

# TREATY BODY MONITOR

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Human Rights Monitor Series

## COMMITTEE AGAINST TORTURE 39<sup>TH</sup> SESSION PORTUGAL, 4<sup>TH</sup> REPORT 14-15 NOVEMBER 2007

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### Information submitted to the Committee

Portugal submitted its 4<sup>th</sup> periodic report to the Committee Against Torture ('the Committee') on 21 March 2005. This report was made available on 31 May 2005.<sup>1</sup> Portugal last came before the Committee in 2000, when it submitted its 3<sup>rd</sup> periodic report for consideration. The present report covers the period 2000-2004, and addresses the issues of the definition of torture, the punishment of torture, guarantees under the criminal procedure, the prison system, and the right to compensation. The State provided some specific information and statistical data on these various topics.

After having studied the report, on 9 July 2007, the Committee provided its list of issues to the State.<sup>2</sup> The Committee put forward questions regarding the implementation of a number of articles of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* ('the Convention'). The Committee showed particular concern about the extradition of foreigners and the principle of non-

<sup>1</sup> CAT/C/67/Add.6, 31 May 2005, available at <http://www2.ohchr.org/english/bodies/cat/cats39.htm>

<sup>2</sup> CAT/C/PRT/Q/4, 9 July 2007, available at <http://www2.ohchr.org/english/bodies/cat/cats39.htm>

refoulement.<sup>3</sup> It asked for detailed information on existing legislation and on the treatment of foreign detainees. The Committee also asked for examples of complaints and cases concerning requests for diplomatic assurances. Another area which the Committee asked many questions about was the rules, instructions, methods and practices relating to interrogation. The issues raised include incommunicado detention, the right to contact a third party, the length of pre-trial detention, police violence and overcrowding in prisons. Other questions concerned the criminalisation of torture, education and training of public officials and medical personnel, the system of investigations and complaints, redress, and the effect of anti-terrorist measures on human rights safeguards. The Committee also asked whether Portugal envisages the ratification of the Optional Protocol, as well as whether Portugal has legislation relating to equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment. The State submitted written replies to the list of issues on 7 September 2007.<sup>4</sup>

Only one non-governmental organisation (NGO) submitted a report to the Committee. The Global Initiative to End All Corporal Punishment of Children submitted a one-page document on the legal and practical situation of corporal punishment in Portugal.<sup>5</sup> This report highlighted the concern raised by the Committee on the Rights of the Child and the European Committee of Social Rights about the lack of legislation prohibiting corporal punishment in the home.

## Themes and issues

Portugal's delegation was headed by Mr Francisco Xavier Esteves, Permanent Representative of Portugal to the United Nations Office at Geneva. He was supported by staff from different services and ministries. The Committee's dialogue with the State was led by the two country rapporteurs, Mr Fernando Mariño Menendez and Mr Guibril Camara.

Mr Esteves opened by paying tribute to the work of the Committee and reiterating his Government's commitment to work against torture. He pointed to the care that has been taken in preparing the present report and the delegation as examples of the regard that the Portugal pays to the Committee. Mr Esteves explained that the report was prepared by the Documentation Office and Comparative Law Office of the Attorney-General, with close cooperation with a number of State departments. He emphasised the fact that these bureaux are not directly dependent on the Government. In the final part of his statement, Mr Esteves highlighted a number of "important changes" which have taken place in Portugal since the report was submitted in 2004. He covered, *inter alia*, the restructuring of police units, conditions for the use of firearms, training of police officers, and the dissemination of information about the Convention and the Committee.

### Definition of torture in domestic law

In its report, the State quoted the definition of torture in the Portuguese Penal Code. Under domestic law, torture is considered as "a crime against peace and humanity", and both its commission and the failure to report its commission are punishable. The State asserted that "the definition of torture in the Penal Code is thus very close to that contained in the Convention".

However, the Committee disagreed with this assertion. First, Mr Menendez pointed out that the definition of torture in Portuguese legislation does not cover all forms of torture as defined in the Convention. For example,

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<sup>3</sup> This is a principle of international law which is clearly stated in international instruments, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 3). It prohibits the State from expelling, returning or extraditing a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

<sup>4</sup> CAT/C/PRT/Q/4/Add.1, available at <http://www2.ohchr.org/english/bodies/cat/cats39.htm>

<sup>5</sup> Available at <http://www2.ohchr.org/english/bodies/cat/cats39.htm>

torture for any reason based on discrimination of any kind is not included in domestic law. Second, torture does not have to be a general and systematic attack on civilian populations (a generally accepted definition of a crime against humanity). In relation to this point, Mr Menendez asked whether, apart from dealing with torture as a crime against humanity, the State also considers it as an independent crime. Third, Mr Camara stated that the definition in the Convention refers to the element of acute pain, whereas the Portuguese definition appears to refer only to injuries. This has implications for the issue of TaserX26 weapons, which are discussed below. Following on from these comments, Ms Belmir recommended that the State make consistent the terminology used to define torture in domestic law with that contained in the Convention.

