention.

63. Portugal became a party to the Additional Protocols I and II to the 1949 Geneva Conventions on 27 May 1992, and to the Rome Statute of the International Criminal Court on 5 February 2002. The International Labour Organization (ILO) Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour was also ratified, on 15 June 2000. For further details, please see the third

periodic report of Portugal on the implementation of the Convention on the Rights of the Child, as well as the Common Expanded Core Document of Portugal.

64. Legal persons, as such, would not be liable for the above mentioned crimes, since Act 31/2004 does not foresee so, nor are such crimes among those that can give rise to legal persons' liability under Article 11 of the Criminal Code. Therefore, only natural persons who committed such acts would be accountable.

65. Under the general provisions of its Criminal Code (Articles 4 and 5), Portugal has jurisdiction over all crimes committed in national territory and aboard any Portuguese ship or aircraft, as well as, inter alia, over crimes committed against Portuguese citizens by other Portuguese citizens habitually living in Portugal at the moment of the crime and who are found in national territory, and over crimes committed by Portuguese citizens, or by foreign nationals against Portuguese citizens, provided that the agent is found in Portugal, that such facts are punishable by the law of the place where they were committed (except if no punitive power is exercised in such place) and that they constitute extraditable crimes but extradition cannot be granted or it is decided not to surrender the agent under an European Arrest Warrant or other international cooperation instrument binding upon Portugal. If the crime is committed by a foreign national against other foreign national, Portugal also has jurisdiction if the agent is found in Portugal and the facts constitute an extraditable crime but extradition cannot be granted or it is decided not to surrender the agent under a European Arrest Warrant or other international cooperation instrument binding upon Portugal. Furthermore, Portuguese criminal law is applicable to facts committed outside national territory that Portugal is obliged to try under any international treaty or convention.

66. In addition, Portugal has extraterritorial jurisdiction over violations of international humanitarian law, including the recruitment and use of children in armed conflict, in accordance with Article 5 of Act 31/2004, of 22 July, provided that the agent is found in Portugal and cannot be extradited or it is decided not to surrender him or her to the International Criminal Court. Portuguese law would apply (Article 5 (2) of Act 31/2004, of 22 July, and Article 6 (2) of the Criminal Code). The Code of Military Justice also applies to crimes committed outside Portuguese territory by Portuguese citizens; if the crime is committed in a foreign country by a foreign national, it would apply only if the agent is found in Portugal (Article 3 of the Code of Military Justice). In all cases, a child is defined as any person below 18 years of age (Article 2 (g) of Act 31/2004, of 22 July, and Article 41 (1) (h) of the Code of Military Justice). We consider that these provisions combined give us full jurisdiction over the acts and offences referred to in Articles 1, 2 and 4 of the Optional Protocol.

67. Extradition is governed by Act 144/99, of 31 August (Act on International Judiciary Cooperation in Criminal Matters), as amended by Acts 104/2001, of 25 August, 48/2003, of 22 August, 48/2007, of 29 August, and 115/2009, of 12 October, which also contains provisions on the transmission of criminal proceedings, execution of criminal sentences, transfer of persons condemned to penalties and security measures of deprivation of liberty, surveillance of persons condemned or on parole, and mutual legal assistance in criminal matters. Article 7 of that Act establishes that any request of international judiciary cooperation in criminal matters (including for the purposes of extradition) shall be refused in case it relates to a fact that constitutes a political or politically-related offence. However, Article 7 (2) (a) expressly states that crimes of war (as well genocide, crimes against humanity, serious breaches of the 1949 Geneva Conventions and acts referred in the UN Convention against Torture) shall not be considered political offences. Therefore, the compulsory recruitment of children into the armed forces and the use of children in hostilities are extraditable offences in accordance with Portuguese law.

