

## PORTUGAL

### Follow-up - State Reporting i) Action by Treaty Bodies

CAT, A/63/44 (2008)

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#### CHAPTER IV. FOLLOW-UP ON CONCLUSIONS AND RECOMMENDATIONS ON STATES PARTIES REPORTS

46. In this chapter, the Committee updates its findings and activities that follow-up on the conclusions and recommendations adopted under article 19 of the Convention, in accordance with the recommendations of its Rapporteur on Follow-Up to Country conclusions. The Rapporteur's activities, responses by States parties, and the Rapporteur's views on recurring concerns encountered through this procedure are presented below, and updated to through May 2008, following the Committee's fortieth session.

47. In chapter IV of its annual report for 2005-2006 (A/61/44), the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the conclusions and recommendations on States parties reports submitted under article 19 of the Convention. It also presented information on the Committee's experience in receiving information from States parties from the initiation of the procedure in May 2003 through May 2008.

48. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow-up to conclusions and recommendations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. As in the past, Ms. Gaer presented a progress report to the Committee in May 2008 on the results of the procedure.

49. The Rapporteur has emphasized that the follow-up procedure aims "to make more effective the struggle against torture and other cruel, inhuman and degrading treatment or punishment", as articulated in the preamble to the Convention. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific actions designed to enhance each State party's ability to implement the measures necessary and appropriate to prevent acts of torture and cruel treatment, and thereby assists States parties in bringing their law and practice into full compliance with the obligations set forth in the Convention.

50. In its follow-up procedure, the Committee has identified a number of these recommendations as requiring additional information specifically for this procedure. Such follow-up recommendations are identified because they are serious, protective, and are considered able to be accomplished within one year. The States parties are asked to provide within one year information on the measures taken to give effect to its follow-up recommendations which are specifically noted in a paragraph near the end of the conclusions and

recommendations on the review of the States parties' reports under article 19.

51. Since the procedure was established at the thirtieth session in May 2003, through the end of the fortieth session in May 2008, the Committee has reviewed 67 States for which it has identified follow-up recommendations. Of the 53 States parties that were due to have submitted their follow-up reports to the Committee by 16 May 2008, 33 had completed this requirement (Albania, Argentina, Austria, Azerbaijan, Bahrain, Bosnia and Herzegovina, Canada, Chile, Czech Republic, Colombia, Croatia, Ecuador, Finland, France, Georgia, Germany, Greece, Guatemala, Hungary, Republic of Korea, Latvia, Lithuania, Monaco, Morocco, Nepal, New Zealand, Qatar, Russian Federation, Sri Lanka, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America and Yemen). As of 16 May, 20 States had not yet supplied follow-up information that had fallen due (Bulgaria, Burundi, Cambodia, Cameroon, Democratic Republic of the Congo, Denmark, Guyana, Italy, Japan, Luxembourg, Mexico, Moldova, the Netherlands, Peru, Poland, South Africa, Tajikistan, Togo, Uganda and Ukraine). In March 2008, the Rapporteur sent a reminder requesting the outstanding information to each of the States whose follow-up information was due in November 2007, but had not yet been submitted, and who had not previously been sent a reminder.

52. The Rapporteur noted that 14 follow-up reports had fallen due since the previous annual report.<sup>3</sup> However, only 2 (Hungary and the Russian Federation) of these 14 States had submitted the follow-up information in a timely manner. Despite this, she expressed the view that the follow-up procedure had been remarkably successful in eliciting valuable additional information from States on protective measures taken during the immediate follow-up to the review of the periodic reports. While comparatively few States had replied precisely on time, 25 of the 33 respondents had submitted the information on time or within a matter of one to four months following the due date. Reminders seemed to help elicit many of these responses. The Rapporteur also expressed appreciation to non-governmental organizations, many of whom had also encouraged States parties to submit follow-up information in a timely way.

