RELATÓRIOS APRESENTADOS POR PORTUGAL AOS ÓRGÃOS DE CONTROLO DA APLICAÇÃO DOS TRATADOS DAS NAÇÕES UNIDAS EM MATÉRIA DE DIREITOS HUMANOS

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

HUMAN RIGHTS COMMITTEE

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

SECOND PERIODIC REPORTS OF STATES PARTIES DUE IN 1986 ADDENDUM

PORTUGAL */

*/ For the initial report submitted by the Government of Portugal, see CCPR/C/6/Add.6; for its consideration by the Committee, see summary records CCPR/C/SR.293, SR.294 and SR.298. See also Official Records of the, General Assembly, thirty-sixth session, Supplement No. 40 (A/36/40), paragraphs 291 to 336.

INTRODUCTION

1. The present report relates to the application, through the domestic legal system, of the International Covenant on Civil and Political Rights, which was adopted by the United Nations General Assembly on 16 December 1966 and entered into force on 23 March 1976.

2. The Covenant was approved by the Assembly of the Portuguese Republic by Act No. 29/78 of 12 June, and entered into force for Portugal on 15 September 1978.

3. This is the second Portuguese report submitted under article 40 of the Covenant. In Dreparinq the report, Portugal took into account the general observations made by the Human Rights Committee in accordance with article 40, paragraph 4, endeavouring to clarify the points made by the members of the Committee when the first report was presented.

4. The report is divided into two parts: the first part relates to general principles, while the second includes information on the application of articles 1 to 27 of the Covenant.

PART ONE: GENERAL PRINCIPLES

5. The present report relates to measures adopted by Portugal to qive effect to the riqhts recoqnized in the Covenant, which indicate proqress made in the enjoyment of these riqhts since the presentation of the first report in July 1981. Since that time, several important changes have occurred, especially in legislation. This first part provides an outline of the main features of these changes. In the second part details will be provided of.the measures taken in relation to each of the articles analysed.

6. First and foremost it should be mentioned that Act No. 13/82 of 15 June qave approval for accession to the Optional Protocol to the International Covenant on Civil and Political Riqhts. Portugal thereby recoqnized the competence of the Human Riqhts Committee to examine communications from individuals claiminq to have suffered a violation of one of the rights set out in the Covenant.

7. In 1982 the Assembly of the Republic adopted and Promulqated Act No. 1/82 of 30 September, approvinq the first amendment of the Constitution.

8. As a result of the Act, the Council of the Revolution was abolished, leadinq to several important changes, especially in the status of the President of the Republic (under former article 145, the Council of the Revolution was the President's Council), and in the system for ensuring that the provisions of the Constitution are respected.

9. The Amendment Act added a Council of State (see Constitution, arts. 144 to 149), to Portuqalls political structure as an advisory body to the President of the Republic.

10. Under article 148, it falls to the Council in particular to take decisions on the dissolution of the Assembly of the Republic and the orqans of the autonomous regions, the resiqnation of the Government, the declaration of war and the signature of Deace treaties and, in qeneral, to advise the President of the Republic at his request in the performance of his tasks.

11. A Constitutional Court was set up (art. 212), with the essential task of reviewinq the constitutionality and lawfulness of decisions under the terms of articles 277 et seq. of the Constitution (Act No. 28/82 of 15 November). This constitutional review, which will be analysed in the context of article 1, may be preventive (art. 278), abstract (art. 281) or concrete (art. 280).

12. Important changes were made in respect of rights, quarantees and fundamental freedoms. The essential features of these innovations will be hiqhlighted below.

I. FUNDAMENTAL PRINCIPLES

13. The fundamental principles set forth at the beginning of the Constitution have undergone certain changes which could be anticipated as a result of the post-revolutionary nature of the 1976 Constitution.

14. The Amendment Act substantially modified this situation, eliminating various provisions which arose from it. First, the Council of the Revolution, an organ which had the status of representative of the "armed forces movement', and participated in the exercise of supreme authority, was abolished. Second, the references to the "revolutionary process", set forth in the Constitution in such an expressive manner in former article 10 and former article 55, paragraph 1, were deleted.

15. The Amendment Act also inserted in this chapter various provisions revealing the dominant concerns of the legislature. These may be set out under four headings:

(a) protection of human rights;

(b) promotion of economic, social and cultural rights;

(c) enshrinement of the principle of universal suffrage, on a basis of equality, in direct, secret and periodic elections;

(d) European integration.

16. The Amendment Act recognized the protection of human rights as a principle by which Portugal should be guided in its international relations. It was added to the list of general principles of ordinary international law set out in article 7, paragraph 1, such as the principle of national independence and the right of peoples to self-determination and independence.

"1. In its international relations Portugal shall be governed by the principles of national independence, respect for human rights, the right of peoples to self-determination ..., equality among States, the peaceful settlement of international disputes, non-interference in the internal affairs of other States and co-operation with all other peopies for the emancipation and progress of mankind."

17. The Amendment Act acknowledged the promotion of economic, social and cultural rights as one of the State's fundamental tasks:

ARTICLE 9

"...
"(b) to safeguard fundamental rights and freedoms and respect for the principles of the democratic State subject to the rule of law;

"(c) to defend political democracy and secure the organized participation of the people in solving national problems;

"..."

18. A new task was added to this list: the protection and enhancement of the cultural heritage of the Portuguese people, the protection of nature and the environment and the conservation of natural resources, which had been referred to in article 78.

19. The principle of universal suffrage, on a basis of equality, through direct, secret and periodic elections was added to the fundamental principles set out in the Constitution. Former article 10, institut ionalizing the revolutionary process, was accordingly replaced by a text enshrining this principle of suffrage.

"1. The people shall exercise political power through universal suffrage, on a basis of equality, in direct, secret and periodic elections and in other forms laid down in the Constitution.

"2. The political parties shall contribute to the organization and expression of the will of the people, and shall respect the principles of national independence and political democracy."

20. The Amendment Act prepared the constitutional ground for the direct application of Community legal norms in the Portuguese legal system. It was for that reason that the legislature added a new provision to article 8:

"3. Rules approved by the competent organs of international organizations of which Portugal is a member shall apply directly in internal law, provided that the treaties establishing such bodies expressly so stipulate."

II. FUNDAMENTAL RIGHTS AND DUTIES: GENERAL PRINCIPLES

21. In the first section, relatinq to general principles, the Amendment Act strengthened the constraints placed on the restriction or suspension of fundamental rights, and introduced a new principle concerning the right to legal information and protection.

A. STRENGTHENING OF CONSTRAINTS ON THE RESTRICTION OF FUNDAMENTAL RIGHTS

22. Article 18, paragraph 2, provided that "rights, freedoms and safeguards may be restricted by law only in those cases expressly provided for in the Constitution". The Amendment Act strengthened this provision by adding that such restrictions should "be limited to what is necessary to safequard other riqhts or interests protected by the Constitutionn. Moreover, it was also considered important to lay down that laws restrictinq such riqhts must not be retroactive.

ARTICLE 18

"2. Rights, freedoms and safeguards may be restricted by law only in those cases expressly provided for in the Constitution. Restrictions shall be limited to what is necessary to safequard other rights or interests Protected by the Constitution.

"3. Laws restrictinq rights, freedoms and safequards shall be qeneral and abstract in character, may not have retroactive effect and may not limit in extent or scope the essential content of constitutional principles. "

B. STRENGTHENINQ OF CONSTRAINTS ON THE SUSPENSION OF FUNDAMENTAL RIQHTS

23. Article 19 contains provision for the suspension of the exercise of riqhts, freedoms and safequards:

(Suspension of the exercise of riqhts)

"1. The orqans of supreme authority may not, jointly or separately, suspend the exercise of riqhts, freedoms and safequards except in the case of a state of siege or emerqency declared in the manner laid down in the Constitution.

"2. A state of sieqe or emergency may be declared in all or part of the national territory only in cases of actuai or imminent aggression by foreign forces, serious threat to or disturbance of the democratic constitutional order or public calamity.

"3. The declaration of a state of sieqe or emergency shall be adequately substantiated and shall sDecify the riqhts, freedoms and safequards whose exercise is to be suspended. It shall be in force for no more than 15 days, althouqh it may be renewed for one or several periods of the same duration.

"4. The declaration of a state of sieqe may in no circumstances affect the riqht to life, personal integrity and identity, civil capacity and citizenship, the r)rinciple of non-retroactivity of criminal law, the riqht of accused oersons to a defence and freedom of conscience and reliqion.

"5. The declaration of a state of emergency shall at most entail the partial suspension of riqhts, freedoms and safequards.

"6. The declaration of a state of siege or emerqency shall empower the authorities to take the necessarv steps for the prompt restoration of constitutional normality."

24. As may be seen, this article has been modif ied by the Amendment Act. The first change concerns the placing of limits on the duration of the state of siege or emergency (see Constitution, art. 141). Once the 15-day period has passed, the declaration must be renewed. The second change relates to the rights which may not be affected by the declaration of a state of siege. It is based on similar provisions in the International Covenant on Civil and Political Rights (art. 4) and the European Convention on Human Rights (art. 15, para. 2). The legislature deemed it necessary to add the following rights to those initially listed as not being subject to suspension: the right to personal identity, the right to civil capacity and citizenship, the right to non-retroactivity of criminal law, the right of accused persons to a defence and the right to freedom of conscience and religion.

C. THE RIGHT TO LEGAL INFORMATION AND PROTECTION

25. Mention should also be made of a new provision inserted by the Amendment Act among the general principles concerning fundamental rights and duties: the right to legal information and protection.

ARTICLE 20

(ACCESS TO THE LAW AND TO THE COURTS)

"l. All citizens have the right to legal information and protection in accordance with the law.

"2. Everyone shall be guaranteed access to the courts to defend his or her rights. Justice may not be denied to a person for lack of financial resources."

As manifestations of the principle of access to the law, legal information and protection constitute fundamental guarantees of the equality of citizens and, above all, of the concept of a State subject to the rule of law. In this way they enjoy constitutional status.

III. THE AMENDMENT ACT AND CHAPTER I: PERSONAL RIGHTS, FREEDOMS AND SAFEGUARDS

A. ENSHRINEMENT OF NEW RIGHTS

26. In article 26, which is entitled "Other personal rights", the Amendment Act inserted four new rights: the right to civil capacity, to citizenship, to a good reputation and an image:

" 1. Everyone shall have the right to personal identity, civil capacity, citizenship, a good name and reputation, image and protection of privacy and of private and family life.

" 2. The law shall establish effective safequards against the misuse of any information concerning persons and families, or the use of such information in a manner inconsistent with human dignity."

27. Article 26, paragraph 3 grants special protection to the right to citizenship and the right to civil capacity. These rights may be restricted only in cases and in conditions laid down by the law, and the restrictions May not be justified on political grounds:

" 3. Forfeiture of citizenship and restrictions on civil capacity may be applied only in cases and in conditions laid down by the law, and in no circumstances on political grounds."

An application of this general principle May be found in article 30, paragraph 4, concerning limits on sentences.

B. STRENGTHENING OF THE RIGHT TO FREEDOM AND SECURITY

28. Article 27 has also undergone several changes:

"l. Everyone shall have the right to freedom and security.

" 2. No one shall be deprived of his freedom in whole or in part, except as the -result of a court judgement convictinq him of an offence punishable under the law by a prison sentence, or as the result of the judicial application of a security measure.

"3. An exception to this principle shall be deprivation of freedom in the followinq cases for a period and on conditions to be laid down by the 1 aw:

" (a) Remand in custody, where a person is caught in flagrante delicto, or where there is strong evidence that he has wilfully committed an offence punishable by a major sentencei

"(b) The arrest or detention of a person who has unlawfully entered or stayed in the national territory, or against whom extradition or deportation proceedings have been instituted;

"(c) Disciplinary arrest of military personnel, with the right of appeal to the competent court;

"(d) Placing of a minor in an appropriate institution, for measures of protection, assistance or education as ordered by the competent court;

"(e) Detention by court order following failure to comply with a court decision, or for the purpose of ensuring appearance before the competent judicial authority.

" 4. Any person deprived of his or her freedom shall be informed without delay of the reasons for his arrest or detention.

"5. Any deprivation of freedom in violation of the provisions of the Constitution and the law shall place on the State an obligation to compensate the aggrieved party under the terms laid down in the law."

29. Firstly, note should be taken of the provision that persons deprived of their freedom in circumstances which are contrary to the provisions of the Constitution or the law must be compensated by the State on terms laid down by the law. This right could already be invoked by virtue of the provisions of the European Convention on Human Rights (art. 5, para. 5) and the International Covenant on Civil and Political Rights (art. 9, para. 5), which are in force in Portugal. However, the legislature wished to confer constitutional status on this right.

30. It was also deemed necessary to provide for a further three exceptions to the principle that "no one may be deprived of his freedom except as a result of a court judgment convictinq him of an offence punishable under the law by a Prison sentence, or as a result of the judicial application of a security measure".

31. Accordingly, as an exception to this principle, provision was made for the detention of military personnel for disciplinary reasons, which was inadmissible under the previous constitutional provisions.

32. Nevertheless, the guarantee of legal recourse through the competent court was maintained. The two other exceptions relate to the application to minors of measures or protection, assistance or education imposed by a competent court and carried out in appropriate institutions, as well as arrest for failure to comply with a court decision or to ensure appearance before the competent judicial authority. However, this arrest must be ordered by court decision.

33. Lastly, a few other changes may be noted in the wording of this article. In paragraph 2, for example, in addition to cases of complete deprivation of freedom, cases of partial deprivation of freedom are also provided for. This also applies to paragraph 4, which provides that any person deprived of his freedom must be informed of the reasons for his arrest, and where the expression uwithout delay" has been replaced by the word "immediately".

C. PROHIBITION OF NECESSARY CONSEAUENCES OF CERTAIN TYPES OF SENTENCE

34. In article 30, relating to limits on sentences and security measures, mention should be made of the change to paragraph 4. "No sentence shall involve, as a necessary consequence, the loss of civil, labour or political rightsn. By introducing this change the legislature wished to deal with situations in which the application of certain types of sentence necessarily entail the loss of certain civil, labour or political rights. Situations of this type, which are extremely diverse in nature, are no longer admissible under the terms of this new constitutional provision.

35. The new Penal Code, which entered into force on 1 January 1983, contains a similar provision in article 65, which reads: "No sentence shall entail, as a necessary consequence, the loss of civil, labour or political rights".

D. Strengtheninq of safeguards in criminal proceedings

36. On the subject of safeguards in criminal proceedings, the Amendment Act introduced changes which relate to the situation of accused persons. It provides that the accused should be tried in the shortest possible time, and that he should be able to choose his defence counsel.

ARTICLE 32

(SAFEGUARDS IN CRIMINAL PROCEEDINGS)

"1. ...

"2. Any person charged with an offence shall be presumed innocent until his conviction has acquired the force of res judicata, and he shall be tried in the shortest space of time compatible with safeguards for his defence.

"3. …

"4. The entire investigation shall be within the competence of a judge, who may, in circumstances laid down in the law, delegate to other persons certain elements of the investigation which are not directly connected with fundamental rights.

"…".

37. Although they were not spelled out in the former text of the Constitution, these provisions were already applicable under article 6 of the European Convention on Human Rights (paras. 1 and 3)).

38. Lastly, an observation is called for concerning the new version of article 32, paragraph 4. It enables the judge to delegate to other persons his competence to pursue elements of the investigation which are not directly connected with fundamental rights. Although it may reflect a weakeninq of the position of the accused, this previously inadmissible practice is designed to solve the prpblems raised by the inadequate number of judges, which has led to undesirable delays in investigation procedures.

E. PROTECTION OF PERSONAL DATA

39. The Amendment Act added an important provision to article 35, on the use of data processing (art. 35, paras. 2 and 4).

40. The legislature, bearing in mind developments in this area in various European countries, as well as the bills on this subject tabled in the Assembly of the Portuguese Republic, deemed it wise not to overlook the threat that the use of data processing may pose from the viewpoint of individuals' private lives. Accordingly, it considered that, in addition to prohibiting access by third parties to files containing personal data, it was necessary to establish appropriate machinery for

the strict supervision of the use of certain techniques, such as interconnection of files and transboundary data flows. However, it should be pointed out that the prohibition on transboundary data flows does not concern personal data alone. The concept is used here in a broader sense, and includes data of various types.

41. In view of the importance of this topic, it was included in this chapter of the Constitution without hesitation.

ARTICLE 35

(USE OF DATA PROCESSINQ)

"1. All citizens shall have the right to acquaint themselves with information concerninq them in data banks and the use for which it is intended. They may require it to be corrected or updated.

"2. Access by third Parties to files containinq Personal data, the interconnection of such files and the transmission of transboundary flows of data shall be forbidden, save in exceotional cases as laid down in the law.

"3. Computer technoloqy shall not be used to process data relating to Philosophical or political convictions, political or trade union affiliation, religious beliefs or the private life of citizens, except in the case of the processinq of non-identifiable data for statistical ourposes.

"4. The law shall define the concept of 'personal data' for the purposes of data recordinq.

"5. The allocation of a single national number to each citizen shall be forbidden."

F. Recognition Of other manifestations of freedom of information:

the riqht to inform and to be informed

42. Former article 37 of the Constitution set out the right to obtain information, which included in particular the freedom to seek information and to select sources of information.

43. However, it made no provision for the right to, be informed, except as regards the management of public affairs.

44. This right to be informed presupposes the existence of the right to inform and also the existence of conditions for the provision of information. Consequently, the legislature, takinq into account similar provisions in the European Convention on Human Rights (art. 10) and the International Covenant on Civil and Political Rights (art. 19, para. 2), set forth these two new rights - the right to inform and to, be informed.

45. While the right to freedom of information has been strengthened, the Amendment Act did not ignore situations in which this freedom can encroach upon other individual rights. Thus it recognized, in addition to the already specified right of reply, the right of rectification and the right to compensation for injury suffered.

ARTICLE 37

(FREEDOM OF EXPRESSION AND INFORMATION)

"1. Everyone shall have the right to express and make known his thoughts freely by words, images or any other means, and the right to inform, to obtain information and to be informed without hindrance or discrimination.

"2. The exercise of these rights may not be prevented or restricted by any type or form of censorship.

"3. Offences committed in the exercise of these rights shall be punishable under the general principles of criminal law, the courts of law having jurisdiction to try them.

"4. The right of reply and rectification, and the right to compensation for injury suffered, shall be eaually and effectively quaranteed to all natural and juridical persons.

G. Freedom of the press and safeguards for ideological pluralism

46. Freedom of the press, which is intimately linked with the issue of the right to information, was also the subject of a number of changes. This freedom raises two questions, one relating to the independence of the press vis-à-vis those possessing political or economic power, and the other relating to, the internal freedom of the press, in other words journalists, freedom of expression and creation within the enterprise.

47. The Constitution contains an explicit reference in article 38, and the Amendment Act strengthened this concept by adding certain provisions. As far as the first aspect is concerned, particular mention should be made of a new provision that the State should ensure this freedom and independence, prevent the concentration of press enterprises and promote non-discriminatory measures in support of the press.

ARTICLE 38

(FREEDOM OF THE PRESS AND PUBLIC INFORMATION MEDIA)

"…

"6. No administrative or fiscal system, credit policy or foreign trade policy shall affect the freedom of the press, directly or indirectly, or the independence of organs of information vis-à-vis those possessing political or economic power. It shall be the duty of the State to ensure this freedom and independence, to prevent the concentration of newspaper-publishing enterprises, particularly through multiple or interlocking shareholdings, and to promote non-discriminatory measures in support of the press."

48. The independence of the mass media belonging to the State was also strengthened. In its new wording the Constitution provides that they must be used in such a way as to guarantee scope for expression and ideological pluralism.

ARTICLE 39

(PUBLIC INFORMATION-MEDIA BELONGING OR REPORTING TO PUBLIC BODIES)

"l. Public information media belonginq to the State or other public bodies, or to bodies directly or indirectly subject to its economic control, shall be used in such a way as to safeguard their independence of the Government, the administration and other public authorities, and to guarantee scope for expressing and comparing various schools of thought."

49. This led the legislature to set forth in the Constitution a provision conferring on the opposition parties represented in the Assembly of the Republic the right to space in newspapers belonging to public bodies and to broadcasting time on radio and television on a basis of equality with the Government in all respects. It also set forth these parties' right of reply to political statements made by the Government.

ARTICLE 40

(RIGHT TO BROADCASTING TIME)

" 2. The political parties represented in the Assembly of the Republic which do not participate in the Government shall have the right, in accordance with the law, to space in newspapers belonging or reporting to public bodies, and to broadcasting time on radio and television, allocated in accordance with their representativeness and equal, in terms of size, duration and all other characteristics, to the space and time allocated to the Government. These parties shall also have the right of reply, in the same organs, to political statements made by the Government."

H. THE PRIVATE NATURE OF RELIGIOUS CONVICTIONS AND PRACTICES

50. In accordance with a new provision of the Constitution (art. 41), freedom of conscience, religion and worship dictate that the public authorities may not question anyone about his religious convictions or practices, except in the case of the collection of statistical information that cannot be identified individually. In such cases, refusal to reply must have no harmful consequences for the citizen.

IV. ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND DUTIES

51. Following the amendment of the Constitution, the realization of economic, social and cultural rights is one of the fundamental tasks of the State, as article 9 (d) expressly provides. This concern, clearly demonstrated by the insertion of a provision on the subject, backs up Portugal's already displayed intention to prOmote these special rights. After the entry into force of the 1976 Constitution, in which these rights were extensively enshrined, Portugal ratified the International Covenant on Economic, Social and Cultural Rights and signed the European Social Charter, displaying a firm political determination to strengthen these rights.

52. The changes introduced by the Amendment Act were aimed above all at broadening the scope of certain rights such as workers' rights, the right to protection of the family, the right to education and the right to enjoyment and creation in the cultural field.

A. PROTECTION OF MIGRANT WORKERS

53. The legislature introduced various new provisions covering emigrant Portuguese workers.

ARTICLE 60

(RIGHTS OF WORKERS)

"2. It shall be the duty of the State to guarantee the working conditions, remuneration and rest to which workers are entitled, in particular by:

" (e) Safeguarding the working conditions and social benefits of emigrant workers."

ARTICLE 74

(EDUCATION)

"3. In the implementation of education policy, it shall be the duty of the State:
"…
" (h) To secure for the children of Portuguese immigrants abroad instruction in the Portuguese language and knowledge of Portuguese culture."

54. The working conditions of emigrants and their social benefits are issues which Portugal must not neglect.

55. Appropriate conditions must be created so that the children of these workers can have access to Portuguese culture, by learning the Portuguese language. Under the new Constitution, it is now the duty of the State to ensure that these conditions are met and that workers and their families are able to enjoy the benefits laid down in the Constitution.

B. PROTECTION OF THE FAMILY

56. The Constitution views the family as a fundamental institution which must be protected, not only by the State but also by society. Before the amendment, article 67, paragraph 1 provided only for protection of the family by the State. The legislature endeavoured to bring the wording of this paragraph closer to that of the provisions on protection of the family contained in the

Universal Declaration of Human Rights (art. 16, para. 3), the International Covenant on Civil and Political Rights (art. 23, para. 1) and the International Covenant on Economic, Social and Cultural Rights (art. 10, para. 1).

57. It is the duty of the State to create certain conditions necessary for the protection of this institution. Article 67, paragraph 2 sets out the State's duties in this regard. However, the Amendment Act added a number of provisions designed to promote the drawing up of a comprehensive family policy and also the establishment of a national network of day care centres and other family support infrastructure. These provisions form new constitutional obligations with which the State must comply to safeguard and protect the institution of the family, which this article proclaims to be an important element of society.

ARTICLE 67

(FAMILY)

"l. The family, as a fundamental element of society, shall have the right to protection by society and by the State, and to the realization of all conditions permitting the personal fulfilment of its members.

"2. It shall be the duty of the State, in the context of protection of the family, in particular:

" (b) To promote the establishment of a national network of assistance to mothers and children, a network of day care centres and family support infrastructure and a policy for assistance to the elderly.
"…

"(f) Following consultation with associations representing families, to draw up and carry out a comprehensive integrated family policy."

58. The Constitution also lays down the right to found a family, though this is a fundamental right (art. 36).

59. In addition, mention should be made of the change in article 68 regarding recognition of fatherhood as a value which must be protected. The former wording made provision only for protection of the mother in her vital social function.

60. The change introduced puts an end to a situation which might be regarded as an exception to the principle of equality of spouses (or, more precisely, quality of parents) set forth in article 36, paragraph 3, of the Constitution.

61. Motherhood and fatherhood are thus given equal recognition as "cardinal social values".

ARTICLE 68

(FATHERHOOD AND MOTHERHOOD)

"l. Fathers and mothers shall have the right to the protection of society and the State in performing their irreplaceable role with regard to their children, particularly in education, and in guaranteeing that they may achieve vocational fulfilment and participate in the civic life of the country.

"2. Motherhood and fatherhood are cardinal social values."

C. SPECIAL ED CATION FOR THE DISABLED

62. The situation of the physically and mentally disabled also warrants special protection under the Constitution.

63. Drawing on the principles set forth in the United Nations Declaration on the Rights of Mentally Retarded Persons and the European Social Charter (art. 15), the Constitution reaffirms the principle of equality of rights and duties vis-à-vis such persons and entrusts to the State the task of carrying out a national policy for prevention, treatment, rehabilitation and integration (see Constitution, art. 71).

64. In this context, and under the terms of a new provision added by the Amendment Act, it is the duty of the State to promote and support special education for the disabled.

ARTICLE 74

(EDUCATION)

" 3. In the implementation of education policy, it shall be the duty of the State:

"…

"(g) to promote and support special education for the disabled. "

D. THE RIGHT TO ENJOYMENT AND CREATION IN THE CULTURAL FIELD

65. The right to enjoyment and creation in the cultural field is guaranteed by the Constitution, in articles 73 and 78.

66. This important constitutional provision was appreciably strengthened by the Amendment Act, which entrusted the State with a number of tasks designed n. to guarantee the exercise of this right:

ARTICLE 78

(ENJOYMENT AND CREATION IN THE CULTURAL FIELD)

"l. Everyone shall have the right to enjoyment and creation in the cultural field, and the duty to preserve, defend and enhance the cultural heritage.

"2. It shall be the duty of the State, in co-operation with all those working in the cultural field:

"(a) to encourage and ensure access by all citizens, particularly workers, to the means and instruments of cultural action, and to correct imbalances in this area which exist in the countryp

"(b) to support initiatives designed to stimulate individual and collective creativity, in its various forms and expressions, and to disseminate cultural achievements and assets of quality;

"(c) to promote the protection and enhancement of the cultural heritage, by making it an element which awakens the common cultural identity;

"(d) to develop cultural relations with all peoples, especially Portuguese-speaking peoples, and to ensure the safeguarding and promotion of Portuguese culture abroad;

"(e) to co-ordinate cultural policy with policies in other sectors."

67. At the same time, under the new drafting of this article, everyone is expected to promote, uphold and enhance the Portuguese cultural heritage, and has the right to forestall or eliminate factors contributing to its debasement, in accordance with the law (para. 3).

V. FUNDAMENTAL INNVOATIONS IN CRIMINAL LAW AND CRIMINAL PROCEDURE

68. A body of criminal law and criminal procedure has come into existence since the submission of Portugal's initial report, some of the legal provisions constituting an adaptation of the principles and rules of the fundamental law derived from the first constitutional amendment under Act No. 1/82 of 30 September 1982.

69. The new Penal Code approved by Decree-Law No. 400/82 of 23 December, came into force on 1 January 1983.

70. One of the features of the new Code is the principle, set out in the general part that any sentence shall be based, from the axiological and normative standpoint, on specific culpability and a system of punishment in which execution of the sentence is based on a philosophy of education and reinteqration. The abolition of the distinction between the various forms of imprisonment, whereby sentences involvinq deprivation of liberty differ only in terms of their

duration, the principle whereby no effect of a civil, occupational or political, nature shall necessarily result from the application of a sentence, and the system of measures not involvinq deprivation of liberty should therefore be emphasized.

71. Regardinq the sDecial part, mention may be made of the two lines of oolicy referred to in the preamble, namely a decriminalization policy and a nrecriminalization" option, more particularly in respect of crimes constitutinq a public danqer.

72. Protection of the assets and interests of the victim has also drawn the attention of the leqislature. Balance is sought by takinq into account, on the one hand, the policy towards decriminalization and, on the other hand, the increase in the number of crimes in resPect of which prosecution is dependent on the lodainq of a complaint by the victim.

73. The Provisions concerninq minor offences in the Penal Code of 1886 remain in force by virtue of article 6 of Decree-Law No. 400/82 of 23 September.

74. Decree-Law No. 433/82 of 27 october contains substantive and procedural provisions concerning the legal system for administrative offences.

75. its preamble states that:

"The introduction of administrative offences is due to the growinq interventionist tendencies of the modern State, which is progressively broadeninq its action in the areas of the economy, health, education, culture, ecoloqical balance, etc.

"This characteristic, common to most States and modern technological societies, is of particular siqnificance in view of the profound and well-known transformations of recent years, which were reflected in the Fundamental Law of 1976."

76. Further to this text, important sectors of Public life have been regulated by other instruments, such as Decree-Law No. 28/84 of 20 January, which established the new juridical system for economic offences and offences aqainst public health, in addition to providinq for and punishinq criminal. acts and administrative offences.

77. Consumer protection is provided, furthermore, through the requlations qoverninq advertisinq, by Decree-Law No. 303/83 of 28 June.

78. Apart from the Penal Code, mention should also be made of the entry into force of the special. Penal system concerninq younq people, established in Decree-Law No. 401/82 of 23 September. Decree-Law No. 402/82 of 23 September, which introduces amendments to the Co-de of Penal Procedure and to the system for the execution of sentences and safequards made necessary by virtue of new Provisions of substantive law.

79. A commission was instructed to draft a new Code of Penal Procedure, which has just been apDroved by Decree-Law No. 78/87 of 17 February. This is due to enter into force on 1 June 1987, and will also be applicable to future procedures (art. 2, para. 1) . However, immediate effect was given (para. 2) to the Provision concerninq the abolition of the system of bail for certain more serious crimes, and to article 209 of the Code (see below).

80. The formalities necessary for approval of a new Code of Penal Procedure were initiated with the submission to parliament of the proposal for enablinq legislation, which contains an annex setting out and substantiatinq the text of the draft code. This legislative proposal was enacted as Act No. 43/86 of 26 September and published in the Diário da República (No. 222, series I) on the same date. Its main features are as follows:

(a) Simplified, less bureaucratic and speedier procedure compatible with the administration of justice and the safeguardinq of fundamental human rights and social peace;

(b) Equal positions in law for the prosecution and for the defence in respect of all Procedural acts, and material equality concerninq the availability of "weapons" in the proceedinqs;

(c) Balance between the accusatorial nature of the proceedinqs and the principle of judicial investiqation;

(d) Riqorous definition of preciselY when and how a person becomes the defendant in the proceedings. For this purpose, the specific duties of the judicial authorities and of the police are established and the status of the defence counsel is defined;

(e) Establishment of the Statels obligation to bear the costs of defence counsel assiqned by the court (except in cases where reimbursement is payable) as part of a policy of access to, justice;

(f) Strict subordination of the procedural intervention of the private plaintiff (assistente) to the principal intervention of the public prosecutor, except in cases where public proceedings are initiated followinq a complaint or following a complaint and private accusation. The private plaintiff has the right of apoeal, independently of the public prosecutor, in respect of decisions affecting him;

(g) Maintenance of compulsory notice of civil actions arisinq from acts material to prosecution in a criminal court (adesão obrigatória da acção civil ao processo penal), but extending to situations in which civil actions may be conducted in separate proceedinqs. in a criminal court, the public prosecutor may act as public defence counsel for injured parties who lack adequate financial means and, in qeneral, will act in a subsidiary capacity in respect of a civil action;

(h) Placinc the judicial police under the guidance of the public Prosecutor and the judqe as reqards acts fallinq within its competence;

(i) Requlation of the conditions, arrangements and Procedure for compensation payable by the State in resPect of damaqes arisinq from unlawful or unjustified arrest or Preventive detention and the payment of compensation for judicial error;

j) Adaptation of the system of execution of sentences to the principles of criminal policy set out in the Penal Code, particularly as regards the activities of services connected with social reinteqration, parole, probation and other penal arranqements involvinq partial deprivation of liberty.

81. Judicial and other institutions concerned with the administration of justice have also received the attention of the legislature.

82. Changes are provided in the enabling legislation for criminal procedure (art. 6) to modify the status of judaes and the public prosecutor. These changes will affect the powers and statutory role of the public prosecutor under the new penal nrocedure. The article also provides for the approval of a new oraanizational law qoverninq the judicial police.

83. Police bodies have been the subject of leqislative initiatives by the Executive to render them more effective in their role of preventing and combatinq terrorism and orqanized crime.

84. The most significant laws in this regard are:

(a) Decree-Law No. 458/82 of 24 November, which establishes orqanizational and statutory provisions qoverning the judicial police. This is referred to in the discussion on the relevant articles of the Covenant, particularly in connection with the statutory duties and rules governinq the use of firearms;

(b) Decree-Law No. 217/83 of 25 May, authorizes direct access by the judicial police to car registration data by means of the policels computer terminals. This legislative measure is a response to the need to investigate crimes involvinq car theft and the use of stolen cars in committinq serious crimes.

85. For the public safety police, a computer service was introduced under Decree-Law No. 82/84 of 14 March. Personnel assigned to this service are bound by the requirement of professional secrecy. The data on the files are confidential in nature.

