



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

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**WRITTEN REPLIES OF THE GOVERNMENT OF PORTUGAL* TO THE
LIST OF ISSUES (CAT/C/PRT/Q/4) TO BE CONSIDERED DURING THE
EXAMINATION OF THE FOURTH PERIODIC REPORT OF PORTUGAL
(CAT/C/67/Add.6)**

[7 September 2007]

* 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.

Article 2

Question 1

Please indicate whether the Police Department Code of Ethics, adopted in 2002 by officials of the National Republican Guard (GNR) and the Public Security Police (PSP), explicitly prohibits torture and cruel, inhuman and degrading treatment.

1. Yes. Article 3 (*Respect for the fundamental rights of the human person*), paragraph 2, of the Code of Ethics of the Police Department, published in the Official Gazette, series I, B, No. 50, dated 28 February 2002, page 1669,¹ reads as follows: “in particular, [the members of the police forces] have the duty to refrain in all circumstances from inflicting, instigating or tolerating cruel, inhuman or degrading acts”.

Article 3

Question 2

Please provide detailed information on Portuguese legislation on foreigners. In particular, please explain whether applicable domestic law provides an effective remedy against forcible return. In addition, please indicate whether an appeal made during the consideration of an asylum request has a suspensive effect.

2. The Constitution of the Portuguese Republic establishes the principle of equality between Portuguese citizens and citizens of other countries. The only exclusions from that equality concern certain political rights, the exercise of public functions other than those of an exclusively technical nature and the rights and duties reserved exclusively, under the Constitution and the law, to Portuguese citizens.

3. Citizens of the European Union residing in Portugal may be elected to, and elect, members of, the European Parliament and take part in local elections.

4. Citizens of PALOP countries (African countries using Portuguese as an official language) may also, subject to the application of the principle of reciprocity, hold public and political offices normally reserved for Portuguese citizens with the exceptions of the offices of the President of the Republic, President of the Parliament, Prime Minister, President of the Supreme Courts and service in the armed forces and the diplomatic corps.

5. Any resident foreign citizen may elect, and be elected, to the organs of local authority of the collectivity in the area in which he or she resides.

¹ See <http://dre.pt/pdfgratis/2002/02/050B00.pdf>.

6. In the case of citizens of the European Union, Act No. 37/2006 of 9 August, transposing Directive 2004/38 EC of the European Parliament and the Council, confers on those citizens the right to reside in the national territory for a period of three months without conditions and formalities other than the possession of a valid identity card or passport: that right is extended to members of their families accompanying them provided that those persons are also in possession of a valid identity document. With effect from the moment at which the three-month period is exceeded, each such citizen must be engaged in an occupational activity, in a subordinate or self-employed capacity; have means sufficient for himself and the members of the family; have health insurance when that is required, by the State of his nationality, of Portuguese citizens; or be enrolled in an officially recognized public or private educational establishment and have adequate means of subsistence.

7. In such cases the citizen must within 30 days register at the council offices of the area in which he resides. The right of permanent residence is acquired after five years save in the event of absence from the national territory exceeding two years in duration.

8. Citizens of PALOP countries are subject to the general regime laid down by Act No. 23/2007 (see below) but are protected by bilateral agreements concluded between Portugal and their countries of origin.² Mention may be made, first of all, of the treaties of friendship and cooperation, which generally lay down the main principles providing the basis for equality between Portuguese citizens and the citizens of the States in question, and also the bilateral agreements on the subjects of public administration, consular protection or social security.

9. As regards citizens of other countries, Act No. 23/2007 of 4 July repealed Decree-Law No. 244/98 of 8 August, which hitherto regulated in general terms “the entry, presence, stay and removal of aliens in Portuguese territory”. The new Act is not applicable to citizens of the European Union, the European Economic Area or any other State with which the European Union has concluded an agreement concerning free movement of persons. Such persons must be bearers of a valid travel document with a period of validity exceeding the duration of their stay (except in the case of the return of a foreign citizen resident in Portugal (art. 9)): they must have means of subsistence sufficient for their stay and, where appropriate, for their onward journey (art. 11) or present a declaration from a resident to the effect that that resident undertakes to provide them with means of subsistence (art. 12). They must not be listed as having been refused entry in the Schengen Information System (art. 32.1 b) or in the integrated Schengen information system (art. 32, 1 c). They must not constitute a danger or a threat to public order, national security, public health or the international relations of member States of the European Union and of States in which the Convention implementing the Schengen Agreement applies (art. 32, 1 d).

10. If these conditions are not met, the alien is not admitted into national territory, and the transporter is required to return him or her as soon as possible to the point at which the person concerned began to use that means of transport. However, a person may not be refused admission if he or she was born in Portugal or has minor Portuguese children dependent on him.

² See <http://www.gddc.pt/siii/temas.asp>.

11. Decisions to refuse admission lie within the competence of the Aliens and Border Department (SEF). The person concerned and the transporter are heard and may lodge an appeal with the administrative tribunals. An appeal does not have a suspensive effect.

12. Requests for asylum are governed by Act No. 15/98 of 26 March and Act No. 20/2006 of 23 June (transposing Council Directive 2003/9/EC of 27 January). Final decisions are taken by the Minister of the Interior (Act No. 20/2006, art. 24, 3). If a request for asylum is rejected, an appeal may be addressed to the Administrative and Fiscal Tribunal (art. 24, 1). Such appeals have suspensive effect.

Question 3

Please furnish information on the treatment of persons detained under legislation on foreigners and provide a complete list of the places where such persons are held. Please also explain what measures, if any, have been taken to isolate such persons.

13. Citizens detained under the legislation concerning foreigners have the right to:

(a) The assistance of a lawyer during the whole of the expulsion proceedings and the period during which they are held in places of detention;

(b) Written information in their mother tongue or in a language they understand;

(c) An interpreter towards their language of origin, or a language they understand, during every phase of proceedings;

(d) Visits, medical treatment and assistance and help from social services;

(e) The availability of cultural mediators for support on the religious plane and assistance in their dealings with the SEP.

14. The detention centres under the supervision of the SEP are:

(a) The CIT (temporary installation centre) in the Santo Antonio housing unit (Decree-Law No. 44/2006 of 24/02) in Porto. It is designed for foreign citizens and stateless persons who are the objects of a judicial or administrative decision to expel them from the national territory;

(b) EECITs (premises equivalent to the CIT). These are located at the frontier posts at Porto, Lisbon, Faro, Funchal and Ponta Delgada. They are destined for persons who have been refused admission into the national territory and/or request asylum at the frontier.