In response to Mr Menendez's question on torture based on discrimination, the State replied that in such cases, other articles in the domestic law can be applied. On the notion of torture as a crime against humanity, it pointed to the new Penal Code which has been approved this year. In this document, the crime of torture has been inserted under cultural identity and personal identity, instead of under crimes against humanity. Thus, in the new Penal Code, torture is related to physical integrity rather than crimes against civilian populations. The State further affirmed that the relevant article of the Penal Code is sufficiently clear to understand distinctions between different types of acts of torture. The State also reiterated the need to distinguish between torture and other forms of degrading treatment, a distinction that is made in the European Convention of Human Rights.

### **Criminalisation of torture**

In its periodic report, Portugal provided a list of crimes which the judicial police is solely responsible for investigating. Furthermore, in compliance with the Committee's request, the State provided information on the number and nature of cases in which the provisions of the criminal legislation concerning crimes such as attempted torture have been applied since its last report in 2000. In its introductory remarks, the delegation asserted the obligation of the public security police to participate in any criminal pursuits on police abuse.

Several Committee members underscored the fact that the list of crimes which the judicial police is responsible for investigating does not include torture. Mr Menendez asked why, if the list includes crimes against peace and crime against humanity, it does not cover torture. Mr Grossman asked how an individual accused of torture will be treated, given the fact that the judicial police is not empowered to investigate such acts. Furthermore, Ms Sveaass asked whether this list of crimes is a European Community list. On a separate issue, Mr Menendez asked how crimes that constitute inhuman treatment (sexual abuse of children, trafficking of persons) are criminalised in the criminal code.

In its reply, the delegation began by pointing out that there is an ongoing debate between those who would like to reduce the number of crimes on the said list and those who are calling for a European Code, which would contain financial crimes and terrorism. It then discussed the Framework Decision of the European Union, which concerns reciprocity, not common crimes. For Portugal, this centres on making the procedures simpler so as to improve communications among the judicial systems and the European Union. The list of crimes for which the judicial police is responsible for investigating is relevant where there is a question of double-criminality, which is typical for extraditions. This is "much more efficient than extradition", and only the magistrate may issue the arrest.

### **Types of detention**

Under Portuguese legislation, there are several types of detention. The distinctions between these, as well as their inconsistency with international human rights obligations, were picked up by the Committee. The first of these is detention for purposes of identification. Mr Menendez asked for clarification on the procedure for this type of detention. Mr Camara pointed out that it is usually people who are suspected of a crime who are asked for identification. Thus, the problem arises that this type of detention delays the time of custody. He recounted that in some countries this time is subtracted from the time of *guard aveugle*, and asked what the case is in Portugal. On the same issue, Mr Mavrommatis voiced his concern about alleged mass arrests of suspected

illegal immigrants. He asserted that this is contrary to the principle that arrests and identification should be done on an individual basis, and warned that States have to be careful about this kind of abuse by their forces.

Another type of detention which was noted by the Committee is preventive detention. In Portugal, preventive detention is used for all individuals who have not been sentenced. Mr Menendez expressed his concern that this terminology has led to confusion, and that this type of custody “can be extended unduly”. Ms Belmir commented that a clearer definition of this concept is necessary, as anywhere else in the world, someone who has been tried can no longer be held in preventive detention. She also reiterated the expediency of harmonising the use of this term with instruments such as the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,<sup>6</sup> pointing out that the draft legislation in process offers a good opportunity for doing this.

A third type of detention which was discussed is incommunicado detention. Mr Menendez asked how long this can last legally, and whether there is any control over this instrument. He also inquired whether there are greater incidents of torture, inhuman or degrading treatment when a person is being detained in a location being controlled by the police. Mr Grossman noted that in detaining an individual, it is the responsibility of the competent authority to establish a measure that is least limiting of his freedom and least intrusive. He thus asked whether there exists a guideline for such authorities, outlining the legal criteria and different factors that need to be borne in mind in placing an individual in detention.

