**PORTUGUESE REPLY TO THE AD HOC COMMITTEE ON THE ELABORATION OF COMPLEMENTARY STANDARDS TO THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION**

**Questionnaire (Paragraph 4 of A/HRC/21/30)**

**Bearing in mind the text of resolution A/HRC/21/30:**

1. **Kindly provide information on the phenomena of xenophobia in your national context, including any general trends.**

Portugal, one of the leading countries in integration policies, has been making considerable efforts and investments in order to combat all forms of racial discrimination and to integrate all the groups included in the Portuguese intercultural society, ensuring the full access of all human, civil, cultural, economic, political, and social rights.

Portuguese policy investments have been internationally recognised. Portugal has been ranked in 2011, for the second consecutive time, the second country (among 31 developed countries) with the best policies for immigrants’ integration by the *Migrant Integration Policy Index*. Furthermore, in 2009, the *United Nations Human Development Report 2009* recognised Portugal as the country with the best legal framework in the protection of migrant rights.

A good example of that effort and commitment is the fact that Portugal has a public institute (High Commission for Migrations - ACM) that – among other competences - is responsible for combating racism and xenophobia, for promoting the integration of immigrants and Roma communities, and for promoting intercultural and inter-religious dialogue. The High Commission for Migrations reports to the Ministry of Presidency, which due to its work with transversal dimensions of public policies adopts a holistic approach when dealing with the issues stated above.

We apply a comprehensive and integrated vision to the phenomenon of racism and immigration, following an intercultural model based on integration as a two-way process and always bearing in mind the need to respect and protect all human rights. Our goal is a mutual process of integration, without assimilation or segregation.

Regarding general trends in Portugal, the political arguments advocated by the extreme right-wing parties, propagating racist attitudes and xenophobia, have not led, at this point, to significant electoral gains. The extremist right wing party that advertised in 2009 “Portugal for the Portuguese” and other similar slogans obtained around 17.742 votes at the 2011 election, representing 0.32% of votes cast which did not allow them to elect a single representative in the Portuguese Parliament. This low success rate reflects, on one hand, a lack of willingness on the part of the electorate to support these ideas but also lack of political weight and an inability to cast significant influence over government and legislation. Unlike other European countries, Portuguese extremist right-wing parties had no influence upon government formation, the choice of Prime Minister, or definition of public policies.

1. **How is xenophobia addressed in your country (include any legal and judicial frameworks and practices, substantive and procedural measures?**

The Portuguese Constitution embodies the principle of equality in Article 13, according to which “no one shall be privileged, favoured, prejudiced, deprived of any right or exempted from any duty on the basis of ancestry, sex, race, language, place of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation”.

The Law n. 18/2004, of 11th May (following the Racial Equality Directive 2000/43/EC – “Directive”), lays down a framework for combating discrimination on the grounds of racial or ethnic origin. In addition, Law n. 18/2004, of 11 May, transposes Directive 2000/43/EC of the Council of the European Union, implementing the principle of equal treatment between persons irrespective of their racial or ethnic origin, and putting into effect the principle of equal treatmentArticle 5 of such Law confers to immigrant associations a special status in the criminal procedure, allowing these associations to intervene in victim representation and support whenever the facts involve criminal liability for racist acts.

Regarding legislation:

a) Article 240 of the Criminal Code was amended in 2007 in order to broaden the crime of discrimination. At the time being, the crime of discrimination includes sexual discrimination in reason of gender as well as in reason of sexual orientation. Not being addressed only to racially motivated acts (racism or xenophobia), but also to other serious forms of discrimination, article 240 reads as follows:

"*1. Whoever:*

*a) Starts or constitutes an organization, or develops activities of organized propaganda which incite to discrimination, to hate or to violence against a person or a group of persons on the grounds of their race, colour, ethnic or national origin, religion, sex or sexual orientation, or who encourages such discrimination; or*

*b) Takes part in the organization of the activities mentioned in the previous paragraph or assists them, namely by financing them, shall be punished with imprisonment from 1 to 8 years.*

*2. Whoever, in a public meeting, by means of a written statement intended for disclosure or through any mass media channel or computer system intended for disclosure:*

*a) Fosters acts of violence against any person or group of persons on the grounds of race, colour, ethnic or national origin, religion, sex or sexual orientation;*

*b) Defames or insults any person or group of persons on the grounds of race, colour, ethnic or national origin, religion, sex or sexual orientation, namely through the denial of war crimes or of crimes against peace and humanity;*

*c) Threatens any person or group of persons on the grounds of race, colour, ethnic or national origin, religion, sex or sexual orientation, with intent to incite or encourage racial, religious or sexual discrimination, is punished with imprisonment from six months to five years".*

Furthermore, according to article 246 of the Criminal Code, any person convicted for the offences established in article 240 may be temporarily deprived of his/her active and/or passive electoral capacity.

