



PROVEDOR DE JUSTIÇA

Gabinete da Provedora

NHRI STATEMENT

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

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

Distinguished Members of the Committee,

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

The Portuguese Ombudsman welcomes the seventh periodic report submitted by Portugal under article 19 of the Convention pursuant to the optional reporting procedure. During the reporting period, the Portuguese State has achieved significant milestones with regards to the prevention of torture and ill-treatment. The Ombudsman specifically applauds the reforms adopted in field of criminal law.

Notwithstanding, with a privileged perspective due to its field presence via the visits of the National Preventive Mechanism to places of deprivation of liberty, the Ombudsman believes that it should provide the Committee with additional information with regards to issues it has encountered in those visits.

Given the fact that we can divide the issues by category, we will provide a brief summary of our main conclusions and concerns with regards to different types of places of deprivation of liberty.

We will begin by focusing on prisons. Most of the issues that can be raised with regards to the Portuguese penal system stem from the lack of investment in infrastructures and human resources. These are structural problems that impact, on various degrees, all prisons in Portugal.

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

bigger prisons with larger populations. Furthermore, it is often the case that without more human resources, some activities cannot happen. This includes working outside prison walls, more activities within prison, and even effective access to medical and other appointments.

This problem had even graver consequences in 2018, a year marked by prison guards' strikes. The Ombudsman will not make any valuation on the reasons behind this collective movement, but the consequences and some of the underlying issues related to the strikes ought to be noted. During this period, we have received several complaints from all the main protagonists of prison daily life. Prisons became harder to manage, and guards reported feelings of tiredness and frustration. Communication with inmates became harder, with negative consequences to security. Prisoners felt “increased punishment”, with longer periods of time locked in their cells, canteens being closed, activities cancelled, reduced number of visits and telephone contacts. As a result, this was a particularly sensitive time in terms of the prevention of ill-treatment.

In relation to infrastructures, some buildings are too old and require urgent intervention to guarantee that minimum requirements of health and safety are complied with. For example, the NPM has seen in more than one occasion toilets that were not separated from either other toilets or showers, with no privacy nor security for inmates in these vulnerable moments; in older prisons, complaints about cockroaches and other bugs were common. The NPM has visited several prisons with decaying conditions, where cells are small, humid and lack adequate lighting and temperature.

Further, the distribution of the prison population faces complex challenges. Contrarily to the Mandela Rules, most of the prisons' accommodation consists of more than one person per cell, with obvious implications in terms of space, comfort and privacy, as well as potential impact on prisoners' mental health.

Portuguese prisons are heterogeneous in terms of size, occupancy rate, and occupational opportunities. The NPM visits noted that bigger prisons are associated with more impersonal incarceration experiences, with more distance between staff and offenders. At times, this has led to inadequate treatment, with, for instance, inmates commenting that they felt degraded when called by a number.

The prison experience is also negatively affected by the shortage of occupational opportunities, such as labor, education and leisure. In particular, the NPM highlights the need to ensure more – and better paid – job vacancies, based on more partnerships with civil society organizations and companies. In this context, the Ombudsman recalls that the Subcommittee recommended Portugal to “*broaden the work, education, rehabilitation and recreational opportunities for prisoners*”, and that “*fairly remunerated work opportunities be made available to all detainees*”.

Contact with the outside world is another issue of concern. The General Rules of Prison Establishments state that prisoners can only make two five-minute phone calls a day – one to family and friends, another to a lawyer or solicitor. The first part has been subject to recurrent criticism of the Ombudsman, as one five-minute phone call per day is not enough to promote personal ties, which are known to be fundamental to the reintegration of offenders in society. This issue, which is linked to the existence of a black market of mobile phones in prisons (correlated with incidences of violence and intimidation), has been on the spotlight recently, with the Directorate-General for Reinsertion and Prison Services announcing its willingness to study alternatives to this situation.

Vulnerability in prisons continues to be a concern. The clearest situation is that of sexual offenders who, for security reasons, are often separated from the rest of the prison population. While the Ombudsman understands and supports the special care provided to such detainees, due to the frequency of incidences of violence they tend to experience, it must be ensured that this separation does not have detrimental consequences to their daily prison life. Alas, the NPM has noted situations of further deprivations, in which these vulnerable offenders are placed in cells that have inhumane conditions, are granted fewer hours out of their cells, lack access to activities, among others.

In addition, the Ombudsman underlines that prisons ought to be prepared to provide special care for lactating women, which has not always been the case. Failure to respond to such needs may configure in itself a degrading treatment.

Another issue that is worth mentioning is the way in which new inmates are accommodated in “transitional” or “first” cells. These are individual cells, where new

inmates stay for a few days before being integrated in the regular prison environment. Some prisons argue that this way of welcoming newly arrived inmates provides time for the prison staff to analyze which prison area best fits the newcomer. Although this purpose is understandable and desirable, its execution raises some doubts. In some prisons, the “transitional” cell is located next to the disciplinary cells and stays in both cells may seem to be equivalent. The Ombudsman calls attention to unnecessary isolation, which may worsen the experience of the first hours in prison and can be similar to disciplinary isolation measures.

Finally, contrarily to §23 of our report, there has been a positive development with regards to the disciplinary measure of solitary confinement. The Director-General has recommended that its application should not exceed 15 consecutive days.

