

PORTUGAL

@Torture and Ill-treatment: Summary of Amnesty International's Concerns

Amnesty International has received allegations over a number of years that people in custody have been tortured and ill-treated. Most of the allegations have related to cases where law enforcement officers have used deliberate and unwarranted physical violence against people in the period both immediately before they have been taken into police custody and while they have been in police custody. A smaller number of allegations have concerned people in prisons. Public order officials from all the law enforcement agencies - Judiciary Police (*Polícia Judiciária* - PJ), Public Security Police (*Polícia de Segurança Pública* - PSP), Republican National Guard (*Guarda Nacional Republicana* -GNR - a paramilitary *gendarmerie* force) and the Prison Service - have been named in these allegations. All of the complaints have been made by people who have apparently been detained on suspicion of having committed ordinary criminal offences. None of the cases investigated by Amnesty International have concerned detainees who were armed when they were detained and none of them were accused of belonging to armed political groups or terrorist organizations.

The most common forms of ill-treatment alleged have been repeated kicks, punches, kneeling, pistol-whipping and beatings with truncheons. In certain cases detainees have reported beatings with rubber and flexible metal hose-pipes. Others have claimed to have had objects forced into the anus and to have been threatened with physical, including sexual, assault. Verbal racial abuse has been common in cases involving ethnic minorities. In most cases allegations have been supported by substantive medical and forensic evidence and in many of them the complainants have been taken by the detaining officers to receive medical attention during their initial period in custody.

Judicial investigations have been opened into complaints made to the courts, but in Amnesty International's experience these have been extremely slow, frequently lacking in thoroughness and often inconclusive. Amnesty International knows of very few judicial investigations into allegations of torture and ill-treatment which have resulted in the prosecution of law enforcement officers. In the rare instances known to Amnesty International of a prosecution where an officer has been found guilty, the sentence passed by the court has been nominal.

Portugal has ratified the principal international instruments prohibiting torture and cruel, inhuman or degrading treatment or punishment. On 15 June 1978 Portugal ratified the International Covenant on Civil and Political Rights and on 9 February 1989 ratified the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading

Treatment or Punishment (the Convention against Torture). On 29 March 1990 Portugal ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. This established a European Committee for the Prevention of Torture which was designed to strengthen the safeguards afforded by the European Convention for the Protection of Human Rights by allowing visits to countries which had ratified it.

Amnesty International has been concerned that the Portuguese authorities should respond to allegations of torture and ill-treatment, as defined by Article 1 of the Convention against Torture, in full accordance with the relevant standards and requirements of international human rights legislation. In May 1993, Portugal submitted its Initial Report to the UN Committee against Torture reporting on its compliance with the requirements of the Convention against Torture. This report will be considered by the Committee against Torture in Geneva at its next session in November 1993.

Amnesty International has continued to receive allegations of torture and ill-treatment since Portugal ratified the Convention against Torture in February 1989 and has regularly notified its concern to the appropriate Portuguese governmental and judicial authorities.

Amnesty International does not possess official statistics recording the number of complaints of torture and ill-treatment which have been made to or passed to the judicial authorities. However, as an indication, in August 1985, after Portugal had signed the Convention, a Commission of Inquiry was established with representation of the Ministries of Internal Administration and Justice, the office of the Ombudsman (*Provedor de Justiça*) and the General Command of the PSP. The Commission examined 166 individual complaints against the PSP reported in the first six months of 1985. It concluded *inter alia* that there were indications of the systematic use of violence by sections of the PSP; that on three occasions police conduct had resulted in a death; and that illegal acts had been committed by the police in all of the cases studied. Improvements were recommended to police recruitment and training and in the handling of complaints and disciplinary proceedings against the police. Amnesty International does not know to what extent these recommendations have been implemented and the Report of the Commission has never been published in full.

In December 1992 the *Provedor de Justiça* announced his intention of conducting an inquiry into the functioning of the PJ. He had selected for this purpose 32 individual complaints of acts of violence against people, false arrest and abuse of powers by police officers out of a number of complaints which had been received by his office in a 23-month period. With one exception, all the complaints came from the Lisbon area. The findings, if any, of this inquiry are not known.

The basic provisions regarding the protection of people against torture and other cruel, inhuman or degrading treatment or punishment are contained in Article 25 of the Portuguese Constitution:

- "1. The moral and physical integrity of person is inviolable.
2. No one may be submitted to torture or cruel, degrading or inhuman punishment or treatment."