In response to these points, the State outlined the three situations in which an individual may be deprived of his liberty: (1) identification purposes, (2) detention, and (3) preventive custody. On the alleged mass identification procedures, the State replied frankly that there is no such thing in Portuguese law or practice. It also stressed that arrest for identification is a very exceptional measure, and enumerated the ways in which an individual can prove his identity. The State also referred to the rules on material conditions in police stations and rights of detainees. These are guidelines with great legal force and cover areas such as prison conditions, access to family, legal counsel and doctors, and the maintenance of detention records by the police. The State went on to explain the difference between detention for criminal proceedings and pre-trial detention. It also stipulated that since the legislative reforms of September 2006, incommunicado detention is only possible if the person under detention is suspected of terrorism, or violent or organised criminality. In such a case, the public prosecutor may impose incommunicado detention for a maximum of 48 hours, but only before the suspect is presented to the judge. During this time, the detainee’s right to be assisted by a legal advisor is maintained. The State also gave an overview of the time limits for pre-trial detention, and explained that the practice of pre-trial detention is based on the principle of presumption of innocence until conviction.

Apart from the questions concerning the different types of detention, Mr Menendez asked for further information about the laws concerning detainees in temporary facilities in airports or at the border. He specifically asked about the role of the border police when individuals are considered to be suspects of contraband, smuggling, drug trafficking or other crimes. Mr Grossman also highlighted the use of the word “reasonableness” by the State to define the time limit for the detention of a foreigner, and asked how it has developed this notion.

The State corrected Mr Menendez on his assumption about individuals detained at airports. It proclaimed that individuals suspected of narcotic crimes are not placed in airport centres. Such centres are solely designed for the temporary lodging of foreigners who are not admitted into Portugal.

### **Prison conditions**

In its opening statement, Portugal referred to a ministerial decree on the physical conditions of detention. It went on to explain that 140 places of detention had been closed down because they did not meet the required

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<sup>6</sup> Available at: <http://conventions.coe.int/Treaty/en/Treaties/Html/126.htm>

criteria. When an individual is detained, there is an obligation on the police to record details of his arrest and detention in a registration book. The detainee has the right to contact a family member, the right to private consultations with a lawyer, as well as the right to be examined by a doctor of his choice. Furthermore, any place of detention is subject to inspection by the Inspectorate-General of Internal Administration (IGAI).

Mr Grossman recounted that when the Human Rights Committee examined Portugal, progress in the keeping of registries had been noted. However, no update on this issue was given to the present Committee. Thus, he asked if this is because this problem has been resolved, or if it is due to an oversight. Ms Belmir inquired about the role of the Ministry of Justice and the Office of the Prosecutor in the inspection of detention facilities.

The State admitted that during visits carried out in 2005, IGAI had noticed a number of serious shortcomings in the maintenance of recording books. However, during visits in 2006, these shortcomings were not noticed. From this, the State inferred that “the fact that we noticed these [shortcomings] and then corrected them shows that the system is working”. The State also described a number of changes which were introduced in Oporto Central Prison to improve the detention conditions. In reply to Ms Belmir, Portugal explained that prison inspections are under the control of both internal and external bodies. In Lisbon, the judge has direct private conversations with the inmates. Inmates have the right to demand a hearing in the registry book, which the judge has a duty to hear.

### ***Inter-prisoner violence***

Ms Gaer, noting the concluding observations of the Human Rights Committee [from which session? footnote] and the report of the European Committee for the Prevention of Torture, asked for an update on inter-prisoner violence, especially with regard to sexual violence.

The State reaffirmed its view that inter-prisoner violence is usually drug-related, and that tackling this issue involves a wide range of measures. These include the free distribution of condoms, tattooing and piercing material, and sanitary materials, as well as needle-exchange programmes and universal screening tests. Stronger measures to prevent drug trafficking from visitors, more video surveillance, and more specific programmes of detoxification have also been introduced. There is a protocol with the Ministry of Health to maintain such programmes. On sexual violence amongst inmates, the State assured that legal proceedings are exercised whenever such an act occurs.

Mr Kovalev asked the State to clarify the responsibility, if any, that the administration of the prison bears in relation to the issue of drugs. He observed that it is difficult to bring drugs into a prison without the help of the administration. The State did not comment on this point.

### ***Diseases and deaths in prison***

Ms Gaer raised the issue of diseases and deaths in prison. She emphasised that HIV/AIDS is spread both through drug use, as noted by the State in its report, as well as through sexual contacts. She therefore asked if the State monitors such issues, and if there are any plans to implement policies in this regard. Furthermore, Ms Gaer asked for findings on the reasons for the dozen or more annual suicides in custody.

