



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

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COMMITTEE AGAINST TORTURE

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

Fourth periodic reports due in 2002

Addendum

PORTUGAL*

[21 March 2005]

* For the initial report submitted by the Government of Portugal, see CAT/C/9/Add.5; for its consideration, see CAT/C/SR.166,167 and 167/Add.1 and Official Records of the General Assembly, forty-ninth session, Supplement No. 44 (A/49/44), paras. 106-117. For the second periodic report, see CAT/C/25/Add.10; for its consideration, see CAT/C/SR.305 and 306 and Official Records of the General Assembly, fifty-third session, Supplement No. 44 (A/53/44), paras. 70-79. For the third periodic report, see CAT/C/44/Add.7; for its consideration, see CAT/C/SR. 414, 417 and 421 and Official Records of the General Assembly, fifty-fifth session, Supplement No. 44 (A/55/44), paras. 96-105.

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* The statistical annexes may be consulted in the files of the secretariat of the Committee against Torture.

Introduction

1. The present report follows on the third periodic report of Portugal relating to the implementation of the Convention against Torture (CAT/C/44/Add.7). It covers the period 2000-2004, i.e. from the time of the submission of the third report until May, June and July 2004.

2. The structure of the report is as follows:

(a) Chapter I deals with the definition of torture, which, for Portugal, has been the same since the third report, and with Portugal's undertaking not to allow torture to exist in any territory under its jurisdiction. It relates to article 1 of the Convention (definition), article 2 (legislative, administrative and other measures) and article 3 (guarantees of non-expulsion and non-extradition to another State where a person may be subjected to torture);

(b) Chapter II deals with acts of torture, offences under criminal law and the punishment of torture. It relates to article 4 of the Convention (all acts of torture, as well as attempts to commit torture, are punishable criminal offences) and to articles 5, 6 and 7 (jurisdiction of the State, detention of persons who commit acts of torture) and contains a note on the universal jurisdiction of the Portuguese State. Information is also provided on article 8 (extradition of persons who have committed acts of torture) and article 9 (international judicial assistance);

(c) Chapter III deals with guarantees under criminal procedure, including the problems associated with guarantees in relation to persons in detention, pre-trial detention, electronic surveillance, supervision of authorities responsible for detention and the right of appeal;

(d) Chapter IV provides information on the Portuguese prison system;

(e) Chapter V deals with the right to compensation, which has remained practically unchanged since the submission of the last periodic report; and

(f) In a brief conclusion, Portugal expresses the hope that its report will be as well received as its preceding reports and, in particular, that its efforts to improve the legal system and the prison system will be understood.

I. DEFINITION OF TORTURE AND UNDERTAKING NOT TO COMMIT TORTURE

A. Definition of torture

3. Article 1 of the Convention against Torture reads:

“...the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is *inflicted by* or at the instigation of or with the consent or acquiescence of *a public official or other person* acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”.

B. Portugal's undertaking not to commit torture

4. The definition of torture contained in the Convention includes pain and suffering inflicted by a public official. Portuguese legislation provides that torture is a crime against peace and humanity. Article 243 of the Portuguese Penal Code reads:

"1. Any person who, in the performance of duties of preventing, prosecuting, investigating or trying criminal or disciplinary offences, enforcing related penalties or protecting, guarding or supervising a detained person or prisoner, subjects that person to torture or to cruel, inhuman or degrading treatment for the purpose of:

- (a) Obtaining a confession, statement, declaration or information from that or any other person;
- (b) Punishing that person for an act which he committed, of which he was suspected or which was committed by any other person; or
- (c) Intimidating that or any other person

shall be liable to one to five years' imprisonment, unless a harsher penalty is applicable under another legal provision.

2. Any person who, on his own initiative or following orders from a superior, usurps the functions described in the preceding paragraph to commit any of the acts referred to therein shall be liable to the same penalty.

3. Any act which involves inflicting intense physical or psychological suffering or using chemical substances, medicaments, drugs or other natural or artificial means in order to impair the victim's ability to take decisions or freely express his will shall be regarded as torture or cruel, inhuman or degrading treatment or punishment.

4. The provisions of the preceding paragraph do not include pain or suffering inherent in or arising from the enforcement of the penalties provided for in paragraph 1 or any lawful measures depriving a person of his liberty or restricting his freedom".

The definition of torture contained in the Penal Code is thus very close to that contained in the Convention.

5. Article 244 is the core of the definition of torture contained in the Penal Code. It reads:

"1. Any person who, under the terms and conditions provided for in the preceding article:

- (a) Causes serious harm to another person's physical integrity;
- (b) Uses particularly harsh means or methods of torture, such as beatings, electric shocks, mock executions or hallucinogens; or
- (c) Habitually commits any of the acts referred to in the preceding article;

shall be liable to 3 to 12 years' imprisonment.

2. When the acts referred to in this or the preceding article lead to the suicide or death of the victim, the perpetrator shall be liable to 8 to 16 years' imprisonment".

6. According to article 245, failure to report the commission of an act of torture is also punishable:

"A hierarchical superior who is aware that a subordinate has committed an act referred to in articles 243 and 244 and who fails to report him within no more than three days of learning of the commission of the act shall be liable to six months' to three years' imprisonment".

7. In accordance with article 246 of the Penal Code, the commission of the crimes referred to in the Penal Code as crimes against peace and against humanity may lead to deprivation of the right to vote and to be elected to political office for a period of 2 to 10 years.

C. Legislative, administrative and other measures

8. With regard to legislative, administrative, judicial and other measures, as well as to everything that has been stated thus far, reference should be made to the third periodic report of Portugal (CAT/C/44/Add.7, paras. 33 to 36).

9. Recently adopted measures include the new Court Organization Act, which was referred to during the introduction to the third report in May 2000 and was recently amended by means of Act No. 105/2003 of 10 December 2003, which solves problems relating to the inclusion of military judges in ordinary courts during the trial of military cases.

10. An important set of provisions contained in the new Act, which continues to guarantee the independence of the courts and increases their powers by reorganizing them, is to be found in articles 68 to 76:

(a) Where a judge is absent or unavoidably detained, he is replaced by another judge or, as appropriate, another suitable person who holds a degree in law and is appointed by the Supreme Judicial Council (art. 68);

(b) Where so required in exceptional circumstances, the Supreme Judicial Council may decide that a judge should, with his consent, exercise his functions in more than one court, even in a different district (art. 68);

(c) Auxiliary judges may be appointed to make up the number of judges in courts of first instance and courts of appeal (arts. 70 and 50);

(d) A "roster" of judges is established in judicial districts in order to replace judges when the volume of work, absences or the period of time during which a substitute judge is necessary do not allow the system provided for in article 69 to be used (art. 71);

(e) Under article 73, emergency service is organized by rotation, particularly during court recesses;

(f) The emergency service provided for in the Code of Criminal Procedure, in the Mental Health Act and in legislation relating to young people is also organized by rotation (art. 73).

11. Criminal investigation courts, as provided for in articles 79 et seq. of the Court Organization Act, may be established when so required as a result of the volume of judicial

activity. Similarly, subdivisions of the Public Prosecutor's Office, known as Research and Criminal Prosecution Departments (DIAP) may be established under the jurisdiction of the investigation courts.

12. The Act also provides for a public prosecutor's office and representation in each court. The Attorney-General's Office is the representative in the Supreme Court. Deputy and district public prosecutors are the representatives in courts of appeal and, in courts of first instance, representation is ensured by attorneys-general and deputy prosecutors.

13. An important section of the Act relates to representatives, i.e. lawyers, under article 114:

“1. The Act guarantees lawyers the immunities required for the exercise of their functions and governs legal representation as the key element of the administration of justice.

2. With a view to the protection of individual rights and guarantees, lawyers may request action by the competent courts.

3. Lawyers are assured of the necessary immunity for the exercise of their functions by means of legal recognition and guarantees of:

- (a) The right to protection of professional secrecy;
- (b) The right to the free exercise of representation and non-punishment for the exercise of acts in conformity with the statutes applicable to the profession; and
- (c) The right to special protection for communications with clients and to the preservation of the secrecy of documentation relating to the exercise of the right of defence”.

14. The Statute of the Public Prosecutor's Office has also been changed; it is now governed by Act No. 68/98. The Public Prosecutor's Office represents the State, defends interests determined by law, takes part in the implementation of criminal policy defined by State agencies, institutes criminal proceedings in accordance with the principle of the rule of law and defends the principle of democratic legality, the Constitution, its statute and the law.

15. In accordance with the law, the Public Prosecutor's Office enjoys autonomy in relation to other central, regional and local government bodies. Its autonomy is characterized by the fact that it is bound by criteria of legality and objectivity and by the fact that judges are exclusively subordinate to directives, orders and instructions provided for by law.

16. While the courts are independent, the Public Prosecutor's Office is autonomous only because it is linked to the State, but it is autonomous nonetheless: even during representation of the State, it is the Public Prosecutor's Office which defines the terms of such representation. In cases submitted to it in accordance with the law, it decides what action it will take. The State has no control over the management of the Public Prosecutor's Office, which is the responsibility of the Attorney-General of the Republic and the Supreme Council of the Public Prosecutor's Office.

17. Monitoring of the procedural activities of police bodies and of the criminal investigation police, in particular, is the responsibility of the Public Prosecutor's Office, in the person of the Attorney-General of the Republic. Such monitoring takes place at each hierarchical level, depending on the proceedings in question, and investigations are conducted by the Public

Prosecutor's Office as part of the criminal proceedings. The investigation, which is presided over by the examining magistrate, is optional: it takes place, for example, when so requested by the accused person.

18. In addition to the amendment of the Code of Criminal Procedure, which was completed in 1998 (Act No. 58/98 of 25 August 1998) and which will be referred to below in connection with the consideration of procedural guarantees, other measures have been adopted since the submission of the third periodic report:

(a) Act No. 16/98 of 8 April 1998 governs the structure and operation of the Judicial Studies Centre, which trains judges and prosecutors, as well as non-presiding judges and is responsible for specific activities relating to the legal and judicial training of lawyers, solicitor is and officials from other professional sectors, as well as for the development of legal and judicial study and research activities; and

(b) Act No. 93/99 of 14 July 1999 governs the implementation of measures for the protection of witnesses in criminal proceedings; and Act No. 119/2003 of 22 August 2003 containing rules and regulations relating thereto;

(c) Order No. 183/2003 of 21 February 2003 temporarily sets up the Study and Discussion Committee on the Reform of the Prison System as part of the Ministry of Justice;

(d) Council of Ministers Decision No. 37/2002 of 28 February 2002 takes note of the adoption of the Police Department Code of Ethics by officials of the National Republican Guard (GNR) and the Public Security Police (PSP);

(e) Order No. 472/2001 of 10 May 2001 provides that the criminal research departments of the criminal investigation police are those resulting from the judicial division of the country into districts of first instance (*comarcas*);

(f) Order No. 11/98 of 24 January 1998 reorganizes the medico-legal system;

(g) Order No. 96/2001 of 26 March 2001 adopts the National Forensic Medicine Institute Organization Act;

(h) Order No. 95/99 of 13 October establishes the legal regime of the Lisbon, Porto and Coimbra Forensic Medicine Institutes;

(i) Order No. 274/99 of 20 229-1999 establishes regulations for the dissection of corpses and the extraction of parts, tissue and organs for teaching and scientific research purposes;

(j) Act No. 36/98 of 24 July on mental health;

(k) Council of Ministers Decision No. 46/99 of 26 May 1999 approves the National Drug Abuse Strategy;

(l) Council of Ministers Decision No. 39/2001 of 9 April 2001 establishes the National Plan of Action to Combat Drug Abuse and Drug Addiction – Horizon 2004;

(m) Assembly of the Republic Decision No. 16/2000 of 2 December 1999;

(n) Presidential Decree No. 4/2000 and 6 March 2000 ratifies the European Convention on the Compensation of Victims of Violent Crimes.

D. Non-expulsion, return ("refoulement") or extradition to another State where a person may be subjected to torture

19. Act No. 144/99 of 31 August 1999 governs international judicial cooperation by the Portuguese State; and it relates to: (i) extradition; (ii) the transmission of criminal proceedings; (iii) the enforcement of criminal penalties; (iv) the transfer of persons who have been sentenced to penalties and preventive measures involving deprivation of liberty; (v) the supervision of persons who have been convicted or released conditionally; and (vi) mutual legal assistance in criminal matters.

20. According to article 4 of the Act, international judicial cooperation in criminal matters is governed by the principle of reciprocity. The Ministry of Justice asks for a guarantee of reciprocity when circumstances so require and may give such a guarantee to other States. A lack of cooperation and mutual assistance does not prevent a request for cooperation from being met, provided that:

(a) It is necessary as a result of the nature of the offence or the need to combat certain serious forms of crime;

(b) It may help to improve the detainee's situation or contribute to his social rehabilitation;

(c) It may help reveal the truth concerning acts attributed to a Portuguese citizen.

21. Article 6 of Act No. 144/99 places limitations on international cooperation. It will be refused when:

(a) The proceedings do not meet the requirements of the European Convention for the Protection of Human Rights and Fundamental Freedoms, dated for November 1950, or other relevant international instruments ratified by Portugal;

(b) There are serious grounds for believing that it is being requested for the purpose of prosecuting or punishing a person for reasons of race, religion, sex, nationality, language, political or ideological opinions or membership of a particular social group;

(c) There is a serious danger that the procedural situation of a person may be aggravated for one of the reasons given above;

(d) It may result in a judgement by a special court or it may be related to the enforcement of a sentence handed down by such a court;

(e) The offence to which it relates is punishable by the death penalty or by another penalty likely to cause irreversible harm to the person's integrity;

(f) It is related to an offence punishable by life or indeterminate imprisonment.

22. Under article 6, paragraph 2, the provisions of subparagraphs (e) and (f) above do not prevent cooperation:

(a) If the requesting State commutes the sentence by means of an irrevocable act which is binding on the courts and other bodies that monitor the enforcement of sentences; if it has previously commuted the death penalty or any other penalty likely to cause irreversible harm to the person's integrity or has withdrawn the lifelong or indeterminate nature of the penalty;

(b) If, in the event of extradition for crimes which are, according to the law of the requesting State, punishable by a penalty or preventive measure involving lifelong or indeterminate imprisonment, the requesting State offers guarantees that this penalty or preventive measure will not be applied or enforced;

(c) If the requesting State agrees to the conversion of these penalties or measures by a Portuguese court, in accordance with the provisions of Portuguese law applicable to the crime giving rise to the sentence; or

(d) Where the request relates to the assistance provided for in article 6, paragraph 1 (f), it is made on the basis of the relevance of the act to the presumed non-applicability of these penalties or measures.

23. When the request for extradition is denied on the basis of paragraph 1 (d), (e) and (f), the cooperation mechanism provided for in article 32, paragraph 5, is applied. Thus, when extradition is denied on the basis of article 6, paragraph 1 (d), (e) and (f), criminal proceedings are instituted for the offences on which the request is based and the necessary evidence is requested from the requesting State. The judge may apply the appropriate measures of protection.

24. The question of the constitutionality of this new Act was asked, abstractly and successively, by the Ombudsman of the Constitutional Court, which nevertheless ruled, in its decision No. 1/2001, handed down in case No. 742/99 (published in the Official Journal, series No. II, dated 8 February 2001), that there was no unconstitutionality.

25. Recently, Act No. 65/2003, of 23 August 2003, adopting the legal regime of the European arrest warrant (in accordance with Council framework decision 2002/584/JAI, justice and internal affairs, of 13 June 2002) slightly changed the regime provided for in Act No. 144/99.