15. It must also be mentioned that there are secure cells included in the premises for normal cells in the places of detention. During periods of detention in secure cells medical and social support and food are provided and personal hygiene is attended to in appropriate premises.

Question 4

What guarantees exist for foreigners who are not admitted into Portuguese territory? In particular, how are such persons informed, in a language that they can understand, of the reasons for this measure, and of their right to be heard and to have the decision reviewed by an appropriate authority? Please indicate the maximum length of detention for persons arrested under Portugal's legislation on foreigners.

16. During the proceedings culminating in the acceptance of the foreigner, or his expulsion from Portuguese territory, various guarantees are accorded to him so that he can keep fully informed of the trial proceedings and his rights. Article 38 of Act No. 23/2007 of 4 July entitles him to have knowledge of relevant information concerning his trial “*in a language which he can presumably understand*”. This is the only provision mentioning this right. However, article 40, concerning the rights of a foreigner during his stay in the international zone of the port or airport, or in a temporary installation centre, accords him not only the assistance of an interpreter but also the possibility of contacting the diplomatic or consular representatives of his country. In addition, in all cases where a hearing of the person concerned takes place, the fact of the hearing implies the presence of an interpreter. The same applies in the cases referred to in articles 38; 108; 4; 148; 154; and 165.

17. Finally, it should be mentioned that when, under articles such as articles 156, 158, 2 or 190, it is determined that criminal proceedings are subsidiarily applicable to proceedings concerning the judicial expulsion of foreigners, article 92, 2 of the Code of Criminal Procedure, which requires the presence of an interpreter when the person concerned does not have mastery of the Portuguese language, may validly be invoked.

18. In situations where detention of a foreigner pending his possible expulsion is necessary there are restrictive guarantees fixing the maximum period during which the foreigner may be detained. These guarantees are to be found in article 27 of the Constitution, articles 3 and 9 of the UDHR, article 9 of the PICPR or article 5 of the ECHR. Thus the period of detention may not exceed what is reasonable.

19. Under the terms of Act No. 23/2007 of 4 July a foreigner in this situation may be detained and placed in a temporary installation centre as a “coercive measure” (art. 142), which exists only in proceedings of this kind. In such cases the period of detention may not exceed 60 days (art. 146, 3).

20. However, there are other cases in which a foreigner liable to expulsion from the national territory may be detained. The first case is that where the foreigner is detained by the police authorities for having entered Portuguese territory illegally; he must be brought within 48 hours of his detention before a judge in a petty offences court (or, where appropriate, a court of first instance) for official sanction of the detention and, where appropriate, the application of a coercive measure (art. 146, 1).

21. The second case arises when the transporter is unable to re-embark the foreigner within a short time (48 hours). In such cases the person to be expelled is sent to a temporary installation

centre or equivalent premises (art. 41). There are no provisions specifically stating the period during which the person may be detained in such cases. However, the detention must be kept to the shortest duration possible (art. 41).

22. This question overlaps with point 3: reference is made to that point for any information not provided here.

Question 5

Please indicate if any complaints have been received since 2000 concerning acts of torture and cruel, inhuman or degrading treatment, including those resulting in unintentional homicide, committed during extradition, refoulement or expulsion procedures. If so, please provide statistics and indicate what types of injuries the complainants sustained. What has been the outcome of the complaints in terms of prosecutions, sanctions, and compensation for the victims? Please give specific examples.

23. There is no data on this point.

Question 6

Please indicate in what cases Portugal may request diplomatic assurances from a third State to which it plans to extradite, return or expel an individual. Please also provide examples of cases in which the authorities were not able to extradite, return or expel individuals because there was a risk that they might be tortured. What information served as the basis for taking such decisions?

24. As a State party to the United Nations Convention against Torture, Portugal is bound to comply with the obligation of non-return (non-refoulement) laid down in article 3 of that Convention. This obligation is reflected in various provisions of domestic legislation, namely article 143, 1 of Act No. 23/2007 of 4 July, which provides that expulsion may not take place to any country in which the foreign citizen may be prosecuted on grounds which, under the terms of the law, justify the granting of the right of asylum, or in which he may be subjected to torture or cruel, inhuman or degrading treatment within the meaning of article 3 of the European Convention on Human Rights; article 6 (a) of Act No. 144/99 of 31 August, under which a request for international judicial cooperation is refused, inter alia, when the trial proceedings do not satisfy or respect the requirements of the European Convention on Human Rights or other relevant international instruments on the subject ratified by Portugal; and article 25 of the Constitution of the Portuguese Republic, which states that “no person may be subjected to torture or to cruel, degrading or inhuman punishments”.³

³ The subject of diplomatic guarantees of a nature to be requested by Portugal in this area is a matter for the Ministry of Justice, which formulates and decides upon such requests in the context of requests for extradition - under the terms of Act No. 144/99 of 31 August as successively amended by Act No. 104/2001 and Act No. 48/2003, which regulate international judicial cooperation in criminal matters - and for the Ministry of Foreign Affairs, which handles them.

25. As regards asylum itself, the Act concerning asylum provides (in art. 5, para. 1) that the granting of asylum debars the continuation of any request for extradition from the requesting State based on the facts on which the granting of asylum is based. Paragraph 2 of the same article stipulates that “the final decision on any pending proceedings for the extradition of the applicant shall be suspended for as long as the asylum procedure is under consideration during either the judicial or the administrative phase”.

26. This correspondence between the provisions of the Convention and the provisions of similar tenor resulting from the work of the Portuguese legislature having been established, we must now consider whether the concepts of torture are in harmony with one another. Article 243 of the Criminal Code, which defines torture as cruel, degrading or inhuman treatment, considering it as an act consisting of the infliction of severe physical or psychological suffering or grave physical or psychological fatigue, or of the use of chemical products, drugs or other natural or artificial substances, with the intention of disrupting the capacity of determination, or the free expression of the will, of the victim, corresponds fairly precisely, notwithstanding the difference of terminology, to the definition of torture contained in article 1 of the United Nations Convention against Torture, specifically because those acts are committed by an official of the State; because they give rise to severe suffering; and on account of their purpose, and specifically that of bringing pressure to bear on the victim with the aim of obtaining information from him or imposing a course of action on him.

