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Appendix I: Concluding Observations of the Human Rights Committee: Portugal. 05/07/2003.
CCPR/CO/77/PRT. Dated 5 July 2003 and issued on 6 August 2003.

PORTUGAL

Portugal before the Human Rights Committee: summary of Amnesty International's concerns regarding the protection of human rights under the International Covenant on Civil and Political Rights

Introduction

On 21 July 2003 the United Nations Human Rights Committee (the HRC) considered Portugal's third periodic report under Article 40 of the International Covenant on Civil and Political Rights (ICCPR).¹

On that occasion, Amnesty International brought to the attention of the HRC the organization's concerns about reports of human rights violations emerged in recent years in the country.²

This document includes information emerged at the public session of the HRC in the course of which the Portuguese delegation presented their report, and was questioned by the HRC members about various issues of concern.³ It is also based on information gathered by Amnesty International during a research mission to Portugal in December 2002.

The Concluding Observations issued by the HRC upon their consideration of Portugal's third periodic report are attached to this document as an appendix.

Amnesty International's concerns outlined in the present document include: fatal police shootings reportedly as a result of unlawful use of force; deaths in disputed circumstances in police and prison custody; continuing reports of ill-treatment, including

¹ The Human Rights Committee is established under Article 28 of the ICCPR and monitors states parties' compliance with, and implementation of, the Covenant. It consists of 18 members, who are experts of high moral character and recognized competence in the field of human rights.

² An Amnesty International representative attended the public session of Portugal's consideration by the HRC.

³ The Portuguese government's response to the list of issues raised by the HRC can be found in the *Réponse du Portugal à la liste des points à traiter à l'occasion de l'examen du troisième rapport périodique du Portugal (CCPR/C/PRT/2002/3) adoptée par le Comité des Droits de l'Homme le 20 mars 2003*, provided by the Portuguese delegation to the HRC on the day of the public session; and in Human Rights Committee 78th session, Summary Record of the 2110th meeting, 21 July 2003, CCPR/C/SR.2110, 28 July 2003. At the time of writing, the Summary Record had not yet been consolidated and was available only for the part of the public session that took place in the morning of 21 July 2003.

excessive use of force and racial abuse by police; grave failure to ensure the safety of people deprived of their liberty; conditions amounting to cruel, inhuman and degrading treatment in numerous prison establishments; and failure to address police and prison officers' misconduct adequately.

This document focuses in particular on concerns which came to Amnesty International's attention in the period between January 2000 and March 2003.⁴

Right to life (Article 6, ICCPR)

Amnesty International is concerned that there have been instances in which the Portuguese authorities have failed to ensure the protection of the right to life of people within their jurisdiction, including possible cases of arbitrary deprivation of life.

The organization is concerned that on several occasions law enforcement officials may have used firearms in breach of international standards and national laws and regulations, and killed some people in an unlawful manner.

Amnesty International is also concerned about the continuing failure to protect the right to life of people in police and prison custody, including from self-harm in the case of particularly vulnerable persons; and – in prison establishments – from inter-prisoner violence. In this connection, in May 2000 the United Nations Committee against Torture in its Conclusions and recommendations following consideration of Portugal report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) stated that it was “concerned at continuing reports of a number of deaths and ill-treatment arising out of contact by members of the public with the police”, and “at continuing reports of inter-prisoner violence in prisons.” The Committee against Torture recommended that “The State party should continue to take such steps as are necessary to curtail inter-prisoner violence”.⁵

During their consideration of Portugal's compliance with, and implementation of Article 6 of the Covenant, the Human Rights Committee asked several questions regarding protection of the right to life in connection with police use of firearms and killings resulting from such use, and in connection with incidents of death in police and prison custody. Committee members also sought clarification about the state of investigations into several individual cases of death in police and prison custody. All of these cases were raised by

⁴ For Amnesty International's concerns prior to 2000, see “*Small problems...? A summary of concerns* (AI Index: EUR 38/002/2001). This document can be found on Amnesty International's website on www.amnesty.org/.

⁵ Conclusions and recommendations of the Committee against Torture, Portugal. 08/05/2000. A/55/44, paras. 96-105.

Amnesty International with the Portuguese government and the organization has reported on them in various public documents (see below).

Fatal police shootings

Amnesty International expressed its concern to the HRC about the fatal shootings by officers of the Public Security Police (PSP) of Ângelo Semedo, António Pereira, and Nuno Lucas. The three men were killed in separate incidents which occurred between December 2001 and August 2002. From the information available to Amnesty International, although the circumstances in which each of these shootings took place are still disputed, there are no allegations that any of the men was armed at the time, nor that there was a clear and imminent danger to the lives of the officers or of those present at the time of each shooting.

Ângelo Semedo, a 17-year-old boy of Cape Verdean origin, was shot on 5 December 2001 at about 12.15 pm by a PSP officer in the Alto de Cova da Moura area of Amadora, and died later in the hospital of Amadora-Sintra. According to a version of events attributed to the PSP and reported in the national press, a police patrol car was called to the above-mentioned area after receiving information that a driver had been threatened with violence and his car had been stolen. Police officers gave chase on foot to those whom they suspected of involvement, including Ângelo Semedo. In the course of pursuing them, one officer fired five rubber bullets at Ângelo Semedo. The same officer then reportedly fired two live bullets, one in the air and one which hit Ângelo Semedo. A number of people witnessed the incident, including some members of Ângelo Semedo's family who alleged that the police officer fired two shots at Ângelo Semedo while he was running. According to the General Inspectorate of Internal Administration (*Inspecção-Geral da Administração Interna*, IGAI⁶), Ângelo Semedo died as a consequence of the injuries caused by the perforation of his abdomen by a bullet.

António Pereira, a construction worker in his mid-twenties and a member of the African Cultural Centre in Setúbal for several years, was shot dead in the late afternoon of 20 June 2002 by a PSP officer in the Bela Vista area of Setúbal - an area inhabited by many foreign nationals. In addition, other people were injured during the same incident. According to reports, António Pereira had tried to intervene in a quarrel between two men. Many people were present at the scene when two officers arrived in a patrol car. According to reports attributed to eye-witnesses, one PSP officer got out of the car and threatened to use his firearm while the second officer, who was described as carrying a rifle, got out of the car and fired two shots hitting one of the men who had been quarrelling in the arm and the other in the

⁶ IGAI's main task is to oversee the activities of law enforcement forces that fall under the responsibility of the Ministry of the Interior. IGAI opens disciplinary inquiries into particularly severe reports of police abuse, and opens automatic inquiries into deaths in custody as a result of alleged ill-treatment or shootings. It cannot, however, impose disciplinary penalties of its own accord. Its recommendations are submitted for consideration to the Minister of the Interior.

groin. The same police officer fired again at António Pereira, who had been attempting to calm the situation and had interposed his body in front of the two men involved in the quarrel. One shot struck António Pereira in the shoulder. A second shot hit him in the chest as he fell. Following the shooting a crowd gathered around the local police station and began throwing stones at the building. Police reinforcements were reportedly called, including a specialist riot unit, the *Corpo de Intervenção* (CI), who dispersed the crowd, allegedly using dogs and discharging both blank and live rounds. According to reports, some people were injured as a result of the CI's operation. José Barão, aged 46, for example, was reportedly hit in the abdomen by a rubber bullet as he opened the entrance door to his apartment block, after having heard the noise of shots being fired. In this connection, Amnesty International expressed concern to the Portuguese government about the techniques of crowd-control that were reportedly used, and particularly about the allegations that live rounds were discharged. The police officer who shot António Pereira is reported to have stated - during questioning at the Setúbal Tribunal in the course of the criminal investigation into the shooting - that he had fired in self-defence as a result of being threatened with a broken glass carafe. The Tribunal granted him bail subject to conditions imposing movement restrictions.

In addition to being concerned at the possible unlawful killing of António Pereira, Amnesty International noted reports that the shooting and the police operation which had resulted in the death of António Pereira and the reported wounding of three other people in the following police operation in the Bela Vista area of Setúbal had resulted in heightened tension within the local community. Several members of the community -- which is largely formed by people belonging to ethnic minorities -- reportedly said that they felt discriminated against and failed by the authorities, including by the police. There were reports that the police were widely perceived by many members of the local community as having over-reacted on the occasion of the shooting, thus deepening an allegedly already widespread sense of marginalization.

In light of the above, Amnesty International is concerned that the shooting of António Pereira and the wounding of three others in the course of the police operation in the Setúbal area could be symptomatic of a practice of discriminatory policing in areas inhabited by people belonging to ethnic minorities.