86. The statute of the public safety police (PSP) was introduced under Decree-Law No. 151/85 of 9 May.

87. The PSP's legal powers include the prevention and suppression of crime, the initiation of proceedinqs in criminal cases and administrative offences and the development of civic training activities relating in particular to the prevention of delinquency and to basic road traffic requlations. It also has the power to control arms, munitions and explosives in qeneral and performs personal safety functions.

88. The legal provisions concerning the use of coercive means and the statutory duties and requlations qoverning the use of firearms will be discussed in connection with the respective articles of the Covenant.

89. The penitentiary services were restructured in accordance with the provisions of Decree-Law No. 268/81 of 16 September. The main purpose of the reform was to ensure full implementation of the new penitentiary reform (Decree-Law Nos. 265/79 of 1 Auqust and 49/80 of 22 March), to

pursue the policy for the social reintegration and employment of offenders, to complete the restructuring of the services and to improve co-ordination between penitentiary establishments.

90. In implementation of some of the measures in the new Penal Code, Decree-Law No. 319/82 of 11 August established a department known as the Institute for Social Reintegration.

91. In accordance with Decree-Law No. 204/83 of 20 May - which def ined the organizational statute of the Institute - the fundamental objective of this body is to promote the prevention of crime through the social reintegration of offenders, whether or not they are liable to prosecution, and to provide support for minors who are at risk or socially maladjusted. In co-operation with all entities within the system of administration of justice, the Institute participates in the drafting of legislation and in the implementation of institutional measures - specifically in penitentiary and psychiatric institutions - as well as providing support for released offenders, with a view to facilitating their social reintegration.

VI. NATIONAL DEFENCE

A. BASIC FEATURES

92. Act No. 29/82 of 11 December approved the law governing national defence and the armed forces.

93. Under the terms of article 1, national defence is the activity furthered by the State and by citizens, with respect for democratic institutions, to ensure national independence, territorial integrity and the freedom and security of the population against any external aggression or threat.

94. Under article 2, Portugal advocates the solution of international problems and conflicts through negotiation and mediation, believing that has a duty to contribute to the preservation of international peace and security. For the purpose of self-defence, recognized by the Charter of United Nations, Portugal reserves the right to go to war in the event of effective or imminent military aggression.

95. The main outlines and measures of national defence policy are necessarily included in the Government programme (art. 41, para. 2) approved by the Council of Ministers and submitted to the Assembly of the Republic (arts. 4 and 40) .

96. The lasting objectives of national defence are enumerated in article 5:

(a) To guarantee national independence;

(b) To ensure territorial integrityl

(c) To safeguard the freedom and security of the population and the protection of their goods and of the nation's heritagel

(d) To guarantee freedom of action of the sovereign bodies, the "proper functioning" of democratic institutions and the possibility of carrying out the fundamental tasks of the State;

(e) To contribute to the development of the moral and material capacities of the national community so as to Prevent or respond by adequate means to any external aqqression or threat;

(f) To ensure the maintenance or re-establishment of peace in keepinq with the nation's interests.

97. Under article 6, the national defence policy is permanent and global (coverinci military and non-military fields). It is incumbent on all orqans and departments of the State to promote the conditions essential for implementinq the policy, and public information on the relevant duties and quidelines must be provided on a constant and updated basis.

98. The opposition parties have to be consulted by the Government on matters concerninq national defence policy.

B. RESPONSIBILITY FOR NATIONAL DEFENCE AND RELATED DUTIES

99. Defence of the homeland is a fundamental duty of all the Portuquese people, and this applies both to the national community in qeneral and to each citizen in particular; military defence of the Republic is the responsibility of the armed forces.

100. Military service is compulsory under the terms and for the period prescribed by law. Citizens considered unfit for armed military service are required to perform non-armed military service or civic service suited to their situation. Civic service may replace or supplement military service in the case of citizens not subject to military duties.

101. No citizen may be emr)loyed by the State or other public entity if he has not completed his military duties or his civic service, where the latter is comr)ulsory. On the other hand, no citizen may be prejudiced in his assiqnment, social benefits or requlars employment by virtue of the performance of military service or compulsory civic service.

102. Conscientious objectors are citizens who, because of their religious, moral or philosophical convictions, do not believe that it is right to use violent means against their neiqhbours, even though their aim is national defence, collective or personal. Such persons are required to perform civic service which is as long and- exactinq as armed military service.

C. ORGANIZATION, FUNCTIONING AND DISCIPLINE OF THE ARMED FORCES

103. The armed forces provide national defence in conformity with the Constitution and the laws in force.

104. Article 46, paragraph 4, of the Constitution prohibits armed, military-type, militarized or oaramilitary associations.

105. Establishing the basic principles of military status, including specifically the rights and duties of military personnel and guidelines regarding their careers, is a matter that falls within the competence of the Assembly of the Republic (arts. 27 and 40).

106. The armed forces are in the service of the Portuguese People and are strictly apolitical. None of their members may utilize their weapons, rank or function for political purposes.

1. RESTRICTIONS ON THE EXERCISE OF RIGHTS BY MILITARY PERSONNEL (ART. 31)

107. The exercise of the rights of expression, assembly, demonstration, association and collective petition and the right to vote of military and militarized personnel is subject to the following restrictions:

(a) Military and militarized personnel may not make public statements which are of a political nature or jeopardize the cohesion and discipline of the armed forces or fail to respect the duty to refrain from political activity and to observe apolitical conduct;

(b) Without higher authorization, they are prohibited from making Political statements on matters concerning the armed forces, with the exception of articles of a purely technical nature included in publications which are issued by the armed forces and edited or managed by military Personnel;

(c) They are prohibited from convening or participating in demonstrations of a political, partisan or trade union nature and in meetings of the same nature, except in the latter case, if they are dressed in civilian clothes and engage in no other activity;

(d) They are prohibited from joining associations of a Political, Partisan or trade union nature and from participating in the activities of associations of this kind other than ethical associations;

(e) They are prohibited from promoting or submitting collective petitions addressed to sovereign bodies or to their respective superiors regarding matters of a political nature or concerning the armed forces;

(f) They may not be elected to the Presidency of the Republic, the Assembly of the Republic, the Regional Assemblies of the Azores and Madeira, the Legislative Assembly of Macao or the assemblies and executive bodies of local government or popular regional organizations;

(g) The constitutional provisions concerning the rights of workers are not applicable to them;

(h) Citizens engaged in compulsory military service are bound by the requirement to refrain from participating in any political, partisan or trade union activity.

2. THE ROLE OF THE PROVEDOR DE JUSTIÇA (OMBUDSMAN)

108. In cases of acts or omission by the authorities responsible for the armed forces which result in the violation of rights, freedoms and safeguards or which cause damage, complaints may be lodged with the Provedor de Justiça (Ombudsman) by private citizens, in accordance with the law; and by members of the armed forces, once remedies have been exhausted through the administrative channels laid down by law, except as regards operational or classified matters.

D. THE SUPREME AUTHORITY FOR NATIONAL DEFENCE AND THE ARMED FORCES

109. The organs of the State directly responsible for national defence and the armed forces are:

(a) The President of the Republic, Commander-in-Chief of the Armed Forces (art. 38);

(b) The Assembly of the Republic (art. 40), which has the responsibility to legislate for and supervise government action;

(c) The Government (arts. 41 to 45), which has the responsibility to implement the nation's defence policy;

(d) The Higher Council of National Defence (arts. 46 and 47), which is an advisory body;

(e) The Higher Military Council (arts. 48 and 49), which is the military advisory body.

110. It is the specific responsibility of the Government to ensure the free exercise of the sovereignty and the functioning of its organs in time of war or crisis. The Ministers are responsible for national defence policy and must help in studying and adapting their services to respond to states of war or crisis situations by directing the participation of their services in mobilization and civil defence.

111. The Higher Council of National Defence is required to advise on various matters, more particularly on:

(a) Legislation relating to the organization of national defence and the definition of related duties and legislation governing the use of the armed forces in states of siege or in emergencies;

(b) The organization of civil defence, assistance to the population and protection of public property and individuals in the event of war;

(c) The exercise, in time of war, of the functions of assisting the President of the Republic, the Prime Minister and the Minister of Defence in all matters concerning the overall conduct of the war (see art. 64).

112. During the state of war - that is, from the time of the declaration of war to the restoration of peace - the competent organs shall, in conformity with the Constitution and the law, adopt all the political, legislative and financial measures deemed necessary for the conduct of the war and the restoration of peace (arts. 60 to 64).

113. Damage resulting from the war is the responsibility of the aggressor, and proper compensation must be claimed in the peace treaty or armistice agreement (art. 66).

VII. CIVIL DEFENCE

114. Decree-Law No. 78/75 of 22 February established the National Civil Defence Service, a State department responsible for implementing directives to prevent disasters or catastrophes and minimize their effects, and for providing relief and assistance in the event of any such disaster or catastrophe. Decree-Law No. 510/80 of 25 October approved the organizational statute of the National Civil Defence Service.

115. Under article 1 of the Decree-Law, civil defence covers all measures designed to protect citizens and the population as a whole from any danger to the life, health, resources and cultural

and material property, by cutting down the risks and minimizing damage in the event of accidents, catastrophe, disaster or war.

116. The objectives of civil defence are, under article 2, the implementation of:

(a) Measures of prevention;

(b) Measures adopted to control the situation, in cases of emergency, by the competent sovereign bodies;

(c) Measures designed to protect material and cultural property, both public and private;

(d) Measures designed to safeguard natural resources;

(e) Measures of passive defence, in co-operation with the armed forces.

117. The National Civil Defence Service, as an advisory body to the Government, is required to supervise both the studies, plans and programmes to be drawn up and also the actions to be taken by the various departments, by establishing links with foreign and international organizations.

118. Decree-Law No. 279/84 of 13 August set up the National Council for Emergency Civil Planning, which is responsible to the Prime Minister.

119. At the national level, the Council defines and regularly updates emergency civil planning policies so as to co-ordinate, in a crisis situation or in time of war, the management of available resources with civil defence activities, to ensure the functioning of the machinery of the State, support the armed forces and provide for the survival and capacity of resistance of the nation, the protection of the population and the safeguarding of the nation's heritage.

VIII. THE COMMISSION ON THE BLACK PAPER ON THE FACIST REGIME

120. Decree-Law No. 110/78 of 26 May established the Commission on the Black Paper on the Fascist Régime, which is responsible for promoting and centralizing research and collating and analysing documents and other materials which may help to clarify and elucidate the past of the fascist régime in Portugal.

121. Under Decree-Law No. 77/81 of 18 April, the "Salazar" and "Marcelo Caetano" archives were deposited in the National Library where they are to be kept and inventoried. This Decree-Law lays down that public access to these archives will be allowed only after conservation work is completed, and no sooner than 25 years after the death of their former owners.

122. Decree-Law No. 33/85 of 31 January established that, in line with Decree-Law 77/81, the members on the Commission on the Black Paper have free access to these archives for the purpose of performing their duties.

PART TWO

ARTICLE 1

123. The Portuguese Constitution repeatedly displays a concern for the protection of human rights, and systematically upholds the principle of full equality before the law and non-discrimination. Consequently, it is no surprise to find, among the fundamental principles of the Constitution, that "the Portuguese Republic is a democratic State subject to the rule of law, based on the sovereignty of the people, on respect for and the safeguarding of fundamental rights and freedoms ..." (art. 2), that "in its international relations Portugal shall be governed by the principles of ... respect for human rights ..." (art. 7, para. 1), and that "the basic tasks of the State are ... (b) to safeguard fundamental rights and freedoms and respect for the principles of the democratic State subject to the rule of law ..." (art. 9).

124. In the section of the Constitution concerning fundamental rights and duties, article 12, Paragraph 1, lays down that "all citizens shall enjoy the rights and be subject to the duties laid down in the Constitution…". Article 13 provides that:

"1. All citizens shall have the same social dignity and shall be equal before the law.

" 2. No one shall be privileged, favoured, put at a disadvantage, deprived of any right or exempted from any duty on account of his or her ancestry, sex. race, language, place of origin, religion, political or ideological convictions, education, economic situation or social status".

125. This principle of equality is also applicable in the case of aliens or Stateless persons. Article 15 of the Constitution provides that:

"1. Aliens and Stateless persons temporarily or permanently resident in Portugal shall enjoy the same rights and be subject to the same duties as Portuguese citizens.

"2. The provisions of the foregoing paragraph shall not apply to political rights, the performance of public duties not of a predominantly technical nature, or the rights and duties restricted exclusively to Portuguese citizens under the Constitution and by law."

126. The provisions of the Constitution and the law, interpreted and applied in accordance with the Universal Declaration of Human Rights (Constitution, art. 16), thus prohibit any instruments with contrary effect. The validity of laws and acts of the State is dependent on their consistency with the Constitution (art. 3, para. 3), and those committing breaches of these fundamental principles are subject to the provisions of the law laid down for the protection of fundamental rights: recourse to the courts, liability, and so on.

127. Most Portuguese legal experts consider that article 8 of the Constitution of the Portuguese Republic has instituted a system whereby international law is fully accepted:

"1. The rules and principles of general or ordinary international law shall be an integral part of Portuguese law.

"2. Rules derived from international conventions duly ratified or approved shall, following their official publication, apply in internal law insofar as they are internationally binding on the Portuguese State.

"3. Rules approved by the competent organs of international organizations of which Portugal is a member shall apply directly in internal law, provided that the treaties establishing such bodies expressly so stipulate."

128. In the view of these experts, the rules and principles laid down in article 8 of the Constitution stand below the Constitution but above the law. Accordingly, the rights set out in international conventions and agreements - as well as, of course, in the International Covenant on Civil and Political Rights - are, following ratification by Portugal and publication in the Diário da República, directly applicable and directly binding on all public and private bodies (Constitution, art. 18). This means that, where a breach of these principles is established, the victim may have recourse to the courts to assert his or her rights, and justice may not be denied to him or her for lack of financial resources (Constitution, art. 20). Where a Person's economic circumstances prevent him or her from paying legal costs, legal aid will enable him or her to go to court without having to pay legal expenses or lawyers' fees in advance.

129. The courts, which are the organs of supreme authority competent to administer justice in the name of the people (Constitution, art. 205), ensure "the defence of those rights and interests of citizens that are protected by law", punish violations of democratic legality and resolve conflicts of public and Private interests (Constitution, art. 206).

130. Under article 207 of the Constitution, the courts "shall not apply rules which violate the Provisions of the Constitution or the principles set forth in it".

131. It is the task of the Constitutional Court to conduct examinations of constitutionality (Constitution, art. 213). This review may be preventive in cases concerning acts, treaties or agreements transmitted to the President of the Republic for promulgation or approval (Constitution, art. 278); abstract concerning any provision of law (Constitution, art. 281); and concrete in relation to the decisions of courts which refuse to implement a rule on the grounds that it is unconstitutional, or which apply a rule which has been claimed to be unconstitutional during court proceedings (Constitution, art. 280). It should be noted that, under paragraph 2 of this article, when a rule which a court has refused to implement appears in an international convention, the Public Prosecutor's Department must appeal against the decision before the Constitutional Court.

132. Nor should it be forgotten that the Constitution assigns to the Provedor de Justiça (Ombudsman) - who, after examining complaints lodged by citizens, makes recommendations to

the competent organs to prevent or make good acts of injustice (Constitution, art. 23) - the power and the duty to invite the Constitutional Court to declare unconstitutional provisions which he considers to be contrary to the Constitution.

133. Lastly, mention should be made of the right of petition and popular action laid down in article 52 of the Constitution, which enables citizens to lodge claims or complaints in defence of their rights, the law or the public interest.

134. At the international level, as a result of the ratification of several international conventions, citizens who consider themselves victims of a violation of the rights set out in those legal instruments may, in accordance with the procedures set out therein, apply to the bodies set up under those instruments to monitor their application.

135. This is the case in particular for the European Commission of Human Rights and the European Court of Human Rights - established in pursuance of the European Convention on Human Rights under the auspices of the Council of Europe - as well as the United Nations Human Rights Committee.

THE RIGHT OF PEOPLES TO SELF-DETERMINATION

136. The Portuguese Constitution sets forth a number of principles on the basis of which it may be stated unequivocally that the Portuguese people can freely choose its political status and pursue its economic, social and cultural development. Article 1 states that "Portugal is a sovereign Republic founded on human dignity and the will of the people, and committed to its own transformation into a classless society". Article 2 states that:

"The Portuguese Republic is a democratic State subject to the rule of law, based on the sovereignty of the people, on respect for and the safeguarding of fundamental rights and freedoms, and on plurality of democratic expression and democratic political organization, whose object is to secure the transition to socialism through the achievement of economic, social and cultural democracy and the extension of participatory democracy."

137. The use of the expression "sovereign Republic" was intended to reflect the principles of national sovereignty, self-determination and independence. In other words, the Portuguese State drafts the Constitution, organizes its power, establishes new public bodies, reformulates its position vis-à-vis society and projects its actions in the field of international relations. It has the capacity to take independent decisions on the future of the national community. And it will do so in accordance with the will of the people, shaped through pluralism and competition between parties and political groupings and manifested "through universal suffrage, on a basis of equality, in direct, secret and periodic elections and in other forms laid down in the Constitution" (Constitution, art. 10).

138. One of the basic tasks of the State is "to defend political democracy and secure the organized participation of the people in solving national problems" (art. 9 (c).

139. Provision is made for the formation of political parties as a means of ensuring freedom of association. This freedom also encompasses the opportunity to join such parties and "through them to contribute ... to formation of the will of the people and to the organization of political power" (art. 51, para. 1). In this way the parties are a form of organization and expression of the will of the people, although they are not permitted to promote violence or adopt fascist ideology (art. 46, paras. 1 and 4).

140. Thus, citizens have the right to take part in political life and the control of the country's public affairs (art. 48), either directly or through freely elected representatives. Their direct and active participation is considered to be "a condition and fundamental instrument for the consolidation of the democratic system" (art. 112).

141. In appointing their representatives through elections, citizens are given the opportunity to play a part in determining future policy and to oversee the application of this policy. The tasks of the Assembly of the Republic, "the representative assembly of all Portuguese citizens" (art. 150) , are to enact legislation on all subjects, except those reserved to the Government, to approve the plan and State budget and examine annual and final reports on the implementation of the plan, and to ensure respect for the Constitution and laws and review the programme and the acts of the Government and the administrative authorities.

142. The Government is the organ responsible for the general policy of the country (art. 185). The Prime Minister is appointed by the President of the Republic after consultations with the parties represented in the Assembly of the Republic, due regard being had to election results (art. 190). The Government is answerable to the President of the Republic and to the Assembly of the Republic (art. 193).

143. The Government's programme sets forth the principal policy directions and measures to be adopted or proposed in the various spheres of governmental activity (art. 191). The programme is presented for scrutiny by the Assembly of the Republic (art. 195), which may reject it (art. 195, paras. 3 and 4), in which case the Government must resign (art. 198 (d)).

144. The Government itself may ask the Assembly of the Republic for a vote of confidence on a statement of general policy or on any matter of national interest (art. 196). If the motion of confidence is not approved, the Government must resign (art. 198 (e)).

145. The deputies may pass motions of censure on the Government concerning the implementation of its programme or any matter of national interest. The approval of such a motion entails the resignation of the Government.

146. It may be concluded from this brief analysis that the Constitution provides for a variety of ways of ensuring participation by the people in formulating policy and monitoring its implementation.

147. The economic, social and cultural development of the Portuguese people will be ensured both by the organs of supreme power and by the citizens themselves.

148. It is the task of the Assembly of the Republic, through essentially legislative means, and the Government, through its programme of action and its administrative function, to "issue the regulations necessary to give effect to the laws" (art. 202 (c)), "defend democratic legality" (art. 202 (f)) and "take all steps necessary for the promotion of economic and social development and the satisfaction of the needs of the community" (art. 202 (g)). The citizens enjoy the rights, freedoms and guarantees set out in the Constitution (art. 12), which must be respected by public and private bodies (art. 18). Whenever their rights, freedoms and guarantees are violated, citizens have the right of access to the courts (art. 20) and the right to resist (art. 21).

149. In this way, part I of the Constitution sets out fundamental rights and duties, under section II - rights, freedoms and safeguards, and under section III - the various economic (chap. I), social (chap. II) and cultural (chap. III) rights, laying down the duties of the State in the realization of these rights. These duties must comprise the formulation of various measures, on the basis, naturally, of the Government's programme, and of placing them before the Assembly of the Republic.

150. These principles of national sovereignty, self-determination and independence also guide the establishment of international relations with other States. Article 7 of the Constitution provides that Portugal "shall be governed by the principles of national independence, respect for human rights, the right of peoples to self-determination and independence, equality among States ... and co-operation with all other peoples for the emancipation and progress of mankind".

ARTICLE 2

PARAGRAPHS 1 AND 2: THE RIGHT TO NON-DISCRIMINATION

151. The Portuguese Constitution lays down a principle of the greatest importance - the principle of equality, which is set out in article 13. By virtue of this article, all citizens are equal before the law, and:

"2. No one shall be privileged, favoured, put at a disadvantage, deprived of any right or exempted from any duty on account of his or her ancestry, sex, race, language, place of origin, religion, political or ideological convictions, education, economic situation or social status".

152. It is for that very reason that the enumeration of the basic tasks of the State includes the need "to promote the welfare and quality of life of the people, real equality among the Portuguese and the realization of economic, social and cultural rights" (art. 9 (d)).

153. Article 13 sets forth three fundamental considerations which the State must bear in mind: the prohibition of judicial discretion, so that where situations are the same, equal treatment is given; the prohibition of discrimination based on subjective considerations, such as those listed in paragraph 2; and the need for differentiation if inequality of opportunity justifies compensation.

154. Thus the principle of equality has a social function which underpins the duty to eliminate or alleviate inequality in order that equality before the law may be ensured. It is for this reason that the Constitution makes provision for a number of cases of "Positive discrimination".

155. Two examples may be cited in this regard:

(a) Article 69, paragraph 2, concerning children, which mentions the special protection which must be given to "orphans and abandoned children against any form of discrimination or oppression and against abuses of authority in the family and other institutions".

(b) Article 76, paragraph 1, on the system governing admission to universities, which lays down that the State must encourage and facilitate the admission of workers and workers' children.

156. In addition to this general principle set forth in article 13 of the Constitution, mention may be made of several other provisions which promote this concern to secure equality and prevent all forms of discrimination.

157. Article 60 deals with the rights of workers, and reaffirms the Principle of equality by referring to:

"1. All workers, regardless of their age, sex, race, citizenship, place of origin, religion or political or ideological convictions, ...".

158. While these considerations do appear in other provisions of the Constitution, it was considered necessary to emphasize their application to certain specific situations. In this regard mention might be made of citizenship, and the inadmissibility of different treatment as between Portuguese and aliens; or the provisions on place of origin, which forbid discrimination in access to a job or its reservation for those from a particular region (a principle which is reaffirmed in the section on autonomous regions - art. 230 (c)).

159. This concern finds reflection in other pieces of legislation - for example, Act No. 4/84 of 5 April, concerning protection of motherhood and fatherhood, article 2 of which lays down the equality of parents, in the following terms:

"1. Professional fulfilment and participation in the civic life of the country shall be guaranteed to fathers and mothers, on an equal footing.

"2. Fathers and mothers shall have equal rights and duties as regards the maintenance and upbringing of children.

"…".

160. The system of leave granted by virtue of this Act and Decree Law No. 136/85 of 3 May naturally also reflects this concern. The following situations may be cited:

(a) Article 15 of Act No. 4/84 and article 17 of Decree Law No. 136/85, concerning part-time work, which may be authorized "for workers with children aged under 12";

(b) Article 13 of Act No. 4/84 and article 8 of Decree Law No. 136/85, concerning leave to care for sick minors and the family:

"Workers shall have the right to leave ... in the event of sickness or an accident affecting adopted children ... aged under 10".

161. A number of court decisions also deserve mention in this regard.

162. In opinion No. 1/76 (drawn up before the first amendment of the Constitution, which was introduced through Act No. 1/82), the Constitutional Commission declared unconstitutional Regional Decree No. 2/76 adopted by the Regional Assembly in Madeira, on the grounds that it stipulated that preference should be given in the assignment of teachers to those originating from or residing in the region. The criterion was contrary to article 13, paragraphs 1 and 2, on the principle of equality, and article 48, paragraph 4, on the right of free and equal access to public employment. On the basis of this opinion, the Council of the Revolution declared the Decree unconstitutional.

163. In opinion No. 2/81, the Constitutional Commission declared unconstitutional article 52 of Act No. 2135 of 11 July 1968, on military service, which stipulated that preference should be given, in admission to public employment, to those who had completed their military service, laying down a set of priorities based on merit displayed during the performance of such service. This stipulation was contrary to article 13, paragraph 1, of the Constitution, in that it made provision for different treatment of citizens exercising the same right - the right of access to public employment. It was also contrary to article 13, paragraph 2, in that military service is generally performed only by male citizens, being optional for women.

164. The Act also violated article 52 (c) of the Constitution (art. 59, para. 3 (b) following the amendment of the Constitution), which lays down equality of opportunity in the choice of occupation or employment and conditions such that access to a professional category is not prohibited or restricted by reason of a person's sex.

165. On the basis of this opinion, the Council of the Revolution, in resolution No. 21/81, declared the article unconstitutional.

166. The Assembly of the Republic is currently considering a new bill on military service, bill No. 14/IV. It is of interest to note its provision that:

"No citizen may be put at a disadvantage in his or her assignment, social benefits or permanent employment by reason of the performance of the military obligations laid down in the law" (art. 46, para. 1).

Article 55 of the bill, relating to the military obligations of female citizens, provides that they "shall be exempt from military obligations, but may perform effective military service voluntarily".

167. Equal treatment of aliens and Portuguese nationals is a traditional rule in Portuguese constitutional law, and one which is strengthened by the present Constitution's universalist perspective on the interpretation of fundamental rights.

168. The provisions of the Constitution and laws relating to fundamental rights must be interpreted and applied in accordance with the Universal Declaration of Human Rights (art. 16, para. 2).

169. The principle of equality of treatment is set forth in article 15, paragraph 1, of the Constitution:

"Aliens and stateless persons temporarily or permanently resident in Portugal shall enjoy the same rights and be subject to the same duties as Portuguese citizens."

170. This principle, which is naturally applicable to traditional rights and freedoms, is also applicable to positive rights. However, there are restrictions on this principle as regards political rights (since the performance of public duties is not of a predominantly technical nature) as well as the rights and duties restricted exclusively to Portuguese citizens under the Constitution and by law (art. 15, para. 2). However, it may be said that, in addition to civil rights, economic and social rights are generally granted to non-nationals and Portuguese citizens on the same conditions, and that only the Constitution or an express legal provision may justify a departure from this principle.

PARAGRAPH 3: THE RIGHT TO AN EFFECTIVE REMEDY

171. Under article 18 of the Constitution, the constitutional provisions relating to rights, freedoms and safeguards are "directly applicable and binding on all public and private bodies".

172. Furthermore, under article 22, the State and other public authorities are liable under civil law for all acts or omissions in the performance of their duties or caused by such performance which result in violations of the rights, freedoms and safeguards of citizens.

173. Article 20 provides that all citizens have the right to legal protection, and that they are guaranteed access to the courts for the defence of their rights, without any obstacle of an economic nature. It is the responsibility of the courts to ensure the defence of those rights and interests of citizens that are Protected by law, to punish violations of democratic legality and to resolve conflicts of interest (Constitution, art. 206).

174. However, in the case of acts or omissions by the public authorities, citizens may also lodge complaints with the Provedor de Justiça (Ombudsman), who examines them without power of decision, and makes to the competent organs such recommendations as are necessary in order to prevent or make good acts of injustice (art. 23). They may in addition, individually or collectively, submit to the organs of supreme authority or to any other authority petitions, representations, claims or complaints in defence of their rights (art. 52).

175. Article 21 sets forth the right to resist any order that infringes rights, freedoms or safeguards and to repel by force any form of aggression if recourse to Public authority is impossible.

176. Portugal has ratified the European Convention on Human Rights, article 13 of which sets out the right to "an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity".

177. As Portugal has recognized the competence of the European Commission of Human Rights and the European Court of Human Rights, violations of this provision may be brought before them.

178. In ratifying the Optional Protocol to the International Covenant on Civil and Political Rights, Portugal also, of course, recognized the competence of the Human Rights Committee to receive communications concerning violations of the rights set forth in the Covenant, particularly in article 2.

RIGHTS AND SAFEGUARDS VIS-À-VIS THE ADMINISTRATION

179. This problem was studied in considerable detail in the initial report submitted by Portugal (CCPR/C/6/Add.6 - see in particular pp. 15 et. seq.).

180. Since then, a number of legislative measures have been adopted. These measures are outlined below.

RESPONSIBILITY OF HOLDERS OF POLITICAL OFFICE

181. In article 120, the Constitution refers to the status of holders of political office and stipulates that they are politically, civilly and criminally responsible for acts and omissions in the performance of their duties (para. 1).

182. Paragraph 2 of the article (introduced when the Constitution was amended) provides that the law should stipulate the duties and, responsibilities of holders of political office, list posts which they may not hold simultaneously, and specify their rights, privileges and immunities.

183. Under article 133, the President of the Republic is answerable before the Supreme Court for offences committed in the performance of his duties. It is the duty of the Assembly of the Republic to initiate proceedings in respect of such offences, and conviction entails dismissal from office and deprivation of the right to be re-elected. After the end of his term of office, the President is answerable before the ordinary courts for offences not committed in the performance of his duties.

184. Deputies have no civil, criminal or disciplinary liability for the votes they cast and the opinions they express in the performance of their duties, and may not be detained or arrested without the authorization of the Assembly, except for a crime punishable by a major sentence when caught in flagrante delicto (art. 160, paras. 1 and 2). If criminal proceedings are instituted against a deputy and he or she is indicted or similarly charged, the Assembly decides whether or not he or she should be suspended to enable the proceedings to take their course (para. 3).

185. If court proceedings are instituted against a member of the Government (art. 199) and he or she is indicted, except in the case of a serious offence, the Assembly of the Republic decides whether he or she should be suspended to enable the proceedings to take their course.

186. Judges may not be held liable for their decisions, except as provided for by law (art. 221). The status of judges is analysed in greater detail under article 14.

187. In this regard mention should be made of the fact that Act No. 4/83 of 2 April lays down that the property of holders of public offices shall be subject to public scrutiny, and that they

must lodge a declaration of assets and income (see also Decree No. 74/83 of 6 October), while Act No. 4/85 of 9 April Provides that they should be remunerated.

RESPONSIBILITY OF THE STAFF OF THE ADMINISTRATIVE AUTHORITIES

188. Article 266 of the Constitution provides that:

"1. The public administrative authorities shall seek to promote the public interest, while observing the individual rights and interests protected by law.

"2. The organs and staff of the administrative authorities shall be subject to the Constitution and the law, and shall perform their duties fairly and impartially."

189. Officials and staff of the State are liable to civil, criminal or disciplinary proceedings in respect of actions and omissions which result in infringements of those individual rights or interests that are protected by law (art. 271).

190. New disciplinary regulations were issued under Decree-Law No. 24/84 of 16 January. Like the former regulations, they stipulate that officials or staff who neglect their duty to be impartial in the performance of their tasks are liable to suspension (art. 25, para. 2 (c)), and that those who commit acts which are manifestly prejudicial to the institutions and principles Protected by the Constitution are laible to compulsory retirement and dismissal.

The citizen's safeguards in respect of the administrative authorities

191. Under article 268 of the Constitution,

"1. Citizens shall be entitled to be informed by the administrative authorities, whenever they so wish, concerning the status of matters which directly concern them and decisions taken on those matters.

"2. Administrative decisions with public effects shall be notified to the interested parties, when they are not published officially. They must be properly substantiated when they affect the legally Protected rights or interests of citizens.

"3. All interested parties shall have the right to lodge an appeal against any unlawful final and enforceable administrative decision, regardless of its form, and to obtain recognition of a legally protected right or interest."

192. In other words, this article lays down the right of citizens to Information on the status of matters which concern them and decisions taken on those matters; the right to be made aware of such decisions, through official notification or publication, as well as the grounds for them where they affect legally protected rights and interests; and the right to appeal against an unlawful administrative decision or for the recognition of a legally protected right or interest.

193. Decree-Law No. 256-A/77, of 17 June, which was mentioned in the initial report and remains in force, is of particular interest in this regard. The decree-law requires the substantiation, by means of a brief statement of the factual and legal reasons therefor, of any administrative decision which:

(a) Denies, extinguishes, restricts or in any way affects rights, or imposes or makes more severe duties, responsibilities or penalties;

(b) Affects, in a similar manner and as a result of the exercise of discretionary powers, legally protected interests;

(c) Sets forth a decision On a claim or an appeal;

(d) Decides against a claim or argument put forward by the person concerned, or against an opinion, inquiry or official proposal;

(e) Sets forth a decision at variance with the practice usually followed in the settlement of similar cases or in the interpretation and application of the same provisions of law;

(f) Implies the revocation, amendment or suspension of a previous administrative decision.

194. Very recently, in resolution No. 6/87, issued on 29 January, the Government approved a set of rules for adoption by the administrative services, relating to reception facilities for the public and written administrative communications of a non-internal nature. The introduction to

the resolution points to an attempt to personalize the public administration and humanize its relations with its users and those subject to the administration in general.

RECEPTION FACILITIES FOR THE PUBLIC

195. Personnel assigned to these reception facilities must be properly identified and must be fully familiar with the structure and functions of the department, so that they can provide information and direct the public to the appropriate sections. These reception facilities must ensure the distribution of information sheets on the matters dealt with by the departments, and the steps individuals must take to comply with the relevant procedures. They may even inform an individual, on request, of the steps taken in his or her case.