Portuguese law does not contain a definition of the crime of torture but the Penal Code punishes a range of crimes against the physical and moral integrity of the person. Prosecutions may be brought under the Code of Penal Procedure. A new Code was introduced in January 1987 but it has not altered the central points of Amnesty International's concerns regarding torture and cruel, inhuman or degrading treatment as defined by Article 1 of the Convention. These points are in summary:

- the continued allegations of torture and ill-treatment;
- the slowness of the procedures to investigate such allegations;
- the small number of cases where offenders are brought to justice;
- the nominal sentences given to offenders for serious crimes of torture and ill-treatment.

Amnesty International recognizes that Portugal has introduced measures designed to combat the use of torture and ill-treatment against people in custody. However, Article 2 of the Convention states that State Parties should introduce effective measures in order to prevent such crimes. Amnesty International is concerned that, although certain legal and administrative measures have been adopted, they have so far been ineffective in preventing crimes of torture and ill-treatment.

MULTIPLE COMPLAINTS OF TORTURE AND ILL-TREATMENT

Amnesty International is currently investigating allegations of such crimes in the judicial districts of Lisbon, Almada, Setúbal, Oporto, Guarda, the Alentejo, Evora, Coimbra, Sintra and Funchal. In some of these places, such as Lisbon, Almada, Setúbal, Guarda

and Oporto there are multiple complaints.

In August 1991, officers of the *gendarmerie* (GNR) unit in Almada arrested a butcher called Paulo Manuel Ferreira Portugal in Charneca da Caparica. He had objected to a parking fine. Allegedly, the officers beat him up in the street, banged his head against their jeep, handcuffed him and took him to the GNR post in Almada where he was further kicked, punched and insulted. He was not allowed to use the toilet in the station and during the alleged beating he excreted in his clothes. He was taken to hospital for treatment. He had injuries to his head, chest, arms, stomach, ribs and face. Amnesty International has been informed that in May 1993 six officers were charged with causing him physical injury but no trial date has yet been fixed. Amnesty International has been informed that no disciplinary proceedings have yet been opened against the officers charged by the court. (See Appendix one).

On 6 February 1992 Francisco Carretas and a friend were arrested by the GNR in the friend's house in Charneca da Caparica, near Almada. The officers came from the same GNR unit who had arrested and assaulted Paulo Manuel Ferreira Portugal in 1991. According to Francisco Carretas' statement he and his friend were beaten by the officers while they searched the house. They were taken to the GNR post in Almada where they were beaten once again and verbally threatened. They were then taken to a wood near Almada where three officers kicked and punched them; one officer threatened to assault Francisco Carretas sexually. He was later treated for his injuries in the Garcia de Orta Hospital in Almada. An x-ray showed a suspected fracture of the coccyx and photographs taken after his release showed serious and extensive bruising of the back, buttocks and legs. A judicial inquiry has been opened.

BRINGING OFFENDERS TO JUSTICE

Judicial investigations have been opened into all the allegations of torture and ill-treatment known to Amnesty International but there have been few cases where offenders have been brought to justice. The Report by Portugal to the Committee against Torture claims, with respect to Article 2 of the Convention, that there have been major modifications to the statutes of the police forces and *gendarmerie* (GNR) in order to strengthen the prohibition on the use of torture and cruel, inhuman and degrading treatment or punishment. It states that the law provides severe disciplinary and penal sanctions for offenders (CAT/C/9/Add 15 - pp 10 and 11). However, in the cases known to Amnesty International the courts have consistently failed to impose sanctions which would demonstrate the gravity of the offence.

In September 1991 two PSP officers were charged with the ill-treatment of two youths in Oporto in September 1990. One officer charged with causing bodily harm was reported to have slapped and punched José Luis Barros in the face and stomach while questioning him. The other officer was charged with causing grievous bodily harm resulting in

permanent and serious disfigurement to Paulo Jorge Gomes Almeida. The PSP officer had assaulted him in the police station and thrown him through a plate-glass door. He required 59 stitches for injuries to his right arm. The Second Criminal Court in Oporto found this officer guilty of causing bodily harm and on 10 July 1992 sentenced him to six months' imprisonment which was substituted with a fine. He was pardoned by the amnesty which had been passed in July 1991. (See Appendix two). The charge in the case of the other officer was found not proven and he was acquitted. Amnesty International knows of no disciplinary actions that have been taken against either officer.