26. For the member States of the European Union, it is now enough that a judge should issue an arrest warrant for it to be executed in Portugal, without any control, for example, of double criminality (which requires that, when a person is being prosecuted for an offence by foreign authorities, he must also be prosecuted by the national authorities, in accordance with Portuguese law, if applicable, in order for extradition to take place) in relation to the following offences:

- (a) Participation in a criminal organization;
- (b) Terrorism;
- (c) Trafficking in human beings;
- (d) Sexual exploitation of children and child pornography;
- (e) Illicit traffic in narcotic drugs and psychotropic substances;
- (f) Illicit traffic in weapons, munitions and explosives;
- (g) Corruption;

- (h) Fraud, including fraud that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests;
- (i) Laundering of the proceeds of crime;
- (j) Counterfeiting currency, including of the euro;
- (k) Computer-related crime;
- (l) Environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties;
- (m) Facilitation of unauthorized entry and residence;
- (n) Murder and grievous bodily injury;
- (o) Illicit trade in human organs and tissue;
- (p) Kidnapping, illegal restraint and hostage-taking;
- (q) Racism and xenophobia;
- (r) Organized or armed robbery;
- (s) Illicit trafficking in cultural goods, including antiques and works of art;
- (t) Swindling;
- (u) Racketeering and extortion;
- (v) Counterfeiting and piracy of products;
- (w) Forgery of administrative documents and trafficking therein;
- (x) Forgery of means of payment;
- (y) Illicit trafficking in hormonal substances and other growth promoters;
- (z) Illicit trafficking in nuclear or radioactive materials;
- (aa) Trafficking in stolen vehicles;
- (bb) Rape;
- (cc) Arson;
- (dd) Crimes within the jurisdiction of the International Criminal Court;
- (ee) Unlawful seizure of aircraft/ships;
- (ff) Sabotage.

27. It should be added that article 13 of Act No. 65/2003 of 23 August 2003, as referred to in paragraph 25 above, maintains the guarantees provided for in the Portuguese legal system. The execution of the European arrest warrant thus takes place only if the issuing member State provides one of the following guarantees:

(a) Where the European arrest warrant has been issued for the purposes of executing a sentence or a detention order imposed by a decision rendered in absentia and if the person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered in absentia, surrender may be subject to the condition that the issuing judicial authority gives an assurance deemed adequate to guarantee the person who is the subject of the European arrest warrant that he or she will have an opportunity to apply for a retrial of the case in the issuing member State and to be present at the judgment;

(b) If the offence on the basis of which the European arrest warrant has been issued is punishable by a custodial life sentence or lifetime detention order, the execution of the said arrest warrant may be subject to the condition that the issuing member State has provisions in its legal system for a review of the penalty or measure imposed, on request or at the latest after 20 years, or for the application of measures of clemency to which the person is entitled to apply for under the law or practice of the issuing member State, aiming at its non-execution of such penalty or measure;

(c) Where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the executing member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing member State in order to serve there the custodial sentence or detention order passed against him in the issuing member State.

II. CRIMINAL LAW GOVERNING THE PUNISHMENT OF ACTS OF TORTURE

28. Following the order of the provisions of the Convention, this chapter refers to article 4, which provides that all acts of torture, including attempt, are offences under criminal law; article 5 on the jurisdiction of the State; article 6 on the custody of persons who have committed acts of torture; article 7 on criminal proceedings against a person under the jurisdiction of a State who is not extradited; article 8 on extradition; and article 9 on international judicial cooperation

29. These questions will be discussed of course, but, in order to avoid repetition, they will be analysed briefly in six sections relating to the jurisdiction of the State, the punishment of acts of torture, the custody of persons who have committed acts of torture, criminal proceedings against a person under the jurisdiction of a State who is not extradited, the universal jurisdiction of the State and crimes against humanity and, lastly, international judicial cooperation.

A. Jurisdiction of the State

30. The jurisdiction of the State means the jurisdiction of the courts and the police authorities to prosecute and punish the crimes covered by this report. This jurisdiction means the territory of Portugal (mainland, Azores and Madeira) over which the Portuguese authorities exercise their power, thereby affecting any person therein.

31. Under article 4 of the Penal Code, Portuguese criminal law is, unless otherwise provided in an international treaty or convention, applicable to acts committed (a) in Portuguese territory, regardless of the nationality of the person responsible; or (b) onboard Portuguese ships or aircraft.

32. Under article 8 of the Code of Criminal Procedure, the courts of law are competent to try criminal cases and impose custodial sentences and detention orders. The ordinary courts are thus responsible for trying acts of torture.

B. Punishment of acts of torture

33. Paragraphs 4 and 5 above relate to the crimes of torture provided for in articles 243 and 244 of the Penal Code. The first article defines torture, for the commission of which it lays down the punishment, while the second provides for the punishment of torture when its consequences are particularly serious (serious offences against physical integrity, use of particularly harsh means or methods of torture, such as beatings, electric shocks, mock executions or hallucinogens or habitual commission of acts of torture, as defined in article 243).

34. Reference should also be made to article 241 (War crimes against civilians), since the crimes with which it deals may also be committed by the authorities, and article 245 (Failure to report).

(a) Article 241 reads as follows:

“1. Any person who, contravening the rules and principles of general or customary international law, in time of war, armed conflict or occupation, commits any of the following acts against the civilian population, the wounded, sick or prisoners of war:

- (a) Intentional homicide;
- (b) Torture or cruel, degrading or inhuman treatment;
- (c) Intentional impairment of physical integrity;
- (d) Taking hostages;
- (e) Forced service in enemy armed forces;
- (f) Deportation;
- (g) Serious, prolonged or unjustified restrictions of personal liberties;
- (h) The removal or unjustified destruction of valuable property;

shall be liable to a prison sentence of 10 to 20 years.

2. The minimum and maximum limits of this penalty are increased by a quarter if any of the acts referred to are committed against persons belonging to a humanitarian institution.”

(b) Article 245 reads as follows:

“A hierarchical superior who is aware that a subordinate has committed an act referred to in articles 243 and 244 and who fails to report him within three days at most of learning of the commission of the act shall be liable to six months' to three years' imprisonment.”

35. With regard to the punishment of these crimes, article 246 provides for a number of disqualifications to which persons who have committed these crimes are liable:

"Any person who is convicted of a crime under articles 236 to 245 may, given the gravity of the act and its impact on the civic integrity of the person concerned, be disqualified from voting for the President of the Republic, the members of the European Parliament, the members of a legislative assembly or a local community, from being elected to one of these offices and from being a member of a jury for a period of two to 10 years."

C. Detention of persons who have committed acts of torture

36. Under article 242 of the Code of Criminal Procedure, reporting is compulsory even if the perpetrators of the crime are not known:

- "(a) For police bodies, in the case of all crimes of which they are aware;
- (b) For officials, within the meaning of article 386 of the Penal Code, in the case of any crimes of which they are aware during the exercise of their functions."

37. Under article 386 of the Penal Code, the term "official" means:

- "(a) A civil servant;
- (b) An administrative employee; and
- (c) Any person who, even provisionally or temporarily, either for pay or free of charge, on a voluntary basis or in a compulsory manner, is called upon to carry out or take part in carrying out an activity forming part of the administrative or judicial civil service or, in the same circumstances, performs or is involved in functions within a public-interest corporation.
- (d) Managers, holders of supervisory posts and employees of public corporations nationalized by means of government capital or with a majority share of government capital and public utility concessionaires are regarded as officials under criminal law."

38. Detention is then ordered by means of warrant from a judge, in accordance with article 257 of the Code of Criminal Procedure, or, in the case of crimes for which pre-trial detention is admissible (as in the present case), by means of a warrant from a member of the Public Prosecutor's Office. In a case in flagrante delicto, any judicial or police authority may make the arrest, as may any other person where such authorities are not present or cannot be summoned in sufficient time.

D. Criminal proceedings against a person under the jurisdiction of the State who has not been extradited

39. According to article 6 of Act No. 144/99 of 31 October 1999, a request for international cooperation for the purposes of extradition will be refused:

- "(a) If the procedure does not meet or comply with the requirements of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 or other relevant international instruments ratified by Portugal;

(b) If there are plausible reasons for believing that cooperation is being requested for the purpose of prosecuting or punishing a person on the grounds of race, religion, sex, nationality, language, political opinions or membership of a particular social group;

(c) If the person's procedural situation may be aggravated for one of the reasons listed in the preceding subparagraph;

(d) If the cooperation might result in a judgement by a special court or if it is related to a judgement handed down by such a court;

(e) If the offence to which it is related is punishable by a sentence of death or other penalty giving rise to irreversible harm to the physical integrity of the person concerned;

(f) If the procedure is related to an offence giving rise to a lifelong or indeterminate custodial penalty or security measure;

and when the presumptions on which subparagraph (b) of this article is based have not been proven.

40. Cooperation is also refused if proceedings for the same offence have been instituted in Portugal or any other State (art. 8 of Act No. 144/99):

“(a) The proceedings have ended in an acquittal or a decision to remove the case from the list;

(b) The sentence has been served or cannot be served under the law of the State where it was handed down;

(c) The proceedings are terminated for any other reason, unless their termination does not prevent international cooperation under an international convention.”

41. The provisions of subparagraphs (a) and (b) do not apply when the request is based on the need for a review of the sentence.

42. According to article 9 of Act No. 144/99, when the offence attributed to the person against whom the proceedings were instituted is covered by various provisions of the Penal Code, the request for cooperation is accepted only insofar as it relates to an offence or offences in connection with which the request is acceptable and provided that the requesting State gives guarantees that it will meet the conditions laid down for cooperation. According to article 9, paragraph 2, however, cooperation is ruled out if the offence is covered by several provisions of Portuguese or foreign criminal law and the request cannot be accepted under a legal provision which covers the offence as a whole and constitutes a ground for refusing cooperation.

43. According to article 18, cooperation may be refused when the offence in question is the subject of ongoing proceedings or when the offence must or can be the subject of proceedings that are within the jurisdiction of a Portuguese judicial authority. According to paragraph 2, cooperation may also be refused when, on the basis of the circumstances of the offence, the acceptance of the request may have serious consequences for the person concerned in view of his age, the state of his health or other reasons of a personal nature.

44. According to article 19, the principle *non bis in idem* is applicable: when a request for cooperation is accepted and it involves the delegation of proceedings to a foreign judicial authority, proceedings for the offence on which the request is based cannot be instituted or continued in Portugal and a decision whose enforcement is delegated to a foreign authority cannot be enforced. In such cases of refusal of cooperation, it is possible, at the request of a foreign State, to institute or continue criminal proceedings in Portugal for an offence committed outside Portuguese territory (art. 79).

45. Certain special conditions must then be met (art. 80):

"(a) Recourse to extradition must be ruled out;

(b) The foreign State must give guarantees that it will not institute criminal proceedings against the suspect or accused person for the same offence if he is finally sentenced in accordance with a decision of a Portuguese court;

(c) The criminal proceedings relate to an offence which is a crime under the law of the foreign State and under Portuguese law;

(d) The maximum duration of the appropriate custodial penalty or security measure is no less than one year and, in the case of a fine, the maximum amount is not less than 30 procedural units of account;

(e) The suspect or accused person has Portuguese nationality or, if he is a foreigner or stateless person, he must have his habitual residence in Portuguese territory;

(f) The acceptance of the request is justified in the interests of the smooth administration of justice or the more successful social rehabilitation of the suspect or accused person in the event of conviction."

46. According to article 80, paragraph 2, it is possible to agree to the institution or continuation of criminal proceedings in Portugal when the conditions provided for in the preceding paragraph prove to be applicable in the following cases:

"(a) When the suspect or accused person is subject to criminal proceedings in Portugal for another offence to which a custodial penalty or security measure that is as harsh as or harsher than the penalties referred to in subparagraph (d) above is applicable and the suspect or accused person's presence in court is guaranteed;

(b) When the extradition of the suspect or accused person who habitually resides in Portugal is refused;

(c) When the requesting State considers that the presence of the suspect or accused person cannot be guaranteed in its courts, but can be guaranteed in Portugal;

(d) Where the foreign State considers that conditions for the enforcement of a possible conviction do not exist, even having recourse to extradition, and that such conditions do exist in Portugal."

47. According to article 81, Portuguese law is then applicable, unless the law of the foreign requesting State is more favourable.

E. Questions relating to universal jurisdiction of the State and to crimes against humanity

48. According to article 4 of the Penal Code, territoriality is the general principle governing the spatial applicability of the law. However, article 5, paragraph 1 (a), on “acts committed outside the national territory” refers to crimes that may be punishable by Portugal even though they were committed outside the national territory. These crimes, such as computer and communications fraud (art. 221), are nevertheless associated with national interests.

49. Article 5, paragraph 1 (b), refers to the principle of the universal applicability of criminal law and provides for the prosecution of certain crimes committed outside the national territory, on condition that the person responsible is in Portugal and cannot be extradited. These crimes, for which Portugal recognizes that it has universal jurisdiction, are:

Slavery (art. 159 of the Penal Code);

Kidnapping (art.160);

Trafficking in persons (art. 169);

Sexual abuse of children (art. 172);

Sexual abuse of dependent adults (art. 173);

Exploitation of the prostitution of, and trafficking in, minors (art. 176);

Incitement to war (art. 236);

Incitement of the armed forces (art. 237);

Recruitment of mercenaries (art. 238);

Genocide (art. 239, para. 1);

Destruction of monuments (art. 242).

50. The principle embodied in article 5, paragraph 1 (b), is expanded on in article 5, paragraph 2, which extends the application of Portuguese criminal law to acts committed outside the national territory, regardless of the nationality of the perpetrators or the victims, provided that Portugal is bound to try them under an international treaty or convention.

51. This principle is limited by article 6, which is entitled “Restrictions on the applicability of Portuguese law” and is intended to mean that the prosecution of acts committed outside the national territory is subsidiary:

“1. Portuguese law is applicable to acts committed outside the national territory only where the perpetrator has not been tried in the country where the act was committed or has avoided the full or partial execution of the sentence.

2. Where Portuguese law is applicable under the provisions of the preceding paragraph, the act shall be punishable according to the law of the country where it was committed if that law is specifically more favourable to the perpetrator. The applicable

penalty shall be converted into the corresponding penalty in the Portuguese system or, in the event that there is no corresponding penalty, into that provided for the act under Portuguese law.

52. All criminal courts, whether courts of first instance or courts of appeal (district, appeal, Supreme), may exercise universal jurisdiction on the basis of the *per saltum* remedy that is available in the Portuguese procedural law system.

53. With regard to optional or compulsory universal jurisdiction, there generally appears to be a duty to prosecute automatically for the crimes to which the universal jurisdiction of the State would apply. There is definitely a duty to prosecute all of the crimes provided for in the Portuguese Penal Code (art. 5, para. 1 (b)). The same duty exists for the crimes provided for in article 5, paragraph 2.

54. It may also be said that the concept of *actio popularis* applies to the exercise of universal jurisdiction. Thus, even if there is no advantage to taking criminal proceedings, defined as the fact that any citizen may be a victim and find himself in a situation where the law allows him to act as a plaintiff or bring criminal indemnification proceedings, any person may report and act as a plaintiff or bring criminal indemnification proceedings in connection with crimes against peace and against humanity, as well as crimes of influence peddling, corruption by an official, denial of justice, mendacity, any form of corruption, including unlawful economic participation in the case, abuse of power and fraud for the purpose of obtaining a subsidy (art. 68, para. 1 (e), of the Code of Criminal Procedure). The Public Prosecutor's Office also has a duty to take proceedings for such crimes.

55. Portugal received a request for the exercise of universal jurisdiction and a ruling was handed down by the Office of the Attorney-General of the Republic and, in particular by its Advisory Council. 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.

