



**International Human Rights
Instruments**

Distr.: General
25 July 2011

Original: English

**Core document forming part of the reports of
States parties**

Portugal^{*},^{}**

[30 January 2011]

* 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.

** Annexes can be consulted in the files of the Secretariat.

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I. Introduction

1. This core document was elaborated¹ within a working group (WG) coordinated by the Portuguese Ministry for Foreign Affairs and composed by several governmental departments. It was drafted by the Human Rights Department of the Bureau for Documentation and Comparative Law (Prosecutor-General's Office) on the basis of information and data provided by concerned departments.² Each department appointed a focal point, who was responsible for coordinating its own contribution and that of subordinate bodies.

2. The WG met several times within the process of preparation of this core document, as well as of other reports to United Nations human rights treaty bodies (namely to the Committee on Economic, Social and Cultural Rights, Human Rights Committee, Committee on the Elimination of Racial Discrimination and Committee on the Rights of the Child). Detailed lists of necessary information were provided to all participants, indicating the treaty provisions binding upon Portugal, the general comments issued by each Committee in relation to each provision, the information provided in previous reports and the Committees' concluding observations upon examination of those reports.

3. The elaboration of this core document and other reports was an opportunity for all participants to examine measures taken to implement Portugal's human rights obligations and progresses achieved in this regard, as well as to increase the awareness of various actors concerning international commitments undertaken by the Portuguese State which require the adoption of measures within each one's field of competence. It is intended that this structure remains in place during the process of examination of these reports and to study measures to be adopted in follow-up to the concluding observations of each Committee, as well as to prepare future reports due to be submitted by Portugal.

4. This core document was elaborated mainly on the basis of data available for the years 2002–2007. It was felt that, since Portugal is a party to six of the core United Nations human rights instruments and submitted its initial core document back in 1993, the evolution of the country since then is well documented. In some cases, however, there was the need to mention data for previous years and occasionally, when data for 2008 and 2009 was available, it was also included.

II. General information about the reporting State

5. The Portuguese Republic is a democratic sovereign State, located in Southwestern Europe (Iberian Peninsula). Its territory borders with Spain to the North and East and with the Atlantic Ocean to West and South, and comprises two autonomous regions in the Atlantic Ocean: the archipelagos of the Azores and Madeira, totalling an area of 92 152 km². Its capital is Lisbon and the official language Portuguese (two other languages are spoken in two small areas: *mirandês* and *barranquenho*). The official currency is Euro.

¹ Elaborated in accordance with the Guidelines on the form and content of reports to be submitted by States Parties to the human rights treaties, contained in document HRI/GEN/2/Rev.5.

² Namely Parliament, Ministries of Foreign Affairs, Finances, Presidency of the Council of Ministers, Defence, Home Affairs, Justice, Economy, Labour and Social Security, Health and Education, Statistics Portugal, Commission for Gender Equality, Office of the High Commissioner for Immigration and Intercultural Dialogue, Portuguese Youth Institute, Bureau for the Media and Commission on Religious Freedom.

6. Portugal became independent in 1143. In the XV century, it began expanding by sea, thus creating an overseas empire that lasted from 1415 to 1975. In 1910, the monarchy was replaced by a Republican system. In 1933, a dictatorship (*Estado Novo*) was instated, ruling the country until 25 April 1974. A new constitution was adopted in 1976 (by a Constitutional Assembly elected by universal suffrage), providing for a wide range of fundamental rights — civil, political, economic, social and cultural — and ensuring a democratic and multi-party regime, based on the dignity of the human person and on the free will of the people.

7. The de-colonization process — which put an end to a 3-front colonial war that lasted from 1961 to 1975 — took place shortly after the 1974 revolution. There are no more overseas territories under Portuguese administration: Macao passed on to Chinese administration on 20 December 1999 and Timor-Leste had its independence recognized on 20 May 2002.

8. Portugal became a Member of the United Nations on 14 December 1955 and acceded to the European Union (EU) on 1 January 1986. It is also a member of several other international and regional organisations, namely the Council of Europe, NATO, OECD and CPLP (Community of Portuguese-speaking countries). Furthermore, it is part of the Schengen space.

III. Demographic, economic, social and cultural characteristics of the State

A. Demographic indicators

9. Portugal has approximately 10 617 575 inhabitants (Chart 1). Of these, 51.60% are women (5 478 768). 95.37% of the population resides in the continent (10 126 880), 2.30% in Azores and 2.33% in Madeira (Chart 2). Children (persons under 18 years) constitute 18.6% of the population (2 092 345 – Charts 3 to 8).

10. In 2007, there were approximately 446 333 foreign nationals legally residing or staying in Portugal (Chart 9), about 4.2% of the population. Of those, 401 612 had residence permits, which reflects an increase in 21.7% in relation to figures of 2006 (329 898). This increase is similar to that registered in 2005 and 2006, but much higher than that of previous years, which results from the conversion of stay permissions and long-term visas into residence permits, favoured by legislation adopted in 1998, 2003 and 2007. The largest communities were those from Portuguese-speaking countries, especially Brazil, Cape Verde and Angola (Chart 10). It is also interesting to note that an estimated 4 981 085 Portuguese nationals are resident abroad.³

11. In accordance with Census 2001, at that time 6.14% of the population were persons with disabilities: the rate was higher in males (6.7%) than in females (5.6%), although in the age group 65 and above the percentage was higher among females, as a result of longer life expectancy and the higher mortality rates of men. Concerning the type of disability, visual impairments affected 1.6% of the population, motor impairments 1.5%, hearing impairments 0.8%, mental impairments 0.7% and palsy 0.5%. 1.4% of the population had other types of disability.⁴

³ Source: MNE/DGACCP.

⁴ Source: Instituto Nacional para a Reabilitacao e INE, Censos 2001.

12. Also according to Census 2001, the majority of the population was Roman Catholic (an estimated 7 353 548 persons), followed by 342 987 without religion and 122 745 of non-specified Christian beliefs. 48 301 persons declared to be Protestant, 17 443 Orthodox, 12 014 Muslim and 1 773 Jewish (Chart 11). It should be noted, however, that answers to questions on one's religious beliefs are, according to the Constitution, optional, and therefore these numbers may not reflect the actual reality. For instance, in accordance with the Catholic Annual Report 2007, the number of Catholics is of 9.261.854 persons. Protestants are estimated to be around 200 000 persons and Muslims 50 000 to 55 000.⁵

13. Due to a legal constraint, Portugal does not collect data disaggregated by race or ethnic origin. There is a considerably large Gypsy community, estimated to have between 40 000 and 60 000 members.

14. There has been a steady decrease in the effective population growth rate, from 0.75% in 2002 to 0.17% in 2007 (Chart 12). Population density has been increasing: in 2007, Portugal had 115.3 inhabitants per Km², compared with a rate of 113.2 in 2002 (Chart 13). This is probably associated with the fact that the majority of the population currently lives in predominantly urban areas: 69.6%, according to Census 2001 (Chart 14), with a significant emphasis on the region of Lisbon, which presents the highest rate of population density: 956.9 inhabitants per km². The North region is the most heavily populated (3 745 236 inhabitants in 2007), followed by the region of Lisbon (2 808 414) and the Centre region (2 385 911) (Chart 15).

15. In parallel with the slow increase in population, the trend towards demographic ageing has continued. Between 2002 and 2007, the proportion of young people (under 18 years of age) in relation to the total population went down from 19.3% to 18.6%, while the proportion of older persons (over 65 years of age) increased from 16.6% to 17.4% (Charts 3 and 4). There is a significantly higher number of older women: 1 077 426 above 65 years of age, compared with 772 405 men (Charts 2 to 4). Widowhood mainly affects women due to higher male mortality, explaining the disparity in the crude widowhood rate between men and women: 2.6 per thousand men and 6.0 per thousand women.⁶

16. The working age population (15–64 years of age) continued to show two distinct trends: the proportion of young adults (15–24 years of age) in the total population went down from 13.4% in 2002 to 11.6% in 2007, while the weight of adult population (25–64 years) showed the same trend as the elderly population, increasing from 54.2% to 55.6% over the same period. Overall, there has been a slight increase in the dependency ratio (percentage of the population under 15 and over 65 years): in 2007, this ratio was of 48.7%, compared with 48.1% in 2002 (Chart 16). This results from two opposing trends: a slight decrease in the ratio of young dependants (from 23.4 to 22.8) and, simultaneously, an increase in the dependency ratio of older persons (from 24.7 to 25.9).⁷

17. The birth rate (live births per thousand inhabitants) dropped from 11.0 in 2002 to 9.7 in 2007. In 2007, there were 102 492 live births of mothers resident in Portugal, compared with 114 383 in 2002 (Chart 17). Of those, 52683 were male and 49809 female, which means a rate of males at birth of 106 (for every 100 female births).⁸ There has been a decrease in the number of teenage mothers, from 6730 (5.8%) in 2002 to 4844 (4.7%) in 2007 (Chart 17).

⁵ Source: Commission on Religious Freedom.

⁶ Source: Statistics Portugal, *Demographic Statistics 2007*, p. 12.

⁷ Source: Statistics Portugal, *Demographic Statistics 2007*, p. 24.

⁸ Source: Statistics Portugal, *Demographic Statistics 2007*, p. 33.

18. In the period between 2002 and 2007, the total fertility rate (TFR) dropped from 1.5 to 1.3 children per woman, the lowest figure ever recorded in Portugal (Chart 18). In parallel with this downward trend in fertility (in contrast with the recovery between 1995 and 2000, year in which the TFR reached 1.6 children per woman), an increase in the mean age of women at childbearing has also been observed. The trends apparent for some years now continued, that is, women in Portugal not only have fewer children, but they also have them later. In fact, there was a drop in fertility rates in the age groups below 30 between 2002 and 2007, against an increase in higher age groups. The mean age of women at first birth rose from 27.0 to 28.2 years and the mean age of women at birth went up from 29.0 to 30.0 years.⁹

19. In 2007, there were 103 512 deaths of individuals resident in Portugal, corresponding to an increase of 1.5% against the 101 990 deaths recorded in 2006 (Chart 19). Between 2002 and 2007, the crude death rate oscillated between 10.4 and 9.6 deaths per thousand inhabitants (the figures reported for 2003 and 2006, respectively). Also during this period, there was a general decline in mortality rates in Portugal for all age groups.¹⁰

20. The changes described above are reflected in the increase in life expectancy at birth: in 2005–2007, the average life expectancy was of 78.48 years (75.18 for men and 81.57 for women – Chart 20).

21. The average household size also continues to decrease: in 2007, it was of 2.75, compared with 2.89 in 2002 (Chart 21). 10.5% of households are single-parent (2007); this rate is close to that of 2002 (10.4%), after a decrease in 2004 and 2005 (9.5% and 9.7%, respectively – Chart 22). The proportion of households headed by women is increasing: 26.5% in 2007, compared with 25.9% in 2002 (Chart 23).

B. Social, economic and cultural indicators

22. Portugal is considered by the United Nations Development Programme (UNDP) as a High Human Development Country, ranking 33 in the 2008 Human Development Index.¹¹ In 2002, however, Portugal ranked 28th in the same Index.¹²

1. Health

23. The right to the protection of health is guaranteed by the Constitution (Art. 64) and ensured, inter alia, through a universal and general National Health Service (NHS) which, taking into account the economic and social circumstances of people, shall be by tendency free. It is composed by hospital facilities, local health units, health centres and health centre groups, under the responsibility of the Ministry of Health. Small fees are paid by persons who resort to the NHS, although some categories of persons benefit from reductions thereof (eg. the elderly) and others are exempt (eg. pregnant women and recent mothers, children up to 12 years, unemployed, persons with low income and patients with some specified illnesses).

24. The infant mortality rate has been continuing its downward trend and decreased in 31.61% since 2002. In 2006, it reached 3.3 deaths of children under one year of age per thousand live births, slightly increasing to 3.44% in 2007 (Chart 24).¹³ Deaths due to

⁹ Source: Statistics Portugal, *Demographic Statistics 2007*, p. 11.

¹⁰ Source: Statistics Portugal, *Demographic Statistics 2007*, p. 12.

¹¹ Source: UNDP, *Human Development Indices: A statistical update 2008 – HDI ranking*.

¹² Source: UNDP, *Human Development Report 2002*.

¹³ Source: Statistics Portugal, *Demographic Statistics 2007*, p. 12.

certain conditions related to pregnancy period and the foetal growth decreased from 0,73‰ in 2002 to 0,17‰ in 2006. Also deaths resulting from respiratory distress of the newborn significantly decreased (0,36‰ in 2002 to 0,16 ‰ in 2006). There was an increase in the percentage of deaths due to congenital malformations (of the heart and other). In 2006, 1,71‰ of infant deaths resulted from other causes, as opposed to 3,14‰ in 2002 (Chart 25). Between 2004 and 2007, the rate of live births below 2500 grams has increased (from 7.6% of newborns to 7.9%) and is higher among female babies (Chart 26).

25. The evolution of the maternal mortality rate was also positive between 2002 and 2006 (0.20 to 0.15 deaths per 100 000 women aged 15–49 years – Chart 27). Per 100 000 live births, this rate was 6.2 in 2001 and 2.7 in 2005 (Chart 28). Medical terminations of pregnancy have increased substantially between 2002 and 2007 (from 0.74% to approximately 4,26% of live births in hospitals – Chart 29). This is probably associated with the legislative amendment introduced in April 2007 which, for the first time, allowed abortion to be performed at the request of a woman, by a doctor in a legally authorised health facility. In 2008, a total of 16 581 terminations of pregnancy occurred, from all causes.¹⁴ In the years, 2005/2006, 86.8% of women of childbearing age (15–49 years) were using contraception or had a partner who was using contraception (Chart 30).

26. The incidence of both HIV infection and AIDS has decreased since 2001 (from 23,15 and 9,7 per 100 000 persons, respectively, to 20,5 and 6,59 in 2006), according to data available from HFA-WHO Data Base (Chart 28). It should be noted that, according to data available from Statistics Portugal/INSRJ, the incidence of HIV/AIDS had dropped significantly in 2007, to 9.10 cases per 100 000 persons, and AIDS (excluding asymptomatic HIV infected persons) had also decreased to an incidence of 3.02 per 100000 persons (Chart 31). Furthermore, the incidence of tuberculosis, viral hepatitis A and B, syphilis, malaria and Boutonneuse fever is decreasing, while the incidence of other salmonella infections seems to be increasing (Chart 28). Prevalence of AIDS increased from 10 838 diagnosed cases in 2002 to 14 195 in 2007 (Chart 32).

27. Diseases of the circulatory system constitute the major cause of death in Portugal (34% in 2005, latest year with available statistics), followed by cancer (21.6%). Next come “symptoms, signs, abnormal findings, ill-defined causes” (11.8%), respiratory diseases (10.5%), endocrine, nutritional and metabolic diseases (4.8%), digestive diseases (4.3%), external causes of death (4.2%), diseases of the genitourinary system (2.7%), diseases of the nervous system and the sense organs (2.4%), and infectious and parasitic diseases (2.1%) (Chart 33).

28. The significance of the different causes of death however varies according to age and sex. Diseases of the circulatory system, with particular emphasis in older age groups, were in 2005 the main cause of death of men and women above 65 years of age, but constituted a higher proportion of deaths of females (42,1%), as compared with males (34,0%). Tumours affected in particular individuals aged 45 to 64 years (39,4% of all deaths in this age group), while external causes of death were the main cause of deaths in younger ages (respectively, 44,7% of deaths of persons from 1 to 19 years of age and 26,4% for those aged 20 to 44), with a higher incidence in male deaths. Accidents constitute a significant proportion of external causes of death (50% of deaths resulting from such causes in 2005), namely road traffic accidents (33,6% of male deaths and 22,8% of female deaths due to external causes) (Chart 34).

¹⁴ Source: MS/ACS.

2. Poverty

29. According to 2005/2006 data, total annual average expenditure was €17,607 per household residing in Portugal.¹⁵ Of total expenditure, approximately 26.6% was on housing (including expenditure on water, electricity, gas and other fuels), 15.5% on food and non-alcoholic beverages, 6.1% on health and 1.7% on education. This represented a global increase in the percentages spent on housing, health and education, but a decrease in the percentages spent on food, as compared with results from 2000. The increase in expenditure on health was made at the cost of medium urban and rural areas; while expenditure on education was particularly marked in urban areas. Expenditure on housing increased in all areas, whose respective percentages became closer. Expenditure on food and non alcoholic beverages significantly decreased in urban areas, but actually increased in rural ones (Chart 35).

30. The social security framework law (Law 4/2007) defines the materialisation of the right to social security (guaranteed by Article 63 of the Constitution), the promotion of sustained conditions and levels for social protection as well as of the efficiency of the system and of its management, as priority objectives of the social security system. This system has an insurance scheme that guarantees benefits to replace lost earnings and a scheme for social protection for citizens that encompasses the social action, solidarity and family protection components and seeks to ensure basic rights and equal opportunities, as well to contribute to social cohesion.

31. According to the Income and Living Conditions Survey conducted in 2006, 18% of the resident population was at risk of poverty after social transfers, which reflects a decline from the two previous years: 20% according to the 2004 survey and 19% according to the 2005 survey. The poverty threshold considered corresponds to 60% of the median of the distribution of net equivalent monetary income. In the 2006 survey and taking as reference income from the previous year, this threshold corresponded to €4386 (around €366/month).¹⁶ Persons aged 65 and above are at a greater risk of poverty (26% in 2006), although the situation has improved since 2004 (29%). Also women and children present rates above the average, although the evolution since 2004 has been positive: concerning women, the rate decreased from 22% in 2004 to 19% in 2006; 21% of children were at risk of poverty in 2006, compared with 25% in 2004 (Chart 36).

32. Before all social transfers, the risk of poverty was of 40% in 2006 (compared with 41% in the two previous years). Pensions play an important role in reducing the risk of poverty, since the rate dropped to 25% after social transfers relative to pensions, in 2006 (compared with 27% in 2004).¹⁷ The GINI coefficient, relating to distribution of income, dropped from 38% in 2004 to 37% in 2006 (Chart 37).

3. Work and employment

33. The unemployment rate is increasing since 2000 (when it reached 3.9%). In 2007, it had reached 8,0%. Female unemployment has always been higher than male (9.6% for women and 6.6% for men in 2007, aggravating the disparity registered in 2000, with 4.9% for women and 3.1 for men) (Chart 38). About 49% of resident population (approximately 5.1 million persons) is employed. The majority (around 59%) works in the tertiary sector (services and public administration), a percentage higher than in 1995 (about 53%). Next comes the secondary sector (industry, including energy, and building), with about 28%

¹⁵ Source: Statistics Portugal, *Statistical Yearbook of Portugal 2007*, p. 245.

¹⁶ Source: Statistics Portugal, *Statistical Yearbook of Portugal 2007*, p. 248.

¹⁷ Source: Statistics Portugal, *Statistical Yearbook of Portugal 2007*, p. 253.

(compared with 32.5% in 1995) and the primary sector (11.7%, decreasing from 14.4% in 1995) (Chart 39).

34. It has not been possible to break-down this data between the formal and informal sectors, although a new statistics methodology is being developed which will allow for the provision of such information next year. A measure of this dimension can perhaps be given by the numbers of “non observed employment” (i.e., the component of employment that is not captured in the statistical sources collected at the employers). In 2007, this represented 19.75% of employment, almost 53% of which in agriculture, but this does not mean that the agricultural sector can be considered an informal sector or that agricultural employment should be considered as ‘informal employment’ (Chart 40).

35. Overall, work participation has increased since 1998, reaching 62.6% of the population aged 15 and above in 2007.¹⁸ The participation of women increased from 51.8% in 1998 to 56.3% in 2007. However, the participation of young people (aged 15–24) decreased from 47% in 1998 to 41.9% in 2007. Over the same period, there has been an increase in the participation of persons aged 65 and above (from 17.1% in 1998 to 18.2% in 2007) (Chart 41). Professional groups with the highest participation of women are “services and sales staff (67,8%), “unqualified workers” (67%) and “administrative and similar staff (60,9%). Women constitute only 31.9% of senior public officials and business directors and senior staff (Chart 42). In terms of employment sectors, there is a large majority of women in domestic work for families (98,7%), health and social support (83,8%), education (77,6%) and hotel, restaurant and similar activities (60,8%). In contrast, women are practically absent from such activities as building (4,1%), fishing and water culture (3,9%) and extraction industries (10,7%) (Chart 43).

36. The right to constitute and join trade unions, and to participate in their activities, is fully recognized, in accordance with the Constitution (Art. 55). The proportion of work force registered with trade unions is estimated to be around 30%–39%. The density of trade union registration seems to have declined from 1993 to 2003, although the absolute union membership rose over the same period.¹⁹ In 2006, the boards of the two union federations (UGT and CGTP-IN) were composed by 24.3% and 24.2% women, respectively.

4. Education

37. Basic schooling is compulsory in Portugal, lasting nine years, from 6 to 15 years of age. There is the intention of enlarging it to 12 years of schooling. Compulsory education comprises primary education (first cycle: first to fourth grade; and second cycle: fifth to sixth grade) and lower secondary education (third cycle: seventh to ninth grade). Basic schooling is free in public schools.

38. Upper secondary education comprises three more grades (tenth to 12th). It offers four basic types of courses: scientific and humanities courses (intended mostly for those wishing to pursue higher education); technological courses; specialized artistic courses; and professional courses. In public schools, upper secondary education students must pay an annual fee. There are several options for those wishing to pursue post-secondary education, including non-higher technological specialisation courses (CET), and higher education, in polytechnic institutes and universities (both public and private). Non higher education is coordinated by the Ministry of Education, and higher education by the Ministry of Science and Higher Education (Chart 44).

¹⁸ Work participation is understood as the ratio between the total working population in each group and the total population of each group.

¹⁹ Source: *European Industrial Relations Observatory report on membership trends in 26 European countries, Trade union membership 1993–2003*.

39. According to data available for 2005/2006, the actual rate of schooling (ratio between the number of students enrolled in a particular course of study in normal age of frequency of that cycle, and the residents of the same age levels) (Chart 45) reached 100% of children in the first cycle of primary education, 84.4% in the second cycle and 83.5% in the third cycle, decreasing to 54.2% in upper secondary education. While full coverage in the first cycle remained unchanged since 2001, there has been a decrease in the rates concerning the second and third cycles, and more marked in upper secondary education (Chart 46).

40. The gross rate of schooling — percentage between the total number of students enrolled in a particular course of study (no age considered) and the resident population in the same age level attending the normal course of studies — is higher, although levels decreased from 2001 to 2007: concerning compulsory education, 120% in 2001/2002 to 118% in 2006/2007. Gross rates of schooling have been higher for males in compulsory education, but lower in upper secondary education (Chart 47).

41. An analysis of data disaggregated by school year and age shows that 100% of children aged 7 to 14 have been enrolled at school since 2001/2002 (for those aged 14, 95.5% in compulsory education and 4.5% in upper secondary education) (Charts 48–49). There has been a significant decrease in drop-out rates from school, both in compulsory and in upper secondary education: in the first case, the percentage of drop-out students was 10.1% in 2006/2007, compared with 13.6% in 2001/2002; concerning upper secondary education, this trend was even more visible, with a difference of more than 12 percentage points over the same period (from 37.4% to 24.8%) (Chart 50). Drop-out rates are higher in males than in females: in 2006/07, males had a drop-out rate of 11.8% in compulsory education and of 27.8% in upper secondary education, while females presented rates of 8.1% and 22%, respectively (Chart 51).

42. Teacher/student ratio in public schools remained steady or even decreased between 2001/2002 and 2005/2006, but showed signs of increasing in 2006/2007. Concerning the first cycle of primary education, this ratio was 12.5 in 2001/2002 and 14.7 in 2006/2007: this evolution is probably associated with measures taken to reorganise the first cycle school network, by which 60 school centres opened but others closed due to an insufficient number of pupils, who have been transferred to larger schools; this reorganisation was considered fundamental to reduce academic underachievement and school drop-out rates.²⁰ The second cycle registered the lower ratio, ranging from 7.1 in 2001/2002 to 7.6 in 2006/2007. Only in the third cycle was there a decrease, from 8.5 in 2001/2002 to 8.1 in 2006/2007 (Chart 52).

43. Illiteracy rates have been significantly decreasing: in 1960, 33.12% of the population was illiterate, with a higher incidence on women (38.97%, compared with 26.55% for men). In 1970, the percentage had decreased to 25.74% for the global population, but the gender gap remained (31,04 for women versus 19,69 for men) (Chart 53). In 1991, the overall illiteracy rate had decreased to 11.01 % (7.66% for males and 14.09% for females) and it was visible that older age groups were the most affected. According to the most recent data available from Census 2001, the global illiteracy rate in Portugal was of approximately 9.03%: 6.34% for men and 11.52% for women, but these rates were mostly due to the illiteracy rates of persons aged 60 and above. 30.29% of persons in this age group remained illiterate, 21.50% as it concerned males and 36.92% concerning females. Around one percent of persons aged 10 to 18 were illiterate and the gender gap had been inverted: 1.15% for boys and 0.87% for girls (Charts 54–56).

²⁰ Source: Ministry of Education, *Relatorio nacional sobre o Desenvolvimento da Educacao* 2008, p. 10.

5. National accounts

44. In 2007, the Portuguese Gross Domestic Product (GDP) reached 163 119 million euros, which represented an annual growth rate of 1.9%. This rate rose between 1996 and 1998 (when it reached 4.8%), and then decreased to a low of -0.8% in 2003, and has had a tendency to increase since then. The Gross National Income has been increasing since 1995, totalling 156 603,0 million euros in 2007 (Chart 57).

45. Concerning the Consumer Price Index (CPI), between 2002 and 2008 it has registered average values of approximately 2,7%, with 2,6% in 2008 (Chart 58). Gross disposable income per capita has increased from 8 772 euros in 1995 to 14 982 in 2007 (Chart 57). However, public debt is also on the rise, from 61 793 million euros (50.5% of GDP) in 2000 to 103 552 million euros (63.6% of GDP) in 2007 (Chart 59).

46. Expenditure on social protection has increased since 1995: it represented 27.9% of total public expenditure in 1995 and 38.2% in 2007, corresponding to 12.1% of GDP in 1995 and 17.5% in 2007. Expenditure on health increased in relation to total public expenditure from 1995 (12.9%) to 2006 (15,4%), but then decreased to 12,4% in 2007; in relation to the GDP, the percentage in 2007 (5,7%) was similar to that of 1995 (5,6%), after a maximum of 7,3% in 2005. Also concerning housing and community amenities there has been a reduction: in 1995, this represented 1.5% of total public expenditure and 0.7% of GDP, compared with 1.4% of total public expenditure and 0.6% of GDP in 2007. The evolution of expenditure on education has been uneven, from 14.1% of total public expenditure and 6.1% of GDP in 1995 to 12,6% and 5,8%, respectively, in 2007, after much higher levels of expenditure in 1999–2005 (Chart 60).

47. Concerning international assistance, 111 million dollars were disbursed in net official development assistance (ODA) in 2005. This represented a decrease between 1990 (0.24% of GNI) and 2005 (0.21% of GNI). However, ODA per capita of donor country increased (USD \$25 in 1990 to USD \$36 in 2005). In 2005, 56% of ODA was granted to least developed countries (compared with 70% in 1990). In 2004–2005, 2.7% of ODA was allocated to basic social services (compared with 8.5% in 1996–1997). In 2005, 61% of ODA was granted as untied bilateral ODA.²¹

IV. Constitutional, political and legal structure of the State

A. Constitutional structure

48. The structure of the Portuguese State is based on the Constitution presently in force (see text in Annex), adopted on 2 April 1976 by the democratically elected Constitutional Assembly, and which entered into force on 25 April 1976. This Constitution (CRP) has had seven revisions so far (in 1982, 1989, 1992, 1997, 2001, 2004 and 2005). It is composed by six parts: preamble; fundamental principles; Part I (Fundamental Rights and Duties); Part II (Economic Organisation); Part III (Organisation of the Political Power) and Part IV (Guarantee and Revision of the Constitution).

49. In accordance with the CRP (Art. 1), Portugal is “a sovereign Republic, based on the dignity of the human person and on the will of the people, and committed to building a free, fair and solidary society”. Portugal is a democratic State based on the rule of law, the sovereignty of the people, plurality of both democratic expression and democratic political organization as well as respect for and the safeguarding of fundamental rights and freedoms

²¹ Source: UNDP, *Human Development Report 2007/2008*, table 17, p. 289.

(Art. 2 CRP). The Constitution also states that the aim of the Portuguese Republic is to achieve economic, social and cultural democracy and to further participatory democracy. Political power is exercised by the people, namely through universal, equal, direct, secret and periodic suffrage and referendums (Art. 10 CRP, which also guarantees a multi-party system).