53. Through this procedure, the Committee seeks to advance the Convention's requirement that "each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture ..." (art. 2, para. 1) and the undertaking "to prevent ... other acts of cruel, inhuman and degrading treatment or punishment ..." (art. 16).

54. The Rapporteur expressed appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow-up (normally between three and six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information has been needed, she has written to the concerned State party with specific requests for further clarification. With regard to States that have not supplied the follow-up information at all, she requests the outstanding information.

55. At its thirty-eighth session in May 2007, the Committee decided to make public the Rapporteur's letters to the States parties. These would be placed on the web page of the Committee. The Committee further decided to assign a United Nations document symbol

number to all States parties' replies to the follow-up and also place them on its website (<http://www2.ohchr.org/english/bodies/cat/sessions.htm>).

56. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow-up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill-treatment.

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58. The chart below details, as of 16 May 2008, the end of the Committee's fortieth session, the state of the replies with respect to follow-up.

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3/ *Official Records of the General Assembly, Sixty-second Session, Supplement No. 44 (A/62/44)*.

**Follow-up procedure to conclusions and recommendations  
from May 2003 to May 2008**

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**Thirty-ninth session (November 2007)**

<b>State party</b>	<b>Information due in</b>	<b>Information received</b>	<b>Action taken</b>
...			
Portugal	November 2008	-	
...			

...

#### **IV. FOLLOW UP ON CONCLUDING OBSERVATIONS ON STATES PARTIES REPORTS**

53. In this chapter, the Committee updates its findings and activities that follow-up to concluding observations adopted under article 19 of the Convention, in accordance with the recommendations of its Rapporteur on follow-up to concluding observations. The Rapporteur's activities, responses by States parties, and the Rapporteur's views on recurring concerns encountered through this procedure are presented below, and updated through 15 May 2009, following the Committee's forty-second session.

54. In chapter IV of its annual report for 2005-2006 (A/61/44), the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the concluding observations on States parties reports submitted under article 19 of the Convention. It also presented information on the Committee's experience in receiving information from States parties from the initiation of the procedure in May 2003 through May 2009.

55. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow up to concluding observations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. As in the past, Ms. Gaer presented a progress report to the Committee in May 2009 on the results of the procedure.

56. The Rapporteur has emphasized that the follow up procedure aims "to make more effective the struggle against torture and other cruel, inhuman and degrading treatment or punishment", as articulated in the preamble to the Convention. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific actions designed to enhance each State party's ability to implement the measures necessary and appropriate to prevent acts of torture and ill-treatment, and thereby assists States parties in bringing their law and practice into full compliance with the obligations set forth in the Convention.

57. In its follow-up procedure, the Committee has identified a number of these recommendations as requiring additional information specifically for this procedure. Such follow-up recommendations are identified because they are serious, protective, and are considered able to be accomplished within one year. The States parties are asked to provide within one year information on the measures taken to give effect to its follow-up recommendations which are specifically noted in a paragraph near the end of the conclusions and recommendations on the review of the States parties' reports under article 19.

58. Since the procedure was established at the thirtieth session in May 2003, through the end of the forty-second session in May 2009, the Committee has reviewed 81 States for which it has identified follow up recommendations. Of the 67 States parties that were due to have submitted their follow up reports to the Committee by 15 May 2009, 44 had completed this requirement. As of 15 May 2009, 23 States had not yet supplied follow up information that had fallen due. The

Rapporteur sends reminders requesting the outstanding information to each of the States whose follow up information was due, but had not yet been submitted, and who had not previously been sent a reminder. The status of the follow-up to concluding observations may be found in the web pages of the Committee (<http://www2.ohchr.org/english/bodies/cat/sessions.htm>).