68. This principle is confirmed by the inclusion, in several multilateral and bilateral legal cooperation treaties celebrated between Portugal and other countries, of clauses excluding crimes of war from the concept of political offences. This is the case of the Convention on Judiciary Support in Criminal Matters between the Member States of the Community of Portuguese-speaking Countries, of 23 November 2005 (Article 3 (4) (d)); of the Convention on Extradition between the Member States of the Community of Portuguese-speaking Countries, of 23 November 2005 (Article 3 (2) (d)); of the Agreement on Legal Cooperation between the Portuguese Republic and the Republic of Guinea Bissau, of 5 July 1988 (Article 34 (2) (d)); of the Agreement on Legal and Judiciary Cooperation between the Portuguese Republic and the Popular Republic of Mozambique, of 12 April 1990 (Article 33 (3) (d)); of the Agreement on Legal and Judiciary Cooperation between the Portuguese Republic and the Republic of Angola, of 30 August 1995 (Article 33 (2) (d)); of the Treaty on Mutual Judiciary Support in Criminal Matters between Portugal and Mexico, of 20 October 1998 (Article 3 (8) (d)); of the Treaty on Extradition between Portugal and Mexico, of 20 October 1998 (Article 4 (3) (d)); of the Treaty on Extradition between Portugal and Tunisia, of 11 May 1998 (Article 3 (2) (a)); of the Treaty on Mutual Judiciary Support in Criminal Matters between Portugal and Tunisia, of 11 May 1998 (Article 3 (5) (a)); of the Agreement on Legal and Judiciary Cooperation between Portugal and Cape Verde, of 2 December 2003 (Article 33 (2) (a)); of the Agreement on Mutual Judiciary Support in Criminal Matters between Portugal and Argentina, of 7 April 2003 (Article 4 (2) (a)); of the Convention on Mutual Judiciary Support in Criminal Matters between Portugal and Algeria, of 22 January 2007 (Article 3 (1) (d) (i)); of the Convention on Extradition between Portugal and Algeria, of 22 January 2007 (Article 4 (e) (i)); of the Extradition Agreement between Portugal and India, of 11 January 2007 (Article 4 (1) (c) (i)); and of the Convention on Extradition between Portugal and Morocco, of 17 April 2007 (Article 3 (1) (i) (i)).

69. Portugal is equally a party to a number of other treaties offering legal basis for extradition, namely the European Convention on Extradition and its two Additional Protocols, the Convention relating to extradition between the Member States of the European Union and the Convention Implementing the Schengen Agreement, and has celebrated bilateral treaties in this regard, namely with Botswana, Argentina, Bolivia, Brazil, the United States of America, China and Australia.

70. In addition to the above mentioned instruments, other treaties were signed with regard to judiciary cooperation in criminal matters which could also apply in relation to offences covered by the Optional Protocol, inter alia the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and its Protocol, the European Convention on Mutual Assistance in Criminal Matters and its two Additional Protocols, as well as bilateral treaties with Spain, France, Mali, Morocco, Sao Tome and Principe, Brazil, Canada, China and Australia. On 22 April 2002, an Agreement on Police Cooperation was signed between Portugal and South Africa, providing, inter alia, for cooperation against the illicit trafficking in firearms, ammunitions, explosives and chemical substances, including radioactive materials.

71. As said above, Portugal is a party to the Rome Statute of the International Criminal Court, as well as to the United Nations Convention against Transnational Organized Crime and its Protocols to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and against the Smuggling of Migrants by Land, Sea and Air. The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition was signed on 3 September 2002 but is yet to be ratified. Furthermore, we recognize the European Arrest Warrant pursuant to Act 65/2003, of 23 August (which applies to crimes within the jurisdiction of the International Criminal Court)

and are parties to the Convention on the establishment of a European Police Office (EUROPOL).

72. However, no requests for extradition related to the offences referred to in the Optional Protocol were submitted to the Portuguese authorities over the reporting period, nor has Portugal made any request related to the same offences. Therefore, there is nothing to report concerning judicial cooperation with other States in this regard.

