



# International Covenant on Civil and Political Rights

Distr.: General  
13 August 2019

Original: English  
English, French and Spanish only

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## Human Rights Committee

### List of issues in relation to the fifth periodic report of Portugal\*

#### Constitutional and legal framework within which the Covenant is implemented (art. 2)

1. With reference to article 8 of the Constitution, which states that “the norms contained in duly ratified or approved international conventions come into force in Portuguese internal law once they have been officially published”, please provide examples in which the provisions of the Covenant have been referred to by domestic courts. Please specify the measures taken to ensure that information on the Covenant and on its Optional Protocol is disseminated among judges, lawyers, prosecutors, law enforcement officials and the public. In addition, please provide information on processes in place to implement the recommendations contained in the Committee’s previous concluding observations (CCPR/C/PRT/CO/4).

2. Please provide information on the availability of effective remedies for an individual who claims to be a victim of a violation of any of the rights set forth in the Covenant. Please indicate what procedures are in place for the implementation of the Committee’s Views under the Optional Protocol and for submitting follow-up reports thereon, and provide information on measures taken to ensure full compliance with the Views adopted in respect of the State party.

3. Please provide information on the measures taken to provide the Ombudsman (Provedor de Justiça) with the necessary financial and human resources for its operations. Please clarify whether there is a formalized selection process for the Ombudsman and an objective dismissal process for the deputies.

#### Anti-corruption measures (arts. 2 and 25)

4. Please report on measures taken to prevent and address corruption in government, including international cooperation in the fight against corruption.

#### Non-discrimination (arts. 2, 7, 24, 25 and 26)

5. Please provide information on the scope of coverage of article 240 of the Penal Code, which criminalizes discrimination and incitement to hatred and to violence. Please include information on whether the provisions of that article are restricted to acts committed in the framework of organized propaganda and whether they cover all the grounds of discrimination found in the Covenant. Please clarify whether article 240 of the Code prohibits discrimination based on language. Please also provide information on the court cases in which article 240 has been applied.

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\* Adopted by the Committee at its 126th session (1–26 July 2019).



6. Taking into account the prohibition in the Constitution against collecting disaggregated data, please clarify how the State party intends to address the discrimination faced by certain groups, in particular persons of African descent and Roma. Please also provide information on the bill presented before the parliament in April 2018 on the rights of lesbian, gay, bisexual, transgender and intersex persons. Please provide information on the bill's content and on a timeline for its adoption.

7. Please provide information on the administrative complaint procedure for cases of racial discrimination, including information on the average length of such procedures, the number of complaints received in the past five years and their outcomes. Please provide information on the Commission for Equality and Against Racial Discrimination, including details about its independence and whether it is provided with sufficient resources to process complaints of discrimination. Please also comment on information received by the Committee that the Commission's complaint procedure is lengthy and complicated.

8. Please report on the steps taken to respond to reports of hate speech, including in the media and on the Internet. Please comment on the reported increase in hate speech in the media and specifically on social networks, and on measures taken to address this issue, including measures taken to ensure effective investigation of and prosecution for hate crimes. Please supply data on the number of reported cases, investigations and prosecutions initiated, and on their outcome. Please provide statistics on violent hate crimes.

9. Please provide information on steps taken to address all forms of discrimination against persons of African descent. In particular, please comment on information received by the Committee indicating that persons of African descent suffer from a high rate of unemployment and that Portuguese-speaking Afro-descendant pupils are three times more likely than others to fail the first cycle of secondary education and twice as likely to fail the second and third cycles. Please indicate the steps taken to improve access by people of African descent to housing, and comment on information received by the Committee on cases of forced eviction without prior notice, without any possibility of seeking legal remedies and without any proposals from the authorities to rehouse those evicted in decent accommodation.

10. Please comment on reports of violence committed by police officers against people in ethnic minority communities, particularly those of Roma and African descent. In this regard, please provide information on measures taken to investigate and prosecute police officers for acts of racial discrimination.

11. Please provide information on the medical assessment of disability and on whether there are legal criteria on the eligibility of persons with disabilities for the various social protection programmes. Please clarify the position of the State on the use of sterilization, scientific research, electroconvulsive therapy, termination of pregnancy and psychosurgical interventions on persons with disabilities who have been declared legally incapacitated.