In reply, the State quoted a set of data showing a decreasing trend in the number of deaths in prison. It explained that special care is taken of inmates when a risk of suicide is identified. On the issue of HIV/AIDS, the delegation stated that all inmates under the age of 40 undergo universal screening tests when they enter a prison. The State also quoted the amount spent on retroviral medication from 2004 to 2006.

## ***Overcrowding in prisons***

Ms Gaer commended the State on its efforts to reduce overcrowding in prisons. However, she observed that from the statistics provided in the report, it appears that the situation is far from resolved. She noted that there was a decrease in overcrowding in the women's prison and asked whether there is any particular reason for this. Mr Kovalev enquired about concrete measures which are envisioned to remedy the situation of overcrowding. He asked about planned reforms of prison facilities, and whether there is a time limit for the realisation of these measures.

The State responded that there is now a decreasing trend of incarceration, and that this is solving overcrowding problems. The delegation stated that in Portugal, handling overcrowding is not so much a policy of building new prisons, but more of an issue related to the criminal and penitentiary police. The State provided information on the opening of women's prisons in reply to Ms Gaer's question. In reply to Mr Kovalev's question, the State briefly presented the planned construction and reform of prison facilities. It also touched upon the adoption of the idea of building prisons under a predefined model.

## **Treatment of detainees**

### ***Ill-treatment by prison staff and police violence***

The Code of Ethics of the National Republican Guard and the Public Security Police was outlined in the State report and discussed during the session. This is a system of self-regulation of the use of force by the police. Mr Grossman asked what body is responsible for supervising the fulfilment of this Ethical Code, and whether there are cases when it has been implemented. Ms Gaer expressed her concern about alleged abuse by prison guards against detainees, and requested information on the results of criminal investigations into the death of a specific individual.

The State provided a website which contains information on complaints against the police.<sup>7</sup> It pointed out, however, that abuses of authority are covered rather than torture as such. The delegation then recited and compared a number of statistics on the number of complaints, and concluded that the significant decrease "may reflect better behaviour on the behalf of police officers". Furthermore, the State stressed that Portuguese law does not allow the handing over of public security activities to private security companies. Such companies are closely monitored by IGAI. Moreover, IGAI is obliged to notify the prosecutor's office of any facts which are relevant to a given criminal case and to provide evidence when so requested. The State explained that violations of the principles enshrined in the Code of Conduct entail disciplinary offences, and consequently give rise to disciplinary prosecution. The State also provided details on the specific case of alleged ill-treatment referred to by Ms Gaer<sup>8</sup> and explained that whenever there is a suspected case of torture, the alleged victim undergoes a mandatory forensic exam. When a complaint is dismissed, the victim appealing to the investigative judge is able to force a trial and challenge its dismissal.

### ***The use of firearms by policemen***

Of particular concern to the Committee was the acquisition of electronic TaserX26 weapons by the Public Security Police. In its report, Portugal explained that "these weapons offer the advantage of loosing an electric discharge which causes pain to and temporarily and totally immobilises the recipient while not causing injury and averting struggles which might harm the subject of the action or the police forces themselves". However, Committee member Ms Belmir urged caution, warning that Taser weapons carry a lot of risks. She pointed

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<sup>7</sup> The website was provided as <http://www.tgpg.mg.pt>

<sup>8</sup> Seven officers were tried, but the court decided not to convict them because there was not enough evidence. The inmate himself found it difficult to identify the officer responsible for the alleged ill-treatment. The sentence is now under appeal. The disciplinary procedure, which is separate from the criminal procedure, is now proceeding with full independence and with full appreciation of the facts under the law.

out that there are documented cases of death resulting from the use of such weapons. On a separate issue, Mr Grossman referred to the concluding observations of the Human Rights Committee in 2003 on Portugal, which highlighted issues such as race and gender-related crimes by the police. He asked whether investigations have been made on those cases and whether individuals have been sentenced.