59. The Rapporteur noted that 14 follow up reports had fallen due since the previous annual report. However, only 4 (Algeria, Estonia, Portugal and Uzbekistan) of these 14 States had submitted the follow up information in a timely manner. Despite this, she expressed the view that the follow up procedure had been remarkably successful in eliciting valuable additional information from States on protective measures taken during the immediate follow up to the review of the periodic reports. One State party (Montenegro) had already submitted information which was due only in November 2009. While comparatively few States had replied precisely on time, 34 of the 44 respondents had submitted the information on time or within a matter of one to four months following the due date. Reminders seemed to help elicit many of these responses. The Rapporteur also expressed appreciation to non governmental organizations, many of whom had also encouraged States parties to submit follow up information in a timely way.

60. Through this procedure, the Committee seeks to advance the Convention's requirement that "each State party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture ..." (art. 2, para. 1) and the undertaking "to prevent ... other acts of cruel, inhuman and degrading treatment or punishment ..." (art. 16).

61. The Rapporteur expressed appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow up (normally between three and six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information has been needed, she has written to the concerned State party with specific requests for further clarification. With regard to States that have not supplied the follow up information at all, she requests the outstanding information.

62. At its thirty eighth session in May 2007, the Committee decided to make public the Rapporteur's letters to the States parties. These would be placed on the web page of the Committee. The Committee further decided to assign a United Nations document symbol number to all States parties' replies to the follow up and also place them on its website (<http://www2.ohchr.org/english/bodies/cat/sessions.htm>).

63. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill treatment.

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65. The chart below details, as of 15 May 2009, the end of the Committee's forty-second session, the state of the replies with respect to follow up.

**Follow-up procedure to conclusions and recommendations from May 2003 to May 2009**

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**Thirty-ninth session (November 2007)**

<b>State party</b>	<b>Information due in</b>	<b>Information received</b>	<b>Action taken</b>
...			
Portugal	November 2008	23 November 2007 CAT/C/PRT/CO/4/Add.1	Response under review
...			

...

**Chapter IV. Follow-up to concluding observations on States parties' reports**

65. In this chapter, the Committee updates its findings and activities that constitute follow-up to concluding observations adopted under article 19 of the Convention, in accordance with the procedure established on follow-up to concluding observations. The follow-up responses by States parties, and the activities of the Rapporteur for follow-up to concluding observations under article 19 of the Convention, including the Rapporteur's views on the results of this procedure, are presented below. This information is updated through 14 May 2010, the end of the Committee's forty-fourth session.

66. In chapter IV of its annual report for 2005-2006 (A/61/44), the Committee described the framework that it had developed to provide for follow-up subsequent to the adoption of the concluding observations on States parties reports submitted under article 19 of the Convention. In that report and each year thereafter, the Committee has presented information on its experience in receiving information on follow-up measures taken by States parties since the initiation of the procedure in May 2003.

67. In accordance with rule 68, paragraph 2, of the rules of procedure, the Committee established the post of Rapporteur for follow-up to concluding observations under article 19 of the Convention and appointed Ms. Felice Gaer to that position. In November 2009 and May 2010, the Rapporteur presented a progress report to the Committee on the results of the procedure.

68. At the conclusion of the Committee's review of each State party report, the Committee identifies concerns and recommends specific measures to prevent acts of torture and ill-treatment. Thereby, the Committee assists States parties in identifying effective legislative, judicial, administrative and other measures to bring their laws and practice into full compliance with the obligations set forth in the Convention.

69. In its follow-up procedure, the Committee has identified a number of these recommendations as requiring additional information within one year. Such follow-up recommendations are identified because they are serious, protective and are considered able to be accomplished within one year. The States parties are asked to provide information within one year on the measures taken to give effect to the follow-up recommendations. In the concluding observations on each State party report, the recommendations requiring follow-up within one year are specifically identified in a paragraph at the end of the concluding observations.

