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HUMAN RIGHTS COMMITTEE
Seventy-eighth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Portugal

1. The Human Rights Committee considered the third periodic report of Portugal (CCPR/C/PRT/2002/3) at its 2110th and 2111th meetings, held on 21 July 2003 (see CCPR/C/SR.2110 and 2111). It adopted the following concluding observations at its 2126th meeting (CCPR/C/SR.2126), held on 31 July 2003.

A. Introduction

2. The Committee welcomes the submission of the third periodic report of Portugal and the opportunity to resume the dialogue with the State party after an interval of more than 10 years. In the view of the Committee, the failure to submit a report over such a long period constitutes an obstacle to in-depth consideration of the measures that require to be taken to ensure satisfactory implementation of the Covenant. The Committee invites the State party to submit its reports henceforth in accordance with the reporting intervals established by the Committee.

3. The Committee welcomes the information provided in the report, as well as the oral and written information provided by the delegation. It regrets, however, the insufficient information on the practical implementation of

the Covenant and on factors and difficulties preventing or impeding such implementation.

B. Positive aspects

4. The Committee appreciates the creation, in 1995, of the General Inspectorate of Internal Administration (IGAI) within the Ministry of the Interior, with a mandate to open inquiries into reports of police abuse. It also welcomes the creation of the General Inspectorate of Justice Services in 2000, as well as of the Office of Ombudsman.
5. The Committee welcomes the decrease in prison overpopulation achieved in recent years, as well as the measures adopted to improve the situation of prisoners.
6. The Committee welcomes the granting to foreigners of the rights to vote and to be elected in local elections, as well as the recognition of broader political rights for citizens of Portuguese-speaking countries, under condition of reciprocity.
7. The Committee notes with satisfaction that the State party has translated into Portuguese and disseminated numerous United Nations documents relating to human rights.

C. Principal subjects of concern and recommendations

8. The Committee is concerned about reported cases of disproportionate use of force and ill-treatment by the police, occurring particularly at the time of arrest and during police custody, and resulting, in some instances, in the death of the victims. Police violence against persons belonging to ethnic minorities appears to be recurrent. The Committee is equally concerned about the reported failure of the judicial and administrative systems to deal promptly and effectively with such cases, particularly those relating to the deaths of several persons in 2000 and 2001, allegedly caused by police officers (articles 2, 6, 7 and 26 of the Covenant):

(a) The State party should end police violence without delay. It should increase its efforts to ensure that education on the prohibition of torture and ill-treatment, as well as sensitization on issues of racial discrimination, are included in the training of law enforcement personnel. Efforts should also be made to recruit members of minority groups into the police;

(b) The State party should ensure that all alleged cases of torture, ill-treatment and disproportionate use of force by police officers are fully and promptly investigated, that those found guilty are punished, and that compensation is provided to the victims or their families. To this end, a police oversight service, independent from the Ministry of the Interior, should be created. The State party is requested to provide the Committee with detailed statistical data on complaints relating to cases of torture, ill-treatment and disproportionate use of force by the police and their outcome, disaggregated by national and ethnic origin.

9. The Committee notes with concern that Portuguese regulations on police use of firearms, as described in the periodic report, are not compatible with the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials. It is concerned that several persons have been shot dead by the police in recent years, and that training in the use of firearms is reported to be insufficient (articles 6 and 7 of the Covenant).

The State party should ensure that principles 9, 14 and 16 of the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials, relating to legitimate cases of use of firearms, is fully integrated into Portuguese law and implemented in practice, and that adequate training is effectively conducted.

10. The Committee is concerned about reported cases of ill-treatment and abuse of authority by prison staff and

of violence among prisoners which, in some instances, have led to the death of the victims (articles 6, 7 and 10 of the Covenant):

(a) The State party should increase its efforts towards the elimination of violence among prisoners and ill-treatment by prison staff, in particular through adequate training of staff and timely prosecution of offences;

(b) The State party should keep the Committee informed about the outcome of the proceedings conducted as a result of the violent death of two prisoners in October 2001 in the prison in Vale de Judeus. Responses to allegations of ill-treatment by prison staff in the prisons of Custóias and of Linhó (Sintra) are also requested;

(c) More comprehensive information on the status, mandate and achievements of the various agencies supervising prisons and dealing with complaints from detainees should be provided to the Committee.

11. The Committee is concerned that, despite considerable improvement, overpopulation in prisons still amounts to 22 per cent, that access to health care remains problematic, and that pre-trial and convicted detainees are not always kept separately in practice (articles 7 and 10 of the Covenant).

The State party should ensure that all persons deprived of liberty are treated with humanity and with respect for their inherent dignity as human beings. It should intensify its efforts to reduce the overpopulation in prisons and ensure that pre-trial and convicted detainees are kept separately. Appropriate and timely medical care must be available to all detainees.

12. The Committee takes note that asylum-seekers whose applications are deemed inadmissible (e.g. on the basis of the exclusion clauses of article 1 F of the 1951 Convention relating to the Status of Refugees or because they have missed the eight-day deadline for submitting their applications) are not deported to countries where there is armed conflict or systematic violations of human rights. However, it remains concerned that applicable domestic law does not provide effective remedies against forcible return in violation of the State party's obligation under article 7 of the Covenant.

