



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

PORTUGAL

1. The Committee considered the fourth periodic report of Portugal (CAT/C/67/Add.6) at its 795th and 798th meetings, held on 14 and 15 November 2007 (CAT/C/SR.795 and 798), and adopted at its 805th meeting on 21 November 2007 (CAT/C/SR.805) the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the fourth periodic report of Portugal, the exhaustive written replies to the list of issues and the extremely detailed additional oral replies given during the consideration of the report. Lastly, the Committee welcomes the constructive dialogue with the high-level delegation sent by the State party and thanks it for the frank and precise replies to the questions raised (CAT/C/PRT/Q/4/Add.1).

B. Positive aspects

3. The Committee commends the State party on its progress in the protection and promotion of human rights since the consideration in 2000 of the third periodic report (CAT/C/44/Add.7).

4. The Committee welcomes the entry into force of the following legislation:

(a) Act No. 23/2007 of 4 July 2007, according to which foreign nationals may not be deported to a country where they would be in danger of being subjected to torture or other cruel, inhuman or degrading treatment;

(b) Act No. 59/2007 of 4 September 2007 approving the new Penal Code and Act No. 48/2007 of 29 August 2007 approving the new Code of Criminal Procedure;

(c) Act No. 63/2007 of 6 November 2007 approving the restructuring of the National Republican Guard (GNR), as announced by the State party's delegation.

5. The Committee also welcomes the following measures:

(a) The creation in 2000 of the Inspectorate-General for Justice Services;

(b) The establishment of the Police Code of Ethics approved by Resolution No. 37/2002 of the Council of Ministers on 28 February 2002; and

(c) The dissemination of the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Convention") through the translation of the United Nations Fact Sheets into Portuguese.

C. Subjects of concern and recommendations

Definition of torture

6. While taking note of the explanations given by the State party delegation that discrimination is illegal under article 240 of the new Penal Code, the Committee is nonetheless concerned that the definition of torture contained in article 243 of the Penal Code does not include discrimination among the motives for acts of torture and, consequently, does not appear to cover every possible motive for torture as defined under article 1 of the Convention.

The State party should consider making the necessary amendments to article 243 of the Penal Code to include discrimination as a possible motive for acts of torture as defined under article 1 of the Convention.

Arrest for identification purposes

7. While noting that, according to the Portuguese delegation, arrests for identification purposes are exceptional, the Committee regrets such a procedure exists, since it could lead to group arrests being made under certain circumstances. The Committee is concerned that time spent in custody for identification purposes (6 hours maximum) is not deducted from the total period of custody which may follow (48 hours). The Committee is also concerned that Portuguese legislation contains no provision explicitly requiring the Public Prosecutor's Office to order a forensic report in all cases where it has knowledge of the ill-treatment of a person held in custody (art. 2).

The State party should take adequate measures to:

(a) Ensure that all arrests, including arrests for identification purposes, are not targeted at groups of persons but that arrests are made on an individual basis;

(b) Guarantee that the time spent in custody for identification purposes (6 hours maximum) is deducted from the total period of custody, if applicable (48 hours); and

(c) Include in its legislation a provision explicitly requiring the Public Prosecutor's Office to order a forensic report in all cases where it has knowledge of a situation of ill-treatment of a person held in custody.

Pretrial detention

8. While taking note of the explanations given by the Portuguese delegation, in particular its reference to article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("European Convention on Human Rights"), the Committee is concerned by the State party's definition of pretrial detention which encompasses not only detention of persons awaiting trial but also of persons tried in first instance whose sentence has not yet been confirmed or quashed by a court of appeal. Such language is liable to cause confusion regarding the actual duration of pretrial detention as it is understood by the Committee and the number of detainees awaiting trial (arts. 2 and 16).

The State party should envisage taking the necessary measures to distinguish pretrial detention from detention of persons who have been tried in a court of first instance and have appealed against their sentence, in order to avoid any confusion which could lead the Committee to believe that the Convention has been violated.

Detention incommunicado

9. While welcoming the fact that detainees can no longer be held incommunicado, totally or relatively, during pretrial detention, the Committee notes that under article 143 (4) of the new Code of Criminal Procedure, in cases of terrorism or violent or highly organized crime, the Public Prosecutor's Office can order that detainees be held totally incommunicado - excepting their access to legal counsel - until such time as they are brought before the courts (art. 2).

The State party should ensure that detention incommunicado prior to appearance in court in cases of terrorism or organized violence is explicitly and strictly regulated by law and subject to stringent judicial supervision.

Universal jurisdiction

10. While acknowledging with satisfaction that article 5 of the new Penal Code permits the State party to exercise universal jurisdiction in respect of acts of torture committed outside its territory, the Committee notes with concern that such jurisdiction is exercised by the Attorney-General, whose Office, although autonomous, is connected with the Executive branch (art. 5).

The State party should consider entrusting the exercise of universal jurisdiction in respect of serious violations of international law to an independent tribunal.

Prison conditions

11. The Committee welcomes the reform of prison legislation reported by the Portuguese delegation which is designed to bring the law on the enforcement of sentences into conformity with the European Prison Rules. It also notes the substantial improvement in prison occupancy rates and the efforts made in the area of health care. The Committee remains concerned, however, about reports of continuing violence among inmates, including sexual violence, and about the persistently high number of deaths in detention, largely attributable to HIV/AIDS and suicide. The Committee is also troubled by reports of torture and cruel, inhuman or degrading treatment in penitentiary establishments, for instance the case of Mr. Albino Libânio, who allegedly suffered multiple injuries from a beating in 2003 (arts. 11 and 16).