70. Since the procedure was established at the thirtieth session in May 2003, through the end of the forty-fourth session in May 2010, the Committee has reviewed 95 reports from States parties for which it has identified follow-up recommendations. It must be noted that periodic reports of Chile, Latvia, Lithuania and New Zealand have been examined twice by the Committee since the establishment of the follow-up procedure. Of the 81 States parties that were due to have submitted their follow-up reports to the Committee by 14 May 2010, 57 had completed this

requirement. As of 14 May 2010, 24 States had not yet supplied follow-up information that had fallen due: Republic of Moldova, Cambodia, Cameroon, Bulgaria, Uganda, Democratic Republic of the Congo, Peru, Togo, Burundi, South Africa, Tajikistan, Luxembourg, Benin, Costa Rica, Indonesia, Zambia, Lithuania (to the 2009 concluding observations), Chad, Chile, Honduras, Israel, New Zealand, Nicaragua and the Philippines.

71. The Rapporteur sends reminders requesting the outstanding information to each of the States for which follow-up information is due, but not yet submitted. The status of the follow-up to concluding observations may be found in the web pages of the Committee at each of the respective sessions. As of 2010, the Committee has established a separate web page for follow-up (<http://www2.ohchr.org/english/bodies/cat/follow-procedure.htm>).

72. Of the 24 States parties that did not submit any information under the follow-up procedure as of 14 May 2010, non-respondents came from all world regions. While about one-third had reported for the first time, two-thirds were reporting for a second, third or even fourth time.

73. The Rapporteur expresses appreciation for the information provided by States parties regarding those measures taken to implement their obligations under the Convention. In addition, she has assessed the responses received as to whether all the items designated by the Committee for follow-up (normally between three and six recommendations) have been addressed, whether the information provided responds to the Committee's concern, and whether further information is required. Each letter responds specifically and in detail to the information presented by the State party. Where further information has been needed, she has written to the concerned State party with specific requests for further clarification. With regard to States that have not supplied the follow-up information at all, she requests the outstanding information.

74. At its thirty-eighth session in May 2007, the Committee decided to make public the Rapporteur's letters to the States parties which are posted on the web page of the Committee. The Committee further decided to assign a United Nations document symbol number to all States parties' replies to the follow-up and also place them on its website.

75. Since the recommendations to each State party are crafted to reflect the specific situation in that country, the follow-up responses from the States parties and letters from the Rapporteur requesting further clarification address a wide array of topics. Among those addressed in the letters sent to States parties requesting further information have been a number of precise matters seen as essential to the implementation of the recommendation in question. A number of issues have been highlighted to reflect not only the information provided, but also the issues that have not been addressed but which are deemed essential to the Committee's ongoing work, in order to be effective in taking preventive and protective measures to eliminate torture and ill-treatment.

76. Among the Rapporteur's activities in the past year, have been the following: attending the inter-committee meetings in Geneva where follow-up procedures were discussed with members from other treaty bodies, and it was decided to establish a working group on follow-up; addressing the Committee on the Elimination of Discrimination against Women at its August 2009 meeting in New York concerning aspects of the follow-up procedure; assessing responses

from States parties and preparing follow-up letters to countries as warranted and updating the information collected from the follow-up procedure.

77. Additionally, the Rapporteur initiated a study of the Committee's follow-up procedure, beginning with an examination of the number and nature of topics identified by the Committee in its requests to States parties for follow-up information. She reported to the Committee on some preliminary findings, in November 2009 and later in May 2010, and specifically presented charts showing that the number of topics designated for follow-up has substantially increased since the thirty-fifth session. Of the 87 countries examined as of the forty-third session (November 2009), one to three paragraphs were designated for follow-up for 14 States parties, four or five such topics were designated for 38 States parties, and six or more paragraphs were designated for 35 States parties. The Rapporteur drew this trend to the attention of the members of the Committee and it was agreed in May 2010 that, whenever possible, efforts would henceforth be made to limit the number of follow-up items to a maximum of five paragraphs.