F. International judicial cooperation

56. We wish to draw attention to the sections of the present report which deal with international judicial cooperation and to point out that the Portuguese Government punishes acts of torture by all of the means to which reference has been made in chapter II.

III. GUARANTEES UNDER CRIMINAL PROCEDURE

57. Chapter III on guarantees under criminal procedure against torture of accused persons deals with problems relating to guarantees in respect of custody, pre-trial detention, electronic surveillance, monitoring of prison authorities and the right to file a complaint.

A. Guarantees in relation to custody

1. Suspects

58. Before discussing questions involving pre-trial detention, reference must be made to guarantees of suspects in relation to custody. A person who is not in possession of identity documents may be taken into custody for identification purposes. This matter is governed by Act No. 5/95 of 21 February 1995, which makes it an obligation to carry proof of identity. In the absence of such proof, the police may conduct the necessary identification operations, during a period of not more than two hours, by accompanying the person concerned to his place of residence or contacting persons whom he may appoint, such as his family or his lawyer.

59. This type of custody is intended for identification purposes and is not criminal in nature. According to article 250 of the Code of Criminal Procedure, a longer identification operation, not to exceed six hours, may be conducted when the person to be identified is suspected of having committed a crime, of being the subject of extradition or expulsion proceedings, of illegal entry or stay in the national territory or of having an arrest warrant against him.

60. Prior to identification, the criminal police must show proof of their authority, inform the suspect of the grounds on which the obligation to identify himself is based and indicate ways in which the suspect may identify himself. Here again, the suspect is entitled to communicate with any person who may bring him his documents, to go with the criminal police to the place where the identity documents are located or to have his identity recognized by a properly identified person who guarantees the veracity of his personal data.

61. Then comes the phase of custody itself, i.e. holding the suspect for questioning and then bringing him before a judge or prosecutor (in some cases) within 48 hours

(art. 141.1 of the Code of Criminal Procedure) in order to release him or confirm his arrest, which becomes pre-trial detention.

2. Accused persons

62. This is the point where the suspect becomes an accused person, with all the rights and guarantees thus involved. Holding a person for questioning is a coercive measure and article 58 of the Code of Criminal Procedure provides that a suspect becomes an accused person as soon as a coercive measure is applied.

63. A suspect becomes an accused person when he is informed either orally in writing by a judicial authority or the criminal police that, as of that time, he is to be regarded as an accused person under criminal law procedure. Such information is accompanied by an indication and, if necessary, an explanation of the procedural rights and duties incumbent upon him as of that time.

64. When a person becomes an accused person, he is, whenever possible, given a document identifying the proceedings and the defender, if a defender has already been appointed, as well as a statement of the procedural rights and duties referred to in article 61 of the Code of Criminal Procedure.

65. Any omission or abuse of the procedures provided for in article 58, paragraphs 2 and 3, above means that any statements made by the person concerned cannot be used as evidence against him (art. 58, para. 4, of the Code of Criminal Procedure).

66. According to article 61 of the Code of Criminal Procedure, the accused person is entitled, from the time when he becomes an accused person, as provided for in article 58 of the Code, and throughout all phases of the proceedings, to the following rights:

- (a) To be present at proceedings of direct concern to him;
- (b) To be heard by the court or the examining magistrate whenever a decision of concern to him personally is to be taken;
- (c) Not to answer questions asked by any entity about the acts attributed to him or the content of any statements he might have made about such acts;
- (d) To choose counsel or to request the court to appoint one;
- (e) To be assisted by counsel during any proceedings in which he takes part and, when in custody, to communicate with counsel, even in private;
- (f) To take part in the inquiry and the investigation by providing evidence and availing himself of such procedures as he may deem necessary;
- (g) To be informed of his rights by the judicial authority or the criminal police body before which he is required to appear;
- (h) To appeal decisions which are unfavourable to him, as provided for by law.

The private communication referred to in subparagraph (e) above (which corresponds to article 61 (e)) takes place under surveillance, when required for security reasons, but under circumstances such that it cannot be overheard by the person responsible for surveillance.

67. The accused person also has duties (art. 61, para. 3):

- (a) He must appear before the court, the public prosecutor or criminal police bodies when the law so states and he has been duly summoned;
- (b) He must reply truthfully to any questions a competent authority may ask about his identity and, when the law so states, to any questions about his criminal record;
- (c) He must remain at the disposal of the courts, particularly in terms of residence;
- (d) He must submit to the preliminary investigation and to any coercive and property guarantee measures provided for by law and ordered and implemented by a competent authority.

68. According to article 62 of the Code of Criminal Procedure, the accused person may be assisted by counsel at any time during the proceedings. In cases where the law provides that the accused person may be assisted by counsel and he has not appointed or briefed one, the court may appoint a lawyer or lawyer trainee, who will step down as soon as the accused person does appoint counsel. In an emergency, when it is impossible to appoint a lawyer or lawyer trainee, a similar person may be appointed, preferably one who holds a degree in law and who will step down as soon as it is possible to appoint a lawyer or lawyer trainee.

69. When the accused person is deaf, dumb, illiterate, does not know Portuguese, is under age 21 and the question of his lack of accountability or diminished capacity arises, the Public Prosecutor's Office will appoint a lawyer to act as his defence counsel.

70. The appointment of a lawyer by the court is also compulsory when the accused person does not have a representative or counsel at the time of the completion of the investigation, if the accusation against him is made by the Public Prosecutor's Office. That is also true in the case of the first non-judicial questioning of an accused person in custody, who may request the assistance of counsel.

71. According to article 64 of the Code of Criminal Procedure, the assistance of counsel is compulsory:

- (a) During the first judicial questioning of an accused person in custody;
- (b) During the investigation and trial, except where the proceedings cannot lead to the imposition of a prison sentence or security measure involving imprisonment;
- (c) During any part of the proceedings when the accused person is deaf, dumb, illiterate, does not know Portuguese, is under age 21 and the question of his lack of accountability or diminished capacity arises;
- (d) During ordinary or third-party appeals;
- (e) In cases to which articles 271 and 294 refer (testimony and statements for future memory);
- (f) During sentencing in the absence of the accused person;
- (g) In any case provided for by law.

72. In addition to the information given above, reference should also be made to evidence (art. 124 et seq. of the Code of Criminal Procedure) and safeguards thereof.

3. *Evidence*

73. According to article 124 of the Code of Criminal Procedure, any facts that are legally relevant to the existence or non-existence of the crime, the punishability or non-punishability of the accused person and the determination of the applicable penalty or security measure are evidence.

74. Generally speaking, any evidence which is not prohibited by law is admissible, but article 126 of the Code of Criminal Procedure prohibits the following means of obtaining evidence:

“1. Evidence obtained through torture, coercion or any other impairment of the physical or mental integrity of persons is invalid and cannot be used;

2. The following evidence is invalid because it impairs the physical and mental integrity of persons, even when it is obtained by means of:

- (a) Interference with free will and capacity to take decisions through ill treatment, bodily harm and the use of any means whatsoever such as hypnosis, cruelty or deceit;
- (b) Interference, by any means whatsoever, with a person's memory or judgement;
- (c) The use of force, except in cases and within the limits provided for by law;
- (d) The threat of the use of a legally inadmissible measure and the denial or refusal of a lawful entitlement or subjecting it to certain conditions;
- (e) The promise of a legally inadmissible advantage.

3. Except in cases provided for by law, evidence obtained by means of interference in private life, the home, correspondence or telecommunications without the consent of the persons concerned is also invalid.

4. When the use of the methods of obtaining evidence provided for in this article constitutes a crime, such methods may be used for the sole purpose of prosecuting the persons responsible therefor."

B. Pre-trial detention

75. Pre-trial detention is as much a coercive measure as other less serious measures provided for in the Code of Criminal Procedure, such as house arrest (art. 196), imposition of bail (art. 197), the duty to report periodically (art. 158), suspension from the exercise of functions, occupations and rights (art. 199), prohibition of presence, absence and contacts (art. 200) and prohibition on leaving the home (art. 201).

76. The requirements for the imposition of pre-trial detention are:

- (a) The existence of strong indications of the commission of a crime punishable by a prison term of a maximum duration of more than three years; or
- (b) The fact that the person concerned unlawfully entered or stayed in the national territory or is the subject of ongoing extradition or expulsion proceedings.

77. In the case where the person to be subjected to pre-trial detention is mentally disturbed, the judge may, after having heard the defence counsel and, whenever possible, a member of the family, decide that, as long as the disturbance lasts, the person concerned will be held in a psychiatric hospital or other appropriate similar establishment and the necessary measures will be taken to prevent any risk of flight or recidivism.

78. According to article 204, no coercive measure, except for house arrest, as provided for in article 196, may be implemented unless there has specifically been a:

- (a) Flight or risk of flight;
- (b) Danger of interference with the inquiry or investigation and, in particular, danger for the collection, preservation and veracity of evidence; or

(c) Danger, in view of the nature and circumstances of the crime or the personality of the accused person, of a disturbance of public order and tranquility or the continuation of the criminal activity.

79. Pre-trial detention may be suspended, as necessary, when the accused person is gravely ill, pregnant or providing postpartum care. The suspension ends when the circumstances giving rise to it end and, in the postpartum case, at the end of the third month following childbirth. During the period of suspension of pre-trial detention, the accused person is subject to house arrest and to any other measure that is in conformity and compatible with his or her condition, particularly hospital detention.

80. Coercive measures are immediately revoked by court order if they have been applied in cases or under conditions not provided for by law or if the circumstances justifying their application have ceased to exist.

81. According to article 213, the judge reconsiders the grounds for pre-trial detention unofficially every three months, deciding whether it should be maintained or whether it should be replaced or revoked. In order to take a decision on replacement, revocation or maintenance of pre-trial detention, the judge may, either on his own initiative or at the request of the Public Prosecutor's Office or the accused person, call for the preparation of a social welfare report or for information from the Social Rehabilitation Department, provided that the accused person agrees to such rehabilitation.

82. Coercive measures are immediately terminated:

(a) As a result of the discontinuation of the inquiry, when an investigation is not requested;

(b) When the decision not to try the case becomes final (*despacho de não pronúncia*);

(c) When the decision not to accept the charge becomes final under article 311, paragraph 2, of the Code of Criminal Procedure (when the charge is clearly unfounded);

(d) As a result of acquittal, even when an appeal has been filed;

(e) When the sentence is final.

83. Pre-trial detention is also immediately terminated when a decision is taken to convict, even if an appeal has been filed, and the prison term imposed is not longer than that already served. The maximum time limits for pre-trial detention are provided for in article 215 of the Code of Criminal Procedure, article 1 of which reads:

“1. Pre-trial detention shall be terminated if:

(a) Six months have elapsed without a specific charge;

(b) Ten months have elapsed without a decision, although the investigation has been completed;

(c) Eighteen months have elapsed without a conviction in first instance;

(d) Two years have elapsed without a final conviction.”

84. The time limits provided for in article 215, paragraph 1, above are increased to eight months, one year, two years and 30 months, respectively, in cases of terrorism, violent or highly organized crime or in the case of a crime punishable by a prison sentence of more than eight years and in the case of one of the crimes provided for in paragraph 2, which is referred to below in shortened form, together with an indication of the relevant article of the Penal Code:

- (b) Car theft or forgery of related documents, as well as documents identifying vehicles;
- (c) Counterfeiting currency, credit instruments, tax documents, stamps and seals;
- (d) Fraud, fraudulent insolvency, mismanagement of the public or cooperative sector, forgery, corruption, economic participation in business;
- (e) Laundering of money, assets or proceeds of crime;
- (f) Any offence covered by a convention on the safety of air navigation or shipping.

85. Article 215, paragraphs 3 and 4, of the Code of Criminal Procedure read:

“3. The time limits provided for in paragraph 1 may be increased to 12 months, 16 months, 3 years and 4 years, respectively, when the proceedings relate to one of the crimes referred to in paragraph 2 and prove to be exceptionally complex on account, for example, of the number of accused persons or victims or the highly organized nature of the crime.

4. The time limits referred to in paragraph 1 (c) and (d), as well as those referred to in paragraphs 2 and 3, are increased by six months in the event of an appeal to the Constitutional Court or where the criminal proceedings have been suspended for the purpose of the hearing of a preliminary issue in another court.”

86. Another reason for the extension of the time limit for pre-trial detention is provided for in article 216 of the Code of Criminal Procedure, which reads:

“1. Such time limits are suspended (counting stops and then starts again at the end of the suspension):

- (a) In the event of an expert opinion, the result of which may be decisive for the indictment, the order for the pronouncement of sentence (*pronúncia*) or the final sentence, from the time the expert report is ordered until its submission; or
- (b) In the event of illness requiring the hospitalization of the accused person, if his presence is essential for the conduct of the investigations.

2. The suspension provided for in paragraph 1 (a) may in no case last longer than three months.”

87. According to article 217, an accused person in pre-trial detention is released as soon as the measure is terminated, unless he has to be kept in prison for another trial.

88. This system has been criticized because of the slowness of the resulting procedure and the length of time during which pre-trial detention may last. In addition, pre-trial detention may be overused. It is estimated that 25 per cent of the total prison population is composed of persons in pre-trial detention.

89. These two problems overlap. There is every reason to fear that accused persons may spend the period of time of the sentence which would be imposed in pre-trial detention and that they may be released on the day of sentencing because they have already served their sentence, but have not benefited from the general conditions applicable to other detainees.

90. It may, however, be noted that judges can find themselves in situations where there appear to be few alternatives to pre-trial detention because there is a serious risk of flight or recidivism, as in the case of offences involving drugs, drug trafficking and drug use.

91. The underlying approach of the Code of Criminal Procedure to the question of pre-trial detention is that such detention remains preventive until the case has been finally decided, thereby strengthening the principle of the presumption of innocence. If pre-trial detention ended at the time of the first sentence, even with an appeal, there would be fewer prisoners awaiting trial, pre-trial detention would last less long and accused persons would benefit from the same guarantees as other prisoners, since their trials would be ongoing. Without meaning to make the question of pre-trial detention simply one of semantics, it may be said that the problem could be solved, at least in part and, in so far as time limits are concerned, if its name was changed. This is obviously not an ideal solution, but Portugal is counting on the understanding of the Committee against Torture to help it find one.

92. The following table may make it easier to understand the prison situation in Portugal:

Table 1. Prison population

<i>Years</i>	<i>1999^a</i>	<i>%</i>	<i>2000</i>	<i>%</i>	<i>2001</i>	<i>%</i>	<i>2002</i>	<i>%</i>	<i>2003</i>	<i>%</i>	<i>2004^b</i>	<i>%</i>
Accused person	4 052	31.4	3 854	30.2	3 690	28.1	4 219	30.6	3 492	25.6	3 497	25.7
Convicted	8 855	68.6	8 917	69.8	9 422	71.9	9 553	69.4	10 143	74.4	10 123	74.3
Total	12 907	100	12 771	100	13 112	100	13 772	100	13 635	100	13 620	100

Source: Prison Services Department; Planning, Documentation, Studies and International Reports Department.

^a There was an amnesty in 1999.

^b Data until 15 June 2004.

C. Electronic surveillance

93. Mention must be made of electronic surveillance, which has a great deal of potential as an alternative to pre-trial detention. It applies to persons who are under an obligation to remain at home in accordance with article 201 of the Code of Criminal Procedure. It is provided for by Act No. 122/99 of 20 August 1999 and depends on the consent of the accused person and the persons who are living with him or who may be affected by his house arrest. The consent of the accused person is given in writing, unless he himself requests the application of this measure; such consent is a revocable at any time.