Question 7

Please provide data, disaggregated by age, sex and nationality, for 2004, 2005 and 2006 concerning:

- (a) The number of asylum requests registered;*
- (b) The number of requests granted;*
- (c) The number of applicants whose requests were granted because they had been tortured or because they might be tortured if they were returned to their country of origin;*
- (d) The number of forcible deportations or expulsions (please indicate how many of them involved rejected asylum-seekers);*
- (e) The countries to which these persons were expelled.*

27. Number of asylum requests: 2004: 113; 2005: 113; 2006: 129.

28. Number of requests granted: 2004: 12; 2005: 23; 2006: 25.

29. In all the asylum requests received during the period 2004-2006, a mere reference to torture suffered or the possibility of being tortured has not by itself given rise to acceptance of the request; the matter has been raised only in some individual cases. In such cases the possibility has been carefully considered, and if it is considered credible it has had a positive influence on the decision on whether to accept the asylum request.

30. Numbers of expulsions from the national territory: 2004: 514; 2005: 784; 2006: 919.
31. Mostly to the countries of origin.

Question 8

Please provide information on the number of cases, if any, considered by the European Court of Human Rights, concerning the expulsion, return or extradition of foreigners from Portugal.

32. There are no cases before the European Court of Human Rights against Portugal concerning the expulsion, removal or expulsion of foreigners from Portugal. Moreover, there have never been any in the past. A list of the decisions of the European Court of Human Rights concerning Portugal, updated to the preceding month, may be consulted on the page of the Documentation and Comparative Law Unit of the Office of the Attorney General of the Republic at the following address: <http://www.gddc.pt/direitos-humanos/portugal-dh/acordaos-tedh.html>.

Article 4

Question 9

Please indicate the number and nature of cases in which the provisions of criminal legislation concerning such crimes as attempted torture have been applied since 2000. Please also indicate the outcome of the consideration of such cases, the punishment imposed or the reasons for the acquittal decision.

33. In response to a circular from the Attorney General of the Republic, the Office of the Attorney General has been compiling a list of crimes of which public officials are suspected. The types of crimes reported⁴ are: abuse of authority, threats, coercion, corruption, obtaining a statement by extortion (one case reported in 2001), homicide through negligence, wilful homicide, insults, deliberate impairment of physical integrity, other crimes, illegal detention, fraudulent use (or non-use) of criminal procedures. The total numbers of reports received were: 749 in 2000, 783 in 2001, 895 in 2002, 934 in 2003, 739 in 2004 and 543 in 2005. In terms of procedural steps, out of 551 current cases under investigation in 2000 there were 28 acquittals and 40 sentencings; in 2001, out of 593 current cases there were 13 acquittals and 26 sentencings; in 2002, out of 708 cases, 14 ended in acquittals and 30 in sentencings; in 2003, out of 733 current cases there were 3 acquittals and 15 sentencings; in 2004, out of 577 trials proceeding, there were 6 sentencings; and in 2005, out of 450 cases, there were 2 sentencings.⁵

⁴ Here the word “reported” refers to facts reported and not to crimes actually committed, which can only be established or disproved by investigation or court judgement.

⁵ The Public Prosecutor’s Office only has processed figures up to 2005. “Cases” are proceedings under way irrespective of their years of origin or of conclusion. It is important to note that each year there are x acquittals and y sentencings for the crimes mentioned, proceedings in respect of which were begun following their being reported.

Article 10

Question 10

Please provide updated information on the instruction and training provided for law enforcement officers and other public officials with respect to human rights, in particular the treatment of prisoners and measures to prevent torture and other cruel, inhuman or degrading treatment. Please specify whether such instruction and training includes information on the Convention. How and by whom are such training and instruction programmes monitored and evaluated?

34. The commission of excesses or abuses by prison staff is a matter of continuous concern for the responsible officials of the Directorate-General of Prison Services, who take both preventive and repressive measures in this area. Particular importance is attached to the training of prison staff, who are an essential instrument in the promotion of satisfactory relations with the prison population.

35. The content of training for guards has been strengthened, particularly in the areas of interpersonal relations, ethics, psychology and human rights.

36. A programme concerning the international instruments for the protection and defence of human rights has been introduced as part of the course relating to the study of measures involving deprivation of liberty. It relates specifically to the United Nations Convention against Torture, the European Convention for the Prevention of Torture and the powers and activities developed by the committees established within the framework of the conventions referred to.

37. Individual judges and members of non-governmental organizations (such as the Bar Commission on Human Rights) are invited to participate in training activities concerning human rights in recognition of the positive contribution their experience will enable them to provide.

38. As regards the SEF, training for investigative and inspection functions within the Service includes the subject of human rights and the instruments establishing them, and especially the Universal Declaration of Human Rights and the European Convention on Human Rights; the subject is included in the discipline of constitutional law. In fact, the catalogue of fundamental rights enshrined in the Portuguese Constitution embraces all the rights laid down in these international instruments. At a more practical level human rights are also dealt with in the discipline of police techniques.

Question 11

Please indicate whether there are specific programmes to train the medical personnel who are assigned to identify and document cases of torture and assist in the rehabilitation of victims.

39. See reply to question 23. The two questions overlap. Training in forensic medicine should enable doctors to verify a situation in which an act of torture may have been perpetrated and, where appropriate, to report that situation. The treatment and rehabilitation of victims take place from then onwards.

Articles 11 and 16

Question 12

Please provide information on legislation and practice concerning:

- (a) The length of custody from the moment the person is arrested until he or she is brought before a judge;*
- (b) The registration of a person from the moment of his or her arrest until he or she is brought before a judge;*
- (c) The circumstances in which incommunicado detention may be ordered, the authorities competent to order it and the maximum length of such detention;*
- (d) The obligation of the public prosecutor to order, on his or her motion or at the request of the detainee, a forensic examination in cases where a detainee alleges to have been subjected to ill-treatment between the time of his or her arrest and his or her appearance before the judicial authority.*

40. Portugal considers two types of cases under the heading of “custody”: “detention” and [forcible] “removal to a police establishment for identification purposes”. The duration of “detention” is fixed by law (article 254 of the Code of Criminal Procedure). The maximum length of detention⁶ is 48 or 24 hours, according to the case, namely:

- (a) Where the detainee is to be presented for summary judgement or to be brought before the competent judge for initial judicial interrogation or for the application or execution of a coercive measure, the maximum length of detention is 48 hours;
- (b) Where the purpose is to ensure the presence of the detainee before the judicial authority for a procedural act, the maximum period is 24 hours.

41. In any case of a “detention” undertaken by a police entity of any kind whatsoever, the latter must immediately report the matter to the judge or the Public Prosecutor’s Office, according to the case.