78. The Rapporteur also found that certain topics were more commonly raised as a part of the follow up procedure than others. Specifically, for all State parties reviewed since the follow-up procedure began, the following topics were most frequently designated:

Ensure prompt, impartial and effective investigation(s)	76 per cent
Prosecute and sanction persons responsible for abuses	61 per cent
Guarantee legal safeguards	57 per cent
Enable right to complain and have cases examined	43 per cent
Conduct training, awareness-raising	43 per cent
Ensure interrogation techniques in line with the Convention	39 per cent
Provide redress and rehabilitation	38 per cent
End gender-based violence, ensure protection of women	34 per cent
Ensure monitoring of detention facilities/visit by independent body	32 per cent
Carry out data collection on torture and ill-treatment	30 per cent
Improve condition of detention, including overcrowding	28 per cent

79. In the correspondence with States parties, the Rapporteur has noted recurring concerns which are not fully addressed in the follow-up replies and her concerns (illustrative, not comprehensive) have been included in prior annual reports. To summarize them, she finds there is considerable value in having more precise information being provided, e.g. lists of prisoners, details on deaths in detention and forensic investigations.

80. As a result of numerous exchanges with States parties, the Rapporteur has observed that there is need for more vigorous fact-finding and monitoring in many States parties. In addition, there is often inadequate gathering and analysing of police and criminal justice statistics. When the Committee requests such information, States parties frequently do not provide it. The Rapporteur further considers that conducting prompt, thorough and impartial investigations into allegations of abuse is of great protective value. This is often best undertaken through unannounced inspections by independent bodies. The Committee has received documents, information and complaints about the absence of such monitoring bodies, the failure of such bodies to exercise independence in carrying out their work or to implement recommendations for

improvement.

81. The Rapporteur has also pointed to the importance of States parties providing clear-cut instructions on the absolute prohibition of torture as part of the training of law-enforcement and other relevant personnel. States parties need to provide information on the results of medical examinations and autopsies, and to document signs of torture, especially including sexual violence. States parties also need to instruct personnel on the need to secure and preserve evidence. The Rapporteur has found many lacunae in national statistics, including on penal and disciplinary action against law-enforcement personnel. Accurate record keeping, covering the registration of all procedural steps of detained persons, is essential and requires greater attention. All such measures contribute to safeguard the individual against torture or other forms of ill-treatment, as set forth in the Convention.

82. The chart below details, as of 14 May 2010, the end of the Committee's forty-fourth session, the replies with respect to follow-up. This chart also includes States parties' comments to concluding observations, if any.

#### **Follow-up procedure to concluding observations from May 2003 to May 2010**

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#### **Thirty-ninth session (November 2007)**

<b>State party</b>	<b>Information due in</b>	<b>Information received</b>	<b>Action taken</b>
...			
Portugal	November 2008	23 November 2007 (including comments) CAT/C/PRT/CO/4/Add.1	Request for further clarifications
...			

...

**Follow-up - State Reporting**  
**ii) Action by State Party**

**CAT, CAT/C/PRT/CO/4/Add.1 (2007)**

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

**Comments by the Government of PORTUGAL\* to the conclusions and recommendations of the Committee against Torture (CAT/C/PRT/CO/4)**

[23 November 2007]

1. Portugal welcomes the successful dialogue it had with the Committee during the presentation of the report. It is determined to work, both now and in the future, to resolve questions concerning the human rights of persons under its jurisdiction, and it will continue to offer the Committee against Torture every assistance as the Committee endeavours to understand the human rights situation in Portugal.

2. In section C of its draft concluding observations, the Committee refers to several subjects of concern and makes a number of recommendations. Portugal would like to address some of the subjects of concern, since it seems that perhaps it did not reply to the Committee's questions clearly.

**Definition of torture**

**Paragraph 6**

3. Inclusion of discrimination in the definition of torture in article 243 of the Penal Code. In reply to the question raised by the Country Rapporteur, it was pointed out that the definition in article 243 is sufficiently broad to cover discrimination, provided that it is committed by an official in the performance of his or her duties.

**Arrest for the purpose of verifying identity**

**Paragraph 7**

(a) In accordance with the law and police practice in Portugal, all police measures are strictly individual and concrete (Constitution, art. 272, para. 2).