94. During the inquiry, electronic surveillance is ordered by the court at the request of the Public Prosecutor's Office; following the inquiry, it may be decided unofficially by the court.

95. According to article 4, electronic surveillance is carried out, on the basis of respect for the dignity of the accused person, by means of technology designed for the remote detection of his presence or absence in a certain place at certain times decided by the court. The Social

Rehabilitation Institute is responsible for electronic surveillance. It monitors the implementation of this measure and keeps the courts informed of the methods used.

96. Every three months, the court reviews the conditions in which electronic surveillance was decided, as well as its enforcement, maintaining, changing or revoking its decision (art. 7).

97. In 2002, 44 electronic surveillance measures were applied; in 2003, the Social Rehabilitation Institute applied 142 such measures and, as at April 2004, 202 are in the process of being applied.

D. Supervision of prison authorities/authorities responsible for detention

98. Before discussing this question, we must first consider legislation relating to the police and the Inspectorate- General of Internal Administration (IGAI), the authority which monitors law enforcement agencies.

99. Criminal Investigations Organization Act No. 21/2000 of 10 August 2000 defines the principles determining how investigation activities are carried out by the courts and the police. Criminal investigation thus consists of all measures, as defined in the Criminal Procedure Act, taken to determine the existence of a crime, to identify the perpetrators and their responsibility and to discover the facts and collect evidence in accordance with procedure (art. 1). The investigation is conducted by the competent judicial authority at every stage in the proceedings (art. 2). The judicial authority is assisted in the investigation by the criminal police bodies, which report the facts (when they are aware of the commission of a crime) (art. 2, para. 3) to the Public Prosecutor's Office within the shortest possible time and immediately set the investigation in motion, taking all necessary and urgent measures to safeguard the evidence (art. 270, para. 4, of the Code of Criminal Procedure).

100. During the investigation, the criminal police bodies work under the supervision of and are functionally subordinate to the competent judicial authority, regardless of their own hierarchy. According to article 7, the criminal police bodies may conduct any legally admissible investigations, while the judicial authority may take control of the proceedings, supervise their conduct and lawfulness and decide on any type of act. This is thus the first step of a judicial nature that reflects systematic control: the judiciary is the master of the proceedings it conducts and thus keeps police activity under very close supervision.

101. In terms of generic competence, the criminal police bodies include the judicial police, the National Republican Guard and the security police. Specific criminal police bodies are any bodies on which such status has been conferred by law.

1. Judicial police

102. According to article 4, the judicial police is solely responsible for the investigation of the following crimes:

- (a) Murder, perpetrator unknown;
- (b) Crimes against liberty and sexual self-determination, punishable by up to five years' imprisonment;

- (c) Fire, explosion, exposure of persons to radioactive substances and release of toxic or asphyxiating gases;
- (d) Pollution causing a public emergency;
- (e) Theft, damage, forgery or concealment of scientific, artistic, historical or cultural property;
- (f) Forged a driving licences and forged vehicle documents;
- (g) Trafficking in and changing identity of stolen vehicles;
- (h) Crimes against peace and against humanity;
- (i) Slavery, illegal confinement and abduction or hostage taking;
- (j) Terrorism and participation in terrorist organizations;
- (k) Crimes against State security, with the exception of crimes relating to the voting process;
- (l) Participation in an armed uprising;
- (m) Seizure or offence against the safety of air, water, rail or road transport, which is, in the abstract, punishable by eight or more years' imprisonment;
- (n) Crimes carried out by means of bombs, grenades, explosive substances or devices, firearms and booby traps, nuclear, chemical or radioactive weapons;
- (o) Theft in loan institutions, tax collection offices and post offices;
- (p) Participation in criminal associations;
- (q) Crimes relating to the traffic in narcotic drugs and psychotropic substances, as provided for in articles 21, 22, 23, 27 and 28 of Decree-Law No. 15/93 of 22 January 1993, as well as any crime provided for in that legislative text of which the judicial police is aware;
- (r) Laundering of money, assets or proceeds of crime;
- (s) Corruption, abuse of office, economic participation in business and influence peddling;
- (t) Embezzlement in a public sector or cooperative unit;
- (u) Fraud in obtaining a subsidy or its misuse, as well as fraud in obtaining an interest subsidized credit;
- (v) Economic-financial offences committed in an organized manner or using information technology;
- (w) International or transnational economic-financial offences;

- (x) Computer crime;
- (y) Counterfeiting of currency, credit documents, tax revenue, seals and related assets or their issue;
- (z) Real estate crimes;
- (aa) Fraudulent insolvency;
- (bb) Abuse of freedom of the press committed through the national media;
- (cc) Complicity in crimes referred to in subparagraphs (s) to (z) above;
- (dd) Insult, as regards their functions or the exercise thereof, of the President of the Republic, the President of the Parliament, the Prime Minister, the presiding judges of the superior courts and the Attorney-General of the Republic.

103. According to article 5 of Act No. 21/2000, the Attorney-General of the Republic may, at the request of the National Director of the Judicial Police, the Commander General of the National Republican Guard or the National Director of the Public Security Police, entrust the investigation of crimes under article 4 (b) to (g) and (aa) to one of these police bodies. In important cases, the Attorney-General may entrust to the judicial police crimes which are not provided for in article 4, but, because of their importance, warrant investigation by the judicial police.

104. The central link between the police bodies is the Attorney-General of the Republic. When proximity or simplicity allows the non-judicial police to intervene in a case normally reserved for the judicial police, such intervention may be decided. In complex cases which are not necessarily within the jurisdiction of the judicial police, it may be called upon to solve any problems that may arise.

105. According to article 7, the various police bodies are coordinated by a coordinating Council composed of the Ministers of Justice and the Interior, the National Director of the Judicial Police, the Commander General of the National Republican Guard and the National Director of the Public Security Police. The President of the Supreme Judicial Council and the Attorney-General of the Republic may take part in the meetings whenever they deem it appropriate.

106. Decree-Law No. 275-A/2000 of 9 November 2000 establishes the organizational regime governing the judicial police. The judicial police is the highest-ranking criminal police body which takes part in the administration of justice, is organized hierarchically under the Ministry of Justice and is supervised according to law. It takes part in proceedings under the supervision and functional dependence of the judicial authorities, without prejudice to its own hierarchical organization.

107. The judicial police has the following two functions: to cooperate with the judicial authorities in investigations and to develop and promote prevention and investigation activities within its jurisdiction or assigned to it by the competent judicial authorities. Prevention involves surveillance of premises and establishments where crimes are likely to be committed, such as trafficking in persons, money laundering and related crimes and trafficking in works of art, which it is responsible for investigating once they have been committed (art. 4 contains a list). Investigation relates to crimes already committed (art. 5 contains a list similar to the one given in

the above-mentioned Criminal Investigation Act), as well as crimes which the judicial authorities request it to investigate.

107. The judicial police also serves as the link between Portuguese criminal police bodies and authorities and international criminal police cooperation organizations, such as INTERPOL and EUROPOL. It provides resources for the collection, processing, analysis and dissemination at the national level of information on known crime, scientific and technical expertise and training intended specifically for the criminal prevention and investigation functions which are necessary for its own activities and those of other criminal police bodies.

109. The judicial police also has an obligation to cooperate with all bodies with which its work is coordinated. It is entitled to ask for the cooperation of any public or private body when it gives the reasons for its request (art. 6). This duty takes on definite shape in connection with cooperation with persons and bodies which exercise functions relating to the surveillance, protection and security of persons, property and public or private facilities, which have the specific duty to cooperate with the judicial police.

110. The judicial police has an integrated criminal data system; it has direct access to the civil and criminal information contained in magnetic civil and criminal identification files. It cooperates directly in the analysis of requests for data processing relating to crime prevention and investigation carried out by the Justice Department's Information Technologies Institute. In accordance with the applicable standards and procedures, it has access to crime information contained in the files of other national and international bodies. Article 10 of the Organization Act provides that any person has an obligation to appear before judicial police bodies when duly summoned to do so.

2. *Code of Ethics of the National Republican Guard and the Public Security Police*

111. The Code of Ethics is a system of checks and balances which rates highly in the context of the Convention against Torture. It was established on the initiative of the police itself---the National Republican Guard and the Public Security Police, to be exact---and it is an important step in the self-regulation of the use of force by the police.

112. The Code of Ethics was published in the Official Gazette by Council of Ministers resolution No 37/2002 of 28 February 2002, which takes note of the Code of Ethics, requests the Ministry of the Interior to disseminate it widely and decides that training courses for members of the police forces must cover questions of ethics. The Code embodies principles of professional and behavioural ethics which are the same for all members of the security forces and which are essential for the credible and effective exercise of police activities.

113. Article 2, entitled "Basic principles", reads:

"1. The members of the security forces shall fulfill the obligations imposed on them by law, serve the public interest, defend democratic institutions, protect all persons against unlawful acts and respect human rights.

2. As diligent law enforcement officers, the members of the security forces shuttle cultivate and promote the values of humanism, justice, integrity, honor, dignity, impartiality, exemption, probity and solidarity.

3. In the exercise of their functions, the members of the security forces shall show absolute respect for the Constitution of the Portuguese Republic, the Universal Declaration of Human Rights, the European Convention on Human Rights, Community rules and regulations, international conventions, the law and the present Code.

4. The members of the security forces who act in accordance with the provisions of the present Code shall be entitled to the active support of the community they serve and to recognition by the State."

114. Article 3 of the Code affirms respect for fundamental human rights:

"1. In the performance of their functions, the members of the security forces shall promote, respect and protect human dignity, the right to life, liberty, security and all fundamental rights of the human person, regardless of his nationality, origin, social status or political, religious or philosophical beliefs.

2. In particular, they shall have the duty not to inflict, provoke or tolerate cruel, inhuman or degrading acts in any circumstance."

115. Article 4 states the principle of respect for the fundamental rights of detainees:

"1. The members of the security forces shall have the special duty to guarantee respect for the life, physical and mental integrity, honor and dignity of persons in their custody or under their orders.

2. The members of the security forces shall pay close attention to the health of persons in their custody and immediately take any measures required to ensure that the necessary medical care is provided."

116. Article 7 states the principle of proper conduct in the performance of duties:

"1. The members of the security forces shall act with determination, caution, serenity, common sense and self-control in dealing with situations arising as part of their professional activity.

2. The members of the security forces shall act in such a manner as to preserve the confidence, consideration and prestige inherent in the police function by treating all citizens, nationals, foreigners and stateless persons courteously, promoting conviviality and providing any assistance, information and explanations that may be requested of them in their sphere of competence.

3. The members of the security forces shall carry out their activities in accordance with criteria of justice, objectivity, transparency and rigor and shall act and take decisions promptly in order to prevent any damage to the assets and legal interests to be safeguarded."

117. Article 8 states the principle of appropriateness, necessity and proportionality in the use of force:

"1. The members of the security forces shall use appropriate coercive measures to ensure respect for law and order, public security and tranquillity only when such measures

are essential, necessary and sufficient for the proper performance of their functions and when means of persuasion and dialogue have been exhausted.

2. The members of the security forces shall avoid the use of force, except in cases expressly provided for by law and when it is lawful, strictly necessary appropriate and a proportional to the objective sought.

3. They must, in particular, not make use of firearms as an extreme measure, except when absolutely necessary or appropriate, when their lives or those of third parties are actually in danger and in cases strictly enumerated by law."

118. The duty to obey is also provided for:

"1. The members of the security forces shall promptly execute lawful and legal orders of hierarchical superiors.

2. The obedience that members of the security forces owe to their superiors shall not exempt them from responsibility for the execution of any such orders which are obviously violations of the law.

3. No disciplinary measure may be taken against a member of the security forces who has refused to execute an illegal and unlawful order."

119. This Code thus embodies principles which mean that the police itself tries to limit its action and to avoid the commission of acts of torture.

3. *Inspectorate-General of Internal Administration*

120. The foregoing shows that there is systematic internal monitoring of law enforcement agencies and officials and of the judiciary. External monitoring is carried out by the Inspectorate-General of Internal Administration (IGAI). Reference may also be made to the following site: <http://www.igai.pt>. IGAI, which was established in 1995 by Decree-Law No. 227/95 of 11 September 1995, as amended by Decree-Laws No. 154/96 of 31 August 1996 and No. 3/99 of 4 January 1999, is directly subordinate to the Minister of the Interior (art. 1) as a result of the fact that, in 1987, law enforcement agencies were placed under the supervision of that Minister by Act No. 20/87 of 12 June 1987, which ensures that any internal security activity is monitored in order to prevent abuses from being committed.

(a) *Competence of the Inspectorate-General*

121. Under article 2 of the Decree-Law, IGAI is headquartered in Lisbon and carries out its inspection activities throughout the national territory. Its activities cover all departments which report directly to the Minister of the Interior or which are under his supervision, the prefectures (*Governos Civis*), the police (the National Republican Guard (GNR), the Public Security Police (PSP) and the Aliens and Border Department (SEF)) and private security bodies. In conjunction with the relevant departments of the Ministry of Foreign Affairs, IGAI's mandate also covers the activities of departments reporting to the Minister of the Interior which are, under cooperation treaties, conventions and protocols, carried out outside the national territory.

122. According to article 3, IGAI monitors the implementation of laws and regulations with a view to the smooth operation of departments reporting Tuesday Minister, the protection of the

lawful interests of citizens, the safeguard of the public interest and the reestablishment of laws that have been breached. In particular, IGAI considers complaints filed as a result of possible breaches of the law or on account of the irregular or defective functioning of departments; it conducts inquiries and which prepares expert reports decided on by the Minister of the Interior, institutes administrative proceedings, conducts disciplinary proceedings, transmits evidence of legal-criminal significance to the competent bodies for criminal investigation and cooperates with such bodies in collecting evidence, as requested (art. 3, para. 2 (d) to (h)).

123. In the context of its inspection, supervision and investigation activities, IGAI's functions are, in particular:

(a) To conduct ordinary inspections and to use auditing methods for regular evaluations of the efficiency and effectiveness of departments reporting to the Minister, in accordance with the appropriate programme of activities;

(b) To conduct special inspections, as decided on by superior orders, with the same objectives;

(c) To monitor the operation of organizations which carry out private security activities when the lawfulness of such activities may be in doubt, without prejudice to the activities of the Private Security Council;

(d) To evaluate complaints, claims and accusations relating to possible violations of the law and, in general, to doubts about the unlawfulness of and shortcomings in the functioning of services;

(e) To conduct inquiries and expert investigations decided on by higher authorities and necessary for the proper functioning of services;

(f) To propose that disciplinary proceedings should be conducted and to conduct those decided on by the Minister of the Interior;

(g) To communicate facts which are of legal and criminal relevance to the competent bodies and to cooperate with such bodies in obtaining evidence, whenever that is requested;

(h) To exercise other types of jurisdiction provided for by law or decided on by higher authorities, in the context of its functions.

124. Under article 3, paragraph 3, of Decree-Law No. 227/95, IGAI is responsible for collecting, analysing and interpreting material required for the preparation of replies to requests for explanations made by national and international human rights organizations and for carrying out studies and issuing opinions on all matters within its jurisdiction.

125. According to article 4, IGAI's activities are governed by the following basic principles:

(a) Its jurisdiction is exercised in accordance with the law and the Constitution in order to protect democratic lawfulness and guarantee full respect for the fundamental rights of citizens;

(b) In the exercise of investigatory functions, particularly the conduct of complaint, investigatory and disciplinary proceedings, its activities are based on the principle of the rule of law and governed by rigorous criteria of objectivity;

(c) IGAI may not be involved in operational activities of security forces and departments; it must, however, monitor the way in which such activities are carried out and the consequences resulting therefrom, whenever that is deemed appropriate.

