



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

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## Committee against Torture

### Concluding observations on the combined fifth and sixth periodic reports of Portugal\*

1. The Committee against Torture considered the combined fifth and sixth periodic reports of Portugal (CAT/C/PRT/5-6) at its 1186th and 1189th meetings, held on 7 and 8 November 2013 (CAT/C/SR.1186 and 1189), and adopted at its 1204th meeting, held on 20 November 2013 (CAT/C/SR.1204), the following concluding observations.

#### A. Introduction

2. The Committee expresses its appreciation to the State party for accepting the optional reporting procedure and for having submitted its combined fifth and sixth periodic reports in a timely manner thereunder, as it improves the cooperation between the State party and the Committee and focuses the examination of the report as well as the dialogue with the delegation.

3. The Committee appreciates the open and constructive dialogue with the State party's high-level multisectoral delegation, as well as the additional information and explanations provided to the Committee.

#### B. Positive aspects

4. The Committee welcomes the ratification by the State party of the following international instruments:

(a) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, on 23 September 2009;

(b) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 15 January 2013;

(c) The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, on 28 January 2013; and

(d) The Optional Protocol to the Convention on the Rights of the Child on a communications procedure, on 24 September 2013.

\* Adopted by the Committee at its fifty-first session (28 October–22 November 2013).



5. The Committee welcomes the State party's ongoing efforts to revise its legislation in order to give effect to the Committee's recommendations and to enhance the implementation of the Convention, including the adoption of:

- (a) Act No. 27/2008 on asylum;
- (b) Act No. 229/2008, setting up the Observatory on Trafficking in Human Beings;
- (c) Act No. 49/2008, approving the Law on the Organization of Criminal Investigation;
- (d) Act No. 115/2009, establishing the Code on the Execution of Sentences and Measures Involving Deprivation of Liberty, and Decree-Law No. 51/2011, establishing the General Regulation for Prison Facilities, which significantly increased judicial control of compliance with measures of deprivation of liberty;
- (e) Act No. 104/2009 on compensation to victims of violent crimes and domestic violence, and Act No. 112/2009 on the legal regime applicable to the prevention of domestic violence and to the protection of and assistance for its victims; and
- (f) Act No. 113/2009 on protection measures for minors.

6. The Committee also welcomes the adoption of the following administrative and other measures:

- (a) The appointment of the Ombudsman as the national preventive mechanism, in accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on 20 May 2013;
- (b) Order No. 12786/2009 of 19 May 2009, regulating the conditions of detention in judicial police facilities and in the courts and public prosecution services;
- (c) The Order of the Director-General for Prison Services on the Regulation on the Use of Coercive Measures, of 3 September 2009; and
- (d) The creation of the National Network of Educational Guardianship Centres, in 2008.

## **C. Principal subjects of concern and recommendations**

### **Definition of torture**

7. While noting the State party's position that the definition of torture in article 243 of the Criminal Code is sufficiently broad to cover discrimination among the purposes for inflicting torture, the Committee observes that the domestic courts have never applied this article to situations in which torture was inflicted for reasons based on discrimination. The Committee regrets, therefore, that despite its previous concluding observations (CAT/C/PRT/CO/4, para. 6), the State party has not yet made a specific reference to discrimination in the definition of torture set out in the Criminal Code (arts. 1 and 4).

**The Committee reiterates its earlier recommendation (CAT/C/PRT/CO/4, para. 6) and calls on the State party to reconsider amending article 243 of the Criminal Code to explicitly include discrimination among the purposes for inflicting torture, in strict conformity with article 1 of the Convention. The Committee draws attention to paragraph 9 of its general comment No. 2 (2008) on the implementation of article 2 by States parties, which indicates that discrepancies between the Convention's definition and that incorporated into domestic law create potential loopholes for impunity.**

### **Fundamental safeguards**

8. The Committee regrets that, despite its previous concluding observations (CAT/C/PRT/CO/4, para. 7), the State party has not taken steps to guarantee that the time spent in detention for identification purposes (maximum 6 hours) is deducted from the total period of police custody (48 hours), particularly in the light of the explanations provided by the State party that detention for identification purposes can be used whenever there are sufficient grounds to believe that the person might have perpetrated a crime. The Committee is concerned that persons detained for identification purposes and suspected of a crime might not be afforded, in practice, the same safeguards as other detained persons under the regular procedure during this six-hour period. The Committee bears in mind, in this regard, that there have been instances in which detained persons have not been informed of their rights from the outset of the detention. The Committee also notes that the right to access to a lawyer promptly upon detention is not effective in practice for those who cannot afford a private lawyer, since access to an ex officio lawyer is guaranteed only at the detention hearing before the judge (arts. 2, 11, and 12).