Nuno Lucas, a 24-year-old man, was shot in the late afternoon of 5 August 2002, in Passeio Alegre, Oporto, reportedly in the course of a fight with a PSP officer from police station n° 17 of Oporto who was attempting to detain him. He suffered a head injury caused by gun shot, and died the following day in hospital. According to reports, two police officers in a patrol car saw a vehicle which had reportedly been stolen the day before. One of the two people in the car was Nuno Lucas. Also according to reports, one officer got out of the car and ran after one of the two suspects who was trying to escape on foot. The second police officer reportedly tried to stop Nuno Lucas, who was attempting to get away by car. The police officer reportedly shouted at him to stop, and then fired a warning shot in the air. Then the

police officer allegedly grabbed hold of Nuno Lucas while the latter was still in the driver's seat to prevent him from fleeing. A fight between the two ensued, during which the officer struck Nuno Lucas with the stock of his gun, which in turn fired hitting Nuno Lucas in the head.

The autopsy carried out on Nuno Lucas's body by the National Institute of Legal Medicine reportedly confirmed that the death was due to a gun shot wound to the head caused by a shot fired at close range.

In the course of a press conference in the immediate aftermath of the incident, a police spokesman talking on behalf of the superintendent in charge of the Metropolitan Command of the PSP of Oporto reportedly maintained that the shot which killed Nuno Lucas had been fired accidentally. On that occasion, asked if a blow with a gun-stock could cause the gun to fire, he replied that it would be possible and that after the first shot in the air, the hammer of the gun would have been charged. The spokesman was reported to have also added that every police officer knows that, after one shot, a blow causes the gun to fire.

In October 2002 Amnesty International wrote to the government requesting clarification about the circumstances in which all three incidents had occurred and about the ensuing investigations into each case. In December 2002 the Ministry of the Interior informed Amnesty International that the disciplinary inquiry into the shooting of Ângelo Semedo had concluded in October 2002 and that the police officer involved had been suspended for 75 days for infringing rules on the use of firearms, but that the punishment had been suspended for one year pending an ongoing criminal investigation. The Ministry of the Interior also informed Amnesty International that disciplinary and criminal investigations were ongoing against the police officers involved in the shootings of António Pereira and Nuno Lucas. The Ministry of the Interior also informed the organization that none of the police officers involved in any of these cases had been suspended from duty, nor ordered not to carry arms, pending the disciplinary and criminal investigations.

Amnesty International received reports that inappropriate -- thus possibly unlawful -- use of firearms took place on other occasions -- including while the police officers involved were not on duty -- where it did not result in casualties, but was nevertheless disproportionate to the threat posed, if any, to the police officers involved (for example, see the case of Carlos Moreira and Augusta Monteiro under Prohibition of torture or cruel, inhuman or degrading treatment or punishment, Article 7, ICCPR).

Information regarding the cases of Ângelo Semedo, António Pereira and Nuno Lucas emerged at the HRC session

The HRC asked to be updated about the investigations into each of these cases. The Portuguese delegation provided the following information:

-- in the case of Ângelo Semedo the delegation confirmed that the suspension of a police officer for a period of 75 days had been proposed by IGAI, but that the disciplinary measure had been suspended for a period of one year and that certain elements diminishing and limiting the responsibility of the police officer had emerged;

-- in the case of António Pereira, the delegation said that disciplinary proceedings had been brought against one police officer and that he had been suspended from duty for 225 days. The Portuguese delegation added that, following a criminal investigation, the public prosecutor had brought a charge of aggravated homicide against the police officer and that the case was due to be heard in November 2003;

-- in the case of Nuno Lucas, the Portuguese delegation stated that there had not yet been a definitive decision by the Minister of the Interior, but that the dismissal of the police officer involved – which is the most severe disciplinary punishment – had been proposed by IGAI.

The unlawful fatal police shooting of Rui Matias Oliveira in 1990

Amnesty International is also concerned about the long time needed in some cases to obtain justice in case of human rights violations perpetrated by the police.

Rui Matias Oliveira was shot dead by an officer of the Traffic Division of the PSP on 1 May 1990, during a car pursuit in the Olivais area of Lisbon. The 24-year-old, suspected of theft, was unarmed. There was contradictory testimony as to whether the officers had identified themselves by using their siren or lights. The police officers allegedly shot at the car at least three times. One of the shots pierced Rui Oliveira's skull. However, according to reports, the bullet which entered his head, together with a part of the head itself, were reportedly removed from within the interior of the car and neither was ever recovered. The car had allegedly been emptied of contents and cleaned by officers of the same traffic division. Eleven years later, on 6 March 2001, the officer who fired the fatal shot was eventually sentenced, by the Court of Boa Hora, to a suspended two-year prison term for negligent homicide (*homicídio negligente*). In 1993 the same officer had been sentenced by the Court of Cascais to a suspended prison term of four years and six months after having been convicted of having shot several times at a "suspicious" car containing five people in August 1989. This shooting also took place during a pursuit. (The driver of the police car was sentenced to five years' imprisonment).

Systemic concerns about the use of firearms and the mechanisms to ensure police accountability

Apart from the actions of individual police officers in the above-mentioned cases, Amnesty International is concerned that these incidents may be symptomatic of inadequate training in the use of firearms, both as to the situations in which firearms can lawfully be used and as to the technical aspects of their use.

Amnesty International is also concerned that the police officers involved were neither suspended from active duty nor prevented from carrying arms pending the disciplinary and criminal investigations, as a precautionary measure after the shootings.

Having heard that in all three of the above-mentioned cases disciplinary proceedings had been opened but suspended pending criminal investigations, the HRC raised questions about the effectiveness of mechanisms to ensure that police officers are held accountable for the use of lethal force; and about whether adequate provisional measures are taken against police officers suspected of having posed a lethal threat to members of the public. In particular, the HRC noted that neither Portugal's third periodic report nor the Portuguese delegation had discussed the administrative procedures in the context of the underlying concern for the right to life. The HRC then went on to ask whether, when disciplinary and/or criminal proceedings were brought against police officers accused of using excessive force, they were allowed to continue to carry firearms pending the proceedings.

The HRC asked also whether victims and relatives of victims of police misconduct were granted redress following an incident of unlawful use of firearms by police, and whether this occurred automatically or required the bringing of judicial proceedings.

In addition, the HRC questioned whether the circumstances in which domestic legislation allowed the police to use firearms, as described in Portugal's third periodic report, were in compliance with international standards, particularly with reference to the requirement of proportionality of the use of lethal force with respect to the nature of the threat.

Deaths in police custody in disputed circumstances

In the 1990s Amnesty International repeatedly expressed concern regarding alleged deaths in police custody or occurring shortly after the deceased had been reportedly taken into custody or stopped by police; and about the excessive length of criminal and disciplinary proceedings before a finding of responsibility for any police officer was reached.⁷ In 2000 Amnesty International had been concerned about the deaths of Álvaro Cardoso, Paulo Silva, and

⁷ See at 4 *supra*.

António Mendes dos Santos. All three cases were raised by the HRC, whose members asked to be updated about the investigations.

Álvaro Cardoso,⁸ of Roma origin, died in Oporto in January 2000, in hospital, where he had been taken by police officers who had arrested and detained him for some hours in a police station, in connection with a street disturbance. According to the autopsy report, his death was due to a ruptured spleen. There had been allegations that police had beaten him while at the police station. In the course of the criminal investigation into the death of Álvaro Cardoso two police officers were charged with aggravated homicide and other lesser offences and detained pending trial. Their pre-trial detention led to widespread police protest. Many officers surrendered their weapons and some were reported to have threatened a prosecuting magistrate after the decision to continue to detain the suspected police officers pending trial had been confirmed.

At the HRC session, the Portuguese delegation explained that in the course of the criminal investigation into the case “the officers had asked for an optional investigation procedure to be conducted in which an outside magistrate was called on to rule on the manner in which the original investigation had been carried out. At the end of that optional phase the examining magistrate had decided not to bring charges against the two officers. That ruling had been appealed by the Public Prosecutor’s Office but upheld by the Court of Appeal.”⁹ In September 2002 the Oporto Court of Appeal ruled that no prosecutions should be brought against the two police officers suspected of being involved in the death of Álvaro Cardoso and that the case should be closed.

Following the closure of criminal proceedings, IGAI, which had opened disciplinary proceedings against the two police officers, recommended their closure on grounds of insufficient evidence.

In the course of the dialogue with the HRC members, the Portuguese delegation stated also that the autopsy had found that the injuries to the spleen had been inflicted prior to the intervention of the police, and that the external injuries on Álvaro Cardoso’s body were not fatal. The Portuguese delegation referred also to the fact that Álvaro Cardoso might have been injured in the course of a fight with other Roma people, which had been the reason why the police had intervened. Furthermore, the Portuguese delegation added that the criminal investigation had gathered contradictory witness statements raising the possibility that the deceased may have been lethally assaulted before the police intervention.

⁸ See at 4 *supra*.

⁹ Human Rights Committee 78th session, Summary Record of the 2110th meeting, 21 July 2003, CCPR/C/SR.2110, 28 July 2003. At the time of writing, the Summary Record had not yet been consolidated and was available only for the part of the public session that took place in the morning of 21 July 2003.