In its oral reply, Portugal asserted that neither its report nor its written replies infer “any type of satisfaction from the use of these [Taser] weapons”. It affirmed that the use of Taser weapons will be regulated by the rules on coercive measures (legality, necessity, appropriateness, proportionality). Furthermore, it explained how the weapons bought by the Public Security Police and the Director General will be distributed among the different units. It stressed that these weapons will only be used when the use of firearms will be much more critical, or when there is a danger to the life of someone involved, and that officers will be properly trained to use them. In general, when a firearm is used, it is compulsory to draw up a report and to have an investigation systematically carried out whenever this leads to a death or bodily injury. IGAI has just completed a case study on the use of firearms during car chases. In response to this report, the Ministry of the Interior recommended that the police should not use firearms during car chases, as the costs of such use are much greater than the advantages derived there from. In response to Mr Grossman’s concern, the State referred to the minority strategy of police forces, which includes affirmative action in police-recruitment policies. It also discussed a practical problem which it faces in this regard, namely that very few members of the Roma community currently meet the required criterion of 12 years of schooling in order to apply. The State further drew attention to the efforts it is making to take into account gender issues, such as the maintenance of a special women and children unit in the gendarmerie. It also pointed to the fact that there has been a substantial rise in the number of female police officers recruited into the police forces.

Ms Belmir reiterated her warning that the use of Taser weapons is “rather risky” and can lead to death or handicap. Mr Wang referred to contemporary information from the Canadian media on deaths resulting from the use of Taser weapons in North America. He thus recommended that the State put in place safeguards. At the same time, he predicted that “these weapons will be prohibited in the near future”. Mr Mavrommatis underscored the irony of how something that is portrayed as an alternative to lethal force may in fact be lethal.

### ***Training of police officers***

In its opening statement, the State presented its new organic framework for the training of agents, which was adopted in January 2007. It also described the system in place for the training of police officers. There is a Superior Institute for Police Sciences and Domestic Security as well as practical police schools. There is also a continuing education programme, which provides teaching on different duties, fundamental rights, professional ethics, social norms, and training for proximity policing. The teaching is carried out through training videos (more of which are being developed) and handbooks. These videos are distributed throughout the country, and officers are subsequently subjected to a written test. There was little subsequent dialogue on this issue, except Mr Grossman pointing out the need to make sure that there is individual responsibility when rules are violated.

### ***Asylum procedure***

The Portuguese Constitution establishes the principle of equality between Portuguese citizens and citizens of other countries. A new text codifying expulsion was adopted in July, and entered into law in November 2007. This law was drafted pursuant to Portugal’s different international commitments, and establishes a flexible regime to provide visas based on fairness, trust, and transparency. It also includes rules that facilitate family regroupment, provide for exceptional authorisations of immigration permits in cases of humanitarian situations, help voluntary return, and strengthen sanctions against those who take advantage of illegal immigration.

Mr Menendez asked the State for clarification on the appeals procedure in the case of a declined asylum request, as well as on the treatment of cases involving unaccompanied minors. He further inquired whether there is any difficulty flowing from the implementation of the principle of reciprocity under the European detention law. On diplomatic guarantees, Mr Menendez asked whether this principle is applied outside the framework of extradition. He also requested information on which countries foreigners have been returned to. Mr Grossman asked about the established practice in connection with diplomatic guarantees, and how diplomatic assurances are actually fulfilled. He also enquired whether and how access to legal counsel is provided to political asylum seekers. Ms Sveaass referred to the statistics which were provided in the written responses to the list of issues, and highlighted the low number of asylum requests compared to other countries. She inquired whether this is due to a problem in the asylum-seeking procedure. Ms Sveaass also asked whether there is a routine procedure for documentation of torture when asylum seekers arrive in Portugal.

The State described its stance on extradition, stressing that it does not extradite an individual if there is fear of persecution, the imposition of the death penalty, or an unlimited or life sentence in the State requesting his extradition. An individual may however be extradited if the requesting State agrees to commute the death sentence or changes the nature of the sentence. This may be agreed upon through informal meetings. Portugal gave the example of the extradition of an individual to India to illustrate its extradition procedure. It also stressed that it has received no complaints concerning the application of the law on international judicial cooperation. On the European arrest warrant, the State simply replied that its Supreme Court does not consider that the reciprocity principle applies. In relation to compulsory removal and appeal, the State described three situations in which this may occur. It further explained that as this is an administrative procedure, it is susceptible to legal and fiscal appeal. The State also described the role of the Portuguese Refugee Council, a national NGO that represents the UN High Commissioner for Refugees, in the asylum procedure. Furthermore, the State gave details on the time that individuals may be detained at each stage of the process. The State also gave a brief overview of its treatment of asylum requests from unaccompanied minors in reply to Mr Menendez's question. It further affirmed that asylum applicants have the right to a barrister, legal aid, and translation as necessary. On diplomatic guarantees, the State explained that it has not adopted a list of 'safe countries', as such a method is not flexible enough to take into account political and other changes each country. In determining whether an individual may be returned to a given country, the State takes into account all sources of information, including the UN, ambassadors, NGOs, and the media. It mentioned that diplomatic guarantees have never been asked for so far. Finally, the State also provided statistical data on the countries to which individuals have been returned.