The State party should ensure that persons whose applications for asylum are declared inadmissible are not forcibly returned to countries where there are substantial grounds for believing that they would be in danger of being subjected to arbitrary deprivation of life or to torture or ill-treatment, and to provide, in this regard, effective remedies in domestic law.

13. The Committee expresses concern about reported cases of police failure to register arrests and detentions (article 9 of the Covenant).

The State party should ensure that all arrests and detentions are registered, in particular through the improvement of its supervision system and the training of police officers.

14. The Committee is concerned that a person may be held in pre-trial detention for a period of 6 to 12 months before charges are brought and that such detention in exceptional cases can last for up to 4 years. It further notes with concern that, in spite of the exceptional character of pre-trial detention, as stated in the Code of Criminal Procedure, almost one third of the persons detained in Portugal are in pre-trial detention (articles 9 and 14 of the Covenant).

The State party should amend its legislation in order to ensure that charges are brought against persons in pre-trial preventive detention and that all persons are tried within a reasonable time. It should ensure that in practice magistrates only pronounce preventive detention as a last resort.

15. The Committee notes with concern that many of the provisions relating to terrorism in the Penal Code and the Code of Penal Procedure relate to exceptional situations which may result in violations of articles 9, 15 and 17 of the Covenant.

The State party should ensure that measures taken against terrorism do not infringe the provisions of the Covenant and that exceptional provisions are not abused by State officials.

16. The Committee notes with concern that detainees subject to solitary confinement as a disciplinary measure may only lodge an appeal if the period of confinement exceeds eight days. The Committee is also concerned that during solitary confinement the daily monitoring of detainees by fully qualified medical staff is not guaranteed (article 10 of the Covenant).

The State party should ensure the right of detainees to an effective remedy, with suspensive effect, against all disciplinary measures of solitary confinement and should guarantee that detainees are monitored daily by fully qualified medical staff during solitary confinement.

17. The Committee notes that an accessory penalty of expulsion may not be imposed on a resident alien when the person concerned was born and lives in Portugal, or exercises parental authority over under-age children residing in Portugal, or has been in Portugal since he/she was less than 10 years old. The Committee is concerned, however, that those limitations may not protect the family life in all cases and that non-resident aliens do not benefit from such guarantees (articles 17 and 26 of the Covenant).

The State party should amend its legislation in order to ensure that the family life of resident and non-resident aliens sentenced to an accessory penalty of expulsion is fully protected.

18. The Committee is concerned that lawyers and medical doctors may be required to give evidence, despite their duty of confidentiality, in cases which are described in very broad terms by the Code of Criminal Procedure (article 17 of the Covenant).

The State party should amend its legislation so that it specifies the precise circumstances in which limitations on the professional privilege of lawyers and medical doctors are imposed.

19. The Committee notes with concern that, despite numerous protective legislative measures, the proportion of juvenile workers has increased in Portugal since 1998 and that no statistics have been gathered regarding the worst forms of child labour (article 24 of the Covenant).

The State party should intensify its efforts to eliminate child labour, conduct studies on the existence of the worst forms of child labour and strengthen the effectiveness of its supervisory system in this area. In its next periodic report, the State party should provide the Committee with detailed information regarding the practical application of article 24 of the Covenant, including on criminal and administrative sanctions which have been pronounced.

20. The Committee is concerned that, despite extensive positive measures adopted by the State party, the Roma continue to suffer from prejudice and discrimination, particularly with regard to access to housing, employment and social services, and that the State party was unable to submit detailed information, including statistical information, on the situation of these communities as well as on the results achieved by the institutions responsible for the advancement and welfare of the Roma (articles 26 and 27 of the Covenant):

(a) The State party should intensify its efforts to integrate Roma communities in Portugal in a manner that is respectful of their cultural identity, in particular through the adoption of positive action with regard to housing, employment, education and social services;

(b) The State party should submit detailed information to the Committee about the situation and difficulties encountered by the Roma people, as well as on the results achieved by the High Commissioner for Immigration and Ethnic Minorities, the Commission for Equality and against Racial Discrimination and the Working Group for the Equality and Integration of Roma. Information relating to complaints filed with those institutions by members of ethnic minorities in Portugal and their outcome should also be provided.

21. The Committee regrets that insufficient information was provided about the activities and the achievements of the Ombudsman (article 2 of the Covenant).

The State party should submit more comprehensive information about the Ombudsman and provide the Committee with copies of the Ombudsman's annual report.

22. The Committee sets 1 August 2008 as the date of submission of Portugal's fourth periodic report. It requests that the text of the State party's third periodic report and the present concluding observations be published and widely disseminated throughout the country, and that the fourth periodic report be brought to the attention of non-

governmental organizations working in Portugal.

23. In accordance with rule 70, paragraph 5, of the Committee's rules of procedure, the State party should provide information within one year on its response to the Committee's recommendations. The Committee requests the State party to provide information in its next report on the other recommendations made and on the implementation of the Covenant as a whole.



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