#### **Equality between men and women (arts. 2, 3, 7, 24, 25 and 26)**

12. Please provide information on the parity law of 2006, which establishes a minimum quota of 33.3 per cent for candidates of each sex on electoral lists for European, national and local elections, and indicate whether the State party intends to raise the minimum quota to increase the representation of women in all legislative assemblies at the European, national and local levels. In this regard, please also provide information on the impact of Law 62/2017, which establishes a minimum quota for woman in State-owned and listed companies. In light of the information provided by the State party (CCPR/C/PRT/5, paras. 25–26) and the Committee's previous concluding observations (CCPR/C/PRT/CO/4, para. 4), please provide information on measures taken to further increase the representation of women in decision-making positions in the foreign service.

#### **Violence against women, including sexual and domestic violence (arts. 2, 3, 6, 7 and 26)**

13. With reference to the Committee's previous concluding observations (CCPR/C/PRT/CO/4, para. 12), its report on follow-up to the concluding observations

(CCPR/C/114/2) and the State party's fifth periodic report (CCPR/C/PRT/5, paras. 174–195), please report on the progress made in combating violence against women, including domestic violence, in particular with regard to: (a) the implementation of the National Strategy for Equality and Non-Discrimination; (b) the availability and use of protection orders for victims of violence; and (c) the adequate funding of and access to shelters. The Committee notes the statistics provided by the State party and requires clarification on the disproportionately low (albeit increasing) numbers of prosecutions and convictions of perpetrators, compared with the high numbers of reported cases of domestic violence recorded by the police.

**Right to life, prohibition of torture and cruel, inhuman or degrading treatment, conduct of the security forces and treatment of persons deprived of their liberty (arts. 6, 7 and 10)**

14. With reference to the Committee's previous concluding observations (CCPR/C/PRT/CO/4, para. 10) and the State party's fifth periodic report (CCPR/C/PRT/5, paras. 157–173), please identify and describe the legal standards under domestic law on the appropriate use of force and firearms by law enforcement and security forces during arrest, demonstrations, in custody, in anti-terrorism or anti-poaching operations and under any other circumstances where force may be used. Please provide information on the regulation and use of electric shock devices, including Tasers, outside of prisons. The Committee notes the number of proceedings and outcomes indicated by the State party in its fifth periodic report, but requires information on the number of criminal complaints received, investigations, criminal proceedings and outcomes for each reported year, and on whether there are cases in which law enforcement officials have been given immunity or special protection when they have used force. Please comment on whether the State party's laws on the use of force are in conformity with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Please provide information on measures taken to ensure that these standards are respected in practice.

15. Please comment on reports of ill-treatment at the time of apprehension and during the time spent in police stations and detention centres, principally Caxias, Lisbon Central and Montijo prisons and Leiria juvenile prison. In particular, please respond to allegations of ill-treatment, particularly against foreign nationals, including for the purpose of obtaining confessions. Please indicate the effective complaint mechanisms and remedies available to persons who claim to have been subjected to torture or ill-treatment by State officials and give the exact number of complaints, investigations, prosecutions and convictions and the compensation awarded for acts of torture and ill-treatment over the past five years. In particular, please indicate whether forensic medical examinations are promptly carried out during investigations of allegations of torture or ill-treatment. Please indicate the legal measures that have been taken to establish the inadmissibility of statements or confessions obtained under torture.

16. With reference to the Committee's previous concluding observations (CCPR/C/PRT/CO/4, para. 11) and its report on follow-up to the concluding observations (CCPR/C/114/2), please report on the progress made in addressing overcrowding in detention facilities, including on construction projects for new facilities. Please provide information on measures taken to tackle drug abuse by detainees, including steps taken to increase the availability of drugs in prison and to provide for persons living with HIV/AIDS and hepatitis C.

17. Please explain how article 105 of Law 115/2009, which allows for up to 30 days of solitary confinement to be imposed on prisoners as a disciplinary punishment, is compatible with the Covenant. Please clarify whether this provision or periods of solitary confinement are applied to juveniles in conflict with the law.