## **V. Protection, recovery and reintegration (art. 6, para. 3)**

73. Given that offences prohibited by the Optional Protocol are not taking place in Portugal, information provided under this section would concern primarily refugee and asylum-seeking children subject to our jurisdiction. We shall indicate the legal framework and measures applicable to children victims of the offences prohibited by this Optional Protocol who would seek asylum in Portugal, despite the fact that, according to the Portuguese Council for Refugees, no such child has sought asylum in our country over the reporting period. Thus, presently there are no children victims of the offences prohibited by this Optional Protocol under the jurisdiction of Portugal.

74. The conditions and procedures for granting asylum and subsidiary protection, and the statute of asylum-seekers and refugees, are governed by Act 27/2008, of 30 June, which transposed into the Portuguese legal order Council Directives 2004/83/CE and 2005/85/CE and contains a number of provisions concerning the protection of children. Under Article 5 of Act 27/2008, of 30 June, acts committed specifically against children (as well as, *inter alia*, war crimes) are described as acts of persecution likely to justify the granting of asylum. Children and unaccompanied children are considered “particularly vulnerable persons” with special needs (Article 2 (1) (r)) and can submit a request in their own behalf (Article 13 (5)). In this case, they shall be represented by the Portuguese Council for Refugees (Article 16 (4)). They can also benefit from advice from UNOHCR or the Portuguese Council for Refugees, at any stage of the proceedings (Article 49 (4)). The situation of particularly vulnerable persons must be taken into account in the provision of accommodation and healthcare and the competent authority has the duty to identify such persons, at the time of submission of an asylum request or at any other moment (Article 77). It is expressly stated that the temporary settlement of unaccompanied or separated children must fulfil special conditions, “in the terms internationally recommended, namely by UNHCR, UNICEF and the International Committee of the Red Cross” (Article 26 (2)).

75. In accordance with Article 47 of this Act, 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 Portugal’s international obligations. All asylum-seekers enjoy a number of procedural guarantees, namely the rights to information, access to an interpreter and legal aid. It should be noted that appeals lodged with judicial authorities against decisions of the administration that reject asylum requests now have suspensive effect, and the person cannot be expelled until a decision is taken by a competent court.

76. Refugee and asylum-seeking children have the right of access to the education system in the same conditions as national citizens and of other citizens for whom Portuguese is not their mother tongue and the possibility to pursue secondary education cannot be denied because the child has attained majority (Articles 53 and 70). The accommodation of asylum-seeking children must ensure the protection of their family life and, if applicable, they shall stay with their parents or responsible person (Article 59) and must benefit from appropriate healthcare and social support (Article 56 (2)) Refugee children have the right of access to the National Health Service in the same conditions as

national citizens and children suffering the effects of an armed conflict are among those considered as having special needs in this regard (Article 73). It should also be noted that, in accordance with Decree Law 67/2004, of 25 March, 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.

77. In the same vein, and under the new legal framework on the entry, stay, exiting and removal of foreigners from national territory (Act 23/2007, of 4 July, regulated by Regulatory Decree 84/2007, of 5 November), 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. Residence permits can now be granted, on an exceptional basis, due to humanitarian reasons.

78. Refugees have the right to family reunification, which can be claimed by the following relatives: 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 are jointly examined and their granting implies the automatic granting of visas to family members staying abroad.

79. Act 27/2008, of 30 June establishes in its Article 78 that its provisions shall apply taking into consideration the best interest of the child, namely the desirability of the child's placement with his or her parents or, in their absence, with reliable adult relatives, or in foster families or specialized centres, as well as the importance of not separating siblings and of guaranteeing a stable life to the child, with the minimum possible changes in the place of residence (Article 78 (1) and (2)). Children victims of any form of abuse, neglect, torture, cruel, inhuman or degrading treatment or armed conflict must have access to rehabilitation services, as well as to an adequate psychological assistance by qualified staff (Article 78 (3)).