196. For complex issues, the reception services may dispatch staff with a special responsibility for assisting interested parties to draft requests or complete forms.

WRITTEN ADMINISTRATIVE COMMUNICATIONS

197. Each written administrative communication must mention the name, address and telephone number of the department concerned, identifying the official or member of staff signing the communication and his or her title. Communications addressed to individuals must be drafted clearly, concisely and objectively, and an effort must be made never to use technical language.

198. If reference is made to provisions which set out rules or to administration circulars, the part which is important for pursuing or settling the matter must if possible be reproduced, or a photocopy attached.

199. When it is necessary to call a person to an administrative office, he or she must be told of the purpose of the meeting, and must be given priority at the time of attendance.

200. Efforts to combat corruption within the public services led the Government to Day very special attention to relations between the administrative authorities and the public.

201. A high authority was set up under Decree-Law No. 369/83 of 6 October, entrusted with the task of preventing corrupt and fraudulent activities. Act No. 45/86 of 1 October subsequently laid down new legal arrangements designed to bring the status of the authority into line with the objectives being pursued.

202. The principal features of these arrangements are as follows:

(a) Direct reporting by the high authority to the Assembly of the Republic (art. 1), and election by a two-thirds majority of Assembly members in office (arts. 1 and 2).

(b) Complete independence in the performance of its duties and strict respect for the Constitution and the law, in upholding the public interest and national dignity (art. 4);

(c) New arrangements for putting into effect the duty of official public bodies to co-operate, particularly those having powers of judicial or police investigation, inquiry or inspection (arts. 5 and 6). This special duty to co-operate gives rise to a right, on the part of the high authority, to have access to documents and other items of information, the setting aside of the principle of banking secrecy and the duty to co-operate with the high authority for all citizens and all bodies not enjoying express protection under the Constitution or the law. An exception is made for information constituting a State secret;

(d) Acts and transactions relating to the procedures pursued by the high authority are subject:

(i) To the limitations deriving from the protection of citizens' fundamental rights as regards the collection of evidence;

(ii) To the principle that the persons concerned must be heard, except where they may be indicted in criminal proceedings and where cases are closed, if the person concerned has not asked to be heard.

203. Decree-law No. 370/83 of 6 October specifies a number of measures for the realization of the principle of impartiality in the work of the public administrative authorities, in accordance with article 267, paragraph 2, of the Constitution:

"2. The organs and staff of the administrative authorities shall be subject to the Constitution and the law, and shall perform their duties fairly and impartially."

204. The Decree-Law deals with impediments to certain administrative decisions or public law contracts, particularly where the head of a department of the central, regional or local administration or a public institution or enterprise has a personal interest in the decision or contract. These principles also apply where the interested party is the spouse or a relative of the person concerned or a person with whom he or she is living in the same household.

205. Decisions taken or contracts entered into in violation of these principles are subject to the provisions of the law concerning nullity.

206. Decree-Law No. 371/83 of 6 October extended the coverage of the criminal law beyond the definition of offences laid down in the Penal Code to encompass the performance of duties which are similar (from the viewpoint of criminal policy) to those of public officials, and also to the categories stipulated in the law as regards personally acquired or non-inherited assets.

207. The definition of a public official for the purposes of the criminal law appears in article 437 of the Penal Code, as supplemented by the definition appearing in article 4, paragraph 2, of Decree-Law No. 371/83, concerning the consequences arising from that instrument and the articles of the Code concerning the offences of corruption (arts. 420 et seg.), embezzlement (arts. 421 et seg.), misuse of authority (arts. 428 et seg.), breach of secrecy (arts. 433 et seg.) and abandonment of post (art. 436).

208. Serious and flagrant breach of duty may entail the penalty of dismissal under article 66 of the Code (art. 7 of Decree-Law No. 371/83). Attempted breaches will always be punished, regardless of the severity of the punishment prescribed in Decree-Law No. 371/83 (art. 6).

THE ADMINISTRATIVE COURTS

209. The Act on procedure in administrative courts was recently approved by Decree-Law No. 267/85 of 16 July. This instrument was adopted in pursuance of the applicable constitutional principles, specifically article 268 concerning rights and safeguards in respect of the administrative authorities.

210. In the words of its introduction, the instrument seeks to devise a balanced system of remedies which, without calling into question the public interest as pursued by the administrative authorities, provides citizens with effective protection of their legally protected rights and interests.

211. This piece of legislation introduced new procedures, such as the declarations of regulations as illegal or the recognition of legally protected rights or interests. Accordingly, any rule issued in the performance of administrative functions may be declared unlawful (art. 66), either at the request of a person who considers himself or herself to have been injured by its application (art. 63), or by the Public Prosecutor's Department.

212. It should be recalled that, under article 224 of the Constitution, it is the Department's task to uphold democratic legality and the interests laid down in the law:

"1. The Public Prosecutor's Department shall be competent to represent the State, initiate criminal proceedings and defend democratic legality and the interests stipulated in the law.

"2. The Department shall have independent status."

213. It is also Possible for persons who claim to be the holders of legally protected rights or interests to initiate proceedings for the recognition of such a rights or interests (art. 69 et seq.). Such proceedings are initiated when other remedies have failed to secure effective respect for a court decision, right or interest.

214. Under article 83, in order to Permit recourse to administrative or legal remedies, the public authorities must facilitate the examination of documents or Procedures and the issue of copies of official documents, at the request of the interested party or the Public Prosecutor's Department except where the matter is confidential or secret, in other words, where discretion is necessary in the public interest - specifically in matters of national defence, internal security and foreign policy, or for the Protection of citizens' fundamental rights, particularly the right to respect for

private and family life. Following a period of notice of 10 days, the applicant may request the appropriate administrative court to order the authority to accede to his or her request.

215. In the event of a breach, or feared breach, of administrative law, the Public Prosecutor's Department or those for whom the breach involves an injury which merits the intervention of the law may request the administrative court to order the adoption or avoidance of specific conduct in order to ensure that the rules are applied (art. 86).

216. The Act concerning procedure even specifies emergency procedures which are valid during the legal vacations. Specific mention is made of orders to give access to or issue copies of official documents, and orders to adopt a specific form of conduct.

ARTICLE 3

EQUAL RIGHTS OF MEN AND WOMEN

217. As already pointed out on several occasions, the Constitution lays down the principle of equality under which all citizens possess the same dignity and are equal before the law and no discrimination may be made specifically on the grounds of sex. The text of the Constitution provides several examples of this concern when it speaks of "the right to found a family and marry on terms of complete equality" (art. 36, para. 1); of "equality of opportunity in the choice of occupation or type of work and conditions to ensure that access to any post, work or professional category" is not "prohibited or restricted by reason of a person's sex" (art. 59, para. 3 (b); of the rights of workers without any distinction as to sex, and remuneration on the principle of "equal pay for equal work" (art. 60, para. 1).

218. Moreover, on 30 July 1980 Portugal ratified the Convention on the Elimination of All Forms of Discrimination against Women. Portugal has submitted the reports provided for under article 18 of the Convention (see CEDAW/C/5/Add.21 and Corr.1 and Amend.1).

219. Ordinary law has endeavoured to incorporate the above-mentioned constitutional principles:

(a) Decree-Law No. 392/79 of 20 September defined the legal frame of application for the principle of non-discrimination in access to employment, vocational training and working conditions (see E/1984/6/Add.16, relating to the implementation of the International Covenant on Economic, Social and Cultural Rights, articles 6 to 9, article 6 "Choice of employment"). Pursuant to the Decree-Law, the Commission on Equality in Employment (CITE) was set up. It is made up of government, trade union and employers' representatives and is in particular responsible for recommending the adoption of legislative, regulatory or administrative measures, for promoting the preparation of studies and disseminating the objectives of Decree-Law No. 392/79 and publicizing cases of violation of the rules thereof;

(b) The nationality Act, No. 37/81 of 3 October, established equal rights for men and women (discussed in connection with article 24);

(c) Decree-Law No. 303/83 of 28 June, relating to advertising, laid down a number of principles, including equality, by prohibiting any form of sexual discrimination;

(d) Act No. 4/84 of 11 May, relating to maternity and paternity protection, and Decree-Laws Nos. 135/85 and 136/85, implementing the Act, now represent the legal framework for maternity protection and unify maternity legislation, which was previously set out in a number of laws. The Act implements the principles embodied in article 68 of the Constitution as amended on 30 September 1982 subsequent to the amendment of the Constitution voted on 12 August 1982;

(e) Article 8 of Decree-Law No. 491/85 of 26 November prohibits discrimination on the grounds of sex by laying down the punishment of a coima (monetary administrative penalty) for anyone who publishes or announces offers of employment that contain sexually discriminatory restrictions, specifications or preferences;

(f) The new Penal Code in 1982 which establishes equal treatment for men and women also displays deep concern to provide women with adequate protection. By way of example we could

mention the following provisions: article 153, concerning ill-treatment of pregnant women (para. 2);

Article 197, paragraph 2, concerning the payment of alimony to pregnant women; article 198, relating to material support by the man who has made a woman pregnant; the section on sexual offences (art. 201 et seq.).

220. The Assembly of the Republic recently devoted a session to the present situation of women in Portugal, in celebration of International Women's Year. After a discussion of women's problems in access to work, training, teaching, and in regard to family violence, emphasis was placed on the need to contribute to changing outlooks in order for equality to become a reality not merely on the legislative level, but also in practice.

221. Some of the conclusions in the report submitted at that session by the Parliamentary Commission on the Status of Women are set out below:

(a) Portuguese women are still the victims of deep-rooted discrimination in various areas of political life, particularly at the higher levels in bodies formed by political parties and institutions;

(b) It is necessary to pay heed to the problems of equality, with a view to achieving the constitutional principle of equal rights and opportunities for men and women;

(c) The Commission on Equality in Employment (CITE) and the governmental Commission on the Status of Women are introducing effective measures to combat discrimination and to defend and ensure the implementation and dissemination of the laws;

(d) Campaigns have to be conducted to publicize women's rights, particularly on radio and television.

ARTICLE 4

DEROGATIONS FROM OBLIGATIONS UNDER THE COVENANT

221. Under article 19 of the Constitution:

"1. The organs of supreme authority may not, jointly or separately, suspend the exercise of rights, freedoms and safeguards except in the case of a state of siege or emergency declared in the manner laid down in the Constitution.

"2. A state of siege or emergency may be declared in all or part of the national territory only in cases of actual or imminent aggression by foreign forces, serious threat to or disturbance of the democratic constitutional order or public calamity.

"3. The declaration of a state of siege or emergency shall be adequately substantiated and shall specify the rights, freedoms and safeguards whose exercise is to be suspended. It shall be in force for no more than 15 days, although it may be renewed for one or several periods of the same duration.

"4. The declaration of a state of siege shall in no circumstances affect the right to life, personal integrity and identity, civil capacity and citizenship, the non-retroactive nature of criminal law, the right of accused persons to defence and freedom of conscience and religion.

"5. The declaration of a state of emergency shall at most entail the partial suspension of rights, freedoms and safeguards.

"6. The declaration of a state of siege or emergency shall empower the authorities to take the necessary steps for the prompt restoration of constitutional normality."

223. The states of "emergency" provided for under the Constitution are marked by actual serious danger to the existence of the State and the security and the organization of the community-danger which can only be eliminated by exceptional measures.

224. A state of siege and a state of emergency are covered by the same articles of the Constitution (art. 137, para. 1 (c), and art. 141); they are subject to similar time and material limits (art. 19, para. 3).

225. A declaration of a state of emergency is tightly controlled by the Constitution so as to avert any possibility of its being declared without justification or being abused. Thus, the President of the Republic is responsible for declaring a state of siege or emergency (Constitution, art. 137,

para. 1 (c)) after "consulting the Government and obtaining authorization from the Assembly of the Republic" (Constitution, art. 141) which will supervise the application of the declaration (art. 165).

226. Furthermore, the President of the Republic may not dissolve the Assembly while a state of siege or emergency is in force (art. 175) and the Constitution may not be amended (art. 291).

227. Suspension of the exercise of fundamental rights on account of a declaration of a state of siege or emergency does not affect the "principle of prohibition of excess"; i.e. a state of emergency will be declared only when it proves necessary and is appropriate to overcome the dangers covered by the Constitution; a state of siege will be decreed only when the state of emergency has proved insufficient; the suspension will concern only those rights, freedoms and safeguards whose exercise threatens the objectives of the state of emergency and the state of emergency will last only as long as the dangers covered by the Constitution persist.

228. Certain rights may not be suspended (art. 19, para. 4). These are the rights concerning the fundamental values of the individual - life, integrity, security and freedom of conscience - and the rights of accused persons to a defence.

229. The Constitution covers a number of aspects of a state of emergency. It provides for additional laws to be passed under certain conditions. The Assembly of the Republic alone may pass legislation on the matter (absolute legislative powers), pursuant to article 167 (c) of the Constitution.

Act No. 44/86 of 30 September

230. Quite recently, the Assembly of the Republic adopted Act No. 44/86, published on 30 September, which laid down the régime for a state of siege and a state of emergency. Pursuant to the Constitution they may be declared only in cases of actual or imminent aggression by foreign forces, serious threat to or disturbance of the democratic constitutional order or public calamity (art. 1).

231. A declaration of a state of siege or of emergency may in no circumstances affect the right to life, personal integrity and identity, civil capacity and citizenship, the principle that criminal law cannot be retroactive, the right of accused persons to a defence, and freedom of conscience and religion (art. 2, para. 1).

232. Suspension of the exercise of rights, freedoms and safeguards must always observe the principle of equality and non-discrimination and respect the following principles:

(a) Restricted residence or detention of individuals on the grounds of violation of security regulations must always be referred to the competent examining magistrate within 24 hours, and the right of habeas corpus in particular is guaranteed;

(b) Searches and the collection of evidence by various means must be subject to an official report transmitted to the examining magistrate, together with a report on the reasons and the results;

(c) If the movement of persons or vehicles is restricted or prohibited, the authorities must provide the necessary means for enforcing the declaration, particularly in regard to the transport, housing and maintenance of the persons affected;

(d) All types of publications, radio or television broadcasts, cinema and theatrical presentations may be suspended, and publications ordered to be seized;

(e) Meetings of the statutory bodies of political parties, trade unions and occupational associations will in no circumstances be prohibited, dissolved or subject to prior authorization.

233. It is important to stress that pursuant to article 2, paragraph 3, if someone's rights, freedoms and safeguards have been violated by the declaration of a state of siege or emergency or by any unconstitutional or illegal measure taken while it was in force, a right to compensation applies.

234. As to scope, duration and means, the suspension or restriction of rights, freedoms and safeguards must be limited to the strict minimum required for prompt restoration of constitutional normality. The period may not exceed 15 days, although it may be extended for one or two further periods of the same duration if the reasons persist.

235. In no circumstances may the declaration affect the application of the constitutional rules concerning the competence and operation of organs of sovereignty.

236. A state of siege or emergency may be declared in all or part of Portuquese territory, depending on the geographical area affected by the relevant circumstances.

237. During the state of siege or emergency persons retain full right of access to the courts to defend rights, freedoms and safeguards which have been undermined or jeopardized by any unconstitutional or illegal measure (art. 6).

238. A state of siege is declared whenever there is an actual or imminent act of force or insurrection which threatens the country's sovereignty, independence, territorial integrity or democratic constitutional order and which it is not possible to, remove by the normal means provided for in the Constitution and the law. Once a state of siege has been declared the civil authorities shall be subject to the military authorities or replaced by them (art. 8).

239. A state of emergency is declared in less serious circumstances, in particular when there is a threat of or an actual public calamity. The exercise of rights shall be suspended only in part; the powers of the civil administrative authorities may be reinforced and they may be given support by the armed forces (art. 9).

240. A state of siege or emergency shall be declared by the President of the Republic and shall require authorization from the Assembly of the Republic (art. 10).

241. Once the circumstances leading to the declaration have ended, the state of siege or emergency will immediately be abrogated by a decree from the President of the Republic, countersigned by the Government.

242. The declaration shall contain the following elements, clearly and specifically defined:

(a) Definition of and grounds for the state declared;

(b) Territorial coverage;

(c) Duration;

(d) Specification of the rights, freedoms and safeguards whose exercise is suspended or restricted;

(e) Definition, under a state of siege, of the powers vested in the military authorities;

(f) Definition, under a state of emergency, of the extent to which the powers of the civil administrative authorities are reinforced and, where necessary, given support by the armed forces;

(g) Definition of the crimes subject to the jurisdiction of the military courts.

243. The Government shall ensure the implementation of the declaration of the state of siege or emergency and inform the President of the Republic and the Assembly of the Republic of the relevant acts (art. 17).

244. Under a state of siege or emerqency covering the whole of Portuguese territory, the Higher Council of National Defence shall be permanently convened.

245. The Office of the Government Attorney and the department of the Provedor de Justiça (Ombudsman) shall also meet permanently, since the defence of democratic legality and citizens' rights falls within their Purview (art. 18).

246. The military courts shall be responsible for investigating and trying infringements of the declaration, as well as offences committed wilfully and directly in connection with the causes of the state of siege and while it is in force, namely offences against the life, physical integrity and the freedom of individuals, the right to information, security of communications, property and public order. Such offences are dealt with essentially as military offences (art. 22).

247. During states of emerqency the civil courts fully exercise their powers and functions, pursuant to article 22. In particular, they are responsible for ensuring observance of the constitutional and legal rules governing states of siege and emergency (art. 23).

248. This is all an emergency procedure. Within a period of 15 days after the lifting of the state of siege or emergency or, if the declaration has been renewed, 15 days after the end of each period, the Government shall submit to the Assembly of the Republic a detailed and as carefully

documented report as possible on the steps and measures taken while the declaration was in force.

249. The Assembly of the Republic shall examine the implementation of the relevant declaration and indicate the requisite steps regarding civil and criminal responsibility for violations of the provisions of the declaration of the state of siege or emergency (art. 29).

ARTICLE 5

THE RIGHT TO ENGAQE IN ANY ACTIVITY OR PERFORM ANY ACT AIMED AT THE DESTRUCTION OF RIGHTS AND FREEDOMS

250. Under article 16 of the Constitution:

"1. The fundamental riqhts embodied in the Constitution shall not exclude other riqhts resultinq from the laws and applicable rules of international law.

2. The provisions of the Constitution and laws relatinq to fundamental riqhts shall be interpreted and avp

lied in accordance with the Universal Declaration of Human Riqhts."

251. Furthermore, the system of riqhts, freedoms and safequards is applicable to those set out under title II of the Constitution, relating to rights, freedoms and safeguards and other similar fundamental rights (art. 17).

252. Moreover, Portugal has ratified the European Convention on Human Rights, in which article 17 stipulates that nothing in the Convention may be interpreted as implying for any State, group or Person any right to engage in any activity or perform any act aimed at the destruction of the rights and freedoms set forth therein or at their limitation to a greater extent than is provided for in the Convention.

253. As already pointed out, under article 8 of the Constitution, rules from duly ratified or approved international conventions enter into force following official publication of the conventions. The constitutional provisions relating to rights, freedoms and safeguards are directly applicable and binding on public and private bodies (Constitution, art. 18).

ARTICLE 6

THE RIGHT TO LIFE

254. The right to life is expressly recognized by the Constitution of the Republic (art. 24).

255. In its initial report, Portugal had already mentioned the abolition of the death penalty. It is, however, worth drawing attention to the evolution of abolitionism.

256. The death penalty for theft and homicide was abolished by decrees dated 12 December 1801 and 11 January 1802.

257. The supplementary Act to the 1852 Constitutional Charter abolished the death penalty for political crimes.

258. The 1852 Penal Code laid down the death penalty only for civil crimes involving treason.

259. On 1 July 1867 the death penalty was abolished for all civil crimes.

260. The Decree of 16 March 1911 abolished the death penalty for military crimes. The abolition was confirmed by the 1911 Constitution (art. 3, para. 22).

261. In 1916, the death penalty was restored only for certain war crimes committed on the field of operations, and confirmed by the Code of Military Justice and the 1933 Constitution.

262. The death penalty was completely abolished by the 1976 Constitution, adopted after the Revolution of 25 April 1974.

263. It is nevertheless worthwhile mentioning that the last execution for a political crime took place in 1834 and for a civil crime in 1772. Only one execution took place for a military crime followinq the restoration of the death penalty in 1916 and it was for espionage.

264. The last execution of a woman took place in 1772.

PROTECTION OF LIFE

265. On account of the absolute protection of the right to life, no one may be deprived of life, even after a declaration of a state of siege or emergency (Constitution, art. 19 maxime, para. 4).

266. Act N.º 44/86 of 30 September defines the legal scope of states of siege and emergency and prohibits any restriction whatsoever on the right to life (art. 1).

267. Furthermore, the Constitution prohibits extradition for crimes punishable by the death penalty under the law of the applicant State.

268. The law on extradition, Decree-Law N.º 437/75 of 16 August, also prohibits extradition if the crime carries a life sentence and if no provision is made to replace that penalty (art. 4).

269. Portugal ratified the European Convention on the Suppression of Terrorism in Act N.º 19/81 of 18 Auqust, but entered a reservation concerning extradition for crimes punishable by the death penalty or by a life sentence under the law of the applicant State (art. 2).

270. Accordingly, the Portuquese Parliament approved for ratification Protocol N.º 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms Concerning the Abolition of the Death Penalty (Decision N.º 12/86 of 6 June, published in the Diário da República, N.º 129, Series I, dated 6 June 1986). The Protocol was ratified on 2 October 1986.

PROTECTION OF LIFE BEFORE BIRTH

271. Abortion is generally punishable under article 139 of the Penal Code.

272. Act N.º 6/87 of 11 May nevertheless amended the wording of articles 139 to 141 of the Penal Code so as to make abortion no longer illegal in cases covered by article 140, provided the conditions set out therein and the formalities laid down by article 141 for obtaining consent or determining cases in which consent is not required are met.

273. Abortion is not considered illegal when it is carried out for the following reasons: on therapeutic grounds, when it is the sole means of removing a danger of death or serious and irreversible harm to the body or physical and mental health of the woman, in which case it may be carried out at any time (art. 140, para. 1 (a)); on prophylactic grounds ? to avert a danger of death or serious and lasting harm to the body or physical and mental health of the woman, in which case it is possible during the first 12 weeks of preqnancy (art. 140, para. 1 (b)); on eugenic grounds, when there is a danger of malformation or serious and incurable illness which could affect the child, in which case it is possible during the first 16 weeks of pregnancy (art. 140, para. 1 (c)), and on criminal qrounds, also known as sentimental grounds, when the pregnancy is the result of a rape in which case it is possible during the first 12 weeks of pregnancy (art. 140, para. 1 (d)).

274. In a decision concerning the compatibility of articles 140 and 141 of Act N.º 6/84 with the Constitution, the Constitutional Court's view was in the affirmative and it did not declare them to be unconstitutional (Decision N.º 85/85 of 25 June, published in the Diário da República, N.º 143, Series II).

275. Quite recently the department of the Minister of Justice set up a Commission on the legal framework for new medical technologies and instructed it to analyse the problems raised by the modern techniques of artifical insemination and of life support systems, in the light of ethical values.

GENOCIDE

276. Title II of the Penal Code incorporates crimes aqainst humanity (chap. Il) and includes the crimes of qenocide and racial discrimination (art. 198).

"1. Anyone who commits one or more of the 'following acts with intent to destroy, in whole or in oart, a national, ethnic, racial, religious or social community or group:

(a) Killinq members of the community or group;

(b) Causinq serious bodily or mental harm to members of the community or group;

(c) Inflictinq on the community or qroup inhuman livinq conditions or treatment likely to bring about the destruction of the community or grouo;

(d) Forcibly transferrinq children to another community or group;

shall be liable to a prison sentence of 10 to 25 years.

"2. Anyone who, at a public meetinq, by the dissemination of written material or by use of any of the mass media:

(a) Slanders, libels or insults an individual or group of individuals or subjects them to iDublic scorn on account of theirrace, colour or ethnic origin;

(b) Provokes acts of violence against an individual or group of individuals of another race, colour or ethnic origin;

shall be liable to a prison sentence of five years.

"3. Anyone who:

(a) Founds or joins orqanizations or undertakes activities of orqanized Dropaqanda incitinq to racial discrimination, hatred or violence or encouraginq them;

(b) Participates in the organizations or activities specified in the foregoing paragraphs or assists racist activities, including the financing thereof;

shall be liable to a prison sentence of two to eight years.

ASSISTANCE IN SUICIDE

277. Assistance in suicide is punishable on two counts: providing assistance or instigating suicide (Penal Code, art. 135). Article 134 deals with homicide committed at the request of the victim.

278. Article 135 specifically covers those cases where the recipient of assistance is under 16, when he or she is not legally responsible or is not capable of defending him or herself.

279. Articles 137 and 138 respectively concern qualified infanticide and neglect or exposure of a person to circumstances which endanger his or her life.

SUPPRESSION OF TERRORISM

280. As bas already been mentioned, Portugal ratified the European Convention on the Suppression of Terrorism, which is consequently in force under Portuguese law (Constitution, art. 8, para. 2).

281. Terrorism is covered by the Penal Code, which stipulates heavy sentences for crimes involving terrorism (art. 289) or committed by terrorist organizations (art. 288).

282. The issue of compensation for the victims of terrorist acts bas been taken into consideration by the authorities on account of the increase in the number of terrorist acts affecting public servants.

283. Decree-Law N.º 324/85 of 6 August deals with the case-by-case award, subject to a decision by the Council of Ministers, of compensation to public servants, whether civilian or military, whenever they have been the victims of a terrorist act in the performance of their duties or on account thereof, if the act in question bas affected their life or physical integrity,

freedom or valuable property (art. 1, para. 1). Such compensation may also be awarded to family members or dependents of public servants who have been victims of the criminal act (art. 1, para. 2).

284. The justification for a claim will always be subject to an examination ordered by the member of the Government in charge of the appropriate plenistry (art. 2).

OTHER PROVISIONS OF THE PORTUGUESE PENAL CODE

285. Crimes connected with lethal and highly dangerous products are covered by section III of the Penal Code (offences against the values and interests of the community). Chapter III concerns offences involving ordinary dangers, such as fires, explosions or exposure to radiation (art. 253 et seq.). Article 260 concerns arms, ammunitions and explosives.

286. Chapter III also deals with health of fences (art. 269 et seq.), including water pollution and poisoning.

287. Chapter IV deals with crimes with threat communications (art. 277 et seq.).

288. Finally, chapter V deals with offences against public order and peace (art. 285 et seq.) and articles 288 and 289 concern terrorist acts or offences committed by terrorist organizations.

DRUGS

289. In 1971 Portugal ratified the 1961 Single Convention on Narcotic Drugs and acceded to the 1971 Convention on Psychotropic Substances. Systematic legislation on the subject proved necessary and this was done by means of Decree-Law N.º 430/83 of 13 December, under which:

(a) The Office for Planning and Co-ordination to Combat Drugs is responsible for ensuring fulfilment of the commitments arising out of the Conventions (art. 5 and art. 22, para. 1);

(b) Control over the illegal sale of narcotics has been reinforced, in particular in the case of phsychotropic substances.

(c) Punishment for drug trafficking has been altered and procedural measures for fuller investigations have been strengthened. The judicial police have been given sole responsibility for carrying out criminal investigations into drug trafficking;

(d) Legislation has been passed for the treatment, cure and reintegration of drug addicts. Voluntary acceptance of treatment by a drug addict is duly taken into account on sentencing. Penal action may be waived in the case of non-habitual consumption for first-time offenders who are under 21 and promise the court not to offend again;

(e) The special penal provisions for young people between 16 and 21 have been maintained.

(f) Measures have been taken to co-ordinate the activities of existing institutions with similar objectives, such as the Office for Planning and Co-ordination to Combat Drugs (Decree-Law N.º 365/82 of 8 September), the Centre for Studies into the Prevention of Drug Abuse (Decree-Law N.º 791/76 of 5 November) and the Institute for Social Reintegration (Decree-Law N.º 204/83 of 20 May);

(g) Statutory Order N.º 71/84 of 7 September regulated systematic measures against the trafficking and use of narcotics and psychotropic substances. It specifies those cases in which, although they are subject to controls, the cultivation, manufacture, import, distribution, export and possession of narcotics and psychotropic substances may be authorized (art. 4). Authorization will be given by the Department of Pharmaceutical Affairs, provided the use of narcotics and psychotropic substances is for medical, scientific or teaching purposes only. Furthermore, the Decree prohibits the advertising of narcotics and psychotropic substances (art. 39) and stipulates that spot checks may be made in firms which possess narcotics or psychotropic substances. The fairly loose penalty introduced by the 1982 Penal Code applies to delinquents who abuse narcotics (Penal Code art. 86 et seq.).

PREVENTION OF ADDICTION TO SMOKING

290. Legislation covering addiction to tobacco is contained in Act N.º 28/82 of 17 Auqust, supplemented by Decree-Law N.º 226/83 of 27 May, which prohibits both tobacco advertising (art. 2) and smoking in certain places, generally health establishments, places where minors are present, teaching premises and restricted spaces (art. 3).

ALCOHOLISM

291. General criminal law establishes fairly loose sentences for habitual alcoholics or those who show a propensity to alcohol abuse (Penal Code art. 86 et seq.).

292. Article 278 of the special section makes it an offence to drive or pilot any means of transport, on land, sea or air, if one is not in a fit state to do so and if doing so will endanger the life, physical integrity or valuable property of another person. Act N.º 3/82 of 29 March makes it an offence to drive under the influence of alcohol and provides for withdrawal of the offenders driving licence and prohibits substitution of the prison sentence by a fine or by a suspended sentence if he has caused the death of, or serious injury to, another person in an accident (art. 13).

293. Requlations covering advertisinq are laid down by Decree-Law N.º 303/83 of 28 June. Article 23, paragraph 5 prohibits children and young people from taking part in any advertising for tobacco and alcohol. Failure to observe these prohibitions is punishable by a fine.

REGULATIONS CONCERNINQ THE USE OF FIREARMS

THE USE OF FIREARMS BY THE POLICE

294. This is covered by articles 88 et seq. of Decree-Law N.º 458/82 of 24 November, which establishes the organic statutes of the judicial police and which was also analysed in connection with article 7 of the Covenant. Mention may also be made of Decree-Law N.º 364/83 of 28 September relating to the control of firearms by the public safety police and Decree-Law N.º 465/83 of 31 December (art. 5, para. 18) concerning the National Republican Guard (GNR).

295. Use of firearms by the police is subject to the following principles and rules:

(a) Firearms must be used only as a last resort (art. 88, para. 1);

(b) Their use must be justified by the circumstances (art. 88, para. 1);

(c) The persons against whom it is intended to, use firearms must be given a prompt and unambiguous warning of that intention (art. 89);

(d) An obligation to provide wounded people with prompt assistance (art. 90, para. 1);

(e) An obligation to make a written report on the incident to one's superior, even if no injury or damage had ensued (art. 90, para. 23);

(f) A prohibition on the use of firearms if it involves danger to other Persons other than the policeman himself and the criminals, except in the case of self-defence or state of necessity (art. 88, para. 2).

296. By way of example, the law lists instances in which firearms may be used.

USE OF FIREARMS BY PRIVATE INDIVIDUALS

297. Government Decree N.º 56/84 of 28 September approved for ratification the European Convention on the Control of the Acquisition and Possession of Firearms by Individuals.

298. In Portuguese law, Decree-Law No. 7-A/75 of 17 April remains partly in force (see art. 1 and, regarding prohibited arms, arts. 2 and 3). The import, manufacture, holding, purchase, sale

or transfer for any reason as well as the transport, possession, use and carrying of firearms are punishable under article 260 of the Penal Code.

ARTICLE 7

TORTURE, CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

THE CONSTITUTION

299. Article 25, paragraph 2, of the Constitution guarantees protection against torture or cruel, degrading or inhuman treatment or punishment. As to the safeguards provided by criminal procedure, article 32, paragraph 6, of the Constitution makes similar provisions and establishes that any evidence obtained through torture, coercion, violation of the moral integrity or security of person of the individual or other means shall be of no effect. Furthermore, article 30 establishes that no one shall be subjected to a sentence or security measure involving deprivation or restriction of freedom for life or for an unlimited or indefinite term.

CRIMINAL LAW

300. Article 412 of the Penal Code punishes any official who, in criminal or disciplinary proceedings or proceedings connected with an administrative offence resorts to violence, serious threats or any other illegal means of constraint in order to obtain a written or oral statement from the accused, informant, witness or expert or to prevent them from making such a statement.

301. The constitutional principle in question is also incorporated in the Code in regard to "offences against the physical integrity of individuals" (art. 142 et seq.) and "offences against the freedom of individuals", for example threats (art. 155), coercion (art. 156), illegal confinement (art. 160) and the kidnapping of minors (art. 167) or others (art. 162).

302. The principle is also found in the law on sexual offences. For example, article 209 of the Code makes it an offence to have sexual relations with or to behave indecently before detainees or persons in similar circumstances.

303. The same principle underlies offences against the family, such as desertion of one's spouse and children in the face of moral danger (art. 199).

THE LAW ON PENAL PROCEDURE

304. In addition to article 306 of the Code of Penal Procedure regarding the prohibition on ill-treatment of Prisoners, already quoted in Portugal's initial report, part II of Decree-Law N.º 402/82 of 23 September sets out the general conditions concerning the enforcement of sentences and security measures:

"(...) Convicted persons shall be treated so to protect their physical and mental health and to ensure their reintegration in society" (art. 6).