#### **The State party should:**

**(a) Amend the Code of Criminal Procedure to ensure that detention starts at the outset of deprivation of liberty and that the time spent in custody for identification purposes is considered part of the 48-hour period within which a detained person must be brought before a judge;**

**(b) Ensure that suspects are informed of and are able to exercise their rights at the very moment of their deprivation of liberty, and are informed of the reasons for their detention;**

**(c) Guarantee access to an ex officio lawyer, including consultations in private, as from the moment of deprivation of liberty and during interviews with law enforcement officials;**

**(d) Ensure that compliance with the legal safeguards by all public officials is regularly monitored and that those who do not comply with these safeguards are properly sanctioned.**

### **Prompt, effective and impartial investigations**

9. The Committee regrets the lack of data concerning criminal investigations into, and prosecutions and sanctions for, the crime of torture and ill-treatment (art. 243 of the Criminal Code) during the period covered by the State party's report. The Committee is also concerned at the lack of clarification on the competence of the internal and external inspection services of each branch of police and prison services to carry out investigations into alleged acts of torture and ill-treatment, and on how these inspection services relate to the Public Prosecutor's Office when they are conducting criminal and disciplinary investigations in parallel. As regards the information provided on disciplinary proceedings from 2008 to 2010, the Committee notes with concern the limited number of punishments imposed in cases of ill-treatment by police and prison officers, as well as the large number of cases closed due to lack of evidence, even where allegations of ill-treatment by police forces and by prison staff have been documented by monitoring bodies. The Committee is concerned at information indicating that, with regard to prisoners alleging ill-treatment, a full medical examination out of the hearing and sight of prison officers does not always take place, and that injuries observed upon admission or sustained in prison thereafter are not properly recorded (arts. 2, 12, 13 and 16).

**The State party should:**

(a) **Ensure that all reports of torture or ill-treatment are investigated promptly, effectively and impartially by appropriate independent bodies at the criminal level, irrespective of disciplinary investigations;**

(b) **Ensure that persons suspected of having committed acts of torture or ill-treatment are immediately suspended from their duties and remain so throughout the investigation;**

(c) **Prosecute persons suspected of having committed torture or ill-treatment and, if they are found guilty, ensure that they receive sentences that are commensurate with the gravity of their acts and that their victims are afforded appropriate redress;**

(d) **Ensure that all medical examinations of prisoners are conducted out of the hearing and, whenever the security situation allows, out of the sight of prison officers, and that medical records are made available to the prisoner concerned and his lawyer upon request; and**

(e) **Ensure that injuries observed during the medical screening of prisoners upon admission or thereafter by medical staff are fully recorded, including information on the consistency between the allegations made and the injuries observed. Whenever injuries are indicative of ill-treatment, a report should be promptly sent by the medical staff to the supervisory judge, the prosecutor and the prison inspection services.**

**Complaints mechanisms**

10. The Committee notes the different internal and external inspection services of the police and prison administration competent to receive complaints and carry out disciplinary investigations on ill-treatment and the lack of clarity this may create when lodging a complaint. As regards criminal complaints, the Committee is also concerned by instances in which the police have refused to provide proof of the registered complaint to the person submitting it (arts. 12, 13 and 16).

**The State party should establish a central mechanism to receive complaints of torture or ill-treatment, and should ensure that such a mechanism is accessible to all places of detention, especially prisons. Individuals alleging ill-treatment should be able to know exactly to whom they should address their complaint and should be duly informed of the action taken on their complaint. The State party should also ensure that the complainant is protected against all ill-treatment or intimidation that may arise as a consequence of his complaint. A centralized register of complaints of torture and ill-treatment should be kept that includes information on the corresponding investigations, trials and criminal or disciplinary penalties imposed. The existing inspection bodies, including the supervisory judge and the Ombudsman, should be provided with the resources necessary to strengthen their monitoring functions, including in forensic psychiatric hospitals.**