42. The length of custody in a police establishment for coercive identification purposes is also fixed by law (CPP, article 250, and Act No. 5/95 of 21 February, which renders the bearing of an identity document compulsory: with the wording of Act No. 49/98 of 11 August). Here too the periods fixed are maxima, namely six hours under the procedure governed by article 250 of the CPP and two hours for the procedure governed by Act No. 5/95.

43. With regard to the registration of a detainee between the moment of arrest and that of appearance before a judge, under the terms of the Regulations concerning the Material

⁶ The length of detention is that elapsing between the time of being taken into custody and that of appearing before the judge.

Conditions of Custody in Prison Establishments, approved by Order No. 8684/99 (2nd series) of the Minister of the Interior, DR II, No. 102, of 3 May 1999, the following specific items must be kept on hand in all prison establishments:

- (a) A register of detainees;
- (b) An individual form for each detainee.

44. Whenever a citizen enters an establishment as a detainee the register and a form are always completed as follows.

45. In the register: the identity of the detainee, the date and time of entry into custody, the place of detention, the identities of the officials/police officers who took part in the act of detention, identification of the fact which gave rise to the detention and the circumstances which gave it a legal basis.

46. On the form: all circumstances and measures concerning the detainee (and specifically the time and cause of deprivation of liberty), the moment at which the detainee is informed of his or her rights, signs of injuries, contacts with family members, friends or a lawyer, incidents occurring during detention and the times of presentation before the judicial authority and of release. The form is signed by the police officers involved and the detainee.

47. The law identifies failure on the part of the police officers to comply with the duty of registration as a fault calling for disciplinary measures.

48. Paragraphs (a) and (b) of question 12 call for comments of a practical nature. The Inspectorate-General of Internal Administration (IGAI) of the Ministry of the Interior has as its primary task the defence of the fundamental rights of citizens who come into contact with the police. To that end it systematically conducts unannounced inspections on any day of the week and at any time of day or night in all the police stations of the National Republican Guard, the Public Security Police and the Aliens and Border Department in continental Portugal or in the Islands (Azores and Madeira).

49. The specific aim of these visits is to verify in the field compliance with the laws and regulations concerning the conditions of detainees in police stations, in particular to verify if there are detainees present and, if so, to talk with them to verify their situations, to ensure that data has been properly recorded in the register of detainees, the individual detainee form and the register of identities and to see that the duty of reporting detentions to the judicial authorities (judge or public prosecutor's office) has been complied with.

50. From these verification measures concerning the treatment of complaints and the searches for information (particularly analysis of the Press) which the IGAI systematically undertakes⁷ it may be concluded that there have been no violations or failures to carry out the legal obligations described, particularly as regards contact with families, trustworthy friends, lawyers and doctors.

⁷ See appended the annual reports of the IGAI concerning 2004 and 2005, in which the results of the inspection measures are reported on in detail.

Inspection measures also serve to verify that the judge or the competent magistrate in the public prosecutor's office have been informed by fax of detentions within a period not usually exceeding two hours (the time needed to prepare the documentation concerning the detention).

51. In IGAI's report on activities for the year 2004 it is stated that during that year 116 police establishments (in particular police posts and stations) were inspected. "No violations of the fundamental rights of citizens, in particular those of detainees or persons brought to a police post or station for the purpose of carrying out statutory procedures, were detected, even though in certain cases there were detainees contacted by members of the inspection team (situations which also arose during measures carried out exclusively during the night)." The report goes on to say: "An improvement has been observed in the proceedings relating to entries in registers and statutory communications" (p. 17).

52. In IGAI's report on activities for the year 2005 it is stated that during that year 156 police establishments (in particular police posts and stations) were inspected. "No violations of the fundamental rights of citizens, in particular those of detainees or persons brought to a police post or station for the purpose of carrying out statutory procedures, were detected. In certain cases there were detainees contacted by members of the inspection team (situations which also arose during measures carried out exclusively during the night)" (p. 34). The report continues: "Some shortcomings of a certain degree of seriousness were observed regarding entries in books and registers (detentions not recorded in the appropriate register) and statutory communications (absence of notifications of the public prosecutor's office)" (p. 35).

53. IGAI's report on its activities in 2006 states that in that year 148 police establishments (posts and stations) were inspected. The findings of those inspections are described in detail in the report (pp. 44-56). No cases of violations of the fundamental rights of citizens, in particular those of detainees or persons brought to police posts and stations for the performance of statutory procedures, were recorded.

54. In Portuguese legislation *incommunicado* detention is not permitted in any circumstances. This is stipulated in articles 255-258 of the CPP, which govern detention in cases of *flagrante delicto* and *non-flagrante delicto* respectively, and article 259, which lays down the obligation of notification of detentions to the judicial authorities, while article 220 of the CPP and article 31 of the Constitution (CRP) provide for the institution of *habeas corpus* in all situations of illicit detention.

55. The possibility of maintaining a detainee *incommunicado* exists, but only in a very small number of cases. Here reference is made to articles 210, 2 (a) and 211 of Decree-Law No. 265/79, which states that "on the order of the competent authority and in accordance with the terms of the Code of Criminal Procedure" persons in "preventive imprisonment" (*but not persons serving sentences*) may be held *incommunicado*, totally or relatively, according to need.

56. There is a conflict of laws here - on the one hand, the right to freedom of expression; on the other, the need to safeguard secrecy in judicial proceeding;⁸ the competent authority may

⁸ On this subject see opinion P000602003 of the Office of the Attorney General of the Republic, available at <http://www.dgsi.pt>.

consider it more urgent to protect the secrecy of a judicial proceeding, but will nevertheless always seek in that judgement of prognosis “*the least restrictive equilibrium between the interests involved*”.

57. An incommunicado situation, justified in this manner, is never detention in secrecy (art. 211, 3). An accused person subject to an incommunicado regime is able to contact “*his family or his legal representative*” on entry into the prison establishment (article 6, 3, by remission of article 211, 3) and also “*the director of the establishment, the doctor, the religious assistant (...) and all persons with whom he has the right [under the terms of the Decree-Law] to communicate personally*” including, under the terms of articles 32 ff. of the same law, his lawyer.

58. As a first approach to this question it must be pointed out that forensic expert examination is one of the forms of evidence admitted under the CPP (arts. 151-163); it is “*ordered automatically or at the request of the judicial authority made in the form of an order*” (art. 154) whenever assessment of the facts calls for specific knowledge, in this case in the medical field.

59. Portuguese legislation does not contain any provision expressly requiring the public prosecutor’s office to order a forensic expert examination in all cases where it has knowledge of the ill-treatment of a detainee.