Paulo Silva¹⁰ died in a hospital in Oporto in January 2000, due to internal injuries resulting from blows administered with a blunt implement, allegedly after being beaten up by police in a district where he had reportedly gone to buy heroin. Although the police denied responsibility, alleging that he might have been beaten up by others before their arrival in the district, disciplinary and criminal investigations were opened.

At the HRC session the following information was provided by the Portuguese delegation: nine disciplinary proceedings had been opened against one deputy chief and eight police officers. Such proceedings had been suspended pending the outcome of the criminal investigation. Initial statements taken from alleged drug addicts that were in the area during the police operation reportedly indicated that the police operation had not involved the use of force. However, the Portuguese delegation maintained that it had been reported that Paulo Silva had stated, shortly before dying, that he had been ill-treated by police. In the course of the criminal investigation the Judiciary Police had detected discrepancies in the statements of the police officers allegedly involved, and had recorded a gap of one hour and thirty minutes in the chronological account of their actions during the night in which Paulo Silva was reportedly assaulted. The criminal investigation is ongoing.

António Mendes dos Santos¹¹ died in June 2000 in Coimbra. Ten days prior to his death, he had been taken into custody and detained at a police station. He had then been released. Disciplinary proceedings were opened against two police officers, and were then suspended pending the outcome of the criminal investigation into the case.

In the *Réponse du Portugal à la liste des points à traiter à l'occasion de l'examen du troisième rapport périodique du Portugal (CCPR/C/PRT/2002/3) adoptée par le Comité des Droits de l'Homme le 20 mars 2003*, provided by the Portuguese delegation to the HRC on the day of the public session, it is stated that following the finding that the cause of death had been peritonitis coupled with grave hepatic, respiratory and kidney failures, the public prosecutor had struck the case for homicide off the court record; that the injuries that had been found on the body of António Mendes dos Santos had reportedly been minor, consistent with the infliction of low-level violence, and therefore incapable of causing the death of the victim; and that the criminal proceedings were therefore currently pending for charges of bodily harm (*ofenses corporelles simples*) and that a hearing is scheduled to take place on 19 April 2004.¹²

¹⁰ See at 4 *supra*.

¹¹ See at 4 *supra*.

¹² However, according to Portuguese delegation's statements as reported in the Summary Record of the HRC session, the offence with which the two police officers were charged is grievous bodily harm.

Self-inflicted deaths in police custody

Amnesty International is concerned about reports indicating that the authorities may be failing to protect the right to life of people detained in police stations, particularly from the risks of self-inflicted injuries. From reports of the circumstances of some recent cases of alleged suicide in police custody it emerges that there may have been contributory factors such as an unsafe detention environment, and disregarded or inadequate procedures to identify and deal with particularly vulnerable persons.

According to the reports available to Amnesty International, at least three people killed themselves in police custody in 2002. Similar figures were reported in 2000 and 2001. Between December 2001 and January 2002 there was a sequence of three reported suicides of people of Ukrainian origin in different police stations. According to reports, at least two of them had been detained in connection with disturbances in public places in the course of which they had stated that they were being threatened by people involved in criminal activities and had asked for police protection.

In the report of its activities carried out in 2001 (published in March 2002), IGAI stated that in several of the police cells they had visited there were "suspension points" not protected by adequate metallic grids; that some cells had doors with non-protected metal bars; and that some police cells contained dangerous objects and materials. Moreover the location of some detention areas within police stations was described as very far from the police officers on duty, rendering it difficult to respond to possible requests for help.

Deaths in prison custody in disputed circumstances

Amnesty International has been gravely concerned at the failure of the authorities to ensure the protection of the right to life of people detained in prisons, in particular from inter-prisoner violence and self-harm in the case of particularly vulnerable persons. Inter-prisoner violence has been a major problem in Portuguese prisons in the last decade, and has continued to be so in recent years, with some very grave incidents -- including some which resulted in fatalities -- in the second part of 2001. Suicides in prison increased significantly in 2001.

The HRC posed numerous questions regarding the measures that are in place to ensure the safety of inmates in prisons from both inter-prisoner violence and ill-treatment by prison guards, and about the mechanisms in place to ensure that any suspicious death is investigated. In addition, the HRC noted that Portugal's third periodic report contained insufficient figures and statistical data relating to prison issues, and it requested figures about deaths in prisons in the last five years and the cause for each of them. The HRC also asked to be informed of the outcome of the investigation into the killings of two prisoners in Vale de Judeus prison in October 2001.

Killings and other inter-prisoner violence

Inter-prisoner violence has been of grave concern to Amnesty International for many years. The organization has continued to receive several reports of serious incidents of inter-prisoner violence, including in some cases resulting in the death of prisoners, in recent years. Additionally, concern regarding inter-prisoner violence was expressed by the Committee against Torture in May 2000¹³; and by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in its report of its visit to Portugal in April 1999¹⁴.

The CPT noted that “the problem of inter-prisoner violence is far from being resolved” (para. 42); and that:

“As indicated in previous visit reports, the CPT is also very concerned when it discovers a prison culture which is conducive to inter-prisoner violence. In all of the establishments visited [Coimbra Regional Prison, Leiria Special Prison, Lisbon Central Prison, and Oporto Central Prison], the CPT’s delegation received a significant number of accounts of ill-treatment of prisoners by fellow-inmates. The forms of ill-treatment alleged included physical assault – principally beatings, often using sticks, metal bars and other objects – and intimidation. In many cases the victims of such treatment had sustained injuries requiring medical attention (wounds, haematomas and, in certain cases, fractured bones). ... As had been the case during previous visits, the delegation also received accounts of prisoners being assaulted in the presence of prison staff who failed to intervene.” (para. 49).

The CPT expressed particular concern about the level of inter-prisoner intimidation and violence at Oporto Central Prison (Custóias) – an establishment to which it had drawn the attention of the authorities in previous reports. The CPT found that the level of inter-prisoner violence at Oporto Central Prison had remained high, that drugs were widely available and that staffing levels on the wings were inadequate (see in particular paras. 49 to 51 and 126 to 127). In December 2002 a delegation of the CPT carried out a four-day visit to review developments at Oporto prison. The publication of the report of this latest visit was awaited at the time of writing.

Amnesty International received information indicating that between July 2001 and January 2002 four people were killed reportedly as a result of inter-prisoner violence, three of whom in Vale de Judeus prison. Although not designed as a high security prison, Vale de

¹³ See also under Right to life (Article 6, ICCPR).

¹⁴ *Report to the Portuguese Government on the visit to Portugal carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*, from 19 to 30 April 1999, CPT/inf (2001) 12, published on 26 July 2001. Available also at www.cpt.coe.int/

Judeus is an establishment housing dangerous prisoners and prisoners sentenced to long terms of imprisonment.

In Vale de Judeus prison: Rui Jorge Oliveira Gomes, allegedly the chief of a known criminal gang, was stabbed to death in July 2001; and Augusto Morgado Fernandes and António Oliveira Dias were also killed there in October 2001. Augusto Morgado Fernandes had reportedly complained to the Court of Cartaxo about the illegal sale of mobile phones in the prison and had written to the Parliamentary Ombudsman (*Provedor de Justiça*) alleging that he was being persecuted at the prison and that he feared for his life. According to reports, he was stabbed several times with the end of a spoon that had been worked into a knife and part of his skull was crushed with an iron bar. According to information available to Amnesty International, some reports implicated prison guards in the killings, either through negligence - because cell doors had been left open when they should not have been - or in relation to alleged illicit activities in which guards were implicated, involving the sale of mobile phones, tobacco and drugs.

According to reports received by Amnesty International, in January 2002 a prisoner was fatally stabbed in the prison of Sintra, near Lisbon, allegedly in connection with drug trafficking inside the prison. According to reports, at the end of 2001 an inspection by prison authorities to stop drug trafficking in the prison led to a prisoners' protest. In the course of the operation to quell the protest rubber bullets were discharged and eight prisoners required medical treatment and were taken to the hospital of Amadora/Sintra.

Non-fatal inter-prisoner assaults were also reported to have taken place in a number of prisons. For example, in September 2001 a prisoner of Afghan nationality was stabbed in Vale de Judeus prison, and in December 2001 two prisoners were seriously assaulted by other inmates in Coimbra prison. One had to undergo emergency surgery. The assaults were reportedly connected to drug trafficking in the prison.

Amnesty International notes that according to reports, following the fatal incidents of inter-prisoner violence in 2001, the authorities have taken a number of steps: searches have been conducted in some establishments, leading to the requisition of a large quantity of prohibited materials and objects, including drugs, mobile phones and tools that could be used as weapons; a stricter regime has been imposed in some prisons; and some prisoners regarded as particularly dangerous have either been separated from the rest of the prison population and placed in isolation or transferred to other establishments.