50. Portuguese international relations are ruled by the principles of national independence, respect for human rights, the rights of peoples, equality among States, pacific settlement of international disputes, non interference in other States internal affairs and cooperation. We stand for the abolition of, inter alia, imperialism, colonialism and any other forms of aggression, domination and exploitation in the relations between peoples, and recognize the right of peoples to self-determination, independence and development. Portugal maintains special ties of friendship and cooperation with Portuguese-speaking countries (Art. 7 (1) to (4) CRP).

51. The Portuguese Constitution contains an extensive catalogue of “rights, freedoms and guarantees” and of “economic, social and cultural rights” (Titles II and III, Arts. 24 to 79 CRP), which consecrate constitutionally many civil, cultural, economic, political and social rights provided for in international human rights treaties – see below. Constitutional and legal provisions concerning fundamental rights are to be interpreted and integrated in accordance with the Universal Declaration of Human Rights, as expressly stated by Art. 16 (2) CRP. Furthermore, norms and principles of general or common international law are an integral part of Portuguese law and norms contained in regularly ratified or approved international conventions are in force at the domestic level provided that they have been published in the Official Gazette and while they are binding upon Portugal at the international level (Art. 8 (1) and (2) CRP).

52. In terms of economic and social organisation, the Constitution (CRP) guarantees the coexistence of a public sector, a private sector and a cooperative and social sector in ownership of means of production, as well as free enterprise initiative within a mixed economy and public ownership of national resources (Art. 80).

B. Political and legal framework of the State

53. There are four organs of supreme authority: the President of the Republic; Parliament; the Government and Courts (Art. 110 CRP). The political system in place is semi-presidential. Separation of powers is guaranteed by Art. 111 CRP. In accordance with Art. 112 CRP, there are three types of normative acts: Acts, Decree-Laws and regional legislative decrees. The latest are regional in scope and deal with matters provided for under the political and administrative statute of each autonomous region. The Government can also adopt regulations. Normative acts are published in the *Official Gazette (Diário da República)*.

1. President of the Republic

54. The President of the Republic (PR) represents the Portuguese Republic, guarantees national independence, State unity and the regular functioning of democratic institutions, and is, by inherence, the supreme commander of the armed forces (Art. 120 CRP). The PR is elected for 5-year terms by universal, direct and secret ballot, and may not run for the third consecutive mandate. No woman has ever been elected for this office. In case of temporary impediment, the PR is replaced by the President of Parliament (Art. 132 CRP), whose competence shall however be limited (Art. 139 CRP). The PR is advised by the Council of State (Arts. 141 ss. CRP).

55. The PR's competence includes: presiding over the Council of State; setting the date of elections, in accordance with electoral legislation; convening Parliament on an extraordinary basis; dissolving Parliament, upon hearing the parties represented thereon and the Council of State; appointing and dismissing the Prime Minister (PM) and Government members (in this case upon PM's proposal); and appointing and dismissing, upon Government proposal, the president of the Court of Audit, the Prosecutor General and the heads of the armed forces (Art. 133 CRP).

56. The PR has the right of promulgation and veto. He must promulgate any decree approved by Parliament or by the Government or exercise his right of veto within the time periods stipulated by the Constitution. In case veto is exercised, Parliament may confirm its own decrees by absolute majority of Parliament members in office, and the PR is then obliged to promulgate (Art. 136 CRP). The PR also submits matters of relevant national interest to a referendum, declares states of siege or emergency, grants pardons and commutes sentences, upon hearing the Government, and requests the Constitutional Court to examine the constitutionality of norms contained in national legislation and international conventions (Art. 134 CRP). Concerning international relations, the PR appoints Ambassadors, upon Government proposal, and accredits foreign diplomatic representatives, ratifies duly approved international treaties and is competent to declare war, upon Government proposal and with the authorisation of Parliament, after hearing the Council of State (Art. 135 CRP).

2. Parliament

57. Parliament (Assembleia da Republica) is the representative assembly of all Portuguese citizens (Art. 147 CRP) and the main legislative organ. It is presently composed by 230 members, elected in geographically defined constituencies in accordance with the law.

58. Parliamentarians are elected for four-year terms and exercise their mandate freely. They namely enjoy civil, criminal and disciplinary immunity for votes and opinions expressed in the exercise of their duties.

59. Parliament has competences of a political, legislative and supervisory nature, as well as competences in relation to other organs. It can legislate on all matters, except those relating to the organisation and functioning of Government. It approves Constitutional amendments, the political and administrative statutes of Autonomous Regions, the State Budget and international treaties, proposes to the PR the convening of referendums on matters of relevant national interest, authorises and confirms the declaration of state of siege and state of emergency, and authorises the PR to declare war and peace (Art. 161 CRP).

60. Parliament has exclusive legislative power on some matters, including elections and referendums, the Constitutional Court, organisation of national defence, legal regimes on state of siege and state of emergency, acquisition and loss of national citizenship, associations and political parties, basic legal framework of the education system, statute of mandate-holders elected by direct and universal ballot, legal framework on security forces, intelligence services and State secrecy, and the creation, extinction and modification of local authorities (Art. 164 CRP).

61. Other matters are within the competence of Parliament, but the Government can be authorised to legislate thereon, pursuant to authorisation of and within the limits prescribed by Parliament. It is the case, for example, of issues relating to: the status and capacity of individuals; rights, freedoms and guarantees; definition of crimes, penalties and security measures; criminal procedure; general framework on disciplinary measures and misdemeanours; basic legal framework on social security and national health service;

protection of nature and cultural heritage; taxes and fiscal matters; monetary system; organisation and competence of courts and status of magistrates and non judicial conflict settlement entities; status of municipal authorities; guarantees of citizens, basic legal framework and civil responsibility of Public Administration (Art. 165 CRP).

62. As a rule, Acts of Parliament are approved by simple majority, but some (called Organic Acts) must be approved by absolute majority of Parliamentarians in office (it is the case, for instance, of Acts pertaining to Parliament and Presidential elections, referendum and national defence). Amendments to the Constitution take the form of Constitutional Acts and must be approved by a 2/3 majority of Parliamentarians in office. Other Parliament deliberations take the form of resolution (Art. 166 CRP).

63. As part of its supervisory powers, Parliament namely supervises conformity with the Constitution and the law and examines the acts of Government and public administration. It also examines the implementation of declarations of state of siege or of emergency (Art. 162 CRP).

64. The Government is formed taking into account the results of Parliament elections (legislative elections). Parliament examines the Government Programme and may reject it (by absolute majority of Parliamentarians in office). The Government may seek a motion of trust at any time, on issues of relevant national interest. Similarly, any parliamentarian group may submit a motion of censure to Government. The rejection of the former or the approval of the latter will lead to Government resignation (Arts. 192 to 194 CRP).

65. Parliament holds debates on general or specific policy matters (Government summoning) upon request of Parliamentarian groups. Members of Parliament pose questions to Government, either in writing (requests) or at sessions held every fortnight with the participation of the PM. The enforcement of a Decree-Law can be totally or partially suspended by Parliament until the approval of an Act which amends it (Art. 162 CRP).

66. Parliament also participates in the election of mandate-holders of external organs (either totally or partially), namely the Ombudsman, the President of the Economic and Social Council, ten judges of the Constitutional Court, seven members of the Supreme Council of the Judiciary, members of the Supreme Council of Public Prosecution, and members of the entity in charge of regulating the media. Furthermore, it approves the political and administrative statutes and election laws of the Autonomous Regions, pronounces itself on the dismissal of their government organs and grants Regional Legislative Assemblies authorisation to legislate on certain matters.

67. Parliament elects its own officials (President, four vice-presidents, four secretaries and four vice-secretaries) and adopts its rules of procedure. Parliament members elected by each party may constitute Parliamentarian Groups (generally one for each party represented in Parliament). Parliament establishes ad hoc and standing commissions (specialized on certain matters), which can also establish sub-commissions. There are currently 12 permanent commissions.²² Ad hoc commissions may undertake inquiries into any matter of public interest relating to the implementation of laws or Government acts.

68. Legislative proposals may be submitted by Parliamentarians and Parliamentary Groups, as well as by the Government and Regional Legislative Assemblies (bills) and by

²² On Constitutional Matters, Rights, Freedoms and Guarantees; Foreign Affairs and Portuguese Communities; National Defence; European Matters; Budget and Finances; Economic Matters, Innovation and Regional Development; Local Power, Environment and Territorial Organisation; Education and Science; Public Works, Transports and Communications; Health; Labour, Social Security and Public Administration; Ethics, Society and Culture.

groups of citizens (minimum 35 000) registered to vote (Art. 167 CRP and Act 17/2003, of 4 June). Legislative initiatives are first examined by the specialised commissions, then discussed in Plenary and voted on in generality (preliminary vote on the general aspects of the initiative). Then, they are voted on in speciality (article by article), which can be done in Plenary or in Commissions. Voting in speciality on some matters (eg. elections for mandate-holders of organs of supreme authority, referendums and political parties) must be done in Plenary. The final text is subject to a final global vote in Plenary. The text approved — called parliament decree — is sent to the PR for promulgation. After promulgation, it is designated as “Act” and sent to Government for referenda (PM’s signature) and then published in the Official Gazette.

3. Government

69. The Government is body that conducts the country’s general policy and is the supreme authority within Public Administration (Art. 182 CRP). It is composed by the Prime Minister (PM), Ministers (who meet in Council of Ministers) and Secretaries and Under-Secretaries of State (Art. 183 CRP).

70. The PM is appointed by the PR after consulting the parties represented in Parliament and in light of the results of legislative elections. Other members of Government are appointed by the PR upon PM’s proposal. The Government is responsible before the PR and Parliament, and can be dismissed by either of them: by the PR when it becomes necessary to do so in order to ensure the normal functioning of democratic institutions and after consulting the Council of State; by Parliament upon rejection of a motion of trust or approval of a motion of censure (Art. 195 CRP). Should the PM resign or be dismissed, the Government as a whole will be removed from office. The PR then has the option of inviting another party to form Government, in light of the composition of Parliament, or of dissolving Parliament and convening new legislative elections.

71. The Government has political, legislative and administrative competences. It is responsible for, namely: negotiating and finalising international agreements; approving international agreements outside the scope of competence of Parliament; submitting government bills and draft resolutions to Parliament; proposing to the PR the convening of referenda on important matters of national interest and the declaration of war and peace; and pronouncing itself on the declaration of a stage of siege or state of emergency (Art. 197 CRP).

72. The Government has the power to make Decree-Laws on matters not within the exclusive competence of Parliament; to make Decree-Laws on matters within the relative competence of Parliament, in accordance with Parliament authorisation; and to make Decree-Laws that develop the principles or the basic general elements of Acts of Parliament. Legislation on matters concerning the internal organisation and functioning of Government are of the exclusive competence of this organ. There have been 16 Constitutional Governments since 1976. Only once was a woman PM. Government presently in office (XVI) was inaugurated in March 2005 and is now composed by the PM and 16 Ministers.²³

²³ Foreign Affairs; Finances; Presidency of the Council of Ministers; National Defence; Internal Affairs; Justice; Environment, Territorial Organisation and Regional Development, Economy and Innovation; Agriculture, Rural Development and Fisheries; Public Works, Transports and Communications, Work and Social Solidarity; Health; Education; Science, Technology and Higher Education; Culture; and Parliamentary Issues.

4. Autonomous regions

73. The two Autonomous Regions of Azores and Madeira each have their own political and administrative statutes and self-government institutions (Arts. 6 (2) and 225ss CRP) – a Legislative Assembly and a Regional Government, but their autonomy does not affect the integrity of State sovereignty and is exercised within the framework of the CRP. The members of Legislative Assemblies are elected for four-year terms by universal, direct and secret suffrage in accordance with the principle of proportional representation. Each Regional Government is politically responsible before the Legislative Assembly of its Autonomous Region. The PR, upon hearing the Government, appoints a Representative of the Republic for each region. This Representative appoints the President of the Regional Government, in light of the results of regional elections, as well as the remaining members of the regional cabinet (upon proposal of its President).

74. Autonomous Regions are competent to, inter alia, legislate on matters of specific regional interest which are not within the exclusive competence of supreme authority organs. The approval of regional budgets and of economic and social development plans and accounts, as well as the adaptation of the national fiscal system to regional specificities, fall within the exclusive competence of Regional Legislative Assemblies. These also adopt their own draft political and administrative statutes and electoral laws, which are sent to Parliament for discussion and approval.

75. Organs of Supreme Authority have the duty to cooperate with regional organs. Regional legislation and regulations must be signed by the Representative of the Republic, who has the power of veto. Regional Legislative Assemblies may, however, confirm their vote by absolute majority of members in office, in which case the Representative of the Republic is bound to sign. Legislative Assemblies may be dismissed by the PR, which entails the removal of Regional Government.

5. Local authorities

76. The democratic organisation of the State includes local authorities. These are public bodies with a territorial basis, which pursue the interests of local populations (Arts 235ss CRP). There are currently two types of local authorities: municipalities (308) which, for their turn, are divided into parishes (4259). Municipalities have associated themselves at various levels, in order to pursue common interests (eg. by establishing Inter-municipal communities and the Metropolitan Areas of Lisbon and Oporto). The responsibilities and organisation of local authorities and the competence of their bodies are regulated by law in accordance with the principle of administrative decentralisation (Art. 237 CRP).

77. Each local authority has its own elected assembly with decision-making powers (municipal assembly or parish assembly), and a collegiate executive body that is responsible before such assembly (municipal cabinet and parish cabinet). Local authorities are vested with powers and competences associated with meeting the needs of local communities, in areas such as social and economic development, territorial organisation, supply of public necessities, basic sanitation, health, education, culture, environment and sports.²⁴ Local authorities have their own staff, assets and finances, the management of which is ensured by their own organs. Administrative supervision over local authorities is limited to verifying their compliance with the law, and such authorities can only be dismissed due to serious illegal acts or omissions (Art. 242 CRP).

²⁴ Acts 159/99 of 14 September, and 169/99, of 18 September, amended and republished by Act 5-A/2002, of 11 January.

6. Electoral system

78. In accordance with the Constitution, all citizens above 18 years of age are eligible to vote and be elected, save such incapacities as may be provided for in general law (Art. 49 (1) CRP). Incompatibilities prescribed by law apply to the passive electoral capacity of active diplomats, military personnel and magistrates. In elections for the PR, only citizens of Portuguese origin aged 35 or above can run.

79. On 31 December 2007, 8 784 959 national citizens residents in Portugal were registered to vote, plus 197 790 citizens resident throughout the world. Furthermore, 9 576 citizens of EU member States and 19 727 citizens of other States resident in Portugal were also registered to vote (Chart 61). These numbers reflect an increase in the numbers of registered persons which is particularly visible as it concerns foreigners (plus 36.25% nationals of EU member States and around 10% more of other non-nationals between 2003 and 2007). Registration to vote is mandatory for all resident citizens above 17 years of age and is made automatically by electoral administration services. It is optional for non-resident Portuguese citizens and for foreign nationals resident in Portugal with electoral capacity.²⁵ There is a single registration system for all elections.

80. The right to vote is exercised in person, by means of universal, equal, direct, secret and periodic ballot, and constitutes a civic duty (Arts. 10 and 49 (2) CRP). There are five types of election: for PR, for Parliament, for Regional Legislative Assemblies, for Local Authorities and for the European Parliament. There is also the possibility of convening national and local referendums. The polling system varies in accordance with the election: in Presidential elections, there is a majority two-round system; in elections for Parliament, autonomous regions and local power bodies, there is a proportional system and votes are converted into mandates in accordance with the method of Hondt. Voter turnout has had a tendency to be above the national average in major urban centres in all elections except those for local authorities, and is higher in northern littoral than in the South, and in general lower in the Autonomous Regions (Chart 62).

81. The Parliament adopted on 20 April 2006 a Law (Organic law 3/2006, of 21 August, amended by declaration 71/2006, of 4 October 2006) which sets at 33% the minimum representation for both sexes in the electoral lists for the National Parliament, the European Parliament and for Local Authorities, having effects on the percentage of elected members, corresponding to a quantitative threshold to parity. Any list of three or more candidates must ensure a minimum participation of 33% of each sex (this rule does not apply in elections to municipal organs with less than 7 500 voters nor to parish organs with less than 750). Additionally, for the Portuguese and European Parliaments, the lists should not include more than two persons of the same sex successively.²⁶ If the lists do not respect these rules, the public financing of the electoral campaigns may be reduced.

82. Courts are responsible for examining complaints on the conduct of elections and for verifying the legality and validity of electoral procedure acts. Thus, candidacies are presented before the Constitutional Court (Presidential and European) or before common courts (legislative, local and regional), for verification of legality. There is a period of electoral campaign (of approximately 11 days), during which political parties have the right to use specific means of campaign, such as broadcast time in TV and radio services and to post propaganda, as well to use recreational and other public facilities.

83. Electoral campaigns are governed by the principles of freedom of propaganda (of means and content), of equal opportunities and treatment for all candidatures, of

²⁵ Act 47/2008, of 27 August: "Legal framework on electoral registration".

²⁶ Organic Act 3/2006, of 21 August, as corrected by Corrective Declaration 71/2006, of 4 October.

impartiality of public bodies towards all candidatures, and of transparency and scrutiny of electoral accounts (Art. 113 (2) CRP). The media are bound not to discriminate any candidature.²⁷ The publication of opinion polls as from the eve of elections, until the closing of voting polls, is prohibited.

84. A National Elections Commission (Comissão Nacional de Eleicoes – CNE) has been established to ensure equal opportunities of action and propaganda to all candidacies, to ensure equality of treatment to all citizens in electoral registration and electoral conduct and to provide information on electoral issues. It applies fines to political parties, mass media and publicity and other companies for misdemeanours resulting from violation of electoral regulations. CNE's decisions can be appealed before the Constitutional Court, which is the competent body to examine cases relating to jurisdictional and administrative acts on electoral matters, including irregularities on the conduct of elections.

85. For the purpose of Presidential elections, there is a single national constituency. All Portuguese citizens of origin above 35 years of age may run for election. To be elected, it is necessary that the candidate obtains more than half of validly expressed votes. If no candidate obtains such majority in the first electoral round, a second round will be convened, with the participation of the two most voted candidates (Art. 126 CRP). In accordance with the Constitution presently in force, Presidential elections were held in 1976, 1980, 1986, 1991, 1996, 2001 and 2006. Six candidates participated at the last Presidential elections, held in 2006 and the current PR was elected with 50,54% of votes (Chart 63). The voter turnout in presidential elections has had a tendency to decrease (from 75.4% in 1976 and 84,2 % in 1980 to 50,9 % in 2001), although 61,53% registered voters participated in 2006 (Chart 64).

86. For the purpose of legislative elections (for Parliament), there are 20 constituencies in Portugal (coinciding with 18 Districts in the continent, plus the two Autonomous Regions), electing members of Parliament in proportion to the number of registered voters. Portuguese citizens resident abroad elect 2 members in the constituency of Europe and 2 members in the constituency outside Europe. Candidacies are presented by political parties only, isolated or in coalition, but the lists may include independents (not registered in a political party) (Art. 151 CRP). Each voter has one vote and the lists are plurinomial, closed and blocked. Representation is proportional and votes are converted into mandates through the method of Hondt. The establishment of a minimum number of votes for a party to be represented in Parliament is constitutionally prohibited. Parliamentarians represent the country as a whole, rather than the constituency which elects them (Art. 152 CRP).

87. Since 1976, there have been 11 legislative elections in Portugal: in 1976, 1979, 1980, 1983, 1985, 1987, 1991, 1995, 1999, 2002 and 2005. In the latest (2005), 11 parties participated, and five forces obtained seats in Parliament and are therefore represented therein: the Socialist Party (PS: 45,03% and 121 seats), the Social and Democratic Party (PSD: 28,77% and 75 seats), the Coalition Portuguese Communist Party/Ecologist Party (PCP-PEV: 7,54% and 14 seats), the Social and Democratic Centre (CDS-PP: 7,24% and 12 seats), and the Left Wing Block (BE: 6,35% and 8 seats). The results of other participating parties varied between 0,03% and 0,84%. This represented a significant change in the composition of Parliament resulting from the previous elections (held in 2002), in which the majority had been obtained by PSD (40,21%), followed by PS (37,79%), CDS-PP (8,72%), PCP-PEV (6,94%) and BE (2,74%). In 1999, the majority had been obtained by PS (44,06%). Voter turnout has had a tendency to decrease since 1976: on this occasion, 83,53% of voters participated, compared with 61,09% in 1999, 61,48% in 2002 and 64,26% in 2005 (Charts 65–67). In the 2005 elections, 49 women were elected as

²⁷ Decree-Law 85-D/75, of 26 February.

members of Parliament (21.3%), which represents an improvement from previous years: 45 in 2002, 40 in 1999, 28 in 1995 and 20 in 1991 (Chart 68).

88. The system adopted in the election of Regional Assemblies is similar to that in place for Parliament. In Azores, there are nine constituencies (one for each island), plus one regional compensation constituency (designed to correct identified distortions in the allocation of seats in light of votes obtained). It should be noted that, in Madeira, only Portuguese citizens with habitual residence in the region can be elected for its Regional Assembly. Since 1976, nine elections have been held for each Regional Legislative Assembly: in 1976, 1980, 1984, 1988, 1992, 1996, 2000, 2004 and 2007 (Madeira)/2008 (Azores). In Madeira, the same party (PPD/PSD) has had the highest number of votes since 1976. In Azores, PPD/PSD was the most voted party until 1992, after which the Socialist Party won the majority of seats. The percentage of female representation is relatively low: 12% in Azores and currently 17% in Madeira, although in the latter case there was an improvement from the previous election (10%) (Chart 69).

89. Local elections comprise elections for parish assemblies, municipal assemblies and municipal cabinets. Elections are held by universal, direct and secret suffrage of the citizens registered to vote in the area of the local authority in question, in accordance with the proportional representation system (same system as for Parliament, with the necessary adaptations). There is a separate vote on the municipal cabinet, and the first candidate in the most voted list shall be appointed mayor (head of the executive cabinet). The first candidate in the most voted list for parish assembly shall, in most cases, be appointed head of the parish cabinet. Local authority mandate-holders are elected for four-year terms and as a rule, the elections are held simultaneously.

90. One specificity as it concerns elections for local authorities is the fact that groups of registered electors may also nominate candidates (alongside political parties, either individually or in coalition). Another is the fact that some foreigners resident in Portugal may also participate in local elections: nationals of EU member States, Brazil and Cape Verde may vote and be elected. Nationals of Norway, Iceland, Uruguay, Venezuela, Chile and Argentina may vote (the concession of this right to foreign nationals is subordinate to reciprocity).

91. Since 1976, nine rounds of local elections were held: in 1976, 1979, 1982, 1985, 1989, 1993, 1997, 2001 and 2005, and the distribution of seats in local organs has greatly varied. At the local level, women now represent 21% to 22% of elected officers, but this percentage is lower in parish cabinets: 14% (Chart 70).

92. For the purpose of elections for the European Parliament, there is a single constituency which currently elects 24 Members. Nationals of EU Member States resident in Portugal are eligible to vote, and any national of a EU Member State may run for election, regardless of his or her place of residence. Since 1987, five such elections were held, in 1987, 1989, 1994, 1999 and 2004. PSD was the most voted party in 1987 and 1989, while PS won the majority of seats in 1994, 1999 and 2004. In the latter, 6 women (25%) were elected, which represented an improvement since 1999 (20%).

93. As seen from above, the Portuguese democratic system has been regularly functioning since 1976. All national and sub-national elections were held within the schedule laid out by law. Occasionally, the dismissal of Government or collegiate bodies, in accordance with constitutional procedures, prevented such bodies from fulfilling the full time of their mandates and led to the anticipation of electoral acts.

94. Citizens may also be called upon to pronounce themselves in national or regional referenda (Art. 115 CRP). These are convened by the PR, upon proposal of Parliament or of the Government. Groups of citizens may submit a request to this effect to Parliament. Only "matters of relevant national interest that must be decided by the Parliament or by

Government through the approval of an international convention or legislative act” may be submitted to referendum. Constitutional amendments, budgetary or tax issues, and matters within the political or legislative exclusive competence of Parliament, may not be submitted to referendum. Three national referenda have been held since 1976: two in 1998 and one in 2007.

7. Political parties

95. Political parties are expressly recognized by the Constitution, which states that they “shall contribute to the organisation and expression of the will of the people, with respect for the principles of national independence, the unity of the state and political democracy” (Art. 10 (2) CRP). They are fundamental actors in the Constitutional and political scene and enjoy a number of prerogatives (including the right to broadcasting time on the public radio and television service and the exclusive right to submit lists of candidates in elections for Parliament). However, as no one can be deprived of the exercise of any right because he or she is or ceases to be registered as a member of any legally constituted party (Art. 51 CRP), Parliament Members do not lose their seats in case they cease to be registered in a party, and lists of candidates may include independent persons.

96. No one can be simultaneously registered as a member of more than one political party and these parties must not employ names that contain expressions which are directly related to any religion or church, or emblems that can be confused with national or religious symbols. The creation of parties with a name or manifesto that possesses a regional nature or scope is prohibited. Political parties are governed by the principles of transparency, democratic organisation and management, and participation of all their members (Art. 51 CRP). The constitution and functioning of political parties are ruled by Organic Act 2/2003, of 22 August. Political parties represented in Parliament and in regional or local assemblies, which are not part of the respective executive bodies, have further prerogatives emerging from the rights of opposition. These prerogatives are governed by Act 24/98, of 26 May. Political parties are registered at the Constitutional Court. There are currently 16 parties registered, the last two in 2008.²⁸

8. Public administration

97. The Constitution establishes that Public Administration shall seek to pursue public interest and shall respect all such citizens’ rights and interests as are protected by law (Art. 266 CRP). There are three main types of administrative bodies: those within the direct administration of the State (central or regional); those within the indirect administration of the State (which possess their own legal personality, distinct from that of the “State”, as well as administrative and financial autonomy, but whose activity pursues State purposes); and those within autonomous administration (these pursue the interests of those who formed them and define in an autonomous and independent manner their own guidance and activities: it is the case of regional and local administrations and public associations).

98. Article 268 of the Constitution recognizes a number of rights to citizens in their relations with Public Administration, for example: the right to be informed about progress of the procedures which directly concern them and of such decisions as are taken in relation to them; the right of access to administrative files and records, subject to the law governing matters of internal and external security, criminal investigation and personal privacy; the right to be notified of administrative acts which concern them, and that those acts which affect their rights or legally protected interests be expressly motivated; the right to judicial protection of their rights and legally protected interests, the right of appeal against acts and

²⁸ *Source:* Tribunal Constitucional.

norms which affect such acts or interests; the right to the issuing of positive rulings requiring the practise of administrative acts that are due by law, and of adequate interim measures; and the right to a maximum time limit for replies from the Administration, as provided for by law.

99. The procedure of administrative bodies is governed by the Code of Administrative Procedure.²⁹ Public officials and agents are civilly and criminally liable and subject to disciplinary proceedings for their actions and omissions in the performance of their duties (Art. 271 CRP). The State itself is liable for damages resulting from the exercise of legislative, judicial and administrative powers.³⁰

9. Armed forces

100. The PR is the supreme commander of the armed forces and chairs the Supreme National Defence Council, specific consultative body on matters concerning national defence and the organisation, operation and discipline of the armed forces. This Council includes members elected by Parliament (Art. 274 CRP).

101. The Armed Forces are charged with ensuring the military defence of the country and are under the authority of supreme authority bodies. They are composed exclusively of Portuguese citizens and have a single organisational structure for the entire Portuguese territory. The Armed Forces are responsible for fulfilling Portugal's military commitments and for taking part in humanitarian and peace missions undertaken by international organisations of which Portugal is a member. They may also be charged with cooperating in civil protection missions, tasks related to meeting the basic needs and improving the quality of life of the population and actions of technical and military cooperation.

102. The structure of Portuguese armed forces comprises three branches of the military – army, air force and navy. Recruitment into the armed forces is voluntary in times of peace after the official abolition of mandatory military service in 2004.

103. Women started entering the Armed Forces in the nineties. Two laws contributed to this change: the Law of Military Service from 1991, which, among others, allowed the entry of women in training schools for Officers and Sergeants in order to integrate the Armed Forces; and the Ordinance regulating the military service by women. From that moment on, specific regulations have established the classes, arms and services and specializations open to women in each branch of the armed forces.

104. The Minister of National Defense, aiming at eliminating discrimination against women, determined that in the proofs for admission in the Armed Forces the gender equality principle must be respected in what concerns access to classes, arms and specializations (by Ministerial decision 101/2008, of 6 June). For the evolution of the number of women in the military, see Chart 99.

10. Constitutional guarantee and revision

105. The validity of laws and other acts of the State, the autonomous regions, local authorities and any other public entities depends on their conformity with Constitution (Art. 3 (3) CRP). Such conformity can be verified on a preventive basis or a posteriori. The Constitutional Court can be requested to rule on such conformity prior to the promulgation, ratification or approval of any Act, Decree-Law, regional legislative decree, treaty or

²⁹ Decree-Law 442/91, of 15 November, as amended by Declaration of Correction 265/91, of 31-12; Declaration of Correction 22-A/92, of February; Decree-Law 6/96, of 31 January; Constitutional Court Judgement TC 118/97, of 24 April.

