

Portugal**Questionnaire on the use of legislation, including criminal legislation, to regulate the activities and work of human rights defenders**

It would be greatly appreciated if responses were brief. They may be submitted in bullet points if preferred.

For non-governmental organizations, should they wish, their identity will remain confidential (only the country where they operate will be disclosed). Furthermore, they need only answer questions which are relevant to them, and may share information about defenders other than themselves.

1. a) Please indicate if your country has a specific legal framework, laws or regulations that aim to facilitate or protect the activities and work of human rights defenders. Please cite the names of any such laws or regulations in full.

There is no specific framework related to the activities and work of human rights defenders as such. Its regulation can be found within the legal framework for associations (see nr. 354 to 386 of the Core document, HRI/CORE/PRT/2011) or volunteering (Law nr. 71/98, of 3 November, establishing the legal framework for volunteering and Decree-Law nr. 389/99, of 30 September, regulating that law).

b) Please indicate how these laws and regulations are in line with international human rights standards, including, but not limited to, the Declaration on Human Rights Defenders.

The existing legal framework, both at the constitutional and at the legal level, guarantees, *inter alia*, in general terms, the right of assembly and to demonstrate (Article 45 of the Constitution), the right to associate (Article 46 of the Constitution), the freedom of expression and the right to receive and impart information (Article 37 of the Constitution), the rights of political participation and the right to complain (both in criminal or administrative procedures).

c) Please also indicate what legal or administrative safeguards are put in place to prevent baseless legal action against and/or prosecution of human rights defenders for undertaking their legitimate work.

At the constitutional level, Article 18 limits the restrictions to the rights and liberties established in the Constitution to the ones expressly contemplated in the Constitution itself, confined by the

principle of necessity and proportionality. Article 21 of the Constitution safeguards the right to resist to any order offending the respective rights and liberties and to repel by force any aggression whenever it is not possible to resort to the public authorities. Article 22 of the Constitution states that the State and all public entities are responsible for their actions or omissions resulting in a violation of rights and liberties. The Constitution also obliges the Public Administration to act in the public interest, respecting rights and interests of citizens, and to motivate its acts (Articles 266 and 268 of the Constitution). Several guarantees in criminal procedure are also safeguarded in the Constitution, namely the right of appeal (Articles 27 to 32 of the Constitution). It should also be mentioned Article 20 of the Constitution, which guarantees to everybody access to law and courts and the right to an effective remedy, including the right to bring a legal adviser before any authority.

These constitutional standards have civil, criminal or administrative regulation.

Also, the activities of justice services are subject to the monitoring of internal disciplinary units, of the Inspectorate-General for Justice Services (depending on the Ministry of Justice) and, eventually, of Public Prosecution.

2. a) Please describe the measures taken, if any, to ensure that your country's national security-related laws (including laws on public order, public safety, respect for morals and counter-terrorism laws) are not used to unduly restrict the scope of activities of human rights defenders.

b) Please also indicate in particular how these national security-related laws respect the human right to freedom of expression and opinion.

Sugerimos a consulta do Ministério da Defesa Nacional.

3. a) Please describe the measures taken, if any, to ensure that provisions of the criminal code, or other national laws, are not ambiguous or too broad to allow their arbitrary use, thereby restricting the activities of human rights defenders.

Criminal procedure is framed by the principle of legality – *nullum crimen, nulla poena, sine lege scripta, stricta, proevia, certa* – so criminal infractions cannot be ambiguous or susceptible of arbitrary use. In any case, the Constitution safeguards the right of appeal in criminal procedures and *habeas corpus*.

On the other hand, much effort is given in education and training of legal practitioners and police agents, including in the field of human rights. Great attention is given, *inter alia*, to the standards and case law of the European Court of Human Rights.

b) Please indicate what legal or administrative safeguards are in place in order to ensure that human rights defenders are not discriminated against in the administration of justice, be it through the handing down of disproportionate sentences, the unreasonable prolongation of criminal or other trials, or any other means.

There is no specific safeguard directed to human rights defenders as such. The principle of non discrimination is both constitutionally and legally established and it applies to everyone, as well as the criminal guarantees established in the Constitution (Articles 27 to 32) and applies to human rights defenders.

On the other hand, as already mentioned, much effort is given in education and training of legal practitioners, including in the field of human rights. Great attention is given, *inter alia*, to the standards and case law of the European Court of Human Rights.

4. a) Please indicate if your country has specific laws or administrative rules governing the registration, functioning and funding of non-governmental organisations. Please cite the names of any such laws or regulations in full.

b) Please explain how these legal or administrative provisions comply with your country's international human rights obligations regarding the right to freedom of association.

See nr. 172 to 180 and nr. 354 to 415 of the Core document (HRI/CORE/PRT/2011). The National Register of Collective Persons is regulated by Decree-Law nr. 128/98, of 13 may (as modified by the last time by Law nr. 29/2009, of 29 may).

5. a) Are there criminal or other legal or administrative sanctions for human rights defenders who undertake activities on an individual basis or while the association they are members of is unregistered?

No. Nonetheless, the registry of the association is necessary to the recognition of its legal personality and capacity and therefore it is important for the association to be granted public benefits or funding. Also the public recognition of the volunteer may allow him/her to benefit from rights established by the laws regulating and promoting volunteering.

b) If such a legal framework exists, does it restrict the type of activities that human rights defenders can undertake? If yes, please provide further details.

N.a.

6. Please indicate the measures taken, if any, to ensure that internal security and official secret-related laws are not used to deny freedom of information to human rights defenders and to

prosecute them for their efforts to seek and disseminate information on the observance of human rights standards.

Sugerimos a consulta do Ministério da Defesa Nacional/Ministério da Administração Interna.

7. a) Please indicate the measures taken, if any, to avoid the use of defamation, slander or blasphemy laws to unduly restrict the right to freedom of opinion and expression of human rights defenders.

The crimes of defamation and slander (there is no crime of blasphemy in the Portuguese Criminal Code) intend to protect the honour, reputation and dignity of a person. However, in general terms, the act is not punishable when the imputation is intended to realize a legitimate interest and it is proved to be true (or if there were serious motivations for the agent to believe it was true). These general rules apply to human rights defenders.

b) How is it ensured that such laws, as well as laws on printing, publication and censorship, comply with international human rights standards and do not target human rights defenders carrying out their legitimate work?

These laws and their application may be scrutinised by judicial courts, by the Constitutional Court and by the European Court of Human Rights, as well as by all non-judicial competent entities to which Portugal is bound (such as, Human Rights Committees). Freedom of expression and the right to receive and impart information are guaranteed in the Constitution (Article 37).

8. Please indicate if any other type of legislation is used to regulate the activities of human rights defenders in your country and how the application of the legislation mentioned affects the activities of human rights defenders. Please cite the names of any such legislation in full.

See nr. 355. to 386. of the Core document (HRI/CORE/PRT/2011).