Information emerged during the HRC session in relation to Vale de Judeus prison

In reply to questions regarding the events in Vale de Judeus posed by the HRC, the Portuguese delegation stated that the 2001 events in that establishment – which had included five homicides -- had been of an exceptional nature, and that criminal investigations and an

inquiry by the prison service inspectorate had been opened into the October 2001 killings, and that both the criminal investigations and the prison service inquiry were pending. The Portuguese delegation added that in the course of the criminal investigations into the killings, other facts and events warranting a criminal investigation had emerged and occurred, namely, the discovery of an escape tunnel and a reportedly violent protest by prisoners. According to the Portuguese delegation, the prosecuting authorities had initially decided to treat all these circumstances as part of a general criminal investigation into the situation in Vale de Judeus prison filed in the Court of Cartaxo. However, it was later decided to conduct different parts of the investigation separately. The criminal investigation into the October 2001 killings occurred in October 2001, which is conducted by the Office of the General-Procurator of the Republic, is in its final stage and a decision about the bringing of any prosecutions is expected by the end of September 2003.

The Portuguese delegation added that, following the ECPT visit to Vale de Judeus prison in 1999, which had identified overcrowding and the use of drugs as causes of many other problems in the establishment, efforts had been made to reduce the prison population, increase prison staff and monitor prison visits, as most drugs entered the prison via visitors. Up to 300 prisoners had been transferred to another prison near Oporto and two prison guards had been convicted of drug-trafficking.

Self-inflicted deaths in prison custody

Amnesty International is concerned that prison staff may not be adequately trained to identify and ensure the safety of particularly vulnerable inmates; and that procedures to ensure their safety and address their needs -- especially medical needs -- may be either disregarded or lacking in some establishments.

In 2001, 20 people were reported to have died from self-inflicted injuries in Portuguese prisons. This is the highest number of such deaths since 1998, when 20 cases were also recorded. There had been 13 cases in 1999 and 10 in 2000.

One death, in September 2001, in Coimbra prison, was reportedly as a result of a drug overdose. In November 2001 a further death was reportedly narrowly avoided in Izeda prison, Bragança, when a prisoner, aged 29, was found in a coma in the isolation cell, where he had been placed for 30 days for allegedly having assaulted a prison officer. According to reports, he attempted to hang himself using the shoe-laces that had not been removed from his shoes by prison guards. A prison service spokesperson allegedly stated that the presence of the shoe-laces in the cell had been an oversight, as it constituted a breach of prison rules. In January 2002 two prisoners killed themselves at the Oporto prison of Custóias, one shortly after the other; one of the two had reportedly expressed the will to die on a previous occasion.

Prohibition of torture or cruel, inhuman or degrading treatment or punishment (Article 7, ICCPR)

Amnesty International is concerned about the failure of the authorities to ensure that no one is subjected to torture or to cruel, inhuman or degrading treatment or punishment. In recent years the organization has continued to receive numerous reports of ill-treatment by police and prison officers.

Amnesty International considers that some aspects of the functioning of the judicial system -- in cases involving allegations of misconduct by police and prison officers -- may contribute to undermining the trust of people in law enforcement authorities and the judicial system in general. Such aspects include, in particular, the slow pace of legal proceedings -- which is endemic in the country and affects all kinds of proceedings (civil, criminal and administrative) -- resulting in their often being very expensive, and the often inadequate quality of legal aid. Amnesty International's consideration is based on the opinion of several lawyers consulted by the organization; the experience of victims who have reported their case to the organization; and the experience of local non-governmental organizations.

In its report to the Commission on Human Rights in March 2002, the Special Rapporteur of the Commission on Human Rights on the question of torture stated, with reference to Portugal:

*"The Special Rapporteur has received information about the failure of the judicial and administrative systems to deal effectively with cases of torture and ill-treatment. Judicial and administrative or disciplinary proceedings may last for years, while police officers are believed to remain in their posts. It is reported that offenders are rarely brought to justice and the sentences pronounced are in general so light as to contribute to an atmosphere of relative impunity."*¹⁵

Several issues concerning ill-treatment by police and prison officers were discussed in the course of the HRC session, including mechanisms available to lodge complaints and to hold perpetrators accountable.

Police ill-treatment and racial abuse

Amnesty International continued to receive numerous reports of police ill-treatment of people - including children, women and people belonging to ethnic minorities - at the time of arrest or in police stations. Reports of ill-treatment and racial abuse by police were corroborated by a number of local non-governmental organizations.

¹⁵ E/CN.4/2002/76/Add.1, 14 March 2002, para. 1245.

Among the cases that have recently been of concern to Amnesty International are the following:

- In August 2002 a Chinese shopkeeper, Lin Aizhong, was reportedly ill-treated by PSP officers in the Mouraria area of Lisbon. Lin Aizhong was detained in connection with the alleged obstruction caused by some boxes of goods in a public shopping area. According to reports, police asked Lin Aizhong to sign a notification requiring the removal of the boxes. He insisted on reading the document first. Due to his lack of fluency in Portuguese, this proved difficult. In circumstances which remain unclear to date, police decided to detain him and took him to the local police station. There, according to some witnesses, including his wife, he was handcuffed to a table leg and beaten up by police officers who had removed their identity tags. The police reportedly claim that Lin Aizhong assaulted three police officers and that the officers had to receive medical treatment. Lin Aizhong was taken to hospital. Representatives of the Chinese community in Lisbon reportedly stated that in the past there had already been incidents of verbal racial abuse and harassment by some police officers of people of Chinese origin. Following the victim's complaint, both a criminal and an internal disciplinary investigation by IGAI were opened. A complaint was lodged also with the High Commissioner for Immigration and Ethnic Minorities.
- In August 2002 Mónica Godinho and Cláudia Domingues alleged that they had been beaten with truncheons, slapped and kicked by several police officers at the PSP station of Cascais, near Lisbon, where they had been taken following a car accident in which they had been involved. Cláudia Domingues was also reportedly pushed by a police officer causing her to hit her head against the floor. Mónica Godinho and Cláudia Domingues alleged that they were also subjected to verbal abuse because of their sexual orientation. The two women, who were themselves charged with assault, lodged a complaint against the police. A criminal investigation was ongoing at the time of writing.
- On 1 October 2002, Carlos Moreira, a 15-year-old Portuguese national of Cape Verdean origin, was reportedly ill-treated while being taken into custody and subsequently at the PSP station of Casal de São Brás, Amadora, near Lisbon, after -- according to the information available to Amnesty International -- trying to quell an argument between two girls at the gates of his school. Carlos Moreira alleged that police officers pushed him to the ground before detaining him. At the police station, he was reportedly slapped in the face, kicked and subjected to verbal, including racist, abuse. On the same day, after his release, Carlos Moreira together with his mother Augusta Monteiro went back to the police station where he had been held. Augusta Monteiro asked police officers at the station what had happened, at which point she was allegedly insulted by police and told to leave. Outside the police station Carlos Moreira identified some of the police officers who had ill-treated him. Augusta

Monteiro approached them. According to Carlos Moreira and Augusta Monteiro's account, they were again subjected to racial verbal abuse by police. One officer reportedly grabbed hold of Carlos's head and threatened him. Augusta Monteiro intervened placing herself between the officer and Carlos Moreira. The officer reportedly pulled out his firearm and pointed it at Augusta Monteiro's chest and pushed her until she fell over. While on the ground she heard a shot and -- before realizing that the officer had shot in the air -- thought that her son had been hit. On hearing the shot, other police officers ran out of the police station. Carlos Moreira ran inside the block where they live, situated nearby the police station, where he was eventually restrained by police officers on the fourth floor, reportedly beaten, handcuffed and taken back to the police station. He alleges that at the police station he was kicked in the face, which resulted in a cut to his lower lip. Two days later Carlos Moreira and Augusta Monteiro went to a different police station and made a complaint. However, Augusta Monteiro cannot be sure of the accuracy of the written record of the complaint, because the police officer who wrote it refused to read it aloud to her (despite her request, as she cannot read Portuguese). A complaint to the police on their behalf was also made by the non-governmental organization SOS Racismo.