305. Article 261 of the Code of Penal Procedure prohibits the use of certain measures during the questioning of accused persons, and specifically prohibits the use of violence, ill-treatment, bodily harm or the use of cruel, fraudulent, hypnotic or other means likely to weaken the accused's will or sense of judgement.

306. As to court witnesses, article 437 of the Code empowers the president of the court to prohibit questions which are suggestive, misleading, improper or vexatious.

307. Both of these texts are applicable until the new Code of Penal Procedure comes into force.

308. The new Code of Penal Procedure prohibits the use of evidence obtained by torture, coercion or, in general, injury to the physical or mental integrity of individuals even with their consent (art. 126, para. 1 and para. 2).

309. The above prohibition also concerns unauthorized interference with privacy and the home or tamperinq with correspondence or telecommunications (art. 126, para. 3).

310. Evidence obtained by these means is null and void and may be used only in criminal proceedings against the persons obtaining such evidence.

PRISON LAW

311. Article 6 of Decree-Law N.º 265/79 of 1 Auqust establishes that a detainee shall enter a prison out of the sight of the other prisoners if it is necessary to protect his privacy (para. 1).

312. Searching of detainees is regulated by article 116. For example, a search must fully respect the detainees personality and dignity (para. 2) and may be carried out only when instruments of detection have failed (para. 4).

313. Article 125 requires that prior warning be given when physical force is employed (new version of Decree-Law N.º 49/80 of 22 March).

314. Article 126 lays down the qeneral rules on the use of firearms by prison personnel or persons working in prisons (the use of firearms is prohibited in detention centres for young people under article 20 of Decree-Law N.º 90/83 of 16 February, which will be referred to below).

315. In all cases where force is used it must be employed in proportion to the circumstances (art. 124) and restricted to the minimum required to ensure safety and order (art. 122 et seq.). Use of force is always followed by a written investigation into the circumstances.

316. Provisions also cover the use of coercion in health care. Pursuant to article 127, it is prohibited to oblige a detainee to undergo medical examinations, treatment or feeding unless his life or health is in danger. Such measures may only be prescribed and applied under the supervision of a doctor.

317. The following special safety measures are authorized: prohibition on the use, and confiscation, of certain objects; observation of the prisoner during the niqht; isolation of the prisoner from the prison population; elimination of, or restrictions on, the time a prisoner spends outside; the use of handcuffs, if necessary, under medical supervision; use of a special security cell (art. 111). Such measures will be authorized if it is impossible to prevent or remove the danger of escape or in the event of a serious disturbance to the order and safety of the establishment.

318. The director of the establishment is responsible for deciding on the application of these special security measures. In the event of immediate danger the measures may be ordered by his deputy, but a request must be made for them to be confirmed as soon as possible.

POLICE MEASURES

319. Article 272 of the Constitution stipulates that the police may act only in those cases and in accordance with the rules laid down by the law and only as strictly necessary (para. 2). This rule has been followed in reqard to coercion by the public safety police (Decree-Law N.º 151/85 of 9 May, art. 3).

320. Under Decree-Law N.º 458/82 of 24 November, it is the duty of the judicial police not to use torture, inhuman, cruel or degrading treatment and not to carry out or to ignore, if necessary, orders or instructions to apply such treatment (art. 87, para. 1 (b)). Police officials who refuse to obey such orders will not be disciplined (art. 87, para. 2).

321. This princiole is reflected in the orqanizational or statutory laws relating to other police forces.

MEDICAL OR SCIENTIFIC EXPERIMENTS

322. Criminal law now lays down the legal provisions concerning medical and surgical treatment and operations (Penal Code, arts. 143, 148 to 150, 158 and 159).

323. Such acts are legal provided they satisfy the following requirements:

(a) The operation must have been carried out in accordance with professional practice and with the state of medical knowledge and experience (art. 150, para. 1);

(b) The purpose of such an act must be to cure, to prevent or to relieve suffering (art. 150, para. 1);

(c) Prior consent must have been obtained in a valid and proper manner (arts. 38, 149, 159 and, in respect of presumed consent, art. 39);

(d) Any ensuing injury must not offend common decency (art. 149, paras. 1 and 2).

violation of the rules of professional conduct may be prosecuted under art. 150 paragraph 2, of the Penal Code. Arbitrary medical and surgical operations and treatment are specifically dealt with by the provisions of article 158.

324. Apart from these provisions, the Penal Code specifically covers:

Serious bodily harm, involving either serious bodily injury or damage to health (art. 143);

(b) Artificial insemination without the consent of the woman (article 214).

325. This matter may also be considered from the standpoint of health offences, which are covered by articles 269 et seq. of the Penal Code. This is in particular the case of articles 274 to 276 which respectively lay down penalties for the examining doctor or his employee, the pharmacist or his employee and the doctor responsible, either intentionally or through negligence, for endangering the life, health or physical integrity of another person by altering analyses, medical prescriptions or denying or failing to provide medical assistance.

326. The removal of organs or tissue from deceased persons, in particular for the purposes of a transplant or any other major therapeutic purpose is in ali cases regulated by Decree-Law N.º 533/76 of 13 July, which was mentioned previously in Portugal's initial report.

327. Problems have arisen in respect of the definition in this Decree-Law of a criterion to determine whether death has taken place, a criterion which is hard to reconcile with the requirements for the removal of certain organs and tissue and which may even involve criminal responsibility.

328. The issue was dealt with in depth in the opinion given by the Office of the Attorney General of the Republic and, published in the Diário da República, N.º 272, Series II, on 26 November 1985, namely, death as defined by Decree-Law N.º 553/76 of 13 July signifies cerebral death. Proper rules of medico-legal semiology must be observed in determining death for the purposes of this text. Once death has been determined, resuscitation techniques for the purposes of removing organs or tissue under satisfactory conditions may be maintained or used on the corpse.

329. Acknowledging that problems have come into being as a result of the emergence of modern resuscitation techniques, the Ministry of Justice has recently set up a commission to identify the problems and put forward practical legal solutions (Decision N.º 37/86 of the Minister of Justice, published in the Diário da República, Series 11, 6 May 1986).

330. Decree-Law N.º 553/76 of 13 July raises another type of issue in respect of consent for the removal of organs. In law, the only ground for preventing the removal of tissues or organs by doctors is the opposition of the deceased oerson himself. Pursuant to an opinion of the Office of the Attorney General of the Republic in 1952, the use of organs and tissue for therapeutic purposes must have preference over the rights of family members and friends in regard to the corpse.

331. Chapter II, concerning life and death, deals with problems such as therapy involving a risk of miscarriage, the obligation to refrain from using therapy when it has no hope of succeeding, a decision to cut off life support systems, the removal of organs from dead and living individuals, and artificial insemination and sterilization.

332. Chapter IV covers problems of experiments on humans, and makes specific reference to safeguards and the ethical limits to experiments.

333. Chapter I, article 44, stipulates that when a doctor treating children, elderly or handicapped persons or invalids finds that they have been the victims of cruelty, maltreatment or other forms of suffering, he must take the appropriate measures to ensure their protection, and in particular inform the police or the relevant social services.

334. Chapter III specifically concerns ill-treatment of patients in prisons. The general principle set out in article 56, paragraph 2, establishes the doctor's obligation to respect under all circumstances the interest of the patient and his physical integrity in accordance with the profession's code of practice, which stipulates the following:

"1. In no circumstances must a doctor carry out, collaborate in or accept the use of violence, torture or other cruel, inhuman or degrading treatment, whatever offence the prisoner or detainee may have committed or been accused of committing, including states of siege, wars or civil conflicts".

The provisions include refusal to hand over premises, instruments or medicines and refusal to communicate the scientific knowledge in order to allow torture to be applied.

ARTICLE 8

SLAVERY, SERVITUDE AND FORCED LABOUR

335. On 4 October 1927 Portugal ratified the 1926 Slavery Convention and on 10 August 1959 it ratified the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, adopted on 7 September 1956 in Geneva. Consequently, these have for many years formed part of Portuguese law.

336. On 9 November 1978 Portugal ratified the European Convention on Human Rights, in which article 4 stipulates that "No one shall be held in slavery or servitude". As it has signed the declaration provided for under article 25 of the Convention, Portuqal accepts that, if anyone claiming to be the victim of a violation of that right, a supranational body may assess the value and consequences in accordance with the principles of the Convention.

337. This shows that Portugal has adopted a number of international legal instruments and that, pursuant to article 8 of the Portugese Constitution, they are an integral part of internal law, a fact which moreover illustrates the trend in internal legislation. By a decree dated 10 December 1836 Portugal banned the slave trade in its territory. Subsequently, in 1858, slavery itself was abolished.

338. The Constitution makes no specific mention of slavery or servitude. This in itself is no doubt a reflection of the fact that both of these situations have long since disappeared from Portuguse society. The Constitution provides a framework of rights and safeguards which makes slavery and servitude impossible. Reference has already been made of the inviolability of the physical and moral integrity of citizens, their right to a personal identity, the civil capacity, citizenship, freedom and security (see arts. 25 to 27).

339. The earlier Portuguese Penal Code, of 1886, made no mention of slavery and servitude among the offences enumerated. Only with the 1982 Penal Code, published in Decree-Law N.º 400/82 of 23 September, was a prison sentence of 8 to 15 years stipulated for "anyone who reduces a person to the state or status of slave". A similar sentence was established for anyone who transfers, sells or purchases a human being or takes possession of a human being in order to keep him in a state of slavery or servitude (art. 161). Illegal confinement (art. 160), the kidnapping of minors (art. 163) or others (art. 162) and trafficking in persons (art. 217) are also offences under criminal law.

340. Article 60 of the Penal Code provides for community service in place of a short-term prison sentence (para. 1). This means rendering free services which the court considers to be of value to the community and which are given outside normal working hours for the benefit of the State or for other bodies determined by law (para. 2). This penalty may only be applied with the consent of the offender.

341. If the convicted person is unable to work for reasons beyond his control, the court may impose a fine or even lift the sentence. Any convicted person who wilfully incapacitates himself for work or refuses to work without justification is liable to punishment.

342. The Penal Code provides for the replacement of an unpaid fine by days of work. The law punishes whoever wilfully renders himself unable to pay a fine either partly or in full or unable to replace such payment by days of work.

343. Criminal law in the case of juveniles provides for young people to be placed in reform centres (in this connection see the initial report by Portugal on the application of articles 10 to 12 of the International Covenant on Economic, Social and Cultural Rights, E/1980/6/Add.35/Rev.1 and E/1985/WG.1/SR.2). Under this system which is regulated by Decree-Law N.o 90/83 of 16 February, young people are kept busy in work, physical education, sport and social and cultural activities.

344. Act No. 6/85 of 4 May provides for the status of conscientious objector to military service, and makes it compulsory to perform some form of civil service (see the observations made in connection with art. 18).

ARTICLE 9

RIGHT TO FREEDOM AND SECURITY

PARAGRAPH 1

345. Article 27 of the Constitution, as reworded in the first constitutional revision, takes account of the exceptions to the general principle that "No one shall be deprived of his freedom in whole or in part, except as the result of a court judgement convicting him of an offence punishable under the law by a prison sentence or as the result of the judicial application of a security measure" (art. 27, para. 2).

346. Exceptions to this principle, for the periods and on the conditions laid down by law are:

(a) Remand in custody where a person is caught in flagrante delicto, or where there is strong evidence that he has wilfully comitted an offence punishable by a major sentence;

(b) The arrest or detention of a person who has unlawfully entered or stayed in Portuguese territory or against whom extradition or deportation proceedings have been instituted;

(c) Disciplinary arrest of military personnel, with the right of appeal to the competent court;

(d) Placing a minar in an appropriate institution, for measures of protection, assistance or education as ordered by the competent court;

(e) Detention by court order following failure to comply with a court decision, or for the purpose of ensuring appearance before the ccmpetent judicial authority.

347. Article 28 of the Constitution reads:

"l. Arrest without charge shall be subject to a court order with in 48 hours confirming or continuing detention. The court shall hear reasons for detention and shall inform the prisoner, question him and give him the opportunity to defend himself.

2. Remand in custody shall not be continued if it can be replaced by bail or by conditional release as provided for by law.

3. A court order requiring or extending a period of deprivation of freedom shall be made known immediately to a relation of the prisoner or to a person trusted and named by the prisoner.

4. Remand in custody, before and after the charge, shall be subject to the time-limits laid down by law."

DETENTION

348. The law follows the provisions of the Constitution closely in this matter.

THE CODE OF PENAL PROCEDURE

349. In the existing procedural text, the subject is dealt with mainly under articles 286 to 311, with modifications introduced by Act N.º 25/81 of 21 August and by Decree-Law N.º 402/82 of 23 September. As a rule, these provisions concern detention to ensure appearance before the court and the form of custody in which the prisoners may be placed.

350. Under article 286, remand in custody may be authorized only in cases of flagrante delicto or in cases involving a serious crime punishable by a major sentence. The other articles concern conditions for arrest in flagrante delicto and after cases, the conditions for remand in custody, including particulars as to which authorities are competent to order it, the formal and substantive conditions governing it, its treatment of prisoners, the time-limits to be observed before and after the charge, appearance before the court and holding persons incommunicado.

351. The accused may be conditionally released if remand in custody can be replaced by other measures. The conditions which determined remand in custody may be periodically re-assessed.

352. Article 91, paragraph 3, makes provision for appearance sob custódia (under escort). The court may use the police to compel, a person to appear if he has been absent without reason from a hearing of which he has been duly notified.

THE NEW CODE OF PENAL PROCEDURE

353. In the new Code, the way the matter is treated has undergone systematic, terminological and substantive changes.

DETENTION TO ENSURE APPEARANCE BEFORE A MAGISTRATE OR COURT

354. The law deals differently with remand in custody, as a sentence of last resort (arts. 191 to 218); and arrest, the purposes of which are set out in article 254:

(a) To bring the prisoner before a court within 48 hours after his arrest or within the same time-limit, before the examining magistrate competent to carry out the initial judicial inquiry and order remand in custody or bail;

(b) To bring the prisoner immediately before a court for procedural purposes.

355. In the case of flagrante delicto punishable by a prison sentence, arrest may be carried out by a judicial authority or police body (art. 255, para. 1 (a)), or by any other person in the absence of such authority or body and if it is not possible for them to be summoned in time (art. 255, para. 1 (b)). If prosecution of the offence is by private action, the offender need only be identified (art. 255, para. 4).

356. If the person is not caught in flagrante delicto, the court must always issue an arrest warrant. Nevertheless, the Public Prosecutor's Department May order an arrest if remand in custody is applicable (art. 257, para. 1); the criminal police authorities may also order arrest if all the following conditions are observed:

(a) If remand in custody is admissible in the case in question;

(b) There are grounds for fearing the person may abscond;

(c) It is impossible, for reasons of urgency and the risk of delay, to wait for the judicial authority to intervene.

The police bodies which have placed the person under arrest are required immediately to inform the court or the Public Prosecutor's Department, as appropriate.

REMAND IN CUSTODY IN TERMS OF MEASURES OF CONSTRAINT AND THE GENERAL PRINCIPLES UNDER WHICH SUCH ARE APPLIED

357. Measures of constraint are subject to the principles of legality, suitability and proportionality. They may not interfere with the exercise of those fundamental rights which are not incompatible with the requirements of prevention in the case in question.

358. Whether such measures are applied will also always depend on whether the person has first been duly charged (art. 191, para. 1).They may not be applied if there are good grounds for believing there are causes entailing exemption from responsibility or extinguishment of the criminal prosecution (art. 192, para. 2). The measures shall always be applied by decision of the court, on the request of the Public Prosecutor's Department, during the inquiry and even routinely, following an inquiry, after hearing the Public Prosecutor's Department (art. 194, para. 1).

359. It is worth mentioning the new measure, introduced in the new Code of Penal Procedurer whereby the person is required to remain at home or not to leave it without prior authorization. It will not be applied unless there are strong grounds for believing that there has been a serious offence punishable by a maximum prison term of at least three years (art. 201).

GENERAL FEATURES OF THE SYSTEMI FOR REMAND IN CUSTODY

360. First, remand in custody is clearly a measure used in the last resort, a feature that is even more marked in the new Code of Penal Procedure.

361. Remand in custody may be used only when other measures are unsuitable or insufficient (art. 193, para. 2). It may be used if there are strong grounds for believing that the person has committed a serious offence punishable by a maximum prison term of at least three years (art. 202, para. 2 (a)) or in the case of a person who has unlawfully entered or remained on Portuguese territory or against whom extradition or deportation proceedings have been instituted (art. 202, para. 1 (b)).

362. If the accused appears to be suffering from a mental abnormality, the court may order him to be placed in a psychiatric or similar establishment for the duration of the abnormality, after hearing counsel for the defence and, as soon as possible, a member of the accused's family. The necessary precautions are taken to prevent any risk of escape and to prevent any further crimes being committed (art. 202, para. 2).

363. Remand in custody is used under the general conditions for measures of constraint set out in article 204, concerning escape or the risk of escape, the risk of interference with the inquiry or destruction of evidence, and the maintenance of public order.

364. Second, in accordance with these general lines, the legislature has just abolished the system for certain offences considered to be more serious and for which bail has not been granted. To this end, the situation of such prisoners will be subject to reassessment by the court with a view to deciding whether to maintain or replace the measure in question.

365. Third, revocation, modification or termination of remand in custody as well as measures of constraint are regulated in detail; they may be re-imposed for supervening ? reasons which warrant them (arts. 212 to 214), and suspended in the event of serious illness, pregnancy or maternity (art. 211).

366. Fourth, strict regulations apply to the time-limits for remand in custody. The maximum time-limits are set out in article 215 and relate to the duration of arrest before charges are brought, the decision to charge, a verdict of guilty by the court of first instance, and final conviction, having the force of res judicata. The time-limit may be extended, as when an appeal has been lodged with the Constitutional Court (art. 215). The limit may be suspended under certain conditions if expert advice is sought or if the accused falls ill and requires hospitalization (art. 216).

RIGHTS IN CASES OF ADMINISTRATIVE OFFENCES

367. The law prohibits remand in custody for administrative offences (Decree-Law N.º 433/82 of 27 October, art. 42).

ILLEGAL PRESENCE OF FOREIGNERS IN PORTUGUESE TERRITORY

368. Under the Extradition Act adopted in 1975, persons can be arrested for the purposes of extradition. Any application of these provisions must naturally take account of the principles of the Constitution, particularly the matter of deprivation of freedom (arts. 27 and 28) and extradition, deportation and the right to asylum (art. 33). Decree-Law N.º 264-C/81 of 3 September applies in deportation cases (see below in connection with arts. 12 and 13).

DISCIPLINARY ARREST OF MILITARY PERSONNEL

369. This is an exceptional, disciplinary and non-penal measure provided for in the Regulations on Military Discipline. Conditions for arrest, remand and measures to replace remand are subject to the provisions of general penal procedure, except as stipulated in the provisions of the Code of Military Justice (arts. 363 to 375).

PLACING A MINOR IN A SUITABLE ESTABLISHMENT

370. Portuqalls initial report on the implementation of articles 10 to 12 of the International Covenant on Economic, Social and Cultural Rights (E/1980/6/Add.35/Rev.1) has already covered this subject.

PARAGRAPH 2

371. An official who orders a person to be deprived of freedom and refuses to, inform him of the reasons for his arrest, when the reasons have been requested, is punishable under article 417, paragraph 2, of the Penal Code.

372. In the Code of Penal Procedure still in force, provision is made for the prisoner and his relations or a person whom he trusts to be informed, and also for the prisoner to be heard before the judge decides to place him on remand.

373. In the new Code of Penal Procedure the consent of an accused person with 18 years of age is required before any third person is informed that remand or other measure of constraint or bail has been ordered (art. 194, para. 3). The information will be given to a relation, confidant or counsel chosen by the accused (para. 3.). Consent is none the less waived in the case of a person under 18 years of age (para. 4).

374. The Code makes detailed provision for information concerning the reasons for arrest to be supplied to the prisoner by a judicial authority or a branch of the criminal police. Such authorities must tell him of his status as an accused person by informing him, and if necessary explaining to him, what his rights and duties are (art. 58). Failure to carry out or a breach of the formal procedures established by law means that the statements obtained cannot be used as evidence against the person under arrest (art. 58, para. 3).

375. Remand shall be preceded, as soon as possible, by a hearing at which the accused is present (art. 194, para. 2).

PARAGRAPH 3

376. Under article 32, paragraph 2, of the Constitution:

"Any person charged with an offence shall be presumed innocent until his conviction has acquired the force of res judicata, and he shall be tried in the shortest space of time compatible with safe guards for his defence."

We shall turn now to the questioning of the detainee, without prejudice to the observations made in examining paragraphs 2 and 3 of article 14 of the Covenant.

QUESTIONING OF THE PRISONER

The existing Code of Penal Procedure

377. Articles 250 to 268 cover questioning of the prisoner and include provision for an interpreter to be appointed; they also specify which methods of questioning are prohibited and establish that the questioning shall have no effect if defence counsel was not present in accordance with the law.

THE NEW CODE OF PENAL PROCEDURE

378. The subject is covered in articles 141 to 144.

379. The prisoner shall be brought before a competent court within 48 hours after his arrest, failing which he shall be brought before the court with jurisdiction at the place of arrest. It will be possible in any event for the prisoner to be brought, immediately after his arrest, before the Public Prosecutor's Department with jurisdiction at the place of arrest. The Department, having heard the accused, may order his release or decide that he should go before the court in accordance with the procedure established for the situations mentioned above.

380. Immediate release has also been provided for under article 261.

Immediate release may be decided by the body which ordered or carried out the arrest, or before which the prisoner is brought, in the event of mistaken identity or if it has become unnecessary to proceed further.

381. A report on the incident is compulsory if the body concerned is not the judicial authority.

382. Any questioning of the accused between midnight and six a.m. shall have no effect, except when done immediately after the arrest (art. 103, para. 3).

TRIAL WITHIN A REASONABLE TIME

383. The concept of trial within a reasonable time must be viewed in the light of the provisions concerning the timing of procedural and the time-limits on them. We shall revert to this subject in our examination of other articles of the Covenant, particularly article 14.

384. We should, however, refer at this point to the time-limits on remand in custody. The existing and the new Codes of Penal Procedure set out the maximum time-limits for each phase in the procedure and also cases in which an appeal has been lodged. On expiry of these time-limits, the accused is set free immediately, under a decision by the court.

385. Under the new Code the court may decide to impose other measures.

386. The accused is not set free if he is to be held on remand because other proceedings against him are under way.

387. If the maximum time-limits are not observed, an application for habeas corpus may be filed.

PARAGRAPH 4: RIGHT OF APPEAL

388. The prisoner has the right of appeal to a higher court to re-examine a decision to restrict or deprive him of his freedom. The general principle in this respect is to be found in article 32,

paraqraph 1, of the Constitution, which states that "criminal proceedings shall afford all necessary safeguards to the defence".

389. Habeas corpus is dealt with in article 31 of the Constitution:

"l. The remedy of habeas corpus shall be available before a court of law or court martial, according to the case, against any wrongful use of power in the form of unlawful arrest or detention.
2. Habeas corpus may be applied for by the person concerned or by any citizen qualified to exercise his political rights.

3. The court shall rule on the application for habeas corpus within a week, at a hearing attended by both parties."

390. The existing Code of Penal Procedure follows these lines. Penalties apply to bodies which do not enforce a decision on habeas corpus by the Supreme Court of Justice.

391. The prisoner also enjoys the right of appeal against a decision by the court to deny or to grant bail. The right to appeal is also granted in respect of cases where imposed obligations have not been fulfilled. In the latter case, however, an appeal may be made only when the accused is in prison (art. 647-2, para. 4).

392. The new Code of Penal Procedure has adopted similar provisions.

PARAGRAPH 5: RIGHT TO COMPENSATION

393. Under the terms of article 27, paragraph 5, "Any deprivation of freedom in breach of the provisions of the Constitution and the law shall oblige the State to compensate the victim in accordance with the law". In the new Code of Penal Procedure, articles 225 and 226 rule on the compensation payable as a result of unlawful or unjustified detention. Remand in custody is unjustified:

(a) In the event of an obvious (grosseiro) error in assessing the factual premises on which the decision to remand in custody is based;

(b) If the deprivation of freedom has caused abnormal and very serious harm, unless the prisoner helped to create the situation by intent or negligence.

ARTICLE 10

TREATMENT OF PRISONERS AND PURPOSE OF THE TREATMENT

PARAGRAPH 1

395. Respect for the dignity of the prisoner is covered by the provisions on deprivation of freedom.

396. Under the existing penal procedure and article 6 of Decree-Law N.º 402/82 of 29 September, "in the enforcement of sentences and security measures the human dignity of convicted persons shall always be respected and they shall be provided with the treatment that is necessary to maintain their physical and mental health and required for their social rehabilitation".

397. Under article 7, the individual characteristics of convicted persons must be taken into account so that preference is given, within the limits of the law, to the most suitable ways of carrying out the above aims.

398. Decree-Law N.º 265/79 (penitentiary law) follows the same lines. Prisoners are still entitled to fundamental human rights, except in regard to the limitations stemming from a verdict of guilt and from the requirements for the order and safety of the prison establishment. They also have the right to paid work and social security benefits and as far as possible, the right of access to culture and full development of their personality (Decree-Law N.º 265/79, art. 4).

399. This principle is echoed in other provisions, such as the right to receive visits (arts. 29 et seq.), to choose one's work (arts. 63 et seq.), the right to privacy (art. 116) and the right to petition the European Court of Human Riqhts (art. 151). This matter was mentioned in the initial report by Portugal; see also the comments concerning articles 14 and 18 below.

PARAGRAPH 2

400. Remand in custody is enforced under the special rules set out in articles 209 et seq. of Decree-Law N.º 265/79 (penitentiary law). Article 209 states that "persons on remand are presumed innocent and must be treated accordingly" (para. 1). Remand in custody such that it must avoid any restriction of freedom not strictly necessary for the purpose served and for the maintenance of discipline, safety and order within the prison establishment.

401. The conditions governing remand in custody are set out in article 210 of Decree-Law No. 265/79 as amended by Decree-Law No. 414/85 of 18 October. The normal régime for accused persons is that they shall spend their time with other small groups of prisoners during the day and be separated at night (art. 210, para. 1). These conditions do not apply to prisoners:

(a) Held incommunicado, in accordance with the law;

(b) Who make a written request to the prison governor;

(c) Who are not suited to the normal régime or who are presumed to be particularly dangerous in view of the acts for which they were remanded or in view of their criminal record;

(d) Whose physical or mental condition does not so permit.

In these cases, the prisoner may be held in an establishment of another category, although the remand régime will continue to be observed and, as soon as possible, he will be separated from other categories of prisoners (para. 5).

402. Adults up to the age of 25 must, as soon as possible, be remanded in custody in a suitable establishment, essentially for educational purposes (art. 216).

403. The rules for custodial sentences are applicable to remand in custody, unless otherwise established by law (art. 216-A). The application of this article in the light of the special security measures was assessed in an opinion from the Office of the Government Attorney published in the Diário da República No. 272 of 26 November 1985, which went into thorough detail about conditions for prisoners on remand. We shall here set out the basic steps in connection with the opinion concerning the matter, and note that it was adopted before publication in 1985.

404. The need to differentiate between the situations of persons under arrest or on remand from convicted persons serving a sentence was quickly realized by the legislature and recommended by specialists. At the international level, more particularly after the Second World War, human rights safeguards became particularly important and led to the establishment of Standard Minimum Rules for the Treatment of Prisoners, whether serving a sentence, under arrest or on remand.

405. The basic document on the subject is the Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders on 30 August 1955 and approved by the Economic and Social Council in resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

406. The International Covenant on Civil and Political Rights, signed by Portugal at New York on 7 October 1976 and approved for ratification by Act No. 29/78 of 12 June, after declaring that "It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement" (art. 9, para. 3), stipulates that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person n (art. 10, para. 1), and that "Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons" (art. 10, para. 2 (a)).

407. Although it contains no precise provisions concerning the treatment of arrested or remanded persons, the European Convention on Human Rights, approved for ratification by Act

No. 65/78 of 13 October, embodies rights which may have repercussions on the custodial situation of this category of detainee.

408. A thorough reform of penitentiary law by the legislature in Decree-Law No. 265/79 of 1 August, which entered into force on 1 January 1980 (art. 227), was undertaken with those international instruments, among others in mind. The new rules on remand in custody are Dart of the idea that any accused person is presumed innocent until the judgement has become res judicata (para. 3 of the preamble).

409. Remand in custody is itself an exception to the principle that accused persons are presumed innocent until found guilty. Given the danger to the rights of the individual, it is understandable why most legislations, over and above establishing the circumstances in which remand in custody may be imposed and the purposes it is intended to serve, lay down special rules which reflect the way remand in custody is different from actual imprisonment.

410. As the purpose of remand has nothing to do with general, special or judicial prevention (it is not a true sentence and hence there is no pretention to any ideal of social rehabilitation), we can understand why article 209 of Decree-Law No. 265/79, after establishing that: "1. Persons on remand are presumed innocent and must be treated accordingly" introduces, as the general principle underlying remand in custody, that: "2. Remand in custody is such that it must avoid any restriction of freedom not strictly necessary for the purpose served and for the maintenance of discipline, safety and order within the establishment".

411. Detention conditions are covered by careful and precise regulations, something which is necessary to prevent remand in custody from becoming, in practice, a form of more or less arbitrary repression by another name.

412. Under these provisions, over and above establishing the principle (which had been a constant feature since the reform of 1936, reaffirmed in the aforementioned international instruments) that "persons on remand must be placed in separate establishments or, as far as possible, in sections segregated from other categories of prisoner" (art. 210, para. 3), the 1979 legislature, distancing itself radically from the normal rule of constant separation set by the 1936 reform, established that "the normal régime for persons on remand is that they shall spend their time with other prisoners during the day and be separated at night" (art. 210, para. 1). However, the normal régime is not applicable to prisoners (art. 210, para. 2):

(a) Held in absolute or limited isolation by order of the competent authority in accordance with the provisions of the Code of Penal Procedure (cf. art. 211);

(b) Who make a written request to the prison governor;

(c) Who are unsuited to communal living with other prisoners;

(d) Whose physical and mental condition does not so permit.

413. Apart from exceptional situations in which they are held incommunicado, prisoners may receive visits every day, whenever possible, under the conditions set by the regulations (art. 212); may wear their own clothing (art. 213); may receive, at their own expense, food prepared outside the establishment (art. 214); may not be compelled to work (art. 215, para. 1), but may, at their request, be authorized to do so, to attend educational and basic and advanced vocational training courses or take part in any other instructive, cultural, recreational or sports activity organized by the establishment (art. 215, para. 2).

414. Apart from the special rules, the general rules valid for all categories of prisoners are applicable to persons on remand. They concern visits (arts. 31 to 39), correspondence (arts. 40 to 48) and the use of free time (arts. 83 to 88).

415. Although recognizing that Decree-Law No. 265/79 had welcomed "the updated principles of penitentiary law recommended by the specialized international agencies", the legislature admitted that "the existing material, human and financial realities" called for a number of small changes in some matters, and this was later done in Decree-Law No. 49/80 of 22 March, in which the legislature also tried to resolve doubts as to interpretation and to rectify the shortcomings which had become evident in practice.

416. The changes regarding the conditions governing remand in custody lie in article 210, paragraph 2 (c), whereby prisoners "incapable of living together with others" are exempt from

the normal arrangements, as are those who "because of their criminal record are considered especially dangerous". An addition was made to article 216-A, which reads:

"The rules governing the conditions for penalties involving deprivation of freedom shall apply to remand in custody, unless the law provides otherwise."

417. Now that the broad lines of developments in the conditions governing remand in custody have been explained and a brief account given of the basic principles behind them, it is necessary to consider the question of the legality of adopting the special security measures referred to in the information provided by the Director-General of Penitentiary Services, and of the conditions in which they may be maintained.

418. Under the heading "Special security measures", article 111 of Decree-Law No. 265/79 states:

"1. Special security measures may be applied to the prisoner if his conduct or his physical state are such as to suggest a risk of escape or committing acts of violence against himself or against persons or objects.

"2. The following security measures shall be authorized:

(a) Prohibition of the use, or confiscation of certain objects;

(b) Observation of the prisoner at night;

(c) Separation of the prisoner from others;

(d) Removal of, or restrictions on, outdoor periods;

(e) Use of handcuffs;

(f) Holding the prisoner in a special security cell.

"3. Implementation of the measures set out in the previous paragraph shall be authorized if it proves impossible to avert by any other means the risk of escape of prisoners or the order and security of the establishment in question are seriously disrupted.

"4. The special security measures shall be implemented only for as long as the risk which has led to their implementation persists.

"5. The measures referred to in paragraph 2 may not be implemented as a disciplinary measure."

419. Article 113 contains specific provisions with regard to holding a prisoner in a special security cell and, to use the wording of Decree-Law No. 49/80:

"1. A prisoner may be confined in a special security cell only for reasons that relate to him and when all other special security measures have proved to be ineffective or inadequate means of dealing with the seriousness or nature of the situation.

"2. Uninterrupted solitary confinement of a prisoner in a special security cell is intended solely as a means of bringing about a return to normal and shall not, in any case, exceed a period of one month.

"3. If, after the aforementioned period, the conditions leading to implementation of the special measure of solitary confinement still obtain, the prisoner must be transferred to a security establishment or section.

"4. Confinement of a prisoner in a special security cell for a continuous period exceeding 15 days shall require the approval of the Directorate-General of Penitentiary Services.