60. It must be borne in mind that “ill-treatment” of this kind falls within the scope, not of “*ill-treatment and breaches of security rules*”, as defined in article 152 of the Criminal Code, but of “*qualified impairment of physical integrity*” (as defined in article 146), in cases where it constitutes an impairment of the “*body or health of the other person*” (article 143.1 of the Criminal Code) committed with “*grave perversity and particular blameworthiness by the officer*”(article 146 of the Criminal Code) on the grounds that it has been inflicted by “*an official who has committed this act with grave abuse of authority*” (art. 32, 2, 1). That being the case, the act committed constitutes a public crime which fully legitimizes the opening of trial proceedings by the Public Prosecutor’s Office (CPP, art. 48).

61. Thus once the prosecutor’s office is informed of the crime⁹ it becomes responsible for opening an inquiry thereon with the aim of “*investigating whether a crime has been committed, identifying the authors and determining their responsibility and discovering and collecting evidence*” (CPP, art. 252).

62. In situations such as that under consideration here there can be no doubt about the best (but not the only) way of proving or disproving the existence of “ill-treatment” inflicted on the detainee where article 151 is applicable to the situation. In that case recourse must, under the terms of article 154, be had to forensic expertise. Such recourse must be considered urgent inasmuch as it is necessary to “*undertake speedily observation of the victims of acts of violence of a nature rapidly to disappear or to change in form*” (Act No. 45/2004, article 13, 1).

⁹ See CPP, article 241, and articles 2 and 11, 3 of the Ministry of the Interior (Ministério da Administração Interna) Regulation No. 10/99, available at http://ww.igai.pt/publicdocs/Regulamento_10MAI1999.pdf.

Question 13

Following its visit to Portugal from 18 to 26 November 2003, the European Committee for the Prevention of Torture indicated in its report that the right of every detained person to contact a close family member or a third party, as well as to have access to a lawyer and a doctor, from the beginning of his or her deprivation of liberty, was far from being guaranteed in practice. Please provide information on the measures taken with a view to guaranteeing this right to all detainees. Please also indicate if police officers are present when detainees meet with their lawyer, doctor or a member of their family.

63. Here the Committee requests information on two points:

(a) The measures taken to guarantee contacts between detainees and family members, trustworthy friends, lawyers and doctors;

(b) Whether police officers are present when detainees are conversing with family members, trustworthy friends, lawyers or doctors.

64. On these points it is important to begin by recalling the requirement under the law that interviews between a detainee and his lawyer take place “*in such a manner that the conversations cannot be heard by the person responsible for surveillance*” and that medical examinations take place “*in reserved premises*”. On the other hand, the law does not require that personal contacts between a detainee and members of his family or trusted friends take place in private.¹⁰

65. It must be mentioned that, in order to obtain a clear explanation for the Committee on the two points raised by this question, the Inspector General of the IGAI, the Commander General of the National Republican Guard (GNR), the National Director of the Public Security Police (PSP), the President of the Bar Association and the President of the Medical Council were asked for information on the following points:

(a) Whether police officers were present at conversations between a detainee and his lawyer, his doctor or a member of his family;

(b) Whether there are in practice obstacles to the right of a detainee to communicate, under the terms of the laws and regulations, with the members of his family, third parties, a lawyer or a doctor;

(c) If so, the nature of those obstacles;

(d) Again, if so, what measures have been taken to eliminate or mitigate those obstacles.

¹⁰ Is the purpose of this apparently differential treatment to safeguard the interests of the criminal investigation by preserving the integrity and veracity of the evidence?

66. As mentioned earlier, the IGAI teams systematically verify, during inspections, the degree of compliance with the above-mentioned legal obligations, particularly as regards contacts between detainees and family members, trustworthy friends, lawyers and doctors.

67. It was also stated earlier that there had been no violations of these legal obligations; consequently the inspection reports contain no specific mention of this point.

68. However, in order to provide the Committee with all the elements of a reply, the Inspector General of the IGAI has already instructed the inspection teams to include, in reports concerning forthcoming inspections still to be carried out in 2007, specific information on the following points:

(a) If police officers are present at conversations between a detainee and his lawyer, his doctor or a member of his family;

(b) If they are aware of any obstacles to the right of a detainee to communicate, under the terms of the laws and regulations, with the members of his family, trustworthy friends, his lawyer or the doctor;

(c) If so, the nature of those obstacles;

(d) Again, if so, what measures have been taken to eliminate or mitigate those obstacles;

(e) To ascertain whether conditions have been created enabling the visit of the defender to take place in such a manner that the interviews cannot be heard by the officer in charge of surveillance;

(f) To ascertain whether information concerning the right to appoint legal counsel and to communicate with a family member or a trustworthy friend is documented by oral or written notification;

(g) To ascertain whether conditions have been created permitting the provision of detainees with all reasonable facilities enabling them to inform their families of their situation immediately, by means of the station telephone if no public telephone is available;

(h) To ascertain whether conditions have been created and to what extent contact by telephone between the detainee and his defender is authorized and subject to observation, distinguishing between the cases of use of the station telephone and use of a public telephone;

(i) To ascertain what measures are envisaged and must be taken to enable the detainee to undergo a medical examination with all possible dispatch, in particular when he shows marks of injury or on account of his state of health;

(j) To ascertain what measures in general are envisaged and must be taken to protect the lives and health of detainees;

(k) To ascertain what measures are envisaged and must be taken in the cases of sick detainees requiring specialist treatment or needing to be transferred to an adequate health establishment;

(l) To report on measures envisaged for procedures involving medical examinations of detainees, and specifically what premises are available in police establishments where such examinations can be effected and whether those premises can be considered as reserved for that purpose.

69. As soon as the replies have been received and the information from the inspection teams is available, the facts will be determined and the situation will be assessed in order to establish whether there are obstacles to contacts by the detainee with persons in his family, trustworthy friends, lawyers and doctors. If cases are encountered, solutions will be envisaged. The Committee will be informed of all this at the appropriate time.

70. The rules relating to contacts with family members laid down by law include in particular the following (points 14.2 and 14.4 of the previously mentioned Regulations concerning the Material Conditions of Custody in Prison Establishments):

(a) The detainee has the right to communicate with “a member of his family or a person trusted by him”;

(b) The detainee “must be authorized immediately to inform his family about his situation, and to that end all reasonable facilities must be accorded to him: the use of the telephone of the post itself must be allowed him where there is no public telephone”.

