



PROVEDOR DE JUSTIÇA

Gabinete da Provedora

**CONTRIBUTION OF THE
PORTUGUESE OMBUDSMAN**

**on the Implementation of the Convention against Torture and
Other Cruel, Inhuman or Degrading Treatment or Punishment**

**in the Process of Review of the Seventh periodic report submitted by
Portugal under article 19 of the Convention pursuant to the optional
reporting procedure**

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Introduction

The Portuguese Ombudsman, in its capacity as National Human Rights Institution and National Preventive Mechanism, would like to stress the importance it attaches to the collaboration with UN monitoring bodies in the area of human rights and to welcome this opportunity to share with the Committee against Torture its experience and views in the domains covered by the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

This contribution focuses on questions addressed by the Committee's previous concluding observations (see CAT/C/PRT/CO/5-6) and their implementation by Portugal, as well as on the main concerns and priorities identified by the Ombudsman in its activity.

Part A. will consist on an appreciation of the Seventh periodic report on the implementation of the Convention. The Ombudsman will add some relevant information or comments to the State report, when relevant.

Part B. consists on topics that, despite not being discussed in the report, are considered particularly relevant by the Ombudsman.

A. Comments on the Seventh periodic report on the implementation of the Convention

The Portuguese Ombudsman welcomes the Report submitted by Portugal under article 19 of the Convention pursuant to the optional reporting procedure.

During the reporting period, the Portuguese State has continued to develop measures aimed at fully implementing the CAT in the country. That is the case of the enactment of Law 94/2017 of 23 August, which has eliminated the prison sentences related to free days and to the semi detention regime, replacing them with the new penalty of house arrest with electronic surveillance, thus contributing to reduce prisons' overcrowding. The Ombudsman also highlights the adoption of several strategies to raise awareness and to protect special vulnerable persons (such as the "GNR Special Programmes of Proximity"), the adoption of comprehensive measures aimed at fighting against the trafficking of human beings and female genital mutilation, and the development of training programmes on non-discrimination for law enforcement officials, with the cooperation of High Commissioner for Migration.

However, there are still some measures that, in light of the Committee's previous concluding observations (see CAT/C/PRT/CO/5-6), are not fully implemented. With the following comments, the Ombudsman wishes to contribute to the full execution of the Convention in Portugal, pointing some gaps that persist and making some recommendations, when appropriate, to achieve this objective.

Article 1 – Definition of Torture

1. Taking into account the definition of torture enshrined in Article 1 of the CAT, the Portuguese Ombudsman questions the discrepancies of Article 243 of the Criminal Code, as regards the agent of the crime. Article 243 encompasses officials with the function of prevention, prosecution or investigation of criminal or disciplinary offenses, the execution of sanctions of the same nature, or the protection, custody or surveillance of a detained or imprisoned person, or acts committed by someone who, on his own

initiative or by order of superior, usurps the functions referred above. On the other hand, the CAT mentions “all public officials or other persons acting in an official capacity”.

Article 2 – Guarantees for the prevention of torture

2. With reference to the Committee’s previous concluding observations (para. 8), the State report (para. 5) points out that the Portuguese Criminal Procedures Code is not explicit on the deduction of a delay of 6 hours of detention for identification purposes to the maximum 48 hour period in police custody, although the General Inspectorate of Home Affairs has issued a Recommendation for such purposes to all the forces and security services on the aegis of the Ministry of the Interior. However, since this measure provides a guarantee to the detained person, a legally binding and transparent instrument should be adopted. Moreover, this measure is not applicable to other police forces that are not under the aegis of the Ministry of the Interior, such as the Judiciary Police.

3. With reference to the Committee’s previous concluding observations (para. 8), the State report (para. 17) points out that there is no information available on the number of complaints lodged and cases initiated against officials who have disrespected the safeguards to persons deprived of their liberty. This data is of the utmost importance, as it is related to violations of the detainees’ guarantees and is an important instrument to monitor the compliance with all these guarantees. Thus, the Ombudsman suggests the Committee to recommend to Portugal the adoption of measures aimed at collecting such data.

4. With reference to the Committee’s previous concluding observations (paras. 17 and 21) and the information received from the State in relation to domestic and gender-based violence for the period under review (para. 24-47), the Ombudsman welcomes all the efforts made during the reporting period to raise awareness and prevent domestic violence and other types of gender-based violence. However, it is still concerned with the extremely high numbers of cases of domestic violence reported in the last years.

According to the last Annual Security Report, 22.423 crimes of domestic violence were reported in 2018¹. However, the Ministry of Justice reports a higher number: 26.483 complaints². This discrepancy needs to be understood.

The Ministry of Justice website presents data on convictions for domestic violence against Spouse/Similar, Domestic Violence against Minors and “other Domestic Violence”. In the reporting period, the following numbers of convictions were published in the Ministry of Justice website:

	2016	2017
Domestic Violence (Spouse / similar)	1.528	1.461
Domestic Violence against Children	47	49
Others Domestic Violence	409	403

5. Although it is worth noting that the State has been developing several measures aimed at raising awareness on domestic violence against women, some victims remain less visible. That is the case of older persons, who are also particularly vulnerable to fall victims of such crime. In 2018, the Hotline for Older Persons, run by the Ombudsman, received 39 calls reporting cases of domestic violence. Moreover, they are also particular vulnerable to other types of ill-treatment. The Ombudsman received 76 phone calls on abuse (whether perpetrated by the family or by the Institutions), 96 calls reporting negligence of care, 27 calls on material and financial abuse, and 10 calls on abandonment.