In December 1991 an officer of the PSP in Setúbal stopped Alexandre Luis Marques Pires Gravanita, a Portuguese citizen born in Angola, and asked for his identity card. He ordered Alexandre Gravanita to accompany him to the station where, apparently without cause, he kicked him, punched him and racially abused him. Alexandre Gravanita was released without charge and had to receive hospital treatment for general cuts and bruising. After a judicial investigation two PSP officers were charged in connection with the incident. In March 1993 one officer was found guilty of abusing his authority and causing Alexandre Gravanita bodily injury; he was sentenced to one year's imprisonment and fined. The second officer was found guilty of giving false testimony and was sentenced to eight months' imprisonment. However, the court suspended both sentences for three years. Both officers have appealed. Amnesty International is unaware of any disciplinary sanction having been taken against the two officers. (See Appendix three).

SYSTEMATIC REVIEWS OF RULES AND PRACTICES

Article 11 of the Convention charges each State Party with the duty of keeping under systematic review interrogation rules and practices and arrangements for overseeing the custody and treatment of people under arrest or imprisonment. Portuguese law gives special powers to the *Provedor de Justiça* to fulfil this rule *inter alia*. It is noticeable that, in Portugal's Report to the Committee against Torture on the activities of the *Provedor de Justiça*, the only statistical information given about the inquiries the *Provedor de Justiça* has opened into violence against detainees concerns incidents in prisons. No information is given relating to violence in police stations and *gendarmerie* (GNR) posts or during arrests on the street. Most of the complaints received by Amnesty International have related to incidents of torture and ill-treatment in police stations, GNR posts and on the street. Furthermore, the figures the Report gives on inquiries into violence in prisons only cover the period between 1987 and 1989. No mention is made of the last four years. No mention either is made of inquiries into the use of violence and abuse of powers by the police or *gendarmerie* (GNR) or of the two separate inquiries of 1985 into the PSP and of 1992 into the functioning of the PJ. (See Appendix four).

In December 1992 Amnesty International wrote to the *Provedor de Justiça* welcoming the inquiry into the 32 complaints against the PJ from Lisbon and Coimbra which his office

had received in the previous 23 months. Amnesty International suggested that the *Provedor de Justiça* widen his inquiry to include two other cases from Setúbal and Guarda.

On 26 June 1990 Isidro Albuquerque Rodrigues was arrested by the PJ in Alcântara on suspicion of assault, robbery and being an accessory to murder. He alleged that during his interrogation in Setúbal he had been stripped naked and handcuffed, kicked in the stomach and punched in the face. He also claimed that a shampoo bottle had been forced into his anus and that he had been whipped with a length of flexible metal hose-pipe. Two of his teeth were broken, his ribs were scarred and over a year later he was still suffering from back pains. After committal to prison he received medical treatment in the prison hospital at Caxias. A judicial investigation was opened but Amnesty International does not know of any result. (See Appendix five).

On 9 September 1992 the PJ visited Guarda Prison to take a statement from Orlando Correia, a French citizen of Portuguese parentage. He refused to comply unless his lawyer and an interpreter were present. He alleged that the PJ officers assaulted him in front of witnesses. He was taken to the PJ office where he stated that he was verbally abused and beaten; a pistol was inserted in his mouth and he was tied spread-eagled to a railing. He was admitted unconscious to Guarda Hospital that afternoon. The hospital recorded bruising and other injuries to his chest and back but a sworn statement from an eyewitness reported in the press alleged that there were noticeable injuries all over his body, that his lips were black and very swollen and that he had a large bruise over his left eye. He made a formal complaint to the Public Prosecutor. The PJ officers were reported as saying these were self-inflicted injuries. His lawyer applied to the court on four occasions for a full forensic medical examination but this was not done until some three weeks later on 1 October 1992. It cannot, therefore, be considered as an accurate report on Orlando Correia's physical state after the alleged assault. A judicial investigation was opened into his allegations. (See Appendix six).