**Conditions of detention**

11. While acknowledging the State party's efforts to increase the capacity of penal institutions, the Committee remains concerned at the current overpopulation of 115 per cent. The Committee takes into account, in this regard, that about 20 per cent of the prison population is in pretrial detention, and regrets the lack of information on the average pretrial detention time. The Committee regrets, furthermore, that prison facilities, such as the psychiatric hospital at Santa Cruz do Bispo Prison or the Lisbon Central Prison, continue to operate in deplorable conditions. The Committee also notes with concern that the placement of prisoners in high security units is, in practice, routinely prolonged without

informing the prisoners of the reasons for an extension. The Committee expresses its concern at the high rates of deaths in custody, especially suicide, among inmates, the insufficient capacity of in-patient psychiatric wards to accommodate prisoners with serious mental illnesses, and the lack of staff and rehabilitative activities in forensic psychiatric hospitals, as well as the use of restraints (arts. 2, 11 and 16).

**The State party should intensify its efforts to bring the conditions of detention in places of deprivation of liberty into line with the Standard Minimum Rules for the Treatment of Prisoners, in particular by:**

**(a) Stepping up its efforts to reduce overcrowding, particularly through the wider application of non-custodial measures as an alternative to imprisonment, in the light of the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);**

**(b) Avoiding long periods of pretrial detention and ensuring that pretrial detainees receive a fair trial without undue delay;**

**(c) Continuing its efforts to improve and expand prison facilities in order to remodel those facilities that do not meet international standards, in particular Lisbon Central Prison and the psychiatric hospital at Santa Cruz do Bispo Prison;**

**(d) Ensuring: (i) that all cases of death and suicide in custody are effectively investigated; (ii) that the Directorate-General for Prisons enhances monitoring and detection of at-risk detainees and takes preventive measures regarding the risk of suicide and inter-prisoner violence, including by increasing prison staff and installing video cameras; and (iii) that research continues to be undertaken on the impact of the current programmes to prevent suicide and drug use, with a view to increasing their efficiency;**

**(e) Ensuring that the decisions on the placement of prisoners in security units, and the extension thereof, are reasoned and communicated to those affected, and that they are subject to appeal;**

**(f) Increasing the capacity of in-patient psychiatric wards and providing full access to mental health-care services within all prison facilities; and**

**(g) Increasing the medical staff and rehabilitation activities in all forensic psychiatric hospitals and preventing the use of restraints as much as possible or applying them as a measure of last resort when all other alternatives for control have failed, and never as a punishment, for the shortest possible time, under strict medical supervision and after being duly recorded.**

#### **Solitary confinement**

12. While acknowledging the overall positive impact of Act No. 115/2009 and Decree-Law No. 51/2011 (para. 5 (d) above) on the prison system, the Committee remains concerned by article 105 of the Act, which allows solitary confinement to be imposed as a disciplinary punishment for up to 30 days, even to juveniles between the ages of 16 and 18 in conflict with the law. The Committee also notes with concern that provisional isolation of up to 30 days may be imposed on a prisoner pending the imposition of solitary confinement, which amounts de facto to an extended informal punishment of the prisoner (arts. 2, 11 and 16).

**The Committee urges the State party to:**

**(a) Revise its legislation in order to ensure that solitary confinement remains a measure of last resort, imposed for as short a time as possible, under strict supervision and judicial review. The State party should establish clear and specific**

criteria for decisions on isolation. The practice of renewing and, as such, prolonging disciplinary sanctions of solitary confinement should be strictly prohibited;

(b) Ensure that solitary confinement is never applied to juveniles in conflict with the law or to persons with psychosocial disabilities;

(c) Reduce the maximum duration of provisional isolation and deduct the time spent therein from the maximum period of solitary confinement;

(d) Ensure that the detainee's physical and mental condition is regularly monitored by qualified medical personnel throughout the period of solitary confinement; and

(e) Increase the level of meaningful social contact for detainees while in solitary confinement.

#### **Rendition flights**

13. While welcoming the criminal investigation undertaken into the State party's alleged involvement in extraordinary renditions in the context of its international cooperation in countering terrorism, the Committee notes the State party's clarification in the State report that the investigation has been closed on the grounds of insufficient evidence, despite reports on the State party's alleged cooperation in a rendition and secret detention programme (arts. 2, 3, 12 and 16).