¹ *The Annual Security Report 2017 of the Portuguese Government*, p. 14. Available at: <https://www.portugal.gov.pt/download-ficheiros/ficheiro.aspx?v=ad5cfe37-0d52-412e-83fb-7f098448dba7>

² https://estatisticas.justica.gov.pt/sites/siej/pt-pt/Paginas/Violencia_domestica.aspx

Children affected by domestic violence in the household remain particularly fragile. The Government's official data do not present specific numbers on children exposed to this sort of violence. However, according to annual reports of the National Commission for the Promotion of Rights and the Protection of Children and Youth, in 2017 there were 8.695 children exposed to domestic violence. In 2018, the Children Hotline, run by the Ombudsman, received 10 calls reporting cases of exposition of children to domestic violence. There were 102 calls on ill-treatment and negligence.

The Ombudsman also runs a Hotline for Persons with Disabilities. Although there are no records of calls reporting cases of violence against these persons in the last year, they may also be particularly vulnerable to this phenomenon and, in some cases, face more difficulties in reporting cases that affect them.

Finally, migrants and asylum seekers with temporary, precarious or irregular status in the country may also incur in domestic violence or other types of gender-based violence. Their situation is particularly worrisome as, due to lack of information of the Portuguese legal system or fear to report their cases to the authorities (namely for fearing deportation), they may be particularly unprotected.

The Ombudsman applauds the development of several awareness-raising actions, conducted by the National Republican Guard (GNR) in the context of the Special Programmes of Proximity Policing (State Report, para. 67), aimed at raising awareness against particular vulnerable persons. However, it considers that more incentives and support to victims in the reporting process ought to be adopted.

6. In cases where the protection of victims of domestic violence does not recommend that they shall continue to reside in their house, the numbers of available shelters may be insufficient when comparing the high levels of criminality, although no overcrowding is reported. The State's report does not mention the existence of the sole shelter for men victims of domestic violence, which has ten vacancies. Nevertheless, according to the 2018 Annual Security Report, 6.850 men reported having been victims of domestic violence. The Ombudsman is concerned that these vacancies may not be

sufficient to accommodate victims of domestic violence, namely when children accompany their fathers.

7. The Ombudsman welcomes the measures of redress and compensation of victims, but highlights that the number of persons who have requested this compensation is extremely low, comparing with the numbers of committed crimes. According to Annex III, Table VIII of the State Report, these numbers have been of a maximum of 3 requests per year and only a maximum of 2 compensations was awarded. The Ombudsman is concerned with the effectiveness of this compensation mechanism and would recommend more efforts to inform victims of this right.

8. The Ombudsman applauds the efforts made by the State to fight against Trafficking of Human Beings (para.71-122). However, it is still concerned with the high levels of trafficking for labour exploitation, which have been increasing in the latest years in the Portuguese territory. According to the Portuguese Observatory on Trafficking on Human Beings, there were 150 reported cases in 2017 and 168 cases in 2018³. Compared to the numbers presented in the III Annex to the State Report, the recent statistics demonstrate that the number is growing. Thus, the Ombudsman stresses the importance of reinforcing the means to fight and prevent that Portugal may be used as a destination country for this phenomenon.

9. With reference to the Committee's previous concluding observations (para. 21), the Ombudsman is also profoundly concerned with the practice of FGM in the territory, which affects, according to the State's report, 49% of the number of resident women who were born in practicing countries (para.127). Although the Ombudsman recognises the efforts made by the State to promote research studies on the issue and to develop

³ https://www.otsh.mai.gov.pt/wp-content/uploads/OTSH_Relatorio_Anual_TSH_2018_corrigeo_03AGO19.pdf

Programmes of Action for the prevention and elimination of this phenomenon, further clarification is needed on the specific steps designed to overcome the identified causes in the State's report (e.g. religious traditions, valorisation by men).

Article 3 – Migrants and Asylum Seekers

10. The State Report refers (para. 132) that “*in Portugal, the number of asylum applicants that claimed to have been victims of torture or identified as victims of torture is residual*”. However, in recent years, the numbers of asylum applications have risen significantly. In 2017, there were 1.750 requests. This number has decreased in 2018 to 1.272⁴.

In its visits to “EECIT” detention centres (spaces equivalent to temporary detention centres for foreigners that are located at the airport's international area), the NPM has been confronted with asylum seekers who report that they were victims, in their countries of origin, of acts falling under the concept of torture as enshrined in Article 1 of the Convention. Therefore, the Ombudsman has enough reasons to question the State's report when mentioning that this number is residual. Moreover, as mentioned in the NPM's 2018 report, no procedures are put in place to systematically identify particular vulnerable persons, such as victims of torture. Therefore, it may occur that several of these victims remain unreported. In this scenario, the NPM has suggested that procedures should be put in place in order to enable the Aliens and Borders Police's officials to identify vulnerable persons, including alleged victims of torture and refer them to adequate services.

11. As for deportations, the State's report does not mention the countries of destination, as required by the CAT (para. 135). Such data is of the utmost importance to

⁴ Source: Aliens and Borders Service (SEF): <https://sefstat.sef.pt/Docs/Rifa2018.pdf>

control the respect for the principle of *non-refoulement*. As Portugal does not have a list of safe countries, the risk of *non-refoulement* must be dully checked in any case of removal.