³⁰ See Act 67/2007, of 31 de December, as amended by Act 31/2008, of 17 July.

international agreement. If the norm is deemed unconstitutional, the decree that contains it shall be vetoed and returned to the organ which approved it; it may not be promulgated or signed unless such norm is eliminated or the decree confirmed by a two-thirds majority of Members of Parliament present, provided that higher than the absolute majority of Members in office. (Arts. 278 and 279 CRP).

106. A posteriori, any ordinary court can refuse to apply a norm in case it deems it unconstitutional. Court decisions on the constitutionality of a norm can be appealed before the Constitutional Court (Art. 280 CRP). Any norm deemed unconstitutional upon examination of three concrete cases shall be declared unconstitutional with generally binding force, and thus repealed (Arts. 281 and 282 CRP). Such declaration of unconstitutionality with general binding force can also be made at the request of, inter alia, the PR or the Ombudsman, who can furthermore request that the Constitutional Court pronounce itself on unconstitutionality by omission, by declaring failure to adopt the necessary legislative measures to give effect to Constitutional norms (Art. 283 CRP).

107. The Constitution can be amended by Parliament every five years (or at any moment upon request of four fifths of Members in office, except during a state of siege or state of emergency). Constitutional amendments are approved by a two-thirds majority of Members of Parliament in office, as a Constitutional Act, whose promulgation cannot be refused by the PR. Some Constitutional provisions cannot, however, be amended. For example: national independence and State unity; separation of the State and churches; respect for the rights, freedoms and guarantees of citizens and for the rights of workers and labour unions; universal, direct, secret and periodic ballot as a form of designation of mandate-holders in organs of supreme authority, regional organs and local authorities, as well as the proportional representation system; pluralism of expression and political organisation, including political parties and the right to democratic opposition; separation and interdependence of organs of supreme authority; independence of the courts; autonomy of local authorities; and political and administrative autonomy of Azores and Madeira (Arts. 284 to 289 CRP).

C. Administration of justice

108. Public expenditure on public order and safety increased between 1995 and 2003, both in relation to total public expenditure and in relation to GDP, and has been decreasing ever since. In accordance with provisional data for 2007, it represented 3.49% of total public expenditure and 1.60% of GDP (Charts 80 and 81).

1. Courts

109. The Courts are supreme authority bodies that administer justice in the name of the people (Art. 202 (1) CRP). They are independent and subject to law only (Art. 203 CRP) and their rulings are binding on all persons and bodies, public and private, prevailing over the decisions of all other authorities (Art. 205 (2) CRP). All court rulings that are not merely administrative in nature must be duly motivated (Art. 205 (1)). Court hearings are public, “save in the event that in order to safeguard personal dignity or public morals, or to ensure its own proper operation, the court in question rules otherwise in a written order setting out the grounds for its decision” (Art. 206 CRP). In accordance with the Constitution (Art. 209), there are the following main categories of courts.

(a) Constitutional Court

110. The Constitutional Court is specifically responsible for administering justice in matters of a legal and constitutional nature (Art. 221 CRP). It is made up of 13 judges, 10

of whom elected by Parliament and 3 co-opted by those elected. They enjoy the same safeguards as all judges, i.e. independence, immovability, impartiality and immunity.

111. Besides ruling on conformity with the Constitution and the law, the Constitutional Court has competence in electoral matters and passes judgement in last instance on the regularity and validity of acts of the electoral procedure. It verifies the death of the PR, declares the permanent or temporary incapacity to perform presidential functions of the PR or any presidential candidate, and verifies forfeiture of the office of PR. It further verifies the legality of the formation of political parties and coalitions, assessing the legality of their names, initials and symbols, and ordering their abolition, all as laid down by the CRP and the law, and verifies in advance the constitutionality and legality of national, regional and local referenda. At the request of Parliamentarians and as laid down by law, it rules on appeals concerning losses of seats and elections held by Parliament and the Regional Legislative Assemblies (Art. 223).

(b) Courts of law

112. The structure of courts of law is composed by courts of law of first and second instance, and headed by the Supreme Court of Justice. Courts of law have jurisdiction over all matters not assigned to other courts and are, as a general rule, competent to try matters on civil and criminal proceedings (Art. 211 CRP).³¹

113. For purposes of court jurisdiction, national territory is currently divided into judicial districts, judicial circles and judicial parishes. As from 1 September 2010, and upon an evaluation of the implementation of new Act 52/2008, of 28 August, it shall be divided into judicial districts and judicial parishes, thus providing for a re-organisation of the judicial map. First and second instance courts have jurisdiction over their own constituencies. The Supreme Court of Justice has jurisdiction over the whole national territory.

114. As a rule, first instance courts are parish courts (*tribunais de comarca*); second instance courts are Appeal Courts (*Tribunais da Relação*) and one or more are established per judicial district. This hierarchy of courts is designed to permit appeals to a higher court against decisions by a lower one. The competence of each court is determined in accordance with criteria of substance, hierarchy, value and territory.

115. There are several categories of first instance courts, in accordance with several criteria. First instance courts can split into chambers of specialized competence: civil and criminal. There are also courts of specific competence, such as civil benches, criminal benches and enforcement benches. Furthermore, there are several courts with specialized competence on certain areas, such as criminal inquiry, family; children; labour; trade; maritime issues; and execution of criminal sanctions.

116. Criminal inquiry courts intervene in criminal inquiries, deciding on such issues as indictments and all judicial acts within the inquiry. Family courts are competent to try issues such as judicial separation, divorce and alimony, as well as to decide on matters relating to minor and other children (such as adoption, exercise of parental responsibilities and representation of children). Juvenile courts decide on measures relating to, in particular, children aged 12 to 16 who practice acts classified as crimes or misdemeanours, who have proven difficulties in adapting to a normal social life or who lend themselves to beggary,

³¹ The organisation of Courts of Law is essentially ruled by Act 3/99, of 13 January, as amended by Act 101/99, of 26 July, and by Decrees-Law 323/2001, of 17 December, and 38/2003, of 8 March. On 28 August 2008, a new Act on the Organisation and Functioning of Courts of Law was published (Act 52/2008), but it shall only be fully in force as from 1 September 2010, after an evaluation is carried out in pilot judicial parishes.

vagrancy, prostitution or substance abuse. They also examine and decide on requests for the protection and promotion of the rights of children, namely against abuses within the family or institutions and in relation to children whose health, security, education or morals might be at risk (in case non judicial authorities are not called upon to intervene). Labour courts examine issues related to work and employment, such as contracts, professional relations, validity and termination of employment, professional illnesses and accidents and trade unions. Commerce courts deal with matters such as bankruptcy of societies and corporations, annulment and validity of societal acts, trade names and industrial property. Maritime courts are competent to decide on matters such as contracts and liability concerning ships and maritime transportation. Courts of execution of criminal sanctions are competent, for instance, to decide on parole and early release of prisoners (Arts. 79–92 of Act3/99, of 13 January).

117. New Act 52/2008, of 28 August, by re-formulating the judicial division of the country, establishes that specialized benches may be established in parish courts (*tribunais de comarca*) on the matters currently within the competence of specialized courts, as well as on intellectual property, enforcement of sentences; civil matters and criminal matters. In accordance with the new Act, each parish court shall have chambers specialized in labour issues and in family and children, as well as major, medium and small instance benches on civil and criminal matters.

118. As a rule, second instance courts (*Tribunais da Relacao*) are appeal courts. There are currently 5 throughout the country and each comprises 3 benches: civil, criminal and social. New Act 52/2008, of 28 August, also provides for the possibility of creating benches on family and children, trade and intellectual property. These courts work in plenary and in section. In accordance with the respective competence, sections examine appeals, as well as proceedings initiated against first instance judges and prosecutors and hear cases concerning international judicial cooperation on criminal matters and revision and confirmation of foreign judgements. The plenary examines conflicts of competence between sections.

119. The Supreme Court of Justice is the highest body in the hierarchy of courts of law, but in principle examines matters of law only, rather than concrete facts. It is divided into civil, criminal and social sections (labour issues). It works in plenary of judges, in full specialized sections or by section (each section is composed by three judges). Full specialized sections are competent to, inter alia, try high dignitaries of the State (PR, President of Parliament and PM) for acts committed in the exercise of their duties.

(c) Administrative and Tax Courts

120. The highest instance of the Administrative and Tax Courts is the Supreme Administrative Court: these courts examine legal actions and appeals with the view to settle disputes emerging from legal relations of administrative or fiscal nature (Art. 212 CRP).

(d) Court of Audit

121. The Court of Audit is the senior body with authority to scrutinise the legality of public expenditure and judge such accounts as the law may require to be submitted to it. Its President is appointed for four-year mandates (and can be dismissed) by the PR, upon Government proposal (Art. 214 CRP).

(e) Other courts

122. The Constitution also mentions maritime courts, arbitration tribunals and justices of the peace, as well as courts martial (Arts. 209 (2) and 213), although these were abolished in 2003 and may only be established in times of war.³² Justices of peace have been reinstated in 2001 (Act 78/2001, of 13 July) and their competence is merely declaratory and restricted to legal actions within the exclusive competence of first instance courts of justice (which also enforce the justice of peace's decisions). As it concerns the subject-matter, they mainly examine civil cases relating to contract and property law, as well as claims for compensation submitted by victims of certain types of crime (non aggravated body injury, defamation, slander and non aggravated theft). The procedure comprises a mandatory mediation phase. Courts with the exclusive power to try certain categories of crime are prohibited (Art. 209 (4) CRP).

2. Legal professionals**(a) Judges and Public Prosecutors**

123. Judges and Public Prosecutors are recruited into first instance courts, on the basis of merit, by public competition, open to all Portuguese citizens (or citizens of Portuguese-speaking countries subject to reciprocity) with a recognized law degree, who must fulfil the general requirements for the exercise of civil service.³³ Promotion into second instance courts and the Supreme Court of Justice is also made by competition (Art. 215 CRP).

(i) Judges

124. Judges enjoy security of tenure and cannot be transferred, suspended, retired or removed from office except in the cases laid down by law. Save the exceptions laid down by law, they are also not held personally liable for their rulings. The exercise of the judiciary is incompatible with the performance of any other public or private function, except unremunerated teaching or legal research functions (Art. 216 CRP). The Statute of the Judiciary was approved by Act 21/85, of 30 July.³⁴

125. The appointment, assignment, transfer and promotion of judges of the courts of law and the exercise of discipline over them shall be the responsibility of the Supreme Council of the Bench. The same responsibilities are conferred upon the Supreme Council of Administrative and Tax Courts, in relation to the judges of these courts (Art. 217 CRP). The Supreme Council of the Bench is chaired by the President of the Supreme Court of Justice and composed by two members appointed by the PR, seven elected by Parliament and seven elected by their peers in accordance with the principle of proportional representation (Art. 218 CRP).

(ii) Public prosecution

126. Public Prosecution represents the State (as well as Autonomous Regions and local authorities) and defends such interests as the law may lay down (namely those of disabled persons, workers and their families, persons with no permanent residence and those whose whereabouts are unknown,). It participates in the implementation of criminal policy as defined by supreme authority bodies, exercises penal action in accordance with the principle of legality, directs criminal investigations even if carried out by other bodies,

³² Source: Code of Military Justice, Arts 128 ss, Act 100/2003, of 15 de November, corrected by Rectification 2/2004, of 3 January.

³³ Act 2/2008, of 14 January.

³⁴ With 12 amendments, the last of which introduced by Act 63/2008, of 18 November.

promotes and implements crime prevention initiatives, and supervises the procedural activity of criminal police bodies. It prosecutes and sustains prosecution during criminal inquiries and trials, lodges appeals (even if in the interest of defence) and promotes the execution of sentences and security measures. It also defends the democratic rule of law as well as collective and diffuse interests, as provided for by law. (Art. 219 CRP).

127. Public Prosecution has its own statute (Act 60/98, of 28 August) and enjoys autonomy. Public Prosecutors are accountable magistrates, subject to a hierarchy, and cannot be transferred, suspended, retired or removed from office except in cases provided for by law. The appointment, assignment, transfer and promotion of Public Prosecutors and the exercise of discipline over them are the responsibility of the Prosecutor General's Office (Art. 219 CRP).

128. The Prosecutor General's Office is the highest body of Public Prosecution, and is chaired by the Prosecutor General, comprising the Supreme Council of Public Prosecution (which includes five members elected by Parliament, two appointed by the Minister of Justice and 11 elected by their peers. The Prosecutor General is appointed for six-year mandates (and can be dismissed) by the PR, upon Government proposal (Art. 220 CRP). There are Public Prosecutors at the courts of all levels.

(b) Lawyers

129. The CRP recognizes legal representation as an essential element in the administration of justice and establishes that lawyers must enjoy the immunities needed to exercise their mandates (Art. 208 CRP). Furthermore, in relation to criminal proceedings, it is recognized the defendant's right to choose counsel and to be assisted by him in every procedural act (Art. 32 (3) CRP).

130. Representation in court proceedings can only be made by lawyers admitted to the Portuguese Bar Association³⁵ (public association representative of lawyers, independent from the State and which establishes its own rules in a free and autonomous manner). Law graduates in officially recognized courses can apply for admission, upon successful completion of a 30-month apprenticeship. Those not in full exercise of civic rights, as well as those lacking the necessary moral stature for the exercise of advocacy (eg. those judicially condemned for the practice of a serious crime) cannot be admitted. The exercise of advocacy is also incompatible with several functions, namely the exercise of mandates in supreme authority bodies, local and regional authorities, and for magistrates and members of the armed forces.

131. Lawyers exercise their duties with full technical autonomy and in an independent manner. They are bound to professional privilege, and enjoy a number of prerogatives, namely the right to communicate with detained clients, to obtain information and consult judicial files, not to have their professional correspondence seized and to special safeguards as it concerns searches and interception of communications (which must be decreed and presided by the competent judge).

132. The assistance of a lawyer is mandatory in most civil cases (including all those in which appeal is admissible) and in all criminal cases (in these cases, if the defendant himself does not appoint a lawyer, one must be appointed on his behalf).

³⁵ Act 15/2005, of 26 January (Statute of the Portuguese Bar Association) and Act 49/2004, of 24 August (Act on the acts exclusive of lawyers).

(c) Solicitors

133. Solicitors also exercise legal representation functions in some civil court proceedings, including those within the exclusive competence of first instance courts and processes of inventory. They act as consultants, advisors and representative of citizens, and enjoy similar prerogatives as those indicated in relation to lawyers.³⁶

134. In 2007, there were 12.7 prosecutors in Portugal per 100,000 inhabitants, compared with a rate of 11.3 in 2001. The rate of judges per 100,000 persons increased from 15.6 in 2001 to 17.5 in 2007. These figures do not include judges and prosecutors serving in administrative and tax courts, the Constitutional Court and former military tribunals (see Chart 71). There has been a substantial increase in the representation of women in all legal professions, with women outnumbering men as public prosecutors, lawyers, solicitors and justice officials (see Chart 72).

135. Between 2001 and 2007, the backlog of cases per judge has decreased only in superior courts of law (from 91.54 to 84,89). Such backlog increased in first instance courts (from 588,53 to 684,69) and dramatically in the Constitutional Court (from 7,44 to 89,54) (Chart 73).

3. Police forces

136. There are several law enforcement agencies in Portugal, namely a security force of military nature (GNR – National Republican Guards), another of civil nature (PSP – Public Security Police) and a judiciary police (PJ) with competence to investigate the most complex and serious crimes. The two first are under the aegis of the Ministry for Home Affairs, as is a specialized service on immigration and borders (SEF). PJ is under the aegis of the Ministry of Justice. There are also 35 municipal polices forces throughout the country, under the authority of mayors (but subject to the supervision of the Ministry for Home Affairs). In 2007, an Integrated Internal Security System (SISI) was created, with the view to optimize the operational capacities of the various systems, organs and services relevant to ensure public order, security and tranquillity. SISI is headed by a Secretary-General, who coordinates the action of security forces and services and may assume, in certain circumstances, the direction, command and control of such forces.

137. The ratio of police/security personnel per 100,000 persons has decreased from 494,9 in 2001 to 487,7 in 2007, although the total number of law enforcement officers slightly increased over the same period, after a low point registered in 2005 (see Chart 74).

4. Prisons

138. In 2007, there were 53 detention centres (both civil and military) in Portugal, accommodating 11 587 inmates (with a capacity for 12 416) and with 5 930 prison officials in service. This represented a significant improvement in the situation since 2001, when the number of inmates exceeded the capacity of detention centres, and was made possible, not only due to the increase in such capacity, but also in view of the decrease in the number of inmates (Chart 75).

139. The vast majority of inmates were men: women represented only 7%, a rate that has been steady since 2003 and represents a decrease in one percentage point compared with 2001. The percentage of pre-trial detainees was 20% in 2007, compared with 28% in 2001 (Chart 76). The majority of sentenced prisoners was serving prison sentences of 3 to 9 years, which is a constant at least since 2001. Over the same period, there was an increase

³⁶ Decree-Law 88/2003, of 26 April (Statute of the Chamber of Solicitors).

in the number of prisoners serving prison sentences of up to 6 months and of more than 9 years (Chart 77). In 2007, the majority of sentenced prisoners had been convicted for crimes against property (2910), closely followed by crimes related to drugs (2524) and crimes against people (2 454). In 2001, the prevalence was for crimes related to drugs (3 930), followed by crimes against property (3 320) and a much smaller number of crimes against people (1 811) (Chart 78). Deaths in custody have a tendency to decrease, from 106 in 2001 to 77 in 2007 (Chart 79).

5. Civil law

140. Portugal is a civil law country, influenced by the roman and German tradition. Besides the Constitution, the Portuguese legal system is primarily based on the Civil Code,³⁷ applied by courts in accordance with the Code of Civil Procedure.³⁸

141. The Civil Code contains a general part regulating the sources of law, their interpretation and application, private international law, the status of persons, both individual (legal personality, capacity and incapacities, rights of personality, residence and representation) and corporate (incorporation, capacity, liability, extinction, associations, foundations, and other), and legal facts (legal business, the impact of time in legal relations, exercise and protection of rights and proof, including documents). Another major part is devoted to obligations, including their sources (namely contracts and civil liability), modalities, transmission, guarantees, fulfilment and non fulfilment, extinction and compensation. As it concerns contracts, sale and purchase are specially regulated, as well as, inter alia, donations, societies, locations, lending, mandates and deposits. A third part is devoted to assets, regulating such issues as possession, property, fruition, use and real estate servitudes. The fourth part deals with family law, containing the main provisions on such issues as marriage, divorce, family relations, parenthood, parental responsibilities, adoption, tutorship and alimony. Finally, the fifth part is devoted to succession and inheritance law, containing provisions on issues such as division and administration of assets, legal and mandatory inheritance and wills.

142. The Code of Civil Procedure (CCP) is based on the principles of equality between parties, contradictory (possibility to make submissions on any questions of fact or law arisen within the proceedings) and cooperation. In principle, the facts should be alleged by the interested party, but this does not preclude the judge from taking into account other essential facts which result from the discussion of the case. The court does not initiate civil proceedings ex officio. The settlement of the dispute must be requested by one of the parties, and there are rules on the representation of children, absent and incapacitated persons and corporations, among others.

143. The CCP contains provisions on, inter alia, party legitimacy, competence of courts, legal representation, impediments and deadlines. All decisions must be duly motivated. As a rule, civil procedure is public, except if such public nature might cause damage to the dignity of persons, intimacy of private or family life or public morals, or if it may jeopardize the efficacy of the decisions to be taken. This is namely the case of proceedings relating to marriage, divorce, paternity and provisional measures. Each cause is given a value, which is important as it concerns the form of proceedings (ordinary, summary or abbreviated summary) and appeals.

³⁷ Approved in 1966 (Decree-Law 47 344, of 25 November 1966). Last amendment introduced by Act 61/2008, of 31 October.

³⁸ Approved in 1961 (Decree-Law 44129, of 28 December 1961) and subject to an important revision in 1995. Last amendment introduced by Decree-Law 226/2008, of 20 November.

144. Two main types of legal actions are foreseen: declaratory and executive. Ordinary declaratory actions are initiated with an initial petition (submitted by the Plaintiff). Justice fees apply, except if the Plaintiff requested exemption due to insufficiency of means. The process is then distributed to the competent court section and judge (the judge cannot be changed except in such cases provided for by law), after which the petition is served to the Defendant, who has the possibility to contest it and to present a counter-request. The Plaintiff can reply to the Defendant's contestation and the latter can then counter-reply. Afterwards, the judge, if applicable, issues an order calling for the correction of procedural faults. As a rule, a preliminary hearing is then held, with the view to reach an amicable settlement of the dispute, provide an opportunity to discuss matters of law and fact and establish the means of proof to be used. The judge then issues an Order (*despacho saneador*), which can decide the cause if available elements allow it, or decide on procedural hurdles invoked so far, and establishes the subject-matter relevant for the decision. The parties then indicate witnesses or other evidence (inquiry stage), which are produced in the trial and decision stage. A final judgement is then passed. Pursuant to an amendment introduced in 2008, the Plaintiff may request that the judgement be executed immediately.

145. As a rule, court decisions can be appealed to a higher court, except if the value of the case is below the minimum required to lodge such appeal. Judgements on the status of persons and family law can always be the object of an appeal. Courts of Appeal (*Tribunais da Relação*) are in general terms the competent courts to examine appeals, but some appeals can go up to the Supreme Court of Justice (as a rule, this Court pronounces itself on matters of law only). In most cases, appeals do not suspend the efficacy of a judgment, except if the appellant so requests; this rule does not apply in relation to cases concerning the status of persons.

146. Executive actions are based on a title, which can be a judicial sentence or an official or private document with executive force, and the proceedings are, as a rule, dealt with by electronic means. An execution officer is responsible for taking the necessary measures within execution procedures.

147. There are special procedures such as those on the interdiction and inhabilitation of persons, alimony, divorce and separation, dispositions in relation to children and spouses, protection of personality, name and private correspondence.

148. Labour law is branch of civil law, based on the assumption that, rather than parties being equal, the employee is frequently in a weaker position regarding the employer, and must therefore be protected. Act 7/2009, of 12 February, approved a new Labour Code.

6. Criminal law and crime figures

149. The main principles of the Portuguese criminal justice system are established by the CRP, which guarantees the principles of legality and non-retroactivity in the implementation of criminal law, except if the new provisions are more favourable to the defendant. No one can be tried more than once for the same crime and there is the right to the review of sentences and compensation for damages suffered (Art. 29 CRP). Sentences or security measures of a perpetual nature, unlimited or undefined duration are prohibited and criminal liability is non-transferable. No sentence automatically results in the loss of any civil, professional or political right (Art. 30 CRP). The Criminal Code also recognizes the principles of *nulla poena sine culpa* and proportionality, and therefore in no case can the sentence go beyond the measure of guilt.

150. The Criminal Code (CC)³⁹ applies in full to persons aged 21 and above. Special legislation applies to those aged 16 to 21. In its general part, the CC deals with matters such as the territorial and temporal competence of Portuguese courts, the liability of individuals and corporate persons, intent and neglect, inimputability, forms of crime and exclusion of illicit and guilt. Penalties and security measures aim at protecting legal interests and reintegrating perpetrators into society.

151. A wide range of penalties is typified: imprisonment, home arrest, imprisonment in free days, semi-detention, fine (which in some cases can be converted into labour) and community work. Accessory penalties are also contemplated, such as the prohibition of, or suspension from, the exercise of a function, and the prohibition to drive. The court decides on the concrete penalty to be applied, within the limits prescribed by law and taking into account such factors as the offender's personal circumstances and guilt. It can also determine the suspension of execution of a sentence of imprisonment of less than five years, subject to certain conditions which the convicted person must respect (including those described in a personal rehabilitation plan). Furthermore, special mitigation or exemption of sentence can be decided. Corporations can be sentenced to fines or dissolution, as well as to a number of accessory penalties.

152. The CC also regulates parole, the loss of instruments, proceeds and advantages and such security measures as the institutionalisation of unaccountable persons and the prohibition of certain activities or the withdrawal of a driver's licence.

153. As a rule, the duration of prison sentences ranges from one month to 20 years. In a limited number of cases (aggravated murder, drug trafficking with criminal association) it can go up to 25 years. It should be noted that Portugal recognizes the notion of "legal accumulation", by which no one can serve for more than such maximum limit of 25 years in prison, regardless of the number of crimes by which he or she was convicted. Relatively undetermined sentences can be applied, but in no case can they extend for more than 25 years. Some crimes (such as terrorism and drug trafficking) are the object of special legislation, which does not affect the basic principles established under the CC.

154. The death penalty is expressly prohibited under Art. 24 (2) of the CRP. It was first abolished for political crimes in 1852 and in 1867 for all crimes, except those of a military nature. The 1911 Constitution abolished it for all crimes, but it was re-introduced in 1916 for crimes committed in a theatre of war. It was definitely abolished with the entry into force of the 1976 Constitution. The last confirmed execution took place in 1846.

155. It is worth noting that life imprisonment has been abolished in 1884. Since 1971 it is directly forbidden by the Constitutions.

156. The Code of Criminal Procedure (CPP)⁴⁰ is based, inter alia, on the principle of the legality of procedure, which means that the application of criminal penalties and security measures can take place only in conformity with the law.

157. A person charged or whose indictment has been requested within a criminal proceeding is given the status of defendant (*arguido*). Since 2007, the granting of such status, if made by a police organ, must be confirmed by a judicial authority. The status of "arguido" entails a number of rights, such as the right to remain silent, to be informed of charges brought against him or her, to request the appointment of a lawyer and to offer evidence. The defendant can appoint a lawyer at any stage and the assistance of a lawyer is

³⁹ Approved in 1982 (Decree-Law 400/82, of 23 September), and subject to an important revision in 1995. Last amendment introduced by Act 61/2008, of 31 October.

⁴⁰ Approved in 1987 (Decree-Law 78/87, of 17 February). Last amendment introduced by Decree-Law 181/2008, of 28 August.

mandatory in a number of acts (such as interrogations of detained or imprisoned defendants) and in all cases after prosecution. If the defendant himself does not appoint a lawyer of his or her choice, an ex officio counsel is appointed on his or her behalf, but the defendant may be responsible for the payment of the counsel's fees in case legal aid has not been requested. In 2007, a total of €102 162 has been received in legal aid, less than in 2004 (Chart 82).

158. Victims can associate themselves to the procedure (by becoming "assistants"), in order to receive information, intervene in the proceedings and seek remedy. For this purpose, a civil claim can be attached to the criminal procedure. The number of such claims has been decreasing since 2001 (from 17801 to 15707 in 2006), and compensation was arbitrated in 48% of cases in 2006 (this percentage increased from 2001 to 2003, and has been decreasing ever since). The vast majority of compensation claims is submitted in connection with crimes against persons and, in these cases, compensation was arbitrated in 50% of instances in 2006 (against 55% in 2001). This percentage is similar in cases of crimes against property, higher in cases of crimes against society (57%) and much lower as it concerns crimes provided for under autonomous criminal legislation (other than the Criminal Code), in relation to which the number of compensation claims significantly decreased since 2001 (see Chart 83 A).

159. In case victims of violent crimes — such as those crimes resulting in serious body injuries or death — are unable to obtain compensation from the offender (for example, because the latter is unknown or it can reasonably be predicted that he or she does not have the means to provide compensation), they can seek compensation from the State, by applying to the National Commission for the Protection of Victims of Violent Crimes. In 2007, this Commission awarded compensation in 53,85% of cases, which was a decrease in comparison with the results obtained in previous years (for example, 73,13% in 2004) (Chart 83).

160. Although the proceedings are, as a rule, public, they can be subjected to judicial privilege, during inquiry, at the request of the defendant, the assistant or the victim, or by determination of Public Prosecution. The public can be present at public procedural acts, except if the judge decides otherwise, ex officio or at the request of the parties. As a rule, procedural acts in cases of trafficking in persons and sexual crimes are held in camera. The reading of judgments is always public.

161. The proceedings are initiated with the report of a crime, which is mandatory for police authorities in relation to all crimes that come to their knowledge. Police authorities shall then take all provisional measures as to collection of evidence and identification of suspects. If the suspect is detained, he or she must be brought before a judge within 48 hours. The report of a crime entails the initiation of a criminal inquiry, directed by Public Prosecution, with the assistance of criminal police organs.

162. The CPP indicates a number of coercive measures, which can be applied to the defendant. These are: the term of identity and residence; bail; periodic presentation before a police or judicial authority; suspension of the exercise of a certain profession, function, activity or right; prohibition or imposition of conduct; home arrest; and pre-trial detention. All such measures, except the first, must be decreed by a judge and can only be applied if the following requirements are met: that the defendant is evading or there is a risk of evasion; that there is the risk of him disturbing inquiry or instruction, namely by compromising evidence; and that there is the risk of continuation of criminal activity or serious disruption of public order and tranquillity.