"5. The time-limits referred to in the previous paragraphs may not be regarded as interrupted because the prisoner has attended religious services or been allowed periods of recreation.

"6. A prisoner held in a special security cell must be seen by the establishment's doctor and must be given regular check-ups for as long as he remains there; the doctor must report to the governor on the prisoner's physical and mental state of health and, if appropriate, on the need to modify the penalty in question.

"7. The special security cell may contain no dangerous object; with that exception, the cell must have all the features of the other cells in the establishment, apart from those specifically relating to security."

420. The fact that the Director-General of Penitentiary Services refers to article 113, paragraph 2. suggests that such a measure has come to be regarded as "custody in a special security cell".

421. The legal possibility of applying, in the abstract, such a measure to those remanded in custody raises no great doubts. Any possible doubts were removed entirely by article 216-A (added to Decree-Law No. 265/79 by Decree-Law No. 49/80), under which the rules on the system for penalties involving deprivation of freedom can apply to remand in custody, unless the law provides otherwise; in fact, no legal provision conflicts with application of the measures set out in article 111, paragraph 2, of Decree-Law No. 265/79 to persons remanded in custody.

422. Under the terms of article 114, paragraph 1, of Decree-Law No. 265/79, it is for the prison governor to decide whether to apply the special security measures referred to in article 111, although, as already pointed out, when confinement in a special security cell exceeds a continuous period of 15 days, the governor's decision must be approved by the Director-General of Penitentiary Services. However, a superior's authority includes, as a rule, all the powers conferred by law on his subordinates (simultaneous competence), with the exception of those cases in which the law empowers the subordinate to perform certain acts (exclusive competence), something which does not appear to apply in the case of article 114, paragraph 1. Accordingly, adoption of the measures laid down in article 111, paragraph 2, may also be decided upon by the Director-General of Penitentiary Services.

423. The relevant conditions are a more complicated matter. It seems obvious, however, from both article Ill and article 113, that the special security measures in general, and the measure concerning custody in the special security cell in particular, may not be applied unless "it proves impossible to avert or remove the risk of escape of prisoners or if the order and security of the establishment are seriously disrupted" (art. 111, para. 3) and "when all other special security measures have proved to be ineffective or inadequate means of dealing with the seriousness or the nature of the situation" (art. 113, para. 1). In other words, any threat to the order and security of penitentiary establishments must be dealt with by stronger security and greater discipline in the prison; only when security and discipline have proved inadequate is it lawful to resort to these special security measures.

424. Among these measures, the most serious is certainly confinement in a special security cell, and it may therefore be applied only when all other measures (namely, separating the prisoner from others and deprivation of/or restriction on outdoor periods) have proved ineffectual or inadequate as a means of dealing with the seriousness or nature of the situation.

425. These measures, from the most flexible to the most rigid, are extraordinary and exceptional are will no longer be applied when the danger that initially occasioned them is removed (art. 11, para. 4). Regarding solitary confinement in a special security cell, the legislature has gone so far as to decree that it must be brought to an end even in cases where, after the one-month time-limit has expired, the conditions that caused it to be enforced still obtain (art. 113, para. 3).

426. It is for the prison governor to decide in each case whether conditions warrant these measures, without prejudice to the supervisory powers of the Director-General of the Penitentiary Services and of the Minister of Justice and the right of persons remanded in custody or of accused persons to be brought before a judge of the Court for the Inspection of the Enforcement of Sentences (Decree-Law No. 265/79, art. 139).

427. Prison governors have discretionary powers and such powers can be abused when exercised for reasons other than those stipulated by law (to avert or remove the risk of escape of prisoners or put an end to serious disturbances of the order and security of the prison). They must never be used for disciplinary reasons.

428. Article 113, paragraph 1, states clearly that confinement in a special security cell may be applied "only for reasons that relate to" the prisoner himself, something which highlights the need to weigh up the circumstances of the individual before enforcing this measure. This would seem to prevent any enforcement for reasons unconnected with each of the prisoners affected, or in conditions which could be construed as collective punishments, which are expressly forbidden by rule 27, paragraph 2, of the Standard Minimum Rules for the Treatment of Prisoners, as adapted by the Council of Europe.

429. These rules set out the powers, conditions and the aims of prison administration.

430. As we have stated before, the special security measures must be halted when the risk which has necessitated their enforcement no longer exists. Confinement in a special security cell must end, even when the conditions which gave rise to it still obtain after the one-month time-limit has expired, in which case the prisoner must be transferred to a security establishment or wing.

431. Is the one-month time-limit interrupted when the person on remand is taken out to appear before a magistrate? Article 113, paragraph 5, rules that this time-limit is not interrupted if a prisoner has attended religious services or been allowed periods of recreation. In view of this rule, it might be inferred, a contrario, that the time-limit is interrupted when the prisoner is brought before the court. Quite apart from the obvious fallibility of this kind of argument, such an interpretation is not in keeping with the spirit of the law. In the case of persons remanded in custody, the normal régime is for them to spend their time with other prisoners during the day (art. 210, para. 1). The period of confinement can only be considered to have been interrupted when the prisoner has been allowed to return to the normal system of remand in custody, which, because of its very nature, cannot be confused with being taken from a special security cell, under constant surveillance, in order to appear before the court.

432. Again, the time-limit of one month cannot be interpreted as the normal period of confinement in a security cell. This is the maximum period and it may not be exceeded. Confinement must end when the risk which has necessitated it no longer exists (art. 111, para. 4), when the situation has returned to normal (art. 113, para. 2), and the prison administration must take all requisite steps to ensure that the situation is restored to normal as quickly as possible.

433. All of this still means that the order and the security of the prison are recognized as being the fundamental values of the régime on imprisonment, including remand in custody. They are limits on the fundamental rights of. prisoners (art. 4, para. 1), their communal life (art. 17, para. 2 (c)), the freedom to decorate their cells (art. 19, para. 3), the right to purchase food and articles of personal hygiene (art. 27, para. 3), visits (art. 31 and art. 34, para. 1) , correspondence (art. 40, para. 2, art. 43, para. 1 (a) choice of work (art. 63, para. 7), leisure activities (art. 83, para. 3, and art. 87), access to newspapers and periodicals (art. 85, para. 2) , radio and television (art. 86, para. 1) , attendance at religious services (art. 90, para. 3) and privacy (art. 116, para. 1).

434. It is clear from these provisions that the underlying idea is that where insurmountable conflicts arise between the rights of prisoners and the need to maintain order and security in the establishment and among the inmates, these values must ultimately prevail. But even in these situations, which can almost prefigure a state of necessity, the prison authorities must always bear in mind the spirit of article 108, paragraph 3, (like all the other articles cited without any indication of the source, it is from Decree-Law No. 265/79), which states: "Any restriction imposed on the prisoner in the interest of order and discipline must be proportionate to the purpose served and must not be maintained beyond the time strictly necessary."

PARAGRAPH 3

435. Under the terms of article 71 of the Penal Code, "If the penalties for an offence involve custodial or non-custodial sentences, the court must give preference to the latter and state the grounds for so doing, when a non-custodial sentence is sufficient to achieve the social rehabilitation of the offender and meets the needs for punishment and prevention of the offence."

436. If it is a custodial sentence, i.e., one of deprivation of freedom in a penal institution, the social rehabilitation of the offender is always borne in mind in the provisions of the law on penitentiaries, due account being taken of the enforcement of custodial sentences, the choice of institution in which the convicted person will serve the. sentence, and the treatment of prisoners.

437. Prisoners must be committed according to sex, age and legal status (accused persons or convicted persons, first offenders, habitual offenders) to separate establishments and, if this is not possible, to separate wings in the prison establishment (art. 12, para. 1).

438. The period involved, the state of physical and mental health, the proximity of the family residence, security, training and labour considerations which may be important when a prisoner returns to society, will also be taken into account in deciding on the prison establishment (art. 11, para. 1).

439. Establishments exist for young adults and detention centres for young people from 16 to 21 years of age. Young people remain in them up to the age of 25 if their treatment so requires (art. 158, para. 5 (a), and art. 160). Suitable principles of re-education for the return to society apply to the imprisonment of adult offenders up to the age of 25. Once order and security are guaranteed, efforts are made to provide vocational training, physical exercise, and leisure activities, with expert guidance (art. 201).

440. Decree-Law No. 90/83 of 16 February established two detention centres for young people from the age of 16 to 25 serving short sentences, as prescribed in Decree-Law No. 101/82 (Special Penal Code for Young People). The aim is to respond to acts by young offenders that are not sufficiently serious as to warrant a Prison sentence but justify an institutional measure.

441. The system for young people was discussed in Portugal's initial report on the implementation of articles 10 and 12 of the International Covenant on Economic, Social and Cultural Rights (E/1980/6/Add.35/Rev.1).

442. Further to the reform of the prison system initiated under Decree-Law No. 265/79, Decree-Law No. 204/83 of 20 May established the Social Rehabilitation Institute, the main aim being to prevent crime, especially through the social rehabilitation of offenders and non-offenders subject to institutional or non-institutional measures and through support for minors who are at risk or experience difficulty in adapting to society (art. 2). The Institute's functions include (art. 3):

(a) Participation in the implementation of institutional measures particularly in penal, psychiatric and other institutions;

(b) Support for offenders who have been released or are on parole, with the view to their reintegration in society;

(c) Participation in the implementation of measures applicable to young offenders or minors;

(d) The development of co-operation with all bodies forming part of the system of the administration of justice, for effective implementation of social rehabilitation and crime prevention policies;

(e) Examination of social marginalization in order to make the Institute's activities more relevant;

(f) Establishment of relations with foreign agencies and international organizations.

ARTICLE 11

IMPRISONMENT FOR DEBTS

443. Under the Portuguese legal system, no one may be imprisoned for debts.

444. However, provisions of criminal law deal with total or partial family obligations, namely cases of failure to provide material assistance to one's family, material assistance outside wedlock and desertion of one's spouse or children in moral danger, matters which are covered in articles 197 to 199 of the Penal Code.

ARTICLE 12

RIGHT TO FREEDOM OF MOVEMENT AND FREE CHOICE OF RESIDENCE

445. Article 44 of the Constitution recognizes this right and reads:

"1. Every citizen is guaranteed the right to travel and to settle freely anywhere in Portuguese territory.

"2. Everyone is guaranteed the right to emigrate or to leave and to return to Portuguese territory."

446. Portugal has ratified the European Convention on Human Rights, which has been incorporated into national legislation under article 8 of the Constitution.

447. Under Article 2 of the Fourth Protocol to the Convention:

"1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

"2. Every person shall be free to leave any country, including his own.

"3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

"4. The rights set forth in paragraph 1 may also be subject in particular areas to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

Article 3, paragraph 2, further states that "No one may be deprived of the right to enter the territory of the State of which he is a national".

448. Under article 18 of the Constitution, rights, freedoms and guarantees may not be subject to any restrictions except in cases expressly provided for in the Constitution and those restrictions shall be limited to what is necessary to safeguard other rights or interests protected by the Constitution. Restrictive laws must be general and abstract in nature and may not have any retroactive effects or restrict the scope of the essential substance of the Constitution. For its part, article 19 forbids the suspension of the exercise of rights, freedoms and safeguards except in the case of a state of siege or emergency declared in the manner laid down in the Constitution.

449. Act No. 44/86 of 30 September, as we have seen, regulates states of siege and states of emergency and closely follows the constitutional provisions. Some restrictions on the right to freedom of movement are stipulated. Under a state of siege or emergency, the restrictions on movement of persons and vehicles require the authorities to take t ' he requisite measures, especially in regard to the transport, housing and support of the citizens affected (art. 2, para. 2 (c)). The Act further guarantees the right of access to courts to defend the rights and freedoms and safeguards against any harm or threat of harm caused by imposing unconstitutional or unlawful measures (art. 6). The Act recognizes the principles of equality, non-discrimination and proportionality (art. 2, Paras. 1, 2-3).

450. Again, regulations on the entry and residence of foreigners in Portugal (see Decree-Law No. 264-B/81, of 3 September) as well as the principles governing applications for asylum by foreigners or stateless persons (Act No. 38/80 of 1 August and Decree-Law No. 415/83 of 24 November) are discussed briefly below (a subject also examined in connection with article 13 of the Covenant; see, in addition, CERD/C/101/Add.8, paras. 197 to 215).

451. Reference is also made here to the rules and regulations of the Aliens Service (Decree-Law No. 440/86, of 31 December).

ENTRY AND RESIDENCE OF FOREIGNERS IN PORTUGAL

452. Under article 1, foreigners wishing to enter Portugal should as a rule do so at the frontiers and present a valid passport. For certain categories of persons, including diplomats, the presentation of a passport is not required.

TRAVEL DOCUMENTS ISSUED BY THE PORTUGUESE AUTHORITIES

453. A passport for foreigners may be issued to: (a) stateless persons or nationals of countries without any diplomatic or consular representation in Portugal; (b) nationals of countries with which Portugal has signed an agreement; (c) persons non-resident. in Portugal if exceptional reasons so determine. This passport is valid for two years.

454. A travel document (arts. 23 to 27) may be issued to foreigners with refugee status who are living in Portugal. Under Act No. 38/80 of 1 August, it may also be granted to refugees in accordance with paragraph 11 of the annex to the 1951 Convention relating to the Status of Refugees. This document is valid for two years and may be issued for individuals or families.

455. A safe conduct (arts. 28 and 29) is granted to foreigners not resident in Portugal who have proven that it is impossible or difficult for them to obtain another document which will' enable them to leave the national territory.

456. Any foreigner who has been granted a permit to reside in Portugal by the Aliens Service is a resident. The Service makes its decision in the light of: (a) the person's respect for Portuguese laws, in particular laws pertaining to foreigners; (b) the person's financial means; (c) the person's purposes in residing in Portugal and their viability; (d) family ties with other national or foreign residents.

RIGHT OF ASYLUM

457. The right-of asylum is (under Act No. 38/80 of 1 August, and Decree-Law No. 415/83 of 24 November) guaranteed to foreigners and stateless persons persecuted or seriously threatened with persecution at a result of their activities In furtherance of democracy, social and national liberation, peace between peoples, and the freedom and rights of the individual in the State of his nationality or usual place of residence.

458. This right will be studied in detail in the light of article 13 of the Covenant. However, it is interesting to note that, if asylum is denied, the applicant may remain on Portuguese territory for a temporary period not exceeding 60 days in order to seek asylum in another country or to return to one where he has already been granted it. On the expiry of that period, the applicant becomes subject to the general code concerning foreigners in Portugal.

ALIENS SERVICE

459. Regulations for the Aliens Service were issued on 31 December 1986, after the adoption of Decree-Law No. 440/86. The Service monitors and supervises foreigners in order to contribute to the prevention of terrorism and other forms of organized international crime. It has been reorganized in order to guarantee freedom of movement of persons by keeping a check on and removing risks of crime from abroad.

460. The Aliens Service, which falls under the Ministry of the Interior, examines, promotes, co-ordinates and executes measures connected with frontier crossing and it keeps a constant check on the activities of foreigners on Portuguese territory. Its functions include, more particularly (art. 2):

(a) Checking and monitoring the frontiers to prevent them being crossed by individuals without documents or proper papers;

(b) Checking the documents of nationals at points of entry and departure;

(c) Checking the stay and activities of foreigners on Portuguese territory;

(d) Advising on requests for visas;

(e) Granting permanent visas and residence permits to foreigners;

(f) Organizing proceedings to expel foreigners from Portuguese territory;

(g) Conducting proceedings for applications for asylum in accordance with the law and maintaining contacts with national and international agencies for the support and protection of refugees;

(h) Preventing crew members and passengers who arrive from places where health conditions are suspect from disembarking without the authorization of the Directorate-General of Primary Health Care.

461. Decree-Law No. 312/86 of 24 September has stipulated that foreigners must be in possession of a certain amount of money to live on when they enter Portuguese territory, unless

they can prove that they will have accommodation and food for the duration of their stay. These provisions do not apply to citizens of member States of the European Communities.

462. In regard to any measures of constraint ordered during the proceedings, the new Code of Penal Procedure provides for measures such as a ban on staying in Portugal, on travelling abroad, a requirement to remain in certain regions or a ban on frequenting certain circles or places (art. 200, para. 1). Under the terms of article 201, a person may be placed under house arrest, but only where there are serious grounds for presuming that an offence involving a maximum prison sentence exceeding three years has been committed. For the purposes of identification, the police may not, by law, hold an individual for more than six hours (art. 250, para. 3).

463. In the case of administrative offences, by law the competent administrative and police authorities are entitled to require the offender to identify himself. When persons are caught in flagrante delicto, they cannot, for identification purposes, be held for a period exceeding 24 hours (Decree-Law No. 433/82 of 27 October, art. 49).

464. Article 54 of the Penal Code, concerning probation, entitles the court to impose obligations on convicted persons with a view to rehabilitation, including the obligation not to frequent certain areas or to reside in certain places or regions (para. 2 (b) and (c)). The obligations are part of a personal rehabilitation plan under the probation system introduced by article 53 of the Code.

465. Articles 6 and 8 of Decree-Law No. 401/82 of 23 September (special penal system for young people), concern certain rules of conduct for young offenders, for rehabilitation purposes (see E/1980/6/Add.35/Rev.1).

466. On 30 May 1984, Portugal ratified the European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe. Under article 1, paragraph 1, nationals of the contracting parties may enter and leave the territory of the other parties on presentation of one of the documents listed in the annex to the Agreement. With regard to Portugal, the documents are a valid passport or one that is not more than five years out of date, a valid national identity card, a valid collective identity travel document, and an identity card (cédula pessoal) in the case of minors.

467. The total number of foreign residents in Portugal in December 1985 was 79,594. Of these 6,257 were granted residence permits and 6,533 were granted visas to pursue professional activities.

ARTICLE 13

DEPORTATION, EXTRADITION AND THE RIGHT OF ASYLUM

468. Article 33 of the Constitution sets forth the principles regulating extradition, deportation and the right of asylum. It forbids the extradition or deportation of Portuguese citizens from Portuguese territory.

469. The grounds for deportation are now set forth in Decree-Law No. 264-B/81 of 3 September and persons may be deported in the following cases (art. 42, para. 1):

(a) Illegal entry into Portuguese territory;

(b) Attacks against Portuguese sovereignty, public order or morality;

(c) Any threat against the interests of the country or the dignity of the State of Portugal or of its nationals;

(d) Unauthorized interference in the political life of the country;

(e) Failure to observe the legal provisions concerning foreigners;

(f) Involvement in any actions of a kind which would have prevented their entry into Portuguese territory in the first place if the Portuguese authorities had had knowledge of such actions beforehand.

Persons may also be deported as the result of a criminal conviction or in cases stipulated in article 43 of Decree-Law No. 264-B/81.

470. Under article 33, paragraph 4, of the Constitution, extradition and expulsion shall be decided only by a judicial authority (see Decree-Law No. 264-B/81, art 45, concerning expulsion, and Decree-Law No. 437/75 of 16 August, art. 24, concerning extradition). With respect to guarantees of protection against the expulsion procedure governed by Decree-Law No. 264-B/81, a foreigner. will receive notification of the court proceedings so that he may prepare and present his defence. If he is not present, the hearing may be postponed only once (art. 46 and art. 47, para. 2 (b)).

471. The Constitution also guarantees the right of asylum for foreigners and stateless persons persecuted or seriously threatened with persecution as a result of their activities on behalf of democracy, social and national liberation, peace between peoples, and the freedom and rights of the individual (art. 33, para. 5).

472. Refugee status and the right of asylum are provided for in Act No. 38/80 of 1 August, as amended by Decree-Law No. 415/83 of 24 November.

473. The Ministers of the Interior and the Minister of Justice rule on applications for asylum. When the right of asylum is granted, the beneficiary has refugee status and the effects of asylum are extended to the applicant's under-age children and can be extended to other members of the nuclear family if the applicant so requests.

474. Any application for asylum shall be submitted to the Aliens Service within 60 days following entry into Portuguese territory. If the application is viewed favourably, the Aliens Service will issue a temporary residence permit which will remain valid until a final decision is taken on the application. On submission of an application, any administrative or criminal proceedings initiated by reason of illegal entry are suspended. If asylum is granted, the proceedings are discontinued.

475. Once the decision has been taken, the Aliens Service notifies the applicant and informs the representative of the Office of the United Nations High Commissioner for Refugees. If the decision is in the negative, the applicant is informed of his right to appeal to the Administrative High Court within 30 days. Where asylum is refused, the applicant may remain in the national territory for an interim period not exceeding 60 days so that he may seek asylum in another country or return to the one which had already granted him asylum.

476. Proceedings to grant or refuse asylum, as well as deportation proceedings, are free of charge and dealt with urgently.

477. Refusal of asylum, in limine, is admissible in the absence of proper grounds or in cases in which a person has left the country of origin or of residence under a deportation order (art. 15-A, added under Decree-Law No. 415/83), issued as a result of one of the acts prohibited by article 9 of Act No. 38/80 of 1 August.

478. As to the resettlement of refugees under the mandate of the office of the United Nations High Commissioner for Refugees, the Government's decision will be taken in the light of the particular circumstances and the legitimate interests to be protected.

479. In view of the incorporation into Portuguese law of the European Convention on Human Rights, under article 8 of the Constitution, account must also be taken of article 3 of the Fourth Protocol (adopted by Act No. 65/78 of 9 November):

"1. No one shall be expelled by means either of an individual or collective measure, from the territory of the State of which he is a national."

In addition, article 4 of the Protocol prohibits the collective expulsion of foreigners.

ARTICLE 14

THE ADMINISTRATION OF JUSTICE

PARAGRAPH 1

480. Article 113, paragraph 1, of the Constitution considers the courts to be organs of supreme authority, and under articles 167 (h) and 168, paragraph 1 (g). the Assembly of the Republic is competent to legislate on their organization, functioning and procedures. It falls to the courts to administer justice in the name of the people (art. 205). Hence the Jurisdictional function of the

State devolves on them alone and, in accordance with article 206, they ensure the defence of the rights and interests of citizens that are protected by law, punish violations of democratic legality and resolve conflicts of public and private interests.

481. It should also be emphasized that the courts are independent (vis-à-vis the other sovereign organs, State bodies and the hierarchical orders and instructions of other courts) and are subject only to the law (art. 208). Their decisions are binding on all public and private bodies and prevail over the decisions of all other authorities (art. 210, para. 2).

482. The detailed and complex characteristics of some branches of substantive law have warranted the establishment of several systems of specialized courts, depending on the specific judicial matters concerned. Accordingly, article 212 of the Constitution stipulates the following categories of court: the Constitutional Court, courts of law, the Court of Audit and courts martial. It also provides for the establishment of administrative and fiscal courts, maritime courts and arbitration tribunals.

483. Under Act No. 35/86 of 4 September, the maritime courts have civil jurisdiction (art. 4) with regard to administrative offences (art. 5), the enforcement of decisions (art. 6) and international matters (art. 7).

484. The courts martial are competent to try essentially military offences.

485. Thus, in conformity with the Constitution, courts martial no longer have jurisdiction ratione personae over members of the armed forces, for their jurisdiction is defined ratione materiae, in relation to some categories of crime (Constitution, art. 218, para. 1). These provisions have rendered unconstitutional others whereby courts martial were competent to try administrative cases, within the armed forces.

486. The Constitutional Court declared this to be unconstitutional in two recent judgements of 22 April (81/86) and 27 June (204/86)

487. Where good cause exists, deliberate offences comparable to essentially military offences may be included by law in the jurisdiction of the courts martial (art. 218, para. 2). It must, however, be emphasized that legislation on this matter falls within the sole jurisdiction of the Assembly of the Republic, in accordance with article 167 (i) of the Constitution.

488. The various categories of courts of law do reflect a hierarchy, but the sole aim is to ensure that decisions can be reviewed (Act No. 82/77, art. 15). Therefore, it is possible to lodge an appeal against the decisions of the courts of first instance with the appeal courts and thence with the Supreme Court of Justice.

489. The Supreme Court of Justice is the highest court of law, without prejudice to the competence of the Constitutional Court in regard to matters that are unconstitutional or unlawful (Constitution, art. 214, para. 1 and Act No. 82/77, art. 21).

490. The courts of appeal are, as a rule, courts of second instance (Constitution, art. 215, para. 2 and Act No. 82/77, art. 11, para. 2) and they sit in each judicial district. Depending on the subject-matter, the courts of law may be courts with general jurisdiction or courts with special jurisdiction.

491. As a general rule, the courts of first instance have general jurisdiction (Act No. 82/77, art. 1) and they have all jurisdictional authority not assigned to other courts of law. (Act No. 82/77, art. 54).

492. The courts with special jurisdiction are the civil courts, criminal courts, courts of criminal investigation, family courts, juvenile courts, labour courts and courts for the enforcement of sentences (Constitution, art. 216, para. 1 and Act No. 82/77, art. 45, paras. 2 and 56).

493. It is the responsibility of the civil courts to settle cases not assigned to other courts of law (Act No. 82/77, art. 57); the criminal courts decide or the indictment ("pronúncia") , the trial and its outcome in criminal cases (Act No. 82/77, art. 59)l and the courts of criminal investigation conduct the pre-trial proceedings and adversary proceedings and exercise the jurisdictional functions relating to the preliminary inquiry and the procedure on security measures (Act No. 82/77, art. 60).

494. It is the responsibility of family courts to prepare and hear cases concerning marriage and to exercise civil jurisdiction over minors (Act No. 82/77, arts. 61 and 62); the labour courts

exercise social jurisdiction either in civil matters or labour offences (Act No. 82/77, arts. 65 to 67); and generally the courts for the enforcement of sentences decide on the alteration or substitution of current sentences and security measures and deal with the respective prisoners (Act No. 82/77, arts. 70 and 71).

495. The juvenile courts are competent to decide on measures regarding minors who are over 12 years of age (apart from the cases stipulated in paragraph 2) and under 16 (apart from the cases stipulated in paragraph 4) and:

(a) Have great difficulty in adjusting to normal life in society owing to their situation, conduct or obvious tendencies;

(b) Engage in begging, vagrancy, prostitution, debauchery, abuse of' alcoholic beverages or unlawful use of narcotics;

(c) Commit acts characterized by the law as crimes, offences or contraventions (Act No. 82/77, of 6 December, art. 63, para. 1).

496. In accordance with Act No. 82/77, article 63, paragraph 3, and Decree-Law No. 314/78, article 15, which deals with the guardianship of minors, the juvenile courts are also competent to:

(a) Decide on measures regarding minors who have been ill-treated, abandoned or deprived of support and are consequently at risk in terms of their health, safety, education or morality;

(b) Decide on measures regarding minors who have reached the age of 14 and have failed to adjust to family discipline, employment or the educational or welfare establishment in which they live;

(c) Assess and rule on applications to protect minors against misuse of authority in the family or in the institutions in which they live.

497. In short, the juvenile court is intended to provide judicial protection for minors and to defend their rights and interests by implementing measures for protection, assistance and education (Decree-Law No. 314/78, art. 2).

498. The courts with special jurisdiction are defined in terms of the form of proceedings (Constitution, art. 216, para. 1 and Act No. 82/77, art. 45, para. 3). They are equivalent to the criminal, correctional and police chambers of the criminal courts (Decree-Law No. 269/78, art. 7).

499. The criminal chambers are concerned with the indictment, trial and subsequent decisions in criminal cases covered by "de querela" proceedings or when a collective court must intervene (Decree-Law No. 269/78, art. 8).

500. The correctional chambers are concerned with the indictment or its equivalent, trial and subsequent decisions in criminal cases punishable under correctional proceedings (Decree-Law No. 269/78, art. 9).

501. The police chambers are concerned with preparation of the proceedings, trial and subsequent decisions in criminal cases involving summary proceedings or contravention proceedings (Decree-Law No. 269/78, art. 10.

502. The "julqados de paz", which have not yet been established, are also courts of first instance and have jurisdiction in the parishes (Act No. 82/77, art. 12, para 2, and art. 73). The "justice of the peace" (juiz de paz) is elected by the parish assembly (Act No. 82/77, art. 74) and he rules on minor civil and criminal cases. Appeals against his decisions can be brought before the court of first instance with jurisdiction in the relevant parish (Act No. 82/77, art. 76, para. 2 and art. 20, para. 1).

503. The new structure of the penal procedure, introduced as a result of the entry into force of the new Code of Penal Procedure, involves changes in the composition and jurisdiction of the criminal courts. Changes are also made to the organizational structure of the courts of law (Penal Procedure Authorization Act, art. 6).

PEOPLE'S JUDGES

504. In settling cases involving rural leases, placing minors in custody, dealing with minor criminal offences committed by minors over 16 and already subject to special measures, or hearing certain labour matters in which a collective tribunal may take Part, two people's judges who are not "togados" (not wearing a judge's robe) may Participate in the hearing. They will be drawn:

(a) In the first case, from lessors and tenant farmers;

(b) In the second case, from citizens without special qualification;

(c) In the last case, from independent and self-employed workers or from workers' and employers' organizations (Act No. 82/77, arts. 58, 64 and 68, and Constitution, art. 217, para. 2).

505. After 25 April 1974, the situation regarding the judicial system was marked by the:

Social upheaval and an increased number of grievances;

Economic recession and widespread crisis;

Return to Portugal of approximately 1 million nationals from former colonies;

Emergence of new factors making for conflict and instability in the law;

Real dangers of people taking justice into their own hands;

Danger of democracy being lost.

All these limitations and influences made the task of redefining priorities, projects and programmes to reduce the existing shortcomings a particularly difficult one.

506. Therefore it proved necessary to develop and implement a plan to counter the crisis, three areas being of fundamental importance in restoring the country's judicial system:

(a) Training and increasing the number of judges and officials in the judicial system;

(b) Legislative changes or reform of the methods of judicial organization and the functioning of the courts;

(c) Structural reform of the judicial system and detailed review of the laws on procedure.

The first of these measures, concerning the selection and training of judges, were taken in 1974 and 1975 - a period characterized by profound social and economic changes and marked by political instability and the danger of reverting to non-democratic solutions.

507. After a decision was taken to opt for the only viable solution with regard to the selection and training of judges, namely a guarantee of the best choice, the number was increased as rapidly as possible, without however jeopardizing the standard of quality required to ensure competent administration of justice and the safeguards demanded by democracy.

508. After a distinction was drawn between judges on the Bench and members of the Public Prosecutor's Department, the Centre for Judicial Studies, a training school for judges was established in Portugal. From the technical competence it has displayed, this school has gained great international prestige among such establishments.

509. The number of judges has increased from 440 in 1974 to over 900 at the present time and, among prosecuting counsels, from 292 in 1974 to approximately 600 today.

510. The status of judicial officials has been greatly changed, with the aim, inter alia, of improving the selection standards and acquiring more highly trained staff. As a result of the efforts made, there has been an overall increase from approximately 2,700 in 1974 to almost 5,500 at present.

511. Along with efforts to create conditions to overcome the shortage of higher ranking staff and their tendency to seek alternative employment, the new organizational laws and respective regulations on the courts of law and Public Prosecutor's Department, together with the Statutes for Judges, were elaborated - in the first place by Act No. 82/77; in the review of the Statutes for Judges by Act No. 21/85 of 30 July; by replacing the organizational law on the Public Prosecutor's Department by Act No. 47/86 of 15 October. These laws and regulations set out the structure and jurisdiction of the highest organ for the administration and discipline of judges

(Higher Council of the Judiciary) and of the umbrella organ for prosecuting counsels (Office of the Government Attorney).

512. Also in the legislative field, the Organizational Act concerning Clerks to the Courts and the Statutes of Judicial Officials was published on 30 December 1978. However, this official text was replaced by Decree-Law No. 385/82 of 16 September, which, while retaining most of the provisions of the earlier text, introduced a few important changes. More particularly they concern the admission procedure and, as a result, candidates are now tested publicly in order to ensure that the best are selected. In addition. measures have been introduced to modernize our courts gradually by creating new categories of officials, assigning units solely to serve the Public Prosecutor's Department and regarding professional specialization as the best criterion in the appointment of clerks to the labour courts.

513. As to legislative reforms and laws of procedure, mention should be made of the introduction, in Decree-Law No. 242/85 of 9 July, of important changes to the civil procedure. The aim of such changes has fundamentally been to "relieve the situation" so that "at the same time, the decisive lesson of experience can be used for some solutions which the Legislative Review Commission already felt able to suggest to the competent bodies in order to simplify the procedure".

514. The new Statutes for Judges, approved by Act No. 21/85 of 30 July, replaced the previous statutes (which had been analysed in Portugal's initial report - Act No. 85/77 of 13 December). Under article 40, a person must, in order to perform the duties of a judge:

(a) Be a Portuguese citizen;

(b) Enjoy all political and civil rights;

(c) Hold a degree in law, obtained or approved in Portugal;

(d) Have successfully completed the studies and training courses at the Centre for Judicial Studies.

Such persons may not exercise any other public or private function apart from teaching, unpaid scientific research of a judicial nature or holding office in the Professional organizations of the Bench (art. 13). Nor may they be publicly involved in party politics (art. 11).

515. Judges must be assigned to their posts in the light of the needs of the service and the private and family life of those concerned. In the assignment of judges to the courts with special jurisdiction, particular consideration must be given to the training candidates have received in the field concerned.

516. The Higher Council of the Judiciary, the highest administrative and disciplinary organ, has several functions set forth in article 149 of Act No. 21/85, including:

(a) To appoint, assign, transfer, promote, exonerate, assess the professional merit of and exercise disciplinary action in connection with judges of the courts of law;

(b) To express opinions on texts concerning the organization of the judiciary, the status of judges and matters relating to the administration of justice in general;

(c) To study and suggest to the Ministry of Justice legislative measures to improve penitentiary institutions and increase their efficiency.