12. The State's report does not mention the occupancy rate of temporary centres and reception centres, disaggregated by place of detention, as required by the Committee's previous concluding observations (para. 14). Such data is fundamental to controlling the trends of overcrowding and isolation in such centres.

In Portugal, there is only one temporary installation centre (CIT) – the Santo António do Porto Housing Unit (UHSA). All other centres intended for the detention of migrants are EECIT. The UHSA is intended primarily for the detention of immigrants awaiting the execution of a removal order from the national territory, as well as of individuals awaiting the implementation of the accessory penalty of expulsion, after serving a prison sentence, or in case of anticipation of the execution. As a rule, foreigners whose entry into the country is refused, as well as asylum seekers to whom detention applies, are held in the airports' EECIT.

During the visits to the Lisbon EECIT, the NPM witnessed overcrowding. On the contrary, at the Porto EECIT, the NPM recorded moments of excessive isolation of those detained therein. In this context, it accompanied a situation of a detainee who had been alone in the female ward for 30 days, and took action to promote her transfer to the UHSA. The Ombudsman considers that both isolation and overcrowding, particularly when prolonged over time, are risk factors for the possibility of treatments incompatible with the prohibition of inhuman and degrading treatments.

13. With reference to the asylum procedures and the Committee's previous concluding observations (para. 14), the State's report mentions that centres located at the external borders' international area *are similar* to temporary installation centres where asylum applicants wait for the decision on the submitted application (para. 138). The Ombudsman, however, disagrees. Over the last two years, the NPM's activity has focused with special acuteness on migrants' temporary detention centres. Its main focus has been,

precisely, the detention centres located at the external borders (airports). As it results from the NPM's 2018 annual report, these centres present several challenges that may encompass risks for the personal integrity of the detainees.

These centres, which have two wings that separate asylum seekers and other migrants whose entry in the national territory was refused (Lisbon) or male and female detainees (Porto), detain persons for a maximum of 60 days, according to the Portuguese Immigration and Asylum Law. However, as thoroughly exposed in the NPM's annual report, contrarily to UHSA, these centres do not offer the minimum conditions for accommodating persons for such a long period of time. They are installed in very small spaces, accommodation consist in dormitories with several bunk beds (where children are also accommodated), and there are no leisure areas, apart from a small concrete patio. In Lisbon, food consists of individual meal packages commonly used by airlines for air travel.

Also, contrarily to UHSA, where detainees are allowed to have some personal items in their private rooms, in the airports' centres it was observed that detainees barely hold personal goods, besides the clothes that they bring in the body and others drying in the courtyard. Moreover, detainees at airports' EECIT are particularly isolated. In Lisbon's EECIT, visits made by lawyers or family members require an accreditation process with the national airports, which costs 11 euros. The difficult access to a lawyer can be particularly serious in cases where a return decision is pending. The rarity of visits to these places of detention is aggravated by the restricted telephone contacts allowed in EECIT. This contrasts with UHSA practices, where a controlled use of the mobile phone is allowed for two hours a day.

The NPM could observe that detainees at the airports' EECITs are not fully aware of their rights – both detention and procedure-related. Here too the situations between places of detention are profoundly disparate. At UHSA, the detainees interviewed are well acquainted with the Centre's rights and operating rules, which are posted and visible at various points, as well as the schedules of the various activities provided. Leaflets on the conditions of detention and operation of the Unit are available and distributed in nine different languages. Further, at UHSA detainees have access to juridical and social support on a regular basis, which helps clarifying the situation in which they are in. The same does

not happen at EECITs. It is important to ensure adequate knowledge of all aspects of the centre's functioning, such as the date of visit by doctors, family members or lawyers.

Following NPM's visits and conclusions, which were dully discussed with the Ministry of Internal Affairs, the latter has made a compromise to open a new CIT in Almoçageme during 2019, mostly to receive people that currently are admitted by the EECIT of Lisbon. However, to the present date, the new centre has not opened, and so migrants remain detained in the EECIT's facilities.

14. The State report also mentions that stays which exceed 48 hours in these temporary centres must be authorized by the competent court (para. 138). However, in a visit made by the NPM to the Lisbon EECIT, no evidence of judicial hearing was presented. Instead, the NPM team was informed that the Aliens and Borders Service (SEF) requests authorisation by fax to the competent court, which responds by the same means, without hearing the detainee in person. This fact may preclude a broad understanding of the personal circumstances of the detainees, including accompanying family members, their possible consideration as “especially vulnerable persons”, etc. It also may prevent the application of alternative measures to detention.

15. The State report refers that, despite some exceptions, “*asylum seekers lodged at the external border are not subject to detention solely based on the fact that they are applicants for international protection*” (para. 141) . Although this corresponds to Article 35-A, n.1 of the Asylum Law, in reality, detention of asylum seekers at the airports' border corresponds to the general practice. According to the n. 3 of the abovementioned Article 35-A, asylum seekers may also be placed or kept in a temporary installation centre in the case of applications made at border posts or in the context of applications made following a decision to remove national territory. These provisions were added by the Law 27/2008 of 30 June. While Article 35-A states that such measures can only be applied in cases where “no other less serious alternative measures can be effectively implemented”, the NPM has witnessed that detention is applicable in a systematic basis in this context.