"Being taken by force to a police station for the purpose of identification"<sup>1</sup> is a police measure established by law (Code of Criminal Procedure, art. 250). Thus, "collective arrest" or "collective detention" does not exist either in law or in practice.

(b) Article 80 of the Penal Code provides that the time spent in detention for identification purposes (six hours maximum) shall be deducted from the duration of the sentence.

Detention for the purpose of identification expires after six hours. In the rare case in which detention is followed by custody, practice would appear to indicate that the six hours are taken into account.<sup>2</sup>

(c) Since they are held in a police station, detainees are placed under the "responsibility and protection" of the police (No. 10.1 Regulation governing physical conditions ...). While legally such persons fall under the responsibility of the prosecuting authorities, they are physically and legally under the supervision of the police. Pursuant to the above-mentioned Regulations, the police are required (non-discretionary power) to provide medical care for the detainees (for details, see Regulations, para. 21). A forensic medical examination is required whenever the crime is of a public nature, and such examinations are always supervised by the Public Prosecutor's Office.

## **Incommunicado regime**

### **Paragraph 9**

4. Incommunicado detention is kept to a minimum and is applicable only in the case of very serious crimes. Pursuant to article 51, subparagraph (a), of the Code of Criminal Procedure, such detention must be immediately notified to the Public Prosecutor's Office with a view to ensuring strict judicial supervision in the matter. Such detention may not exceed 48 hours.

## **Universal jurisdiction**

### **Paragraph 10**

5. In Portugal, the Office of the Attorney-General of the Republic is independent of the Government and is not bound by the executive power for matters of criminal procedure.

6. According to the Statute of the Public Prosecutor's Office (Act No. 60/98 of 27 August 1998), prosecutors are independent and subject only to the criteria of legality and objectivity, and magistrates are subject only to the directives, orders and instructions set out in the Act (art. 2).

7. The Government may not use the Minister of Justice to give instructions to the Attorney General regarding ongoing criminal proceedings (Act No. 60/98, art. 87).

8. With regard to universal jurisdiction, the Advisory Council of the Attorney-General's Office (a government consultative body) has, at the Government's request, issued an opinion concerning the question of Timor.

9. However, the final decision in such matters remains judicial in nature and is a matter for a judge. Under article 5 of the Penal Code, this jurisdiction lies with the courts.

## **Prison conditions**

### **Paragraph 11**

10. There have been no reports of cases of sexual violence between detainees, and no complaint to that effect has been registered. The prison population is tested for AIDS and other infectious diseases, and sick inmates receive appropriate care. The deaths due to AIDS are of natural causes and reflect infection and morbidity rates in the national population; they are not

due to prison conditions. It should be pointed out that the death rate in prisons has been declining continuously, falling from 167 cases in 1997 to 91 cases in 2007. A similar trend has been noted for suicides. Given the country's total prison population of 12,000 inmates, the number of deaths due to illness or homicide, although regrettable, cannot be regarded as high, especially when account is taken of the fact that the prison system annually processes more than 24,000 individuals, a figure which includes inmate incarcerations and releases.

11. The Albino Libânio case is not an instance of torture. It was referred to the courts, and the resulting decision was the subject of an appeal. A disciplinary trial is under way to decide whether to dismiss the prison guard. There are many complex reasons for prison violence, which is constantly being addressed within the prison system.

## **Prompt and impartial investigations and compensation**

### **Paragraph 12**

12. Article 4 of Act No. 21/2000 of 10 August 2000 refers to the criminal investigation police crimes against the peace and humanity, including torture.

### **Paragraph 13**

(a) All complaints of torture or cruel, inhuman or degrading treatment brought against the police force are immediately investigated (criminal and disciplinary investigation). As the investigation is automatic (legality of prosecution, non-discretionary power), a complaint is not necessary (for details, see the Code of Criminal Procedure, arts. 241 ff., the Inspectorate General of Internal Administration (Organization) Act, art. 4, para. 2, and the IGAI Regulations, arts. 1 3).