Portuguese law provides for the judicial authorities to conduct investigations into acts of torture and ill-treatment. In cases involving the GNR, competence may be passed to the military judicial authorities. A structure of disciplinary and administrative inquiries and sanctions also exists for all the law enforcement agencies and the Prison Service. The new Code of Penal Procedure introduced in 1987 was designed - *inter alia* - to speed up the handling of cases. The 1987 reform of the criminal procedure sought to secure maximum speediness in the administration of criminal justice. There was one limit, namely it had to be compatible with proper defence safeguards. In effect, those safeguards were effectively strengthened under the new Code. Maximum speed in the conduct of the procedure of a case rested firstly on the conviction that a judgment given in the shortest possible time, compatible with defence safeguards, was a citizen's fundamental right (Article 32, (2) *in fine*, of the Constitution). On the other hand, maximum speed also served the interests of crime

prevention (*Introdução ao Processo Penal*, Coimbra: Livraria Almedina 1989, da Costa Pimenta, José).

Public Prosecutors may independently decide not to proceed with cases and file them (*arquivar*). When the new Code of Penal Procedure was introduced in 1987 the Attorney General issued some guidelines in a memorandum to judicial officials; this pointed out - *inter alia* - that Article 278 of the Code of Penal Procedure established a system for the possible official review of the decisions not to proceed in important cases. The Code gave the power of review to the superior officers of the individual Public Prosecutors. However, this power was not intended to act as a systematic review of all their decisions but instead was reserved for the most complex cases. These were defined as those liable to a five-year sentence or more on conviction. Portugal's Report to the Committee against Torture gives the scale of penalties applicable to criminal acts (CAT/C/9 Add. 15 - p 23). The possible penalties in the vast majority of cases of torture and ill-treatment known to Amnesty International are for less than five years and therefore would not be subject to review under this system.

Amnesty International notes that in Portugal's Report to the Committee against Torture regarding the implementation of Article 12 of the Convention, nearly all the information given deals with the operation of the law relating to prisons. Article 12 requires a State Party *inter alia* to ensure that the competent authorities conduct a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture may have been committed. The Report gives no figures for the number of allegations under investigation now or in the past by the judicial authority relating either to alleged acts of torture and ill-treatment in prisons or the more common complaints made by people in police or *gendarmerie* (GNR) custody. No information is given in the Report to the Committee against Torture under Articles 12 and 13 regarding the number of *ex officio* investigations instituted by the judicial authorities nor of the number of investigations instituted by the judicial authorities following complaints. Amnesty International is also unaware of any official statistics recording the number of complaints where the courts decided not to proceed, investigations by the court, judgments, convictions and sentences.

PROBLEMS WITH JUDICIAL INVESTIGATIONS

Amnesty International has been concerned that the judicial investigations into the allegations of torture and ill-treatment of which it is aware have been very slow, even in straightforward cases supported by medical and forensic evidence. Many complaints have been dismissed for lack of evidence. This apparently has happened even in cases where the complainant received substantial injuries. Frequently officers have claimed that prisoners tried to escape, resisted arrest or that the injuries were self-inflicted.

Domingos do Couto died on 9 August 1984 in the Provincial Hospital of Chaves. He had become involved in a physical altercation with a GNR officer in Montalegre. On 6 August 1984 he had made a complaint to the Public Prosecutor in Montalegre alleging that he had been kicked, punched and severely beaten with a truncheon. He died three days later. The autopsy report said that he had suffered four fractured ribs, weals in the region of the heart and extensive bruising of the chest, apparently caused by blows from a truncheon. An inquiry was registered and eventually passed to the Military Tribunal which may handle inquiries into complaints regarding the actions of the GNR. Amnesty International is not aware of the result of any inquiry, judicial or disciplinary, in the last nine years. The legal advisor of the now deceased complainant has not been informed of any result regarding the inquiry following the complaint made by Domingos do Couto against the GNR. (See Appendix seven).

Similar difficulties have arisen within the civilian justice system. In June 1989 there were allegations of systematic beatings of prisoners in Linhó Prison following the death of Mário Manuel da Luz. Reports of the autopsy said that he died from bronchopneumonia after being kept totally naked without bedclothes in an unheated punishment cell for nearly one month. Substantive allegations were received by Amnesty International that he had been subjected to prolonged beatings. The Director General of Prison Services acknowledged that acts committed in the prison's punishment cells and security wing constituted "serious breaches of discipline and, probably, criminal offences". At the time the prison governor, Adolfo Tassis Teixeira, and other prison officers, including the prison doctor, were suspended in connection with previous allegations of ill-treatment. The prison governor was later forcibly retired. Portugal's Report to the Committee against Torture cites the investigation into the death of Mário Manuel da Luz as an indication of its compliance with the Convention. However, it is noteworthy that it was not until nearly four years later that the case was heard in the court in Caxais. In June 1993 the court gave a verdict of not proven and acquitted all the defendants. The Public Prosecutor may appeal. (See Appendix eight).