80. Without prejudice to their representation by the Portuguese Council for Refugees, unaccompanied refugee or asylum-seeking children can benefit from applicable child protection measures (for further details, see the third periodic report on the implementation of the CRC) – Article 79 (1). The needs of these children must be taken into consideration through their tutor or designated representative, and periodically evaluated by the competent authorities; the child's views should be taken into account, in accordance with his or her age and maturity (Article 79 (2)). Unaccompanied children aged 16 or above can be placed in facilities for adult asylum-seekers (Article 79 (4)).

81. The Foreigner and Borders Office and the Ministry for Foreign Affairs should make all efforts to find the family members of unaccompanied children (Article 79 (5)) and in case the child's or his or her close relatives' life or physical integrity are at risk, namely if they stayed at the country of origin, the processing and diffusion of information relating to such persons are confidential, to avoid compromising their safety (Article 79 (6)). Furthermore, according to Article 79 (7), staff working with unaccompanied children must have an adequate training to meet their needs and is subject to a duty of confidentiality concerning information they become aware of in the exercise of their duties. Finally, a special treatment adequate to the damages sustained by victims of acts of "serious violence" must be accorded to these persons, namely through special attention and follow-up by the district centres of the Institute for Social Solidarity, health services or entities with which

protocols have been celebrated for this purpose (Article 80), namely the Portuguese Council for Refugees (CPR).

82. CPR is a Non Governmental Organisation created in 1991. It plays a fundamental role in asylum proceedings initiated in Portugal – namely through the provision of legal advice to all asylum-seekers and the representation of children in asylum-seeking proceedings. Since 1998, CPR represents the UNHCR in our country. CPR signed several protocols with the Portuguese government (namely the Ministries for Internal Affairs and of Labour and Social Security) in order to ensure the legal and social protection of asylum-seekers and refugees, including children. It implements projects to welcome and integrate these persons, namely projects funded by the European Refugee Fund and by Community Initiative EQUAL (in this context, a partnership was established with the Institute for Solidarity and Social Security, the Professional Training Centre for the Food Sector and a Lisbon Charity (*Santa Casa da Misericórdia de Lisboa*)).

83. CPR strives to ensure the full integration of refugees and asylum-seekers in the civil, labour and cultural life of society and provides them with information and counselling, assistance concerning food, transportation, documentation, communications and emergency subsidies, access to education and healthcare, the teaching of the Portuguese language (having developed education materials for this purpose, available on-line) and education on the use of the Internet. It also develops information and awareness-raising activities, inter alia, by promoting the celebrations of the World Refugee Day, publishing and making available educational materials, and organising workshops at schools and universities, as well as international congresses and e-learning courses. A course on “The Right of Asylum and Refugees” is taught in the Law School of Oporto Catholic University.

84. CPR built a centre for the temporary accommodation of refugees and asylum-seekers with the view to improve the reception and integration of these persons. This Centre aggregates a number of services offered to refugees and asylum-seekers and strives to strengthen the ties between such persons and the rest of society, namely through the development of joint activities. This Centre is equipped with a day care and kindergarten which can be jointly used by refugee children and other children, with the view to promote a multicultural and unbiased education. Children can enrol permanently or occasionally participate in several activities. The day care and kindergarten also supports families and educators through education sessions and workshops, family support services and the organisation of parties.

85. In recognition of the special needs of refugee and asylum-seeking children, a campaign is underway to build a specific centre for these children. A Protocol to this effect was signed in July 2009 between CPR, the municipality of Lisbon and a watch company. A bank, a private foundation, one TV station and a publicity firm are also participating. This Centre will be located in Lisbon, in a building offered by the municipality, and is intended to improve the reception of unaccompanied children and to implement, through Programmes for Re-installation in Portugal, the reception of children with special medical needs. Donations can be made in money or through the acquisition of a watch specially designed for this campaign.