- In November 2001 a judicial investigation was opened into the alleged ill-treatment by PSP officers in Portimão of two French nationals, Nathalie Julien and her brother, Didier Eric Julien. They were reportedly beaten with truncheons and kicked by up to five officers following a dispute in a bar in the area of Praia da Rocha, in the early hours of 4 November 2001. According to a complaint lodged by Didier Julien, he was suddenly and violently hit with a truncheon on the right shoulder. He fell to the floor, where he was reportedly kicked by up to five officers. One officer then handcuffed him, placed him and his sister in a police car and drove them to the police station. At the PSP station Didier Julien asked for an explanation. The same officer who had handcuffed him then allegedly struck him with a truncheon on his right shoulder, while his hands were still cuffed. The blow fractured Didier Julien's collar bone. Although in great pain, he was not taken to hospital until about 4 pm the following afternoon. While at the police station Nathalie and Didier Julien were reportedly not allowed to make any phone calls to notify third persons of the fact and place of their detention, or to speak with a lawyer, and were not told the nature of the reasons for their arrest. In her complaint against the police, Nathalie Julien claimed that she had been slapped and struck with a truncheon. A medical report on her referred to various haematomas and bruises.
- On 30 June 2002, public order incidents were reported in the Costa de Caparica, where some 500 Brazilians nationals or people of Brazilian origin had been celebrating the fifth World Cup victory of the Brazil team in or around the *O Elétrico* bar in a commercial centre. According to reports, the incidents -- which resulted in up to six Brazilian nationals, or persons of Brazilian origin, and one or more police

officers, sustaining injuries -- started when two police officers arrived at the place where the people had gathered. The police officers called for reinforcements, which arrived in two stages. At about 17.20 a large number of police officers of the *Corpo de Intervenção* (CI) in riot gear arrived. According to some reported eye-witness statements the police officers made indiscriminate use of their truncheons, beating various people including a pregnant woman and children. As violence broke out, a group of about 15 people, near a small railway line between Costa de Caparica and Fonte da Telha, reportedly began to throw stones at police officers, who responded with rubber bullets. One, or possibly two, officers were reportedly injured by the stones, with one requiring hospital treatment. One youth was reported to have been shot twice in the head with rubber bullets, and the Accident and Emergency Unit of the Hospital Garcia de Orta reportedly referred to the case of a Brazilian woman who had been shot in the leg with a rubber bullet. Police dogs were also used. The circumstances in which the police action occurred were disputed. A number of residents and local traders supported the police action, but the Brazilian Embassy requested clarification from the Minister of Foreign Affairs and a Brazilian organization protested against gratuitous police violence. IGAI opened a disciplinary inquiry into the incidents.

Matters raised and information provided in the course of the HRC session on the issue of police ill-treatment

The HRC raised questions about the measures that are in place to prevent and combat police ill-treatment and to hold those responsible to account. In its reply, the Portuguese delegation referred to the activities of IGAI, the police oversight agency within the Ministry of the Interior, which, in addition to carrying out disciplinary investigations into allegations of police misconduct, carries out both periodic inspections and unannounced inspections of police stations.

The Portuguese delegation referred also to the system established under circular No. 3/93 of the Office of the General Procurator of the Republic to keep a record of all criminal proceedings in which law enforcement officials are involved, and to take appropriate measures in light of such records. The system requires public prosecutors to inform without delay the Procurator General's Office of any criminal cases resulting in the investigation of any law enforcement officer and of the outcome of such investigations. In cases that go to trial, a copy of any final decision of such cases must also be submitted.

Information on the reported use of excessive force by police in connection with the Costa de Caparica incidents was also requested by the HRC. The Portuguese delegation said that the disciplinary inquiry into the police operation had concluded that the use of force had been necessary, proportional and adequate to the circumstances; that force had been used only after other measures to re-establish public order had failed and in order to stop the threat posed to the physical safety of the police officers involved. As a result, no disciplinary

measures had been instigated against police officers. The criminal investigations against those suspected of having taken part in the public order incidents had also been closed with no charges being brought against anyone for lack of evidence and impossibility of identifying those involved.

Ill-treatment in prisons

In recent years Amnesty International has continued to receive allegations of ill-treatment of inmates by prison staff, including some allegations of harassment by prison officers of particularly vulnerable prisoners and of prisoners who have protested against prison conditions, regime or treatment; or who have denounced the alleged involvement of prison officers in illegal activities.

Although it may be difficult to substantiate some alleged cases of ill-treatment in prisons, Amnesty International notes that some allegations of ill-treatment by prison officers are also included in the 2002 Report of activities of the Human Rights Commission of the Bar Association (*Ordem dos Advogados*)¹⁶; and that in 2001 the Ombudsman (*Provedor de Justiça*) reportedly received 20 complaints from inmates who alleged that they had been victims of assaults by prison officers. Complaints received by the Ombudsman came in particular from the establishments of Vale de Judeus, Lisbon, Coimbra and Sintra. In 2001 in the course of a media interview, the Ombudsman noted the difficulties of investigating such allegations, as they may reach the Ombudsman's office only after several months, when physical evidence may no longer be available. The Ombudsman also noted that the opening of cells at night was a contributory factor to violence in prisons and -- while acknowledging that there were rules forbidding the opening of cells at night save in justifiable cases -- he stated that these rules could only be effective if accompanied by measures such as, for example, CCTV cameras strategically positioned along the corridors of wings and close to disciplinary cells¹⁷.

In March 2001 Amnesty International wrote to the Minister of Justice about reports that the organization had received alleging that prison guards were physically ill-treating inmates at Linhó Prison (Sintra), and that material conditions at the prison were inhuman and degrading.

¹⁶ <http://www.oa.pt/genericos/>, [[Entrada](#) > [A Ordem](#) > [Comissões e Institutos](#)]

¹⁷ In the report of the 1999 visit to Portugal the CPT also expressed "concern about the practice of opening cells during the night without a record being made or senior staff being informed of that fact, a situation which is clearly open to abuse". The CPT noted that steps had been taken by the Portuguese authorities to ensure that the opening of cells at night was accompanied by appropriate safeguards such as a record to be made and a report to be filed with senior staff, but that adequate safeguards were not fully implemented at Lisbon Central Prison and Lisbon Judicial Police Prison (para 48). See at 14 *supra*.

Amnesty International brought to the Minister's attention reports that prison guards in the security unit were beating inmates with batons. The organization also expressed concern about nine cases in which physical assaults by prison officers were alleged to have taken place - one in January 1999 and the remainder between February and May 2000.

In April 2001 the Director General of the Prison Services (DGPS) responded to Amnesty International with information about the nine cases of alleged ill-treatment. In reference to many of those cases the DGSP stated that the prisoner had been subjected to disciplinary measures for violent or disruptive acts, but that little or no information had been received by the DGSP alleging violence by guards. However, in one case, that of Nélio Henrique de Sá, reportedly assaulted by a guard in April 2000 during an incident in the prison canteen, an investigation into the use of physical force by a guard concluded that the guard's conduct had been inappropriate and he had been issued with a written reprimand. In another case, the use of physical force was found to have been proportionate to the circumstances.

In August 2001 Amnesty International received allegations about the situation at the Oporto prison of Custóias. One report described continuing abuse of power by custodial staff, who habitually and arbitrarily beat prisoners, kicking and punching them and hitting them with truncheons or other objects. It also referred to continuing prison guards' passivity in relation to serious inter-prisoner violence and to daily and systematic sale of drugs.

In its report of its 1999 visit to Portugal, the CPT noted that the number of allegations of ill-treatment of prisoners by prison staff received by the CPT delegation was smaller than it had been during earlier visits. It added, however, that some allegations of ill-treatment were nonetheless received. While the most common type of ill-treatment alleged in the prisons visited consisted of "verbal abuse and rough treatment", at Lisbon Central Prison the CPT delegation received reports that "inmates had been removed from their cells during the night and struck by officers using batons; most such allegations related to prisoners who had been held in that establishment's disciplinary unit" (para. 43). Other allegations of ill-treatment by staff related to Lisbon Judicial Police Prison and Caxias Prison.¹⁸

Matters raised and information provided in the course of the HRC session on the issue of ill-treatment by prison officers

The HRC requested information regarding cases of ill-treatment and excessive use of force by prison officers and the measures in place to prevent, reduce and investigate such occurrences. In addition, the HRC noted that figures regarding incidents of ill-treatment by prison officers were absent from Portugal's third periodic report, and required the Portuguese delegation to provide them.

¹⁸ See at 14 *supra*, particularly paras. 42 to 48.

The Portuguese delegation acknowledged that cases of ill-treatment and abuse of authority by prison staff and violence among prisoners were a continuing concern to the prison service. The Portuguese delegation went on to say that in recent years preventive measures such as training of prison staff in deontology, psychology and human rights had been undertaken. The delegation referred also to internal prison service circulars that had been issued with the aim of reducing the risk of ill-treatment of prisoners by prison officers, including the circular forbidding the opening of cells at night, save in exceptional circumstances (on the latter, however, see above the criticism of the Ombudsman).

Finally, the delegation referred to the structures created within the prison service, i.e. the Service of Control and Inspection, created in 1994, constituted of three units coordinated by magistrates of the office of the public prosecutor; and the General Inspectorate of the Justice Services, created in 2000, which oversees services and structures of the Ministry of Justice or operating within its remit. Inmates may send confidential complaints to both structures, and investigations are opened as a result. Complaints by prisoners to these structures do not prevent further complaints being lodged elsewhere by inmates or their families.

The Portuguese delegation added that the periodic visits to prisons by magistrates responsible for the execution of sentences, required by law to visit prisons at least once a month, including to hear prisoners' grievances, constituted a further complaints and control mechanism. In addition, the Portuguese delegation added that the magistrates' visits, especially to large establishments, tend to occur more frequently, usually once a week.