Mr Menendez questioned the wording used in the State's written replies on the issue of consular rights of detained foreigners. He pointed out that the wording used in the Spanish version does not fully reflect the obligatory nature of the State's provision of this right.<sup>9</sup> Mr Menendez and Mr Grossman asked for further clarification on the accelerated procedure for asylum seekers. In reply, the State briefly gave information on its coercive expulsion procedure, consular and diplomatic assistance, and the procedure followed when a new asylum seeker is received.

### **Universal jurisdiction**

In its report, the State provided a list of crimes for which it recognises that it has universal jurisdiction. It also explained the relevant restrictions and the authorities who may exercise universal jurisdiction. In this connection, it briefly discussed a (rejected) request by an NGO for the exercise of universal jurisdiction.<sup>10</sup>

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<sup>9</sup> The English version reads as follows: "article 40, concerning the rights of a foreigner [in detention]...*accords him...the possibility* of contacting the diplomatic or consular representatives of his country" (emphasis added).

<sup>10</sup> "The request was made by the Portuguese section of the International Commission of Jurists against five members of the Indonesian army as being responsible, immediately following the 1999 referendum, for acts of terrorism, including widespread massacres. The Office of the Attorney-General nevertheless considered that the presumptions on which the exercise of universal jurisdiction is based had not been proven, thereby enabling international courts to assume jurisdiction for the trial of those crimes." (paragraph 55 of the State report).

Committee member Mr Menendez drew attention to the fact that the list of crimes for which the State recognises universal jurisdiction does not include torture. However, he assumed that this crime is covered because Portugal is a party to the Covenant. Mr Camara suggested that although the Office of the Attorney-General is autonomous, it might be more credible if universal jurisdiction is entrusted to an independent body. From his previous experience, Mr Camara was aware that the Attorney-General inevitably has links to the Government, and will thus take into account international contingencies in his decision-making.

To reply to Mr Menendez's point, the State first pointed out that new crimes have been added to the list for which it recognises that it has universal jurisdiction. It went on to state that universal jurisdiction can also be exercised in the case of a foreign official committing an act of torture in the strict legal sense, sexual coercion or rape. This provision, however, does not apply if the agent is extradited. In response to Mr Camara, the State referred to the case of the Indonesian soldiers mentioned in its report. In this instance, the Office of the Attorney General had ruled that the authority was too vague to exercise jurisdiction, and was not based on the consideration of universal jurisdiction as optional.

### **Anti-terrorist measures and extraordinary renditions**

In its written responses to the list of issues, the State mentioned its adoption of a number of anti-terrorist measures in accordance with the European Union Council Framework Decision of June 2002. These, it stressed, do not alter its human rights obligations.

Mr Grossman inquired whether the anti-terrorist legislation allows for individual complaints. He asked about the existing mechanisms that allow for this, as well as for further information in general, emphasising the "vital values" concerned. Mr Menendez raised the phenomenon of unmonitored flights by foreign services, and asked whether Portugal has detected this type of air transfer. He also asked if such an act is considered as a crime on Portuguese territory, even if it is carried out by a foreign government. Mr Grossman referred to pending investigations of the different branches of the Government on this issue, and asked about their status.

In response to Mr Grossman's last question, the delegation replied that there is a committee of experts studying this issue, and that their findings are in the public domain. Furthermore, their conclusions may lead to the adoption of a procedural handbook on issues such as the authorisation, selection, and monitoring of flights. Portugal again emphasised that "human rights and fundamental freedoms must be respected in the fight to combat terrorism". On the issue of exceptional measures which are adopted, the State declared that there is no lack of restrictions or guarantees in its penal procedure code, which applies in all cases. The only difference made to the law is the enlarged application of the notion of terrorism to include public international organisations, and to include the criminal responsibility of legal persons. It is the public prosecution and the courts, with no exceptions whatsoever, that control the application of these measures. So far, no complaints of torture by the use of this legislation have come to the attention of the Portuguese authorities. The obligation to report to the Prosecutor's office still stands, and all police branches need to act under its supervision.