**The Committee encourages the State party to continue its investigations, if further information comes to light, into allegations of the State party's involvement in a rendition programme and of the use of the State party's airports and airspace by flights involved in "extraordinary rendition", and bring to light the facts surrounding these allegations. The Committee reminds the State party that the transfer and refoulement of persons, when there are substantial grounds for believing that these persons would be at risk of being subjected to torture, is in itself a violation of article 3 of the Convention.**

#### **Reception conditions of asylum seekers**

14. The Committee notes that the number of asylum applications has increased in recent years, from 140 applications in 2009 to 369 applications received to date in 2013. It also notes that the Refugee Reception Centre, designed to accommodate asylum seekers in the admissibility phase, during which there is no entitlement to work, suffers from overcrowding (arts. 3, 11 and 16).

**The State party should ensure the timely processing of refugee claims, both in the special procedure at the border as well as in the regular procedure, in order to reduce the waiting time of asylum seekers in reception centres. The State party should also take action to increase the accommodation capacity of the reception centres, in order to alleviate the current overcrowding, and ensure that adequate medical care, as well as adequate supplies of, inter alia, food, water and personal hygiene items, are always provided.**

#### **Electrical discharge weapons**

15. The Committee recalls its previous recommendation (CAT/C/PRT/CO/4, para. 14) and expresses its deep concern at instances where electrical discharge weapons ("Taser X26") were disproportionately used by police and prison officials, for example, in 2010 by the Prison Security Intervention Group at Paços de Ferreira prison (arts. 2 and 16).

**The State party should ensure that electrical discharge weapons are used exclusively in extreme and limited situations where there is a real and immediate threat to life or risk of serious injury, as a substitute for lethal weapons, and by trained law**

enforcement personnel only. The Committee is of the view that electrical discharge weapons should not be part of the equipment of custodial staff in prisons or any other place of deprivation of liberty. The Committee urges the State party to strictly monitor and supervise their use.

#### **Redress, including compensation and rehabilitation**

16. While welcoming the adoption of Act No. 104/2009 (para. 5 (e) above) and the establishment of the Commission for the Protection of Crime Victims (CPVC), which grants compensation to and provides social support and rehabilitation for victims of violent crimes and of domestic violence in advance of the outcome of criminal proceedings, the Committee regrets the lack of information on compensation awarded by the CPVC or the courts of the State party to the victims of torture or ill-treatment (art. 14).

**The Committee draws the attention of the State party to the recently adopted general comment No. 3 (2012) on article 14 of the Convention, in which the Committee explains the content and scope of the obligations of States parties to provide full redress to victims of torture. The State party should compile, and provide the Committee with, information on:**

(a) **Redress and compensation measures ordered by the CPVC or the courts and provided to victims of torture or ill-treatment or to their families. This information should include the number of requests made and the number of requests granted, as well as the amounts ordered and actually provided in each case; and**

(b) **Any ongoing rehabilitation programmes for victims of torture and ill-treatment. The State party should also allocate adequate resources to effectively implement such programmes and inform the Committee thereof.**

#### **Domestic violence**

17. The Committee welcomes the legislative and other measures aimed at preventing and combating domestic violence (para. 5 (e) above), including the criminalization of domestic violence and corporal punishment of children under article 152 of the Criminal Code and the adoption of the Fourth National Action Plan against Domestic Violence (2011–2013). However, the Committee recalls its previous concern (CAT/C/PRT/CO/4, para. 15) regarding the high prevalence of this phenomenon, including the high number of deaths, and notes the insufficient data provided regarding prosecutions, type of sanctions imposed and reparation in these cases (arts. 2, 12, 13 and 16).

**The State party should continue its efforts to combat domestic violence, inter alia, by:**

(a) **Ensuring the effective implementation of the legal framework and the Fourth National Action Plan against Domestic Violence, including by promptly, effectively and impartially investigating all incidents of violence against women and prosecuting those responsible;**

(b) **Continuing to conduct public awareness-raising campaigns to fight domestic violence and gender stereotypes, particularly among young people, and increasing training for law enforcement officers, judges, lawyers and social workers;**

(c) **Undertaking research into the impact of preventive measures and criminal justice responses to counter domestic violence, with a view to increasing their efficiency; and**

(d) **Compiling and providing the Committee with disaggregated data on the number of complaints, investigations, prosecutions and sentences handed down for acts of domestic violence, on the provision of redress to the victims and on the difficulties experienced in preventing such acts.**

**Ill-treatment of Roma and other minorities**

18. While welcoming the measures for the integration of immigrants and the recent adoption of the Strategy for Inclusion of the Roma Communities (2013-2020), the Committee is concerned at reports of discrimination and abuses against Roma and other minorities by the police, including allegations of excessive use of force against various members of the Roma community, including minors, during an arrest in Regalde, Vila Verde Municipality, in 2012. The Committee is further concerned at reports that mention the perceived lack of confidence of victims in the judicial system, which may result in underreporting (arts. 2, 12, 13 and 16).