86. Furthermore, refugees and stateless persons holding a temporary residence permit are entitled to family allowances pursuant to Decree-Law 41/2006, of 21 February (which amended Decree-Law 176/2003, of 2 August). The new protection scheme for eventual costs with family dependents integrates national and foreign citizens, refugees and stateless persons residing in national territory which fulfil the general and specific conditions for these allowances and no longer depend on the existence of contributory careers.

87. Other measures worth mentioning in this regard are: the development of guidelines for Non-Mother Tongue Portuguese in the 3rd cycle of basic education and for Portuguese

as a Foreign Language in secondary education, aiming both at the new pupils from migratory flows and at other specific school publics; measures to ensure equality in access to education, namely a new legal framework for providing special care for children and young people with special educational needs and measures aimed at pupils who are blind, partially sighted, deaf or suffering from multi-handicaps; the adoption of policy measures 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, sports, insertion of immigrant descendants and family reunion; the adoption of measures in the areas of combating racism and discrimination, religious freedom, immigrant association, media, citizenship and politic rights, as well as measures to promote gender equality and the fight against human trafficking.

88. Refugee and asylum-seeking children can also benefit from a range of other measures and programmes in place to promote social inclusion and integration. For more information, please consult the third periodic report of Portugal on the implementation of the CRC.

89. No specific remedies or reparations have been established for children victims of military recruitment. For information concerning the child’s standing and rights within criminal and civil proceedings, please consult the third periodic report of Portugal on the implementation of the CRC.

## **VI. International assistance and cooperation (art. 7, para. 1)**

90. As indicated above, no requests for cooperation in the investigation of activities contrary to the Optional Protocol have been submitted to the Portuguese judiciary authorities over the reporting period.

91. Regarding cooperation with international tribunals for the punishment of recruitment or participation of children in armed conflict, Portugal has a great concern on this issue and has always supported initiatives aimed at tackling this huge problem. It should be recalled that Portugal is a Party to the Rome Statute of the International Criminal Court and adopted Act 102/2001, of 25 August, setting out rules on cooperation between Portugal and the International Criminal Tribunals for the former Yugoslavia and for Rwanda.

92. Acts of intermediation of military goods and technologies, practised in Portugal and abroad, require the authorisation of the Minister of Defence. This authorisation shall be refused in cases where there are substantial grounds to believe that the military goods and technologies involved might be used in the practice of, inter alia, war crimes foreseen in the Statute of the International Criminal Court or other crimes provided for in the rules of international humanitarian law (Article 17 (e) of Act 49/2009, of 5 August).

93. The legislative framework and the national policy for the export of military equipment and small arms and light weapons (SALW) should be mentioned in the framework of the prevention of the activities contrary to this Protocol (article 7, paragraph 1). The export of military equipment is subject to a permit issued by the Licensing Authority at the Ministry of Defence. The export of SALW also requires a licence from the Ministry of Defence or the Ministry of the Interior, depending on whether the weapons are for military or civilian use. Transit, re-export and brokering are governed by the same rules of export, thus requiring a permit from the licensing authority. All applications are considered on a case-by-case evaluation, based on an overall assessment. Each application is considered by the Ministry of Foreign Affairs, in the light of foreign policy interests, including observation of the criteria enshrined in the European Union Council Common Position 2008/9944/CFSP, namely:

- (a) Respect for the international commitments of Member States, in particular the sanctions decreed by the UN Security Council or the European Union, agreements on non-proliferation and other subjects, as well as other international obligations;
- (b) Respect for human rights in the country of final destination as well as respect by that country of international humanitarian law;
- (c) Internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts;
- (d) Preservation of regional peace, security and stability;
- (e) National security of the Member States and of territories whose external relations are the responsibility of a Member State, as well as that of friendly and allied countries;
- (f) Behaviour of the buyer country with regard to the international community, as regards in particular its attitude to terrorism, the nature of its alliances and respect for international law;
- (g) Existence of a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions;
- (h) Compatibility of the arms exports with the technical and economic capacity of the recipient country, taking into account the desirability that states should achieve their legitimate needs of security and defence with the least diversion for armaments of human and economic resources.