(b) Two laws, the regime of responsibility for acts by public authorities (Decree-Law No. 48,051 of 21 November 1967) and the regime of compensation for victims of violent crimes (Decree-Law No. 423/91 of 30 October 1991) guarantee compensation to the victims in such cases.

### **Paragraph 15**

13. The recommendation does not take into account the extensive information provided to the Committee on efforts to combat domestic violence. The first National Plan to combat domestic violence dates from 1999, and the third National Plan was recently approved. This Plan has carefully defined areas of action and will continue until 2010.

14. Moreover, no mention is made of the legislative and administrative measures taken to address the phenomenon: publicizing the crime, ensuring the necessary conditions for the protection of victims, the creation of specialized services to receive complaints from victims, the opening of shelters (34 of which are already in operation), and the punishment and treatment of offenders. In addition, criminal proceedings have been brought against offenders whenever the authorities have learned of cases of domestic violence.

15. Lastly, no mention is made of the major efforts undertaken by Portugal in recent years to train specialized personnel, including police officers, in domestic violence directed against women and children.

### **Paragraph 16**

16. Contrary to what is stated in the draft concluding observations, human trafficking in Portugal has not assumed proportions comparable to those in other countries of the European Union. Portugal is making considerable legislative and material efforts to combat the practice, by passing new laws and heightening public awareness. Thus the recommendation as formulated seems excessive. Specific legislative measures have been taken to punish the perpetrators of this type of offence appropriately, and some offenders have already been sentenced, as the Committee has been informed.

### **Discrimination**

#### **Paragraph 17**

While discriminatory behaviour occurs in Portugal, as it does in all countries, Portugal is working tirelessly to combat the phenomenon. Reference is made to the reports submitted to the Committee on the Elimination of Racial Discrimination (CERD), and in particular to the eleventh report, which was considered in August 2004. In addition to article 240 of the Penal Code, Portugal had introduced Act No. 144/99 and Decree-Law No. 111/2000 on discriminatory offences of an administrative nature, following up on the recommendations of the Council of Europe's European Commission Against Racism and Intolerance (ECRI) on the subject. If the complaints received by the Commission on Equality and Non-Discrimination are criminal in nature, administrative proceedings give way to criminal proceedings, since the complaint is referred to the prosecuting authorities. Lastly, there is also a system of civil liability for racist acts which focuses on the victim and is based on articles 70 and 483 of the Civil Code. Reference is made to the home page of the Office of the High Commissioner for Integration and against Discrimination (ACIDI) at [www.acidi.gov.pt](http://www.acidi.gov.pt).

#### **Paragraph 19**

17. As Portugal has ratified all the major international human rights instruments, it is difficult to imagine what texts the Committee is referring to in this recommendation. For the international instruments in force in Portugal, see [www.gddc.pt](http://www.gddc.pt).

#### **Paragraph 20**

18. This recommendation does not take account of all the information that Portugal has provided to the Committee both orally and in writing regarding the public dissemination over a number of years of the reports submitted to international treaty bodies, accounts of their consideration and the conclusions and recommendations made with regard to them, notably on the website of the Office of Documentation and Comparative Law of the Attorney-General's Office. All this information has long been made public in Portugal and is thus available to all interested parties, including national non governmental organizations (NGOs).

19. As also reported to the Committee, the current practice is to provide national NGOs with country reports before submitting the documents to the United Nations treaty bodies. Exceptionally, this was not done in the case of the fourth report before the Committee, out of a concern to submit the report by the deadline set by that body.

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

1/ This measure does not really constitute an "arrest"; rather, a person suspected of having committed a crime is "taken by force" to a police station for verification of identity, which can involve the producing of an identity document, the suspect's being recognized by a third party or travel to a place where the identity document or the third party can be found (Code of Criminal Procedure, art. 250).

2/ Portugal will provide more definite information to the Committee during the year it has for providing clarifications.