71. The rules to be observed regarding contacts with lawyers within police establishments are laid down in Ministry of the Interior Order 10717/2000, 2nd series (Diário da República, 2nd series, No. 21, 25 May 1990¹¹). They are:

(a) The detainee held in a police establishment of the security forces has the right to communicate with his defender, orally or in writing. The detainee must be authorized to contact his defender by telephone: he must be granted the use of the telephone of the police establishment for a limited period when there is no public telephone in the installations of the police post or station;

(b) Authorizations of visits may be requested and accorded verbally, without prejudice to any necessary record-keeping;

(c) Authorization of a visit by a lawyer must be granted by the highest-ranking officer present in the post or station at the time. Visits may take place at any hour of the day or night immediately after completion of the tasks necessary in the specific case and the preparation of the relevant documents;

(d) For as long as police establishments do not have rooms intended for the purpose, every facility must be provided to enable defenders to make contact with their clients in conditions of dignity and security. In exceptional circumstances, and in particular where there

¹¹ <http://dre.pt/pdfgratis2s/2000/05/2S121A0000S00.pdf>.

are large numbers of detainees and material facilities are lacking, the measures required by the particular case must be taken, without prejudice to the rules of the police establishment for the maintenance of security and good order;

(e) No inspection shall be made of the contents of the written texts and other documents which the defender has on his person;

(f) A visit by the defender shall take place in such a manner that the conversations are not overheard by the person in charge of surveillance;

(g) Visits may be interrupted on obvious security grounds.

72. With regard to access to medical treatment it is important to note the following (points 21.1, 21.2 and 21.3 of the above-mentioned Rules):

(a) “The detainee has the right to consult the physician of his choice”;

(b) “He must undergo a medical examination with all possible dispatch, particularly if he is injured or on grounds of his state of health”;

(c) “Sick detainees requiring specialist treatment must be transferred to an adequate health establishment, and medication previously prescribed for them must be supplied”;

(d) “The medical examination of a detainee must take place in a private room.”

Question 14

Please provide information on any emergency or anti-terrorist legislation that may limit the guarantees granted to detainees, particularly the rights referred to in the preceding paragraphs: the right to be heard by a judge as soon as possible, the right to contact family members and to inform them of the situation, and to have access to a lawyer and a doctor, from the outset of deprivation of liberty.

73. Following the adoption of European Union Council Framework Decision 2002/475/JAI of 13 June 2002 on combating terrorism Portugal has adopted a number of anti-terrorist measures. That decision affirmed a need for a measure of effectiveness in the repression of terrorism (pp. 7) in a context of respect for human rights as guaranteed in particular in the European Convention on Human Rights. Article 1 of the Framework decision, after defining terrorist crimes, states in article 2 that the Framework Decision shall not have the effect of altering the obligation to respect fundamental rights and fundamental legal principles.

74. Act No. 52/2003 of 22 August gives effect to the Framework Decision. Following the definition of national and international terrorist crimes and provisions concerning the responsibility of their authors (prison sentences, liability of moral persons) the Act extends the universal jurisdiction of the State. None of the rules laid down in the Act contain any reduction in the guarantees (and in particular procedural guarantees) accorded to the citizens.

Question 15

In its concluding observations of 17 September 2003 (CCPR/CO/78/PRT), the Human Rights Committee expressed its concern at the 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 victim (para. 8). The Human Rights Committee also expressed concern that several persons have been shot dead by the police in recent years (para. 9). Please indicate the legislative, administrative and judicial measures that have been taken to eliminate police violence, prosecute the perpetrators of such acts and compensate the victims and, where appropriate, their families.

75. As regards the measures taken or promoted by the IGAI after September 2003 to eliminate police violence and initiate disciplinary action against the authors of those acts, mention must be made of the training, awareness-promoting, disciplinary and inspection measures taken, viz.:

(a) The organization of an international seminar entitled “The use of firearms by police forces” (Queluz, GNR Practical School, November 2003).¹² It was designed primarily for police officers. The speakers included British, French, German and Spanish specialists of repute; they discussed in a comparative context themes such as the legislative framework covering the use of firearms; the description and evaluation of the numbers of deaths caused by the use of firearms; the penal and disciplinary consequences for the police officers concerned; training and teaching methods; and the use of “less lethal” weapons. The aim of the seminar was to improve the quality of police action in cases where firearms are used, compliance with the principles of minimum level of intervention and proportionality with strict respect for the dignity of the person and the protection of the life and the physical integrity of individuals;

(b) The organization of an international seminar entitled “Human rights and police behaviour” (Lisbon, Calouste Gulbenkian Foundation, November 2005).¹³ The seminar was destined primarily for police officers. Statements were made by British, United States and Brazilian experts of repute with identical objectives;

(c) The organization of a conference on “internal security and external control of security forces and services: reflections and experiences of Portuguese-speaking countries” and the first meeting of the police inspection and control bodies in the Portuguese-speaking countries and territories (OCIP) (Lisbon and Sintra, December 2006), also with identical objectives, within the broader framework of cooperation between IGAI and similar bodies in Portuguese-speaking countries (Angola, Brazil, Cape Verde, Guinea-Bissau, Mozambique, São Tomé and Príncipe and Timor) and also in the Special Administrative Region of Macao;

¹² The texts (bilingual Portuguese-English) of the statements made will be found at http://www.igai.pt/publicdocs/Livro_IntervencoesSI_Nov2003.pdf.

¹³ Cf. http://www.igai.pt/publicdocs/Livro_IntervencoesSI_Nov2003.pdf (bilingual: Portuguese and English).

(d) Continuation of pretrial investigative activity in disciplinary proceedings designed to investigate and, where appropriate, to propose the application of disciplinary sanctions against police officers responsible for violations of personal property and, more particularly, for deaths or impairments of physical integrity or for grave abuses of power;

(e) Continuation of inspection activities, and in particular inspections of police establishments (see reply to question 12 above).

76. It is important to note that on 1 June 2004 the National Director of the PSP issued regulations on the subject of "Rules concerning limitations on coercive measures", which govern the use of force (and particularly firearms) by PSP personnel with strict respect for the principles of legality, necessity, appropriateness, prohibition of excesses and proportionality.

77. By decision of the Commander of the Roads brigade of the GNR the use of firearms by GNR personnel during pursuits in motor vehicles has been prohibited with effect from 6 October 2005 "save in cases clearly covered by the law".

