

---

# **ADVANCE UNEDITED VERSION**

---

---

## **Human Rights Committee**

### **Concluding observations on the fourth periodic report of the Portugal, adopted by the Committee at its 106<sup>th</sup> session, 15 October to 2 November**

1. The Committee considered the fourth periodic of Portugal (CCPR/C/PRT/4) at its 2936<sup>th</sup> and 2937<sup>th</sup> meetings (CCPR/C/SR/2936 and CCPR/C/SR/2937), held on 23 and 24 October 2012. At its 2945<sup>th</sup> meeting (CCPR/C/SR/2945), held on 31 October 2012, it adopted the following concluding observations.

#### **A. Introduction**

2. The Committee welcomes the fourth periodic report of Portugal and the information presented therein. It expresses appreciation for the constructive dialogue with the State party's delegation on the measures that the State party has taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/PRT/Q/4/Add.1) to the list of issues (CCPR/C/PRT/Q/4) which were supplemented by the oral responses provided by the delegation and for the supplementary information provided to it in writing.

#### **B. Positive aspects**

3. The Committee welcomes:

- (a) the adoption of the Second National Plan against Trafficking in Human Beings (2012-2013);
- (b) the adoption in 2011 of the fourth National Plan for Gender Equality;
- (c) the amendment to the Penal Code in 2007, criminalizing all forms of corporal punishment of children and making domestic violence an autonomous crime;
- (d) the setting up in 2005 of a National Network of Domestic Violence Centres; and
- (e) the creation in 2007 of the Office to Support Roma Communities, as well as the establishment of a Pilot Project for Municipal Roma Mediators.

#### **C. Principal matters of concern and recommendations**

4. The Committee is concerned that women are underrepresented in decision-making positions in the public sector, including in the Foreign Service, as well as in the legislative assemblies of the autonomous regions of the Azores and Madeira. The Committee is also concerned about the significant and increasing wage gap between men and women (articles 2, 3, 25, 26).

**The State party should strengthen its efforts to increase the representation of women in decision-making positions in the public sector, including in the Foreign Service, as well as in the legislative assemblies of the autonomous regions of the Azores and Madeira, if necessary, through appropriate temporary special measures. The State party should**

**continue to take steps to guarantee equal pay for women and men for work of equal value, in line with the 2009 Labor Code. It should also take steps to address the structural difficulties identified with regard to the implementation of gender-equality policies, including insufficient human and financial resources, limited conceptions of equality in public opinion and lack of political commitment, as mentioned in paragraph 47 of the State party's fourth periodic report.**

5. The Committee is concerned that, despite considerable action taken by the State party, immigrants, foreigners and ethnic minorities, including the Roma minority, continue to face discrimination in access to housing, employment, education, equal wages, health care and public services as well as participation in public life. The Committee is also concerned about reports of racist and discriminatory conduct by law enforcement personnel (articles 2, 25, 26).

**The State party should intensify measures to ensure that immigrants, foreigners and ethnic minorities, including the Roma minority, do not suffer from discrimination in access to housing, employment, education, equal wages, health care and public services as well as participation in public life. The State party should also take steps to ensure that law enforcement personnel refrain from racist and discriminatory conduct, including through intensified awareness raising efforts.**

6. The Committee is concerned that under article 143, paragraph 4, of the Code of Criminal Procedure detainees are prevented from communicating with other persons in cases of terrorism or violent or highly organized crimes, until such time as the detainee is brought before a court (articles 7, 9, 10).

**The State party should take measures to ensure that detention ordered by the Public Prosecutor's Office, under article 143, paragraph 4, of the Code of Criminal Procedure, in cases of terrorism or violent or highly organized crime, is strictly regulated, that detainees held under this provision are under judicial supervision, and that limits on their communication with third persons are stringently reviewed by the judiciary.**

7. The Committee is concerned that time spent in custody for identification purposes, which is carried over into a detention for a suspected crime, is not counted as part of the 48 hour period within which a detained person must be brought before a judge, and that persons suspected of crime are not afforded the protections of criminal suspects during this period (articles 7, 9, 10).

**The State party should take measures to ensure that time spent in custody for identification purposes, which is carried over into a detention for a suspected crime, is considered part of the 48 hour period within which a detained person must be brought before a judge and that such time is not misused to circumvent the rights of persons detained on suspicion of crime.**

8. The Committee is concerned that law enforcement officials do not always inform detainees of their right to legal counsel from the time of arrest, and that some detainees in ordinary criminal cases have not been allowed to contact a third party whilst in police custody (articles 7, 9, 10).