163. Furthermore, pre-trial detention can only be ordered if other provisional measures are deemed insufficient and if the following requisites are fulfilled: that the crime has been intentional and is punishable with more than five years of imprisonment, or with more than

three years if it is a crime of terrorism, organized or highly violent criminality; or if the alleged offender has illegally entered or is illegally staying in national territory and a process for his or her extradition or expulsion is under way. As from September 2007, the maximum time of pre-trial detention is 4 months without accusation, 8 months without instrutory decision, 14 months without condemnation in first instance and 18 months without condemnation by final sentence. These limits are higher in the case of crimes of terrorism, violent or highly organised crime (six months, ten months, 18 months and 2 years, respectively). In case these crimes are especially complex, such limits can once again be extended (to one year, 16 months, two and a half years and three years and four months, respectively) (Chart 84). The special complexity of the case must be decreed by a judge at first instance, ex officio or at the request of Public Prosecution. In 2006, prisoners were serving an average 10 months in pre-trial detention, an increase in one month compared with data from 2001 (Chart 85).

164. Other acts of inquiry (such as the first judicial interrogation of a detained, searches in a lawyers' or doctor's offices or in a bank agency, or the reading of seized correspondence) must be performed by a judge (judge of inquiry), and others must be ordered by such a judge (for example, home searches and seizure of correspondence).

165. The inquiry is closed with prosecution or withdrawal of proceedings, within a maximum of 12 months from the date when it was directed against a particular person or a defendant is constituted. If there is sufficient evidence that a crime was committed and who the offender is, charges will be brought against this person. Public Prosecution can also suspend the proceedings (in the case of crimes punishable with less than five years of imprisonment), by imposing the defendant certain rules of conduct or injunctions. This provisional suspension of the proceedings must be agreed upon by the defendant, the assistant and the judge. If the defendant complies with the established requirements, proceedings will be withdrawn.

166. If either the defendant or the assistant do not agree with the decision taken at the end of the inquiry, they can request opening of instruction (an optional phase, under the direction of a judge), at the end of which the judge decides whether to indict or not to indict the defendant. This decision must be taken within a maximum of four months (three if the defendant is detained).

167. Trial comprises a hearing, as a rule public, at which the defendant should be present, save in the circumstances provided for by law. The audience begins with introductory statements, followed by the production of evidence (in accordance with the principle of contradictory) and final allegations. No evidence obtained through illegal methods (such as torture or ill-treatment) is admissible. Witnesses testify under oath, but the defendant takes no such oath and has the right to remain silent. Close relatives cannot be obliged to testify against one another.

168. The sentence (or, at least, a summary thereof) is read out in public and must be duly motivated. Even if the defendant is found not guilty, the sentence can determine the payment of compensation, if such claim is found sufficiently substantiated. Sentences can be appealed to a higher court. The appeal against condemnatory sentences suspends their effects. Crimes punishable with less than five years of imprisonment can, under certain conditions, be tried in accordance with abbreviated proceedings.

169. Incidence of violent death and life threatening crimes reported per 100,000 persons rose between 2001 and 2007, although the evolution of this rate was uneven (530,21 in 2001, up to 599,21 in 2003, then down to 549,48 in 2005, 589,97 in 2006 and 578,67 in 2007) (Chart 86).

170. In 2006, 4 282 persons were brought to court for violent or other serious crimes such as homicide, rape, robbery and trafficking (40,4 per 100,000 persons), 510 arrested (4,8 per

100,000 persons), 2 913 sentenced (27,5 per 100,000 persons) and 1093 incarcerated (10,3 per 100,000 persons). Since 2001, there has been an overall trend to increase the numbers and rates of persons brought to trial and sentenced, but a decrease in the numbers and rates of persons arrested pending trial and effectively serving prison sentences (Chart 87). The number of reported cases of sexually motivated violence rose from 1 361 in 2001 to 1 814 in 2007, although the highest figure reported in this period was 1 966 in 2003 (Chart 88).

171. Security forces registered the following cases of domestic violence in 2008: Republican National Guard (GNR) – 10 096; Public Security Police (PSP) – 17 647. The total was 27 743. The variation rate registered between 2008 and 2009 corresponded to an increase of 12% of the number of complaints filed; the variation rate between 2007 and 2008 was 26.6% and between 2006 and 2007 it was of 6.4%. The National Inquiry on Gender Violence interpreted this increase in participation of domestic violence aggressions to the police as a growth in confidence in the effectiveness of the system to protect the victims and punish the aggressors. The same Inquiry states that the figures of domestic violence have decreased approximately 10% in the last 12 years. In 2008, there were 1335 sentenced cases in courts of first instance, which resulted in 718 convictions.

D. Non-governmental organizations

172. According to the Portuguese legal system, Non-Governmental Organisations (NGO) traditionally have the legal nature of an association or, seldom, of a foundation. In both cases there is some public intervention, notwithstanding the fact that the CPR guarantees, in its Art. 46, freedom of association and the right of all citizens freely to associate with one another without any authorisation, on condition that such associations are not intended to promote violence and that their purposes are not contrary to criminal law. The CPR further provides that associations shall pursue their purposes freely and without interference from public authorities and shall not be dissolved by the State or have their activities suspended, except in such cases as the law may provide for and then only by judicial order.

173. The Civil Code sets forth the legal framework for associations. Arts 167 et seq. prescribe several steps for their incorporation. Firstly, it is required that a meeting of its founders takes place and that the future articles of the association are approved, stating its name, purpose and headquarters. The association's name has to be certified as admissible by the National Register of Collective Persons. A public deed is then celebrated at a Notary, who reports the association's incorporation to the Civil Government and the Public Prosecutor's Office. Notice of such incorporation is published at the Official Gazette and the process is completed with its definitive registration at the National Register of Collective Persons and Declaration of Commencement of Activities at the Office of the General Directorate of Taxation. Registration is governed by the principle of legality and can only be refused if the association's purpose is, for example, contrary to the law or public order.

174. A simplified incorporation procedure has been put in place, called "On the Spot Association", by which an association can be incorporated in a single act at a Register, without admissibility certificates and with the adoption of pre-approved articles of association.

175. As far as the recognition of organisations is concerned, Portugal is Party to the European Convention on the Recognition of the Legal Personality of International Non-

Governmental Organisations, done at Strasbourg in 1986.⁴¹ The National Register of Collective Persons is the designated authority for the purpose thereof.

176. Also, under Portuguese law, legal persons such as associations, foundations or cooperatives may be granted by Government the status of “legal person of public utility”. This status is granted by the PM and instructed by the General Secretariat of the Presidency of Council of Ministers, pursuant to Decree-Law 391/2007, of 13 December, and Decree-Law 460/77, of 11 November, and confers, amongst other, tax benefits and tariff exemptions.

177. Certain associations, such as Non-governmental Development Cooperation Organisations (NGOD), Non-governmental Environment Organisations (NGEO), Migrant, Women and Youth Associations, and associations of persons with disabilities, can apply to be recognized by certain public departments, in order to be given the status of social partners, and receive State support, tax exemptions and other benefits. This recognition implies a second registration with concerned public departments (which often automatically gives the association the status of “public utility legal person”).

178. For example, NGOD based in Portugal should apply for registration with the Portuguese Institute for Development Support (IPAD, within the Ministry of Foreign Affairs), in case they promote non-profit objectives and aim at developing, implementing and supporting programmes and projects of a social, cultural, environmental, civic and economic nature, inter alia those aimed at promoting and protecting human rights in developing countries. Should an NGO be recognized as a NGOD, it shall automatically be given the status of public utility legal person and may apply for public funding for its projects and programmes. The status of NGODs is governed by Act 66/98, of 14 October.

179. Prospective NGOD apply for registration with IPAD: once the request is made, IPAD will preliminarily examine all documents presented and ask for the Portuguese Platform of ONGD to issue a non-binding view on the request. Then, a draft decision is prepared. If this draft decision is not in favour of the granting of the status of NGOD, the applicant shall be heard and it may submit additional documents or request that further steps be taken. Afterwards, a report is drafted indicating the request made and steps taken, and containing a draft decision, duly explained, which will serve as a basis for the final decision. This decision shall be communicated to the applicant. The status of NGOD must be re-registered at 2-year intervals.

180. There are presently 134 organisations registered as NGOD by IPAD, 55 of which are members of the Portuguese Platform of NGOD.⁴² 121 organisations have been granted the status of NGEO,⁴³ there are 1273 Youth Organisations,⁴⁴ and 100 active Immigrant Organisations.⁴⁵ 40 NGOs are members of the section of Non-governmental Organisations of the Consultative Council of the Commission for Citizenship and Gender Equality, 25 of which are women’s associations and NGO working in the field of gender equality and 15 working in the areas of citizenship and human rights.

⁴¹ Approved for ratification by the Portuguese Parliament through Resolution 28/91 and ratified by Presidential Decree 44/91.

⁴² *Source:* IPAD, 21-10-2008.

⁴³ *Source:* Diário da República, II Serie, Aviso (extracto) n.º 4115/2008, de 19 de Fevereiro.

⁴⁴ *Source:* IPJ/RNAJ.

⁴⁵ *Source:* ACIDI.

E. The media

181. Freedom of the press is guaranteed by the Constitution, implying, inter alia, the freedom of expression and creativity of journalists and other staff, as well as the freedom of journalists to take part in determining the editorial policy of the media body in question, save when it is doctrinal or denominational in nature; the right of journalists to have access to sources of information and to the protection of professional independence and secrecy, as well as their right to elect editorial boards, in accordance with the law; and the right to create newspapers and any other publications, regardless of any prior administrative authorisation, bond or qualification (Art. 38 (1) CRP).

182. Ownership and financing of the media are publicized, and the State shall ensure the media's freedom and independence from political power and economic power by imposing the principle of specialisation on businesses that own general information media, treating and supporting them in a non-discriminatory manner and preventing their concentration, particularly by means of multiple or interlocking interests (Art. 38 (2) and (3) CRP). There are currently nine major media groups in Portugal (Chart 89), and 11 concerning the Internet (Chart 90).

183. The State ensures the existence and operation of a public radio and television service and the structure and operation of public sector media shall safeguard their independence from Government, Public Administration and other public authorities, and shall ensure that all the different currents of opinion are able to express themselves and to confront one another. Radio and television broadcasting stations operate only with licenses that are granted under public calls for tender, as laid down by law (Art. 38 CRP).

184. In 2008, 99.4% of domestic households had television, compared with 87.2% in 2002 (Chart 91). In 2007, there were 4 032 000 domestic Cable TV connections (compared with 3 623 000 in 2004), for a total of 5 519 000 homes (multiple connections in the same household mean that, in some regions, such as Lisbon, the total number of connections is higher than the number of homes). About 1.4 million persons subscribed Cable TV (compared with 1.3 million in 2004), which represents a coverage of 27% (Chart 92).⁴⁶ Direct-to-home Satellite TV had 476 000 subscribers in 2007 (compared with 374 000 in 2004), covering 8.6% of the population (Chart 93).⁴⁷ Commercial TV stations (SIC/TVI) and video accounted for 69.5% of share, although there has been a slight increase in shares obtained by public television (RTP1 and RTP2) since 2003 (Chart 94).

185. Approximately 331 680 national newspapers are printed everyday, plus 389 725 weekly national newspapers and newsmagazines, which represents a general decrease in comparison with figures from 2006 (Chart 95). However, there has been a substantial increase in the use of Internet: from a total of 19.40% in 2002 to 41.90% in 2008. Still, there was a gender discrepancy, as men presented a higher rate (46.5%) than women (37.6%) (Chart 96). Internet use increased in all age groups, but it is especially high for those aged 16–24, and then starts decreasing with age (Chart 97).

186. In 2007, there were more than 700 licensed radio stations in Portugal.⁴⁸ It has been reported that time devoted to radio has slightly decreased since 2003. Average listening time in 2007 was 3h12m, less 1 minute than the previous year. Public radio (Grupo RDP) had a 13.1% share, therefore commercial radio stations are by far more popular (Chart 98). According to studies undertaken, men listen to radio more than women (in contrast to what

⁴⁶ Data for 2004 obtained in Statistic Portugal, *Culture, Sports and Leisure Statistic, 2007*.

⁴⁷ Data for 2004 obtained in Statistic Portugal, *Culture, Sports and Leisure Statistics 2007*.

⁴⁸ Source: Statistic Portugal, *Culture, Sports and Leisure Statistics, 2007*.

happens in relation to TV). Radio audiences have a higher proportion of young persons (especially from 25 to 44 years), although the lowest percentage is that of children aged 4 to 14.⁴⁹

187. In accordance with the CRP (Art. 39), an independent administrative body (ERC – Regulating Entity for the Media) has been established in order to regulate and supervise the media, with the view to ensuring, inter alia: the right to information and the freedom of the press; non-concentration of ownership of the media, independence from political power and economic power; respect for personal rights, freedoms and guarantees; and free expression and confrontation of all different currents of opinion. ERC's Regulation Council (responsible for the definition and implementation of regulatory action) has 5 members, 4 of which elected by Parliament (and the fifth chosen by those elected).⁵⁰

V. General framework for the protection and promotion of human rights

A. Acceptance of international human rights norms

1. Main international human rights conventions and protocols

188. **International Covenant on Economic, Social and Cultural Rights** – Signed on 7 October 1976 and approved for ratification through Law nr. 45/78, of 11 July. Instrument of ratification deposited with the Secretary-General on 31 July 1978. Entry into force in the domestic legal order on 31 October 1978.

189. **International Covenant on Civil and Political Rights** – Signed on 7 October 1976 and approved for ratification through Law nr. 29/78, of 12 June. Instrument of ratification deposited with the Secretary-General on 15 June 1978. Entry into force in the domestic legal order on 15 September 1978.

190. **International Convention on the Elimination of All Forms of Racial Discrimination** – Approved for adherence through Law nr. 7/82, of 29 April. Instrument of adherence deposited with the Secretary-General on 24 August 1982. Entry into force in the domestic legal order on 23 September 1982. Declaration recognising the Committee's competence under article 14 on 2 March 2000.

191. **Convention on the Elimination of All Forms of Discrimination against Women** – Signed on 24 April 1980 and approved for ratification through Law nr. 23/80, of 26 July. Instrument of ratification deposited with the Secretary-General on 30 July 1980. Entry into force in the domestic legal order on 3 September 1981.

192. **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** – Signed on 4 February 1985 and approved for ratification through Law nr. 11/88, of 21 May. Instrument of ratification deposited with the Secretary-General on 9 February 1989. Entry into force in the domestic legal order on 11 March 1989. Declaration recognising the Committee's competence under articles 21 and 22 of the Convention on 9 February 1989.

193. **Convention on the Rights of the Child** – Signed on 26 January 1990 and approved for ratification through Parliament's Resolution nr. 20/90. Instrument of ratification

⁴⁹ Source: ERC, *Regulation Report 2007*, p. 303.

⁵⁰ Act 53/2005, of 8 November.

deposited with the Secretary-General on 21 September 1990. Entry into force in the domestic legal order on 21 October 1990.

194. **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families** – Portugal is not a State Party to this instrument.

195. **Optional Protocol to the International Covenant on Civil and Political Rights, concerning individual petition** – Signed on 1 August 1978 and approved for adherence through Law nr. 13/82, of 15 June. Instrument of ratification deposited with the Secretary-General on 3 May 1983. Entry into force in the domestic legal order on 3 August 1983.

196. **Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty** – Signed on 13 February 1990 and approved for ratification through Parliament's Resolution nr. 25/90, of 27 September. Instrument of ratification deposited with the Secretary-General on 17 October 1990. Entry into force in the domestic legal order on 11 July 1991.

197. **Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, concerning individual complaints and inquiry procedures** – Signed on 16 February 2000 and approved for ratification through Parliament's Resolution nr. 17/2002, of 8 March. Instrument of ratification deposited with the Secretary-General on 26 April 2002. Entry into force in the domestic legal order on 26 July 2002.

198. **Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict** – Signed on 6 September 2000:

(a) At the moment of signature Portugal made the following declaration: "Concerning article 2 of the Protocol, the Portuguese Republic considering that it would have preferred the Protocol to exclude all types or recruitment of persons under the age of 18 years – whether this recruitment is voluntary or not, declares that it will apply its domestic legislation which prohibits the voluntary recruitment of persons under the age of 18 years and will deposit a binding declaration, in conformity with paragraph 2 of article 3 of the Protocol, setting forth 18 years as the minimum age for voluntary recruitment in Portugal";

(b) Approved for ratification through Parliament's Resolution nr. 22/2003, of 28 March. Declaration made upon ratification: "The Government of Portugal declares, in accordance with article 3, paragraph 2, of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict that the minimum age for any recruitment — including voluntary — of persons into its national armed forces is 18 years. This age limit is already contained in the Portuguese domestic legislation";

(c) Instrument of ratification deposited with the Secretary-General on 19 August 2003. Entry into force in the domestic legal order on 19 September 2003.

199. **Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography** – Signed on 6 September 2000 and approved for ratification through Parliament's Resolution nr. 14/2003, of 5 March. Instrument of ratification deposited with the Secretary-General on 16 May 2003. Entry into force in the domestic legal order on 16 June 2003.

200. **Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concerning regular visits by national and international institutions to places of detention** – Portugal is not yet a State Party to this instrument, but is in the process of becoming one. Internal consultations between the relevant line Ministries (Justice and Home Affairs) are ongoing in view setting up, designating or maintaining a national preventive mechanism.

201. **Optional Protocol to the International Covenant on Economic, Social and Cultural Rights** – signed by Portugal on 24 September 2009. Furthermore, it is worth mentioning that the creation of the Open Ended Working Group on an Optional Protocol to the ICESCR, which was responsible with negotiating the Protocol’s text, was a Portuguese initiative (at the then Commission on Human Rights) and the Working Group’s Chairperson was a Portuguese national (Catarina de Albuquerque).

2. Other United Nations human rights and related conventions

202. See Annex 2.

3. Conventions of the International Labour Organization

203. See Annex 2.

4. Conventions of the United Nations Educational, Scientific and Cultural Organization

204. See Annex 2.

5. Conventions of the Hague Conference on Private International Law

205. See Annex 2.

6. Geneva Conventions and other treaties on international humanitarian law

206. See Annex 2.

7. Ratification of regional human rights conventions

207. See Annex 2.

B. Legal framework for the protection of human rights at the national level

1. Reference to human rights in the Constitution, a bill of rights, a basic law or other legislation

208. The Constitution of the Portuguese Republic (hereinafter referred to as “the Constitution” or “CPR”), which has already been submitted to seven revisions of its original text, establishes a sovereign democratic State based on the rule of law, the primary purpose of which is to build a freer, more just and fraternal society.⁵¹

209. The Portuguese State is equally based on the sovereignty of the people, the dignity of the human person and the inherent principle of equality before the law, which determines that everyone is entitled to equal rights and freedoms, without distinction of any kind, “such as ancestry, sex, race, language, territory of origin, religion, political or ideological convictions, education, economic situation, social condition or sexual orientation”.⁵²

210. In its international relations, Portugal observes the principles of national independence, respect for human rights, the right of peoples to self-determination and independence, equality among States, the peaceful settlement of international disputes, non-

⁵¹ Constitutional Law 1/2005, of 12 August. Available in English at: http://app.parlamento.pt/site_antigo/ingles/cons_leg/Constitution_VII_revisao_definitive.pdf and in French at http://app.parlamento.pt/site_antigo/frances/const_leg/crp_franc/CRP_VII.pdf.

⁵² Articles 2 and 13 of the Constitution of the Portuguese Republic.

interference in the internal affairs of other States and cooperation with all other peoples on behalf of the emancipation and progress of mankind (article 7 CPR).

211. Pursuant to article 8 CPR, “[...] the rules and principles of [...] international law shall be an integral part of Portuguese law.” (paragraph 1). The same article further specifies that the “[...] rules provided for in international conventions duly ratified or approved shall [...] apply in municipal law as long as they remain internationally binding with respect to the Portuguese State.”

212. This article consecrates a system of integration of International Law within Portuguese domestic law. As such, the principles set forth in the Universal Declaration of Human Rights are to be construed as being fully in force within the Portuguese territory, and directly applicable and binding on public and private bodies in accordance with the provisions of article 18 that “The constitutional provisions relating to rights, freedoms and safeguards shall be directly applicable and binding on public and private bodies.” Article 12, paragraph 1 of the CPR, entitles all Portuguese citizens to all the rights inscribed in Portuguese Fundamental Law, by stating that “All citizens shall enjoy the rights [...] laid down in the Constitution.”

213. The rights thus consecrated, encompass a wide range of civil, cultural, economic, political and social rights and freedoms. The Portuguese Constitution follows, in this regard, the systematization of rights which was adopted by the Universal Declaration of Human Rights and therefore has a section on civil and political rights on the one hand, and another one on economic, social and cultural rights. This categorization is however, and inevitably, not very tight, and there are some categories of rights that would fit well in any of them. Articles 24 to 57 relate to “Personal rights, freedoms and guarantees” (which are equivalent to the civil and political rights), whereas articles 58–79 relate to “Economic, social and cultural rights and duties” (equivalent to the economic, social and cultural rights).

214. This means that the majority of the human rights consecrated in international human rights instruments to which Portugal is a State Party, have a correspondence with the CPR and other legislation in force in Portugal (see in Annex 3 a Table with the correspondence between constitutional provisions and international human rights treaties).

215. The principle of equality (contained in article 13) determines that every citizen shall possess the “same social dignity and shall be equal before the law” and that “[n]o one shall be privileged, favoured, prejudiced, deprived of any right or exempted from any duty on the basis of ancestry, sex, race, language, place of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation.”

216. Article 15 of the Constitution, on its hand, provides that: “1. Aliens and stateless persons staying or residing in Portugal shall enjoy the same rights and be subject to the same duties as Portuguese citizens. 2. The foregoing paragraph shall not apply to political rights, to the performance of public duties that are not predominantly technical or to rights and duties restricted to Portuguese citizens under the Constitution and by law.”

217. Article 16, paragraph 1 of the Constitution determines that the fundamental rights embodied in the Constitution shall not exclude any other rights “either in the statute or resulting from applicable rules of international law. Paragraph 2 further stipulates that “[t]he provisions of the Constitution and laws relating to fundamental Human Rights shall be read and interpreted in harmony with the Universal Declaration of Human Rights.”

218. Moreover, human rights are protected in Portugal not only by the above-mentioned constitutional standards, but also by ordinary legislation. As referred to in greater detail below, the Constitutional Court is in charge of assessing the compatibility of the legislation

adopted by the Government and/ or the Parliament with the Constitution (see paras. 223–224 below).

2. Incorporation of human rights treaties into the national legal system

219. The provisions of the Constitution and of law are interpreted and implemented in harmony with the Universal Declaration of Human Rights (article 16 of the CPR) and thus any legislation that contravenes the Declaration is prohibited. The validity of the laws and other acts of the state, the autonomous regions, local government and any other public bodies depends on them being in accordance with the Constitution (article 3, para. 3 CPR) and anyone guilty of a violation of these fundamental principles is answerable in accordance with the legal regime for the protection of fundamental rights.

220. Most Portuguese legal literature holds that article 8 of the Constitution has established a system whereby international law is fully incorporated into domestic law. Article 8 of the CPR reads: “1. The rules and principles of general or ordinary international law shall be an integral part of Portuguese law. 2. Rules provided for in duly ratified or approved international conventions shall, following their official publication, apply in domestic law as long as they remain internationally binding with respect to the Portuguese State; 3. Rules laid down by the competent organs of international organizations to which Portugal belongs, shall apply directly in domestic law, in so far as this is expressly provided for in the relevant constitutive treaties.”

221. Most legal literature considers that the status of treaty law, which is that of ordinary international law, is below the Constitution but above ordinary legislation. Accordingly, once ratified by Portugal and published in the official journal (*Diário da República*) international treaties and agreements, and thus the rights established by them, apply directly and are directly binding on all public or private bodies (article 18 of the CPR).

222. This means that, in the event that a violation of one of these principles is established involving, for instance, discrimination — which is prohibited by several provisions of the Portuguese legislation, in particular article 13 of the Constitution — the victim would be entitled to resort to a court to vindicate her or his rights; she/he may not be denied justice for lack of means (article 20 CPR). If someone’s economic situation prevents her/him from paying the legal costs, the Legal Aid Institute will secure *locus standi* without it being necessary to pay expenses or lawyers’ fees in advance. This also means that international law norms — notably in the area of human rights — can be and are invoked before national courts.

3. Judicial, administrative or other authorities with competence in the area of human rights

223. The bodies that exercise sovereign powers in Portugal are all responsible for the promotion and protection of human rights, in their own field of competence:

(a) The President of the Republic is responsible for asking the Constitutional Court to review the constitutionality of rules laid down by laws and executive laws and in international agreements, and to rule whether legal provisions or statutes are unconstitutional due to any inclusion or omission (article 134 of the Constitution);

(b) Unless it authorises the Government to do so, the Assembly of the Republic is exclusively responsible for legislating on rights, freedoms and guarantees (article 165 of the Constitution). The Assembly of the Republic has several specialized commissions and the Commission for Constitutional Matters, Rights, Freedoms and Guarantees (also known as the First Commission) is specifically competent in matters of human rights;

(c) The Government is responsible for the implementation of its policy on the various areas of governance (article 182 of the Constitution). The development, conduct, implementation and evaluation of the specific policies, is the responsibility of the respective line ministries, through its many bodies and agencies;

(d) At public level it is worth mentioning the National Commission for the Protection of Human Rights created by the Council of Ministers' Presidency through its Resolution n. 27/2010, dated 8th April 2010. Composed by representatives of the different Ministries it has for functions namely to contribute to the definition of a national Human Rights policy and to coordinate the different Ministries in order to define the national position in the different international fora. Among other tasks, it may propose the ratification of international Human Rights instruments and it coordinates the drafting of the reports due by Portugal to the International Organisations;

(e) Portuguese Courts are responsible for the administration of justice, and for guaranteeing the defence of the citizens' rights and interests that are protected by law, repressing breaches of the democratic rule of law, and ruling on conflicts between public and private interests (article 202 of the Constitution). The Constitutional Court is specifically responsible for controlling the constitutionality of rules and other acts of the authorities.

224. There are, however, other bodies with more specific competences in these matters, of which we highlight the following:

(a) The Ombudsman (Provedor de Justica) who is competent to receive complaints submitted by citizens against actions or omissions by public authorities. After an assessment, the Ombudsman sends the competent bodies such recommendations as may be necessary in order to prevent or remedy any injustices (article 23 of the Constitution) (see more details on the competences and functions of the Ombudsman in paras. 271–277 below);

(b) The Commission for the Protection of Crime Victims is an agency of the Ministry of Justice responsible for conducting preparatory inquires and taking evidence regarding requests for compensation by the State submitted by victims of violent crimes, and for requests for loans submitted by victims of domestic violence (in accordance with Decree-Law 423/91, 30th October).

4. Provisions of the various human rights instruments that have been invoked before national courts, other tribunal or administrative authorities

225. As mentioned above international treaties duly ratified by Portugal and in force in the national legal system, form an integral part of the domestic legislation and can thus be invoked before national tribunals or courts.

226. Just as an example, the Constitutional Court has, on certain occasions, quoted and invoked international legal standards in force in Portugal in its decisions. For example in 2005 it invoked 3 times the Convention on the Rights of the Child,⁵³ and in the years of 2006,⁵⁴ 2007⁵⁵ and 2008 it also invoked this instrument once each year.⁵⁶ However, Portugal

⁵³ <http://w3.tribunalconstitucional.pt/acordaos/acordaos05/1-100/3305.htm>;
<http://w3.tribunalconstitucional.pt/acordaos/acordaos05/601-700/63105.htm>;
<http://w3.tribunalconstitucional.pt/acordaos/acordaos05/501-600/59905.htm>.

⁵⁴ <http://w3.tribunalconstitucional.pt/acordaos/acordaos06/601-700/63006.htm>.

⁵⁵ <http://w3.tribunalconstitucional.pt/acordaos/acordaos07/1-100/5207.htm>.

⁵⁶ <http://w3.tribunalconstitucional.pt/acordaos/acordaos08/401-500/47408.htm>.

does not have a systematic and thematic statistical analysis of the court decisions, hence is not possible to give a complete answer to this question.

5. Remedies available to individuals who claim that any of his or her rights have been violated

227. The Portuguese legal order encompasses both judicial and non-judicial mechanisms for the defence of individuals' rights.

228. The judicial mechanisms are the following.

(a) Right of access to the courts

229. As far as judicial protection is concerned, the Portuguese Constitution (article 20 CPR) enshrines the principle of an effective judicial protection, guaranteeing everyone access to the courts in order to defend his or her rights and providing that justice cannot be denied to anyone due to lack of financial means (article 20, par. 1 CPR). Moreover, according to article 20, par. 5 of the Constitution, the law shall ensure expedite and priority legal proceedings with the aim of assuring effective and timely judicial protection against threats to or violations of personal fundamental rights, freedoms and guarantees.