16. As for measures taken to ensure that all persons seeking asylum enjoy all procedural guarantees (State report, para. 142-145), the NPM found that several detainees were unaware of whether a decision had already been taken on their case, or what its content was. This whole situation contributes to a sense of detention with no specific purpose, another factor that can aggravate the mental health of detainees. The legal information is normally given by the Portuguese Refugee Council, an NGO that provides support to asylum seekers, normally assisting them during the judicial appeal phase and, thus, only *after* a decision refusing to grant asylum. However, a reinforced duty of information from the SEF, in a language that the asylum-seeker understands, could prevent a sense of general disorientation.

Detainees should also be informed at the outset, in a language that they understand, on the right to a lawyer at all stages of the procedure and the right to contact with them in private. However, the right to access promptly to a lawyer may be hindered at the Lisbon EECIT, since every external person has to pay a fee to the airport administration in order to enter into the international area. The Ombudsman received reports of detainees who claimed that their lawyers had to wait several hours before being allowed to enter in the EECIT. In cases concerning non-admissible aliens, situations where the lawyer was only admitted to enter in the EECIT after the migrant was removed were reported.

Article 10 – Training of Personnel

17. The State Report (para. 149) mentions several training activities provided to law enforcement personnel at all levels, including State security organs, prison staff, immigration officials, judges, prosecutors, medical personnel dealing with detainees, forensic doctors and any other State agents involved in holding persons in custody, interrogation, or treatment of any individual under any form of detention or imprisonment. Yet, such activities encompass mainly initial training comprising several courses on legal subjects, such as Constitutional Law, Fundamental Rights or Criminal

Law. The Ombudsman has analysed the contents of these disciplines, and they are mainly of general nature. Prohibition of Torture is only mentioned as being a fundamental right, amongst others, enshrined in the Portuguese Constitution. The Convention, on its turn, is only mentioned as one of the conventions pertaining to the UN system. Therefore, it is not possible to reach the conclusion that all the above mentioned personnel receives a comprehensive mandatory initial training on: (a) the provisions of the Convention; (b) the guidelines to detect signs of torture and ill-treatment in accordance with international standards, such as those outlined in the Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (Istanbul Protocol); (d) violence against persons because of their sexual orientation or gender; (e) identification and referral of victims of trafficking, torture and sexual violence among asylum seekers.

However, as explained in the State's Report (para. 153-157) the majority of enforcement personnel, in particular prison guards, receive education on non-coercive investigatory/restraint techniques and the principle of the use of force as a last resort. Moreover, due to several measures indicated in the State report (para. 59, 64, 163), training on issues related to violence against women and domestic violence have been reinforced. The same can be said regarding violence against ethnic or national minorities, where the High Commission for Migration has been playing a fundamental role (para. 295-300). Still, the Ombudsman considers that these trainings should be mandatorily provided to all abovementioned officials in the beginning of their careers.

In this context, the Ombudsman recalls the recommendation made by the SPT following its visit to Portugal undertaken from 1 to 10 May 2018: *“it encourages the State party to ensure that the educational programmes for State officials dealing with detained and arrested persons include international standards relating to torture and ill-treatment and that all professionals involved in documentation and investigation of torture and ill-treatment receive adequate training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol)”* (CAT/OP/PRT/1, para. 34).

Article 11 – Treatment of persons subjected to any form of arrest, detention or imprisonment

18. As regards the occupancy rate of places of detention, the Ombudsman welcomes the measures that have been leading to a decrease of the Portuguese prison population since 2016. The reduction in the number of prisoners has ensured that, despite being close to 100% occupancy rate, there is no overcrowding in the Portuguese prison system.

While overall there is no overcrowding, there are numerous overcrowded prisons, in particular smaller institutions, which requires rethinking the distribution of prisoners within the system. Further, Portugal is still well above European average and median in number of prisoners per 100,000 inhabitants. The Ombudsman believes that reducing the prison population is fundamental to preventing situations of torture and ill-treatment, and thus applauds the current trend that was supported by recent legal developments (*maxime* the amendment to the Penal Code 94/2017, of August 23) that created non-custodial alternatives to enforce prison sentences under two years.

19. The Ombudsman also takes the opportunity to welcome the multi-annual strategy for requalification and modernization of the prison system (State's report, para. 178), including the closure of eight prison establishments (Lisboa, Caxias, Ponta Delgada, Setúbal, Leiria (regional), Viseu (regional), Odemira and Silves). The bad conditions of Lisboa, Ponta Delgada and Setúbal Prisons have been considered as especially concerning. The same can be said regarding the psychiatric clinic at Santa Cruz do Bispo Prison, which is not mentioned in the State Report as one of the establishments that will be closed or reformed in a near future.

Despite these developments, the uncertainty about how and when the changes will occur, with no clear schedule for their implementation, can block efforts to improve the prisons that are to be closed, something that the Ombudsman observed during recent visits to the Lisbon and Setúbal prisons. Without knowing for how long they will remain open, it becomes harder to decide what investments to make.

Moreover, as mentioned in Part II of the present document, the Portuguese prison system has structural problems that need to be addressed in a systemic and strategic manner.