78. Finally, the PSP has acquired 75 electronic TaserX26 weapons, which it will distribute to the Lisbon Metropolitan command, the direct action corps, the special operations group and the personal security corps. These weapons offer the advantage of loosing an electric discharge which causes pain to and temporarily and totally immobilizes the recipient while not causing injury and averting struggles which might harm the subject of the action or the police forces themselves. This acquisition, and the appropriate training in the use of electric pistols, form part of a continuing effort (clearly affirmed in 2004 by the adoption of internal rules establishing limitations on the use of coercive means) to moderate possible excesses which might result from police intervention which the PSP has been pursuing for several years.

Question 16

The Human Rights Committee also expressed concern at the excessive length of pretrial detention, which, in exceptional cases, can last for up to four years, and the fact that almost one third of the persons detained in Portugal are in pretrial detention. Please indicate what measures have been taken to amend legislation in order to ensure that persons in pretrial detention are tried within a reasonable time.

79. A revision of the Criminal Code and the Code of Criminal Procedure is under way. The question of pretrial detention will certainly be examined. It must be mentioned that under existing legislation an accused person who has been sentenced at first instance and has lodged an appeal is held in pretrial detention. He will only cease to be in pretrial detention when the sentence to which he has been condemned becomes final. However, in its interpretation of article 5 of the European Convention on Human Rights the European Court does not consider that pretrial detention exists following the handing down of the sentence at first instance, even though the sentence has not become final on account of the operation of the appeal mechanisms. Such a difference in the concept of pretrial imprisonment would certainly give rise to a substantial reduction in the numbers of cases of what is termed pretrial detention.

Question 17

Both the European Committee for the Prevention of Torture in the aforementioned report and the Human Rights Committee in its concluding observations (CCPR/CO/78/PRT, para. 10) expressed their concern at the ill-treatment and abuse of authority by prison staff against prisoners, as well as violence among prisoners, which in some cases have resulted in deaths. The European Committee for the Prevention of Torture has also drawn attention to the circulation of drugs in certain prison establishments, a factor that has contributed to the rise of violence among prisoners. Please indicate the measures taken to prevent both the ill-treatment of prisoners and violence among prisoners.

80. Paragraph 57 of the report prepared by the CPT following its visit to Portugal on 18-26 November 2003 contains the following statement: “Contrary to the observations made in the prison in Oporto, the delegation did not hear any complaints of physical ill-treatment recently inflicted by members of staff members of the other five prisons visited.”

81. The references to the prison establishment in Porto relate primarily to a serious case which occurred a few days before the visit, when a prison guard attacked an inmate. The guard was made subject to both criminal and disciplinary jurisdiction; he was punished by compulsory retirement and a penalty of two years and six months’ imprisonment, suspended for four years: he was also sentenced to pay the inmate 50,000 euros in damages.

82. In every case of application of disciplinary or other sanctions to staff members responsible for surveillance, and independently of the fact that these acts take place within prison establishments, both the management and the superior officers of the guards use training to remind the entire corps of the unacceptability of such behaviour and the severity of the consequences thereof.

83. The most serious disciplinary sanctions applied to officials are published in an internal monthly information bulletin.

84. Efforts have also been made to combat inter-prisoner violence, which is generally due to drug-related matters. These efforts include measures to prevent the entry and circulation of drugs, in particular by means of more frequent inspections and searches, and the offer of detoxification programmes for inmates.

Question 18

The two bodies referred to in paragraph 17 above have also expressed their concern at overcrowding in prisons and at the fact that pretrial and convicted detainees are not always held separately in practice. Please provide information on measures taken to address these concerns.

85. At the time of the last visit by the CPT - on 18-26 November 2003 - there were 14,035 persons in prison, 29.1 per cent of them in pretrial detention. The rate of occupancy was 115.9.

86. On 15 August 2007 - there were 12,544 persons in prison, 22.3 per cent of them in pretrial detention. The rate of occupancy was 102.6.

87. In view of these figures one can only say that there is a problem of overcrowding in the prison system as a whole. However, if the smaller prisons are considered individually, much higher occupancy rates will be found in some of them. It should, however, be mentioned that a reform of prison facilities is proceeding; it will certainly permit a change in the situation.

Articles 12 and 13

Question 19

Please indicate the number of cases in which officials responsible for enforcing the law have been subjected to judicial or administrative sanctions for ill-treatment of detainees.

88. General statistical data on trends in the different types of proceedings (administrative, verification, investigative, disciplinary) may be consulted on the IGAI Internet page.¹⁴

89. The statistical elements available concerning the application of disciplinary sanctions to police officers in trials where the investigation was conducted by IGAI and concerning ill-treatment of citizens while in police custody are as follows:

Year	Disciplinary proceedings	Disciplinary sanctions imposed
1998	1	1 PSP officer: single disciplinary penalty: 60 days' suspension
1999	1	1 PSP officer: fined 60 days [pay]
2000	5	1 PSP officer: disciplinary penalty: 115 days' suspension; 4 PSP officers: disciplinary penalties: 75 days' suspension
2001	2	These proceedings did not give rise to disciplinary sanctions. They were struck from the record.
2002	13	1 PSP officer: single penalty of 60 days' suspension. Execution of sentence suspended for one year; 1 PSP officer: the proceedings were struck from the record on grounds of lack of evidence; 5 PSP (BAC) officers: the proceedings were struck from the record on grounds of lack of evidence; 1 GNR soldier: concurrent disciplinary and judicial punishment: 135 days of total separation from the service (aggravated suspension); 2 GNR soldiers: proceedings struck from the record on account of absence of evidence permitting a disciplinary charge to be brought against them; 1 PSP officer: penalty 180 days' suspension; 2 PSP officers: penalty 121 days' suspension
2003		No disciplinary sanctions on grounds of ill-treatment of citizens held in police custody

¹⁴ See http://www.igai.pt/dados_est.asp.

Year	Disciplinary proceedings	Disciplinary sanctions imposed
2004		No disciplinary sanctions on grounds of ill-treatment of citizens held in police custody
2005		Material being processed
2006		Material being processed
Overall total	22	

90. It must be pointed out that the figures relate exclusively to facts of the following kinds:

(a) Cases of police custody (in Portuguese legal terminology, coercive detention and identification) and not to cases of pretrial detention or imprisonment in execution of a criminal penalty handed down on grounds of a coercive measure or a penalty inflicted by a court of law;

(b) Proceedings in which the investigation was conducted by IGAI; disciplinary sanctions imposed within the security forces themselves by the competent hierarchical superiors are not included.