The State party should continue its efforts to improve prison conditions, in particular by maintaining an appropriate prison occupancy rate. It should also step up measures aimed at preventing violence among inmates, including sexual violence, and suicide by prisoners.

The State party should, furthermore, take the necessary steps to ensure that the physical and psychological integrity of prisoners is respected under all circumstances.

Prompt and impartial investigations and redress

12. The Committee is concerned that article 4 of Act No. 21/2000 of 10 August 2000 does not include torture among the 30 crimes listed in the Act for which the judicial police is solely responsible, since this could impede the initiation of prompt and impartial investigations of alleged cases of torture in the territory of the State party (arts. 12 and 14).

The State party should take appropriate steps to include torture in the list of crimes for which the judicial police is solely responsible and ensure that a prompt and impartial investigation is initiated in all cases where there are grounds for believing that an act of torture has been committed in any territory under its jurisdiction.

It should also ensure that the alleged perpetrators of such acts are brought to justice and, if found guilty, given appropriate sentences and that the victims obtain adequate redress, including the means for their physical and psychological rehabilitation.

13. The Committee takes note of the restructuring of the various police forces, including the Public Security Police (PSP) and the National Republican Guard (GNR), and the report that the use of firearms by the GNR during vehicle pursuits has been prohibited since 2005 “except in cases expressly provided for by law” (CAT/C/67/Add.6, para. 117). It is nonetheless concerned by reports of excessive use of force by the police allegedly involving gunshot injuries, threats at gunpoint, abuse of power and, in one case, death (arts. 11, 12 and 14).

The State party should continue its efforts to raise awareness among the police forces with respect to compliance with the provisions of the Convention by means of ongoing and targeted training. Furthermore, it should ensure that any complaints made against the police forces for acts of torture or cruel, inhuman or degrading treatment are immediately investigated, that the alleged perpetrators are prosecuted and that the victims are given appropriate compensation.

Use of “TaserX26” weapons

14. The Committee is deeply concerned about the recent purchase by the State party of electric “TaserX26” weapons for distribution to the Lisbon Metropolitan Command, the Direct Action Corps, the Special Operations Group and the Personal Security Corps. The Committee is concerned that the use of these weapons causes severe pain constituting a form of torture, and that in some cases it may even cause death, as recent developments have shown (arts. 1 and 16).

The State party should consider relinquishing the use of electric “TaserX26” weapons, the impact of which on the physical and mental state of targeted persons would appear to violate articles 1 and 16 of the Convention.

Domestic violence, particularly against women and children

15. The Committee is concerned about reports received of numerous cases of domestic violence affecting women and children, as well as a high number of deaths among women due to such violence. Moreover, the Committee is deeply concerned at the Supreme Court decision of 5 April 2006, according to which “moderate corporal punishment of a minor by a duly entitled person for solely appropriate educational purposes is not illegal” in the family context (art. 16).

The State party should strengthen its efforts to establish a national strategy to prevent and combat domestic violence against women and children. It should take the necessary legislative measures to prohibit corporal punishment of children in the family. The State party should: guarantee that women and children who have been victims of violence have access to complaints mechanisms; punish the perpetrators of these acts in an appropriate manner; and facilitate the physical and psychological rehabilitation of the victims.

The State party should also ensure that public law enforcement agents receive ongoing and targeted training on the issue of violence against women and children.

Human trafficking, including of residents in Portugal

16. The Committee notes with satisfaction that, under Act No. 23/2007 of 4 July 2007, victims of human trafficking can obtain residence permits, and welcomes the awareness-raising campaign launched by the State party to combat this problem. The Committee is, nonetheless, concerned about the extent of human trafficking, which affects a very high number of women, for the purposes of economic and sexual exploitation (art. 16).

The State party should continue its efforts to combat human trafficking and should adopt the necessary measures to punish the perpetrators with appropriate penalties.

Discrimination

17. The Committee notes that article 240 of the new Penal Code, concerning non-discrimination, now covers not only discrimination based on race, colour, ethnic or national origin and religion, but also discrimination based on sex and sexual orientation. It is nonetheless

concerned by reports of numerous acts of violence of a discriminatory nature directed against certain minorities. The Committee is also concerned that the membership of the police forces does not reflect the diversity of minorities present in Portugal (art. 16).

The State party should take the necessary measures to effectively combat acts of violence based on any form of discrimination and to punish the perpetrators appropriately. The State party should also strive to include representatives of minorities residing in its territory in the police forces.

18. The State party is encouraged to consider ratifying the Optional Protocol to the Convention.
19. The Committee invites the State party to ratify the major United Nations treaties on human rights to which it is not yet party.
20. The State party is encouraged to disseminate widely the reports submitted by Portugal to the Committee and the Committee's conclusions and recommendations, in the national language, through official websites, the media and non-governmental organizations. The State party is also encouraged to circulate its reports to national non-governmental human rights organizations before submitting them to the Committee.
21. The Committee invites the State party to submit its core document in accordance with the requirements concerning the common core document contained in the harmonized guidelines on reporting, adopted by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.4.
22. The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations as contained in paragraphs 11 to 14 above.
23. The Committee, having concluded that, during the consideration of the report of the State party, a sufficient amount of information was adduced to cover the period of the delay in submitting its fourth periodic report, decided to request that the sixth periodic report should be submitted by 30 December 2011.