517. Act No. 47/86 of 15 October very recently approved the organizational status of the Public Prosecutor's Department, the organ competent to represent the State, initiate criminal proceedings and defend democratic legality and such interests as are stipulated by law (Constitution,. art. 224).

518. The Office of the Government Attorney is the highest organ of the Public Prosecutor's Department and it is required:

(a) To promote the defence of democratic legality;

(b) To appoint, assign, transfer, promote, exonerate, assess the professional merit of and exercise disciplinary action in connection with the prosecuting counsels and staff of the Public Prosecutor's Department;

(c) To direct, co-ordinate and monitor the activities of the Public Prosecutor's Department and draft directives, orders and instructions to be followed by the prosecuting counsels and staff of the Department in the exercise of their duties;

(d) At the request of the Government, in cases where mandatory consultation is required by law, to give advisory opinions which will be regarded as official interpretations if they meet with the agreement of the member of the Government who requested them; to suggest to the Minister of Justice legislative measures to enhance the efficiency of the Department and to improve judicial institutions;

(e) To inform the Government of obscurities or contradictions in legal provisions and to suggest appropriate changes;

(f) To monitor the exercise of the functions of police bodies.

519. The Minister of Justice gives the Government Attorney general instructions on the functions of the Public Prosecutor's Department and specific instructions in cases of civil actions involving the State, and requests clarification and reports from the Higher Council of the Department.

520. The functions of officials of the Department are parallel to and independent from those of court judges (art. 54).

521. The incompatibilities, duties and rights are similar, for example, with regard to the exercise of public or private functions or party political activities (arts. 60 et seq.).

522. In order to become a prosecuting counsel, a Person must:

(a) Be a Portuguese citizen;

(b) Enjoy all civil and political rights;

(c) Hold a degree in law obtained or approved in Portugal;

(d) Have successfully completed studies and training courses at the Centre for Judicial Studies.

523. The assignment of prosecuting counsels is subject to the same criteria to those laid down for judges (art. 110).

524. Access to the courts is guaranteed by the Constitution (art. 20). It is also fully safeguarded, during a state of siege or state of emergency, in all matters pertaining to the defence of rights, freedoms and guarantees infringed or threatened by a measure that is unconstitutional or illegal (Act No. 43/86 of 30 September, art. 6).

525. With regard to Public hearings, article 211 of the Constitution applies:

"Court hearings shall be Public, except when the court itself decides otherwise by means of a substantiated decision, in order to safeguard Personal dignity and public morality or to ensure that it may function normally."

526. Acts of procedure may be Public, depending on the circumstances (arts. 86 et seq.).

527. On pain of being declared null and void a criminal case is given a Public hearing once a decision is taken on committal for trial at the end of the Preliminary investigation. If a preliminary investigation does not take Place, the case is given a Public hearing when such an investigation can no longer be required. Until such time in the procedures, the case is confidential (art. 86, para. 1).

528. Specific provisions relate to the mass media in connection with the publicizing of proceedings which are not covered by judicial confidentiality (art. 88, para. 1). The media commit the offence of contempt if they reproduce items or documents from ongoing cases, transmit unauthorized pictures or sound recordings, or disclose the identity of the victim if he or she is under 16 years of age (art. 88).

529. The Public are excluded if the judge considers that Publicity would seriously harm personal dignity, public morality or the normal course of the proceedings, and are admitted when reasons warranting an in camera hearing no longer apply (art. 87, para. 2). Cases of sexual offences in which the victim is under 16 are always held in camera (art. 87, para. 3). Sentence must always be Pronounced at a public hearing (art 87, para. 4).

PARAGRAPH 2

530. The principle of the presumption of innocence is set out in article 32, paragraph 2, of the Constitution:

"Any person charged with an offence shall be presumed innocent until his conviction has acquired the force of res judicata, and he shall be tried in the shortest space of time compatible with safeguards for his defence."

531. As noted with reference to article 10, a person in custody awaiting trial is presumed innocent and his treatment must conform to that principle, in accordance with article 209, paragraph 1, of the Prisons Act.

532. The inclusion of this principle in the new Code of Penal Procedure stems chiefly from the following provisions:

(a) The elimination of situations in which the rules of evidence are reversed. In accordance with article 243, an official record which is drawn up by the authorities and under the conditions stipulated in the article will be regarded simply as information (para. 3), whereas under the present system it is regarded as authoritative in the absence of evidence to the contrary (1929 Code of Penal Procedure, arts. 166 and 169). Thus the legislature endorsed the arguments for caution and removed this "statutory inequity" for the accused person;

(b) The system of measures of constraint, which entails a clear Preference for less restrictive measures (arts. 191 to 193 and 196 et seq., arts. 202 and 204);

(c) The abolition of the system which prohibited bail for some offences considered to be more serious;

(d) Closing the case in the absence of sufficient presumptions (arts. 277, para. 2, 279 and 308, para. 1);

(e) A guarantee of the principle of a full hearing for the defence counsel during the trial.

533. With regard to time-limits, the Code establishes innovative provisions to speed up the procedure and consequently make for more effective access to law. The main features of these provisions are:

(a) Strict regulation of time-limits (art. 103 et seq.);

(b) An obligation to inform the disciplinary authorities of the reasons for failure to observe a time-limit even if the procedure has been carried out in the meanwhile (art. 10);

(c) The introduction of a point of law to speed up the procedure (art. 109);

(d) Simplification of the transmittal of documents (art. 111 et seq.)

(e) Strengthening of the principle of continuity of the hearing and strict regulation of time-limits and breaks. Such is the case, for example, with an adjournment of a hearing under regular procedure. It cannot exceed 30 days. A longer break in the proceedings invalidates evidence already submitted (art. 328, para. 6);

(f) Restructuring of the appeals system (arts. 399 et seq.) and the admissibility of rejection in limine in some cases stipulated by law (art. 420).

PARAGRAPH 3

534. The matters dealt with in this paragraph were the subject of a detailed statement on the law in force at the time Portugal's initial report was submitted. Since the decree law approving the new Code of Penal Procedure, which is to enter into force on 1 June 1987, has recently been published in the official gazette, reference to the guidelines contained in that text will be made below.

535. This statement will follow the structure of article 32 of the Constitution, concerning safeguards in criminal proceedings. These provisions have undergone some changes as a result of the review of the Constitution in 1982:

"ARTICLE 32 OF THE CONSTITUTION

"1. Criminal proceedings shall comprise all necessary safeguards for the defence.

"2. Any person charged with an offence shall be presumed innocent until his conviction has acquired the force of res judicata, and he shall be tried in the shortest space of time compatible with safeguards for his defence.

"3. The person charged shall have the right to choose and be assisted by counsel at all stages of the proceedings. The cases and stages in which such assistance shall be compulsory shall be specified by law."

536. All rights of the person charged are set forth in article 61 of the new Code of Penal Procedure:

"1. At each stage of the proceedings, in the absence of legal provisions to the contrary the accused shall in particular enjoy the following rights:

(a) To be present at the acts of the proceedings which directly concern him;

(b) To be heard by the court or the examining magistrate when they are taking measures or decisions which concern him;

(c) Not to be compelled to answer questions asked by persons speaking during the trial that relate to acts imputed to him or to the contents of previous statements."

537. An admission of quilt is now admissible and it may be full and unqualified, partial, or subject to qualification. The court must ascertain that it is a free admission, particularly with regard to whether the act can be fully imputed to the accused and with regard to the veracity of his confession.

(Continuation of article 61, paragraph 1, of the new Code of Penal Procedure)

"(d) To choose his counsel or request the court to appoint counsel for him;

(e) To be assisted by counsel throughout the proceedings in which he takes part and, if he is held in custody, to communicate with his counsel both publicly and Privately."

538. If security reasons so require, the discussion shall be held within sight, but not within earshot.

539. The Prisoner has the opportunity of communicating with his counsel even before being questioned for the first time or if he is being held incommunicado, and this clearly shows the extent of the right to be assisted by counsel.

540. Article 143, paragraph 3, should also be emphasized:

"In cases of terrorism or violent or highly organized crime the Public Prosecutor's Department may decide that the Prisoner shall not communicate with anyone, other than his counsel, before the first judicial examination."

541. The Constitutional Court considered this matter, when it analysed the future Code of Penal Procedure, for the purposes of monitoring the Code's constitutionality. At that time, it stated that the right of the accused to be assisted by counsel "does not include only the Physical presence of counsel during the Proceedings, but also the right of the accused to communicate with him".

542. In Decision 7/87, published in the Diário da República on 9 February 1987, the Court ruled that the initial draft of the rule was unconstitutional vis-à-vis the safequard contained in article 32, paragraph 3, of the Constitution (the right of the accused to be assisted by counsel). The rule was therefore changed.

543. Another measure which illustrates the extent of the right to be assisted by counsel is the mandatory presence of counsel at the prisoner's first examination (art. 64, para. 1 (a) and art. 141, para. 2), with the opportunity of requesting the judge, at the end of the examination and without the accused being present, to ask questions which are of interest in discovering the truth (para. 6). Absence of counsel at that stage renders the case null and void (art. 119 (c)). If the prisoner so requests, after being informed of these rights, counsel may also be present during any brief questioning by the Public Prosecutor's Department prior to the judicial examination (art. 143, para. 2).

544. The presence of counsel is also mandatory during an appeal (art. 64, para. 1 (d)). The counsel shall exercise the rights of the accused recognized by law, apart from those which the law reserves for the accused himself (art. 63). If counsel is officially appointed, he may be replaced at the request of the accused (art. 64, para. 2).

545. The Code sets forth the cases in which the presence of counsel is mandatory. They include, inter alia, all stages of the proceedings when the accused is deaf, mute, illiterate, unfamiliar with Portuguese or under 21 years of age, or if the question of his non-imputability or partial imputability is raised (art. 64, para. 1 (c)).

(Continuation of article 64, Paragraph 1, of the new Code of Penal Procedure)

"(f) To take part in the progress of the inquiry and the preliminary Investigation, providing evidence and demanding any steps he believes necessary;

(g) To be informed of these rights by the judicial authority or organ of the criminal police before which he is to appear;

(h) To appeal, in conformity with the law, against decisions unfavourable to him."

546. Article 92 of the Code is concerned with the language used in proceedings and the appointment of an interpreter for persons who do not understand or speak Portuguese. A suitable interpreter will be appointed, free of charge, even if the presiding judicial officer or one of the participants is familiar with the language used by the person in question.

547. Article 93:sets forth the rules to be followed in cases of persons who are deaf, dumb or deaf mutes.

548. The acknowledged importance of this principle in law is clearly shown by the fact that reviews for confirmation of foreign judgements will not be permitted if the person charged was unfamiliar with the language used in the proceedings and was not assisted by an interpreter (art. 37 (d)).

549. Under the new Code the presence of the accused at the hearing is mandatory (art. 332, para. 1). The consequences of his absence and a judgement by default are set forth in articles 332, 336 and 337.

ARTICLE 32 OF THE CONSTITUTION

"4. The entire investigation shall be within the competence of a judge, who may, in circumstances laid down in law, delegate to other persons elements of the investigation which are not directly connected with fundamental rights."

550. Under article 17 of the new Code, the preliminary investigation is carried out by the examining magistrate, who is also responsible for committal for trial and for jurisdictional formalities during the inquiry.

551. The examining magistrate, assisted by police, heads the preliminary investigation (art. 288).

552. The law indicates which judicial steps fall within the sole jurisdiction of a judge, during both the investigation and the inquiry and, in the latter case, which steps way be ordered or authorized by the judge alone. He alone is competent:

(a) To carry out the first judicial examination of the prisoner;

(b) To order measures of constraint or bail

(c) To order searches in lawyers' offices, doctors' surgeries or banks;

(d) To conduct the initial examination of the contents of correspondence seized, in order to assess their importance for the evidence.

553. As distinct from the law now in force, the inquiry will become the usual procedure for indictment. The preliminary investigation is optional and restricted to the following cases:

(a) A check on omissions in charges by the Public Prosecutor's Department, at the request of a private plaintiff;

(b) A request by the person charged to investigate the acts of which he is accused, in public or private proceedings (acts. 286 and 287).

554. The preliminary investigation is concluded by the preliminary investigation debate", which is conducted orally and in which both parties are heard (arts. 289 and 297). After this, the magistrate decides whether or not to commit the person to trial.

ARTICLE 32 OF THE CONSTITUTION

"5. Criminal proceedings shall be adversary in nature and the trial and steps in the preliminary investigation determined by law shall be governed by the principle that both parties are to be heard."

555. As already stated, the principle behind the present Code is to strike a balance between making the proceedings as adversary as possible and retaining the principle of investigation, which is embodied in the tradition of Portuguese criminal law, during both the preliminary investigation and the trial.

556. Reference must now be made to two innovative provisions:

(a) The stage of the proceedings at which the applicable penalty is determined, in the light of the personality of the accused and the report submitted by social reintegration services, has become discretionary (arts. 369 and 370). The law even provides for an instance in the proceedings at which additional evidence may be produced, in accordance with article 371, when required to choose the nature and extent of the penalty;

(b) The principle of the possibility of discontinuing criminal proceedings. This encompasses the provisions of articles 280 to 282.

557. The first of these innovations is the possibility of closing a case if the law expressly stipulates that dispensation or exemption from a sentence is possible and if it is found the conditions are such that the accused way be exempted. Depending on the stage in the proceedings, this decision is made by the Public Prosecutor's Department after obtaining the agreement of the examining magistrate, or by the examining magistrate himself, after obtaining the agreement of the Public Prosecutor's Department and the accused.

558. The second innovation is the decision to suspend proceedings temporarily if the offence is punishable by a prison sentence of less than three years or by a penalty not involving deprivation of freedom, in the conditions stipulated by law. There is a sort of classification that is accompanied by certain injunctions and rules of conduct. The decision to suspend proceedings is taken by the Public Prosecutor's Department after obtaining the agreement of the examining magistrate, and suspension may last for up to two years. If the accused observes the injunctions and rules of conduct, the case is closed and cannot be re-opened (art. 282).

ARTICLE 32 OF THE CONSTITUTION

"6. Any evidence obtained through torture, coercion, violation of the moral integrity or security of the person or the individual, or wrongful interference in private life, the home, correspondence or telecommunications shall be null and void.

7. No case shall be withdrawn from a court which has jurisdiction under existing law."

PARAGRAPH 4

559. Juveniles under 16 cannot be charged under criminal law (Penal Code, art. 19). Young people from 16 to 21 are subject to a special penal system established in Decree-Law No. 401/82 of 23 September.

560. The special penal system relates only to young people who can be charged (art. 1, para. 3), and it stems from the rules governing the laws on rehabilitation or guardianship for minors. This is reflected by the preference given to remedial measures, the only kind introduced by the decree-law, in place of prison sentences of up to two years, if such measures are shown to be more favourable to the social rehabilitation of the juvenile. If a prison sentence is applicable, the judge must reduce the sentence in conformity with the general law if he has good grounds for believing that it will make for social reintegration of the juvenile (art. 4). The subsidiary

application of rules on the law on minors ("Guardianship of Minors", Decree-Law No. 314/78 of 27 October) may also be considered.

561. The Code of Penal Procedure requires the mandatory presence of defence counsel at all stages of the proceedings concerning persons under the age of 21 (art. 64, para. 1 (c)).

562. The summary procedure, a special, more informal form of procedure, is not applicable to persons who have not reached the age of 18 at the time the offence is committed (art. 381, para. 2).

563. Cases concerning sexual offences of which the victim is under 16 are always held in camera (art. 87, para. 2).

PARAGRAPH 5

564. The right of appeal is safeguarded in the Constitution (art. 32, para. 1), as is the right of the accused to be assisted by counsel of his own choosing (art. 32, Para. 3). Such assistance is mandatory during an appeal.

565. Significant changes are to be made in the appeal system via-à-vis the law currently in force, including, for example, the possibility of discussing an appeal in limine if there is a defect as to reasoning or in clear cases of an inadmissible appeal (art. 420); the possibility of the withdrawal of an appeal (art. 415); and the subsidiary enforcement at the appeal hearing of provisions concerning the hearing on first instance (art. 423).

PARAGRAPH 6

566. This right is recognized under constitutional law in article 29, paragraph 6, of the Constitution and it is embodied in the Code in force.

567. The rules governing petition for review are set forth in articles 449 to 466 of the new Code.

568. Compensation shall be granted in the decision to acquit the accused (art. 462, para. 1) or may be determined on enforcement of the sentence at the request of the applicant (art. 462, para. 3).

569. Sums paid at fines or costs of the proceedings will also be reimbursed (art. 462, para. 1).

570. Judicial acts required during the appeal proceedings will take precedence over any other services when the convicted person has been imprisoned or interned (art. 466).

571. Suspension of the prison sentence or security internment measure may be granted when the court has grave doubts regarding the conviction and in the course of appeal proceedings (art. 457, para. 2).

PARAGRAPH 7

572. Under article 29, paragraph 5, of the Constitution, no one may be tried more than once for the same offence.

573. It should be emphasized that Portugal has also ratified the European Convention on Human Rights, which is therefore in force in accordance with article 8 of the Constitution, and that article 6 of the Convention recognizes the same rights as those set forth in article 14 of the Covenant.

ARTICLE 15

NULLA POENA SINE LEGE, NULLUM CRIMEN SINE LEGE

574. The new draft of article 29 of the Constitution upholds this provision of the Covenant. Paragraph 1 states:

"No one shall be convicted under criminal law except by virtue of existing legislation making the act or omission punishable, and no one shall be subjected to a security measure involving

deprivation of freedom for reasons that do not warrant such a measure under existing legislation."

PARAGRAPH 3 SAYS:

"No sentences or security measures involving deprivation of freedom shall be applied that are not expressly provided for in existing legislation."

575. Among sentences involving deprivation of freedom the new Penal Code introduces free-time detention (art. 44) i.e. detention at weekends, and semi-detention (art. 45). The systems of probation (arts. 53 et seq.), admonition (art. 59), and community service work (art. 60) have been introduced as Punishments which do not involve deprivation of freedom. Changes have been made in the system for suspension of sentence (arts. 48 et seq.), conditional release (arts. 61 et seq.), and fines (arts. 46 and 47).

576. A relatively indeterminate sentence has been introduced in the hope of solving the problem of accused persons described as dangerous.

577. The general principle of article 65, which reiterates article 30, Paragraph 4, of the Constitution applies to accessory penalties:

"No sentence shall involve, as a necessary consequence, the loss of any civil, labour or political rights."

This applies to such penalties as resignation (art. 66), temporary suspension from duties (art. 67) and a prohibition on engaging in other occupations or exercising other rights (art. 69).

578. Security measures exist for insane persons (arts. 91 et seq.) and mentally abnormal people facing charges (arts. 103 et seq.).

579. Furthermore, article 30 of the Constitution states that:

"In cases of danger due to grave mental disorder that cannot be treated in an open environment, security measures involving deprivation or restriction of freedom may be extended successively by judicial decision in each case, for as long as the danger lasts."

580. Article 40 of the Penal Code establishes an absolute limit for prison sentences, which must never exceed 25 years (para. 3).

581. The Constitution affirms that criminal laws more favourable to the offender shall apply retroactively.

582. The principles of the legality (art. 1) and the retroactivity of the criminal law more favourable to the offender (art. 2) are also set forth in the Penal Code.

583. Analogy may not be used to characterize an act as an offence, to define a state as dangerous or to determine the appropriate sentence or security measure.

ARTICLE 16

RIGHT TO RECOGNITION AS A PERSON BEFORE THE LAW

584. Under the heading "Other personal rights", article 26 of the Constitution sets forth a number of the individual's inalienable rights namely the rights to personal identity, civil capacity, citizenship, good name and reputation, image and protection of privacy and of private and family life.

585. A Person may be deprived of citizenship or subjected to restrictions on civil capacity only in the cases and under the conditions laid down by law, and never on political grounds (art. 26, para. 3).

586. A declaration of a state of siege or emergency may never prejudice, inter alia, the right to civil capacity (Act No. 44/86 of 30 September, concerning states of siege or emergency, art. 2).

587. In accordance with paragraph 2 of article 26 of the Constitution, the law must establish effective safeguards against the misuse of information concerning persons and families or any use in a manner inconsistent with human dignity.

588. Article 70 of the Civil Code provides for legal protection of individuals against any unlawful attack or threat of attack on their security of person or their existence as a person. Apart from any civil liability involved, an individual who is attacked or threatened with attack in such a way can demand that appropriate steps be taken to avert or alleviate the effects of the attack.

589. Article 71 of the Civil Code goes on to state that the rights of legal personality are protected even after a person's death. Voluntary restrictions on the exercise of legal personality are null and void if they are contrary to the principles of public order (art. 81).

590. For its part, the Penal Code provides for protection of some of these rights, namely offences against honour (arts. 164 et seq.) and against privacy (arts. 176 et seq.).

ARTICLE 17

THE RIGHTS OF THE PERSON

591. This is the subject-matter of article 26 of the Constitution, cited above.

THE RIGHT TO PROTECTION OF PRIVACY AND FAMILY LIFE

592. This right is safeguarded in two ways; the right to prevent third parties from obtaining information and the right to prevent disclosure of information on one's private and family life. In this respect, under paragraph 2 of article 26 the law is required to establish "effective safeguards against the misuse of information concerning persons and family or any use in a manner inconsistent with human dignity."

593. Other closely related constitutional provisions are those set out in article 34 (Inviolability of home and correspondence) and article 35 (Use of data processing).

594. Article 35 recognizes the rights of citizens to information about them in data banks and the use for which it is intended and that they are entitled to require the information to be corrected and updated (para. 1) ; that third parties are forbidden access to files containing personal data and interconnection of such files and transboundary flows of data are also forbidden, save in exceptional cases as provided for in the law (para. 2) that the processing of personal data is prohibited, except in the case of non-identifiable data for statistical purposes (para. 3) ;.and that a person shall not be given one single national identification number (para. 5).

595. As already mentioned, this matter is dealt with in the Penal Code, in particular in the chapter on offences against privacy (arts. 176 et seq.). Article 181 is concerned with interference with privacy by means of data processing. In this connection, paragraph 2 states:

"Anyone who unlawfully processes or orders the processing of personal data concerning political, religious or philosophical convictions and other private information shall be liable to deprivation of freedom for a maximum of two years."

596. Paragraph 1 of the article concerns other computer activities which interfere with one's private life. This article derives from the provisions of the Council of Europe's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, which has already been signed by Portugal.

597. There are also regulations on the protection of access to certain data and to classified information held by bodies established under Act No. 30/84 of 5 September, which is the framework-law on Portugal's official data processing system.

598. This data system is essentially intended to provide the necessary information to protect national independence and safeguard internal security.

599. The information services are monitored by the Inspection Board, which is elected by the Assembly of the Republic and has its own powers of inspection (art. 7, para. 1).

600. The restrictions on the updating of the services relate to compatibility with the constitutional system of rights, freedoms and personal safeguards, in particular vis-à-vis data processing, including all restrictions established by law for the defence of these rights (arts. 3 to 5, arts. 23 et seq.).

601. Data can be erased or corrected at the request of persons concerned if the data on them are considered inaccurate, improperly obtained or an infringement of their rights, freedoms and safeguards (art. 27, para. 2).

602. Civil servants and civilian or military personnel carrying out police duties require prior authorization from the Government in order to gain access to data held by the information services, since such data may be used only to protect democratic legality or to prevent and suppress crime (art. 5).

603. Civil servants are bound by the duty to observe professional secrecy and this applies to all persons who have gained access to classified material held by the information services (art. 28). The law establishes penalties for breaches of these legal obligations and duties (art. 30).

604. Furthermore, protection is assured by arrangements, in terms of matter and organization, under four legal texts dated 4 July 1985, subject namely Decree-Law No. 223/85, establishing the fundamental principles; Decree-Law No. 224/85, on the structure of the Strategic Defence Information Service; Decree-Law No. 225/85, on the structure of the Security Information Service; Decree Service, which is the only body within the Information Service of the Republic competent to produce information intended to guarantee internal security and prevent sabotage, terrorism, espionage and acts that could harm or destroy the rule of law (art. 2); and Decree-Law No. 226/85, on the re-structuring of the Military Information Service

605. Particularly important in this connection are the provisions concerning access to and protection of classified material, the dividing line between State secrets and professional confidentiality, and the criteria governing the selection of personnel.

606. The fundamental principles of the activities of the services in the Information System of the Republic (Decree-Law No. 223/85 of 4 July) include the principle of specialization in the collection and processing of. data concerning the specific functions of each service (art. 1); the principle of inter-service co-operation outside the context of their specific functions (art. 2); the autonomy of data centres, so that link-ups between them are forbidden (art. 4); state secrets (art. 5); the duty to observe professional confidentiality (arts. 6 and 7); and monitoring of the activities of the information services, which is the responsibility of judges vested with their statutory rights and duties (art. 8).

607. As far as Police records are concerned, Decree-Law No. 39/83 of 25 January follows the principles of the new Penal Code and the system is based on two fundamental vectors:

(a) Adaptation to the limitations imposed by the new Penal Code on the effects of penalties. Article 3 defines the subject-matter of criminal records. Articles 19 and 20 concern full invalidation of some decisions and rehabilitation of the person. Articles 21 and 22 provide for temporary invalidation (rehabilitation ope judicis);

(b) Defining the conditions for access to data contained in the files (arts. 9 to 14), for example by imposing stricter conditions for a request submitted by a third party (art. 10, para. 2).

608. A special system 1s established for criminal records for minors (arts. 23 et seq.).

609. The law on procedure deals with indecent searches. In the law currently in force, this matter is covered by articles 178 et seq. of the Code of Penal Procedure and by Decree-Law No. 605/75 of 3 November (art. 2, as redrafted under Act No. 25/81 of 21 August).

610. In the new Code, searches are governed by the terms of articles 171 to 173.

611. Searches must respect the dignity and, as far as possible, the sense of propriety of the person examined (art. 172, para. 2).

612. The law also indicates which persons may be present when a search is carried out. The person to be searched may be accompanied by somebody he trusts it delay does not involve any danger. Hence he must be informed of this option granted to him by law (art. 172, para. 2).

613. Anyone wishing to avoid or prevent a search that is deemed necessary may be compelled to submit to it by the competent judicial authority (art. 172, para. 1).

614. The competent judicial or the police authority way prevent persons present at the search from leaving and, if necessary, use force to compel them to remain until the search is completed and for as long as their presence is required (art. 173).

615. These acts may be carried out by any officer of the law if there is a danger of losing evidence and if the above-mentioned authorities are not present.

616. Articles 174 and 175 concern body searches. Such searches are made on the decision of the competent judicial authority, which, whenever possible, should direct the search (art. 174, para. 3). The following cases are exceptions (para. 4):

(a) Terrorism or organized crime, if there are well-founded presumptions that a crime involving serious risk to the life or integrity of persons is about to be committed; the examining magistrate must be informed immediately, in order for the search to be valid (para. 5);

(b) Written evidence of the consent of the person concerned;

(c) in flagrante delicto, if the offence is punishable by a sentence of imprisonment.

In these exceptional cases, searches may be carried out by the criminal police, under conditions defined by law.

617. The criminal police may also carry out searches without prior authorization, subject to a subsequent cheek by the judicial authority, in the event of imminent escape and in dealing with suspects who, for well-founded reasons, are believed to be linked with the crime and may be important to the evidence, if there is a danger of losing them (art. 251).

618. The conditions required for examinations and searches are set out in the law (arts. 172 and 174 respectively).

619. In the procedure for administrative offences, evidence drawn from the individual's private life, from body searches and blood analyses is admissible only with the consent of the person concerned (Decree-Law No. 433/82 of 27 October, art. 42, para. 2).

THE RIGHT TO INVIOLABILITY OF THE HOME

620. This right is laid down in paragraphs 3 and 4 of article 34 of the Constitution. Restrictions on the right to inviolability of the home may be ordered only by the competent judicial authority, in the cases and in the forms laid down by law (para. 2). This right is fully guaranteed at night, unless the person concerned gives his consent (para. 3).

621. Hence, night searches are forbidden, unless the owner of the building gives his consent (Code of Penal Procedure. art. 204, and Decree No. 605/75 of 7 November, art. 2, both texts being still in force).

622. The new Code of Penal Procedure forbids searches of an inhabited house or outbuilding of such a house, between 9 p.m. and 7 a.m. ; otherwise, the evidence is rendered invalid (art. 177, para. 1) .

623. Entry to anyone's home may be ordered only by the court. However, the law states that in the above-mentioned cases of terrorism, violent crime, imminent perpetration of a crime endangering the life or integrity of any person or when there is written evidence of the consent of the person concerned, searches may be ordered by the Public Prosecutor's Department or conducted by the criminal police. In the latter case, the court must immediately be informed of such searches in order for them to be validated (art. 177, para. 2).

624. Special conditions govern searches conducted in a lawyer's office, doctor's surgery (art. 177, para. 3) or public health care establishment (art. 177, para. 4).

625. Infringements of this right are stated with the appropriate penalties in article 428 for cases of abuse of authority and, in general, in articles 176 and 177 of the Penal Code.

RIGHT TO THE INVIOLABILITY OF CORRESPONDENCE

626. Article 34, paragraph 4, of the Constitution states that "Any interference by the public authorities with correspondence or telecommunications, apart from the cases laid down by the law on criminal procedure, shall be prohibited".

627. Criminal law deals with this matter in articles 182 (incrimination) and 183 (aggravation), apart from cases where the person responsible is an employee (art. 434) or a former employee (art. 435) of the postal or telecommunications services.

628. Reference should be made, however, to article 12 of Decree-Law No. 90/83 of 16 February, concerning the inspection of correspondence of young persons placed in centres of detention. This article provides that correspondence sent by or addressed to such persons may be inspected in order to prevent the entry of prohibited objects, the establishment of criminal relations or the commission of acts jeopardising the security of the detention centre.

629. Other restrictions apply to the inspection of prisoners' correspondence and telecommunications, as laid down in the Prisons Act (Decree-Law No. 265/79, arts. 40 et seq.), although they entail an obligation to observe confidentiality (act. 45, para. 1).

630. This matter is regulated in the procedural law still in force (Code of Penal Procedure, art. 210) and provided for in the new Code (arts. 178 to 186), which establishes a more strict régime for the inspection, interception or seizure of correspondence, which the examining magistrate alone can order. Seizure or any other means of inspecting correspondence between the accused and his counsel is prohibited, except where the judge has good reason to believe that such correspondence is material to the offence (art. 179, para. 2).

631. A judge who has ordered or authorized the seizure of correspondence shall be the first to take cognizance of its content and determine whether it is important as evidence. If it is not, he shall arrange for the correspondence to be returned to the riqhtful owner. The magistrate shall remain bound by the requirement of confidentiality in respect of any material of which he has taken coqnizance and which is not relevant as evidence (art. 179, para. 3).

632. Articles 180 and 181 govern cases of seizure in the office of a lawyer or physician and in a banking institution.

633. Articles 187 to 190 deal in general with the régime governing interference with communications by telephone or by any other technical means.

634. The procedure concerning administrative offences permits neither interference with correspondence or telecommunications, nor the use of evidence that is a violation of professional confidentiality (Decree-Law No. 433/82 of 27 October, art. 42, para. 1).

THE REQUIREMENT OF CONFIDENTIALITY

635. This matter is dealt with in article 217 of the Code of Penal Procedure, which is still in force, and is covered by several legal provisions, the most recent concerning the High Authority against Corruption (Act No. 45/86 of 1 October, art. 7) and the services in the Information System of the Republic (Act No. 30/84 of 5 September, art. 28), and by provisions of the Penal Code. This requirement relates to facts or matters which have come to the attention of public officials in the exercise of their functions.

Again the legal régime for bank secrecy is established in Decree-Law No. 2/78 of 9 January, but should also be viewed in relation to the duty of co-operation with the High Authority, as prescribed by article 7, paragraph 2, of Act No. 45/86 of 1 October, and with reference to the struggle against illegal drug trafficking (Decree-Law No. 430/83 of 13 December, art. 50).

637. Violation of a public official's duty of professional secrecy for the purpose of unlawful gain, either for himself or for a third party, or with the intention of causing prejudice to the public interest or to third parties is punishable under article 433 of the Penal Code. Proceedings are taken only where a complaint is lodged by the supervisory body or by the victim.

638. The new Code of Penal Procedure introduces innovations in the regime governing confidentiality. Provision is made for the possibility of ordering testimony, notwithstanding the duty or tight to observe confidentiality, by decision of a judicial authority higher than the one in which the matter was raised or in the Supreme Court, sitting in plenary session of the criminal chambers, in cases where one of the grounds laid down in article 185 of the Penal Code for exclusion of the illegal nature of the act is applicable and after hearing the body representing the profession which is subject to professional secrecy. The only exception concerns the seal of the confessional.

ARTICLE 18

FREEDOM OF EXPRESSION, RELIQION AND WORSHIP

HISTORICAL BACKGROUND

639. Portugal is a mainly Catholic country. Catholicism, throughout much of its history and until the establishment of the Republic in 1910, had the prerogatives of the official religion.

640. After the Act concerning the Separation of Church and State in 1911, Catholics experienced considerable curtailment of various aspects of their freedom of action, at a time when religious orders were prohibited and religious associations virtually ceased to exist. And despite all the reactions, it was only 30 years later - with the celebration of the Agreement with the Holy See in 1940 - that the Catholic Church once again acquired legal personality and autonomy under Portuguese law.