The Portuguese delegation said that prisons were overseen also by the Ombudsman, who had published reports about prisons in 1996 and 1999, and was about to publish a third report; and by some parliamentary committees.

Rights of persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person (Article 10, ICCPR)

Prison conditions

In November 2002 a report that the Director General of the Prison Service (DGPS) had submitted to the Minister of Justice in April 2002 was leaked to the press in connection with the resignation of the DGPS. In his report the DGPS mentioned risks to the safety of prisoners due to a combination of factors including the inadequacy of resources, measures and procedures to ensure the protection of prisoners from inter-prisoner violence; difficulties in ensuring the separation of convicted prisoners from detainees in pre-trial custody at all times due to lack of staff; serious concerns about the health of prisoners because of the spreading of infectious diseases, such as tuberculosis and HIV, coupled with severe overcrowding;

unhygienic conditions in several prisons, including lack of adequate toilet facilities resulting in the practice of "slopping-out"; and widespread drugs trafficking.

In light of the DGPS's report, and given information received from several Portuguese lawyers and some foreign lawyers acting on behalf of persons detained in Portugal, Amnesty International's concerns about the situation in prisons deepened further. Such reports also provided the backdrop for the numerous individual allegations of inhuman and degrading conditions in many establishments -- including inadequate access to medical care and inadequate medical treatment -- that Amnesty International has continued to receive.

Overcrowding in prisons continues to be a major problem and has significantly contributed to rendering material conditions in some establishments inhuman and degrading. According to reports, some establishments hold well over double the maximum number of people that they are designed to accommodate. A major contributory factor to the problem of overcrowding is, according to many experts, including the Human Rights Commission of the Bar Association, the number of people in pre-trial detention, averaging about one third of the prison population. Pre-trial detention, which includes detention of charged persons awaiting trial but also of persons who have not yet been charged, may last for some years. As noted above, prison authorities have admitted to having difficulties in ensuring the separation of convicted prisoners from detainees in pre-trial custody in all establishments.

In 2001 Amnesty International received allegations about poor conditions at Linhó Prison, such as lack of cleanliness, infestations of cockroaches and mice, and unsatisfactory access to medical care. The latter was reportedly at the discretion of prison officers, who had no medical knowledge that would allow for an assessment of the urgency of a problem. Some inmates were said to be concerned about the presence in the wings of other inmates suffering from contagious diseases, and who had not fully recovered from their illness before being sent back to their cells. Amnesty International raised with the authorities, as one example of its concern, the case of Carlos Miguel Figueiredo Ferreira, who allegedly became blind following an eye infection that had not been properly and promptly attended to by medical staff at the prison, although he had told nurses at the prison he had been suffering from headaches for about a month and a half.

With regard to the case of Carlos Miguel Figueiredo Ferreira, the DGPS stated that an investigation was continuing into a complaint of medical neglect that had been brought by his brother.

Amnesty International has, for some time, been concerned about reports originating from Linhó Prison (see Amnesty International Report 2000). The CPT, which visited Linhó in 1992 and again in 1995, also expressed its concern about, among other things, the number of prisoners being held in isolation in the security unit and inadequate sanitary facilities.

In a letter to Amnesty International in April 2001 the DGPS said that Linhó Prison was being totally renovated. Renovation involved, among other things, the introduction of improved sanitary facilities.

In its report on its 1999 visit to Portugal the CPT noted that “The widespread availability of illicit drugs within a prison is bound to have very negative repercussions on all aspects of prison life and make it all the more difficult for the authorities to discharge their duty of care towards persons committed to prison and to provide a safe environment for them. Such problems existed in all four of the prisons visited. At Oporto Central Prison, the situation can only be qualified as being dramatic...” (para. 127) The CPT also recommended that the authorities put an end to overcrowding, which for example resulted at Lisbon and Oporto Central Prisons in the practice of holding three prisoners in cells measuring seven and nine square metres (para. 129); and that they give a very high priority to providing all prisoners with ready access to a lavatory at all times. The CPT delegation had in fact found that in the unrenovated parts of Leiria Special Prison prisoners did not have ready access to appropriate sanitary facilities and slopping out continued to be the norm (para. 69).

Matters raised by the HRC regarding prison conditions

The situation in prisons was the subject of numerous questions by the HRC. HRC members asked information about several aspects affecting the life of inmates. In particular, overcrowding, access to adequate medical care, measures taken to prevent the spreading of infectious diseases, and the reported inability to ensure the separation among people in pre-trial detention and convicted prisoners were among the issues raised during their questioning.

The Portuguese delegation mentioned a number of measures taken following the CPT visits in order to improve prison conditions, in particular in Oporto prison, where the number of prison officers had been increased and a new establishment had been built. Programs to combat drugs addiction and measures to prevent the entering of drugs in prisons were also in place, as other measures to prevent the spreading of infectious diseases. The Portuguese delegation said that overcrowding had decreased from 56 to 22 percent and that sanitary facilities had been provided in individual cells. However, the delegation did not specify whether this applied in all establishments in Portugal.

The HRC sought clarification regarding the reasons behind the very high number of people in pre-trial detention. Questions were asked about the terms of pre-trial detention, the procedure of *habeas corpus*, the availability of alternative measures, the right to compensation for people unlawfully detained, including whether compensation was automatically granted or it required the bringing of a law suit. The HRC noted that the Portuguese delegation maintained that pre-trial detention has a strictly exceptional character, but underlined that the figures available -- indicating that one third of the prison population was made up by people in pre-trial detention -- contradicted its claim that it was a measure of last-resort.

The Portuguese delegation, while continuing to defend the exceptionality of pre-trial detention and ensuring that its expiring terms were strictly adhered to, also provided information about the introduction of a system of electronic surveillance recently introduced in the area of Lisbon. The system is likely to be extended, allowing for a reduction of the number of people sent to pre-trial detention, if the person agreed to wear an electronic device to detect its movements.

The HRC asked several questions also about the use isolation in a single cell as a disciplinary measure, noting that appeal was available to prisoners only when the decision to hold them in a single cell exceeded eight days and with suspensive effect only from the eighth day. The Portuguese delegation, however, said that the legislation regarding the use of disciplinary measures was under review and the possibility of expanding the grounds for appealing against isolation was being considered.

Right to equality before the law and to the equal protection of the law (Articles 2 and 26, ICCPR)

Racism (see also under Police ill-treatment and racial abuse)

Amnesty International is concerned about reports of racial abuse by police officers and about allegations that policing may have been discriminatory on some occasions. The organization received reports by representatives of ethnic minorities' groups that they perceive police as being biased against them. Reports of racial abuse by police officers against members of the Roma community have continued.

In November 2002 the Council of Europe's European Commission against Racism and Intolerance (ECRI) published its second report on Portugal.¹⁹ ECRI acknowledged a number of positive steps taken by the authorities to combat racism, for example the adoption of Law 134/99 prohibiting racial discrimination; the launch of activities aimed at promoting the integration of immigrants and of members of the Roma/Gypsy community in education and work; initiatives to raise human rights awareness among police officers and judges; and the declaration recognising the competence of the Committee on the Elimination of Racial Discrimination (CERD) to examine individual applications. However, it also noted various persisting problems, including: the very few prosecutions brought under the provision of the criminal code which punishes activities carried out with the intent of inciting or encouraging racial or religious discrimination, hatred or violence; the lack of a general rule providing that racist motives constitute an aggravating circumstance for all offences; and the lack of reliable information about the situation of the various minority groups which live in the country.

¹⁹ CRI (2002) 33, *Second Report on Portugal*, www.coe.int/T/E/human_rights/Ecri/

ECRI noted that there had been “several reports of law enforcement officials using excessive force against detainees or other persons with whom they have come into conflict, a large proportion of them immigrants or Roma/Gypsies” and that Roma/Gypsies were reportedly subjected to “frequent spot checks, humiliating treatment and even ill-treatment at the hands of the police”. ECRI expressed particular concern about allegations that police officers responsible for such acts have gone unpunished and urged the authorities to combat impunity by ensuring that investigations into acts of ill-treatment committed against immigrants and members of the Roma/Gypsy community are duly carried out and that those responsible are identified and punished.

The CERD considered Portugal’s eighth report in April 1999 and ninth report in March 2001. The CERD expressed concern on both occasions about the occurrence of incidents of racial discrimination and xenophobia; and about the lack of detailed information about the effective enjoyment by ethnic groups, including refugees, foreign workers, Roma/Gypsies and citizens who obtained Portuguese nationality following the independence of the former colonies, of the rights contained in Article 5 of the International Convention on the Elimination of All Forms of racial Discrimination (right to access to and equal treatment before the courts).²⁰

In February 2002 the president of the local government of Freguesia de Gandra, Paredes, was sentenced to nine months’ imprisonment for having made racist remarks against Roma and black people in the course of a meeting of the local authority council (*assembleia municipal*) and later to the media in February 1997. According to the local non-governmental organization SOS Racismo, this was the first sentence of this kind to be imposed. Eight criminal investigations in total were reportedly opened in 2000 and 2001 for racism-related offences.