**Forced labour, contemporary forms of slavery and trafficking in persons (arts. 6, 7, 8, 13, 24 and 26)**

18. Please provide information on the impact of the third National Plan against Trafficking in Human Beings (2014–2017) and indicate whether the State party has enacted a new one. Please also provide information on the implementation and challenges of the

recently established protocol on an integrated system of procedural information aimed at enabling prosecutors and other legal actors to access all evidence in criminal proceedings in a simple and speedy manner. In light of the information provided by the State party in its fifth periodic report (CCPR/C/PRT/5, para. 226), please provide information on the reasons for the low number of registered crimes, prosecutions and convicted perpetrators for the crime of trafficking in persons. In that regard, and in light of the Committee's previous concluding observations (CCPR/C/PRT/CO/4, para. 13), please provide information on the application of article 160 of the Penal Code and clarify whether the current legal framework is sufficient for the adequate investigation, prosecution and punishment of the crime of trafficking in persons.

19. Please provide information on the steps taken to improve the identification of victims of trafficking and to improve data collection, and on the assistance provided to victims of trafficking, including details on the availability of adequate compensation and protection. In particular, please provide information on procedures in place for the identification of victims of trafficking in asylum procedures, especially unaccompanied and separated children. In this regard, please indicate whether victims of human trafficking can be granted access to asylum procedures or granted international protection based on a well-founded fear of persecution for reasons of trafficking in human beings.

**Treatment of aliens, including refugees and asylum seekers  
(arts. 7, 9, 10, 13, 24 and 26)**

20. Please respond to reports indicating that overcrowding is an ongoing concern at the reception centres for asylum seekers and provide information on measures taken to address the increased number of asylum seekers. Please state whether the new reception centre for refugees, which has a maximum capacity of 90 places, is sufficient to accommodate the increasing number of asylum seekers and whether reception centres are provided with adequate funding. Please provide information on efforts made to ensure that the physical conditions and services in all immigration and reception centres conform to international standards.

21. Please provide information on measures taken to address the increasing number of asylum applications and comment on information received by the Committee that the high number of applications has resulted in longer asylum procedures of up to two years in some cases, creating a risk that, in certain cases, returns could result in violations of the Covenant. Please also provide information on measures taken to ensure that the refugee status determination process provides guarantees of justice and transparency. Please describe the procedures in place to guarantee respect for the principle of non-refoulement, and the measures taken to prevent statelessness.

22. Please provide information on the current practice of systematically detaining asylum seekers at the borders, including unaccompanied children, separated children and children accompanied by their families, and indicate whether the State party intends to end the detention of vulnerable persons. In particular, please provide information on the practice of detaining children at airports. Please also provide information on the application of alternative measures for the detention of migrants and asylum seekers and statistical data on the number of migrants and asylum seekers in detention, including the duration of their detention during the reporting period.

**Liberty and security of person and administration of justice (arts. 9, 14 and 24)**

23. With reference to the Committee's previous concluding observations (CCPR/C/PRT/CO/4, para. 8) and the State party's fifth periodic report (CCPR/C/PRT/5, paras. 148–156), please provide information on steps taken to ensure that detainees are informed, from the outset of their detention, of the reasons for their arrest, of the charges against them and of their rights, including the right to legal counsel from the time of arrest. In this regard, please specify whether the right to have access to a lawyer promptly upon detention is guaranteed in all circumstances, including for those who cannot afford a private lawyer.

24. With reference to the Committee's previous concluding observations (CCPR/C/PRT/CO/4, para. 9) and to its report on follow-up to the concluding observations (CCPR/C/114/2), please provide:

(a) Details of measures taken to reduce the use and duration of pretrial detention, including information on the legislative amendment introduced to the Code of Criminal Procedure, which increased the scope of application of alternative measures to imprisonment;

(b) An indication of whether judicial decisions ordering pretrial detention are properly reasoned and are based on an individualized determination of all the circumstances;

(c) Details of measures taken to reduce the length of investigations and legal procedures, improve judicial efficiency and address staff shortages;

(d) Updated statistics on the length of pretrial detention, including that of juveniles.

**Freedom of expression (art. 19)**

25. Please indicate whether the State party is considering abolishing its criminal defamation laws. Please provide information on the application of such laws by the courts in the last reporting period.

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