641. The principle of religious freedom was thus recognized in Portuguese law, embodied successively by several constitutions, and gained an important place under the Act concerning the Bases of Religious Freedom in 1971. Under the Act, several of whose provisions are still in force, the State recognizes and guarantees religious freedom and provides adequate legal protection for religious denominations (base 1). In emphasizing the principle of separation, the Act grants religious denominations the right to equal treatment, except as regards the differences imposed by their varying representativeness (base II). With regard to religious convictions and worship, the Act states that all persons are entitled to:

(a) Have or not have a religion, change denomination or abandon their previous denomination, and act or not act in accordance with what is prescribed by their denomination;

(b) Express their convictions;

(c) Manifest orally, in writing or by other means the doctrine of the religion to which they adhere;

(d) Perform acts of worship, privately or in public. in accordance with their religion (base III).

Further, the Act provides for the right of assembly for public worship and establishes the régime governing religious denominations and their recognition by the State.

THE CONSTITUTION OF 1976

642. Freedom of conscience, religion and worship was strengthened by the entry into force of the 1976 Constitution, which guarantees first and foremost the inviolability of this freedom (art. 41, para. 1). Moreover, it dots so in such express terms, particularly as far as the first two aforementioned rights are concerned - the right to freedom of conscience and religion - that the Constitution does not allow them to be suspended even in a state of siege. Article 19, paragraph 4, provides that a declaration of a state of siege may in no circumstances affect the right to life, integrity, identity, civil capacity and citizenship of the person, the non-retroactive nature of criminal law, the right of accused persons to a defence and freedom of conscience and religion.

643. This same provision is reproduced by Act No. 44/86 of 30 September concerning the régime governing states of siege or emergency (art. 2).

644. In reaffirming the provisions of previous constitutions and even of Act No. 4/71, mentioned earlier, article 41, paragraph 2, provides that no one shall be prosecuted, deprived of rights or exempted from civil obligations or duties because of his convictions or religious practices. ' The safeguard of non-prosecution is a consequence of the freedom of religion set out in the previous paragraph of the article. On the other hand, non-deprivation of rights, guaranteed by this provision, is a consequence of the constitutional principle of the equality of citizens before the law (art. 13, para. 2). It is worth pointing out that the legislature wanted to embody the above-mentioned safeguards explicitly in a single provision.

645. Article 41, paragraph 3, states that no one shall be questioned by any authority about his convictions or religious practices, except for the collection of statistical data that cannot be identified individually, and no one shall be prejudiced by refusal to reply. This important

provision was introduced by the Constitutional Amendment Act of 1982. It represents a step forward in protecting persons against any injustice or discrimination on religious grounds. The Act concerning the Bases of Religious Freedom, unlike this provision, did not grant a subjective right not to be questioned about matters of religion. It simply provided a guarantee that a person's refusal to reply did not constitute an Illegal act. The Constitution thus set forth a real right not to be questioned. And this provision is even more important in that it applies to both public and private entitles.

646. The churches and religious communities are separate from the State and are free to organize and exercise their own ceremonies and worship (art. 410 para. 4). This principle, so dear to republican ideals was to be irreversibly set forth in the Constitution and the legislature did this by treating the separation of the churches from the State as a constitutional principle not open to review (art. 290 (c)).

647. The corollary to this principle is the non-denominational nature of the State on the one hand, and the freedom of organization and independence of the churches on the other hand. The first aspect - denominational neutrality -relates directly to the constitutional prohibition on both religious interference with the public authorities and on any religious functions or duties by such authorities. This principle underlies the requirements of article 43, Paragraph 2 that public education shall not be denominational and of article 51 paragraph 3 - that the political parties shall be prohibited from adopting religious symbols.

648. The second aspect - the freedom of organization and independence of the churches - is closely tied in with the prohibition on any State interference except where, in Its law-making capacity, the State regulates the freedom of organization and private association and the right of assembly and demonstration or other instrumental rights of freedom of worship.

649. The Constitution safeguards freedom of religious instruction within a given religious denomination and the use of the denomination's own means of public information for the pursuit of its activities (art. 41, para. 5).

650. We have looked at article 41 of the Constitution, the most important provision concerning freedom of conscience, religion and worship. The importance attached to this matter led the legislature to include, in other articles, certain express provisions on religious freedom. To illustrate this point, it will be sufficient to cite the following articles of the Constitution:

ARTICLE 13

…
"2. No one shall be privileged, favoured, injured, deprived of any right or exempted from any duty because of his ... religion …".

ARTICLE 35

"3. Compute r technology shall not be used to process data relating to a person's ... religious beliefs …"

ARTICLE 43

"1. The freedom to learn and teach shall be safeguarded.

2. The State shall not arrogate to itself the right to plan education and culture in accordance with any philosophical, aesthetic, political, ideological or religious guidelines."

ARTICLE 51

"3. Without prejudice to the philosophy or ideology of their programmes, political parties shall not use names that contain terms directly related to any religion or church or use emblems which may be mistaken for national or religious symbols."

ARTICLE 56

"4. Trade union associations shall be independent of employers, the State, religious denominations, political parties and other political associations. Safeguards for such independence shall be laid down by law as the foundation of the unity of the working classes."

There are, too, other Provisions which, although not explicitly establishing safeguards or rights of a religious nature, implicitly cover these matters. This applies to the provisions concerning freedom of expression and information and freedom of association.

THE PRINCIPLE OF SEPARATION OF THE CHURCHES AND THE STATE AND THE SPECIAL STATUS ACCORDED TO THE CATHOLIC RELIQION

651. Article 41, paragraph 4, of the Constitution provides that the churches and religious communities shall be separate from the State. The non-denominational nature of the State of Portugal stipulated in this Provision on the one hand guarantees no interference by religion in the orqanization and government of the State or public authorities, and on the other hand, prohibits the latter from exercising religious functions or duties or using religious rites or symbols in official ceremonies. This principle forms the basis of the constitutional Provisions which guarantee the non-denominational nature of public education and which prohibit the adoption of religious symbols by the political parties.

652. Article 43, paragraph 2, provides that the State shall not arrogate to itself the right to plan education and culture in accordance with any philosophical, aesthetic, political, ideological or religious guidelines. And article 51, paragraph 3, states that without prejudice to the philosophy or ideology of their programmes, political parties shall not use names that contain terms directly related to any religion or church or use emblems which may be mistaken for national or religious symbols.

653. The re1igious neutrality of the State of Portugal as we have seen, dates from the establishment of the Republic and was laid down by the 1911 Act of Separation of the Church and State. The 1976 Constitution once again includes and even reinforces this provision, at the same time guaranteeing that it cannot be reversed in future revisions of the Constitution (art. 290 (c)).

654. Although non-denominational, the Portuguese State nevertheless accords special status to the Catholic religion, a special status that stems above all from the historical importance of this religion. Until the establishment of the Republic, as has already been pointed out, Portugal was a State which accepted Catholicism as the official religion. However, the Separation Act of 1911, while recognizing the principle of freedom of conscience and religion, prohibited religious instruction in schools, including even private schools, and placed religious associations under the protection of the State. The difficult situation in which the Catholic Church was placed vis-à-vis the State by virtue of this legislation was overcome only with the conclusion of the Agreement with the Holy See. The agreed provisions show that the Portuguese State has not only guaranteed religious freedom to the Catholic Church through this instrument, but has also taken into consideration the very special importance Catholicism has always had in the life of the Portuguese community. The special status enjoyed by the Catholic Church does not, however, conflict with the principle of religious freedom recognized by the State in respect of any other religion. Indeed, under Act No. 4/71, religious denominations have the right to equal treatment (art. 2, para. 2), a principle which is expressly embodied in the Constitution itself (art. 13, para. 2).

655. The protection of persons against religious intolerance is also guaranteed by criminal legislation. The new Penal Code approved in 1982 has a section on offences against religious sentiments (arts. 220 to 224). Some of these articles correspond to the provisions already established by a decree dating from the establishment of the Republic. This is the case for the offences of religious coercion (art. 221), prevention or disturbance of an act of worship (art. 222) and injury or abuse of a minister of religion (art. 224). However, other situations, concerning respect for religious convictions and worship, have been specifically provided for in the new Penal Code. This is true of offensive behaviour towards religious convictions, functions or worship.

656. In accordance with article 220 of the Penal Code, any person who submits another to public abuse or ridicule in an objectionable or offensive manner on account of his convictions or religious functions shall be punished by a term of imprisonment of one year or more and by a maximum fine equivalent to 100 days' minimum wage. The same penalty shall be incurred by any person who profanes a place of worship or object of religious veneration. Under article 223 of the Code, the same penalty shall be applicable to any person who publicly ridicules an act of religious worship. Moreover, any attempt to commit either of these two offences shall be punishable.

657. Decree-Law No. 437/75 of 16 August, concerning the legal régime governing extradition, provides that extradition shall not be allowed if there are grounds for believing that it is being requested "for the criminal prosecution of a person on account of his ... religion".

RIGHT TO CONSCIENTIOUS OBJECTION

658. The Constitution of the Portuguese Republic, since the revision in 1982, recognizes conscientious objection In a broad sense and it is no longer limited to the military field as in the earlier version (art. 41, para. 6). The new version thus grants the right to exemption from obligations and from the performance of acts which are contrary to a person's conscience. It is a matter for the law, however, to regulate this right. As a fundamental right, the Constitutional requirement imposes an obligation on the competent legislative bodies to legislate in this area, failure to do so resulting in =constitutionality by omission, and makes it incumbent upon the competent authorities to take measures to safeguard the exercise of this right before the regulations are finalized.

659. As regards conscientious objection to military service, article 11 of the National Defence Act (Act No. 29/82 of 11 December) defines objectors as citizens who for religious, moral or philosophical reasons cannot legitimately, in accordance with their convictions, use means of violence of any kind against their fellow man, even for the purpose of national, collective or private defence, and who have been recognized as objectors under the Act defining the conscientious objector status (para. 1).

660. Conscientious objectors must, however, perform a civilian service which is as long and exacting as armed military service (Decree-Law No. 91/87 of 17 February governs the performance of this public service).

661. Act No. 6/85 of 4 May adopts this same concept of conscientious objector and defines objector status. This Act states that, conscientious objectors shall enjoy all the rights and shall be subject to the same duties as those laid down by the Constitution and by the law in respect of all citizens, in so far as they are not incompatible with the status of conscientious objector (art. 10).

662. The right to conscientious objection includes exemption from military service, in time of peace or war, and requires conscientious objectors to perform a civilian service suited to their situation (art. 4). The competent authorities must take account of the interests, capacity for abnegation and occupational aptitudes of the conscientious objector in defining the tasks of the civilian service and in assigning specific functions to each conscientious objector. In defining the tasks and assigning the functions to be performed as part of civilian service, the preferences indicated by the Person concerned should be taken into consideration.

663. The régime governing remuneration and social security for conscientious objectors shall be established in strict accordance with the provisions applicable to compulsory military service (art. 6).

664. The Act governing the basic principles of the educational system was issued very recently (Act No. 46/86 of 14 October). As regards access to education the Act states that all Portuguese citizens are guaranteed freedom to learn and teach, with tolerance for all possible choices, subject in particular to the following principles:

(a) The State shall not arrogate to itself the right to plan education and culture in accordance with any philosophical, aesthetic, political, ideological or religious guidelines;

(b) Public education shall not be denominational;

(c) The right to establish private and co-operative schools shall be safeguarded.

RELIGIOUS ASSISTANCE TO PRISONERS

665. The Portuguese State has always endeavoured to provide religious assistance to Prisoners, in application of the principles formulated in 1955 by the first United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

666. This safeguard, established since the penitentiary reform of 1936, was once again set out in Decree-Law No. 265/79 of 1 August, concerning the restructuring of the services responsible for applying measures involving deprivation of freedom. This decree-law ensures moral and religious assistance for prisoners, regardless of their convictions. For the time being, in view of the specific situation in Portugal, where, as we have already pointed out, the large majority of the population is Catholic, by virtue of the 1940 Agreement with the Holy See the safeguard of religious assistance has been qranted to prisoners who are Catholics.

667. Decree-Law No. 268/81 of 16 September, which approved the orqanization of the penitentiary services, also made specific provision for a service to provide religious assistance in penitentiary institutions.

668. Finally, Act No. 79/83 of 9 February defines the status of religious workers of the Catholic Church and their legal position, especially as regards their work in penitentiary institutions. Catholic religious assistance is therefore provided in these institutions by chaplains of the Catholic Church designated as religious workers (art. 1). These workers, nominated by the' bishop of the local diocese and appointed by the Minister of Justice, provide spiritual assistance to Catholic detainees and all prisoners who expressly request their assistance (art. 4). In the exercise of their mission, religious workers are required to perform religious services and provide detainees with any other religious assistance. The internal regulations of the institution must allow complete freedom for the exercise of this activity (art. 5).

669. The decree-law further governs aspects relating to the rights, powers and duties of religious workers in the exercise of their functions, at the same time safeguarding their position of independence from the administrative authorities.

670. The Constitution also deals with freedom of cultural expression in article 42, to which reference was made in Portugal's initial report (CCPR/C/6/Add.6, para. 18.4). It should be pointed out, however, that a new Copyright Code has since been published (Decree-Law No. 63/85 of 14 March, ratified by Act No. 4/85 of 17 September). This new law has, as indicated in the preamble, taken account in particular of the institutionalization of democracy, improvements in copyright law at the international level and international conventions since incorporated into Portuguese law, as well as the needs created by advances in communications and reproduction.

671. The earlier legislation has thus been modified in regard to the administration of copyright and contracts for the utilization of literary or artistic works, specifically publishing contracts and translators' rights to the same protection of their work as is enjoyed by the authors translated.

672. Under article 1, works are intellectual creations in the literary, scientific or artistic field, regardless of their outward form, which by virtue of this fact are protected, and, as such are the rights of their authors. Copyright, under article 12, is recognized independently of registration, certification or any other formality. It covers rights of a patrimonial and moral nature (art. 9). Under article 31, Portuguese law alone can determine the protection to be afforded, unless the work is subject to a contrary international convention which has been ratified or approved. AS a rule, in the absence of any special provision, copyright lasts for 50 years after the death of the creator of the work, even in the case of a work released posthumously (art. 35).

673. Title IV of Act No. 45/85 deals with infringements and protection of copyright and related rights. It covers the offences of usurpation and counterfeiting (arts. 195 and 196), violation of moral right (art. 198), economic exploitation of the work usurped or counterfeited (art. 199), prosecution (art. 200), the confiscation and loss of items used to commit the offence and liability (art. 203).

ARTICLE 19

FREEDOM OF EXPRESSION AND INFORMATION, FREEDOM OF THE PRESS AND PUBLIC INFORMATION MEDIA

674. Since it was amended, the Constitution provides for these freedoms in articles 37 to 40.

FREEDOM OF EXPRESSION AND INFORMATION

675. Article 37 states that:

"1. Everyone shall have the right freely to express and make known his thoughts by words, images or any other means, and also the right to inform, to obtain information and to be informed without hindrance or discrimination.

"2. The exercise of these rights shall not be prevented or restricted by any type or form of censorship.

"3. Offences committed in the exercise of these rights shall be punishable under the general principles of criminal law, the courts of law having jurisdiction to try them.

"4. The right of reply and rectification and the right to compensation for injury suffered shall be equally and effectively guaranteed to all natural and juridical persons."

676. Freedom of the press is recognized by article 38 of the Constitution, which underwent several modifications at the time of the 1982 constitutional amendment. In the new version, paragraph 2 of this article establishes that:

"Freedom of the press shall involve from of expression and creation for journalists and literary contributors and a place for the former in giving ideological orientation to information organs not belonging to the State, to political parties or to religious groups, without any other sector or group of workers having the power to exercise censorship or prevent free creativity."

AND PARAGRAPH 3 RECOGNIZES THAT:

"Freedom of the Press shall involve the right of journalists to elect editorial councils, to access to sources of information and to protection of their professional independence and confidentiality in accordance with the law."

Freedom of the press involves the right to found newspapers and any other Publications without any prior administrative authority, any security or qualification (para. 4). Paragraph 6, furthermore, contains the requirement that no administrative or fiscal system credit policy or foreign trade policy shall affect freedom, of the press and the independence of information media from Political and economic interests.

677. Article 39 requires public information media belonging to the State and to other public bodies to be independent of the Government and administrative and other public authorities, and guarantees the possibility of expressing and comparing various schools of thought. To safeguard compliance with these provisions, a Public Information Council was established with powers to shape overall guidelines to respect ideological pluralism (Act No. 23/83 of 6 September).

678. Freedom of the press and public information media may be subject to restrictions imposed on account of a state of siege or emergency under the conditions specified by the law (Act No. 44/86 of 30 September, art. 2, para. 2 (d)). These restrictions concern the suspension of press publications, radio and television broadcasts and shows. These shall in no case be subject to prior censorship (art. 2, para. 2 (b)). Infringement of these rights under an unconstitutional or illegal provision gives rise to the right to compensation (art. 2, para. 3).

679. Offences committed during a state of siege which are directly related to the circumstances of the declaration of such a state of siege and which are contrary to the right to information and security of communications, inter alia, shall be treated as essentially military offences and, accordingly, shall be subject to military jurisdiction.

680. Portugal's initial report referred to several provisions of the Press Act currently in force, and in particular to those concerning criminal responsibility for offences involving abuse of freedom

of the press and the effects of a conviction on a criminal charge or of a repeated offence. The legislative authorization in respect of penal procedure committed the Government to reformulating the provisions of the Press Act in connection with the entry into force of the new Code of Penal Procedure (art. 6, para. 2).

681. The new Code, in fact, contains provisions relating to the new régime for publicizing criminal proceedings, more particularly by the mass media (art. 88) (see the comments on art. 14).

682. It is interesting to see how these constitutional principles are reflected in the legislation concerning the status of radio and television broadcasting, which were examined at the time of the preparation of the two reports submitted by Portugal to the Committee on the Elimination of Racial Discrimination (CERD/C/101/Add. 8 and CERD/C/126/Add.3).

TELEVISION

683. Act No. 75/,79 of 29 September, modified by Decree-Law No. 23/82 of 19 August, regulates television broadcasting.

684. Article 3 of the Act states in particular that the "objectives of radio and television" (para. 1 (c)) must be to:

"Contribute to strengthening knowledge and understanding of Portugal in the world and to broadening relations with all other peoples, especially Portuguese-speaking peoples, as well as links of solidarity with emigrant communities."

685. Article 5 (para. 1), concerning "freedom of expression and information", states that:

"Freedom of expression of thought on radio and television shall be an integral part of the fundamental right of citizens to free and pluralistic information which is essential to democracy, the protection of peace

686. This right to free and pluralistic information naturally presupposes freedom of expression of thought by those who convey information by television, as well as the right to inform and to be informed, without impediment or discrimination, in keeping with the principles of information set forth in the Constitution of the Republic.

687. Article 6 of the Television Act deals with general programming and affirms in particular (para. 2) that:

"Radio and television programming shall be organized in such a way that it respects ideological pluralism and allows free expression and comparison of the various schools of thought, as well as sound and objective information".

688. Further, article 7 of the Act deals with prohibited programmes, stating that:

"It is prohibited to broadcast programmes or messages which:

(a) Are an incitement to crime or violate fundamental rights, freedoms and safeguards, especially because of their spirit of intolerance, violence or hatred."

689. Lastly, attention should also be drawn to Article 52 of the Act, which deals with international co-operation and trade (para. 1):

" The Government shall facilitate the participation of radio and television in International institutions, particularly those aimed at promoting and protecting freedom of expression of thought and mutual solidarity and understanding between peoples by this means of public communication, and shall foster the accession to and conclusion of international conventions in these areas."

690. This shows the concern to protect television against any possible political, ideological or other manipulation. To this end article 29, paragraph 1, of the Television Act provides specifically that offences committed with the aid of television shall be punishable in accordance with the legal régime applicable to offences involving abuse of freedom of the press. The legislation applicable to such offences will be discussed later.

THE PRESS

691. The Press Act, approved by Decree-Law No. 85-C/75 of 22 February, specifies in article 1 that:

"1. Freedom of expression of thought by the press, as an integral part of the fundamental right of citizens to free and pluralistic information, is essential, to the practice of democracy, to the protection of peace and to the political, social and economic progress of the country.

"2. The right to information includes the right to inform and the right to be informed.

"3. The right of the press to inform includes, in addition to freedom of expression of thought:

(a) Freedom of access to official sources of information;

(b) A guarantee of professional confidentiality;

(c) Freedom of publication and broadcasting;

(d) Freedom of enterprise;

(e) Freedom of competition;

(f) A guarantee of the independence of the professional journalist and his participation in shaping news publications.

"4. The right of citizens to be informed is safeguarded in particular by means of:

(a) Anti-monopoly measures;

(b) Publication of the editorial position of news publications;

(c) Identification of advertising;

(d) Admission of the right of reply;

(e) Access to the Press Council."

The right of reply and access to the Press Council are therefore two ways by which all citizens; are guaranteed the right to be informed.

692. The Press Council has a very special function. First regulated by article 17, paragraph 4, of the Press Act, its statutes were later revised by Act. No. 31/78 of'20 June. The Council functions under the Assembly of the Republic as an independent body (art. 1, para. 1, of the Act) and is responsible, among other things, for ensuring:

"(a) The Independence of the press from Political and economic interests, inter alia through measures such as combating monopolies in this area;

(b) The adoption of a general approach that respects ideological pluralism, permits the expression and comparison of the various schools of thought., ensures a sound and objective press and prevents the advocacy or propaganda of Fascist ideology or of any other ideology which is likewise contrary to democratic freedoms and to the Constitution;

(c) Respect, in the press, for the other rights and duties laid down in the Constitution and the law." (art. 2.)

By way of example, the Government considers it useful to present an extract from a press release concerning a meeting held on 4 February 1980 at which the Press Council stated that:

"1. At the request of the international relations branch of the State Secretariat for Public Information, the Press Council has issued an opinion on a very comprehensive document prepared by the Council of Europe on the possible functions of the news media in society in the social, cultural and political fields. The Press Council suggests that the following functions should be added to the list proposed by the Council of Europe: educating young people and expressing their views and aspirations, contributing to a balanced flow of information between the industrialized and developing countries; strengthening international peace and understanding, and combating racism, apartheid and incitement to war; promoting knowledge and understanding of the values and problems -of emigrant communities and encouraging their integration into the societies in which they live."

693. In 1985, the Advisory Council of the office of the Government Attorney discussed the right to information and freedom of the press in its advisory opinion No. 57/85. The first three conclusions of this opinion are reproduced below:

"1. Sports club officials who prohibit journalists access, in the exercise of their functions, to sports facilities where football games are held, or to places specially allocated for such games, are acting in violation of the right to information from the point of view of both the right to inform and of the right to be informed, as embodied in article 37,paragraph 1, of the Constitution;

2. Such action shall be treated as an offence under article 35 of the Press Act (Decree-Law No. 85-C/75 of 26 February) and shall be punishable by a fine of up to 500,000 escudos and, when violence is used or threatened, shall be treated as the offence of coercion under article 156 of the Penal Code and punishable by a term of imprisonment of up to two years or a fine or both;

3. Police officers, when dealing with a situation described in paragraph 1 above, must take action to prevent the commission of the offences referred to in the preceding conclusion, and secure for such journalists effective enjoyment of their rights."

RADIO BROADCASTING

694. We shall now analyse the statute of the Public Radio Broadcasting Corporation (RDP) as approved by Decree-Law No. 167/84 of 22 May.

695. RDP is required to present national programmes to promote the preservation of national values and to meet the needs and wishes of the population in respect of information and training. It is also, required to broadcast programmes for Portuguese centres abroad - with the aim of protecting their cultural identity and strengthening the bonds of affection binding them to Portugal and the links of solidarity between all Portuguese nationals - and for other countries where Portuguese is the official language. It is also permitted to broadcast programmes about Portugal in a foreign language.

696. Under article 11, RDP is required to observe certain principles, and in particular must:

(a) Provide up-to-date, truthful, sound, pluralistic and comprehensive information on national and international events;

(b) Ensure the exercise of freedom of expression and allow comparisons between the various schools of thought;

(c) Ensure a general approach that respects ideological pluralism;

(d) Reflect Portuguese culture in such a way as to develop public interest;

(e) Take and apply measures aimed at minimizing the effects of illiteracy;

(f) Consider it a fundamental duty to broadcast instructional and educational material useful to the life of society by stimulating patriotism, civic responsibility and noble sentiments and by condemning delinquency and deteriorating morals.

697. As regards international co-operation, RDP is required to maintain relations with the European Broadcasting Union, the United Nations Educational, Scientific and Cultural Organization and other foreign entities, giving priority where possible to entities in countries where Portuguese is the official language (art. 13).

698. Employees of RDP also have special duties which reflect the nature of their duties. They must use their initiative and creativity to serve the higher aims of a democratic State based on the rule of law and refrain from adopting views which favour any one party, contrary to their duty to provide independent and objective information. Any breach of this principle shall be treated as a serious disciplinary offence.

699. Mention should be made of the celebration of human rights days in Portugal. Celebrations were held to mark not only the official day of Europe proclaimed by the Council of Europe, but also the fortieth anniversary of the United Nations, several information sessions being organized on these occasions.

700. Act No. 5/86 of 26 March redrafts some of the provisions of Act No. 60/79 of 18 September, concerning official communications for which publication is compulsory. They may be issued by the Assembly of the Republic or the Government and must be broadcast for reasons of

public order. Such information concerns situations which represent a danger to public health, to the safety of citizens, to national independence or other emergency situations (art. 1).

701. The inclusion of material which is objectively offensive in nature or which does not correspond to the truth constitutes grounds for exercise of the right of reply (art. 5).

702. Naturally, freedom of expression also includes the right to express political opinions. The Portuguese Republic is, as stated in article 2 of the Constitution, a democratic State subject to the rule of law and based "on plurality of democratic expression and democratic political organization". The political parties and trade union and professional organizations have the right to broadcasting time on radio and television, in keeping with their representativeness, so as to explain their programmes and activities (Constitution, art. 40). Furthermore, various provisions recognize the right of reply, in general terms as regards any natural or legal person (art. 37, para. 4) and specifically as regards the political parties represented in the Assembly of the Republic (art. 40, para. 2).

703. Article 117, paragraph 2, of the Constitution grants the right of democratic opposition to minority parties, whose status is governed by Act No. 59/77 of 5 August (discussed in Portugal's initial report).

704. Very recently, the Assembly of the Republic approved Act No. 36/86 of 5 September, which recognized the right of political reply of the opposition parties. This Act states that the parties which are represented in the Assembly and are not part of the Government have the same right as the Government to radio and television broadcasting time, free of charge and on a monthly basis, and allocated in proportion to their representativeness. They have the right to reply to political statements by the Government, that is to say, statements dealing with matters of general policy or affecting a particular sector. Broadcasting time and the right of reply may not be used simultaneously to respond to the same political statement by the Government.

ARTICLE 20

INCITEMENT TO WAR OR HATRED

705. Article 46 of the Constitution, dealing with freedom of association, prohibits:

"1. The formation of associations intended to promote violence or whose objectives are contrary to the criminal law;

"...

"4. Armed, military-type, militarized or paramilitary associations and organizations which adopt Fascist ideology."

706. The Penal Code covers this matter in several provisions relating to crimes against peace (arts. 186 et seg.), against mankind (arts. 189 et seg.) or against the State - the security of the State, national sovereignty, independence or integrity (arts. 334 et seg. and 350 et seg.).

707. We may cite by way of example article 186, concerning incitement to hatred against a people for the purpose of starting a war; article 188, concerning the recruitment of mercenaries for military service on behalf of a foreign State or any national or foreign armed organization seeking through violence to overthrow the lawful Government of another State or to threaten its independence, territorial integrity or the normal functioning of its institutions; article 189, concerning the crime of genocide and discrimination on grounds of ethnic origin, race or colour; article 337, concerning incitement to a declaration of war or armed action; articles 357 and 364, concerning the crime of incitement to civil war or collective disobedience aimed specifically at causing alarm or unrest among the population or in divisions of the armed forces; articles 287 and 288, concerning criminal or terrorist associations; and lastly, article 132, concerning aggravated homicide as a result of circumstances revealing that the perpetrator is especially open to censure, and this includes homicide for reasons of racial or religious hatred (para. 2 (d)).

708. Prevention of incitement to violence is of crucial importance in this respect. It is one of the concerns of the Portuguese Government and we might also draw attention to Decree-Law No.

61/85 of 12 March, which lays down standards of discipline in sports facilities and competition areas for the purpose of preventing and suppressing violence.

ARTICLE 21

RIGHT OF PEACEFUL ASSEMBLY

709. This right is embodied in article 45 of the Constitution, which recognizes that:

"1. Citizens shall have the right to meet peacefully and without arms, even in public places, without requiring any authorization.

"2. The right of all citizens to demonstrate shall be recognized."

710. Participation in motins (riots) or public meetings at which acts of violence are committed is an offence under articles 290 et seg. of the Penal Code. The carrying of weapons on such occasions is a criminal offence.

711. Brawling which results in death or serious injury is punishable by a term of imprisonment of up to two years and by a fine under article 151.

712. Riotous behaviour by prisoners is punishable under article 394 of the Penal Code.

713. The initial report submitted by Portugal discussed Decree-Law No. 406/74 of 29 August, which deals with the right of assembly (see CCPR/C/6/Add.6, P. 51). Since this legislation is still in force, we consider it unnecessary to repeat here what has already been said.

ARTICLE 22

FREEDOM OF ASSOCIATION

714. Article 46 of the Constitution provides for freedom of association. Paragraph 4 was modified so as to prohibit armed, military-type, militarized or paramilitary associations and organizations which adopt Fascist ideology. Under the article, citizens have the right to form associations if:

(a) They are not intended to promote violence;

(b) Their objectives are not contrary to the criminal law.

ACT CONCERNING FASCIST ORGANIZATIONS

715. Under Act No. 64/78 of 6 October, organizations which advocate Fascist ideology are prohibited in Portugal. Under this Act, political parties and movements, special commissions, companies and enterprises may be considered as organizations for this purpose. And fascism is understood, in the terms of article 3, as being the adoption, advocacy or dissemination of values, principles, institutions or methods characteristic of specific historical régimes, in particular warmongering, violence as a form of political struggle, colonialism, racism, corporatism or the glorification of the most representative personalities of such régimes. Also considered as Fascist organizations are:

"Organizations which oppose democratic institutions and symbols of sovereignty by anti-democratic means, and in particular by violence, or organizations which advocate and disseminate ideas or adopt forms of struggle contrary to national unity."

716. Fascist organizations recognized as such by judicial decision shall, by virtue of such decision, be abolished or prevented from exercising any activity (art. 4). Members of such organizations and persons who take part in their activities shall themselves be punished under criminal law (art. 5).

717. Meetings of the statutory bodies of political parties, trade unions and professional associations shall in no event be prohibited, dissolved or subject to the requirement of prior authorization in cases where a state of siege or emergency is decreed (Act No. 44/86 of 30 September, art. 2, para. 2 (e)).

718. The provisions of articles 287 et seg. of the Penal Code concern organized and violent crime. Under article 287, anyone who founds or is a party to a group, organization or association whose objective is to commit crime shall be punished by deprivation of freedom for a term of six months to six years. The penalty shall be imprisonment for a term of two to eight years in cases where the person concerned effectively directs such criminal associations. Mitigation of or exemption from punishment is allowed if the person concerned prevents the criminal activity from being continued or informs the authorities of the existence of such groups, organizations or associations so that the commission of offences can still be prevented.

FREEDOM OF ASSOCIATION

719. Portugal discussed this subject in its initial report on the implementation of articles 6 to 9 of the International Covenant on Civil and Political Rights.

RIGHT TO FORM OR JOIN TRADE UNIONS

720. Freedom of association is guaranteed by article 56 of the Constitution, which states that:

"Workers shall be free, to form trade unions, a condition and safeguard for the building of their unity in defence of their rights and interests".

This provision, supplemented by the Freedom of Association, Act (Decree-Law No. 215-B/75 of 30 April), also states that:

"In the exercise of trade union freedom, the following freedoms shall be safeguarded for workers without exception: freedom to set up trade union associations at all levels" (art. 2 (a)).

721. Freedom to set up trade union associations is not dependent on any form of administrative authorization. Workers are free to organize and draw up internal regulations for trade union associations. Accordingly, the trade union's by-laws, developed by the workers themselves, are not dependent on ministerial approval and are subject only to judicial verification, a posteriori, of their legality.

722. Trade union associations acquire legal personality upon registration of the by-laws with the Ministry of Labour. The by-laws must also indicate the criteria governing the admission of workers, that is to say, the geographical scope and the membership.

723. The Act places no limitation on the number of trade unions permitted for each profession, occupation, category or branch of activity. Workers therefore enjoy complete freedom to set up trade unions associations where they feel bound to do so to protect their rights.

724. Freedom of association, as provided for by the Constitution, covers both the freedom of the worker to join a trade union of his own choice and his freedom, not to belong to a trade union, no worker being required to pay dues to a union of which he is not a member.

725. The constitutional safeguards regarding this aspect of trade union freedom are developed by article 37 of the Freedom of Association Act, which states:

"Any agreement or act shall be prohibited and declared null and void if its purpose is:

(a) To make the employment of a worker conditional upon his joining or not joining a trade union association, or upon his withdrawing from the association of which he is a member;

(b) To dismiss, transfer or cause prejudice to any worker on the grounds of his membership or non-membership of a trade union or on the grounds of his trade union activities."

726. Foreign workers enjoy, under the same conditions as Portuguese nationals, not only the right to set up or join trade union associations, but also the right to participate in trade union activities.