230. The right of access to the courts is foreseen in the framework of the individuals' constitutional rights vis-à-vis the public administration as well (article 268, par. 4 of the Constitution), the administrative courts having the competence to settle disputes arising from administrative legal relations. In the framework of the administrative justice, mention should be made to the urgent proceedings foreseen in the Code of Administrative Courts Proceedings, namely the writ for fundamental rights, freedoms and guarantees protection (articles 109–111 of the Code) where an expedite ruling imposing a certain conduct on the public administration is indispensable so as to assure the timely exercise of a fundamental right, freedom or guarantee.

231. Moreover, citizens are entitled to legal protection, and access to the courts to defend their rights, without any form of economic impediment, is guaranteed. The courts are required to ensure defence of the legally protected rights and interests of citizens, to punish violations of the democratic legal order and to settle conflicts of interest. Access to the courts is guaranteed by the Constitution (art. 20.º). This right is protected even during a state of siege or of emergency as far as the defence of the rights, liberties and guarantees undermined or jeopardized by an unconstitutional or unlawful measure is concerned (Act No. 44/86 of 30 September 1986, art. 6). The prime objective of this regime is to ensure the effectiveness and practical implementation of the right of access to justice.

232. Court and lawyers' costs can be covered by legal aid. The provision of legal aid assumes the following forms:

(a) Total or partial exemption from the payment of the proceeding's costs and fees or deferring payment of the proceeding's costs and fees;

(b) Nomination of a barrister or solicitor and payment of the respective fee, or deferring payment of the referred fee.

233. Only persons lacking sufficient resources to pay court fees or lawyers' retainers are eligible for legal aid. The lack of sufficient resources must be proved by applicants of legal aid. The following persons are eligible for legal aid:

(a) Portuguese and European citizens;

(b) Aliens and stateless persons who have a valid authorization to live in the European Union;

(c) Aliens without a valid authorization passed by a Member State of the European Union if the state of the alien guarantees the same protection to Portuguese citizens;

(d) Non-profit legal persons.

234. Legal aid is provided by lawyers in private practice. The participation in legal aid scheme by lawyers is optional. Lawyers are appointed by the Portuguese Bar Association (Ordem dos Advogados). The lawyer appointed to provide legal aid may refuse his services if he puts forward reasons for this refusal.

(b) The right to appeal the Constitutional Court

235. The Constitutional Court has specific jurisdiction over matters of a constitutional nature, namely the control of the constitutionality of legal rules (articles 277 to 283 of the Constitution).

236. In this context, the Court has competence to rule on both cases of abstract control (including the preventive control of constitutionality, the successive control of constitutionality and the control of unconstitutionality by omission) and control of constitutionality in judicial cases. As for the latter, one should underline that in the matters that are brought to trial, the courts cannot apply rules that contravene the Constitution (article 205 of the Constitution), and the individuals have the right to appeal the Constitutional Court against courts' decisions on issues of constitutionality, according to the legal applicable provisions.

(c) Liability of public bodies

237. Jointly with their officeholders, staff and agents, the state and all other public bodies are civilly liable for such actions or omissions in the performance of their functions resulting in a violation of fundamental rights, freedoms and guarantees or in any loss to somebody (article 22 of the Constitution). Recently, a Law on the Regime of Extra-Contractual Responsibility of the State and other Public Entities has also been enacted (Law 67/2007, of 31st of 2007), allowing for the reparation of damages arising from the exercise of the legislative, judicial and administrative powers. According to this law, in the exercise of its administrative power, the State and other public entities are held liable for the damages caused by unlawful actions and omissions of its organs, civil servants or agents; in the exercise of its judicial power, the State is held liable by unlawful damages caused by the administration of justice, namely for the violation of the right to a court decision in reasonable time; in the exercise of its legislative power, the State is held liable for abnormal damages caused to citizens' rights and legally protected interests that are contrary to the Portuguese Constitution, international law, European Union Law or reinforced legislative act (*acto legislativo de valor reforçado*).

238. As far as victims are concerned, they can claim for reparation and compensation from the offender in court, filing a civil request for compensation (article 74 of the Code of Criminal Procedure). Special protection is afforded to the victims of violent crimes (Law 104/2009, dated 14th September), who can ask for the compensation of damages by the State. Compensation may also be anticipated in cases of domestic violence (Law 104/2009, dated 14th September).

(d) The right to popular action (*actio popularis*)

239. The Constitution (article 52, par. 3) grants everyone, either personally or through associations defending the interests in question (such as consumers rights and the environment), the right of *actio popularis*. Law n. 83/95, of August 31, 1985, further implements this right.

(e) **Non-judicial mechanisms**

240. In relation to non-judicial mechanisms, one should mention the following.

241. **Right of petition** – The Constitution (article 52, par. 1) lays down the right of every citizen to submit petitions for the defence of their rights to bodies exercising sovereign power or any other authority, including the right to be informed of the result of the consideration thereof within a reasonable period of time. Law n. 43/90, of August 10, 1990, further implements this right.

242. **The Ombudsman** – Everyone has the right to complain to the Ombudsman (*Provedor de Justicia*) against illegal or unjust actions or omissions by the public authorities (article 23 of the Constitution). These complaints are to be investigated by the Ombudsman, who makes such (non-binding) recommendations as deemed necessary with a view to preventing and/or remedying injustices and infringements to the law (more information on the Ombudsman in paras. 271-277 below).

243. **Independent administrative bodies** – Foreseen by the Constitution or created by the law, the scope of action of certain independent administrative bodies concerns the realm of fundamental rights, those entities being empowered to assess complaints by the individuals against violations of their rights. This is the case of the Media Regulatory Entity (ERC), the Data Protection National Commission (CNPD) and the Access to Official Documents Commission (CADA).

244. **Administrative guarantees** – Any citizen grieved in his or her rights by an administrative act possesses those means of defence directed at the revocation or the amendment of the act concerned, by means of a claim before the author of the act and/or an appeal before the competent hierarchical superior.

245. **Mediation** – In the last years, reform of the judicial system has been made in order to develop alternative means of disputes resolution, namely by the establishment of mediation mechanisms. In the present days these mechanisms are foreseen both in civil and in penal matters.

246. **Right of resistance** – The right of resistance (article 21 of the Constitution) is conceived as a last resort means of protection for everyone facing an order that infringes their fundamental rights, freedoms and guarantees.

6. Institutions and machinery with responsibilities for overseeing the implementation of human rights and for the advancement of women, children, elderly, persons with disabilities, minorities, indigenous peoples, refugees and IDPs

(a) **National Institute for Rehabilitation**

247. The National Institute for Rehabilitation (INR)⁵⁷ is a public body with administrative autonomy and depends on the Ministry of Labour and Social Solidarity. It is presently assisted by the Deputy Secretary of State for Rehabilitation and whose main purpose is to ensure planning, execution and co-ordination of national policies by promoting the rights of people with disabilities.

248. The INR's main guideline is based on the principles of non-discrimination, inclusion and participation of people with disabilities. Considering as fundamental objective, the awareness and sensitization on the rights of people with disabilities, as well as, protection against discrimination and full realisation of their human rights therefore, promoting a

⁵⁷ Decree Law No. 217/2007, of 29 May.

reflection and study on the necessary measures leading to their effective inclusion in all domains of social life.

249. Its role and competences are substantially re-enforced with Law 46/2006, of 28 August, which prohibits and punishes discrimination based on disability and existence of risk aggravated by health.

(b) National Commission for the Protection of Children and Young People at Risk

250. The National Commission for the Protection of Children and Young People at Risk (CNPCJR)⁵⁸ aims at the co-ordination, follow-up and assessment of the activities of public bodies and community agencies involved in the protection of children and young people at risk. It depends on the Ministry of Justice and Ministry of Labour and Social Solidarity. The National Commission is permanently supported by a technical office with executive duties.

251. The CNPCJR also follows, supports and assesses the Commissions for the Protection of Minors,(CPCJ) established in⁵⁹ 1991, by reformulating, and creating new commissions according to Law No. 147/99, of 1 September, to provide a better network for the Promotion and Protection of Children and Young People in Danger. These are non-judicial official institutions with functional autonomy aiming at promoting children and young people rights and preventing or putting an end to situations capable of affecting their safety, health, training or full development.

252. The facilities and support materials, specifically, a working capital which is necessary for the running of these commissions is guaranteed by the municipality and for that effect, cooperation protocols are celebrated with State services represented in the CNPCJR.

253. Through the dissemination of the Commissions' Functional Model along the national territory, a coverage rate was achieved in the Councils with CPCJ, which will soon exceed 90%. Presently, there are 276 Commissions in a universe of 308 Councils, and 10 more other ones are being set up.

(c) Plan for the Elimination of the Exploitation of Child Labour

254. Also, in terms of Prevention and Elimination of the Exploitation of Child Labour,⁶⁰ the PEETI — Plan for the Elimination of the Exploitation of Child Labour was created in 2004 — a programme established by the Ministry of Labour and Social Solidarity to combat child labour. In 2004, its preventive action was strengthened through the creation of the PIEF– Integrated Programme for Education and Training (see Part III, A, B)].

255. The PEETI is a Project with a national structure involving the direct intervention of 18 multidisciplinary teams (EMM) constituted by professionals of different areas, who work in the field, and together with different services assess the situation of children and young people at risk, from a school, family and socio-economic perspective, by referring them to different measures in order to finish compulsory schooling, such as: regular education, recurrent education, vocational training course, education/training course (ETC) or PIEF. Following the general assessment carried out, PEETI's intervention is not only focused on the young person but on his/her family, by promoting an easier referral to public

⁵⁸ Decree-Law No. 98/98, of 18 April.

⁵⁹ Decree-Law No. 189/91, of 17 May.

⁶⁰ Resolution of the Council of Ministers n.º 37/2004 of 20 March, follows the Plan for the Elimination and Exploitation of Child Labour (PEETI) established by Resolution of the Council of Ministers 75/98 of 2 July.

authorities and organisations so as they may fully use their citizenship rights: Social Security, Courts, Social Integration Income, and Health Centres.

(d) Governmental mechanisms for gender equality

256. There are two national mechanisms dedicated to the promotion of equality between women and men: the Commission for Citizenship and Gender Equality (CIG) and the Commission for Equality in Labour and Employment (CITE). The two mechanisms were restructured in 2006 in the framework of the broader National Reform of the Public Portuguese Administration, therefore acquiring new functions.

(i) The Commission for Citizenship and Gender Equality (CIG)

257. In order to improve the promotion and implementation of gender equality the Commission for Citizenship and Gender Equality replaced the Commission for Equality and Women's Rights (CIDM) and the Mission against Domestic Violence. It has also integrated the attributions of the Commission for Equality in Labour and Employment regarding the promotion of equality. Like the previous mechanism, CIG is an official department under the Office of the Presidency of the Council of Ministers (PCM) and it answered to the Secretary of State of the PCM (in 2010 it answers to the Secretary of State for Equality). It has initiated its new functions in May 2007 (Decree-Law n° 164/2007 from May the 3rd). The Commission has its head office in Lisbon and a branch in Oporto. The CIG is the national mechanism responsible for the elaboration and the implementation of global and sectoral policies for the promotion of citizenship and the promotion and defence of gender equality in all the areas of political intervention. The Organic Law of this national mechanism gives it a renewed perspective: reaffirming women's rights, gender equality, and combating gender based violence; promoting gender mainstreaming and combating multiple discrimination, thus addressing the different ways women and men experience discrimination.

258. CIG contributes, namely, to the amendment of the regulatory framework, or to its implementation; prepares studies and planning documents to support political decision-making; promotes education for citizenship and activities to raise civic awareness with a view to identifying situations of discrimination and ways of eradicating them; suggest measures and carries out activities to counter all forms of gender based violence and to support its victims and provides technical supervision of structures for assisting and caring for victims; it cooperates with international and European Community organizations and other equivalent foreign entities.

259. The CIG retained in its new organic law an Advisory Board that is composed of:

- A section of Non-governmental Organisations (40 NGO's: 25 of which are women's associations and NGOs working in the field of gender equality and 15 working in the areas of citizenship and human rights).
- An Inter-ministerial section comprising representatives of each line Ministry and Services that work as gender focal points in their respective areas with the aim of mainstreaming gender equality into all policies. They have the formal Statute of Advisers for Equality. The recently approved "Equality Adviser Statute" assigns a clear mandate and functions to those within each Ministry who have the responsibility to promote the gender equality. This statute encompasses the creation of intra ministerial working teams to ensure the integration of a gender equality dimension in all sectors of Central Public Administration.

260. A Technical and Scientific Advisory Group chaired by the member of the Government in charge of the CIG. Besides the president and the Vice-president of the CIG

it is composed by 10 personalities with well known scientific skills in the fields of citizenship, human rights, women's rights and gender equality.

(ii) *Commission for Equality in Labour and Employment*

261. After the reform, Commission for Equality in Labour and Employment (CITE) has kept its former structure; its tasks were adapted to the new labour regime and it is currently working under the direction of the Ministry for Labour and Social Solidarity in articulation with the member of Government in charge of gender equality. CITE was created in 1979 and is a tri-partite body composed by governmental representatives, social partners representing the employees and social partners representing the employers. Its main tasks are:

- The promotion of equality and non-discrimination between women and men in work, employment and professional training both in the public and private sector
- The protection of maternity and paternity as well as the reconciliation between professional, family and personal life, especially by issuing Opinions or Recommendations regarding complaints on the grounds of gender based discrimination

262. The Commission evaluates the complaints of discrimination and draws up reports on these matters, which are sent to interested parties. It is compulsory to the employers to ask the legal opinion of this Commission before the dismissal of pregnant, puerperal or breast-feeding women.

263. The legal opinion is given in 30 days. If the opinion is negative, only a court of law may authorize the dismissal. Employers are also required to seek the opinion of this Commission if they do not agree with the requests of reduced timetables or flexible time arrangements for women and men with small children. The opinion must be given within 30 days and if the opinion is negative only a court of law may authorise the employer to deny the employee's request.

264. CITE maintains the register of court decisions with regard to equality and non-discrimination between men and women at work, employment and vocational training, in order to provide information about any final decision.

C. Framework within which human rights are promoted at the national level

1. National and regional parliaments and assemblies

265. The Assembly of the Republic is the representative assembly of all Portuguese citizens (article 151 CPR). The Constitution stipulates that deputies shall be elected by constituencies, the geographical limits of which are laid down by the law (article 150 CPR). All Portuguese citizens entitled to vote may stand for election, subject to the restrictions laid down by electoral law (article 150 CPR).

266. Deputies shall exercise their mandates freely (article 155 CPR) and may table proposals for constitutional amendments and bills, put questions to the Government concerning any of the latter's acts or any act of the Public Administration, request and obtain, from the Government or from the organs of any public body, such data, information and publications as they may consider useful for the fulfilment of their mandates, and request the establishment of parliamentary committees of inquiry (article 156 CPR). The Constitution determines deputies' immunities, rights, privileges and duties, as well as grounds for forfeiture and renunciation of mandates.

267. The Assembly of the Republic is responsible for revising the Constitution in conformity with the rules for constitutional revision. Revision may take place once five years have elapsed after publication of any revision law or at any time by a majority of four-fifths of the deputies entitled to vote (article 284 CPR). However, revisions must respect certain limits, such as national independence and the unity of the State; the republican form of government; the separation of the church from the State; the rights, freedoms and safeguards of the citizens and workers; the coexistence of the public, the private and the cooperative and social sectors, with respect to ownership of the means of production; the existence of economic plans; universal, direct, secret and periodic suffrage for the appointment of the members of the organs of supreme authority, the autonomous regions and the organs of local government; plurality of expression and political organization, including the right to a democratic opposition; separation and interdependence of the organs of supreme authority; the scrutiny of legal provisions for unconstitutionality by act or omission; the independence of the courts; the autonomy of local authorities and the autonomy of the of the Autonomous Regions of the Azores and Madeira (article 288 CPR).

268. The Assembly approves international conventions on matters falling within its competence, treaties involving Portugal's participation in international organizations, treaties of friendship, peace treaties, defence treaties and any other treaties which the Government submits to it (article 164 CPR). It watches over observance of the Constitution and the laws and the acts of the Government and the Administration. It scrutinizes the decree-laws and may refuse ratification. It also examines the accounts of the State and other public bodies (article 165 CPR).

269. As regards its own competence, it legislates inter alia on the election of persons to hold office in the organs of supreme authority; on the referendum regime; the organization, functioning and procedures of the Constitutional Court; the organization of the national defence; states of siege and states of emergency; situations relating to Portuguese citizenship and political parties and associations.

2. National human rights institutions

270. Under article 52 of the Constitution, all citizens may, individually or collectively, submit to the organs of supreme authority or to any other authority, petitions, representations, claims or complaints for the purpose of defending their rights, the Constitution, the law or the general interest. To that end, a number of offices and departments have been set up with the responsibility, within the limits of their competence, of promoting, protecting and publicizing human rights. These agencies are: (a) the Office of the Ombudsman (Provedor de Justica), (b) the Attorney-General's Department and (c) the Office for Documentation and Comparative Law. There is information related to the work done in the area of child rights, people with disabilities and women in Part II, D. f) above.

(a) Office of the Ombudsman (Provedor de Justica)

271. The Office of the Ombudsman (Provedor de Justica), created by a Decree-Law of 1975, was taken up by article 23 of the Constitution. He is democratically elected by 2/3 of the members of Parliament, is independent in the exercise of his/her functions, has the power to control the activities of the Public Administration and to recommend certain behaviours to the public powers in order to combat illegalities or injustices, has the competences to monitor the application of all existing legislation, including the Convention on the Rights of the Child and its principles.

272. The Office of the Provedor de Justica (Ombudsman), is an independent organ dedicated to the defence of the legitimate rights and interests of citizens, through informal methods which ensure the legality and justice of the administration. Through this work of

protecting human rights, the intervention of the Ombudsman is naturally reflected in the application of the rights recognized by the international instruments, which are themselves reflected in the text of the Constitution.

273. According to the Ombudsman's statutes, citizens may submit to him, orally or in writing, complaints about actions or omissions of the public authorities. The Ombudsman investigates them and makes the recommendations to the competent bodies necessary to prevent or redress injustices. In addition, the Ombudsman must: (a) Recommend ways in which to correct the illegal or unjust acts or to improve the services of the administration; (b) Draw attention to any flaws in legislation and request an evaluation of the legality or unconstitutionality of any provision whatsoever; (c) Give opinions on all questions which are put to him by the Assembly of the Republic; and (d) Ensure the dissemination of information on the fundamental rights and freedoms, their content and value and on the objectives of his activities.

274. In this specific area, public information programmes frequently appear in the press, or are broadcast on radio and television, and a regular programme entitled "The Voice of the Ombudsman" has been established on the national radio. This programme has made a decisive contribution to publicizing the work of this important organ, especially among the older members of the population where the illiteracy rate is still high.

275. In carrying out his duties, the Ombudsman may: (a) Make visits of inspection to any sector of the administration, examine documents, hear the organs and agents of the administration or request any information which he considers necessary; (b) Conduct any inquiries which he considers appropriate, using any procedure in order to discover the truth, within the limits of the legitimate rights and interests of the citizens in this area. One such instance was the inquiry into acts of torture committed by some police officers and prison officers, which attracted wide media and public attention, and led to the adoption of various measures by the public authorities; and (c) Seek, in cooperation with the competent organs and departments, the most appropriate solutions to the defence of the legitimate interests of citizens and the best means of improving administrative services.

276. The Ombudsman may order the publication of communiqués or information bulletins on his findings, where necessary making use of the mass media. Furthermore, he submits an annual report on his activities to the Assembly of the Republic, which is published in the official journal of that organ of supreme authority. The report includes statistical data on the number and nature of the complaints lodged, the allegations of unconstitutionality submitted and any recommendations he has made.

277. As the Ombudsman often recognizes in his reports, the average citizen, even if he has no legal training or qualification, often applies to the Office recognizing that it has a real capacity to intervene and revealing that he is aware of his rights and requires the Government and the civil service to carry out their duties.

(b) The Prosecutor-General's Department

278. In the area of the protection of the citizens, account should also be taken of the statutes of the Prosecutor-General's Department (Act No. 47/86 of 15 October 1986, and Act No. 23/92 of 20 August 1992 amending it). The fundamental duties of the Office of the Attorney-General's Department are:

- (a) To represent the State, legally incapable persons and missing persons;
- (b) To represent workers and their families ex officio in the protection of their social rights. One of the most important areas of intervention of the Prosecutor-General's Department is that of minors, either in respect of the proceedings brought before the domestic courts in such cases as adoption, parental responsibility, alimony or in respect of

the Juvenile Court and the application of protection, assistance or education measures. If the security, health, moral upbringing and education of the minor are not in jeopardy the Court may still decide to apply measures which it considers adequate, specifically the placement of the child in a family or in an education or welfare establishment. The Prosecutor-General's Department will intervene even in these cases, by instituting legal proceedings or by using other legal means to defend the rights and interests of the minors;

- (c) To institute criminal proceedings;
- (d) To promote and coordinate the actions for the prevention of crime;
- (e) To defend democratic legality.

279. The Prosecutor-General's Department must also ensure full compliance with the law, not only by State organs but also by the citizens in general. Its action may be either preventive or concerned with violations of the law. In the first case, the Advisory Council of the Prosecutor-General's office, and its representatives in the ministries, gives legal opinions on bills, on the compatibility of international conventions or agreements with Portuguese legislation, and on the existence of any flaws, contradictions or obscure passages in legal texts. In the second case, the Attorney-General's Department ensures that the jurisdictional function is being exercised in conformity with the Constitution and the law, monitor the work of the judicial officers and lodges appeals against any court decisions taken in express violation of the law.

280. The Attorney-General's Department is obliged to refer to the Constitutional Court any cases in which the courts have refused to apply a provision whose constitutionality has been questioned and which appears in an international convention. An appeal must also be lodged against any court decision which applies a provision that has previously been ruled unconstitutional or illegal by the Constitutional Court (article 280 of the Constitution).

(c) The Office for Documentation and Comparative Law

281. This Office was established under the direct control of the Attorney-General of the Republic (Decree-Law 388/80 of 22 September 1980). Its purpose is to ensure the access of members of the Portuguese legal professions to foreign, international and community law and it has been given the responsibility of establishing a documentation centre on human rights and international, foreign and community law.

282. The Office also has a webpage containing information regarding the work of the United Nations in the area of human rights in Portuguese, as well as the text of all reports presented by Portugal to Treaty Monitoring Bodies (and the Summary Records of the reports' presentations, as well as the respective concluding observations) (www.gddc.pt). The ODCL has also translated into Portuguese the Collection of Fact Sheets, as well as the Professional Training Series of the OHCHR. The Portuguese version of these publications is available on the internet (<http://www.gddc.pt/direitos-humanos/paginaAFichas.html> and <http://www.gddc.pt/direitos-humanos/paginaBFormacaoProfissional.html>). Equally the ODCL webpage contains bilingual templates (Portuguese/ English) for the presentation of complaints before the United Nations Treaty Bodies, as well as before the European Court of Human Rights. It also contains a database of all treaties to which Portugal is a State Party, including the text (in Portuguese) of all human rights treaties to which Portugal is a State Party.

3. Dissemination of human rights instruments

283. All human rights instruments to which Portugal is a State Party have been translated into Portuguese and published in the Official Gazette. These are freely available on the internet on the Official Gazette's webpage (http://www.incm.pt/site/diario_republica.html).

Moreover these texts are all available on the website of the Office of Documentation and Comparative Law of the Prosecutor General in Portuguese. Moreover, the Office of Documentation and Comparative Law has edited a two volumes compilation (approximately 1400 pages) of universal and regional human rights standards in force in Portugal — both treaties as well as political commitments and declarations — translated into Portuguese. This compilation is intended to be freely distributed to Universities, Libraries, Research Centres and also to Portuguese speaking countries.

284. A significant number of references to international human rights instruments can be found in the institutional websites of the different Ministries, which are structured not only to facilitate access to professionals but mainly to all citizens. A particular emphasis is given to updated news and events calendars related, among others, with commitments undertaken by Portugal and celebration of specific “human rights days”.

285. In the specific area of women’s rights and gender discrimination, in 2003 the Commission for Equality and Women’s Rights/Commission for Citizenship and Gender Equality re-published in Portuguese the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol in its Collection “Global Agenda”. In this second edition 10.000 copies were made and, until December 2007, 8326 copies were disseminated.

286. The Commission for Equality and Women’s Rights/Commission for Citizenship and Gender Equality has a periodic magazine named “*Noticias*” with an edition of 4000 copies. This magazine has a section on international news and instruments. In October 2007, number 79 of “*Noticias*” included the full, Portuguese version of the Convention and its Optional Protocol.

287. Concerning, the protection of children and young people at risk, the CNPCJR, promotes within the framework of the Convention on the Rights of the Child awareness raising in relation to child rights by publishing books, posters, leaflets, brochures and other materials, as well as, ensures the counselling, referral and clarification of questions raised by the public in general, by the CPCJ and even by the integrating departments of Public Administration.”

288. All the publications referred to are widely disseminated among decision makers, enterprises, municipalities, regional authorities, universities, research centres, women’s non-governmental organisations, libraries, gender equality mechanisms of foreign countries, researchers and other publics.

4. Raising human rights awareness among public officials and other professionals

289. Portugal is well aware of the importance of training in the prevention of violations of human rights. For a number of years, therefore, it has been providing systematic training for various professions, whose work is basic to the implementation of fundamental rights, freedoms and guarantees.

(a) The National College of Magistrates

290. Since its foundation, this College has provided training in the area of fundamental rights and the international machinery for their protection. Consequently, it is helping to make judicial magistrates aware of the value and importance of international law, by studying the main instruments in force in Portugal. Because of its regional character, the European Convention on Human Rights is also given full coverage. On the other hand, the College and its students have been associated with several scientific and cultural activities for the dissemination of knowledge of international law and the work of the international organizations. One example is the seminar held in 1988 on the draft Convention on the Rights of the Child, which was mentioned above. As far as justice sector actors are

concerned, education and training in human rights is provided to judges and prosecutors during their legal and judicial education years at the Centre for Judicial Studies. Both prison officers and the judiciary police receive training in human rights in their professional training courses.

(b) The Bar

291. It is important to emphasize that the Bar has been involved in this work by training young lawyers, whose statutes require that they keep their terms before beginning to practise their profession. For example, the information given to them concerns appeals to the international authorities, whether the Strasbourg organs or the Human Rights Committee, has proved to be of crucial importance to them.

(c) The police forces

292. The recruitment and training of the officers of the various police forces encompass fundamental rights, guarantees and freedoms. As regards relations with the public, every officer must carry with him/her a code of conduct which emphasizes the purposes of police work, such as the defence of democratic legality and of the fundamental rights of the citizens, and includes standards of courtesy towards the public and a code of personal behaviour. The code states that the work of the police must be carried out impartially and with respect for the fundamental rights and freedoms, within the limits of the law and without resort to illegal or patently excessive methods. The training of these officers always includes an important chapter on rights, freedoms and guarantees, either during the basic training period or during ongoing training.

293. The course deals with the universality of human rights, non-discrimination, information and legal protection, the activities of the Ombudsman and the courts, giving pride of place to the study of the regional and global protection systems. At this stage, the instruments studied include the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the European Convention on the Control of the Acquisition and Possession of Firearms by Individuals, and the European Convention on Spectator Violence and Misbehaviour at Sports Events and in particular at Football Matches, all of which are in force in Portuguese domestic legislation.

294. It is interesting to note that, even as regards private security guards their selection and recruitment must take into account the awareness of the obligations concerning the fundamental rights, freedoms and guarantees.

(d) The prison service

295. The prison service is given information, in Portuguese, concerning the main international instruments, particularly the Code of Conduct for Law Enforcement Officials; the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Standard Minimum Rules for the Treatment of Prisoners; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; and the European Prison Rules, as recently approved.

(e) Portuguese Nurses' Order

296. This association responsible for the professional regulation of nursing and midwifery has promoted, through its Board of Jurisdiction, the following measures regarding the promotion of the human rights produced several documents which promote

the comprehension and interpretation of the Professional Deontology, included in the Constitution of the Nurses' Order, approved by the Decree-Law n° 104/ 98 of 21st April 1998, ensuring the respect for human rights. These documents are used since 1999 in nursing education and on-going professional training activities.

(f) Ministry of Health

297. Human rights are included in the Program for Humanization of Hospitals and the Minister of Health established in 2008, a protocol with non-governmental organizations (NGOs) through active partnerships and not just as mere financial participation in a project. This cooperation between institutions that have the same vision of their responsibility towards society is crucial, especially if it is seen as an ethical requirement of citizenship and to improve the quality of life of children, youth, elderly and other persons who are in position of weakness, as is the hospital, thus contributing to a more humane environment in hospitals and institutions, helping also to decrease the stress of health professionals and family members accompanying the patients. The agreement, which will last for three years, has an overall budget of EUR 450 thousand euros, to be distributed by the NGOs involved.