91. As regards the prison services, there is an audit and inspection service within the Directorate General of Prison Services with three delegations (North, Centre and South of the country) which are coordinated by magistrates on service mission from the Public Prosecutor's Office.

92. This service, in addition to its remit of inspection and monitoring of projects in prison establishments and the conduct of inspections, audits and trials, acts as the investigating body in the more complex verifications, inquiries and disciplinary proceedings and supervises trial proceedings conducted in prisons.

93. During the last few years - 2004-2007 - 22 disciplinary penalties have been inflicted on prison guards for alleged attacks, insults and threats directed against inmates. The penalties range from fines to suspension for a certain period or dismissal.

Question 20

Please indicate if persons placed in detention, in cases where their complaints of torture and ill-treatment are dismissed, have the possibility to submit their cases to the competent judicial authorities through private prosecution.

94. Every citizen has the right to complain to the competent authorities in the event of a violation of a right to which he is entitled. The best way of proceeding is to apply to the Public Prosecutor's Office, referring to the violation of his rights by the authority responsible for his detention. Other general remedies, such as those of complaint to the mediator, to the Office of the Attorney General of the Republic (who will refer the case to the Public Prosecutor's Office if it is founded) and to parliamentary committees, are always available, as is the possibility of direct application to international supervisory bodies such as the European Court of Human Rights, which may order provisional measures.

Question 21

Please specify which independent body (bodies) is (are) responsible for visiting prison establishments in Portugal. Please indicate the frequency of visits since 2000, and the recommendations put forward by this body (these bodies) following such visits.

95. One of the external bodies supervising the prison system is the tribunal with responsibility for enforcement of sentences. The law requires the judges in this tribunal to visit prison establishments at least once a month and to hear the claims of the inmates. In practice these visits take place more frequently, especially in the larger prisons.

96. A judge from this tribunal also presides over the technical council in each prison establishment (a body consisting of representatives of the different categories of staff). Following the issue of an opinion by the council he may accord conditional release or extended unaccompanied outside visits.

97. The activities of the prisons administration are subject to internal supervision by the Inspectorate-General of Justice Services, the Mediator and parliamentary (Assembleia da República) committees. There is also supervision by the international agencies active in the area of human rights.

Article 14

Question 22

Please indicate whether persons have received compensation following cases of torture or ill-treatment. If so, please indicate the number of such cases and describe the type of violence to which the persons in question were subjected.

98. Reference is made to the case of the prison establishment in Porto and the reply given to question 17.

Question 23

Please indicate whether Portugal makes physical, psychological and social rehabilitation services available to victims.

99. Articles 95 ff of Decree-Law No. 265/79 of 1 August, which governs the treatment of persons held in prison, make provision for medical and health care. There are no provisions in legislation providing for physical, psychological and social rehabilitation services to be made available to victims of acts of torture. As there is no reference to torture other than that prohibiting it, such a provision is by its very nature excluded. However, article 99 provides for medical treatment at the end of the social reintegration of the detainee: it is provided with the consent of the detainee, who bears part of the cost in proportion to his financial resources.

Clearly, if a detainee is subjected to an act of torture within the meaning of the Convention, he will, once legality has been restored, receive care of a physical, psychological and social nature proportionate to the suffering to which the act of torture has given rise.¹⁵

100. It must be added here that the Office of the High Commissioner for Immigration and Ethnic Minorities (ACIME) has concluded a protocol with the Association for Victim Support (APAV) under which it gives financial support to that association for the purpose of constituting and operating a Support Unit for Immigrant Victims and Victims of Racial or Ethnic Discrimination (UAVIDRE).

101. This unit provides confidential information, free of charge, on legal and psychological subjects to immigrant victims or victims of racial discrimination, particularly in cases of torture.

102. Although the Portuguese Government has no data on cases of support provided where torture has occurred, it can be stated that, since the creation of the unit in May 2005 and up to March 2007, 757 proceedings relating to support for immigrant victims and victims of racial discrimination have been opened.

Other

Question 24

Please provide information on the legislative, administrative and other measures that the Government has taken to respond to the threats of terrorism, and please describe if, and how, these measures have affected human rights safeguards in law and in practice.

103. On this subject Portugal refers back to the reply to question 14. The current Act on terrorism (Act No. 52/2003 of 22 August) was adopted in execution of Council Framework Decision 2002/475/JAI of 13 June. Paragraph 10 of the preamble states that “the framework decision respects the fundamental rights as they are guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they derive from constitutional traditions common to member States as principles of community law. The Union observes the principles recognized in paragraph 2 of article 6 of the Treaty on the European Union and enshrined in the Charter of Fundamental Rights of the European Union, particularly in chapter VI. No element of the present framework decision may be interpreted as being intended to diminish or constrain the rights and fundamental freedoms such as the right to strike, the rights of assembly, association and expression, including the right to form and become a member of a trade union for the defence of one’s interests and the right to demonstrate associated with it”.

104. Article 2 of Act No. 52/2003 of 22 August defines terrorist organizations (“All groups of two or more persons who, acting in concert, have the aim of impairing national integrity and independence, paralysing, changing or subverting the institutions of State provided for in the

¹⁵ And he will not have to bear the cost of the care inasmuch as it has been rendered necessary by the suffering experienced.

Constitution, forcing the public authority to commit an act or to refrain from committing an act, or to tolerate the practice of an act, or intimidating certain individuals, certain groups of individuals or the population generally, are deemed to be terrorist groups, associations or organizations”) and the types of crimes they commit together with the penalties for persons committing those crimes within the context of the organization. Article 4 deals with the perpetration of crimes of terrorist organizations by individuals acting alone: article 5 deals with international terrorism. The responsibility of moral persons is also covered. Provision is also made (in article 8) for the application of criminal legislation in space.

105. No aggravation of the condition of accused persons in cases of terrorism other than that inherent in the seriousness of the crime, such as relatively heavy penalties (for the head of a terrorist organization, up to 20 years).

Question 25

Does Portugal envisage ratifying the Optional Protocol to the Convention against Torture? If so, has it established or designated a national mechanism to conduct periodic visits to places of detention in order to prevent torture or other cruel, inhuman or degrading treatment?

106. The matter is currently under consideration.

Question 26

Please indicate whether Portugal has legislation to prevent and prohibit the production, export and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment. If so, please provide information about the content and implementation of such legislation. If not, please indicate whether the adoption of such legislation is being considered.

107. We have no data on this subject. Since Portugal refrains from the practice of any act of torture, it seems unlikely that it would authorize the production of materials *specifically* designed for the perpetration of acts of torture.