### **Vulnerable groups**

#### ***Women***

Discussions on women focused on two key areas – domestic violence and trafficking. Mr Grossman stated that according to information from Amnesty International, 39 women died in Portugal as a result of domestic violence in 2006. He asked the State for its reaction to this figure, as well as for any additional information. He further inquired how the State deals with the reality that many cases of domestic violence are not reported, as well as how it ensures smooth post-reporting relations in a couple. He also asked for the number of guilty findings. Referring specifically to the trafficking of Brazilian women for sexual exploitation, Ms Gaer asked how trafficking is criminalised and how sentences are suspended. She also requested updated statistics on the

number of women trafficked, the number of prosecutions, and their outcomes. Ms Belmir asked if the State believes that the time has come to put together and implement a strategy on violence against women and children and the consequences of this.

The delegation responded that the new *Aliens Act* guarantees trafficking victims the right to stay in Portugal. For exceptional cases such as humanitarian situations, a residence permit may also be granted. In addressing Ms Gaer's concern, the delegation explained that there is cooperation between Portugal and Brazil to tackle this issue. For example, in the last few years, they have carried out coordinated campaigns and seminars on human trafficking. The Portuguese government has focused its efforts on awareness-raising and training. To Ms Belmir, the State replied that violence against women and children cannot be described as torture in the technical sense if it is not carried out by the police. Nevertheless, they are serious concerns, and Portugal is doing its best to address them. The State clarified that the article of the Penal Code which refers only to racial discrimination can in fact be applied to other forms of discrimination, such as that based on gender.

Ms Sveaass noted that despite the great efforts made to include provisions against gender-related violence in the legal system, there is still a lack of information on how investigations and reactions are put forward to those found guilty of this crime. She inquired whether there are any police training programmes specifically on domestic violence, violence against women and violence against children.

The State explained that it is currently implementing the third Plan to Combat Domestic Violence, which focuses on the strengthening of prevention measures. This is a specific programme which covers four years, and further consolidates activities to improve the protection of victims of domestic violence.<sup>11</sup> The delegation also provided data on the victims of domestic violence, and explained the legal complaints mechanisms which are available to victims. It described the existing and prospective centres for receiving victims, and pointed out that the government is working to increase the provision of services to victims. Given the small number of prisons and the possible doubt surrounding the crime, the response to domestic violence is geared towards changing the behaviour of the aggressors through, for example, social rehabilitation programmes. The State explained that it is more concerned that domestic violence be punished effectively rather than discussing whether or not it falls under the definition of torture. The State promised to provide further statistics on domestic violence at a later date.

In response, Mr Mavrommatis commented that the State cannot dismiss lightly that domestic violence is not torture. On the contrary, it is one of the most frequent forms of torture.

### **Children**

Mr Grossman commented that although the Portuguese Penal Code contains articles which prohibit bodily punishment of children, a recent decision of the European Committee on Social Rights sheds doubt on whether this provides full protection.<sup>12</sup> Ms Sveaass asked whether there is a mandatory obligation on health workers or social workers to report violence against children. She also asked whether there are any directories or compiled information on violence against children and sexual abuse, and whether there is any data gathering on this.

The State maintained that some types of corrective measures can be imposed for educational purposes of juveniles. It explained that sexual abuse of minors and trafficking are covered by the Penal Code, although not under the article relating to torture. All crimes relating to the abuse of children have different penalties depending on the involvement of family members.

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<sup>11</sup> Monitoring and supervision of the follow-up of complaints, creation of a single registry of victims, specific instructions for health facilities and support centres, models for interviewing victims, spreading of methodology.

<sup>12</sup> In May 2007, the European Committee on Social Rights upheld that Portugal was in violation of the European Social Rights Charter for not having prohibited all forms of bodily punishment for juveniles, particularly children in households.

## ***Migrants and racial minorities***

Mr Gallegos raised the issue of migration and xenophobia, and was particularly interested to know how Portugal sees the future of eliminating xenophobic tendencies. He moreover asked how Portugal addressed this phenomenon as the President of the European Union. Ms Sveaass pointed out that UN reports have referred with concern to the situation of Roma peoples, in particular the protection of their social rights and their integration. She asked the State to comment on this issue.

The delegation responded by explaining the migration policy within the EU. It highlighted the importance of dialogue and cooperation with origin countries to combat migration. The delegation stressed that racism needs to be placed in context. It went on to illustrate, through outlining four cases, that the magistrates have always been extremely prudent in their application of the concept of discrimination. As in the case of torture, they have often preferred to refer to other articles in the penal code. The State insisted that there is no type of discrimination that is not covered by law. Finally, it stressed that it is trying to do its best to fight against racial discrimination.