(g) Office of the Child Support

298. The Office of the Child Support, through the Sector of Humanization of the Child Care Services, developed a project which aimed to ascertain the conditions for the reception afforded to children and young people in Portuguese hospitals. This study involved all hospitals that serve children/youth of the country and was done through a questionnaire which asked questions deals with the various issues that are considered relevant in the context of Humanization hospital.

299. The data reflect, albeit in a fragmentary, reality that is observed in hospitals, in addition to the reflection that in itself raises, allowing organize a standard sheet of characterization of each hospital that after validated, was part of a Home Guide made available to professionals and the general public.

300. The Guide is an element of consultation for any citizen, allowing you to identify which follows the profile of each pediatric hospital, as well as some of its features, in particular, the services available, the amenities offered to children and families, the nature of care that will be provided, the way will be addressed to the family stay The Guide, in addition to the chips, also includes a summary of the results of the study and a series of texts where professionals from different areas and of recognized competence express their views on relevant subjects the approach of the Hospital/Child/Family and Community.

301. The provision of care focused on children means that the hospital adopts a set of principles that derive from the needs of health and development of the child and the rights which the company acknowledges Child Hospitalized are "laws" postulate that these principles, it. The Convention on the Rights of the Child and the Charter of the Health systems and within the hospitals have been gradually changing its mode of operation, not only in terms of scientific progress but also looking to make the provision of care more efficient. Thus, it evolved to internment of shorter duration, and for outpatient care at home and for a redistribution of resources, in particular by establishing different levels of care. As in all cases, there are positive and negative aspects which need to be discussed with a view to improving these new processes and tailor them more to those who need them, including the Child.

302. Law 41/2007 of 24 August and Ordinance 1529/2008 of 26 December publish the Charter of the Rights of Access to Healthcare, by users of the National Health Service (NHS), which defines that the user has right:

- The provision of care in time considered clinically acceptable to their condition of health
- When registered immediately on the information system of its request for consultation, medical examination or treatment and the subsequent appointment of care in accordance with the priority of their situation
- In compliance with the maximum response times guaranteed (TMRG) set annually by Ministry of Health for all types of care without a matter of urgency
- The claim for the Regulatory Authority of Health if the TMRG are not met, which may, if it is an establishment of the NHS, claiming through the System-On Citizen
- Be informed at every moment on their position on the list of members for health care that awaits
- Be informed, through the display in places of easy access and browsing, the Internet or other means, the maximum response time guaranteed at national level and on the time of response of each institution providing guaranteed health care
- Be informed by the institution providing care when it is not able to respond within the TMRG applicable to their clinical situation and that it provided alternative service of comparable quality and the appropriate timeframe, through referral to another entity or to the NHS a private-sector entity agreed
- Knowing the detailed report on access to health care, that all establishments in the NHS are required to disclose and publish by 31 March each year

303. There is also the Charter of Rights of Hospitalised Patient which is a specification of the Charter of Rights and Obligations of Patients, published by the Ministry of Health and later, by the Directorate General of Health and the Commission of Humanization in two editions. This charter includes rights enshrined in various legal texts, particularly in the Constitution of the Portuguese Republic, the Law on Health, the Convention on Human Rights and Biomedicine and the Charter of Fundamental Rights of the European Union. Only the right to a second opinion is not provided for any national law. The statutory scheme of consumer protection (Law 24/96 of 31 July) also provides for the right to quality of goods and services and the right to health protection and physical security.

304. The Charter ago referenced regards the statement of rights as they appear in the Charter of Rights and Duties of the patients, except for rights that were given the special conditions set out who is the hospital (hospitals and health centres). In the same sense the comments made to the laws are written considering the specific situation of hospitalisation. It was omitted from this document the right to free choice, covered in the Basic Law on Health, given the constraints of the system. The reforms of health systems vary from country to country, but consensus is that the citizen cannot be excluded from the decision, because it is co-financing of the system through their taxes and is a beneficiary of even considering their needs and, above because it is the primary responsibility for their health.

305. Although, in a clear language, this version of the charter is intended primarily to staff health and should be prepared a leaflet for the general public.

306. The Charter of hospitalized patients referred to only admitted at hospitals and health centres, so not including other cases of hospitalization, such as homes for the elderly of the responsibility of Social Security. In the Charter of the Hospitalized Child of the Institute of Child Support for all these things are contained and a number of aspects with regard to children hospitalized, parents or substitutes that are near them, day and night, whatever their age and status health, should be encouraged and supported these stays, invited to participate in the care of their children. Children should not be allowed in services for adults but in suitable locations that meet their needs physical, mental and emotional. In

prolonged internment should be guaranteed the continuity of their studies. Regarding children hospitalized, parents or substitutes that are near them, day and night, whatever their age and health status, should be encouraged and supported these stays, invited to participate in the care of their children.

307. The rights and obligations of users of mental health services are those that are listed in Law No. 36/98 of July 24 – Law of Mental Health.”

(h) National Commission for the Protection of Children and Young People at Risk

308. The CNPCJR undertook a systematized training plan aiming at qualifying its professional staff working in CPCJ, on family intervention (parental education, dynamics, mediation and family therapies), followed by providing contents related to work methodologies, knowledge on the existing social solutions and legal framework. Apart from this aspect, it coordinates and promotes the implementation of parental training programmes for families at risk, by celebrating agreements/ pacts with different private Associations of public interest and Universities.

309. The identification of positive factors and good practices in the course of the work carried out with the CPCJ, as well as the constraints and difficulties felt resulted from the articulation and co-operation with schools and health centres. Therefore, within the health sector hospital units were created for children and young people at risk in the local units of the Regional Health Administration (ARS).

310. A Protocol was celebrated between CNPCJR and the National Institute of Legal Medicine aiming at promoting joint actions of sensitization, training, assessment, research, dissemination, and providing services to the community, as well as, intervention in intersectoral policies, in areas where their competences and specializations in protecting childhood are complete.

311. For education, a teacher/tutor figure was created, whose role is to prevent that some children at risk aren't exposed to dangerous situations and would be the object of CPCJ intervention or even from the Courts, if the teacher/tutor does not intervene upstream, in the promotion and protection system.

312. Within the framework of a paradigm shift based on a model proposed by Law 147/99 of 1 September on the Protection of Children and Young People in danger, the following was designed: a computer application, jointly with other entities⁶¹ to manage the promotion and protection processes in the CPCJ's and their administrative management; and a data base of Public Prosecution partners formally designated to take part in the Protection Commissions receiving information from the Public Prosecutor Office and respective Courts.

313. Since 2004, the CPCJ has been responsible for giving permission to children to participate in activities related to Arts and Entertainment (Decree-law 35/2004, de 29/04, Articles 138 to 146 establishes the obligation of entities promoting cultural, artistic or publicity activities where children up to the age 16 years old participate, as actors, singers, dancers, performers, musicians, models, to request permission from the CPCJ so they may take part in this activity).

⁶¹ New Base, Institute of Social Security and Informatics Institute.

5. Promotion of human rights awareness through educational programmes and Government-sponsored public information

(a) Office of Documentation and Comparative Law of the Prosecutor General

314. The Internet Homepage of the Prosecutor General's Office on Comparative Law contains a large amount of Human Rights information. It comprises general Human Rights information on the United Nations and on the Council of Europe Systems.

315. In the Human Rights Section of the above mentioned Homepage one can find an explanation of the functioning of the individual complaints system in the framework of the European Human Rights Convention and of the United Nations treaty bodies.

316. As was mentioned above, the text of several Human Rights Instruments is equally published in the Homepage in Portuguese, as well as the general comments of the different United Nations treaty monitoring bodies and the Case-law of the European Court of Human Rights and the European Commission.

317. All this Human Rights documentation is aimed not only at the Portuguese population, but equally at all the seven Portuguese speaking countries.

318. The Comparative Law Office answers equally to several requests made by letter, fax, telephone or e-mail on Human Rights documentation, either by Governmental agencies, courts, private persons, or even foreign people interested in the Portuguese experience in this field.

(b) Ministry of Education

319. Raising human rights awareness through educational programmes is one of the guidelines in the normative documents on the national Education System, described below.

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

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

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

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

324. The teaching of the Portuguese Language as a non-mother tongue in the National Curriculum has been a concern of the Ministry of Education, which led to the issuing of guidelines to guarantee the school success of children of immigrant families, namely the

guidelines for a programme aiming at the inclusion of students for whom Portuguese is not the mother tongue (*Documento Orientador do Programa para a integração dos alunos que não têm o Português como língua materna*).

325. “Education for Health”, including its sexual dimension, is a cross-cutting theme dealt with in the different syllabi. The Ministry of Education has showed concern for the thematic and, in 2005, set up a special group to work in this area (Legislation: Order no. 19737/2005, 2nd series, 15th June).

326. At the level of School Autonomy, Administration and Management, (Legislation: Decree law no. 75/2008, 22nd April) the participation and involvement of teaching and non-teaching staff, parents, local communities and secondary education students in the School Education Projects and the correspondent Internal Regulations – should be stressed.

327. The general professional profile of nursery educators and basic and secondary education teachers (Legislation; Decree law no. 240/2001, 30th August) includes competencies required to educate and teach for citizenship awareness. They include the conscience of the civic dimension of their role and corresponding ethic and deontological principles and values; the capability of promoting participated rules of democratic everyday life; the flexible management and settling of interpersonal conflicts and problem solving; the concept of schools and communities as spaces of education for inclusion and of social intervention, in the framework of a comprehensive education of students for democratic citizenship.

328. Teacher initial training for pre-school, basic and secondary education includes cultural, social and ethic components and learning /awareness of the problems of present times.

329. Continuing teacher training has been developing training options in the area of Education for Citizenship and Human Rights. Several support materials have been published by the Ministry of Education or co-published by the ministry and other private and public services, namely on Human Rights in a school context.

330. Several relevant objectives and goals have been set since 1997 to promote gender equality in all sectors, including education. With the view of guaranteeing their implementation, a *Conselheira para a Igualdade* (Ministerial Gender Equality Adviser) was designated in the Ministry of Education. In her work she is assisted by an interdepartmental team.

331. In 2006, under the Second National Plan for Equality (2003–2006), the past Commission for Equality and Women’s Rights, now CIG, in collaboration with the Ministry of Education’s Interdepartmental Equality Team, created a diagnostic tool for the inclusion of equality between women and men in school projects. The information gathered from 135 school groups showed that equality was not yet being regarded nor worked from the perspective of gender issues and relations between women and men. Bearing in mind this fact, the current equality plan (2007–2010) includes the objective of integrating gender equality perspectives into the organisational functioning of schools and other educational and training institutions in order to prevent violence and guarantee the integration of both sexes into everyday school life.

332. During this period (2006–2008) the Commission for Citizenship and Gender Equality (CIG) edited and disseminated support materials included in 3 collections entirely addressed to different actors in the education system, including teachers, teachers’ trainers and parents. Between 2004 and 2006, 8.200 copies of the 16 publications from the Commission for Equality and Women’s Rights addressed to teachers and to parents and guardians in general were distributed. They included two publications on the analysis of primary school textbooks from a gender perspective (Portuguese and maths), including on

education strategies for promoting gender equality in the family and 13 resulting from the transnational pilot project Coeducation: from the principle to the development of a practice, which are still widely used in teachers training.

333. In 2006, the Commission for Equality and Women's Rights began publishing works, envisaging parents, on the promotion of gender equality in family education. It published a practical guide in partnership with Coimbra University. This publication was distributed to parents' associations, teacher training centres and state and private schools in the context of ongoing training.

334. The Law 47/2006 was adopted by the Parliament the 28th of August 2006 integrating the principle of non-discrimination and gender dimension among the quality criteria which preside to the evaluation, certification and adoption of schoolbooks of the basic and secondary levels of education, as well as the principles and goals to which socio-educational support must obey as to the acquisition and lending of schoolbooks. The partnership established between the Ministry of Education and the national gender equality mechanism led in 2007 to the first common publication on gender issues among the quality criteria which preside to the evaluation and certification multimedia products of the basic and secondary levels of education.

335. Another important initiative launched in 2006 by the Ministry of Education and the Presidency of the Council of Ministers was the Forum on Education for Citizenship. This forum integrated several institutions and individuals from the academic, cultural and non-governmental areas who contributed intellectually and with a civic commitment reflecting on the theme of Citizenship over a period of 2 years. The result was presented in a document with 82 Recommendations for a National Action Plan of Education and Training for Citizenship.

336. The gender equality mechanism (CIG) created a theoretical and practical manual/guideline on "Gender equality and Citizenship" for pre-school and for the 3rd cycle of the basic education in order to provide teachers with a pedagogic support for teaching and developing projects and other activities with students in these areas. These manuals will be launched by the Ministry of Education in all the regions.

337. A Guide for integrating a gender equality dimension in the conception, production, analyses and evaluation of educational products was elaborated in 2008 and will be published in 2009.

338. A Guide addressed to sports teachers of the basic education containing practical suggestions on how to integrate the gender dimension in sports classes and in sports practice in a school context was elaborated in 2008 and will also be published in 2009.

339. The National Coeducation Network of education, training and gender specialists has been extended to less represented areas such as sports, physical education and information and communication technologies. It has proved to be an essential resource for the promotion of gender mainstreaming in education and elimination of sex-based discrimination in formal and non-formal education in general and in the education system in particular. The Commission for Equality and Women's Rights, now CIG, has maintained and extended this network and its members have cooperated and participated in the initiatives promoted under the Second and Third National Equality Plan and the Commission's partnerships in education projects. Around 100 researchers and university lecturers from more than 25 academic institutions in the whole country belong to this network, along with members of NGOs.

340. Portugal, through the Ministry of Education, has actively participated in the Council of Europe project "Education for Democratic Citizenship", both in the first wave of the

project (1997–2004) and in the initiative “European Year of Citizenship through Education” (2005).

341. Studies on Education for Democratic Citizenship are being developed in several higher education institutions as well as in other institutions, namely the Ministry of Education. *Mediadores Culturais* (sociocultural mediators) have frequently been appointed by local authorities or special employment programmes to work in schools with a high level of ethnic diversity. These mediators have played an important role in the furthering of family participation in school dynamics and of intercultural dialogue.

342. Since 1990, *Clubes Europeus* have been set up in schools of all levels of education to help students improve their knowledge on the geography, history, values and culture of Europe and its countries. The whole of the 300 *Clubes* forms the *Rede Nacional de Clubes Europeus* (National Network of European Clubs), coordinated by the Ministry of Education.

343. The Project *Assembleia de Escola* (School Assembly) was launched through a protocol on cooperation between the Ministry of Education and the Portuguese Parliament (*Assembleia da República*). The main objective of this project is to inform school-age youths on democratic values and practices.

344. The initiative “Education and Information on National Defence” was launched through a protocol between the Ministry of Education and the Ministry of National Defence. The main objective of this project is to pass information to students on themes related to national identity and defence. (Legislation: Order set no. 267/99, 11th July).

345. *Viver os Direitos Humanos* (“Living” Human Rights) is a joint project of the Ministry of Education and the Portuguese Section of Amnesty International which involves basic and secondary education schools. The main objective of this project is, through the setting up of *Clubes*, *Units* and *Training Centres* or activities, to provide teacher training and to support project development in the area of Human Rights and Citizenship.

(c) CNPCJR

346. Regarding the protection of children and young people at risk, the CNPCJR (a) has increased the articulation with the Local Councils for Social Action (CLAS) — see part III, A, f) — at the diagnosis level and with the Institute for Employment and Vocational Training (IEFP) by implementing the following objectives; (b) co-operated in providing autonomy building apartments and in acquiring the necessary equipment for their functioning within the scope of the “Experiment the Future” project; (c) developed projects such as “Steps....” within the scope of “Qualifying technical intervention working with children and young victims of sexual abuse”; (d) elaborated technical information, namely, general rules, educational models and activity plans, as well as some specific intervention projects for Children and Youth Foster Centres in view of qualifying the National Foster System; (e) monitored the *Born Citizen* Project; (f) collaborated with the Portuguese Youth Institute and “*Movijovem*” of the *Without Border* Programme, which was to provide holidays to young people with vulnerable contexts; (g) conducted studies on the “*Characterisation of Foster Families and Foster Children and Foster Youth*” and on more recurrent issues affecting children and young people such as neglect, early school leaving and exposure to deviant behaviour, and therefore concluding that the measure most applied within the *Promotion and Protection Pact* has been *Parent Support*.

6. Promotion of human rights awareness through the mass media

347. Several campaigns promoted by the Commission for Citizenship and Women’s Rights took place from 2006 to 2008, including through the mass media, especially against

domestic violence (annual campaigns) and against trafficking in human beings, but also aiming at promoting a balanced representation of women and men in decision-making.

348. The campaigns aimed at combating domestic violence take place on an annual basis and include different activities, such as the production and dissemination of leaflets and posters, spots on national and local radios as well as on TV, insertions in the written press and in public spaces. In the framework of the Council of Europe campaign developed in 2007 “Stop Domestic Violence against Women” a radio spot was produced that passed during six month (in 2008), in Romanian and in Russian at the East Radio (Radio Leste) addressed to immigrants from Eastern European countries. The spot drew attention to the gravity of the phenomena of domestic violence in Europe and appealed to denounce it both as victims or witnesses.

349. Another nationwide one year campaign “Violent Dating is not love” targeted at teenagers and young adults and focusing the “prevention of violence in dating relationships” was launched in November 2008. Several awareness-raising initiatives and activities have taken place, as for example outdoors, posters (200 000), leaflets (90 000), postcards, radio and TV spots, an internet website (www.amorverdadeiro.com.pt). In the framework of this campaign a national competition in schools was launched with the theme “Our non violent school”. The awareness-raising materials created for this purpose unveil the gender stereotypes presiding to violence in dating relationships and had a strong success producing changes of values and attitudes in youngsters. During this period awareness raising activities were developed, such as training sessions, exhibitions, events in schools, sports competitions and leisure and public spaces.

350. In 2008, a National Campaign against Trafficking in Human Beings was launched on October 18th – European Day against Trafficking in Human Beings. Under the slogan “Wake up for this reality. Denounce!”, the campaign aimed at raising society’s awareness regarding this subject-matter raising people’s attention to this reality and to appeal to social and collective responsibility. The campaign was disseminated through 200 000 leaflets, 200 insertions on TV and an equal number of insertions on the radio, 1000 outdoors and 1400 spots in cinemas.

351. Another awareness raising campaign on trafficking in human beings was implemented in December 2008. Outdoors, flyers for regional newspapers and 50.000 notebooks to be distributed to security forces agents were created.

352. A national wide campaign on women and decision-making was launched in March 2009. In national television and cable TV (111 times); Radio (180 times); Outdoors (600); trains (380); ATMs (2 439) and through postal free distribution (distribution of free postcards in restaurants, cinemas, theatres cultural centres).

353. An award “Parity – Women and Men in the Media” is granted yearly since 2005 by the Commission for Citizenship and Gender Equality (CIG). It aims at creating an appropriate environment for equality by promoting a balanced and non-stereotyped image of women and men in the media and to give visibility to women and to the political, social economic and cultural issues raised by them. It applies to journalistic, creative or other products publicised by the media, whether on paper, video, digital and audio support, and which promote equality between women and men among its public, promote balanced and diversified images of women and men, stimulate a stronger participation of women in production and decision-making and, especially, which raise awareness on the human rights of women.

7. Role of civil society, including non-governmental organizations

354. We will first briefly explain the legal framework for the functioning of civil society organizations in Portugal and then we will give some examples of activities undertaken by the civil society in the area of human rights.

(a) Legal framework for the functioning of civil society organizations in Portugal

355. The freedom of association is expressly guaranteed under article 46 of the Portuguese Constitution – in general terms, there is no specific mechanism for setting up a nongovernmental organisation aimed at promoting and protecting human rights. The steps to be followed are the same as for any private association and are pursuant to Articles 157 to 194 of the Portuguese Civil Code.

356. The establishment of these organisations is not subject to any prior administrative control and the Law only requires that the objects pursued are clearly defined, collective, lawful and permanent. All persons, either Portuguese or foreign, natural or legal, whether coming under private or public law, as long as they have full capacity, may form an association. This idea is reinforced by the provisions of Article 1 of Decree-Law 584/74, of 7 November, which rules the right of association.

357. The constitution is operated by means of a public deed, which, under the Portuguese legal framework, is a notarially recorded instrument. It must state the property and services with which each member contributes to the association's property and the association's object, domicile as a legal person, operational mechanisms and, if it is not set up for an unlimited period of time, duration.

358. All associations must register with the National Register of Legal Persons, although registration is not a prerequisite for legal personality. The association's statutes shall be published in the official gazette. The National Register of Legal Persons shall verify whether undertakings and names comply with the principles of exclusiveness, veracity and unity. The dissolution of NGOs (like any other association) may be voluntary, by operation of law (e.g. on expiry of a time limit) or ordered by the court (eg. where the objects are unattainable or have been attained or the association is declared insolvent). Therefore, dissolution is never ordered by an administrative authority nor can it be based upon political grounds.

359. Furthermore, Article 13 (1) of the Decree-Law 594/74, of 7 November prescribes that Portuguese NGOs shall be free to join international associations or organisations, providing that these do not pursue aims that are contrary to the Law.

(i) *Public Utility Legal Persons*

360. Associations can request the granting of the statute of Public Utility Legal Persons, pursuant to the provisions of Decree-Law 460/77, of 7 November. Such Decree-Law prescribes that the competence to declare an association or foundation as of public utility lies with the Government, providing that these entities: [...] pursue aims of general interest, or of the national community or of any region or community, co-operating with the central or local administrations, in such terms that justify, on the part of such administration, the declaration of "public utility" (Article 1 (1) of Decree-Law 460/77).

361. For the status of public utility to be recognised, two requisites must be fulfilled (Article 2(1)):

(a) Entities must not restrain their associates or beneficiaries to foreigners, or through any criteria contrary to Article 13 (2) of the Portuguese Constitution;

(b) They must be aware of their public utility, promote and develop it, co-operating with the Administration in the fulfilment of its tasks.

362. Once such status has been recognised, public utility legal persons shall be entitled to some tax exemptions.

(ii) *Private Institutions of Social Solidarity*

363. Associations, including NGOs, can be considered Private Institutions of Social Solidarity, in case they pursue the following aims, through the provision of goods or the rendering of services:

- Supporting children and young persons
- Supporting the family
- Supporting social and community integration
- Protecting citizens in old age and disability
- Protecting and promoting health
- Providing citizens with education and professional training
- Solving housing problems

364. The legal status of private institutions of social solidarity is presently governed by Decree-Law 117/83, of 25 February. These entities shall receive support and funding from the State, namely through co-operation agreements celebrated with welfare institutions. They can also be put in charge of the management of State or municipal services and equipment. These institutions shall be supervised by the competent Ministry within their area of activity, but such supervision cannot impose restrictions on their freedom of action. The competent ministries shall organise their registration.

365. Pursuant to Article 8 of Decree-Law 117/83, registered institutions shall automatically acquire the status of public utility legal persons. Therefore, they shall be entitled to all the benefits thereupon, plus the some exemptions from capital yields tax, capital gains tax, industrial tax, agricultural tax, regulatory tax, vehicle tax and circulation tax.

(iii) *NGOs of Co-operation for Development*

366. Law 19/94, of 24 May has established the legal framework regarding the legal status of NGOs of Co-operation for Development (NGODs). Such organisations are non-profit legal persons of private law with the following purposes: co-operation and intercultural dialogue, as well as direct and effective support to programs and projects in developing countries, namely through:

- (a) Actions for development;
- (b) Humanitarian assistance;
- (c) Protection and promotion of human rights;
- (d) Provision of emergency aid;

(e) Undertaking of dissemination, information and awareness-raising activities, with the view to developing co-operation and strengthening the intercultural dialogue with developing countries.

367. These organisations pursue those objectives within the civic, economic, social, cultural and environmental spheres and their areas of activity are, namely, the following:

- Teaching, education and culture
- Employment and professional training
- Health
- Environmental protection and preservation
- Determination and recovery of the historic and cultural heritage
- Social and community integration
- Support to the creation and development of programmes and projects

368. Their activities can be developed both in Portuguese as in foreign territory. ONGDs are autonomous, which means that they choose freely their areas of activity and pursue their aims in an independent manner and are free to establish their internal organisation, within the limits imposed by law and by their statutes. The Law guarantees State support, prescribing that: the State accepts, supports and enhances the contribution of ONGDs while executing the national co-operation policies set up for developing countries.

369. State support to ONGDs is made effective through the provision of technical and financial support to programmes, projects and activities of co-operation for development, and raising the public awareness with the view to co-operating and strengthening the intercultural dialogue with developing countries. However, law assures that State support cannot impose restrictions on the autonomy of such organisations. These organisations shall be registered with the Foreign Affairs Ministry, and they automatically acquire the nature of public utility legal persons. These NGOs also have the right to participate in the definition of the national and international cooperation policies, through the representation in the advisory bodies with competence in the area. The association of NGOs is also permitted, with the following aims:

- To organise services of common interest and intervention to the associated organisations, rationalising their means of action
- To represent the common interests of the associated organisations; to promote the development of the organisations' action and to support collaboration with them while pursuing their aims
- To monitor the associated organisations' activity in relation to any public or private entity

(iv) *NGOs for the Environment*

370. Law 35/98, of 18 July also establishes a specific legal framework regarding the NGOs for the Environment. These organisations, which shall exclusively pursue the defence and promotion of the environment and of the natural and built heritage, as well as the preservation of nature, shall be recognised as public utility legal persons, five years after the registration. Such registration shall be made with the Institute for Environmental Promotion. The recognition of the status of public utility shall accord these entities the above mentioned tax exemptions and benefits. Right to assemble and demonstrate Furthermore, the right to assemble (and demonstrate) is expressly guaranteed under Article 45 of the Portuguese Constitution, which states: (1) Citizens have the right to assemble peacefully and unarmed, even in public places, without prior authorisation. This excludes any possibility of restricting the freedom to meet and assemble on the part of human rights defenders.

(v) *Women's associations*

371. The Law 95/88 of 17 August established the rights of action and participation of women's associations aimed at eliminating all forms of discrimination and promoting equality between women and men. This Law establishes that those associations can have a national, regional or local scope and have the right to participate in the definition of the policies and of the broad legislative orientations for the promotion of women's rights. They also have the right to be represented in the Advisory Board of the national mechanism for equality between women and men and in other consultative bodies that work with public entities that have competences in defining the policies for the elimination of all forms of discrimination and the promotion of equality between women and men.

372. Subsequently, Law No. 10/97 of 12 May reinforced these rights, not only by recognizing those associations the status of social partners, entitled to be represented at the Social and Economic Council, as by granting them the right to receive support from the Public Central Administration for developing their activities with a view to equality between women and men.

373. Decree-Law No 246/98 of 11 August came to regulate the Law No 10/97 of 12 May, disciplining the recognition process of generic representativity, the forms of technical and financial support, the areas of this support and the registration of non-governmental associations of women.

(vi) *Public Financing of NGOs*

374. Although NGOs cannot seek profit, it is clear that they are free to receive funding and other resources, in order to be able to carry out their activities. This is one of the basic requirements of Article 46 (2), when stating that: Associations may pursue their objectives freely and without interference from any public authority, and they may not be dissolved by the State, nor their activities suspended, unless by judicial decision in the circumstances prescribed by law. Clearly, the restriction upon the receiving of funding would be an abusive interference on NGO's activity.

375. Entities which promote projects of Young Volunteers for Solidarity shall receive the technical and financial support considered to be necessary for their development (Article 11 of Decree-Law 168/93, of 11 May and Article 17 of the Governmental Order 685/93, of 22 July), apart from the technical support in the development of training activities. Volunteers shall also be granted a scholarship aimed at compensating the disbursements inherent to the performance of their tasks (Article 10(1) of Decree-Law 168/93).

376. Participants in projects of Young Volunteers for Co-operation shall also be granted a scholarship, to be paid by the Portuguese Youth Institute (Article 12 (2) of Decree-Law 205/93, of 14 June).

Public financing of NGOs working for the elimination of all forms of discrimination and the promotion of equality between women and men

377. From 2000 to 2006, under the Third Community Support Framework and its Employment, Training and Social Development Programme (POEFDS) (2000–2006) a Measure was created (Measure 4.4) for Promoting Equal Opportunities between Men and Women through the NGO technical and financial support system. This Measure financed 95 NGO projects.

378. Since 2007, the Operational Programme for the Promotion of the Human Potential, one of the 3 Programmes developed under the National Strategic Reference Framework (NSRF) (2007–2013), includes in its axis 7 several typologies aimed at developing the capacity of national public institutions and civil society organizations, including women's

organizations for promoting gender equality. Axis 7 has a funding of about 83 million Euro for the 6 year period distributed by the following 7 typologies:

- 7.1 Knowledge and Information System
- 7.2 Equality Plans
- 7.3 Technical and Financial support to NGOs
- 7.4 Training of Strategic Target Audiences
- 7.5 Awareness raising and promotion of Gender Equality
- 7.6 Promotion of Women Entrepreneurship
- 7.7 Implementation of projects to fight Violence Against Women

379. Three of the above mentioned typologies (7.1, 7.5 and 7.7) are managed by the Commission for Citizenship and Gender Equality (CIG) as a beneficiary body. Therefore CIG presents an application to the POPH (National Authority) and then implements the projects – covering about 20% of the total funds available under axis 7.