126. IGAI is composed of the Inspector General, who is in charge of it; the Inspection and Monitoring Department, which is responsible for disciplinary inspections and proceedings and which also includes a technical support unit that provides guidelines for its activities and prepares working papers, particularly for the purpose of training and the drafting of legislation; the Internal Affairs Department, whose functions are to ensure that the Service operates smoothly and to receive complaints in respect of possible abuses by IGAI officials; and the Administration and General Support Section.

127. Candidates having the necessary preparation for the exercise of IGAI functions become inspectors. Judges and prosecutors may obtain higher level posts, provided that they have several years of experience, thereby helping to improve the quality of IGAI's services (art. 21). There is no real career as an inspector, only the post of inspector, since the choice of candidates is made by the Inspector General (art. 19). Posts are thus not permanent and inspectors are either kept and integrated or requested to leave, depending on the quality of their performance. The same is true of the Inspector General, the persons at the top of the IGAI hierarchy being judges. These criteria for the choice of inspection staff improve the quality of IGAI's work and contribute to the effectiveness of the activities it is carrying out with a view to the protection of fundamental rights.

(b) *Abuses by law enforcement agencies: activities of various agencies, including IGAI*

128. IGAI's activities may be monitored by means of its reports, which, for the purposes of the present text, cover the period from 1998 to 2003. IGAI's activities thus led to the approval in 1999 of the regulations for physical conditions of detention in police premises, which were published in the Official Gazette, second series, No. 102, of 3 May 1999. These regulations, which were introduced as a result of IGAI's activities, were adopted on the initiative of the Ministry of the Interior and are designed to govern conditions of detention in police premises which are subordinate to the Ministry. According to the regulations, detention is any deprivation of liberty for a period of fewer than 48 hours, as well as the condition of any person subjected to the process of compulsory identification.

129. Places of detention must meet requirements relating to habitability, lighting, insulation against excessive cold and heat, ventilation and security. Cells must be near police premises and, if possible, located on the ground floor. Places of detention must also be near the district court's headquarters.

130. The principle on which these regulations are based is that detainees are subordinate to the police.

131. Persons subjected to the process of identification may not be placed in cells.

132. A detainee must receive a booklet containing a list of the rights to which he is entitled in the present situation. A detention report is drawn up and a register of detainees and an individual detention book are kept in each police station. The identification of the detainee, the date and time of detention and of presentation to the judicial authority, the place of detention, the identity of the officers who carried it out and the nature and circumstances of the act to which led to the detention are recorded in the register.

133. Each individual book contains a description of all circumstances and measures relating to the detainee, such as the time and cause of deprivation of liberty, the time at which he was informed of his rights, signs of injury, contacts with family members, friends or legal counsel, incidents which took place during detention, the time of presentation to the judicial authorities and the time of release. This book is signed by the responsible officers and by the detainee himself.

134. In addition to these regulations, mention must be made of the important decision taken by the Minister of Internal Administration (No. 8/MAI/98 of 17 January 1998), which reads:

“According to information brought to the attention of the Ministry and verified in GNR posts and PSP stations, complaints filed by citizens are being refused by law enforcement officials on a variety of pretexts, such as the fact that they are not competent, the claim that a complaint will have no effect and other excuses.

Such conduct is harmful to the reputation of law enforcement agencies and cannot easily be justified on legal grounds. I therefore decide:

1. That GNR and PSP must always promptly receive complaints filed by citizens in GNR posts and PSP stations, regardless of the nature of the complaints (whether criminal or not) and of the competence of the authority concerned to receive them.

2. That, in cases where a complaint has been received and it has been determined that competence to receive the complaint belongs to an agency other than the police force, the complaint must be rapidly sent to the competent agency and the complainant must be so informed.

To the commanders-in-chief of GNR and PSP.
Lisbon, 17 January 1998.
The Minister of Internal Administration”.

135. Another important decision (No. 10 717/2000 (second series) of 25 May 2000) taken by the Minister of Internal Administration deals with relations between detainees, police officers and lawyers:

(a) A person detained in police premises is entitled to communicate orally or in writing with his lawyer. He must be authorized to communicate by telephone with his lawyer and the use of the telephone in the police premises must be allowed to him for a limited time when such premises do not have a public telephone;

(b) Authorizations for visits may be requested and granted verbally;

(c) A lawyer's visit must be authorized by the highest-ranking officer in the post or station at the time and may take place at any time of the day or night, immediately following the completion of the necessary formalities and the preparation of the relevant reports;

(d) If the police premises in question do not have rooms intended for this purpose, lawyers must be given facilities enabling them to meet with their clients in conditions of dignity and security. In exceptional circumstances, particularly when there is a large number of detainees or facilities are lacking, the measures required by the case must be taken, without prejudice to safety standards and the smooth functioning of the police premises in question;

- (e) The content of written texts and other documents in the possession of lawyers is not monitored;
 - (f) Lawyers' visits take place in such a way that conversations may not be overheard by guards;
 - (g) Visits may be interrupted for obvious security reasons.
- (c) *Handling of complaints and monitoring of conditions in places of detention*

136. Attention is drawn to regulation No. 10/99 on inspection and monitoring measures adopted on the decision of the Minister of Internal Administration on 29 April 1999. According to article 1, complaints and other similar documents filed with IGAI are dismissed when they are unfounded or the authors are not identified. If they relate to criminal acts, however, their content is immediately transmitted to the Public Prosecutor's Office or the military judicial police. The results of the preliminary evaluation of a complaint are immediately transmitted to the author and to the agencies directly concerned.

137. According to article 2, whenever action by security officials or any IGAI department leads to a violation of personal integrity, including death and any other serious impairment of physical integrity, or there are indications of serious abuses of authority or grave property damage, the security forces or services must immediately inform the Minister of Internal Administration by fax and await a decision as to the conduct of disciplinary proceedings.

138. The Inspector General of Internal Administration (art. 3) is responsible for ordering any ordinary inspections or monitoring and verification proceedings that he may deem necessary. Inspections may be general, sectoral or thematic and are conducted in accordance with the annual programme of work or when they are decided on by the Minister of Internal Administration, who is responsible for ordering special inspections, inquiries and disciplinary proceedings, as well as inspections affecting an entire service.¹

139. According to article 5, a decision to inspect or investigate a service is communicated to the service concerned, whereas monitoring always takes place without prior notice. The service concerned must give inspectors all necessary support.

140. According to article 8, inspectors are authorized to have full access to services, installations, establishments and premises where activities subject to IGAI inspection and monitoring are carried out. Inspectors obtain access to installations and freedom to move in and around premises where security forces carry out their activities by prior introduction to the service's highest ranking officer and a communication, submitted as early as possible, to the chief of the security force in question. Inspectors have unlimited access to all documentation, prepare reports on the offences they are investigating and immediately transmit such reports to the Inspector General and the chief of the service in the event of a criminal offence. Inspectors obtain evidence that is necessary in order to determine the facts, calling on various Government agencies to supply the relevant information.

¹ There are three types of personnel proceedings and one type of service proceedings. Disciplinary proceedings are designed to identify the official concerned and the act in question, inquiries are designed to identify the persons who have committed a particular act and investigation proceedings are designed to identify both acts and officials on the basis of still unverified information. *Sindicâncias* are investigation proceedings involving an entire service.

141. When an inspection is carried out, a report is prepared and also submitted to the chief of the service in question, who must comment on it within 20 days. The opinion of the Inspector General or the person replacing him is then transmitted to the Minister for the adoption of a decision.

142. In accordance with these regulations and the regulations on physical conditions of detention in police stations, IGAI conducted a review of procedures in 1999, since the latter regulations contain a section relating to the physical characteristics of places of detention (size, layout, lighting, equipment, cleaning, maintenance), standards relating to the treatment of detainees (accommodation, food, information on rights, contacts with defence counsel and family members, medical care) and standards relating to procedures to be followed (registration, detention books, communications).

143. The part of the review relating to decisions and earlier procedures had a pedagogical impact and led to the dissemination of these new rules and a follow up phase. All places of detention whose closure had been proposed were also inspected.

144. During this inspection, 70 places of detention (27 belonging to PSP and 43, to GNR) were visited without prior notice. Positive results were achieved in terms of the implementation of earlier decisions relating to the registration of detentions, contacts between detainees and defence counsel and family members, clinical care, if necessary, by accompanying the detainee concerned to a hospital and, lastly, the registration and custody of items seized and dangerous articles.

145. Respect for the new criminal procedural rules relating to the registration of a person as a detainee, the compulsory appointment of defence counsel by criminal police bodies (in the case of minors, non-attributability, etc.) and communication of the detainee's rights were also monitored. With regard to these guarantees, it was found that signs on the walls spelled out detainees' rights and duties and that booklets in four languages, Portuguese, French, Spanish and English, provided information in this regard. Since the new rules deriving from the regulations on conditions of detention were still not widely known, the monitoring team made sure that they were being disseminated and clearly explained.

146. With regard to places of detention where closure or emergency measures had been proposed because of failure to meet minimum standards, it was found that only four in the Public Security Police stations in Barcelos, Vila Nova de Famalicão and Beja and the National Republican Guard territorial post of Lourinhã were unsatisfactory.

147. It should be noted that the Council of Europe's Committee for the Prevention of Torture visited several police stations in 1999 and reviewed matters relating to human rights. It found that physical conditions of detention, detention procedures and the treatment of detainees had improved since earlier visits in 1992 and 1995 and it drew attention to the important role played by IGAI, with which it held a working meeting at its request.

148. In 2000, IGAI carried out unscheduled inspections at any time of the day and night in law enforcement premises throughout the country. The purpose of these on-the-spot checks was to observe the situation "on the ground", particularly with regard to procedures, conditions of detention, the treatment of detainees, the way the public is received, the gathering of procedural evidence, staff on duty and command support, all of which were reported on at the time of the visit.

149. The criterion for the inspections was a choice of places of detention located in various parts of the country, including the autonomous regions (Azores and Madeira), with a similar number of premises for each law enforcement agency, preferably during difficult periods, especially weekends. In 2000, teams composed of two inspectors carried out six inspections of 62 premises, including 28 PSP stations and 34 GNR posts located in Madeira, Algarve and the districts of Santarém, Leiria, Coimbra, Braga, Guarda, Vila Real and Setúbal.

150. During these visits, the following observations were made:

(a) The teams were well received by law enforcement officials and their commanders, who were present in the places visited, even though the visits were unscheduled;

(b) Care was being taken to implement the rules in force, particularly those relating to procedures, conditions of detention and identification, and there was awareness of the rights of citizens. Note was taken of the adoption by GNR of new record books, which contained boxes for the various types of information to be recorded, and the use by PSP of an "Observations" column in its old record books.

(c) There was considerable awareness of the way in which the public is received and efforts were being made to find solutions in cases which should be dealt with in private; among the places visited, two at least had private rooms intended for victim support;

(d) The teams did not find any detainees who showed signs or complained of ill treatment, even though they did meet with detainees in some of the premises visited;

(e) The complaints recorded in the complaint books kept in all posts do not reflect any lack of interest or respect by law enforcement officials of the requirements and rights of citizens; the complaints usually related to disputes about measures taken and reports written in connection with the regulation of motor vehicle traffic;

(f) There were, however, some cases where administrative organization was lacking and uncertified or uninitialed corrections and deletions were found in the records being kept;

(g) Shortcomings of various kinds in the monitoring of procedures relating to motor vehicle traffic;

(h) Commendable progress in the elimination of alcoholic beverages in police stations and commanders' awareness of the need to achieve this objective;

(i) Several police stations nevertheless had substandard facilities, although some were being renovated or already had plans for new facilities.

151. It was found that police cells generally complied with regulatory requirements. However, it was recommended that one should be closed; emergency work was done in two others. It was also determined that safety nets had been installed in some of the premises visited.

152. Throughout 2001, IGAI also carried out unscheduled inspections in law enforcement premises at any time of the day and night and throughout the country. The purpose of these inspections was the same as the ones referred to in paragraph 148 above.

153. The criterion for the inspections was a choice of places of detention located in various parts of the country, including the autonomous regions (Azores and Madeira), with a similar number of premises for each law enforcement agency, preferably during difficult periods, especially weekends. Throughout 2001, seven inspections were carried out by teams composed of two inspectors; 97 premises were visited, including 32 PSP stations and 25 GNR posts on the mainland (metropolitan headquarters zones in Porto and Lisbon and the districts of Castelo Branco, Portalegre, Viseu, Chaves and Bragança) and 28 PSP stations and 12 customs units forming part of the Ponta Delgada, Angra do Heroísmo and Horta police stations and customs outposts.

154. As in 2000, the inspection teams were well received and note was taken of the concern to respect the rules in force relating to procedures, conditions of detention and identification, as well as the rights of citizens. The teams also did not find any detainees showing signs of ill treatment.

155. In 2001, PSP prepared an internal note on the adoption of various detention procedures which are in keeping with proposals made by IGAI. Particular attention is drawn to the adoption of a new model detention register containing the various elements provided for in the regulations on conditions of detention in police premises.

156. A general finding was that conditions for receiving the public are unsatisfactory. In cases requiring considerable discretion, the task of finding and using a free room (usually the commander's office) was left to police officers themselves.

157. With regard to conditions in the detention areas visited, it was generally found that there were no safety nets and that the doors in PSP cells had unprotected metal bars. These two problems are, however, being specifically dealt with by the Research and Planning Office, with follow-up by IGAI. Other problems were also found with the use and installation of equipment, such as non-built-in faucets, broken tiles and parts with potentially dangerous edges. Another criticism was that some detention areas are located in separate premises from those of the officers on duty, thereby hampering requests for assistance. There were three cases of obvious incompatibility with requirements and it was proposed that the cells in the Elvas and Olivais PSP stations and the Castro d'Aire GNR post should be closed.

158. The question of central detention areas in a prefecture also arose at Lisbon metropolitan headquarters. Such areas have been under review for a long time because they do not meet basic requirements despite all the improvements that have been made. The persons in charge considered that the solution would be to build new premises.

159. In 2002, the same preventive inspection activities were carried out under the same conditions in various parts of the country. They had the same objectives as those referred to in paragraph 148 above.

160. In this case, IGAI chose premises and units where unscheduled inspections had not yet been carried out, as well as new posts and police stations. Four inspections were thus carried out by teams composed of two inspectors: 63 premises were visited, including 23 GNR posts and 40 PSP stations on the mainland (territorial outposts in Cantanhede, Beja, Vila Nova de Milfontes, Faro, Loulé, Albufeira and Silves; the Lisbon metropolitan headquarters area; and the Santarém, Leiria, Setúbal and Beja police headquarters posts).

161. In this case as well, the positive aspects were the way the inspection teams were received by the law enforcement officials and leaders present in the places visited, the generally good

knowledge of the regulations in force in respect of procedures and detention and identification conditions, the determination to implement the regulations and the awareness of respect for the rights of citizens. In 2002, detainees did not show any signs, or complain, of ill treatment.

162. It should be noted that an IGAI inspection discovered a lack of minimum security conditions in a detention area of the GNR territorial post in Quarteira; the senior officers were so informed and they decided that the area should be immediately closed off. The necessary improvements were made, thereby guaranteeing a satisfactory level of security.

163. The same types of inspections were carried out in 2003, when the latest IGAI report was prepared. The objectives were, of course, the same as those referred to in paragraph 148 above.