Matters raised by the HRC regarding racism and discrimination

The HRC asked several questions regarding the implementation of the legislation banning discrimination and incitement to national, racial and religious hatred, including statistics. The Portuguese delegation made reference to Portugal’s eighth periodic report to the CERD for details of cases in which the legislation had been used to address discrimination against Roma/Gypsies and the actions of fascist organizations (CERD/C/314/Add.1, paras. 80-89, 100-103 and 104-105).

The Portuguese delegation made reference also to the above-mentioned case involving defamation and insults by an elected official, which had resulted in the conviction of the official in February 2002, under article 240 of the Portuguese Penal Code. The official had also been required to issue an apology to the Gypsy community. The Portuguese

²⁰ Concluding observations of the Committee on the Elimination of Racial Discrimination: Portugal. 08/04/99. CERD/C/304/Add.67; and Portugal 21/03/2001. CERD/C/304/Add.117.

delegation acknowledged that the sentence imposed had been light, but stated that “the fact that the provision [of the Portuguese Criminal Code] had been successfully invoked was noteworthy”.²¹

The Portuguese delegation added that under Law 134/99, implemented by Decree-Law No. 111/2000, prohibiting racial discrimination in a broad range of areas, such as employment, the provision of services, commerce, housing and education, some 30 cases of racial discrimination had been brought to the attention of the competent administrative authorities during the period 2000-2002; 12 had been investigated, with administrative proceedings being brought under this legislation in five cases, while four cases had been referred to the Public Prosecutor’s Office.

Many further questions were asked by the HRC regarding the situation of Roma/Gypsies, in particular: data were requested regarding the geographical areas where they live; how many are on the electoral register; how may exercise their right to vote; and whether there are Roma/Gypsies members of parliament and police officers. Questions were also asked about the existence of measures of affirmative action/positive discrimination; the implementation -- or lack thereof -- of the obligation to ensure that Roma/Gypsies children attend school; figures regarding the presence of Roma/Gypsies in educational and cultural institutions; and the right to minimum wage for members of the Roma/Gypsy community.

The HRC asked also whether the measures requested in its recommendations by ECRI had been put in place, and what measures are in place to reduce the occurrence of incidents of police violence against Roma. In addition, the HRC noted that Portugal’s third periodic report contained much information about the numerous institutions established to address racism and discrimination in various forms, but very little information on what is happening in reality to members of minorities, including Roma/Gypsies. The HRC noted also that it had received reports critical of the effectiveness of the work of some of the institutions established to address these issues.

The Portuguese delegation acknowledged the need for further measures, including some involving positive discrimination, to improve the situation of the Roma community, whose members are particularly poor, and acknowledged also the difficulty to ensure that Roma children attend school and promised to provide the HRC with further information about various aspect of the situation of Roma.

Finally, the HRC asked to be briefed about any evidence of a backlash against ethnic minorities in Portugal in the aftermath of the events of 11 September 2001 on, and about the existence of an adequate framework/mechanism to ensure that incidents of discrimination,

²¹ Human Rights Committee 78th session, Summary Record of the 2110th meeting, 21 July 2003, CCPR/C/SR.2110, 28 July 2003. The Summary Record had not yet been consolidated at the time of writing.

including racial, would be detected if they occurred. The Portuguese delegation said that no reports of attacks on Jews or Muslims had been recorded as a result of the events of 11 September 2001, and that data about any crimes, including racially motivated, are sent monthly to the Ministry of Justice.

Amnesty International's recommendations

In the wake of the HRC's consideration of Portugal's third periodic report, Amnesty International reiterates its concerns about Portugal's failure to respect and ensure to all individuals within its territory the rights recognized in the ICCPR, without distinction of any kind (Article 2, ICCPR).

In light of the above-mentioned concerns and of the concerns expressed and the recommendations made by the HRC in its Concluding observations²², Amnesty International calls on the Portuguese authorities to:

- implement fully and as a matter of priority the recommendations of the HRC, including the one according to which their Concluding observations should be published and disseminated widely throughout the country;
- develop and publish a plan of action detailing how the authorities intend to implement the recommendations of the HRC, and publish periodic reports on the steps taken to implement them;
- ensure that in all cases of human rights violations in which police or prison personnel are reasonably suspected, a criminal investigation be promptly initiated and completed, and that those charged be brought to justice within reasonable time in the course of a fair trial;
- ensure that police or prison personnel reasonably suspected of human rights violations are brought to justice in the course of a fair and prompt trial, including in the cases of Ângelo Semedo, António Pereira, and Nuno Lucas; Paulo Silva; António Mendes dos Santos; Augusto Morgado Fernandes and António Oliveira Dias; Lin Aizhong; Mónica Godinho and Cláudia Domingues; Carlos Moreira and Augusta Monteiro; Nathalie Julien and Didier Eric Julien;
- ensure that all victims of human rights violations, or their families, have access to effective redress and receive adequate reparation;

²² See appendix.

- create an oversight agency over the police which is completely independent of the Ministry of the Interior, with powers to investigate grave human rights violations by law enforcement officials and to enforce disciplinary measures;
- ensure that in all cases in which police officers are subject to a criminal investigation on suspicion of having unlawfully used firearms, they be prevented from carrying firearms, as a precautionary measure to protect the public. In the most serious cases, suspension from active duty should also be considered at a minimum;
- ensure the protection of the right to life and of the physical and mental integrity of all people in police or prison custody, including by implementing the recommendations of the CPT, and by ensuring compliance with relevant international standards, including the European Prison Rules and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;
- ensure the separation of people held in pre-trial detention from convicted prisoners;
- ensure prompt and regular access to adequate medical care and access to adequate sanitary facilities at all times for all people in custody;
- improve and increase initial and continuous training of all police and prison personnel, including rank and file officers, in all areas relevant to the effective protection of the human rights of people in custody and of members of the public with whom they enter into contact. As a matter of priority, training should be improved in the use of firearms, both as to the circumstances in which firearms can lawfully be used and as to the technical aspects of their use. Training programs in suicide and self-harm prevention should be initiated or improved. All such training programs should seek to incorporate and operationalize relevant international human rights standards as appropriate;
- ensure the adequate and timely provision of resources to the office of the Ombudsman (*Provedor de Justiça*) so as to enable it to discharge fully and effectively its tasks, including a) overseeing the prison service; b) investigating inmates' complaints; c) carrying out unannounced visits to all establishments; and d) making its reports easily and timely available to members of the public;
- review policing of economically and socially deprived areas to prevent and combat all aspects of discriminatory law enforcement, and implement any changes in police training and practices as necessary; and
- ensure that statistical and other data concerning human rights issues -- including the number of criminal investigations of human rights violations allegedly committed by

police and prison personnel and the outcome of such investigations since the early 1990s -- be made easily accessible to members of the public. Such data should be provided in disaggregated form by gender, ethnicity and nationality.

APPENDIX I



**International Covenant
on Civil and
Political Rights**

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**Concluding observations of the Human Rights Committee :
Portugal. 05/07/2003.
CCPR/CO/78/PRT. (Concluding Observations/Comments)**

Convention Abbreviation: CCPR

UNEDITED VERSION

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

CONCLUDING OBSERVATIONS OF THE HUMAN RIGHTS COMMITTEE

PORTUGAL

1. The Human Rights Committee considered the third periodic report of Portugal (CCPR/C/PRT/2002/3) at its 2110th and 2111th meetings, held on 21 July 2003 (see CCPR/C/SR.2110 and 2111). It adopted the following concluding observations at its 2126th meeting (CCPR/C/SR.2126), held on 31 July 2003.

A. Introduction

2. The Committee welcomes the submission of the third periodic report of Portugal, and the opportunity to resume the dialogue with the State party after an interval of more than 10 years. In the view of the Committee, the failure to submit a report over such a long period constitutes an obstacle to in-depth consideration of the measures required to be taken to ensure satisfactory implementation of the Covenant. The Committee invites the State party to submit its reports henceforth in accordance with the reporting intervals established by the Committee.

3. The Committee welcomes the information provided in the report, as well as the oral and written information provided by the delegation. It regrets, however, the insufficient information on the practical implementation of the Covenant and on factors and difficulties preventing or impeding such implementation.

B. Positive aspects

4. The Committee appreciates the creation, in 1995, of the General Inspectorate of Internal Administration (IGAI) within the Ministry of Interior, with the mandate to open inquiries into reports of police abuse. It also welcomes the creation of the General Inspectorate of Justice Services in 2000, as well as of the Office of Ombudsman.

5. The Committee welcomes the decrease in prison overpopulation achieved over recent years, as well as the measures adopted to improve the situation of prisoners.