**The State party should:**

(a) **Take effective measures to ensure the protection of members of the Roma community, including through enhanced monitoring, and to encourage reporting of any ill-treatment, for example through the Special Programme on Proximity Policing. All acts of violence and racial discrimination should be promptly, impartially and effectively investigated, the alleged perpetrators brought to justice, and redress provided to the victims;**

(b) **Publicly condemn attacks against Roma, ethnic and other minorities, and increase the number of awareness-raising campaigns, including among the police, promoting tolerance and respect for diversity; and**

(c) **Enhance training for law enforcement officials on combating crimes against minorities and encourage the recruitment of members of the Roma community into the police force.**

**Trafficking in persons**

19. While welcoming the measures to address trafficking in persons (para. 5 (b) above), including the Second National Plan for the Fight against Trafficking in Human Beings, the Committee notes the very few prosecutions of offenders of such crimes (arts. 2, 12, 13, 14 and 16).

**The State party should continue to adopt the necessary measures to:**

(a) **Vigorously enforce the legal framework to prevent and promptly, thoroughly and impartially investigate, prosecute and punish trafficking in persons;**

(b) **Continue to conduct nationwide awareness-raising campaigns and training for law enforcement officers, judges, prosecutors, migration officials and border police, including on the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol); and**

(c) **Undertake research into the impact of preventive measures and criminal justice responses to counter trafficking in human beings and on the difficulties experienced in preventing such acts.**

**Training**

20. While taking note of the various human rights training programmes for police forces, the Committee notes that the State party has not provided information on training on the provisions of the Convention for prison staff, immigration officials and other State agents involved in the prevention of torture. The Committee also notes that the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) is used in the training of forensic doctors but has not been incorporated into the training programme of other public officials, including other health professionals. The Committee further noted the lack of

information on the effectiveness and impact of those training programmes in reducing the number of cases of torture and ill-treatment (art. 11).

**The State party should:**

**(a) Further develop and strengthen training programmes to ensure that all officials, in particular judges and law enforcement, prison and immigration officers, are aware of the provisions of the Convention;**

**(b) Provide training on the Istanbul Protocol for medical personnel and other officials involved in dealing with detainees and asylum seekers in the investigation and documentation of cases of torture; and**

**(c) Assess the effectiveness and impact of training programmes on the prevention and absolute prohibition of torture and ill-treatment.**

**Data collection**

21. The Committee regrets the absence of comprehensive and disaggregated data on complaints of, investigations into, and prosecutions and convictions for cases of torture and ill-treatment by law-enforcement, security, military and prison personnel, at the criminal and disciplinary levels, as well as on crimes involving discrimination, trafficking, domestic and sexual violence, and female genital mutilation.

**The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including data, at the criminal and disciplinary levels, on complaints of, investigations into, and prosecutions and convictions for cases of torture and ill-treatment, trafficking, domestic and sexual violence, and female genital mutilation, as well as on means of redress, including compensation and rehabilitation, provided to the victims.**

**Other issues**

22. The Committee invites the State party to ratify the International Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

23. The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in all appropriate languages, through official websites, the media and non-governmental organizations.

24. The Committee requests the State party to provide, by 22 November 2014, follow-up information in response to the Committee's recommendations related to: (a) ensuring or strengthening legal safeguards for persons detained; (b) conducting prompt, impartial and effective investigations; and (c) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraph 8 (b), (c) and paragraph 9 (a), (c) of the present concluding observations. In addition, the Committee requests follow-up information on domestic violence and ill-treatment of Roma and other minorities, as contained in paragraphs 17 and 18 of the present document.

25. The State party is invited to submit its next report, which will be the seventh periodic report, by 22 November 2017. For that purpose, the Committee will, in due course, submit to the State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.