20. As regards detention places under the administration of the Ministry of Interior (GNR and PSP), the NPM has also been carrying monitoring visits to police stations which have led to some worrisome conclusions. Sanitary conditions of cells are often very poor, with insufficient ventilation and lack to access to natural light (e.g., Antas PSP police station) or even artificial light (e.g., Beringel GNR police station). During these visits, the NPM observed that there are no clear rules regarding access to outdoor exercise for persons detained for 24 hours or more, being these rights granted on a case-by-case basis.

Besides poor conditions of cells, some of these places lack privacy for detainees awaiting identification and interrogation, leading to unnecessary exposure of people who are already vulnerable, exacerbating the psychological pressure that these moments tend to generate. The NPM also agrees on the need for better working conditions for agents.

21. With reference to measures taken to ensure young adults, under 21, detained in establishments for adults are always accommodated separately, the State's report did not clarify whether this separation is fully implemented in all prisons. The NPM has been witnessing that in some cases such separation is not adopted in a systematic manner. Thus, in several prisons, juveniles are detained together with older inmates.

In some prisons, young offenders are considered as “vulnerable inmates” and, then, are accommodated together with other vulnerable persons, not taking into account that the concept of vulnerability is not homogeneous. This broad solution may lead to negative results, resulting in e.g. accommodating together young offenders, older persons suffering from depression or sex offenders.

22. The Committee's previous concluding observations (para. 11(f) and (g)) asked for updated information on access to mental health-care services in all prison facilities. On its report dated of 3 July 2019, the SPT also stressed that Portugal should "*improve the access of inmates to medical care, including specialized medical care, through better coordination, with the aim of reducing the waiting time for medical assistance for persons deprived of liberty*" ((CAT/OP/PRT/1, para. 99). Despite the information provided in the State's report, (para. 198-201), the Ombudsman remains concerned with systematic problems that persist. Several complaints have also been addressed to the Ombudsman, related to the lack of adequate health services in prisons.

Due to their size and structure, most of Portuguese prisons have difficulties offering a differentiated and adequate treatment of prisoners with mental health issues, which results in increased risks for themselves, for other prisoners and for staff. The lack of sufficient professionals to deal with mental health issues was noted by the Ombudsman in several occasions, and the inmates stressed the importance of having better access to psychologists and psychiatrists, complaining that many of the consultations were short, spaced out, and, in the case of psychiatry, limited to the rapid prescription of medications.

The two prisons with a mental health ward, Caxias Prison Hospital and Santa Cruz do Bispo (Male), are understaffed and lack adequate housing conditions. In the latter, as an example, the NPM found rooms with ten patients in adjoining beds, with one shared toilet and litter. At the time of the visit, there was one psychiatrist for almost 200 patients. Often there were around sixty patients with only one guard present, to the detriment of the safety and humane treatment of all.

Furthermore, the lack of spaces for prisoners with mental disabilities is noted in "regular prisons", where the NPM often finds inmates waiting for vacancies in psychiatric wards, in order to receive adequate treatment. The NPM has noted, in different occasions, that more space to accommodate this particularly vulnerable population is needed.

Some positive aspects should also be underpinned due to recent developments. Albeit insufficient, there has been a gradual internalization of medical and nursing staff in prisons, allowing greater presence and continuity in the treatment and therapeutic relationships, and thus providing more tailored care to those in need. There was also a

positive implementation of cooperation protocols with various hospitals, providing specialized consultations in the prison itself, namely with regards to gastroenterology and infectious diseases. This helped to overcome the deficiencies related to the lack of human and material resources that sometimes prevent inmates to attend external medical appointments.

23. As the State Report mentions, no steps have been taken to conduct a full review of the use of solitary confinement as a disciplinary sanction (para. 205). Thus, the legally maximum duration for these measures continues to be 21 days, although the Subcommittee had recommended that “*ensure, including through changes in legislation if necessary, that the maximum period of placement in solitary confinement does not exceed 15 consecutive days*” (CAT/OP/PRT/1, para. 81).

If this sanction may raise some issues generally, it is particularly worrisome as regards its application to vulnerable persons. The Ombudsman is particularly worried with the enforcement of this sanction in the realm of the Administration of child justice (Educational Guardianship Law). Recently, the Committee on the Rights of the Child urged the State to prohibit and abolish the use of solitary confinement to punish children, and immediately remove all children held in solitary confinement (CRC/C/PRT/CO/5-6, para. 44 (c)).

24. The Ombudsman has received several complaints regarding disciplinary procedures in prisons in the last years. As the 2018 annual report points out, the role that the legal protection system plays in the disciplinary action is not clear, in particular at the stage prior to any appeal to the Courts. Although several local social security services show due diligence in analyzing of the applications submitted, their articulation with the disciplinary proceedings is not always clear. On the other hand, the lengthy of the procedures is normally high and unpredictable. This contributes to the perception that the disciplinary procedures are obscure and not transparent to inmates.

In this context, the Ombudsman highlights that the Subcommittee recommended Portugal that “*the disciplinary proceedings in prisons are speedily processed and that measures are put in place to allow prisoners to appeal against the imposition of disciplinary sanction*” (CAT/OP/PRT/1, para. 81).

Article 12 and 13 – Investigation of cases of torture and complaint mechanisms

25. In the context of measures taken to sensitize detainees about the existence of complaint mechanisms regarding cases of torture or ill-treatment by State officials, the Ombudsman applauds the measure adopted by the Directorate-General for Reinsertion and Prison Services’ for reinforcing the diffusion of the Ombudsman's Blue Line number, often with notices placed near telephone booths.