164. The criteria used in 2003 naturally included a choice of premises located in various parts of the country, but, this time, some of them had already been inspected by IGAI. Ten inspections were thus carried out by teams composed of two inspectors; 137 premises were visited, including 65 GNR posts and 72 PSP stations located throughout the mainland. Inspections were carried out in the territorial units in Sintra, Almada, Setúbal, Santarém and Évora and in 10 territorial outposts in Miranda do Douro, Mirandela, Bragança, Póvoa do Lanhoso, Moncorvo and Matosinhos. The Porto metropolitan headquarters was inspected, as were the 11 police headquarters in the following places: Leiria, Santarém, Viana do Castelo, Portalegre, Castelo Branco, Guarda, Viseu, Vila Real, Bragança, Braga, Coimbra and Aveiro. In the Azores and Madeira, IGAI inspected the Horta police headquarters, the Ponta Delgada police headquarters and the Madeira regional headquarters.

165. No situation involving violations of the fundamental rights of citizens was detected, especially with regard to detainees and persons taken to posts and police stations for the completion of legal formalities. The inspectors were generally well received and police officers cooperated by providing the necessary explanations and documentation.

166. The PSP National Department gave IGAI a circular which it had issued to all headquarters and which contains rules of procedure relating to registration and files, including the registration of detainees, files of communications faxed to judicial authorities, the registration of individuals taken to police stations, the complaints book, the computerization of records of cars stolen, found and to be seized, the file of blood alcohol screening test receipts, the management of fines and administrative offences, files of proceedings relating to administrative offences and other types of files. These rules meet IGAI requirements.

167. The PSP National Department submitted a model identification report to IGAI for its opinion. Since the identification procedure had given rise to some problems, particularly in relation to the current wording of article 250 of the Code of Criminal Procedure and the text of Act No. 5/95 of 21 February 1995, an opinion was given and it is now under consideration.

168. An inspection was carried out at the Sines customs outpost and action was taken in respect of mixed border posts located in national territory, but it was ultimately restricted to the mixed border post within the jurisdiction of the Aliens' and Border Department at Vilar Formoso.

(d) *Complaints concerning law enforcement agencies*

169. IGAI is also responsible for dealing with complaints, which are divided into two categories, category A and category B (and B1, B2 and B3).

(a) Category A relates to obviously unfounded and inappropriate complaints and anonymous accusations. Such cases are dismissed at the outset, with the complainant being so informed and the necessary communications made to the courts (in the case of anonymous accusations of a criminal nature);

(b) Category B (and B1, B2 and B3) relates to complaints, accusations and communications concerning relevant and apparently well-founded situations of known origin. In such cases, IGAI's treatment and involvement depend on the seriousness of the property damage caused. Direct research and investigation action by IGAI is limited to particularly serious and relevant cases, as generally referred to article 2 of the Regulations on Inspection and Verification Action, which was adopted by ministerial decision on 21 December 1999 and published in the Official Gazette, second series, No. 106 of 7 May 1999: "when action by law enforcement officials leads to injury to a person, particularly death or serious impairment of physical integrity, or when there is evidence of a grave abuse of authority or serious property damage". In the most serious cases (category B1), IGAI carries out a form of direct monitoring by instituting and conducting formal proceedings involving investigations, inquiries and disciplinary measures. Category B2 includes fairly serious cases or very serious cases unrelated to the service; IGAI then carries out a form of indirect monitoring by instituting informal administrative proceedings, which supplement formal proceedings instituted by the commanders and leaders concerned and any criminal proceedings which may be instituted. In less serious cases, IGAI simply sends the communications received to the highest ranking officer of the service concerned and informs the author of the complaint of the measure taken.

170. IGAI presents data relating to such complaints in the tables which are annexed to this report and which may be consulted in the files of the secretariat of the Committee against Torture.

171. The majority of cases are brought to IGAI's attention by means of a communication transmitted by the Public Prosecutor's Office in accordance with circular No. 4/98 of 4 May 1998 issued by the Office of the Attorney-General of the Republic.

(e) *Regulations on the use of firearms by the police*

172. The most important text in this regard is Decree-Law No. 457/99 of 5 November 1999, which applies to cases of the use of firearms by the police. "Police officials" are all agencies and persons defined by the Code of Criminal Procedure as criminal police bodies and officers who are authorized to use a firearm in accordance with their legal status.

173. Article 2 of the Decree-Law establishes the principles of necessity and proportionality. Paragraph 1 thus provides that: "The use of firearms is allowed only in the event of absolute necessity, as an extreme measure when other less dangerous means prove to be ineffective, and provided that it is proportional to the circumstances". Paragraph 2 states that: "In this case, the officer concerned must attempt to keep injuries and damage to a minimum and to respect and protect human life".

174. The Decree-Law is expressly based on the international texts governing this subject matter, particularly the Code of Conduct for Law Enforcement Officials, adopted by the United Nations General Assembly in its resolution 34/169 of 17 December 1979. Article 3 of the Code of Conduct provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duties.

175. According to article 3 of the Decree-Law, the use of firearms in the context of article 2 of the above-mentioned principles is permitted only:

- (a) To prevent an imminent and unlawful attack on a police officer or a third party;
- (b) To arrest or prevent the escape of a person who is suspected of having committed a crime punishable by more than three years' imprisonment or who possesses or is using firearms, knives or explosive or radioactive devices or substances or devices or substances intended for the manufacture of toxic or asphyxiating gases;
- (c) To arrest a person who has escaped or for whom an arrest warrant has been issued or to prevent the escape of a lawfully detained person;
- (d) To free hostages or persons who have been kidnapped or abducted;
- (e) To avert or prevent a serious attack on Government or public installations or on aircraft, ships, trains, public transport vehicles or vehicles for the transport of dangerous goods;
- (f) To overcome violent resistance to the performance of a service in the line of duty and to maintain authority after having issued an unequivocal summons to obey and after having exhausted all other possible means of doing so;
- (g) To shoot animals which endanger persons or property or which cannot be successfully treated when seriously injured;
- (h) As an alarm signal or call for help in an emergency situation when other means cannot be used for that purpose;
- (i) When so required for the maintenance of public order or when superior officers order it for that purpose.

176. According to article 3, paragraph 2, of the Decree-Law, the use of firearms against persons is permitted only when, cumulatively, the objective sought can be achieved only by means of firearms, in accordance with paragraph 1, and in one of the following circumstances:

- (a) To prevent an imminent and unlawful attack on a police officer or a third party where there is an imminent danger of death or serious impairment of physical integrity;
- (b) To prevent the commission of a particularly serious crime that endangers human life;
- (c) To arrest a person who represents such a danger and resists arrest or to prevent his escape.

177. According to paragraph 3, no one may be intimidated by the use of firearms when the use of firearms is not permitted. According to paragraph 4, the use of firearms is permitted only if it is unlikely that no one other than the person or persons being aimed at will be shot.

178. Article 4 refers to a "warning" in the following terms:

- "1. The use of firearms must be preceded by a clearly perceptible warning whenever the nature of the service or circumstances so permit.

2. Such warning may consist in firing a shot in the air if it may be assumed that no one will be injured and that no other summons or warning will be clearly and immediately perceptible.

3. In the event of a gathering of persons, the warning must be repeated”.

179. According to article 5, firearms are used in accordance with the instructions of the commander of the law enforcement agency, except where the officer is alone or in circumstances which totally prevent him from awaiting instructions. Article 6 makes it a duty to provide assistance: an officer who has used firearms is under an obligation to provide assistance to injured persons as soon as possible.

180. Article 7 provides for the duty to submit a report. The use of firearms is immediately communicated to the hierarchical superiors, followed by a written report. In the event of personal or property damage, the hierarchical superior informs the Public Prosecutor’s Office, which determines whether a measure should be taken and which one. The hierarchical superior states his position on the matter, submitting a written report to the Public Prosecutor’s Office. The officer or agency concerned must protect the place where the shots were fired in order to prevent traces from being removed and must immediately examine them in case they might change or disappear.

181. When the use of firearms is an element of a crime, the rules of the Code of Criminal Procedure relating to evidence and preventive measures and public order are applied to any rule handed down by the authorities and to criminal police bodies.

182. According to article 8, these rules apply, with the necessary adaptations, to explosives.

183. It should be noted that, during the preparatory work for the Decree-Law,² the Government of Portugal followed to the letter the recommendations contained in international texts, including the above-mentioned Code of Conduct and the Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials and, in particular, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1990).

184. Both GNR and PSP have procedural rules governing the use of coercive measures, particularly firearms, by police officers.

185. It should also be noted that a report must be submitted and an investigation systematically carried out when the use of firearms by a police officer has led to death or bodily injury. Systematic, unannounced inspections take place at any time of the day and night in police stations throughout the national territory (mainland and islands) with a view to the full implementation of the law relating to detainees (registration, submission of information to the Public Prosecutor’s Office, sanitary conditions, medical care, etc.) and places of detention, as stated above (visits organized by IGAI). Posters in all languages listing the rights and duties of all detainees are also put up in visible places in all police stations and measures are taken to guarantee the implementation of provisions ensuring that detainees have the right to be assisted in private by legal counsel, to receive medical care and to have the assistance of an interpreter. On the basis of respect for legal provisions relating to the protection of personal data, audio and video surveillance equipment is gradually being installed inside and outside police stations, where recordings are heard and viewed.

² See “O uso de armas de fogo pelos agentes policiaes, alguns aspectos”, by Judge Maria José R. Leitão Nogueira, IGAI Deputy Inspector General, available on <http://www.igai.pt>.

186. The authorities are systematically encouraging best practices with regard to guarantees of human rights and the elimination of ill treatment by the police, by means of available tools and equipment (initial and continuing theoretical and practical training, organization of seminars, dissemination of texts and handbooks from international organizations dealing, for example, with training in human rights and human rights and law enforcement).

187. The curricula of all law enforcement training institutions provide for human rights training, with particular emphasis on the moderate use of firearms. Training is given at all levels: for access and for promotion; for officers and for officials; initially and on a continuing basis; theoretical and practical, with particular legal, sociological and political emphasis. Between 15 and 30 hours of training are given every week.

188. The Aliens' and Border Department deals with the prohibition of torture, ill treatment and racial discrimination in the context of both initial training (a 10-hour cultural anthropology course designed to provide basic understanding of cultural differences and to prevent racist and xenophobic attitudes) and continuing training (participation in seminars).

189. The Consultative Council for the Training of Law Enforcement Agencies, which was set up by Council of Ministers resolution No. 78/98 of 7 June 1998, is a support and advisory body of the Minister of Internal Administration which is responsible for taking decisions on all matters relating to the training of law enforcement agencies. Its achievements include direct and distance training in the following areas: firearms, the prohibition of torture, ill treatment and racial discrimination, immigration and ethnic minorities. In cooperation with the Office of the High Commissioner for Integration and Ethnic Minorities, the Consultative Council has organized meetings on "Police mediation and ethnic minorities" in which 400 members of the Public Security Police and the National Republican Guard have already taken part.

190. In the context of continuing training, the Public Security Police launched a new continuing training module in 2003 consisting of a 70-hour course which has already been taken by about 7000 police officers and officials and which includes instruction in shooting, police intervention techniques and the use of non-lethal means. It also deals with circumstances in which the various means of coercion may be used.

191. In the context of continuing training, the National Republican Guard deals with professional ethics (module on fundamental rights) and the social environment (module on immigrants and ethnic minorities).

E. Abuses committed by law enforcement agencies: information relating to the Office of the Attorney-General of the Republic

192. Information relating to IGAI was given in paragraph 132 above and is to be found in the IGAI reports for 1999, 2000, 2001, 2002 and 2003. Detailed figures concerning complaints filed with IGAI from 1999 to 2003 are contained in the annexes to the present report.* With a view to the presentation of the fullest possible information, attention is now drawn to figures relating to the Office of the Attorney-General of the Republic.

* These statistical annexes may be consulted in the files of the secretariat of the Committee against Torture.

193. Figures for the two institutions do not always match. The IGAI figures relate to law enforcement agencies reporting to the Ministry of the Interior, while those for the Office of the Attorney-General of the Republic may relate to law enforcement agencies outside the jurisdiction of the Ministry of the Interior. Moreover, domestic violence is not covered in the tables contained in the annexes* because it is not regarded as a crime committed in the line of duty. Most of the data originates in individual communications from officials in the Office of the Attorney-General of the Republic. IGAI has several different sources (including prosecutors, in accordance with the above-mentioned circular No. 4/98) outside prosecutors' jurisdiction. Possible delays in communications may also lead to changes in the reality of the facts for each year taken into account, data for earlier years being more reliable because it has stood the test of time. In any event, it offers an interesting point of view which warrants consideration without much commentary to allow for fuller analysis by the Committee.

F. The right to file a complaint

194. The right to file a complaint derives naturally from the preceding sections on the monitoring of conditions of detention and complaints and accusations dealt with by IGAI, as well as the figures from the Office of the Attorney-General of the Republic contained in the annexes. A complaint may be filed against any service that is responsible for internal security. This right is provided for, in particular, by article 3(d) of Decree-Law No. 227/95 of 11 September 1995, which established the Inspectorate-General of Internal Administration and provides that IGAI evaluates complaints, claims and accusations filed in respect of possible violations of the law and, in general, doubts about the proper functioning of services (see also section D.3 (a) above). Any citizen may file a complaint with IGAI; a complaint gives rise to the inspection proceedings described above.

195. There is, of course, also the right to submit a complaint to the Public Prosecutor's Office, the Office of the Attorney-General of the Republic and the ombudsman's office, which can, moreover, institute IGAI proceedings on the basis of the complaint. In accordance with circular No. 4/98, which provides that prosecutors must transmit information on cases involving possible responsibility of law enforcement agencies, such cases are brought before IGAI by the Public Prosecutor's Office. The ombudsman's office may make recommendations to the administration. The Public Prosecutor's Office may also institute criminal proceedings.

196. Attention is also drawn to the possibility of filing a complaint with international organizations, such as the Human Rights Committee, under the complaints procedure of the Optional Protocol to the International Covenant on Civil and Political Rights, the Council of Europe's Committee on the Prevention of Torture and the European Court of Human Rights.

197. With regard to figures relating to complaints and possible abuses by law enforcement agencies, reference should be made to the preceding sections in which such figures were given, as well as to the statistical annexes available in the files of the secretariat of the Committee against Torture.

* These statistical annexes may be consulted in the files of the secretariat of the Committee against Torture.

IV. THE PORTUGUESE PRISON SYSTEM

198. Chapter IV deals with the Portuguese prison system and describes the relationship between the system based on the activities of the Social Rehabilitation Institute and the traditional prison system. The prison system is composed of the Social Rehabilitation Institute and the services responsible for measures relating to deprivation of liberty.

A. The Social Rehabilitation Institute and educational centres

199. The Institute's basic purpose is to introduce measures other than deprivation of liberty in the prison system. It has been in existence for a long time, but its most recent organization act dates from 2001 and was brought into force by Decree-Law No.

204-A/2001 of 26 July 2001. According to article 2, the Institute is the auxiliary justice body responsible for crime prevention and social rehabilitation policies, particularly in relation to the prevention of juvenile delinquency, protective educational measures and the promotion of alternative penalties to imprisonment.

200. The crime prevention measures in which the Institute takes part are designed to limit the possibility of committing crimes and, at the same time, to contribute to social development. Another of the Institute's objectives is to provide technical support to the courts in connection with family law.