727. Apart from these restrictions, it should be mentioned that trade union associations are independent of employers, the State, religious denominations, political parties and other political associations (art. 56, para. 4, of the Constitution), and reciprocal financing is prohibited (Freedom of Association Act, art. 6, para. 2).

728. The Constitutional Court in a recent decision upheld the concept of freedom of association already set forth in the Constitution. It affirmed that:

Freedom of association is the antithesis of trade union monopoly: it neither allows the imposition of systems of one single trade union nor prohibits the existence of more than one trade union for each category.

"Since it concerns workers uti singuli, by recognizing a subjective - and therefore not a mere collective class freedom - freedom of association ensures for each worker full independence to decide whether or not to join an existing trade union, or whether to take the initiative of promoting the establishment of a new trade union. Furthermore, it is the duty of the trade union itself to choose the kind of organization (by sector, by enterprise, etc.). And it shall also be for the parties concerned - without any external influence - to define the professional or occupational category to which the association should relate."

RIGHT OF TRADE UNIONS TO FORM FEDERATIONS

729. The Constitution, in the article on freedom of association mentioned above, establishes "freedom to set up trade union associations at all levels" (art. 56, para. 2 (a)). The possibility of establishing trade union associations is thus recognized, and the Freedom of Association Act allows three types:

(a) A federation an association of trade unions of workers belonging to the same profession, occupation or to the same branch of activity;

(b) A union - a regional association of trade unions;

(c) A general Confederation - a national association of trade unions.

730. At the same time, the Constitution also recognizes that "trade union associations shall have the right to establish relations with or to join international trade union organizations" (art. 56, para. 5).

RIGHT TO STRIKE

731. The right to strike is safeguarded by article 58 of the Constitution, which entitles workers to decide what interests are to be protected by means of strikes; such interests are not restricted by law. This constitutional provision is supplemented by Act No. 65/77 of 26 August (Strike Act).

732. For example, the principal requirements in the Act are:

(a) The right to strike may not be relinquished (art. 1, para. 3);

(b) Strike action shall be decided by trade union associations or, under certain conditions, by workers' assemblies (art. 2);

(c) Strike pickets shall be allowed, subject to the right to work of those persons not engaged in the strike action (art. 4);

(d) At least 48 hours' advance notice of a strike is required (art. 5);

(e) Striking workers may not be replaced by foreign workers in the enterprise or service while the strike is being held (art. 6);

(f) Trade union associations and workers must, during a strike, provide minimum essential services to meet certain basic public needs (such as medical, hospital and pharmaceutical services, power and water supply, post and telecommunications, etc.);

(g) Any form of discrimination on grounds of participation or non-participation in the strike is prohibited (art. 10).

Failure to comply with the obligation referred to in subparagraph (f) may necessitate the civilian requisition of workers by the Government under special legislation (art. 8), although this procedure is rarely used.

SPECIFIC RESTRICTIONS

733. Public administration workers, other employees of the State and other public entities enjoy full equality with all other workers in respect of the right to form or join trade unions and the right to strike. Both the Freedom of Association Act and the Strike Act emphasise the need to

elaborate special legislation to Govern these matters for workers in the public administration (arts. 50 and 12, respectively).

734. However, the absence of such legislation has not prevented recognition of these rights or diminished their exercise. We would point out, moreover, that Portugal has ratified International Labour Organisation Convention No. 151 (1978) concerning Protection of the Right to Organize and Procedures for Determining Conditions of Employment in the Public Service.

735. As regards members of the armed forces and the police, article 270 of the Constitution states that:

"The law may lay down restrictions on the rights of expression, assembly, demonstration, association and collective petition and on the electoral capacity of the permanent members of the military and security forces on active duty, as strictly required by their functions."

736. Developing the principles set forth in this article of the Constitution, Act No. 29/82 of 11 December - the Armed Forces National Defence Act - restricts, inter alia, the exercise of the rights of expression, assembly, demonstration and association of military and militarized personnel. Thus, they may not convene or participate in trade union meetings or demonstrations, join or participate in the activities of trade union associations other than professional associations of a deontological nature. Nor do the constitutional rules concerning the rights of workers apply to them.

737. Again, article 13 of the Strike Act excludes the military or militarized forces from its field of application.

738. These restrictions under the Armed Forces National Defence Act apply not only to military personnel, but also to the members of the Republican National Guard (GNR) and the Fiscal Guard (which are military forces and constitute special bodies of military personnel having police functions) and, for the time being, to the members of the Public Security Police (PSP), pending the enactment of new legislation determining the extent to which trade union rights; and the right to strike are applicable to them.

739. The members of the judicial police - a non-militarized police force with criminal investigation functions - enjoy the same trade union rights and right to strike as all other public administration employees. Members of the judicial police have, for instance, set up a trade union association for criminal investigation officers and another trade union is at this time in the process of being established.

ARTICLE 23

PROTECTION OF THE FAMILY

740. The initial report described the legal framework surrounding the family, mentioning the various relevant constitutional principles, in particular those embodied in articles 13, 36, 67 and 68, together with supplementary legislation, including Decree-Law No. 496/77 of 25 November. This legal framework is based on the following fundamental concepts: freedom of establishment of the family; freedom to enter into matrimony; equal rights and duties of the spouses as regards civil and political capacity and the maintenance and upbringing of children; prohibition of discrimination against children born out of wedlock; right of the family to the protection of society and the State and to the effective existence of all conditions permitting the personal fulfilment of its members.

741. Emphasis should be placed on the recognized importance of adoption, which is now provided for in article 36, paragraph 7, of the Constitution. The legal régime governing adoption was the subject of two Portuguese reports submitted on the implementation of articles 10 to 12 of the International Covenant on Economic, Social and Cultural Rights. Reference may, however, usefully be made to Decree-Law No. 274/80 of 13 August, which-provides that any person wishing to adopt a child shall directly declare his wish to the Department of Social Security of his area of residence. Such an declaration must be made even in cases where the prospective adopting parent lives with, and is responsible for, the child he wishes to adopt (art. 1). Following this declaration, the Social Security Service will contact the prospective adopting parent and the child, providing them with social and family support so as to obtain the information essential for

the conduct of the necessary investigations. It will prepare a report, which must accompany an application for the establishment of the relationship, addressed to the competent Court (arts. 2 and 3).

742. Although the legal framework relating to the family has remained unchanged, a number of legislative texts strengthening the relevant general principles have recently been adopted. We shall mention them below.

743. Act No. 4/84 of 11 May relating to the protection of motherhood and fatherhood and Decree-Laws Nos. 135/85 and 136/85, dated 3 May 1985 concerning implementation of that Act outlined the legal framework and unified earlier legislation on the subject. Motherhood and fatherhood are, in the new legislation, recognized as higher social values. The Act grants the mother and father, in conditions of full equality, the right to the protection of society and the State as regards the performance of their role vis-à-vis their children, and in particular the upbringing of the children. Parents may not be separated from their children unless they are remiss in performing their duties towards them; such separation must always be the subject of a judicial decision (art. 2). It is the responsibility of the State to prepare and disseminate useful information concerning the régime for the protection of motherhood and fatherhood (art. 3).

PROTECTION OF HEALTH

744. The Act guarantees women the right to free necessary medical attention during pregnancy and the 60 days following childbirth. Free examinations of the baby during the first year are also guaranteed.

PROTECTION OF EMPLOYMENT

745. Under the Act women are entitled, without loss of remuneration or other benefits, to 90 days' leave, of which 60 must be taken after childbirth. The other 30 days may be taken, in full or in part, before or after childbirth. Legal provision is also made for an extension of this period in exceptional cases.

746. In the event of the death of the mother during the period following childbirth, the Act grants the father leave of absence from work for a period equal to that to which the mother would have been entitled.

747. Employees who have adopted a child under the age of three are also entitled to leave of absence for 60 days.

748. Decree-Laws Nos. 135/85 and 136/85 provide for measures affording protection in matters of employment (the former relates to the civil service, and the latter to persons employed under the legal régime of an individual labour contract). Particular attention should be drawn to the measures relating to special working hours for nursing mothers (art. 9), flexible working hours (art. 19), other facilities (art. 21) and absence for the purposes of assistance to natural children, actual or prospective adopted children, and children who are disabled or in hospital.

749. Act No. 3/84 of 24 March recognizes the right to sex education as a fundamental part of education. Under article 1 of the Act, the State is responsible, for the purposes of protection of the family, for publicizing family planning methods and organizing the legal and technical structures which permit conscientious motherhood and fatherhood.

RIGHT TO SEX EDUCATION FOR YOUNG PEOPLE

750. Under this Act, the State, through the schools, health organizations and the media, guarantees the right to sex education as a component of the fundamental right to education (arts. 1 and 2). Scientific knowledge of the human anatomy, genetics, physiology and sexuality are to be provided by schools, which will accordingly contribute to the elimination of discrimination on grounds of sex and the traditional separation of men and women (art. 2, para. 2).

RIGHT TO INFORMATION ABOUT FAMILY PLANNING METHODS

751. This right comprises free access to the scientific and sociological information needed to use healthy family planning methods and for responsible motherhood and fatherhood (art. 3, para. 1).

PURPOSE OF FAMILY PLANNING

752. The purpose of family planning is to give individuals and couples information, knowledge and means that will enable them to take a free and responsible decision about the number and spacing of their children (art. 3, para. 2). Family planning methods are also regarded as important means of protecting the health of mothers and children, preventing abortion and enhancing the quality of family life (art. 3, para. 3).

CONTENT OF FAMILY PLANNING

753. Family planning as envisaged under the law comprises consultations and genetic information for couples, information on methods of contraception and distribution of contraceptive devices, treatment of infertility, prevention of sexually-transmitted diseases and monitoring of genital cancer (art. 4).

FAMILY PLANNING ACTIVITIES

754. The State guarantees to all persons, without discrimination, free access to consultations and any other means of family planning (art. 5, para. 1). It will gradually extend to the whole of the national territory facilities for consultation on family planning. Consultation facilities will be provided at health centres and existing health institutions, for the purpose of family planning activities (art. 5, para. 2).

755. The Act requires information and advice to be objective. They may be based only on scientific data; the use of a particular method of contraception may be refused by the family planning services only for duly substantiated medical reasons (art. 6, paras. 2 and 3).

756. The Act assigns to the State in general, and to the health services and the Commission on the Status of Women in particular, the duty to publicize family planning methods and techniques (art. 5, paras. 3 and 7). The State is required to support all initiatives by associations or other private entities aimed at disseminating family planning methods and techniques in accordance with the spirit of this Act.

757. Lastly, it should be mentioned that consultations and contraceptive devices distributed by public bodies are free of charge (art. 6, para. 1).

TREATMENT OF STERILITY AND ARTIFICIAL INSEMINATION

758. The Act also attaches great importance to the study and treatment, by specialized centres, of sterility and artificial insemination as a means of overcoming sterility (art. 9).

VOLUNTARY STERILIZATION

759. With the aim of ensuring full awareness of this action, the Act requires a number of formalities to be completed for the purposes of voluntary sterilization. On the other hand, it recognizes the right of every doctor to conscientious objection to the practice of sterilization or artificial insemination (arts. 10 and 11).

760. Every employee at family planning clinics is required to maintain confidentiality concerning the subject, content and result of consultations.

761. Decree No. 52/85 of 26 January approved the regulations concerning family planning consultations and information centres for young people. It affirmed the need to institute, within

one year, family planning consultations at all health centres and hospitals comprising gynaecological and obstetric services.

762. It has also been decided to establish information centres for young people which will: (a) provide information on the anatomy and physiology of the reproductive process; (b) provide sex information; (e) educate young people in the proper experience of their sexuality; (d) distribute contraceptives in risk situations. The consultations and information provided will be free of charge, as will the distribution of contraceptives.

763. Act No. 6/84 of 11 May provided for a number of cases in which the voluntary interruption of pregnancy is permitted, and accordingly incorporated a number of amendments in the Penal Code of 1982. In accordance with these amendments, an abortion performed by or under the guidance of a doctor in an official or officially recognized health institution, with the consent of the pregnant woman, is not punishable if, in the light of the state of knowledge and experience of medicine:

(a) It constitutes the sole means of averting the danger of death or serious and irreversible injury to the body or physical or mental health of the pregnant woman;

(b) It is the most advisable means of averting the danger of death or serious and lasting injury to the body or physical or mental health of the pregnant woman, provided that it is performed during the first 12 weeks of pregnancy;

(c) There are convincing grounds for believing that the foetus will suffer from an incurable serious illness or malformation, in which case abortion must be performed during the first 16 weeks of pregnancy;

(d) There are serious indications that the pregnancy resulted from rape, provided that the abortion is performed during the first 12 weeks of pregnancy. In this case, criminal participation in the rape must have occurred.

764. The Act guarantees doctors and any other qualified health practitioners the right of conscientious objection to the practice of acts relating to the voluntary termination of pregnancy as permitted under the Act.

765. Act No. 14/85 of 6 July established the right of a pregnant woman admitted to a public health institution to ask to be accompanied, during childbirth, by the father-to-be or a relative, regardless of the time of day or night when childbirth may occur. The person accompanying her shall not be subject to the regulations concerning visits.

766. Opinion No. 8/81 of the Constitutional Commission ruled unconstitutional certain provisions of Decree-Law No. 32,615 of 31 December 1942, which reorganized the Odivelas Institute intended for the education of "legitimate daughters of members of the armed services". That objective was found to be at variance with article 36, paragraph 4, of the Constitution, which stipulates that: "Children born out of wedlock may not, by virtue of this situation, be subjected to discrimination, and neither the law nor the official services may make use of discriminatory appellations concerning filiation."

767. The principal and deputy principal, as well as other staff members of the Institute, were required to be "unmarried or widows without children". However, article 36, paragraph 1, of the Constitution provides for the "right to establish a family and to enter into matrimony, in conditions of full equality". In addition, article 68 of the Constitution recognizes the right of the father and mother "to the protection of society and the State in performing their irreplaceable role with regard to their children, ... and in guaranteeing that may achieve vocational fulfilment and participate in the civic life of the country". And article 48, paragraph 4, of the Constitution in turn stipulates that "all citizens have the right to enter public service, in conditions of equality and freedom". All these provisions were held to be violated by Decree-Law No. 32,615. On the basis of this opinion, therefore, the Council of the Revolution, in decision No. 123/81, declared these provisions unconstitutional.

ARTICLE 24

THE RIGHTS OF THE CHILD

768. The two reports submitted by Portugal on the implementation of articles 10 to 12 of the International Covenant on Economic, Social and Cultural Rights outlined the measures taken by Portugal to protect children (see document E/1980/6/Add.35/Rev.1). The reports contained an analysis of adoption and guardianship measures ordered by the juvenile courts.

769. In connection with this article, reference should again be made to the constitutional principles contained in article 13, on equality and non-discrimination and article 36, on protection of the family, in accordance with which there may be no discrimination against children born out of wedlock, either through reference in legislation or by official services.

770. The Constitution repeatedly evinces a concern for the rights of minors, concern which has naturally been given specific effect in a number of implementing legal texts. By way of example we would mention: article 60, paragraph 2 (c), in accordance with which the State is responsible for ensuring working conditions in which special protection is provided for minors; article 63, on social security, which mentions the need for special protection of orphans (para. 4); article 64, paragraph 2, concerning the right to health, which mentions the protection of children and young people, and the promotion of physical exercise and sports in schools and among the population in general; article 67, which relates to the intention to establish a national network of mother and child assistance centres and a national network of creches and supporting institutions for families; and article 69, concerning children, which stipulates that children are entitled to the protection of society and the State with a view to their development, particular protection being required for orphans and abandoned children against any form of discrimination or oppression and against abuses of authority in the family and in other institutions.

771. In accordance with Act No. 4/84 of 11 May and Decree-Laws Nos. 135/85 and 136/85 dated 3 May 1985, a number of measures have been enacted to ensure that children benefit from special supervision and attention in the event of illness or hospitalization and, in general, up to the age of 12 or after maternity leave.

772. As regards the right to a name, a subject which was discussed on the occasion of the submission of the initial Portuguese report, account should be taken of the provisions of the Civil Code, and in particular article 72, which recognizes the right of every person to use a name and the right to oppose its improper use by anyone else, and articles 1875 and 1876, concerning first names and family names. As we stated when the previous report was submitted, a child may use the names of his father and mother or of only one of them, the choice being incumbent on the parents. Since there is no ruling in this connection, the competent judge decides, taking account of the child's interest.

773. A new Civil Registration Code has in the meantime been approved by Decree-Law No. 51/78 of 30 March, and amended by Decree-Law No. 379/82 of 14 September 1982. In accordance with article 126, a birth certificate must mention family names and first names. Under article 128, names may be composed of not more than two family names and four first names. First names must in general be Portuguese, or, if foreign, be adapted or translated. They must not give rise to doubt about the sex of the child or make political references. Family names are selected from among those of the father and mother or of one of them or those to which one or other would be entitled, failing which one of the names by which they are known may be chosen.

774. When the child's parents are not known, as for example in the case of an abandoned child, the registrar has to give him a name, composed of a maximum of three first or family names selected from among those most commonly used, or connected with a particular characteristic of the child or with the place where he was found, but never equivocal names or names liable to draw attention to his status, for example, as an abandoned child (Civil Registration Code, arts. 135 and 136).

775. In accordance with article 4 of the Constitution:

"All persons who are regarded as such by law or by an international convention are Portuguese citizens."

Reference should nevertheless be made to the restrictions provided for by the Constitution in this connection:

"Loss of citizenship and restrictions on civil capacity may be applied only in the cases and in accordance with the procedures provided for by law, and in no circumstances for political reasons."

776. The legislation concerning nationality has undergone far-reaching changes since the adoption of the following constitutional principles in 1976: equality of the spouses, non-discrimination against children born out of wedlock, and prohibition of loss of nationality for political reasons. The very essence of the relationship constituted by nationality has been reviewed. Nationality has been viewed as a fundamental right of the individual and, as regards the granting, acquisition and loss of nationality, it has been accepted that the will of the individual concerned may, in certain cases, determine the establishment of nationality, and any grounds for loss of concerned have been excluded.

777. Lastly, an effort has been made to achieve a balance between the two criteria for the determination of nationality: ius sanguinis and ius soli.

778. In accordance with Act No. 37/81 and Decree-Law No. 322/82, the following persons are Portuguese by origin:

(a) The children of a Portuguese mother and father, born in Portuguese territory or territory under Portuguese administration (Macao), or abroad if the Portuguese father or mother was resident abroad in the service of the Portuguese State;

(b) The children of a Portuguese father or mother, born abroad, if they have made a declaration to the effect that they wish to be Portuguese or if they have their birth entered in the Portuguese domestic or consular civil register;

(c) Persons born in Portuguese territory (with the exception of territories under Portuguese administration) of a foreign father and mother who have been normally resident in that territory for six years and are not in the service of their State, if they have made a declaration to the effect that they wish to be Portuguese;

(d) Persons born in Portuguese territory if they possess no other nationality.

The law establishes the presumption of birth in Portuguese territory or territory under Portuguese administration in the case of children abandoned in such territory at birth.

779. In accordance with article 2, under-age or incapacitated children whose father or mother acquires Portuguese nationality may also acquire such nationality by declaration.

780. Any person who is the subject of full adoption by a Portuguese national also acquires Portuguese nationality (Nationality Act, art. 5).

ARTICLE 25

RIGHT OF PARTICIPATION IN POLITICAL LIFE

Participation in the conduct of public affairs (see document E/CNA/1988/11, pp. 9-15)

781. As we have already seen, the Constitution establishes various principles which unequivocally show that the Portuguese people may freely choose its political status. Article 1 recognizes that: "Portugal is a sovereign republic, founded on human dignity and the will of the people", while article 2 refers to a "democratic State subject to the rule of law, based on the sovereignty of the people ... on plurality of expression and democratic political organization, whose object is to ensure ... participatory democracy".

782. In the light of these principles, the Portuguese State elaborates the Constitution and has the capacity independently to determine the future of the national community. It does so in accordance with the people's will, as formed through the competition and plurality of political associations and parties, and manifested "through equal, direct, secret and periodic suffrage and the other means provided- for in the Constitution". One of the fundamental tasks of the State is to "defend political democracy and to ensure the organized participation of the people in the solution of national problems".

783. The establishment of political parties is thus provided for as a means of ensuring freedom of association, which, moreover, entails the possibility "of joining them and, through them, contributing to the formation of the people's will and to the organization of political authority" (art. 51, para. 1). The parties are thus a form of organization and expression of the people's will, although they are not permitted to incite violence or to advocate Fascist ideology (art. 46, paras. 1 and 4).

784. The citizens thus have the right to take part in the political life and conduct of public affairs of the country, either directly or through freely elected representatives (art. 48). Their direct and active participation is deemed to be the condition and fundamental instrument for consolidation of the democratic system (art. 112).

785. By designating their representatives by ballot, citizens have the opportunity of taking part in shaping the policy to be adopted and supervising execution of that policy. It is, in fact, incumbent on the Assembly of the Republic, "a representative assembly of all Portuguese citizens" (art. 150): to legislate on all matters other than those which are reserved for the Government; to approve the State Plan and Budget legislation, and to consider annual and final reports on implementation of the Plan; and to ensure observance of the Constitution and laws, and evaluate the programme and acts of the Government and the Administration.

786. In its turn, the Government is the organ which conducts overall national policy (art. 185). The Prime Minister is appointed by the President of the Republic after consultation with the parties represented in the Assembly of the Republic and in the light of the election results (art. 190). The Government is accountable to the President of the Republic and the Assembly of the Republic (art. 193).

787. The Government's programme contains the principal political courses of action and the measures to be adopted or proposed in the various spheres of government activity (art. 191). This programme is submitted to the Assembly of the Republic for consideration (art. 195) and may be rejected by the Assembly (art. 195, paras. 3 and 4), in which case the Government is required to resign (art. 198 (d)).

788. The Government may itself ask the Assembly of the Republic for a vote of confidence on a declaration of overall policy or on any subject of national interest (art. 196). If the motion is rejected, the Government is required to resign (art. 198 (e)).

789. The deputies may, in their turn, vote on motions of censure against the Government in connection with the execution of programmes or a subject of national interest. If such a motion is carried, the Government is again required to resign.

790. Lastly, article 263 mentions the need to establish people's territorial organizations so as to "increase participation in local administrative activities".

791. From this brief analysis, it is apparent that the Constitution has provided for various means to ensure that the people may take part in the determination and supervision of policy.

792. The Constitution further establishes, in article 52, the right of petition. Paragraph 1 of this article reads:

"All citizens may, individually or jointly, submit to the organs of sovereignty or to any authority petitions, representations, demands or complaints in order to defend their rights, the Constitutions, laws or the general interest."

793. In accordance with article 49 of the Constitution, all citizens who have attained their majority (18 years) have the right to vote, without prejudice to the forms of incapacity stipulated by law. The exercise of this right is personal and constitutes a civic duty.

794. Article 116 establishes the general principles of electoral law.

"1. Direct, secret and periodic suffrage shall constitute the normal means of designating members of the elective organs of sovereignty, and organs of the autonomous regions and local authorities.

"2. The compilation of electoral rolls shall be official, obligatory, final and unique for all elections conducted on the basis of direct universal suffrage.

"3. Electoral campaigns shall be governed by the following principles:

(a) Freedom of propaganda;

(b) Equality of opportunity and treatment of the various candidates;

(c) Impartiality of the public authorities vis-à-vis candidates; and

(d) Monitoring of electoral accounts.

"4. Citizens have a duty to co-operate with the electoral services in accordance with the procedures provided for by law.

"5. The conversion of votes into mandates shall be in accordance with the principle of proportional representation.

"6. The act providing for the disbandment of a collegiate body elected by direct suffrage shall establish the date of the new elections; failure to do so shall render the act invalid. The elections shall be held within 90 days of the date of disbandment, the electoral law in force at the time of disbandment being the only applicable law.

"7. It shall be the responsibility of the courts to determine admissibility and validity of acts relating to electoral procedure."

795. This article underwent a number of amendments at the time of the constitutional revision in 1982 - amendments which have helped to strengthen the guarantees previously established in connection with the right to vote.

796. Compilation of electoral rolls is not only obligatory and unique, but also, official and final. Official compilation means that the commissions responsible for compiling the rolls must ex officio ensure that all citizens legally empowered to vote of whom they have knowledge are entered on the rolls. Final compilation means that, once an elector has been entered on the rolls no further entry may be made at the time of each election, unless changes have occurred in his situation (e.g. change of address).

797. Paragraph 6 was introduced at the time of the constitutional reform. Under this paragraph, if a directly elected collegiate body is disbanded, the date of new elections must at the same time be stipulated. A criterion for choosing this date is even established. In the event of violation of this principle, the act of disbandment is regarded as null and void. Thus, any risks that may arise from the non-existence of action by these directly elected collegiate bodies are averted.

798. Electoral legislation has not undergone any far-reaching amendments. The fundamental texts are the following:

(a) Electoral rolls:

- Act No. 69/78 of 3 November;

- Act No. 15/80 of 30 June;

- Act No. 41/79 of 10 January; and

- Act No. 72/78 of 28 December;

(b) Election of the President of the Republic:

- Decree-Law No. 319-A/76 of 3 May-,

- Act No. 45/80 of 4 December; and

- Act No. 143/85 of 26 November;

(c) Elections to the Assembly of the Republic:

- Act No. 14/79 of 16 May;

- Council of Ministers decision 3/85 of 18 January, which set up an inter-ministerial commission to review the electoral legislation in force;

- Act No. 14-A/85 of 10 July;

(d) Elections to local legislative bodies:

- Decree-Law No. 701-B/76 of 29 September;

- Act No. 14-B/85 of 10 July;

(e) National Electoral Commission:

- Act No. 71/78 of 27 December.

799. The amendments mainly concerned the part played by the Constitutional Court in the electoral process. Under Act No. 28/82 of 15 November, which established the organization, functions and procedures of the Constitutional Court, it is the responsibility of the Court (art. 8) to: receive and accept nominations for the office of President of the Republic; rule on appeals against decisions on demands and representations submitted in the document on the general verification of elections to the office of President of the Republic; rule on appeals in disputes concerning the submission of nominations and disputes concerning elections to the Assembly of the Republic, regional assemblies and local legislative bodies.

800. As regard political parties, coalitions and fronts, it is the Court's responsibility (art. 9) to: accept and record the registration of parties; assess the legality of names, abbreviations and symbols, and their identity or resemblance to those of other parties, coalitions or fronts.

ELECTORAL CODE

801. By a ministerial decree of 3 March 1986, published on the following 26 March, the Government expressed the view that it was necessary to establish a commission to frame an electoral code comprising the principal provisions in force on that subject. It is expected that this code will be published shortly.

RIGHT OF ACCESS TO PUBLIC SERVICE

802. As regards the principle of equality of access to public service, account must be taken of a number of constitutional provisions. Article 47, paragraph 2, refers to the free choice of occupation and access to public service in conditions of equality and freedom and, as a general rule, by means of a competitive examination. Article 48 relates to participation in public life:

"2. Every citizen has the right to be objectively informed of acts of the State and other public entities and to be informed by the Government or other authorities of the management of public affairs."

Article 50 establishes the right of access to public service, in conditions of equality and freedom.

Article 230 forbids the autonomous regions:

"(c) To restrict the exercise of an occupation or access to public service to persons born or resident in the region."

803. As we have already noted, access to public service is in general achieved by means of a competitive examination. The legislation enacted in this connection has laid down the general principles applicable to the selection of public officials in the central administration, public institutions and economic co-ordination agencies (Decree-Law No. 44/84 of 3 February). The measures provided for are intended to "evaluate the ability and qualifications of candidates" (art. 3). They must conform to the following principles (art. 4): equality of conditions and opportunities for all candidates; freedom to submit applications; prompt notice of the selection method and tests to be used, and classification programmes and systems; application of objective evaluation criteria and methods; impartiality in members of examining boards; right of appeal.

804. In respect of public administration employees the Constitution recognizes that they may not be injured or advantaged by virtue of the exercise of any of the political rights provided for in the Constitution or, in particular, by reason of their membership of a party" (art. 269, para. 2).

ARTICLE 26

THE RIGHT TO EQUAL TREATMENT IN THE COURTS AND ANY ADMINISTRATIVE ORGAN

805. The principle of equality, as enunciated in article 13 of the Constitution, is once again the essential foundation of the whole of the existing legal order. Article 20 provides that all citizens are entitled to legal protection and to defend their rights; justice may not be denied for lack of financial means. All citizens may submit to the organs of sovereignty and to any authority

petitions, representations, demands or complaints in order to defend their rights, the Constitution, the laws or the general interest (art. 52). They may, on grounds of acts of omission or commission by the public authorities, apply to the Provedor de Justiça (Ombudsman), who may in consequence make recommendations to the competent bodies for the purpose of preventing, or providing redress for, injustices (art. 23).

806. The courts are the organs of sovereignty responsible for defending the rights and legally protected interests of citizens, prohibiting and punishing violation of democratic legality, and settling conflicts of public or private interests (arts. 205 and 206). They are subject to the law and their decisions are binding on all public and private persons (art. 210).

807. Ensuring equal treatment in the administration of justice sometimes entails adopting measures for the granting of special treatment to certain individuals who, without such measures, would be treated in a discriminatory manner.

808. With this point in mind, a number of provisions call for an interpreter to be present, without cost to the parties concerned, whenever they have an inadequate knowledge of the Portuguese language. In this connection, Decree-Law No. 178/81 of 30 June provides that the Ministry of Justice shall defray the cost of interpretation in proceedings to which a foreign worker is a party.

809. The recent Code of Penal Procedure contains similar provisions. Thus article 92 reads:

"2. If any person who does not know or has an inadequate knowledge of the Portuguese language is involved in the proceedings, a competent interpreter shall be appointed, without charge, even if the presiding judicial officer or one of the participants in the proceedings knows the language used."

Similar action is provided for in the case of deaf and dumb persons. By directly invoking the European Convention on Human Rights (art. 6, para. 3 (e)), Portuguese courts have applied this principle in several decisions, and in these cases the State has defrayed the relevant costs.

810. One school of Portuguese legal thought maintains that equal treatment in the courts presupposes information about the law. Article 20, paragraph 1, of the Constitution refers, in fact, to "the right to legal information and to protection" of all citizens in accordance with the law. Citizens should accordingly be better informed of their rights and the means of exercising them.

811. For that reason, the Ministry of Justice, in 1978, established a commission on access to the law which, in its final report, proposed co-operation between the State and lawyers so as to ensure the availability of legal assistance comprising legal consultation, judicial assistance and the ex officio appointment of a defence counsel in criminal proceedings. Very recently, a new commission on access to the law was appointed. In accordance with the decree setting it up, "persons should be informed and their interest aroused, so as to include justice and the law among the values of the civil apparatus". The media are called upon to co-operate in this task, since access to the law is a cultural reality and efforts should be made to ensure that everyone has a deeper knowledge of his rights and the means of protecting them (Decree No. 61/86 of 11 June).

812. In accordance with a protocol of co-operation concluded between the Ministry of Justice and the Bar Association, a Legal Information Office has in the meantime been established to provide legal information free of charge, at the request of the persons concerned. The Office is staffed by young lawyers. In the Lisbon Faculty of Law, another Legal Information Office distributes and provides information free of charge on questions put to it.

813. Portugal is anxious to ensure that all citizens have a right to information. Thus, in the most recent report submitted by the Provedor de Justiça to the Assembly of the Republic, there is a reference to the need to use comprehensible language in legal texts. In this way, the general public will be able to understand and exercise their rights and duties. In cases where these texts establish a specific time-limit for applying for certain benefits or, in general, exercising certain rights and duties, the dissemination of the relevant information should be ensured through publication not only in the Official Gazette but also on radio and television.

814. The Provedor de Justiça subsequently suggested that radio programmes might be broadcast periodically in order to publicize, in a manner readily comprehensible to the population

in general, their rights and duties, in particular those whose exercise or performance must take place within a certain time-limit.

815. However, the principle of equality of treatment may extend to another area: not only the equal treatment of every citizen in the courts and the enforcement of the law, but equal treatment of the parties in proceedings pending before a court.

816. In this connection, reference should be made to a number of provisions of the above-mentioned Code of Penal Procedure.

817. It is stated in the outline of reasons for enabling legislation that "the intention has been to ensure genuine parity in the legal positions of the prosecution and the defence at all stages of the proceedings, by developing the material equality of procedural 'weapons', as a means of expressing the constitutional rule of the equality of citizens before the law". Thus, the defendant or, in other words, the person against whom a criminal charge has been brought (Code of Penal Procedure, art. 57) must have the assurance that procedural rights and duties will be exercised (ibid., art. 60) through the recognition, inter alia, of his right to be present at proceedings directly concerning him, to choose a defence counsel or request a court-appointed counsel, to be assisted by that counsel in all proceedings in which he participates, and to be informed of his rights by the judicial authority or police body before which he is to appear (ibid., art. 61).

ARTICLE 27

THE RIGHTS OF MINORITIES

818. The principle of equality before the law brings us to recognition of the rights, freedoms and guarantees of all citizens and the assurance that ethnic, religious or language minorities enjoy the right to their own cultural life, religion and language.

819. The only ethnic group as such in Portugal are the gipsies, in respect of whom efforts have been made to ensure that their children attend school on a compulsory basis.

820. Immigrants, refugees and nationals of new Portuguese-speaking countries (in particular, Cape Verde and Timor) have also been the subject of particular attention and have been given support in educational matters.

821. The right of religious minorities to profess and practise their religion is recognized (see comments on article 18).

822. Other action taken has been the attempt to preserve Mirandês, a dialect used in north-eastern Portugal which constitutes the only case of a language minority.