As said, some prisons have the Ombudsman’s leaflets available to the inmates, or the respective phone numbers posted next to the telephones. However, the NPM has already been to prison facilities where the connection to the Ombudsman’s office was not possible (e.g., Évora prison). Therefore, it is paramount to reinforce the information of the NPM / Ombudsman’s role, and to confirm that all means to address this entity are effectively granted.

In this context, the Ombudsman recalls that the Subcommittee recommended that “*information on monitoring and investigation mechanisms and the relevant complaint procedures be made readily available to detained and arrested persons, including by displaying such information prominently in police stations and prisons*” (CAT/OP/PRT/1, para. 48).

26. Since its creation, the NMP has not been object of any measure aimed at strengthening its monitoring functions, with no increased financial or human resources since its creation in 2013. Monitoring tasks, visits, management, coordination, reports and communication with international bodies are done by the same staff that deals with other

tasks performed by the Ombudsman. The NPM has repeatedly claimed that its material and human resources are clearly insufficient. Although in the past year the Ombudsman managed to recruit a full-time worker to coordinate the NPM's functions, this implicated abdicating of one member of the Ombudspersons' Cabinet (statutorily foreseen) and is still considered to be insufficient, as the NPM needs personnel that enables the institution to visit and report the conditions of all places with deprivation of liberty in all the territory.

This insufficiency has been highlighted out in the SPT's report following its visit to the Portuguese Ombudsman, which took place in May 2018: "*recalling that OPCAT article 18 (3) obliges States parties to provide NPMs with the necessary financial and human resources to undertake their work, the SPT reiterates that the NPM shall be provided with a budget sufficient for accomplishing all mandated tasks, in addition to granting the NPM the institutional autonomy to use its resources. This funding should be provided through a separate line in the national annual budget referring specifically to the NPM and not through the general budget of the Ombudsperson. This funding shall be at such a level as to allow the NPM to carry out its visiting programme, to engage outside experts as and when appropriate, to increase its human resources and to regularly access training, in accordance with its own work plan*" (CAT/OP/PRT/R.2, para. 16).

Article 14 – Redress and right to fair and adequate compensation to victims

27. In para. 274 and 275, the State's report mentions that "*there are no records of torture complaints by inmates, nor third parties related to acts of torture*". This information contrasts with the data provided in Table XXII of the State's Report Annex III, where several cases investigated by IGAI, including wounds inflicted by firearms, ill-treatment, physical injuries or death are reported. It is thus difficult to understand why no records of torture complaints by inmates, or third parties, are registered. This may be due to the abovementioned fact, explained in the State's report (para. 17), that there is no information available on the number of complaints lodged and cases initiated against officials who have disrespected safeguards in relation to persons deprived of their liberty.



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The Ombudsman recalls, again, the need to register such data.

B. Additional information

In this part, the Portuguese Ombudsman aims to provide additional information to the Committee based on its work as NPM and its regular activity of monitoring and visiting all detention facilities in Portugal. Following the NPM's 2018 annual report, this part is structured according to types of places of detention. Some of the NPM's main concerns that were not yet mentioned in this document will now be addressed.

E. Prisons

a. Infrastructures and distribution of population

28. Portuguese prisons share structural problems, mostly related to lack of investment in infrastructures and human resources. There is a clear need for more investment in these areas, in order to ensure that instances of ill-treatment are prevented. Indeed, some buildings are too old and require urgent intervention to guarantee that minimum requirements of health and safety are complied with. For example, the NPM has seen in more than one occasion toilets that were not separated from either other toilets or showers, with no privacy nor security for inmates in these vulnerable moments; in older prisons, complaints about cockroaches and other bugs were common. The NPM has visited several prisons with decaying conditions, where cells are small, humid, lack adequate lighting, are either too cold or too warm, etc.

29. Contrarily to the Mandela Rules, most of the prisons' accommodation consists of more than one person per cell, with obvious implications in terms of space, comfort and privacy, as well as potential impact on prisoners' mental health. Since prisons usually have areas with better conditions than others, the distribution of prisoners in accordance with clear purposes and criteria can have beneficial effects, offering a sense of effective progression within the system, particularly for prisoners who are serving long-term sentences. This happened, for example, in the Coimbra Prison, where good behavior was

rewarded with the placement in wings with better conditions. However, this can also lead to perceptions of injustice within the inmate population, causing a risk of potential mistreatment – hence the need for clarity.

30. The considerable heterogeneity of Portuguese prisons – in size, occupancy rate, infrastructure, etc. – contributes to varying prison life experiences. The NPM visits noted that bigger prisons – such as Porto, Coimbra, or Lisbon – are associated with more impersonal incarceration experiences, with more distance between staff and offenders. At times, this has led to inadequate treatment, with, for instance, inmates commenting that they felt degraded when called by a number.

31. Further, certain situations cause concern, as is the case of the most vulnerable inmates. The clearest situation is that of sexual offenders who, for security reasons, are often separated from the rest of the prison population. While the NPM understands and supports the special care provided to such detainees, due to the frequency of incidences of violence they tend to experience, it must be ensured that this separation does not have detrimental consequences to their daily prison life. Alas, the NPM has noted situations of further deprivations, in which these vulnerable offenders are placed in cells that have inhumane conditions, are granted fewer hours out of their cells, lack access to activities, among others. As stressed by international jurisprudence, the availability of adequate outdoor space, the existence of a specific area for physical exercise, or the creation of an autonomous restoration zone can be essential to the physical and psychological well-being of such prisoners.