201. The Social Rehabilitation Institute has the following functions:

- (a) To help define crime policy, particularly in respect of the social rehabilitation of young people and adults, and to prevent delinquency;
- (b) To provide, in accordance with the law, technical support to the courts for the adoption of decisions during criminal and protective educational proceedings and protective civil proceedings;
- (c) To guarantee, in accordance with the law, the implementation of protective educational measures;
- (d) To guarantee, in accordance with the law, the enforcement of alternative penalties and measures to imprisonment, including conditional release and probation;
- (e) To take part in crime prevention programmes and activities, particularly in relation to juvenile delinquency;
- (f) To manage youth educational centres and other facilities and programmes providing support for the social rehabilitation of young people and adults;
- (g) To promote the specialized training of its officials;
- (h) To maintain relations with similar bodies in other countries and international organizations with objectives specifically relating to its jurisdiction, without prejudice to its relationship with the Ministry of Justice's Office for International and European Relations and Cooperation;

(i) To contribute, in the context of its objectives and functions, to the preparation of international legal cooperation instruments and to implement procedures resulting from conventions in which it plays a key role;

(j) To contribute to fuller community participation in the administration of criminal and educational guardianship justice, particularly through cooperation with other public and private institutions and with citizens and voluntary groups whose aims are to prevent juvenile and adult crime and to promote social rehabilitation;

(k) To carry out other functions entrusted to it by law.

202. One of the bodies forming part of the Institute is the Higher Social Rehabilitation Council, whose responsibility is, in the context of the law and the superintendence and guardianship functions of the Ministry of Justice, to ensure that the Institute's services meet the needs of other bodies in the criminal justice and educational guardianship systems (art. 9). The Council's functions are:

(a) To follow up on the Institute's activities, for example, by evaluating forecasting tools and the action taken;

(b) To submit proposals designed to improve the response of the Institute's services to the needs of the courts, the Public Prosecutor's Office and other agencies involved in the criminal and custodial system;

(c) To submit proposals on the activities carried out by the Institute's services in connection with civil custodial measures;

(d) To express an opinion on any other matter which is within its jurisdiction and is submitted to it by the Chairman.

203. The Council is composed of the following members:

(a) A representative of the Ministry of Justice, who acts as Chairman;

(b) A prosecutor appointed by the Supreme Council of the Judiciary;

(c) An official from the Public Prosecutor's Office appointed by the Supreme Council of the Public Prosecutor's Office;

(d) A lawyer appointed by the Bar;

(e) A representative of the judicial police whose rank is no lower than that of Deputy National Director;

(f) A representative of the Public Security Police whose rank is no lower than that of superintendent in chief;

(g) A representative of the National Republican Guard whose rank is no lower than that of colonel;

(h) A representative of the General Prison Department whose rank is no lower than that of Deputy Director-General;

- (i) A representative appointed by the member of the Government responsible for drugs and drug addiction;
- (j) The Chairman of the Institute;
- (k) Two to four senior officials of the Institute to be appointed by their Chairman.

Educational centres

204. The services of the Social Rehabilitation Institute where young people who have committed criminal offences are placed are called educational centres. As at 30 April 2004, their population was as follows:

**Table 2. Population of educational centres
(number of persons according to type of regime)**

<i>Educational centre</i>	<i>Total</i>	<i>Open regime</i>	<i>Semi-open regime</i>	<i>Closed regime</i>
Navarro de Paiva	24		24	
Vila Fernando	34		24	10
Padre António de Oliveira	22		12	10
Bela Vista	38	14	24	
Olivais	32			8
Mondego	28			6
S. Fiel	22			
Alberto Souto	26	14		
Santo António	34		24	10
Santa Clara	38	14	24	
Number of males	298	42	212	44
San Bernardino	15	3	10	2
S. José	15	5	10	
Number of females	30	8	20	2
Total	328	50	232	46

205. All of the available places in educational centres are occupied; some centres are overcrowded. The Social Rehabilitation Institute manages the available places as well as possible, but, in some cases, young people awaiting a detention order are not immediately taken to the centres mentioned. Short-term overcrowding is therefore to be expected.

Table 3. Minors and young people detained in educational and training colleges or in autonomous residential units,^a according to legal situation

<i>Detention order</i>	<i>31 December 1999</i>	<i>31 December 2000</i>
Confidence in custody of colleges	5	2
Detention for observation	155	81
Observation completed---decision awaited	129	211
Enforcement of protective detention measure	397	296
Other protective measures	40	25
Administrative authorization concerning confidence	28	19
Total	754	634

^a Name of educational centres prior to the entry into force of the Protective Educational Act on 1 January 2001. The data in this table thus relate to 1999 and 2000.

Table 4. Minors detained in educational centres, according to legal situation

<i>Detention order</i>	<i>31 December 2001</i>	<i>31 December 2002</i>	<i>31 December 2003</i>	<i>31 December 2004</i>
Detention for personality evaluation/Semi-open regime	2	4	2	1
Detention for personality evaluation/Closed regime	2	1		
Protective detention/Semi-open regime	9	27	36	28
Protective detention/Closed regime	17	17	5	10
Custodial detention/Open regime	22	26	32	42
Custodial detention/Semi-open regime	127	112	172	188
Custodial detention/Closed regime	14	33	36	36
Weekend detention		2	9	7
Detention pending placement in private social welfare institution	26	4	2	1
Total	219	226	294	313

B. Services responsible for the enforcement of sentences

206. These services are governed by Decree-Law No. 265/79 of 1 August 1979, which states that the purpose of the enforcement of sentences is to give detainees guidance with a view to their social rehabilitation by preparing them for the future so that they might live their lives in a socially responsible way without committing crimes (art. 2). The enforcement of sentences also serves to protect society by preventing the commission of other criminal acts (art.2).

207. According to article 4, detainees continue to enjoy their fundamental rights, within the limits resulting from sentencing, as well as those imposed to guarantee the maintenance of order and security in prison. Detainees are entitled to paid work, social security benefits, access to culture and the full development of their personalities.

208. Article 5 states the principle of the shared responsibility of detainees for matters of general interest which may, as a result of their specific and particular features or taking account of the purpose of sentencing, require appropriate cooperation.

209. Each prison has a registration book, the model of which is approved by the General Prison Department and which contains the following information for each detainee, according to order of entry:

- (a) Full name, descent, place and date of birth, marital status, address, education, occupation and any other element used for identification purposes;
- (b) Date and time of entry;
- (c) Agency which ordered detention;
- (d) Reason for detention;
- (e) Person accompanying detainee;
- (f) Detailed list of items seized or taken away.

210. A person may be detained only on the basis of the following rules and in the following cases:

- (a) By a written order of the court, the prosecutor or the judicial police authorities, in accordance with procedural law;
- (b) By voluntary surrender;
- (c) By transfer ordered by the General Prison Department;
- (d) By transfer to another prison;
- (e) By new arrest.

Arrest warrants to which subparagraph (a) refers are issued in three copies, one of which belongs to the prison; the copies are dated and signed by the competent authorities and must indicate the detainee's identity and the reasons for his detention.

211. When detention takes place as a result of an arrest warrant issued by the Public Prosecutor's Office and judicial police bodies and the detainee is not brought before a court by the authority which ordered the arrest within the time limit provided for by law, the prison warden must release the detainee and so inform the Attorney-General of the Republic in the competent court and the General Prison Department.

212. In the event of surrender by a person who claims to have committed a crime or against whom an arrest warrant has been issued, the person is detained, the detention report having been prepared in the presence of two witnesses. An accused person is brought before the judicial authority within 24 hours and, in the case of a person who has been convicted, the General Prison Department is immediately so informed and the prison warden must shed light on the person's status under criminal law. Prison transfers are carried out on the basis of a duly authenticated document in two copies.

213. Following admission to prison and when the sentence is longer than six months or in the case of a relatively indeterminate sentence, the detainee's personality and social, economic and family environment are observed. The purpose of observation is to check all of the circumstances and elements necessary for the planning of treatment during the enforcement of the sentence and for the detainee's social rehabilitation following release (art. 8). An individual rehabilitation plan is drawn up on the basis of these observations. Until the plan has been drawn up, detainees are temporarily divided up according to sex, age, physical and mental health, previous life and situation (art. 10). When a detainee has not been declared incompetent, but it is considered that, as a result of the problem from which he suffers, an ordinary prison regime would be prejudicial to him, the court may order him to be detained in an establishment intended for incompetent persons, for a period corresponding to the length of the sentence. Such detention may take place only with the detainee's consent.

214. Article 11 establishes criteria for assignment to a prison. Account is taken of sex, age and legal situation (accused person, convicted person, first offender, repeat offender), the length of the sentence to be served, the detainee's physical and mental health, his needs in terms of treatment, the proximity of the family residence and security, educational and occupational factors which may be relevant to the detainee's social rehabilitation. When a detainee is assigned to a prison, account must be taken of the possibility of implementing a joint treatment programme and of the need to avoid harmful influences.

215. According to article 12, detainees are fully segregated in separate establishments on the basis of sex, age and legal situation and, when that is not possible, in separate sections within establishments. The separation of first and repeat offenders must be promoted. To this end, detainees who have already been deprived of their liberty are regarded as repeat offenders. Exceptions to these provisions are allowed so that detainees may receive treatment regarded as essential for their social rehabilitation in another establishment or section.

216. According to article 13, a detainee may be transferred to a different establishment than the one provided for in the individual rehabilitation plan when the prospects for his treatment or social rehabilitation are thereby improved or when the organization of the enforcement of his sentence or important reasons so require.

217. Article 14 provides for open and closed establishments. Detainees may be held, with their consent, in an open regime prison or section when there is no reason to believe that they will evade enforcement of the sentence or take advantage of the possibilities that such a regime offers in order to commit offences. Detainees may be held in closed regime prisons, or return to them, when necessary for treatment or whenever they demonstrate, by their conduct, that they are not meeting open regime requirements.

218. Articles 15 and 16 provide for measures to prepare for release and for the time of release. The law does not stop there, moreover, since it gives broad substance to such measures.

219. Attention should be drawn to Act No. 170/99 of 18 September 1999, which provides for measures to combat the spread of infectious diseases in prisons. Detainees maintain their status as beneficiaries of the national health service, with a link being established for this purpose between the prison department and the national health service. According to article 2, prisons systematically guarantee all detainees a free infectious disease screening test, both on admission to prison and periodically during their stay in prison. The test results are confidential and are transmitted to detainees by medical staff so that they may receive specialized and appropriate treatment. Information on the clinical status of detainees may not under any circumstances

undermine the obligation of confidentiality and must be limited to situations where the safety and health of third parties may be in danger (art. 3).

220. According to article 4, detainees who are ill have access to all types of treatment, assistance and advice available to ordinary citizens, with the possibility of consulting specialized health services according to procedures which have been and are to be established by the prison department and the regional health administrations concerned, once all safety measures have been guaranteed. Detainees who are ill must also receive psychological and psychiatric care.

221. Prisons must also adopt general preventive measures in connection with hygiene, safety and workplace health standards, both for detainees and for prison staff. Such measures include free vaccination programmes and the distribution of condoms free of charge.

222. According to article 6, no form of segregation or discrimination against infected detainees is allowed. When restrictive measures are necessary in order to protect the health of other detainees and prison staff, on sound medical grounds, hospitalization rather than treatment in prison is the general rule after all necessary security measures have been taken.

C. Statistical data

223. The following tables contain figures relating to the prison department, prison population by prison, rates of occupation, number of detainees, suicides in prison, cases of contagious infectious diseases and drug use (and treatment). These figures were provided by the Planning, Documentation, Research and International Reports Service of the General Prison Department.

**Table 5-A. Prison population, by prison, capacity and rate of occupancy
(as at 31 December 1999 and 2000)**

<i>Prisons</i>	<i>1999</i>			<i>2000</i>		
	<i>No. of detainees</i>	<i>Capacity</i>	<i>Rate of occupancy (%)</i>	<i>No. of detainees</i>	<i>Capacity</i>	<i>Rate of occupancy (%)</i>
Central prisons						
Alcoentre	704	663	106.2	717	663	108.1
Carregueira ^a	-	-	-	-	-	-
Castelo Branco	98	164	59.8	105	168	62.5
Caxias	741	474	156.3	658	474	138.8
Coimbra	450	421	106.9	461	421	109.5
Funchal	280	349	80.2	317	349	90.8
Izeda	280	289	96.9	296	289	102.4
Linhó	626	568	110.2	585	584	100.2
Lisboa	883	852	103.6	1 054	887	118.8
Monsanto	85	166	51.2	175	166	105.4
P. Ferreira	684	570	120.0	669	570	117.4
P. da Cruz	792	737	107.5	744	737	100.9
Porto	1 035	720	143.8	1 036	720	143.9
Santarém ^a	-	-	-	22	36	61.1
S.C. do Bispo	399	342	116.7	384	342	112.3
Sintra	586	669	87.6	612	729	84.0
Vale de Judeus	512	538	95.2	526	504	104.4
Sub-total	8 155	7 522	108.4	8 361	7 639	109.5
Special prisons^b						
Leiria	246	347	70.9	308	347	88.8
Tires	794	569	139.5	696	633	110.0
S. João de Deus Hospital ^c	33	199	16.6	26	195	13.3
Sub-total	9 228	8 637	106.8	9 391	8 814	106.5
Regional prisons^d	3 679	2 548	144.4	3 380	2 557	132.2
TOTAL	12 907	11 185	115.4	12 771	11 371	112.3

^a Carregueira prison opened only in 2002; Santarém prison opened in 2000.

^b There are special prisons for detainees with special needs: Tires (women), Leiria (young people aged between 16 and 25) and S. João de Deus Hospital (health problems).

^c Only detainees assigned to S. João de Deus Hospital are counted.

^d Figures for regional prisons are given in table 5-B below.

**Table 5-B. Prison population, by prison, capacity and rate of occupancy
(as at 31 December 1999 and 2000)**

<i>Prisons</i>	<i>1999</i>			<i>2000</i>		
	<i>No. of detainees</i>	<i>Capacity</i>	<i>Rate of occupancy (%)</i>	<i>No. of detainees</i>	<i>Capacity</i>	<i>Rate of occupancy (%)</i>
Regional prisons						
Angra do Heroísmo	67	39	171.8	80	39	205.1
Horta support prison	20	17	117.6	25	17	147.1
Aveiro	139	88	158.0	136	88	170.8
Beja	95	48	197.9	82	48	170.8
Braga	143	72	198.6	127	72	176.4
Bragança	63	75	84.0	71	75	
Caldas da Raíña	156	104	150.0	125	104	120.2
Castelo Branco	71	31	229.0	63	31	203.2
Chaves	64	71	90.1	67	71	94.4
Coimbra	180	243	74.1	220	243	90.5
Covilhã	99	105	94.3	91	105	86.7
Elvas	51	29	175.9	61	29	210.3
Évora	71	46	154.3	56	46	121.7
Faro	148	120	123.3	176	120	146.7
Felgueiras	59	33	178.8	51	33	154.5
Funchal	69	100	69.0	38	100	38.0
Guarda	172	171	100.6	163	171	95.3
Guimarães	121	48	252.1	103	48	214.6
Lamego	81	67	120.9	67	67	100.0
Leiria	198	110	118.0	162	110	147.3
Monção	43	34	126.5	29	34	85.3
Montijo	206	105	196.2	213	105	202.9
Odemira	115	56	205.4	102	56	182.1
Olhão support prison	58	37	156.8	12	42	28.6
Ponta Delgada	185	141	131.2	135	141	95.7
Portimão	84	28	300.0	71	28	253.6
São Pedro do Sul support prison	50	29	172.4	54	29	186.2
Setúbal	286	131	218.3	293	131	223.7
Silves	85	58	146.6	76	58	131.0
Torres Novas	54	38	142.1	73	38	192.1
Viana do Castelo	95	44	215.9	67	44	152.3
Vila Real	98	64	153.1	91	68	133.8
Viseu	39	46	84.8	47	46	102.2
P.J. Lisboa	173	88	196.6	120	88	136.4
P.J. Porto	41	32	128.1	33	32	103.1
Total ^a	3 679	2 548	144.4	3 380	2 557	132.2

^a These totals are given in the penultimate line of table 5-A above.