The criteria of the Common Position are taken into account as a minimum standard for the assessment of licence applications. Therefore licence applications will not be granted if the behaviour of the buyer country is not in conformity with international human rights and humanitarian standards. Consequently, the breach of the provisions of this Protocol would determine a refuse of an arms licence.

94. The European Union Common Position, adopted on 8 December 2008, replaced the EU Code of Conduct on Arms Exports and is now legally binding for all EU Member States. The national legislative framework in place includes Law 5/2006 which establishes a comprehensive regime that applies to all categories of small arms and light weapons, excluding only those for military use and for armed and security forces. This Law, as modified by Law 17/2009 of 6 of May, establishes in Article 60. (7), the need to consult the Ministry of Foreign Affairs before granting an arms export licence. The MFA analyses each request against the provisions of the EU Common Position and its decision is mandatory, according to Article 60. (8).

95. Acts of brokering of military goods and technologies, practiced in Portugal and abroad whenever carried out by nationals or brokers resident or established in Portugal, require the authorisation of the Minister of Defence, according to Law 49/2009, of 5 August. The obligation to consult the MFA is foreseen in Article 23. (2). This authorisation shall be refused if the transaction is not compatible with the criteria of the EU Common Position (Article 17. c)). Although the respect for humanitarian law is already covered by the criteria of the EU Common Position, Article 17 (e) specifies that the licence will be refused in case there are substantial grounds to believe that the military goods and technologies involved might be used in the practice of, inter alia, war crimes foreseen in the Statute of the International Criminal Court or other crimes provided for in the rules of international humanitarian law.

96. The law regulating the export of military equipment is currently being revised and will soon be adopted. It will also incorporate the criteria of the EU Common Position, thus

completing the legislative framework on arms exports. However, the assessment currently carried out by the MFA (foreseen in Article 2. (2) of DL 371/80) is already based on the evaluation of the criteria of the EU Common Position.

97. Portugal has supported the establishment of the mandate of Special Representative of the Secretary-General for Children in Armed Conflict and fully supports her work. To date, we have not received any requests for cooperation with this mandate, but stand ready to cooperate whenever that is requested. The situation in Portugal has not been identified in reports of the Secretary-General to the Security Council in accordance with resolution No. 1612 (2005).

## **VII. Other legal provisions (art. 5)**

98. As indicated above, Portugal does not allow the compulsory recruitment of children into its armed forces, nor the participation of children in hostilities. We consider that the legal framework concerning voluntary recruitment into the armed forces is more conducive to the realisation of the rights of the child than the provisions of the Optional Protocol, in particular its Article 3.

99. In addition to this Optional Protocol, ILO Convention No. 182 and the Rome Statute of the International Criminal Court, as well as other instruments referred to above, Portugal is a party to the four Geneva Conventions of 12 August 1949 (since 14 March 1961) and their two Additional Protocols of 1977 (since 27 May 1992), to the Convention on the Prevention and Punishment of the Crime of Genocide (since 9 February 1999), to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (since 15 May 1975), to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (also with the amendment to Article 1) and its Protocols on Non-Detectable Fragments, on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (also as amended on 3 May 1996) and on Prohibitions or Restrictions on the Use of Incendiary Weapons (since 4 April 1997), to the Protocol on Blinding Laser Weapons (since 12 November 2001), to the Protocol on Explosive Remnants of War (since 22 February 2008), to the Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction (since 10 September 1996) and to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (since 19 February 1999).

100. As a member of the European Union, Portugal also fully supports European action in preventing, combating and remedying the practices prohibited by this Optional Protocol, notably the implementation of the EU Guidelines on Children and Armed Conflict. We equally support the efforts of OSCE and NATO in this regard and in boosting women's role in peace and security.