380. The other four typologies (7.2, 7.3, 7.4 and 7.6) are also managed by CIG but as an intermediate body. This means that POPH delegates into CIG the competence to implement these typologies on their behalf. Hence CIG has put into place a mechanism for providing technical and financial support to projects submitted by the beneficiary entities/projects – covering about 80% of the total funds available under axis 7.

381. The Commission for Citizenship and Gender Equality has therefore a mechanism in place for supporting technically and financially the work of Non-Governmental Organisations working in the fields of women's rights, citizenship and human rights. A typology aimed at providing financial and technical support to NGOs in the area of gender equality was created with a view to support NGOs and other civil society organizations operating in the field of gender equality in order to develop their skills and organization capacity, providing means for them to act for the promotion of gender equality in complement to the public initiatives. It aims at reinforcing the intervention of NGOs and to deepen women's capacity to intervene in the economic and social activity and men's capacity to intervene in the private sphere. After the first open call from 15th of February 2008 to 15th of April 2009, 80 projects were selected and are being implemented. The majority of these projects develop initiatives simultaneously in various areas of gender equality. 29 of these projects focus in only one dimension of gender equality (women's entrepreneurship, sexual and reproductive health, psychological violence at work, gender based violence, reconciliation, sports, health, power and decision making, trafficking in human beings).

382. Under the same fund, CIG is also managing the technical and financial support to training addressed to strategic groups in the fields of gender equality and prevention of gender based violence, including the training of trainers and of qualified agents who operate in the area of gender based violence. After the first open call from 15th of February 2008 to 15th of April 2009, 86 training projects were selected and are being implemented. A second open call was opened the 26th of May 2009 until the 25th of June 2009.

383. A typology aimed at providing financial support for the promotion of Plans for gender equality in institutions: Central and Local Public Administration and in enterprises (Drafting and implementation of Plans). A first open call took place from 15th of February 2008 to 15th of April 2009. 30 projects were selected and are being implemented: 14 in the Public sector (11 in the local administration, 1 in the central administration and 2 in public enterprises). 16 projects are being implemented in the private sector and in associations. A second open call will be opened the 26th of May 2009 until the 25th of June 2009. The

Portuguese Government has been focused on the promotion of female entrepreneurship in particular when associated with factors of innovation. In this regard, 2 calls for proposals with a specific funding line to promote female entrepreneurship already took place under the Operational Programme for Competitiveness. As a result 9 million euros were distributed among projects that foster female entrepreneurship. Currently another application phase dedicated exclusively to these projects is under way.

384. In the Operational Programme for the Promotion of the Human Potential (POPH), the support of Entrepreneurship, Association and Business Networks ran by women had a first open call (from 15th of February 2008 to 15th of April 2009). 52 projects, involving about 740 women, implying a commitment of 10.000.000 Euros.

385. Guidelines for drafting and implementing these Plans were promoted by the Commission for Citizenship and Gender Equality (CIG) and produced by University researchers. They are used since May 2009 will be used as referentials for the institutions who want to apply to this financial support line. This is a tool for putting into practice gender equality mainstreaming in Central and Local Public Administration and in enterprises. It is also a management tool aimed at simplifying and providing a frame for organizing the process of implementing Plans for gender equality in these institutions.

386. The Commission for Citizenship and Gender Equality also manages since 2007, the NGOs Fund in the "Social area" from the EEA GRANTS Mechanism. Its main goal is to promote the empowerment of Civil Society Organisations in the fields of Human Rights, Citizenship and Gender Equality. This Fund has a total amount of 1 079 056 Euros. An open call took place from the 25th of February 2008 to the 15th of May 2009 for implementing projects in three main areas: (a) Promotion of Human Rights and reinforcement of citizenship (enforcement of Human Rights and cultural diversity; increase of NGOs skills in the area of citizenship, including gender equality); (b) Social and civic participation of young people in the community (Sexual and reproductive education and parental responsibility of young people; Non discrimination on the grounds of social stereotypes and promotion of gender equality in all scopes of life); (c) Development of skills for the employability of women, migrants and people with disabilities. 108 projects applied and 14 projects were selected.

(b) Examples of activities undertaken by the civil society in the area of human rights

(i) Partnerships and programmes

387. As was mentioned above, the Commission for Citizenship and Gender Equality has a Advisory Board that comprises a NGO section made up of 40 national non-governmental organisations working on the promotion of the values of citizenship, human rights, women's rights and gender equality, in particular by fighting multiple discrimination, in particular those on the grounds of religion or belief, disability, age, sexual orientation, social origin, ethnicity, or sex. 25 of them are from the gender equality area but this Board was also enlarged to 15 NGOs of the areas of citizenship and human rights.

388. Apart from the dialogues and work conducted in the framework of the Advisory Board, the Commission for Citizenship and Gender Equality takes part or is a partner in the activities of the civil society, and involves the civil society and the NGOs in several of its activities, including by inviting them to take part in working groups for the design and implementation of policies, action plans and activities, by consultations on different topics and policies, by the establishment of partnerships and by involving them in and inviting them to seminars, conferences and other events.

389. With the purpose of ensuring the promotion and protection of human rights the Portuguese Government has conceived and implemented a III National Plan for Equality,

Citizenship and Gender (2007–2010); a III National Plan against Domestic Violence (2007–2010); a I National Plan against Trafficking in Human Beings (2007–2010); a National Plan for the Integration of Immigrants; and the National Strategy for a Sustainable Development. All these plans entail the coordination of activities with non-governmental organisations and their financial support.

390. In the years between the launching of the “World Programme for Human Rights Education” (2005) and the present, the following measures were undertaken.

391. The *Iniciativa Novas Oportunidades* (New Opportunities Initiative), launched in 2006, anchored in the principle that secondary education is the main goal to attain, in terms of qualifying youths and adults, aims at offering them the opportunity to acquire the competences essential to the modern knowledge-based economy. Strategically, the initiative is based on a two-fold offer: (a) secondary education geared to active life, opening new training areas to youths, and (b) raising the basic training of those who entered active life with low qualifications, offering them a second chance to recuperate, complete and progress in their studies. Adults can also see their competences, acquired by work experience, recognised and accredited in educational terms. Data regarding 2008 shows that this Initiative had a positive impact in women’s education and training as women were the main users. Women accounted for 54% of the people enrolled in this Initiative and 65% of the trainees in adult education and training courses.

392. The inclusion of “Portuguese Language as a non-mother Tongue” in the National Curriculum, both at basic and secondary levels, guarantees to students whose mother tongue is not Portuguese curriculum activities to help in the mastering of the Portuguese language (Legislation: Normative order no. 30/2007, 10 August).

393. The module “Citizenship and Safety”, prepared for 5th grade students, is part of the pedagogic answer to the proposal of the Team for School Safety and aims at contributing to a civic culture of safety and to practices of civic participation.

394. In the scope of the programme “Education for Health” (*Educação para a Saúde*) (Order no. 25995/2005, 2^o series), which includes the sexual dimension, schools were divided into groups, and the functions of the teacher coordinating promotion for health in each group were defined. Priority areas of intervention were identified. A model for teacher training was approved and curriculum guidelines were issued. A protocol between the Ministries of Education and Health was signed to guarantee direct support to schools. A Forum was set up for experience sharing and two documents were published: “Nutrition and Physical Exercise” and “Intaking Psychoactive Substances”. Schools were invited to candidate for financial support to their projects in the area of health.

395. In the scope of the ongoing Programme for Priority Intervention in Educational Terms (*Programa dos Territórios Educativos de Intervenção Prioritaria II – TEIP II*), sociocultural mediators can be designated by the Ministry or by local authorities to work in schools. The Ministry of Education prepares training actions for mediators working in schools, in collaboration with the *Alto Comissariado para a Integração e para o Diálogo Cultural* (High Commission for Inclusion and Intercultural Dialogue).

396. A new legislation has been published (Legislation: Normative order no. 55/2008, 23rd October), concerning the second generation of this Programme extending the scope to more schools in order to combat school dropout, improvement of quality of learning and the transition from school to work.

397. The Council of Europe document *Governança Democrática* (Democratic Governance) was translated into Portuguese and published by the *Conselho Nacional de Educação* (National Board for Education).

398. The Ministry of Education, sometimes in collaboration with other public services, issued Pedagogic Guidelines to support Civic Education. These are guidelines for teaching practices on Environmental Education, on Consumer Education, and on areas like Sustainable Development, Entrepreneurship, Global Development, and Human Rights (the last one in collaboration with Amnesty International).

399. The mastering of the Portuguese language, for purposes of acquisition of the Portuguese Nationality, is assessed by the Ministry of Education, namely through tests applied to candidates, to whom the State can provide adequate courses.

400. The campaign “All Different, All Equal”, jointly sponsored by the Council of Europe, the European Commission and the European Youth Forum ran until late September 2007. The Portuguese Ministry of Education was represented in the National Committee and, together with other entities, co-implemented several initiatives, as information on the campaign addressed at youths in school sport activities.

401. The competition “For a Safe School” is being jointly prepared by the Ministry of Education and the National Committee for Justice and Peace and aims at raising youths’ awareness to a non-violence culture.

402. In the scope of the initiative “Spring Day for Europe”, for the promotion of the citizenship concept, schools are invited to organise annual events focusing on debate, interaction and reflection on European themes. The initiative is an opportunity for young European citizens to express their own views and make their voices heard on European issues. The theme for the year 2008 was “Bridging Cultures through Dialogue”.

(ii) *Cooperation with solidarity economy organisations or third sector*

403. One of the main priority areas of Social Security’s cooperation with solidarity economy organisations or third sector (IPSS’s, NGO’s, Mutual Associations) assuming a relevant role in providing community services of proximity to individuals and their families. The relation between the State and third sector organisations is characterised by the fact that the State acknowledges their complementary role when fulfilling their social purposes.

404. In Portugal, solidarity economy organisations which provide social services to citizens are supported financially by the State before the celebration of Cooperation Pacts/Agreements. Therefore, the State’s annual investment exceeds 1 billion Euros in funding 17.295 Cooperation Agreements, which provide solutions to circa 508 thousand users.

405. This amount only includes the cost of these solutions operating on a daily basis. An additional investment is carried out in the requalification of spaces and in the creation of new solutions, within new financing programmes such as – PARES – Programme to Expand Social Facilities Network, which seeks to support the expansion, development and consolidation of the community services of proximity in terms of new places available, quality solutions and equity in territorial distribution.

(iii) *Portuguese Association for Victim Support (APAV)*

406. The Portuguese Association for Victim Support (APAV) is a social solidarity private institution, a legal entity for public use, whose statutory aim is to promote and contribute to inform, protect and support citizens who have been victims of penal offences.

407. APAV is a non-profit organization, which supports, in an individualized, qualified and humanized way, victims of crime, through the rendering of free and confidential services. It was founded on June 25th, 1990, has a national scope and its headquarters in Lisbon. For the fulfilment of its mission, the APAV’s goals are the following:

(a) To promote the protection and the support to victims of penal offences in general and in particular of those with less economic resources, specifically by means of information spread, personalized counselling and guidance, moral, social, juridical, psychological and economic support;

(b) To co-operate with entities which are competent in the areas of justice administration, police forces, social security agencies, health centres, as well as with local municipalities, autonomous regions and other private or public entities dealing with penal offences and the respective families;

(c) To foster and promote social solidarity, namely through the creation of networks of voluntary collaborators and social sponsors, as well as by victim-offender mediation and other restorative justice practices;

(d) To foster and sponsor the carrying out of research and studies on victim's problems, in order to satisfy their interest in a more adequate manner;

(e) To promote and participate in programmes, projects, and actions tending to inform and raise awareness in the public opinion;

(f) To contribute in the adoption of legislative, regulatory and administrative measures, which will in turn contribute to the defence, protection and support to the victim of penal offences, considering the prevention of the risks of victimization and the attenuation of its consequences;

(g) To set up contacts with international organizations and to cooperate with entities which pursue similar objectives in other countries.

408. The financing not coming directly from the Government of the Republic is over 50%, thus constituting social sponsoring and the donations a very important part, together with European projects APAV has been granted financing for. The Strategic Plan is an essential document for planning the development of any organization. The APAV's Strategic Plan – Strategy 2008–2012 identifies and highlights major goals to be achieved in a timeframe of five years. The goals highlighted in this document are intended for development during the annual validity of each Activity Plan, following the Strategy. There is a proposal on the adoption, in each Annual Activity Plan, of constant and specific priorities for each year. The Strategic Plan is also a valuable management, marketing and associative policy tool.

409. The preparation of the Strategic Plan is a unique opportunity to focus on the main goals of the Association on a medium-term, and foresee the participation in the process of making decisions for the Associates; for the technical teams (headquarters central, GAV/BVS administrators, Shelters, projects and other units to be created), for Volunteers and for Trainees, and for those who cooperate, direct or indirectly, in the Association's life. The idea is to promote a wider and more integrated perspective of APAV's different activity areas and latest developments; as well as any other economic, social and political contexts, related to the Association's intervention field.

(iv) *Child Support Institute*

410. The Child Support Institute is a private social solidarity institution created in March 1983, by a group of persons with different Professional backgrounds – doctors, magistrates, teachers, psychologists, lawyers, sociologists, etc. Its main objective is to contribute to the integral development of the child, through the promotion and defence of the rights of the child. For CSI the child has been seen in an integral manner, as a subject of rights in the different areas of his/ her life, like health, education, social security and free times.

411. CSI also aims at stimulating, supporting and disseminating the work and activities of all those who are concerned with looking for new answers to children's problems in Portugal, as well as cooperating with similar national and international institutions.

412. According to its statutes CSI promotes (a) Information and awareness-raising programmes; (b) Studies, seminars and other initiatives that enable a debate about the child in modern societies; (c) Advisory opinions and position papers on aspects the promotion of child rights.

413. CSI also contributes to the child's integral development, through the defence and promotion of his/her rights; cooperates with public and private entities in the definition of a national policy for the prevention and protection of the child and promotes studies and research on the child as subject of rights.

(v) *Directorate General of Health, Division of Civil Society Participation*

414. In order to promote the participation of civil society, community empowerment and social and civil society involvement in the formulation and implementation of health policies, the Directorate General of Health, Division of Civil Society Participation was established in 2007. This body promotes the use of innovative forms of participation of civil society, proposes measures of accountability and empowerment of citizens and civil society involved in prevention and control of disease, articulates and monitors the activities of these organizations in health and technical and financially supports projects developed by those institutions.

415. In this context, the Ministry of Health has supported technical and financial projects sponsored by various associations, including projects aimed at children. Additionally, it has developed measures to support the formation and development of civil society organizations in the area of health, and to that end, it has established, within the Directorate General of Health, a Centre for Support to the Health Associations and developed the dissemination of civil society organizations involved in health, allowing the disclosure of their activities, resources and answers.

D. Reporting process at the national level

1. National coordinating structure for reporting under the treaties and participation of departments, institutions and officials at the national, regional and local levels of governance

416. The Portuguese Ministry of Foreign Affairs has invited the Office for Documentation and Comparative Law of the Prosecutor General (a body that is autonomous and independent from the Government) to assume the double role of coordinating the contributions submitted by the different departments to the reports submitted to the Committee on Economic, Social and Cultural Rights, the Human Rights Committee, the Committee against Torture and the Committee on the Rights of the Child, and drafting the final text of the answers to be submitted to these Committees. For this purpose the Office contacts several State Departments and NGOs with the purpose of obtaining data and relevant information on the implementation of the above-mentioned instruments.

417. The preparation and drafting of the reports to the Committee on the Elimination of Discrimination against Women are undertaken by the Commission for Citizenship and Gender Equality (CIG), whereas the preparation and drafting of the reports to the Committee on the Elimination of Racial Discrimination are undertaken by ACIDI.

2. Whether reports are made available to or examined by the national legislature prior to submission to the treaty monitoring bodies

418. A report is, in principle, only submitted to the Parliament prior to its submission to the treaty bodies, in those cases where the Parliament has been asked for a written contribution to the report.

3. The nature of participation of entities outside of government

419. The Office of the Ombudsman as well as the Prosecutor General's Office (which are both independent from the Government) are full and active participants in the elaboration of the core document, as well as of national reports. In the Portuguese case it is one of these independent institutions (the Prosecutor General's Office) which is charged with the task of drafting the great majority of national reports, thus ensuring the impartiality in the assessment of the country's situation. The contributions made by these entities are included in the national reports.

420. NGOs are also consulted for the preparation of reports and the information they provide is included therein, with a reference to the information's origin – even in those cases (which have happened in the past) where there are discrepancies between the official Government's information and the NGO's information.

421. The national reports have not all been systematically and consistently translated into Portuguese. But they have all been put online on the website of the Office for Documentation and Comparative law.

E. Other related human rights information

1. Follow-up to international conferences

422. In general terms, all binding and non-binding instruments are taken into account by the competent national authorities in their respective areas of activity. Moreover, that information is disseminated by those authorities, being considered most relevant in raising awareness on the issues underlined and in obtaining contributions regarding both the drafting of legal texts and the adoption of technical or practical solutions to accomplish the highest standards of compliance with the undertaken commitments or addressed recommendations.

423. In the specific case of the Beijing Declaration and Platform for Action and subsequent commitments in this area (Beijing + 5 and Beijing + 10), every single one of the outcome documents were translated into Portuguese, published in Portugal and widely disseminated.

424. In the area of ageing, Portugal participated in the First Review and Appraisal regarding the implementation of the Madrid International Plan of Action on Ageing (MIPPA), disseminating, in 2007, the respective report to the United Nations Economic Commission for Europe (UNECE), adopted on February 2008, during the 46th Session of the Commission for Social Development, jointly with other reports from different regions.

425. Portugal indicated as main priority for its "bottom up" assessment, the eradication of poverty among the elderly. It is a theme set under Priority 6 of the MIPPA (Eradication of poverty) and of Commitment 3 of the Regional Strategy "Preserve and strengthen the Social Protection Objectives, specifically to eliminate poverty and provide adequate levels of benefits for all".

426. Several measures were identified and have been implemented in Portugal with the objective to eradicate poverty among this age group, namely by creating an Extraordinary

Solidarity Supplement and a Solidarity Supplement for the Elderly — see Part III, A, f) — normal and extraordinary contributions to minimum pensions.

2. Information on non-discrimination and equality and effective remedies

(a) Non-discrimination and equality – general framework

427. According to article 15 of the Portuguese Constitution, foreigners, stateless persons, and European citizens who find themselves or who reside in Portugal shall enjoy the same rights and be subject to the same duties as the Portuguese citizens. This principle of national treatment is also enshrined in the Portuguese Civil Code, in its article 14. Foreigners are, however, excluded from certain political rights, from the exercise of public offices not predominantly technical in nature, and from rights that the Constitution and the law reserve exclusively to Portuguese citizens, like the composition of the Armed Forces, exclusively of Portuguese citizens. Subject to reciprocity, exceptions are made to foreigners who reside in Portugal regarding the right to vote for and stand for election as local councillors, and to citizens of European Union Member States residing in Portugal as regards the right to vote for and stand for election as Members of the European Parliament; and to citizens of Portuguese speaking countries residing in Portugal, excluding appointment to the offices of President of the Republic, President of the Assembly of the Republic, Prime Minister and President of any of the supreme courts, and of service in the armed forces and the diplomatic corps.

428. Within the framework of economic, social and cultural rights and duties, article 59 of the Portuguese Constitution provides that every worker shall be entitled to his rights regardless of age, sex, race, citizenship, place of origin, religion and political and ideological convictions. This provision refers to remuneration; work organisation, social dignity, personal fulfilment and family life; working conditions; rest and leisure time; assistance in unemployment and work-related accident or occupational illness.

429. A structuring principle of the Portuguese legal system is the principle of equality enshrined in article 13 according to which “every citizen shall possess the same social dignity and shall be equal before the law” and “no one shall be privileged, favoured, prejudiced, deprived of any right or exempted from any duty on the basis of ancestry, sex, race, language, place of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation”.

430. Furthermore, article 18 of the Portuguese Constitution states that the Constitution’s provisions with regard to rights, freedoms and guarantees shall be directly applicable to and binding on public and private persons and bodies.

431. Equality and non-discrimination is also enshrined in the Portuguese Labour Code in articles 22 to 32 and 73 to 78 and further developed by Law 35/2004, enacted 29 July 2004. These statutes transpose Directives 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin; Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation; and Directive 2002/73/EC of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions. Public employment and the position of civil servant are also subject to the guarantees of equality and non-discrimination, pursuant to article 5 of Law 99/2003.

432. Finally Law 46/2006 dated 28 August forbids and punishes the discrimination in reason of disabilities and of an aggravated risk for health.

(b) Legal framework and general policies to enhance equality between men and women

433. The Constitution of the Portuguese Republic enshrines the principle of equality regardless of the sex of the persons (Article 13 – Principle of Equality) and the promotion of equality between men and women as a fundamental task of the State (Article 9 – Fundamental Tasks of the State). Article 109 (Political participation of citizens) also states that “Direct and active participation of men and women in political life is a condition and fundamental instrument of the consolidation of the democratic system and the law must promote equality in the exercise of civic and political rights and non-discrimination based on sex in the access to political office.”

434. Under Portuguese Law,⁶² direct discrimination is deemed to exist whenever, by reason of social origin, age, sex, sexual orientation, civil status, family situation, genetic heritage, reduced capacity for work, disability, chronic disease, nationality, ethnic origin, religion, political or ideological convictions or trade union membership, a person is subject to less favourable treatment than that given to another person who was or is in a comparable situation.

435. Indirect discrimination⁶³ is deemed to exist whenever a provision, criterion or practice, which is apparently neutral, may place people in a disadvantageous position in relation to others, on the grounds of social origin, age, sex, sexual orientation, civil status, family situation, genetic heritage, reduced capacity for work, disability, chronic disease, nationality, ethnic origin, religion, political or ideological convictions or trade union membership, unless the provision, criterion or practice in question is objectively justified for a legitimate purpose and the means to attain that purpose are necessary and appropriate.

436. Other factors of both direct and indirect discrimination are homeland, language, race, education, economic situation, origin or social status.⁶⁴ Orders or instructions based on any of these factors, which cause harm to anyone, are considered discriminatory.⁶⁵

437. The harassment of an employee or a job applicant (defined as undesired conduct related inter alia with gender, occurring during the recruitment process, at work or during vocational training, with the purpose or effect of undermining a person’s dignity or creating an intimidating, hostile, degrading, humiliating or destabilising environment) amounts to discrimination.⁶⁶ Any form of undesired verbal, non-verbal or physical conduct of a sexual nature, with the above-mentioned purpose or effect is considered to be harassment.⁶⁷

438. The State is responsible for promoting equal opportunities at work, the reconciliation of professional activity with family life, equality in the exercise of civic and political rights and non-discrimination on the basis of sex in access to political positions.

439. The 2005/2008 National Action Programme for Growth and Jobs is a reference for strategic governance that aims at attaining economic growth and job creation, in a framework of public accounts’ sustainability, social cohesion, competitiveness, and sustainable development.

⁶² Article 23, n.º 1, of the Labour Code, and Article 32, paragraph a) of n.º 2, of the Act 35/2004, of 29 July.

⁶³ According to n.º 1 of Article 23 of the Labour Code and paragraph b) of n.º 2 of Article 32 of the Act 35/2004, of 29th of July.

⁶⁴ Article 32, n.º 1, of the Act 35/2004, of 29 July.

⁶⁵ Article 32, n.º 3, of the Act 35/2004, of 29 July.

⁶⁶ Article 24, n.º 1 and 2, of the Labour Code.

⁶⁷ N.º 3 of Article 24 of the Labour Code.

440. This is a programme of public initiative, whose implementation proceeds in active partnership with civil society and private initiative and in which public policies assume the role of catalysts of a process of modernisation and change. In its conception, within the framework of a network of Coordinators reporting directly to the Prime Minister and integrating personal representatives from all ministers and programme coordinators essential for its success, consideration was given not only to operative documents that engage Government action, such as the Government Programme, the strategic national plan and the Stability and Growth Plan, the 2005/2008 National Action Plan for Employment, the National Plan for Equality (2003/2006 and 2007/2010) and the reference lines of the 2007/2013 National Strategic Reference Framework and of the Technological Plan, but also to multiple contributions from civil society, such as opinions on implementation of the Lisbon Strategy at both national and European level.

441. During the period under appraisal the following policies having a strong impact on women's rights and gender equality have been adopted.

442. The budget for the promotion of gender equality policies has been considerably reinforced for the period ranging from 2007 to 2013. An autonomous area of the Structural Funds was specially created to finance the promotion of gender equality under the Operational Programme for the promotion of the Human Potential (POPH), which is one of the 3 programmes developed under the Portuguese National Strategic Reference Framework (QREN) 2007–2013. Gender Equality is also present in the Agenda for Competitiveness, in particular in the Operational Programme for Competitiveness (POFC). *(As described in the financing of NGOs.)*

443. The main policies in this area are set up in the following National Plans:

(a) The III National Plan for Equality – Citizenship and Gender 2007–2010 (III PNI) that reinforces the combat to gender inequality in all domains of political, social, economic and cultural life in an integrated and transversal way and the Programme of Action for the Elimination of Female Genital Mutilation, under the III National Plan for Equality – Citizenship and Gender Equality (2007–2010), will be launched in 2009;

(b) The III National Plan against Domestic Violence 2007–2010 (III PNCVD) that integrates policies to prevent and combat the phenomenon, based on a transversal approach with a particular emphasis on awareness and information campaigns, training, the support and shelter of the victims aiming towards autonomy and reinsertion into social life;

(c) The I National Plan against Trafficking in Human Beings 2007–2010 (I PNCTSH) that is based on an vision that integrates the human dimension of the problem, enforcing preventive measures and concrete responses regarding the support and integration of the victims of trafficking, especially victims of sexual exploitation and forced labour;

(d) The National Employment Plan 2005–2008 (PNE) works towards an inclusive labour market that promotes equal opportunities for all, rehabilitation and reinsertion, reconciliation between professional, family and private life and gender equality, namely through qualification, employment and social cohesion;

(e) The National Plan of Action for Inclusion 2008–2010 (PNAI), the Programme to Enlarge the Network of Services and Social Structures (PARES) all aim to promote a more inclusive society. These policies have a strong impact on reconciliation between professional, family and personal life;

(f) An inter-ministerial working group was created in 2008 for the design of a National Action Plan to implement the United Nations Resolution 1325 “Women, Peace and Security”.

444. During this period we can also register several legislative improvements on matters pertaining to promotion of gender equality:

(a) The Law adopted in 2006 which establishes that the lists of candidates for local, national and European Parliament elections must ensure a minimum representation of 33% of each sex in eligible positions (see paras 78–94 above – electoral system);

(b) The revision of the Penal Code from September 2007 (see paras. 149–171 above – Criminal law and crime figures);

(c) The Organic Law of the national mechanism for citizenship and gender equality policies that has initiated its new functions with a renewed perspective: reaffirming women’s rights, gender equality, and combating gender based violence; while promoting gender mainstreaming when combating multiple discrimination, thus addressing the different ways women and men experience discrimination (see paras. 247–264 above – institutions and machinery);

(d) Abortion was legalised. Law 16/2007, of 17 April 2007, permits the voluntary interruption of pregnancy during the first 10 weeks of pregnancy, free of charge at a public hospital. Under the new law, in the first 10 weeks of an unwanted pregnancy, women will be able to seek safe abortion services without fear of criminal prosecution;

(e) Law no. 23/2007⁶⁸ regulates the conditions of entry, stay and exit of foreigners from Portuguese territory, includes a period of reflection for the victims of trafficking and an authorization permit for one year;

(f) The regulations of the Council of Ministers of the current Constitutional Government stipulate that draft laws must include a gender impact assessment and use non-discriminatory language. One of the elements that accompany notes to projects in the government’s lawmaking process is an assessment of the project’s impact, when it might affect gender equality. They also provide for gender specifications to be neutralised or minimised in the drafting of laws by using inclusive or neutral forms;

(g) At the local level the Act n° 115/2006 of 14 June regularizes the local social networks introducing for the first time a gender equality dimension as a factor for local development. It also introduced the statute of “Local Gender Equality Adviser” in the National Network of Local Councils for Social Action;

(h) The Resolution of the Council of the Ministers N. 49/2007 of the 28th March, on the Principles of Good Governance of Public Sector Companies determines that all Companies held by the State have to adopt Equality Plans that promote an effective equality between women and men namely by fostering the reconciliation between professional, family and private life. Simultaneously, a specific funding line was created to stimulate and support the implementation of Equality Plans in Local and Central Administration as well as Public and Private sector Companies;

(i) By the Resolution of the Council of Ministers N. 70/2008 of the 22nd April the strategic guidelines for the State Enterprise Sector were approved. It concerns the design and implementation of human resources policies aimed at valuing the human being, in order to strengthen the motivation and incentive the increase of the productivity and develop and implement Plans for Equality, to promote equal opportunities for men and women and reconciliation of personal, work, and family life, eliminating discrimination;

(j) Resolution of the Council of Ministers N. 161/2008 of the 22nd October approved the adoption of measures for mainstreaming gender perspective into Public

⁶⁸ Immigration Law n° 23/2007, of 4 July.