**Table 6-A. Prison population, by prison, capacity and rate of occupancy
(as at 31 December 2001 and 2002)**

<i>Prisons</i>	<i>2001</i>			<i>2002</i>		
	<i>No. of detainees</i>	<i>Capacity</i>	<i>Rate of occupancy (%)</i>	<i>No. of detainees</i>	<i>Capacity</i>	<i>Rate of occupancy (%)</i>
Central prisons						
Alcoentre	724	663	109.2	718	663	108.3
Carregueira ^a				91	94	96.8
Castelo Branco	85	168	50.6	114	168	67.9
Caxias	689	474	145.4	626	474	132.1
Coimbra	440	421	104.5	471	421	111.9
Funchal	272	349	77.9	311	349	89.1
Izeda	297	289	102.8	259	289	89.6
Linhó	585	584	100.2	615	584	105.3
Lisboa	1 260	887	142.1	1 306	887	147.2
Monsanto	191	166	115.1	181	166	109.0
P. Ferreira	670	570	117.5	646	570	113.3
P. da Cruz	718	737	97.4	1 094	720	151.9
Porto	1 103	720	90.8	673	729	92.3
Santarém	38	36	105.6	35	36	97.2
S.C. do Bispo	362	342	105.8	373	342	109.1
Sintra	662	729	90.8	673	729	92.3
Vale de Judeus	517	504	102.6	519	504	103.0
Sub-total	8 613	7 639	112.8	8 700	7 733	112.5
Special prisons						
Leiria	275	347	79.3	295	347	85.0
Tires	646	633	102.1	809	633	127.8
S. João de Deus Hospital ^b	26	195	13.3	15	195	7.7
Sub-total	9 560	8 814	108.5	9 819	8 908	110.2
Regional prisons^c	3 552	2 557	138.9	3 953	2 557	154.6
TOTAL	13 112	11 371	115.3	13 772	11 465	120.1

^a Carregueira opened only in 2002 with partial occupancy; these figures thus relate only to this early phase of activity.

^b Only detainees assigned to S. João de Deus Hospital are counted.

^c Figures for regional prisons are given in table 6-B below.

**Table 6-B. Prison population, by prison, capacity and rate of occupancy
(as at 31 December 2001 and 2002)**

<i>Prisons</i>	<i>1999</i>			<i>2000</i>		
	<i>No. of detainees</i>	<i>Capacity</i>	<i>Rate of occupancy (%)</i>	<i>No. of detainees</i>	<i>Capacity</i>	<i>Rate of occupancy (%)</i>
Regional prisons						
Angra do Heroísmo	81	39	207.7	79	39	202.6
Horta support prison ^a	20	17	117.6	28	17	202.6
Aveiro	142	88	161.4	140	88	159.1
Beja	86	48	179.2	101	48	210.4
Braga	151	72	209.7	154	72	213.9
Bragança	67	75	89.3	88	75	117.3
Caldas da Rainha	160	104	153.8	178	104	171.2
Castelo Branco	67	31	216.1	74	31	238.7
Chaves	62	71	87.3	66	71	93.0
Coimbra	233	243	95.9	224	243	92.2
Covilhã	104	105	99.0	133	105	126.7
Elvas	60	29	206.9	65	29	224.1
Évora	60	46	130.4	71	46	154.3
Faro	216	120	180.0	240	120	200.0
Felgueiras	46	33	139.4	54	33	163.6
Funchal	46	100	46.0	48	100	48.0
Guarda	125	171	73.1	134	171	78.4
Guimarães	107	48	222.9	109	48	227.1
Lamego	74	67	110.4	87	67	129.9
Leiria	161	110	146.4	222	110	201.8
Monção	38	34	111.8	50	34	147.1
Montijo	227	105	216.2	269	105	256.2
Odemira	87	56	155.4	94	56	167.9
Olhão		42	0.0		42	0.0
Ponta Delgada	133	141	94.3	150	141	106.4
Portimão	82	28	292.9	72	28	257.1
São Pedro do Sul	61	29	210.3	80	29	275.9
Setúbal	298	131	227.5	80	131	227.5
Silves	89	58	153.4	100	58	172.4
Torres Novas	74	38	194.7	79	38	207.9
Viana do Castelo	78	44	177.3	117	44	265.9
Vila Real	108	68	158.8	116	68	170.6
Viseu	46	46	100.0	57	46	123.9
P.J. Lisboa	128	88	145.5	142	88	161.4
P.J. Porto	35	32	109.4	22	32	68.8
Total^b	3 552	2 557	138.9	3 953	2 557	154.6

^a Horta, Olhão and São Pedro do Sul were classified as support prisons. São Pedro do Sul and Olhão became regional prisons. Olhão was closed for renovation.

^b These figures are given in the penultimate line of table 6-A above.

**Table 7-A. Prison population, by prison, capacity and rate of occupancy
(as at 31 December 2003 and 2004)**

<i>Prisons</i>	<i>2003</i>			<i>2004^a</i>		
	<i>No. of detainees</i>	<i>Capacity</i>	<i>Rate of occupancy (%)</i>	<i>No. of detainees</i>	<i>Capacity</i>	<i>Rate of occupancy (%)</i>
Central prisons						
Alcoentre	714	663	107.7	709	663	106.9
Carregueira ^b	347	300	115.7	452	450	100.4
Castelo Branco	90	168	53.6	88	168	52.4
Caxias	559	474	117.9	559	474	117.9
Coimbra	450	421	106.9	395	421	93.8
Funchal	329	349	94.3	314	349	90.0
Izeda	220	289	76.1	250	289	86.5
Linhó	636	584	108.9	635	584	108.7
Lisboa	1 120	887	126.3	1 131	887	127.5
Monsanto	166	166	100.0	56	166	33.7
Paços de Ferreira	842	870	96.8	850	870	97.7
P. da Cruz	649	737	88.1	626	737	84.9
Porto	974	720	135.4	1 038	720	144.2
Santarém	26	36	72.2	28	36	77.8
S.C. do Bispo	384	342	112.3	372	342	108.8
Sintra	681	729	93.4	716	729	98.2
Vale de Judeus	514	504	102.0	525	504	104.2
Sub-total	8 701	8 239	105.6	8 744	8 389	104.2
Special prisons						
Leiria	313	347	90.2	330	347	95.1
Tires	686	633	108.4	607	633	95.9
S. João de Deus Hospital ^c	124	195	63.6	168	195	86.2
Sub-total	9 824	9 414	104.4	9 849	9 564	86.2
Regional prisons^d	3 811	2 695	141.4	3 771	2 711	139.1
Total	13 635	12 109	112.6	13 620	12 275	111.0

^a The data for 2004 are updated as at 15 June.

^b Carregueira opened only in 2002 with partial occupancy; these figures thus relate only to this early phase of activity.

^c Only detainees assigned to S. João de Deus Hospital and those interned for treatment are counted for 2003 and 2004.

^d Figures for regional prisons are given in table 7-B below.

**Table 7-B. Prison population, by prison, capacity and rate of occupancy
(as at 31 December 2003 and 2004)**

<i>Prisons</i>	2003			2004 ^a		
	<i>No. of detainees</i>	<i>Capacity</i>	<i>Rate of occupancy (%)</i>	<i>No. of detainees</i>	<i>Capacity</i>	<i>Rate of occupancy (%)</i>
Regional prisons						
Angra do Heroísmo	72	39	1184.6	78	39	200.0
Horta support prison	33	17	194.1	24	17	141.2
Aveiro	131	88	148.9	128	88	145.5
Beja	92	164	56.1	96	164	58.5
Braga	157	72	218.1	136	72	188.9
Bragança	78	75	104.0	78	75	104.5
Caldas da Rainha	135	104	129.8	133	104	127.9
Castelo Branco	72	31	232.3	70	31	225.8
Chaves	51	71	71.8	60	71	84.5
Coimbra	217	243	89.3	240	243	98.8
Covilhã	142	105	135.2	124	105	118.1
Elvas	72	29	248.3	70	29	241.4
Évora	83	46	180.4	82	46	178.3
Faro ^b	195	120	162.5	177	120	147.5
Felgueiras	45	33	136.4	51	33	154.5
Funchal	54	100	54.0	52	100	52.0
Guarda	175	171	102.3	156	171	91.2
Guimarães	104	48	216.7	112	48	233.3
Lamego	90	67	134.3	76	67	113.4
Leiria	235	110	213.6	233	110	211.8
Monção	51	34	150.0	46	34	135.3
Montijo	254	105	241.9	250	105	238.1
Odemira	88	56	157.1	78	56	139.3
Olhão ^b	-	42	0.0	-	42	0.0
Ponta Delgada	174	141	123.4	169	141	119.9
Portimão	57	28	203.6	71	28	253.6
São Pedro do Sul	62	29	213.8	71	29	244.8
Setúbal	299	131	228.2	316	131	241.2
Silves	79	58	136.2	91	58	156.9
Torres Novas	74	38	194.7	68	38	178.9
Viana do Castelo	105	44	238.6	87	44	197.7
Vila Real	108	68	158.8	100	68	147.1
Viseu	58	46	126.1	56	46	121.7
P.J. Lisboa	145	110	131.8	158	110	143.6
P.J. Porto	24	32	75.0	34	48	70.8
Total ^c	3 811	2 695	141.4	3 771	2 711	139.1

^a The data for 2004 are updated as at 15 June.

^b Detainees in Olhão prison are counted together with those in Faro prison.

^c These totals are entered in the penultimate line of table 7-A above.

224. For the sake of clarity, reference should be made to the number of suicides in prisons.

Table 8. Number of suicides per year (1999-2004^a)

1999	13
2000	10
2001	23
2002	19
2003	14
2004	12

^a The data for 2004 are updated as at 15 June.

225. Reference should also be made to cases of infectious diseases and drug use and they way they are treated in prisons. With regard to infectious diseases (figures updated as at 1 February 2004), out of a prison population of 13,503 detainees, 1,180 (8.7 per cent) are HIV-positive and 766 are receiving treatment. By sex, 1,136 of 12,501 men and 44 of 1,002 women are HIV-positive.

226. The figures for the analyses carried out by the clinical pathology laboratory of São João de Deus Hospital in 2003 are as follows:

Table 9

<i>Infectious diseases</i>	<i>No. of detainees</i>	<i>Positive analyses</i>
HIV	3 433	524 (15.4%)
Hepatitis C	3 080	864 (28%)
Hepatitis B	3 273	230 (7%)

On 12 February 2004, the number of persons with HIV and AIDS hospitalized at São João de Deus Hospital was as follows:

Table 10

	<i>HIV-infected</i>	<i>AIDS</i>
Third floor	1 man and 2 women	18 men
Fourth floor	-	8 men
Fifth floor	-	1 man
Psychiatric ward	4 men and 1 woman	-

In the prison hospital, 31 per cent of cases are linked to an HIV-related disease. Of the 23 persons hospitalized in the psychiatric ward, 5 are HIV-positive (21.7 per cent of the total).

227. With regard to cases of drug addiction and the way they are treated, the situation is as follows: in 2003, 815 detainees were being treated in prison facilities. There were 522 in facilities of the Drug and Drug Addiction Institute (IDT). Prison abstinence programmes are available in the Lisbon, Tires, Leiria, Porto and Santa Cruz do Bispo drug-free units, where detainees choose to have their addiction treated through abstinence and psychological counselling, and in the Halfway House, a facility for detainees who have been successfully treated in a drug-free unit (a prerequisite for general drug addiction programmes) and who work on the outside. The figures for these programmes are as follows:

Table 11. Abstinence programmes: drug-free units

<i>Prisons</i>	<i>Capacity</i>	<i>Users in 2003</i>
Lisbon – Wing G ^a	45 beds	64
Lisbon – Wing A	75 beds	113
Tires	28 beds	43
Leiria	29 beds	113
Porto	20 beds	34
Santa Cruz do Bispo	20 beds	21
Total	217 beds	388

^a Detainees in Wing G do not use any kind of drugs.

Table 12. Abstinence programmes: halfway houses

<i>Prison</i>	<i>Capacity</i>	<i>Users in 2003</i>
Caldas de Raínha	12 beds	17

228. The following programmes are based on the use of medicines (methadone, Subutex, antagonists):

Table 13. Pharmacological programmes

<i>Prisons</i>	<i>Users in 2003</i>
Caxias	63
Lisbon	105
Porto	215
Tires	28
Total	410

In three prisons (Lisbon, Porto and Tires), programmes are coordinated by the prison technical team. In Caxias prison, prescription is the responsibility of the treatment centre for drug addicts who have been referred to it and psychological counselling is the responsibility of the prison.

229. With regard to detainees who are following pharmacological treatment programmes (methadone, Subutex, antagonists) under the guidance of IDT/drug treatment centres, the situation is as follows:

Table 14

<i>Prisons</i>	<i>Users</i>
Central and special prisons	272
Regional prisons	250
Total	522

Note: Substitution programmes were followed by 369 detainees in 10 central prisons, 1 special prison and 31 regional prisons; substitution programmes are designed to replace drug use; antagonist programmes are designed to block the effects of drugs. Antagonist programmes were followed by 153 detainees in 9 central prisons and 10 regional prisons. Drug treatment centres are facilities which are part of the Ministry of Health's Drug and Drug Addiction Institute. They operate not only in prisons, but also in civil society as a whole. Detainees are free to follow treatment programmes in these treatment centres.

V. RIGHT TO COMPENSATION

230. Article 14 of the Convention against Torture provides that:

“Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation”.

231. Decree-Law No. 423/91 of 30 October 1991 continues to be the most important legislative text in this regard. Paragraph 1 reads:

“1. The victims of bodily injury caused directly by wilful acts of violence committed in Portuguese territory or on board Portuguese ships or aircraft and, in the event of death, persons who are entitled to maintenance under civil law may apply for the payment of compensation by the State, provided that they are not parties or have not instituted criminal liability proceedings and that:

(a) The injury leads to permanent disability, temporary full incapacity for work for at least 30 days or death;

(b) The injury substantially affects the standard of living of the victim or the persons entitled to maintenance;

(c) The victims have not received full compensation for the injury in accordance with a final decision relating to an application filed under articles 71 to 84 of the Code of Criminal Procedure or there are serious grounds for believing that the offender and persons who bear civil liability will not pay the compensation and it is not possible to obtain effective and adequate compensation by any other means.

232. According to article 2, compensation by the State is restricted to property damage resulting from the injury and is determined equitably, with a maximum limit for each injured person equal to twice the amount within the jurisdiction of the Appeal Court in the event of death or grievous bodily injury.

233. In the event of the death or injury of more than one person as a result of the same act, the maximum limit of compensation by the State equals the amount corresponding to twice the amount equal to double the amount within the jurisdiction of the Appeal Court for each person, within a total maximum of six times the amount within the jurisdiction of the Appeal Court.

234. This new wording was introduced by Decree-Law No. 62/2004 of 22 March 2004. The regime governing the compensation and protection of victims of violent crimes remains otherwise unchanged.

CONCLUSION

235. Portugal, which has always welcomed its fruitful dialogue with the Committee against Torture, hopes to continue this dialogue by submitting its fourth periodic report. It does so by presenting factual information because it thus hopes to provide a clearer picture of the operation of its system of justice with regard to everyday action to combat torture. It is aware that its achievements in this regard are not perfect and relies on the Committee's assessment of this report to evaluate them.

LIST OF ANNEXES*

- I. Complaints submitted to IGAI from 1998 to 2003, including those which gave rise to administrative, investigatory, disciplinary and inquiry proceedings.
- II. Number of crimes committed while on duty; types of crimes reported; officers accused by police bodies (1991-2003 figures).

* These annexes may be consulted in the files of the secretariat of the Committee against Torture.