Before finalizing the analysis of the prisons, the Ombudsman ought to highlight some good practices that it has found and that deserve applause. We note successful initiatives with respect prisoners with drug addictions, with therapeutic programs that separate them from the rest of the prison population. Finally, the NPM has witnessed the efforts of many staff members and Directors of prisons, who often do a lot with very little.

Secondly, we will address the educational guardianship centres. Deprivation of liberty in these centres is the most restrictive measure among the list of options available to those children or adolescents who, between the age of twelve and sixteen, commit an offence qualified as a crime by criminal law.

The NPM has been paying particular attention to the mental health issues associated with educational guardianship centres, as its population has shown a prevalence of mental health problems. The lack of specific therapeutic units for these young offenders is a cause for concern. No other alternatives are yet available, although in response to a Recommendation from the Ombudsman, the Directorate General has mentioned that the creation of such units is considered to be one of the priorities for the 2019-2020 biennium. More psychiatrists in the centers are also required to ensure adequate treatment to those in need. Further, in various visits to educational guardianship centres, the NPM has noted

the lack of specialized staff whose purpose is to help its population to gain the competences required to reintegrate in society upon release.

With regards to contact with the outside world, the Ombudsman applauds the fact that, after a Recommendation, the educational guardianship centres have increased the number and the duration of the available phone calls for those detained therein, as well as the access to videoconference to those who lacked visits due to the geographic distance of their families to the centers in which they were detained.

Despite some shortcomings, however, the dynamics found in most of these centers are good, with positive environments and committed staff and management. The opportunities for education and the protection the centers offer to its young population have been highlighted by those deprived of their liberty.

Third, we will now address the Ombudsman's main concerns as regards migrants' detention centres.

In Portugal, there is only one temporary migrant's detention centre, located in Porto. All other centres are located in the international areas in the airports. Foreigners whose entry into the country is refused, as well as asylum seekers to whom detention applies, are held in these airports' centres.

Over the last two years, the NPM's activity has focused with special acuteness on migrants' temporary detention centres located at the external borders. These centres, which have two wings that separate asylum seekers and other migrants whose entry in the national territory was refused, detain persons for a maximum of 60 days, according to the Portuguese Immigration and Asylum Law. However, they do not offer the minimum conditions for accommodating persons for such a long period of time. They are installed in very small spaces and accommodation consists in dormitories with several bunk beds (where children are also accommodated), and there are no leisure areas, apart from a small concrete patio. Overcrowding is frequent in the centre located in Lisbon. The centre has a capacity for 58 detainees, but in the NPM's last visit there were 83 persons accommodated. On the contrary, at the Porto's centre, the NPM recorded moments of excessive isolation,

having recommended measures aimed at transferring isolated persons to the Porto's housing center.

Access to outside world is also very limited. In Lisbon's airport, visits made by lawyers or family members require an accreditation process with the airport's private security company. The NPM itself was already impeded to freely enter to the international airport area without accreditation. Lawyers have to pay an 11 Euros fee to access the premises, thus seriously jeopardising the detainee's fundamental right to access to a lawyer.

The constraints imposed to the access to lawyers are even more worrisome due to the lack of a judicial hearing to those who are held in detention. In its several visits, the NPM team was informed that the Aliens and Borders Service requests the judicial authorisation to maintain a migrant in detention by fax. The court responds by the same means, without hearing the detainee in person. This fact may preclude a broad understanding of the personal circumstances of the detainees, including accompanying family members, their possible consideration as "especially vulnerable persons". It also may prevent the application of alternative measures to detention, thus leading, as the NPM witnessed, to a systematic detention of asylum seekers at the external borders.

The rarity of family visits to these places of detention is aggravated by the restricted telephone contacts allowed in the centres. As a norm, detainees are only allowed to use the phone for 5 minutes during the entire stay. Although the Borders Police claims that they may ask for more phone time, rules and information on that possibility are not clear. The Ombudsman is extremely concerned with the manifestly insufficient contact with the outside world, as many asylum seekers have reported escaping from their home countries for fear of persecution or ill-treatment and have left their families behind. Under these circumstances, many detainees show a very fragile emotional state, and their mental health is at serious risk – which is aggravated due to the lack of regular psychological monitoring.

Finally, the Ombudsman is also extremely worried with detention of migrant children in the airport's centres. They are normally accommodated with their mothers in the womens' dormitory or, when only accompanied by the father, in the men's facility. However, the possibility of migrant child detention in airport's centres underwent a positive evolution in 2018, as the Minister of Home Affairs issued an order stating that the maximum stay therein for children under 16 years would be of seven days. After this

deadline, children must be received by the Refugee Shelter House managed by the Refugee Council, and their parents should accompany them. Despite recognizing that this development is positive, the Ombudsman considers that the best interests of children always conflicts with their deprivation of liberty and detention - even though it understands the difficulty of pondering some situations, namely regarding suspicions of human trafficking or fear of escape. However, in its last visit, the NPM could verify that some efforts were made to better accommodate children in the Lisbon's airport centre, by providing toys and better food to detainees.

Following NPM's visits and conclusions, which were dully discussed with the Ministry of Internal Affairs, the latter has made a compromise to open a new detention center in Almoçageme during 2019. However, to the present date, the new centre has not opened, and so migrants remain detained in the airport's facilities.

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

We thank you once again for this opportunity and look forward to continuing a constructive debate with State authorities in order to ensure that Portugal fulfils its obligations with regards to torture prevention.



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