Also in this context of vulnerable persons, the MNP underlines that prisons ought to be prepared to provide special care for lactating women, which has not always been the case. Failure to respond to such needs may configure in itself a degrading treatment.

32. Some prisons accommodate new inmates in a “transitional” or “first” cell. These are individual cells, where new inmates stay for a few days before being integrated in the regular prison environment. Some prisons argue that this way of welcoming newly arrived inmates provides time for the prison staff to analyze which prison area best fits the newcomer and his or her integration.

Although this purpose is understandable and desirable, its execution raises some doubts. In some prisons, the “transitional” cell is located next to the disciplinary cells (e.g. Faro Prison) and stays in both cells may seem to be equivalent. Some inmates referred to the NPM that their worst days at the prison were, precisely, the first days. Isolation was one of the main causes, as several inmates claim that they would have preferred to be immediately integrated within the general prison population. The NPM calls attention to unnecessary isolation, which may worsen the experience of the first hours in prison and can be similar to disciplinary isolation measures.

33. Good practices should also be highlighted. The NPM notes successful initiatives with respect prisoners with drug addictions, with therapeutic programs that separate them from the rest of the prison population. The G Wing of the Lisbon Prison is a good example: in a separate building and with conditions that greatly contrast with the grave deficiencies of the main building, the atmosphere itself felt more humane. The NPM knows that for logistical reasons such initiatives are not always possible, but they do point towards the desirable path when thinking of penal reform.

b. Human Resources

34. There is a clear deficit in the number of prison guards in the Portuguese prison system. The NPM has consistently received complaints by prison authorities and staff themselves about the need to have more personnel working in prisons, in order to ensure the security of both the prisoners and the guards. With a low ration of guards per inmate, prison settings are often tense and the control exerted over the functioning of the daily prison life is lowered. It is not surprising that there may be incidents of violence, drug

problems, and less attention to the individual situation of each prisoner, especially in bigger prisons with larger populations. Furthermore, it is often the case that without more human resources, some activities cannot happen. This includes working outside prison walls, more activities within prison, and even effective access to medical and other appointments. Some cases are even paradoxical – for instance, in one of the areas of the Alcoentre Prison, a dining hall was rebuilt but remains unused due to lack of staff to guard the collective moments of having lunch and dinner. Consequently, prisoners have to eat in their cells.

35. This problem had even graver consequences in 2018, a year marked by strikes by the prison guards. The NPM will not make any valuation on the reasons behind this collective movement, but the consequences and some of the underlying issues related to the strikes ought to be noted. The NPM received complaints from all the main protagonists of prison daily life. Although the prisoners suffered the most from the additional deprivations of prison life associated with the strikes, the guards and the Prison Directors reported moments where they felt negatively affected by this situation. Prisons became harder to manage, and guards reported feelings of tiredness and frustration. Communication with inmates became harder, with negative consequences to security. Prisoners felt “increased punishment”, with longer periods of time locked in their cells, canteens being closed, activities cancelled, reduced number of visits and telephone contacts. As a result, this was a particularly sensitive time in terms of the prevention of ill-treatment.

c. Occupation

36. Overall, there is a clear shortage of occupational opportunities (labor, education, leisure) across Portuguese prisons. In particular, the NPM highlights the need to ensure more job vacancies – and better pay – based on more partnerships with civil society organizations and companies. The NPM recalls paragraph 1 of article 43 of the Penal Execution Code and Other Deprivation of Liberty which calls for the regulation of

the work in partnership with external entities, which has yet to be approved. A greater number of job opportunities associated with clear legal instruments that are attentive to the dignity of prisoners are understood to be fundamental to the social reintegration of prisoners after their release. A prisoner who is occupied working, studying, or attending recreational activities benefits in physical and mental well-being, as well as, in the case of work, financially. Productive and fulfilling routines provide meaning to time spent in seclusion, diminishing the room for deviant behavior and ensuring that the deprivation of liberty is not accompanied by further events of punishment.

In this context, the Ombudsman recalls that the Subcommittee recommended Portugal to “*broaden the work, education, rehabilitation and recreational opportunities for prisoners. (...) also recommends that fairly remunerated work opportunities be made available to all detainees. The State party might consider dividing working hours between several prisoners to allow more people to be engaged in purposeful activities*” (CAT/OP/PRT/1, para. 68).

c. Contact with the outside world

37. In article 132 of the General Rules of Prison Establishments it is stated that prisoners can only make two five-minute phone calls a day – one to family and friends, another to a lawyer or solicitor. The first part has been subject to recurrent criticism in all NPM visits, for obvious reasons. One five-minute phone call per day is not enough to maintain and promote personal ties, which are known to be fundamental to the reintegration of offenders in society after their release. This issue, which is linked to the existence of a black market of mobile phones in prisons (correlated with incidences of violence and intimidation), has been on the spotlight recently, with the Directorate-General for Reinsertion and Prison Services announcing its willingness to study alternatives to this situation, which the NPM strongly supports. These could include providing inmates with cell phones with no access to internet and a limited number of contacts to make phone calls.