6. The Committee welcomes the right given to foreigners to vote and to be elected in local elections, as well as the recognition of greater political rights for citizens of Portuguese speaking countries, under condition of reciprocity.

7. The Committee notes with satisfaction that the State party has translated into Portuguese and disseminated numerous United Nations documents relating to human rights.

C. Principal subjects of concern and recommendations

8. The Committee is concerned about reported cases of disproportionate use of force and ill-treatment by the police, occurring particularly at the time of arrest and during police custody, and resulting, in some instances, in the death of the victims. Police violence against persons belonging to ethnic minorities appears to be recurrent. The Committee is equally concerned about the reported failure of the judicial and administrative systems to deal promptly and effectively with such cases, particularly those relating to the deaths of several persons in 2000 and 2001, allegedly caused by police officers. (Articles 2, 6, 7 and 26 of the Covenant).

a) The State party should end police violence without delay. It should increase its efforts to ensure that education on the prohibition of torture and ill-treatment, as well as sensitization on issues of racial discrimination, are

included in the training of law enforcement personnel. Efforts should also be made to recruit members of minority groups into the police.

b) The State party should ensure that all alleged cases of torture, ill-treatment and disproportionate use of force by police officers are fully and promptly investigated, that those found guilty are punished, and that compensation is provided to the victims or their families. To this end, a police oversight service, independent from the Ministry of the Interior, should be created. The State party is requested to provide the Committee with detailed statistical data on complaints relating to cases of torture, ill-treatment and disproportionate use of force by the police and their outcome, disaggregated by national and ethnic origin.

9. The Committee notes with concern that Portuguese regulations on Police use of firearms, as described in the periodic report, are not compatible with the UN Principles on the Use of Force and Firearms by Law Enforcement Officials. It is concerned that several persons have been shot dead by the police over recent years, and that training on the use of firearms is reported to be insufficient. (Articles 6 and 7 of the Covenant)

The State party should ensure that Principles 9, 14 and 16 of the UN Principles on the Use of Force and Firearms by Law Enforcement Officials, relating to legitimate cases of use of firearms, is fully integrated into Portuguese law and implemented in practice, and that adequate training is effectively conducted.

10. The Committee is concerned about reported cases of ill-treatment and abuse of authority by prison staff and of violence among prisoners, which, in some instances, have led to the death of the victims. (Articles 6, 7 and 10 of the Covenant)

a) The State party should increase its efforts towards the elimination of violence among prisoners and ill-treatment by prison staff, in particular through adequate training of staff and timely prosecution of offences.

b) The State party should keep the Committee informed about the outcome of the proceedings conducted as a result of the violent death of two prisoners in October 2001 in the prison in Vale de Judeus. Responses on allegations of ill-treatment by prison staff in the prisons of Custóias and of Linhó (Sintra) are also requested.

c) More comprehensive information on the status, mandate and achievements of the various agencies supervising prisons and dealing with complaints from detainees, should be provided to the Committee.

11. The Committee is concerned that, despite considerable improvement, overpopulation in prisons still amounts to 22 %, that access to health care remains problematic, and that the separation between pre-trial and convicted detainees is not always ensured in practice. (Articles 7 and 10 of the Covenant)

The State party should ensure that all persons deprived of liberty are treated with humanity and with respect for their inherent dignity as human beings. It should intensify its efforts towards the reduction of overpopulation in prisons, and ensure the effective separation of pre-trial and convicted detainees. Appropriate and timely medical care must be available to all detainees.

12. The Committee takes note that asylum-seekers whose application is deemed inadmissible (e.g. on the basis of the exclusion clauses of Article 1 F of the 1951 Convention on Refugees; because they have missed the 8-day deadline for submitting their application) are not deported to countries with an armed conflict or systematic violations of human rights. However, it remains concerned that applicable domestic law does not provide effective remedies against forcible return in violation of the State party's obligation under Article 7 of the Covenant.

The State party should ensure that persons whose application for asylum is declared inadmissible are not forcibly returned to countries where there are substantial grounds for believing that he/she would be in danger of being subjected to arbitrary deprivation of life or torture or ill-treatment, and to provide, in this regard, effective remedies in domestic law.

13. The Committee expresses concern about reported cases of police failure to register arrests and detentions. (Article 9 of the Covenant)

The State party should ensure that all arrests and detentions are registered, in particular through the improvement of its supervision system and the training of police officers.

14. The Committee is concerned that a person may be held in preventive detention during a period of 6 to 12 months before charges are brought against him/her, and that preventive detention, in exceptional cases, can last up to 4 years, a period to which other delays from 3 to 6 months may be added. It further notes with concern that, in spite of the exceptional character of preventive detention, as stated in the Code of criminal procedure, almost one third of detained persons in Portugal are in preventive detention. (Articles 9 and 14 of the Covenant)

The State party should amend its legislation in order to ensure that charges are brought against persons detained in preventive detention, and that all persons

are tried, within a reasonable time. It should ensure that in practice magistrates only pronounce preventive detention as a last resort.

15. The Committee notes with concern that many of the provisions relating to terrorism in the Penal Code and Code of Penal Procedure relate to exceptional situations which may result in violations of articles 9, 15 and 17 of the Covenant.

The State party should ensure that measures taken against terrorism do not infringe the Covenant, and that exceptional provisions are not abused by State officials.

16. The Committee notes with concern that detainees subject to solitary confinement as a disciplinary measure may only lodge an appeal if the period of confinement exceeds eight days. The Committee is also concerned that during solitary confinement the daily supervision of detainees by fully qualified medical staff is not guaranteed. (Article 10 of the Covenant)

The State party should ensure the right of detainees to an effective remedy, with suspensive effect, against all disciplinary measures of solitary confinement and should guarantee the daily supervision of detainees by fully qualified medical staff during solitary confinement.

17. The Committee notes that an accessory penalty of expulsion may not be imposed on resident aliens when the person concerned was born and lives in Portugal, or exercises parental authority over under age children residing in Portugal, or has been in Portugal since he/she was less than 10 years old. The Committee is concerned, however, that those limitations may not protect the family life in all cases, and that non resident aliens do not benefit from such guarantees (Articles 17 and 26 of the Covenant).

The State party should amend its legislation in order to ensure the full protection of family life of resident and non resident aliens sentenced to an accessory penalty of expulsion.

18. The Committee is concerned that lawyers and medical doctors may be required to give evidence despite their duty of confidentiality, in cases which are described in very broad terms by the Code of Criminal Procedure. (Article 17 of the Covenant)

The State party should amend its legislation so that it specifies the precise circumstances in which limitations on the professional privilege of lawyers and medical doctors are imposed.

19. The Committee notes with concern that, despite numerous protective legislative measures, the proportion of juvenile workers has increased in Portugal since 1998, and that no statistics have been elaborated regarding the worst forms of child labour. (Article 24 of the Covenant)

The State party should intensify its efforts towards the elimination of child labour, conduct studies on the existence of the worst forms of child labour, and strengthen the effectiveness of its supervisory system in this area. In its next periodic report, the State party should provide the Committee with detailed information regarding the practical application of article 24 of the Covenant, including on criminal and administrative sanctions which have been pronounced.

20. The Committee is concerned that, despite extensive positive measures adopted by the State party, the Roma continue to suffer from prejudice and discrimination, particularly with regard to access to housing, employment and social services, and that the State party was unable to submit detailed information, including statistical information, on the situation of these communities as well as on the results achieved by the institutions responsible the advancement and welfare of the Roma. (Articles 26 and 27 of the Covenant.)

a) The State party should intensify its efforts towards the integration of Roma communities in Portugal, respectful of their cultural identity, in particular through the adoption of positive action, with regard to housing, employment, education and social services.

b) The State party should submit detailed information to the Committee about the situation and difficulties encountered by the Roma people, as well as on the results achieved by the High Commissioner for Immigration and Ethnic Minorities (ACIME), the Commission for Equality and against Racial Discrimination (CICDR), and the Working Group for the Equality and Integration of Roma (GTIIC). Information relating to complaints filed to those institutions by members of ethnic minorities in Portugal and their outcome should also be provided.

21. The Committee regrets that insufficient information was provided about the activities and the achievements of the Ombudsman. (Article 2 of the Covenant)

The State party should submit more comprehensive information about the Ombudsman, and provide the Committee with copies of the Ombudsman's annual report.

22. The Committee sets 1 August 2008 as the date of submission of Portugal's fourth periodic report. It requests that the text of the State party's third periodic report and the present concluding observations be published and widely disseminated throughout the country, and that the fourth periodic report be brought to the attention of non-governmental organizations working in Portugal.

23. In accordance with rule 70, paragraph 5, of the Committee's rules of procedure, the State party should provide information within one year on its response to the Committee's recommendations contained in paragraphs 8 to 10. The Committee requests the State party to provide information in its next report on the other recommendations made and on the implementation of the Covenant as a whole.