Law enforcement officials involved in such allegations have frequently claimed that the victim or complainant resisted arrest or presented some danger to them or other members of the public. The acceptance of this as an explanation has frequently led to the court dismissing the complaint. In some cases Amnesty International has found it impossible to reconcile the injuries suffered by complainants with the reasonable and justified use of force provided for under the relevant international human rights standards. The UN Code of Conduct for Law Enforcement Officials, adopted by the UN General Assembly in 1979, emphasizing the exceptional nature of the use of force, states that force may be used "only when strictly necessary and to the extent required for the performance of their duty" (Article 3). More detailed guidelines are contained in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. These provide that officials should "...as far as possible, apply non-violent means before resorting to the use of force or firearms...that it must be proportionate to the threat encountered and that officials shall exercise restraint in the use of force and act in proportion to the seriousness of the offence as well as minimizing damage and injury". Furthermore, it is clear that the behaviour of the victim can in no way justify the infliction of torture or ill-treatment.

Amnesty International is most concerned that, although Portugal has created a structure to investigate and try allegations of torture and ill-treatment, this is not working either quickly or thoroughly. It therefore has not been effective in preventing the use of torture or ill-treatment. In Amnesty International's experience one of the most important factors contributing to the practice of torture is impunity. Reports to the UN Committee on Human Rights have emphasized that "perpetrators of human rights violations, whether civilian or military, will become all the more brazen when they are not held to account before a court of law".

APPENDICES

- Appendix 1 -The alleged ill-treatment by GNR officers of Paulo Manuel Ferreira Portugal (Charneca da Caparica). **Extract from:** *Amnesty International Concerns in Europe: May 1992 - October 1992* (AI Index: EUR 01/04/92).
- Appendix 2 -The alleged ill-treatment by PSP officers of Paulo Jorge Gomes Almeida (Oporto). **Extracts from:** *Amnesty International Concerns in Europe: November 1990 - April 1991* (AI Index: EUR 01/01/91); *Amnesty International Concerns in Europe: May 1992 - October 1992* (AI Index: EUR 01/04/92).
- Appendix 3 -The alleged ill-treatment by PSP officers of Alexandre Luis Marques Pires Gravanita (Setúbal). **Extracts from:** *Amnesty International Concerns in Europe: May 1992 - October 1992* (AI Index: EUR 01/04/92); *Amnesty International Concerns in Europe: November 1992 - April 1993* (AI Index: EUR 01/01/93).
- Appendix 4 -Inquiries into the PSP (1985) and into the functioning of the PJ (1992). **Extracts from:** *Amnesty International Concerns in Western Europe: March 1986 - September 1986* (AI Index: EUR 03/06/86); *Amnesty International Concerns in Europe: November 1992 - April 1993* (AI Index: EUR 01/01/93).
- Appendix 5 -The alleged ill-treatment by PJ officers of Isidro Albuquerque Rodrigues (Setúbal). **Extracts from:** *Amnesty International Concerns in Europe: May 1991 - October 1991* (AI Index: EUR 01/02/91); *Amnesty International Concerns in Europe: November 1991 - April 1992* (AI Index: EUR 01/03/92).
- Appendix 6 -The alleged ill-treatment by PJ officers of Orlando Correia (Guarda). **Extract from:** *Amnesty International Concerns in Europe: May 1992 - October 1992* (AI Index: EUR 01/04/92).
- Appendix 7 -The alleged ill-treatment by GNR officers of Domingos do Couto (Montalegre). **Extract from:** *Amnesty International Concerns in Europe: May 1992 - October 1992* (AI Index: EUR 01/04/92).
- Appendix 8 -The alleged ill-treatment of prisoners and the death of Mário Manuel da Luz (Linhó Prison). **Extracts from:** *Amnesty International Concerns in Western Europe: October 1989 - April 1990* (AI Index: EUR 03/01/90); *Amnesty International Concerns in Europe: November 1992 - April 1993* (AI Index: 01/01/93).