F. Educational Guardianship Centres

38. Deprivation of liberty in educational guardianship centres is the most restrictive measure among the list of options available to those children or adolescents who, between the age of twelve and sixteen, commit an offence qualified as a crime by criminal law. Recently, the Committee on the Rights of the Child urged the State to review existing custodial precautionary measures to ensure that child detention is used only in exceptional circumstances (CRC/C/PRT/CO/5-6, para. 44(a)).

a. Health

39. The NPM has been paying particular attention to the mental health issues associated with educational guardianship centres, as its population has shown a prevalence of mental health problems. The lack of specific therapeutic units for these young offenders is a cause for concern. No other alternatives are yet available, although in response to a Recommendation from the NPM, the Directorate General has mentioned that the creation of such units has been studied since 2010, and is considered to be one of the priorities for the 2019-2020 biennium. The NPM notes that juvenile detention centers cannot be the sole instrument available to deal with these situations. More psychiatrists in the centers are also required to ensure adequate treatment to those in need.

A positive comment should be added in reference to the articulation with health institutions present in the areas of the centers, which enables all young offenders to be assigned to a family doctor.

b. Contact with the outside world

40. Following a Recommendation of the NPM, the educational guardianship centres have increased the number and the duration of the available phone calls for those detained therein, as well as the access to videoconference to those who lacked visits due to the geographic distance of their families to the centers in which they were detained. This measure is seen as fundamental by the NPM, who congratulates the Directorate

General for the implementation of the suggested measures. Promoting contact with friends and family cannot but be the nuclear starting point when dealing with children.

c. Organizational Issues

41. In various visits to educational guardianship centres, the NPM has noted the lack of specialized staff whose purpose is to perform monitoring functions within the center and help its population to gain the competences required to reintegrate in society upon release. There are difficulties in hiring new staff, and the procedures that have been started have not solved the constraints the NPM has found. Despite these shortcomings, however, the dynamics found in most of these centers are good, with positive environments and committed staff and management. The opportunities for education and the protection the centers offer to its young population have been highlighted by those deprived of their liberty.

G. Police Stations

42. The moment of detention is particularly sensitive with regards to the risk of torture and ill-treatment, with problems related to the use of force during detention and transportation to the place of detention. The Council of Europe Committee for the Prevention of Torture warned, in its 2018 report on Portugal, against these types of situations, referring to worrying situations. Of lower severity, the NPM has also heard some complaints related to the use of force by the police, in particular related to the unnecessary use of handcuffs. Recognizing the difficult balance between protecting the rights of the individual and security concerns, the NPM stresses the need to ensure maximum respect for the rights of all by restricting the use of force to the minimum required and necessary in the particular case, taking into account the proportionality and seriousness of the offense.

H. Migrants' detention centres

43. Apart from all that was mentioned above concerning migrants' detention centres (para. 10-16), the MPN is also extremely worried with detention of migrant children when accompanied by their parents. Unlike unaccompanied children, who are accommodated in the Portuguese Refugee Council (a non-detention place), children who are accompanied by their parents are detained with them, either at USHA or at the airports' EECITs. In three of the visits made, MNP could observe the existence of children in these facilities. As mentioned above, the CIT of Porto and the EECITs offer very different conditions. Detention of children in the airport's EECITs is particularly serious. Whereas UHSA has recreational spaces and children's material, as well as suitable menus, such conditions do not exist in the EECITs. These spaces lack leisure and educational material, and parents share some complaints about the lack of food and proper hygiene supplies for their children.

The possibility of migrant child detention in EECITs underwent a positive evolution in 2018. On July 24, the Minister of Home Affairs issued an order stating that the maximum stay in the EECIT of minors under 16 years, when accompanied, would be of seven days. After this deadline, children must be received by the Refugee Shelter House managed by the Refugee Council, and their parents should accompany them. Despite recognizing that this development is positive, the MNP considers that the best interests of children always conflicts with their deprivation of liberty and detention, whether in CIT or EECIT - even though it understands the difficulty of pondering some situations, namely regarding suspicions of human trafficking or fear of escape. This is, moreover, a position shared by the Committee on the Rights of the Child, which, in its latest recommendations, expressed concern about the practice of holding in temporary detention families with children requesting asylum or arriving irregularly at the borders of the State party, as well as of those staying irregularly in its territory, and about inadequate conditions for unaccompanied and asylum-seeking children and families in temporary detention, reception, and care centres. Thus, this Committee recommended that the State party should revise the law, to ensure that any form of detention of migrants and asylum



seekers under the age of 18 years, of unaccompanied children and families with children is avoided, and guarantee the implementation of alternatives to detention and prioritize the immediate transfer of asylum-seeking children and their families out of temporary detention, reception and care centres (CRC/C/PRT/CO/5-6, para. 41-42).

44. The NPM is also extremely concerned with the manifestly insufficient contact with the outside world of migrants detained in EECIT. Many in the asylum seekers' wing are persons who have reported escaping from their home countries for fear of persecution or ill-treatment and who have left their families behind. Several have shown apprehension and anxiety about relatives that stayed in their country. Under these circumstances, it can be seen that many detainees show a very fragile emotional state, and their mental health is at serious risk. In addition, there is no regular psychological monitoring. The NPM has already urged the creation of a psychological support structure for detainees, which was not yet implemented.