## **Other issues**

### ***Organ donations***

During the dialogue with the State, Ms Gaer raised the issue of organ donations and transplants, which was discussed when Portugal last came before the Committee. She asked whether it is still the case that everyone is considered to be an organ donor unless they explicitly ask not to be, and whether the existing system provides individuals an adequate opportunity to consent to such a practice. She also inquired about what is being done to publicise and report on this. She also expressed her concern about a recent article on heart and lung transplants for children in Spain with organs from Portugal. She asked for particulars on this issue.

The delegation admitted that there is a serious organ shortage in Portugal. It explained that the system currently in place is one of opting-out, where the views of the relatives are not taken into account. In relation to Spain, the delegation explained that there are agreements on a private basis between hospitals. There are two umbrella organisations dealing with the actual transfer of organs, and the laws of both countries are respected. There are other protocols that have to be followed, for example, with Swiss hospitals.

### ***NGO participation***

Mr Menendez pointed out that although the report has been carefully prepared with the cooperation of civil servants, there is no mention of NGO involvement. He also noted that “rather curiously, no NGOs have come to visit us”. He thus asked the State for its view on the role of NGOs in the elaboration of the report.

Portugal responded that it has been the habit of the Ministry of Foreign Affairs in preparing reports to UN treaty bodies to forward government reports to NGOs before submitting them to the UN. However, this did not occur with the current report because it was finished rather late, and the State wanted to respect the deadline set by the Committee. Nevertheless, several NGOs were consulted during its preparation.<sup>13</sup>

### ***Optional Protocol***

Portugal signed the Optional Protocol to the Convention in 2006. Mr Menendez asked whether the process of ratification is currently under way, and what bodies are responsible for visiting detention facilities.

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<sup>13</sup> For example, the Direction of Aliens and Borders consulted with NGOs working in the field of migration and refugees, the Directorate General consulted with Amnesty International, and the General Inspectorate also had regular contacts with Amnesty during the preparation of the report.

The State responded that consultations are taking place mainly between the Ministry of Justice and the Ministry of Foreign Affairs to prepare for ratification. However, the Ministry of Justice has had a very heavy schedule on account of the then ongoing improvement of the penal code. The delegation acknowledged that the question of the Optional Protocol has still not been dealt with, but assured that it will be in the near future.

### ***Awareness-raising***

In its introductory statement, the State drew attention to the progress it is making in spreading awareness of human rights in general, and the Convention in particular. This has been done through a number of instruments, from human rights education to creating a subsection on the website of the Bureau of Comparative Rights dedicated to the work of the Committee.<sup>14</sup> There are also ongoing projects such as the publication of fact-sheets by experts and NGOs.

### ***Core document***

Ms Gaer noted that the current core document was submitted in 1993, and is thus out of date. She inquired whether there are any plans to update this document. The State replied by making reference to the eventual elaboration of a common core document for all the treaty bodies.

### **Conclusions and next steps**

Other treaty monitoring bodies have addressed similar issues to those which were raised by the Committee against Torture in its review of Portugal. In its concluding observations in 2004,<sup>15</sup> the Committee on the Elimination of Racial Discrimination (CERD) recommended that the State investigate all allegations of ill-treatment, violence or excessive use of force by police officers, as well as that it continue to provide intensive training to ensure the respect and protection of human rights by law enforcement officers without distinction of any kind. CERD also urged the State to guarantee respect for the legal safeguards for asylum-seekers. The Human Rights Committee reviewed Portugal in 2003, and expressed its concern about police violence, detention conditions, forcible return of asylum-seekers, and the effect of anti-terrorist measures on the protection of human rights.<sup>16</sup>

The Committee set 30 December 2011 as the date for the submission of the sixth periodic report of Portugal. The Committee requested that the State submit within one year information on the follow-up given to a few of the Committee's recommendations in the present concluding observations.<sup>17</sup>

*Last revised and updated: 28 January 2008.*

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<sup>14</sup> This includes an explanation of the major articles of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, basic information on the Committee Against Torture, previous reports, reports of meetings, and concluding comments of the Committee.

<sup>15</sup> CERD/C/65/CO/6, available at <http://www2.ohchr.org/english/bodies/cerd/cerds65.htm>

<sup>16</sup> CCPR/CO/78/PRT, available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.78.PRT.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.78.PRT.En?Opendocument)

<sup>17</sup> These concern paragraphs 11 (prison conditions), 12 (criminalisation of torture), 13 (treatment of detainees) and 14 (TaserX26 weapons) of the concluding observations (CAT/C/PRT/CO/4), available at <http://www2.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT.C.PRT.CO.4.doc>

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## **ABOUT THE PUBLICATION**

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