**The State party should ensure that detained persons have an effective right of access to legal counsel from the time they become subject to police custody, and that law enforcement officials abide by the legal duty to inform all persons deprived of their liberty of their rights. The State party should also take steps to ensure that persons in police custody, including those held by the Judicial Police, are guaranteed the right to notify a third party of their detention, subject only to clearly defined and time-limited exceptions aimed at protecting legitimate interests of the police investigation.**

9. The Committee is concerned that the average pre-trial detention time is excessively long, with approximately 20 per cent of pre-trial detainees spending more than one year in detention. It is also concerned that pre-trial detainees have been held together with convicted criminals (articles 9, 10).

**The State party should take further steps to reduce the number of persons in pre-trial detention as well as the duration of such detention, including through measures aimed at**

**reducing the length of investigations and legal procedures, and at improving judicial efficiency and addressing staff shortages. It should also ensure that pre-trial detainees are held separately from convicted criminals.**

10. The Committee continues to be concerned about reports of excessive use of force and ill-treatment by law enforcement officials and members of the security forces, and by the authorisation for use of "Taser" weapons under certain circumstances (articles 7, 9, 10).

**The State party should continue to take steps, legislative or otherwise, to prevent the excessive use of force and ill-treatment by law enforcement officials and members of the security forces. The State party should include in its next periodic report information on the number of complaints since 2011, investigations carried out by the Inspectorate General of Internal Administration and internal investigation departments of local police services, and punishments handed down in each case. The report should also include fuller information about the regulation and use of electric shock devices, such as "Tasers".**

11. The Committee is concerned that some prisons are faced with overcrowding, inadequate facilities, and poor health conditions. It is concerned about drug abuse by detainees, as well as the high rate of detainees with HIV/AIDS and hepatitis C. The Committee is also concerned about some reports of physical ill-treatment and other forms of abuse by prison guards at Monsanto High Security, Coimbra Central and Oporto Central prisons (articles 7, 10).

**The State party should expedite its efforts to address the problem of overcrowding in prisons, including the Angra do Heroísmo Regional Prison (Azores), as well as inadequate facilities, availability of drugs and drug dependence, and the high rate of HIV/AIDS and hepatitis C in correctional institutions. It should also take steps, legislative or otherwise, to prevent physical ill-treatment and other forms of abuse, including excessive strip searches, by prison guards.**

12. The Committee is concerned that domestic violence continues to be prevalent and that victims of domestic violence often do not report the crime due to traditional societal attitudes (articles 7, 9).

**The State party should continue to take steps, in particular within its Fourth National Action Plan against Domestic Violence 2011-2013, to combat and prevent domestic violence and ensure that victims have effective access to complaints mechanisms. It should ensure that victims have access to means of protection, including adequate numbers of shelters set up for women victims. The State party should also ensure that acts of domestic violence are effectively investigated and that perpetrators are brought to justice and sanctioned.**

13. The Committee is concerned that the State party continues to be a destination, transit and source country for women, men and children subjected to trafficking for sexual exploitation and forced labour. It is also concerned that article 160 of the Penal Code employs an overly broad definition of trafficking that includes lesser crimes, complicating the assessment of the extent of prosecution, conviction and sentencing of trafficking offenders (art.8).

**The State party should intensify its efforts to combat trafficking in persons and should change its methods of collecting and reporting data in order to present a more useful description of the legal response. It should also provide in its next periodic report information, on an annual basis since 2011, on the number of victims of the crime of trafficking for sexual and other exploitative purposes, such as forced labour, as well as the number of prosecutions and convictions of perpetrators.**

14. The Committee notes with concern that persons do not have the right to defend themselves in person in criminal proceedings, due to obligatory representation by a lawyer, in contravention of article 14, paragraph 3, (d) of the Covenant (see the Views of the Committee in respect of Communication No.1123/2002) (art.14).

**The State party should ensure that persons are able to exercise their right to defend themselves in person, in line with article 14, paragraph 3, (d) of the Covenant [, and that**

**any restriction of this right has an objective and sufficiently serious purpose and not go beyond what is necessary to uphold the interests of justice. In this light, the State party should implement the recommendation in the Committee's Views in Communication No.1123/2002 and make the present rule less rigid and consider the compulsory provision of back-up counsel to advise defendants who defend themselves.**

15. The State party should widely disseminate the Covenant, the text of the fourth periodic report, the written responses it has provided in response to the list of issues drawn up by the Committee, and the present concluding observations so as to increase awareness among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, as well as the general public. The Committee also suggests that the report and the concluding observations be translated into the official language of the State party. The Committee also requests the State party, when preparing its fifth periodic report, to broadly consult with civil society and non-governmental organizations.

16. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 9, 11 and 12 above.

17. The Committee requests the State party, in its next periodic report, due to be submitted on 31 October 2018, to provide, specific, up-to-date information on all its recommendations and on the Covenant as a whole.

---