Administration and it also defines the status, profile and attributions of the Ministerial Gender Equality Advisers and respective Teams, giving them political support in order to be able to fully accomplish their functions. The Government also wants to broaden and strengthen the implementation of gender and non-discrimination mainstreaming in municipalities by means of the adoption municipal plans for equality and to multiply the structures available for this purpose. In order to ensure the institutionalization of equality advisers in all the 308 municipalities, the Government is considering the adoption of the same type of Law establishing the nomination of local equality advisers. Simultaneously, a specific funding line was created to stimulate and support the implementation of Equality Plans in Local and Central Administration as well as Public and Private sector Companies;

(k) The law that establishes an Observatory on Trafficking on Human Beings within the Ministry of Home Affairs whose main task is monitoring the phenomenon;

(l) In 2008, a new Labour Code⁶⁹ was prepared and negotiated with the social partners, containing the legal framework on gender equality in work, employment and vocational training, and on the protection of maternity and paternity. This Code includes new legislation on parental leaves, enlarging the possibilities of sharing the leave between the mother and the father and also increasing the length of the parental leave for the fathers.

445. The equal opportunities policies for all and policies of equality of opportunities between women and men, identified as priorities in the framework document, are transversal to all measures, in particular with regard to a life cycle work approach. However, there are some more specific sectoral programmes which are more directly related to the national policies aimed at gender equality, such as the National Plans for Equality and against Domestic Violence and, more recently, the First National Plan against Trafficking in Human Beings, the Plan for the Integration of People with Disabilities or Impairments, the Plan for the Integration of Immigrants and the National Plan for Social Inclusion. These plans are based on strategic intervention areas and identify the requisite implementation measures, responsible entities and results and process indicators.

(c) General policies and facts/European year for equal opportunities for all

446. In Portugal, 59% of the population already heard or took knowledge of the European year, 3rd place in the EU, over the European level of 37% (Eurobarometer, February 2008).

447. 38 Municipal Assemblies took place in all the Country, of which 5 in the Autonomous Region of Azores, which involved more than 1.500 participants. In 2008, a Municipal Assembly took place in Sesimbra. These Assemblies produced motions, declarations, and Charts of principles on the various areas of discriminations.

448. Through the 18 Districts of Portugal (Continent and Autonomous Region of Azores), 35 civil society entities concurred to the regional prizes, good practices developed by 19 rewarded associations working on gender discrimination, disability discrimination, social origin discriminations, and multiple discriminations. 13 enterprises were identified at the District level with good practices in the field of the integration of disabled persons. A national Prize was awarded to an association of Roma women who developed good practices in the integration and supporting of Roma children in their school and leisure activities.

449. The contest “my school against discrimination” is an award for a project of school intervention or outdoor intervention coming from a school or a class on ways to fight the various forms of discrimination (namely the questions of multiple discriminations, of the

⁶⁹ Entered into force in February 2009 (Law 7/2009).

equality of treatment and equal opportunities) for the pupils of the schools of the 2nd and 3rd cycles of the basic schooling and of the secondary level of all the Country. 110 schools applied, which involved more than 6 000 pupils of 17 districts of all the Country. 50 reports were presented, coming from the schools and groups of schools, the first prize being awarded to one school of each the three levels of teaching and two honour mentions. The awarded schools were located in Braga, Porto and the other in Lisboa. The honour mentions were attributed to schools of the Lisbon area. The Projects developed were on origin (multiculturality) and on disability.

450. A mobile exposition “Igualdade para a diversidade” went along all Portugal, being present in 25 cities, during 6 days for each stay, in a total of 150 days of exhibition, involving the Governos Civis (representation of the central political power in the regions), the local collectivities and other entities of the Public Administration. More than 150 persons were locally trained to dynamise this activities, the number of visitors exceeded 7,500 people.

451. The fair of equality in diversity is an exhibition of training and ludic-pedagogic materials on the 6 types of discriminations and multiple discriminations which is dynamised with cultural actions. It took place from the 13th to the 15th July 2008 at the Praca do Comércio in Lisbon, involving public institutions and the civil society, around 80 civil society organisations, from the various areas of discrimination. Besides the stands for exposition, there were information, handicraft, divulgation activities, music shows, workshops, gastronomic exhibitions and debates. In one of the days the European anti-discrimination truck was present and young European journalists were awarded for their works. Five debates concerned the gender discrimination, the ethnic discrimination, the sexual orientation discrimination, the religious discrimination and the discrimination grounded on disability.

452. Thematic exhibitions also took place. In 2008 an European contest on cartoons took place. The Portuguese catalogue on the contest was awarded as the best informative material (October 2008). In November 2007, in the framework of the national campaign on domestic violence, the Commission for Gender Equality (CIG) organized, in partnership with the World Press Cartoon a cartoons exhibition entitled “I am not of a violent type” (“a violência não faz o meu género”), which was patent in the Portuguese Parliament (Assembleia da República). The exhibition, being composed by 50 cartoons (the selection of the best among an exhibition organised by the Fundacion General de la Universidad de Alcalá – Comunidade de Madrid), relates the theme of the gender related violence and of the promotion of equality between men and women, through humour at the World level.

453. National and regional exhibitions, besides the already mentioned events, also happened. The awareness to the importance of an inclusive and non-discriminatory society, through the divulgation of the European Year materials, in events such as fairs and exhibitions related to ludic, cultural and gastronomic themes has been promoted. This happened also in conferences and workshops, such as the one related to the 50 years anniversary of the Rome Treaty and directed to all publics. 25 such exhibitions took place, over 10 Districts, for 123 days of exhibit with 83 300 visitors at least.

454. Six thematic colloquies took also place in 2008 on gender, age, sexual orientation, defence, religions and disability, which took place in Lisbon, Porto and Portalegre, which grouped more than 630 persons. Presentations were made which resulted in conclusions. Emphasis was also made on the gender perspective in the armed forces, the multiple discriminations, the multiculturalism and the multireligiosity issues being also discussed.

455. In the framework of the thematic areas of the European Year for Equal Opportunities for All a cycle of movies was organised in cooperation with the Lisbon Cinemateca: Kramer vs. Kramer, of Robert Benton, Babel by Alejandro Gonzalez Inarritu;

Rain Man, by Barry Levinson; Les Roseaux Sauvages by André Téchiné. These films were commented by experts in the various areas. The spectators amounted to 350 persons.

456. The media also defused the anti-discrimination themes. There were Outdoors in cinemas, Metro stations and in organisations such as the Santa Casa da Misericórdia de Lisboa, the Post and the oil stations of Galp. Radio stations produced announcements in 4 national Radios and various regional radios, programs with debates and 60 minutes for equality, distributed in 1 minute per day. 10 programmes which lasted 90 minutes each in the RTP2 Civil Society Programme, counted with the help and advice of CIG. The press also published interviews, opinion articles, reports and announcements. In the internet with inserts and the creation of banners, the CIG also had intervention. Finally the Auchan bags and the leaflets for the promotions contained the logo of European year and the allusive phrase of the year.

457. More than 600 news pieces were published on the AEIOT, 40% registered on line, 30% in the written press and the other 30% were in the radio (20%) and in the television (10%). A page in the internet was also built, permanently updated and addressed to the public entities, the private entities, the NGOs and the public at large: www.igualdades2007.com.pt During the period from January to December 2007, the site was visited by more than 100.000 persons, 445 visits per day having taken place and 57 news having been posted. Also in order to give the possibility of creating a discussion forum for the themes of the various forms of discrimination a blog was created: <http://igualdades2007.blogspot.com> 2699 visits were made and 4732 pages were visited.

458. On the field of innovative studies, one data base was constructed where the themes may be studied and researched, allowing the crossing of the discriminations with multiple approaches. The demands were addressed to 26 universities, to the 15 national polytechnic institutes and to the 52 research centres, this allowing the creation of the data base. 366 research works titles were collected which are now available on line.

459. A Closing Conference was organised for the European year, in articulation with the Portuguese Presidency of the EU, since Portugal assumed the Presidency in the 2nd semester 2007. The Conference happened on 19 and 20 November, at the Centro Cultural de Belém. The formal opening session in the morning of the 19 was presided by Portugal's Prime Minister, Mr. José Socrates and counted with the presence of the Ministers of the Presidency and of Labour and Social Solidarity, on the Portuguese side and of the European Commissions' General Director for Employment, Social Affairs and Equality of Chances.

460. In the diversity of the Programme there are reference speeches, panels with national authorities and civil society organizations representatives, a ministerial round table, panels devoted to the civil society, a message of the youth panel and even, to close, a concert with a Czech Group of Roma hip-hop. The presence at this Conference of 689 persons was aimed at the promotion of an equilibrate participation by all the countries promoting this European Year, the origin of these representations also by virtue of the 6 factors of discrimination as well as an equitable representation by public authorities and civil society.

461. Beside the delivery of the promotional materials of the year for all participants, a quadripartite leaflet reuniting a compilation of the legislative evolution of the 6 discrimination areas comprised in the year in Portugal. This leaflet was also the subject of a specific presentation in one of the 4 thematic workshops.

(d) Legal framework and general policies to eliminate racial discrimination

462. Article 13 of the Constitution of the Portuguese Republic poses the principle of equality and non-discrimination, article 5 of the Administrative Procedure Code states the rule that public authorities or public institutions whether they be national or local are also

forbidden to act with citizens under racial discrimination. A complaint to the Ombudsman, judicial actions are admissible for this kind of violations.⁷⁰

463. Reference must be made to the legal framework formed by the legislation of 1999, 2000 and 2004, which establishes infractions and sanctions of an administrative nature, mentioned in the former reports to the CERD, and the possibility to engage the liability in tort for racially motivated acts as well as to bring to an end any behaviour which would bring prejudice to or which would menace the person.⁷¹ Reference must also be made to the transposition of the EU 2000 Directives related to equality and non-discrimination, the Race Directive being transposed by the Labour Code and Law 18/2004 dated 11th May.⁷²

464. An important change is the new text of article 240 of the Penal Code introduced by the revision⁷³ of the Penal Code,⁷⁴ which now includes in the crime of discrimination based on sex and on sexual orientation.⁷⁵ Another important change is that article 246 of the Penal Code now establishes that an individual convicted for the crime of discrimination (article 240) can be temporarily deprived of his/her active and/or passive electoral capacity.⁷⁶

465. Article 71 of the Penal Code must also be mentioned. It is related to the determination of the measure of the penalty. This determination is made, inside the legally defined limits, depending on the fault of the agent and the needs for prevention. According to para. 2 of article 71 of the Penal Code, in the determination of the measure of the penalty, the Court takes into account every circumstance which, although not being a part of the crime, goes against the agent or for his benefit, namely the sentiments which were expressed while committing the crime and the aims or the motivation which determined it. The judicial decision must expressly mention the reasons of the measure of the penalty. That is similar to a general aggravating circumstance in the case of a racist crime, in the sense that the racist aim shall be taken into account by the judge in each crime such as defamation, while proffering the ruling.

466. In the reference to the new amendments to the Portuguese legislation, mention must be made to the changes to the Civil Procedure Code through Decree-Law 303/2007 dated 24th August, and to the Penal Procedure Code through Law 48/2007 dated 29th August. These changes consecrate the legal review, in *revision*, in order to give execution to a ruling of an international decision body. The relevant provisions are articles 771, al. f and 772, par. 2, al. b of the C.C.P. and 449, par. 1, al. g. of the C.P.P.

⁷⁰ In each case, in the past, in which that could have happened, legality won as is the case of the behaviour of the Mayor of Vila Verde mentioned in the text of the eighth report of Portugal to the Committee on the Elimination of Racial Discrimination (CERD/C/314/Add.1). Lastly, and all affairs of this kind have been mentioned in the reports to that Committee, there has not been any affair of this nature.

⁷¹ Articles 483 and 70 of the Portuguese Civil Code.

⁷² It arises from the change introduced by law 18/2004 dated 11th May that the legal framework, in the administrative domain is first of all formed by Law 18/2004 dated 11th May and, subsidiary, by Law 134/99 dated 31st August and by the general legal regime of the administrative infractions. Therefore Decree-Law 111/2000, dated 4th July, which regulated the 1999 Law is no more in force.

⁷³ The first version of article 240 of the Penal Code on racial discrimination was introduced by the 1995th revision of the Penal Code.

⁷⁴ Introduced in its turn by Law 59/2007 dated 4th September 2007.

⁷⁵ For the text see *infra*.

⁷⁶ On article 246, see Numena, "National Annual Report – Portugal", authored by Bruno Dias, Alexandra Castro, Tiago Farinha, Monica Ribeiro, Edite Rosario, Elisa Silva – October 2007. Numena is an NGO which operates as national focal point for the former European Monitoring Centre on Racism and Xenophobia, now included in the European Fundamental Rights Agency, page 15 par. 5 and quotes.

467. Finally the new Law on Asylum must be referred: a major change occurred in the transition of the administrative to the judicial phase of the proceeding of granting of the Asylum – the judicial review formed against the decision of the Administration in the sense of the rejection of the demand has now suspensive effect, a change which was demanded for years by the National non-governmental associations and by independent experts.⁷⁷ The Law is Law 27/2008, dated 30th June 2008.

468. Other important elements in this legal framework, which may be seen as good practices⁷⁸ are the National Plan of Action for the European Year of Equal Opportunities for All,⁷⁹ the Plan for Immigrant Integration,⁸⁰ the National Plan against Trafficking in Human Beings⁸¹ the new juridical regime of the entry, stay exit and deportation of foreigners in national territory,⁸² the appointment of the ACIDI as coordinator of the European Year of Intercultural Dialogue,⁸³ measures in the Major Options of the Plan for 2008 which include immigrants and ethnic minorities in the sense of their greater integration,⁸⁴ and Law 45/2007 dated 24th August on the right to appeal.⁸⁵

469. The reform of the Law on Portuguese Nationality through Organic Law n. 2/2006 dated 17th of April, is also to be referred to. It has namely for effect as it is the case for the 2nd or 3rd generations, by allowing these citizens to acquire, under certain requirements, the Portuguese nationality, thus reducing the number of immigrants and turning Portugal also in a *Jus Soli* nationality country.

470. On trafficking in human beings, Decree-Law n. 368/2007, dated 5th November is of importance. The victims of trafficking are irregular migrants who also have rights. The victim of trafficking has immediately, once identified as such, a residence permit, since she/he cooperates in the finding of the facts. The victim has also the right to free legal support, as well as social security and medical support.

471. On education and health for non Portuguese citizens who are in this territory there is no children to whom the benefits of public schooling may be refused due to the irregularity situation of her/his parents. The registry of irregular minors is confidential.

472. The General Direction for Health of the Health Ministry issued Circular n. 12/DQS/DMD, dated 07/05/09, which clarifies an orientation followed since 2001, according to which the illegal immigrants who are in Portugal since a time period over 90 days cannot be discriminated in acceding to public health care, although, in general terms, they might have to bear its real costs. Legal immigrants will have the same rights, than national citizens on this matter.

473. Besides the Law related with the extinction of fascist organizations and the prohibition, aside of these of racist organizations by article 46, par. 4 of the Constitution, a constant work is made to discourage racism, racial discrimination and racist organizations. This work also happens in the field of Justice with courts decisions namely those referred to in the Portuguese reports to the Committee on the Elimination of Racial Discrimination.

⁷⁷ Probably in order to guarantee the principle of the effectivity of the review, following jurisprudence of the European Court of Human Rights, namely in the case *Gebremedhin v. France*.

⁷⁸ These practices are defined as good practices by the Numena Report Authors. See Numena, “National Annual Report”, quoted, pages 17–19.

⁷⁹ Numena, “National Annual Report”, *cit.*, page 17.

⁸⁰ Numena, *cit.*, par. 4 page 17.

⁸¹ Numena, *cit.*, par. 5, page. 18.

⁸² Numena, *cit.*, par. 6 page 18.

⁸³ Numena, *cit.*, par. 8 page 19.

⁸⁴ Numena, *cit.*, par. 9, page 19.

⁸⁵ Numena, *cit.* par. 10, page 19.

474. As is mentioned to in the former reports to the Committee on the Elimination of Racial Discrimination, the immigrants associations may become assistants in the penal procedure which involves criminal liability for racist acts. Art. 5 of Law 18/2004 confers these associations a special status, those associations being able to intervene in representation and support of the victims.

(e) **New Penal Code article 240**

475. Not being addressed only to racially motivated acts but also to other grave forms of discrimination, the changes to the text of article 240 of the Penal Code, introduced by Law n. 59/2007, dated 4th September, which enlarge the crime of discrimination to the crime of sexual discrimination, now comprising the crime of gender discrimination as well as the crime of discrimination in reason of the sexual orientation must be mentioned. This article now reads as follows:

“1. Whoever:

(a) Starts or constitutes an organisation, or develops activities of organized propaganda which incite to discrimination, to hate or to violence against a person or a group of persons on the grounds of their race, colour, ethnic or national origin, religion, sex or sexual orientation, or who encourages such discrimination;

or

(b) Takes part in the organisation of the activities mentioned in the previous paragraph or assists them, namely by financing them;

shall be punished with imprisonment from 1 to 8 years.

2. Whoever, in a public meeting, or through a text aimed at divulgation, or through a mass media or an electronic system aimed at divulgation:

(a) Provokes violent acts against a person or a group of persons on the grounds of their race, colour, ethnic or national origin, religion, sex or sexual orientation;

or

(b) Disparages or insults a person or a group of persons on the grounds of their race, colour, ethnic or national origin, religion, sex or sexual orientation, namely through the denial of war crimes or crimes against peace and humanity;

or

(c) Menaces a person or a group of persons on the grounds of their race, colour, ethnic or national origin, religion, sex or sexual orientation aiming at the incitement to racial, religious or sexual discrimination, or at encouraging such discrimination, shall be punished with imprisonment from 6 months to 5 years.”

476. Article 246 of the Penal Code now establishes that any person who is convicted for the crime of article 240 can be temporarily deprived of his active and/or passive electoral capacity.⁸⁶

477. On the prohibition of racist organisations, Portugal remits to its previous reports to the Committee on the Elimination of Racial Discrimination and to the text of article 240, reproduced *supra*.

⁸⁶ See the Numena report, quoted, page 15, par. 5.

(f) People with disabilities

478. Under the Census of 2001, 6.14% of the residents in Portugal suffered from a disability, most of them being aged people. Through available data there is a greater incidence of disability on men rather than on women. However, at 65 years old to older ages, there are more women with disabilities.

479. Like the generality of Portuguese population, people with disabilities have low education levels. The majority of them rests on the levels of “1st cycle of the basic schooling”, or “does not know to write or to read”, category in which lay a majority of women. In 2001, the illiteracy rate of the population with disabilities is higher than the total population (at around 23% and 8.9%).

480. The most part of people with disabilities are inactive persons (71%), and only 29% of them have an economic activity. The main means of living of people with disabilities aged over 15, is their pension (55.2%), which reflects an opposite trend to the trend of the population at large, whose main resources arise from work (52.6%). The high number of people with disabilities at the charge of their family must be registered.

481. Still according to the data of 2001 Census, the unemployment rate within the population with disabilities is around 9.5% as opposed to 6.8% for the general population. It may be concluded that, although there exists a strong investment in specific professional training measures and in labour re-adaptation, it is not yet possible to record an employability rate equal to the rate verified for the population in general.

482. At the legal level, the situation of people with disabilities is monitored, inter alia, by the National Institute for Rehabilitation (INR). This Institute is a public institute which is part of the Ministry of Labour and Social Solidarity and actually under the auspices of the Deputy Secretary of State for Rehabilitation. It has administrative autonomy and its own property. The Deputy Secretary of State for Rehabilitation is in charge of an integrated policy aimed to promote the equal opportunities of all citizens and to fight discrimination against people with disabilities. INR is the national body competent to promote this policy in partnership with other public entities and NGOs. It has for mission to plan, execute and coordinate the national policies aimed to promote the rights of people with disabilities.

483. The National Council for the Rehabilitation and Integration of the People with Disabilities (“Conselho Nacional de Reabilitação e Integração das Pessoas com Deficiência” – CNRIPD), which is a consultative body of the Minister of Labour and Social Solidarity, and provides the Government with information used in deciding on matters related to the definition of the National Rehabilitation Policies. This body supports and includes representatives of all kinds of disabilities as well as social partners and public authorities. It issues opinions and recommendations and presents proposals for measures related to rehabilitation and disability.

484. In legal terms, the equality of the citizens is a fundamental right which is acknowledged by the Constitution of the Portuguese Republic at its art. 13^o, par. 1.

485. Based on the acknowledgement of the dignity, the integrity and the freedom of disabled people, the Portuguese Parliament approved in 2004, Law 38/2004, dated 18th August which sets the general framework of the prevention, habilitation, rehabilitation and participation of the people with disabilities.

486. By virtue of the transversal vision of the policies, the programmes and the measures in benefit of the persons with a disability, and in the sense of the responsabilisation of each ministerial sector, Government approved in 2006, the 1st Plan of Action for the Integration of People with Disabilities or Impairments (PAIPDI 2006–2009), which defines the action lines which must be adopted in the various domains and a functional or inter-organic way which calls for the involvement and the real and effective engagement of every person,

physical or moral, private or public, whether they are integrated in Central Administration, in the Regional Administration or in the Local Administration for their execution. The PAIPDI aims, as a priority, to guarantee and consolidate respect for human rights, promote equal opportunities, combat discrimination and ensure the full social, economic and political participation of all citizens without exception, with special emphasis on combating the discrimination and obstacles faced by people with disabilities. By highlighting the capacities and abilities of people with disabilities and focussing on active policies, PAIPDI is a political instrument for far-reaching cooperation and consultation. It emphasises the social and political participation of people with disabilities and the organisations which represent their rights and those of their families. The Plan is a cross-policy instrument which involves 15 Ministries in its implementation and guarantees the mainstream of disability in public policies with an impact on the quality of life of people with disabilities.

487. In 2007, the National Plan for the Promotion of the Accessibilities, which proceeds to the organization of a series of measures which the XVII Constitutional Government was approved and constitutes an instrument of measures which aim is the improvement of the quality of life of all the citizens and, in special, the exercise of the rights of citizenship of the people with special needs. The objective of The National Plan of Promotion of the Accessibilities is to remove obstacles and barriers faced by the citizens through an integrated and coordinated policy to promote accessibility in Portugal up to 2015. The application of the PNPA considers two phases. For the period up to 2010 the measures and concrete actions are defined, indicating the respective terms of realization and promoters. The actions for the period from 2011 to 2015 will be defined during the second semester of 2010 after a first evaluation on the application of the PNPA. Though the objectives claimed with the application of the PNPA storms to be fitted in these two phases, it was understood to consider important measures and concrete and feasible actions to define, though the difficulty is recognized in planning out to a distance superior to three/four years.

488. Even with these measures, in many spheres of the day-to-day life, this right to equality and non-discrimination is hardly respected, multiple facts and behaviours persist which assume a certain gravity towards citizens with disabilities and the persons suffering from an aggravated risk for their health and which translate violations of the Law and intolerable discriminations.

489. These discriminations are overall verified at the working place, at school, in the limitation on the access to the public and private goods and services, in transportation, in the mobility and in the celebration of contracts and insurances.

490. As a way to bring an end to these situations, Law 46/2006, dated 28th August was published and its purpose is to prevent and forbid discrimination, whether it is direct or indirect, in reason of the disability under all its forms, and to punish the commitment of acts which consist in the violation of a fundamental right or in the refusal or the conditioning of the exercise of every economic, social and cultural or other right by every person on the ground of its disability and aggravated risk for health.

491. It can be concluded that, although these situations of discrimination do not exempt the Legislator to adopt policy and legislative measures which favour the full integration of these citizens, the truth is that they also demand and imply a greater responsabilization of the society and that they imply a different cultural attitude which may warrant the full enjoyment of the human rights and the effective promotion of the equality of chances of disabled persons or persons suffering from an aggravated risk to their health.

492. Actually Portugal is envisaging to ratify the Convention on the Rights of Persons with Disabilities, as well as its Optional Protocol, which form an historic benchmark in this new approach to the rights of these citizens, affirming the universality, the integrity and the

indivisibility of the rights of people with disabilities. The process of ratification is pending before the Portuguese Parliament (Assembleia da República).

(g) Education and teaching

493. The teaching previous to the exams which allow for the conclusion of secondary schooling and for a pupil to apply to the frequency of a university course, is divided in basic schooling and secondary schooling.

494. Basic schooling is composed of 9 years, secondary schooling covers the 10th, 11th and 12th years. The national curriculum of basic schooling⁸⁷ contains a nucleus of essential skills which is articulated around principles and values which are deemed necessary to the personal and social quality of life of each citizen. These are:

- The building and the awareness of personal and social identity
- The participation in civic life in a solidarity, responsible and critical manner
- The respect and valorisation of diversity of people and of groups in what concerns their integration and options
- The development of a sense of aesthetic appreciation of the world
- The development of intellectual curiosity, of taste for knowledge, work and study
- The building of an environmental consciousness leading to the valorisation and the preservation of the cultural and natural heritage
- The valorisation of the rational dimensions of learning and of ethical principles which govern relationship with knowledge and with others

495. In the framework of these principles, at the end of basic schooling, the pupil must be able to:

- Mobilise cultural, scientific and technical knowledge in order to understand reality and to resolve the situations and problems of daily life
- Use in an adequate manner the languages of the different domains, cultural, scientific and technical in order to be able to express himself/herself
- Make an adequate use of Portuguese in order to communicate adequately and to structure a personal thinking
- Make an adequate use of foreign languages in order to communicate in an adequate manner in situations of day-to-day life and to grasp the information
- Adopt personal methods of work and learning, adapted to the desired aims
- To research, select and organise information in order to transform it into a usable knowledge
- To adopt strategies adequate to the resolution of problems and to the taking of decisions
- To realise activities in an autonomous, responsible and creative way
- To cooperate with others in activities and common projects
- To have an harmonious corporal relationship with space, in a personal and interpersonal perspective, promoting health and quality of life

⁸⁷ See the website of the Ministry of Education at: <http://www.dgicd.min-edu.pt>.

496. These principles and these competences have a necessary human rights dimension: this dimension is contained in them, and is thus not separable from them.

497. Namely in what concerns the study of History, the profile of the student who will have competences in the framework of these principles and of the knowledge that he/she has to acquire and possess, is that of the person who manifests respect for other Peoples and Cultures.

498. Finally in the framework of basic schooling, children have civic training courses every year.⁸⁸

499. Another issue which deserves to be underlined is that of the organisation of school books. Law 47/2006 dated 28 August defines the regime of evaluation, of certification and of adoption of school manuals, as well as of other teaching resources of basic schooling and of secondary schooling, as well as the principles and objectives to which must obey socio-educative support relating to the acquisition and the leasing of school books. Article 11 of this law foresees that the evaluation commissions of school manuals control their content before their adoption. Paragraph 2 of this article reads as follows: "Evaluation commissions take also in account the constitutional principles and values, namely those of non-discrimination and gender equality." And paragraph 3: "The evaluation commissions equally take into account the social and cultural diversity of the environment of the pupils to whom the scholar books are prepared, as well as to the plurality of the educational projects of the schools."

500. In the field of Human rights education, it is also possible to refer that the Portuguese Government initiated in 1998 a vast campaign which began by the commemoration of the 50th anniversary of the Universal Declaration of Human Rights⁸⁹ and continued until 2004 in the framework of the United Nations Decade for Human Rights Education (1995–2004). A remnant fund of the publications issued in this context still exists, this campaign continuing under the form of the translation of the most important texts issued by international organisations, in particular the United Nations. These texts are, once finished, also published in electronic format at the web site: [www.gddc.pt](http://www.gddc.pt/direitos-humanos/pubs-brochuras-docs-dh.html) (<http://www.gddc.pt/direitos-humanos/pubs-brochuras-docs-dh.html>).

501. Under the World Programme for Human Rights Education the Portuguese Direcção-Geral da Inovação e do Desenvolvimento Curricular is now the national focal point.

⁸⁸ In this context mention must be made to the contest "*a minha escola contra a discriminacao*" (my school against discrimination) through which the children of the schools elaborate works on the school and discrimination and receive awards according to these works. This contest is launched by the ACIDI-cfr. www.acidi.gov.pt.

⁸⁹ The outdoors of this campaign are at the screen of the web site of the Office of Documentation and Comparative Law of the Attorney-General's Office at www.gddc.pt.