Also, in the cases of homicide and offences to physical integrity, the fact that the crime was committed on the grounds of racial hatred (including ethnical or national origin) is considered an aggravating circumstance implying more severe penalties. Racial motivation can also be taken into account when determining the measure of the penalty, as the court must consider, among other circumstances, the offence intentions revealed to the commission.

b) Apart from the Criminal procedure, allegations of racial discrimination can also be the basis of an administrative procedure. Administrative complaints of racial discrimination can be made by anyone against any public authority, service or individual person to the Commission for Equality and Against Racial Discrimination. The final decision may include the imposition of a fine that can go up to 5 minimum wages for individuals, and 10 minimum wages for public or private companies.

In some situations, the main constraint faced by this process has been the difficulty to determine the competent Inspection authority to instruct the case.

c) Concerning work and access to work, both direct and indirect discrimination based on grounds such as race or ethnic origin, descent, genetic heritage, nationality, and territory of origin, are also prohibited within the Labour Code. The burden of proof of non-discrimination lies with the employer that reverses the ordinary principles of Portuguese procedural law. Convictions can be published. Victims of discrimination, including harassment, are entitled to compensation.

The Authority for the Conditions of Work is responsible for analysing all complaints received concerning alleged cases of racial discrimination in employment or in access to employment.

d) There is always also the possibility of submitting complaints to the Portuguese Ombudsman, our NHRI.

Breach of these provisions mentioned in a), b), c) can entitle the victim to compensation for patrimonial and non-patrimonial damages.

1. **Which national mechanism(s) with competences to protect against and prevent all forms and manifestation of racism, discrimination, xenophobia and related intolerance does your country have in place? Kindly indicate the(ir) mandate(s) and powers, including any proposals for improvement on the basis of national experience.**

As examples of measures which have proved effective in the fight against racism, racial discrimination, xenophobia and related intolerance against all, we would mention:

1. The two *National Action Plans for the Integration of Immigrants*, developed since 2007, are essential instruments in the development of public policies on immigrant integration. They were adopted after a broad debate with social partners, where they obtained a wide consensus. They consider a variety of sectors where integration should occur and be improved (employment, health, education, justice, housing, culture and language, civic participation, human trafficking), as well as transversal themes such as gender issues, racism and discrimination and the promotion of diversity and intercultural dialogue. These action plans adopt a holistic approach to integration, involving 10 different Ministries and serve as a reference for both the government and civil society in developing more specific initiatives.

2. *National Immigrant Support Centres*, the well-known One-Stop-Shop approach (details at [www.oss.inti.acidi.gov.pt](http://www.oss.inti.acidi.gov.pt)), in Lisbon, in Porto, and in Faro, bring together different public services and provide information and support, free of charge, in an integrated way to all immigrants.

3. A Network of 86 *Immigrant Support Centres for the Local Integration of Immigrants*, covering almost the entire territory which provide, in partnerships with local authorities and civil society, decentralized information, support and response to immigrants' questions and problems.

4. The *Immigration Observatory* (details at [www.oi.acidi.gov.pt](http://www.oi.acidi.gov.pt))- created in 2003 to stimulate dialogue between academia and political decision-makers in relation to the definition, discussion and evaluation of public policies in the area of immigrant’s integration in Portugal, including ethnic and racial discrimination issues. It also seeks to deconstruct myths, representations and stereotypes about immigrants or immigration in general.

5. *Choices Programme* - this governmental programme, promoted by ACM, has been able to reach many immigrant youth and children from socio-economic vulnerable contexts. The Programme was created in 2001, and is currently in its fifth phase (2013-December 2015). Until now, it has approved 110 local projects of social inclusion, promoting among other areas the employability of young throughout sustainable and social innovative projects. The Programme targets around 65 thousand children and supports formal and non-formal education, orientation and referral to professional training and employment, developing civic and community participation, as well as promoting “digital inclusion”. This Programme has been co-funded by the European Social Fund.

6. Also in the area of education, the programme “*Intercultural Mediation in the Public Services*" – is developed under the European Fund for the Integration of Third Country Nationals, and coordinated by ACM. In the pilot phase this project placed 28 intercultural mediators, whose goal was to promote interculturalism, in 25 public services (mostly health and municipal services). Mediators were also placed in the following areas: public security police, social security, housing, employment, and education. An estimated 14,000 people benefited from this programme and a new phase will start in March with 20 mediators.

7. The *Commission for Equality and against Discrimination* launched several initiatives to raise awareness and combat racism and xenophobia in Portugal. In 2010 a “Photo and video contest against Racial Discrimination” aimed at choosing the best photo and video promoting the values of diversity and non-discrimination on the basis of nationality, ethnic origin, race, colour or religion.

8. As part of the celebrations of the International Day for the Elimination of Racial Discrimination on March 21st, a set of initiatives were launched aimed at raising public awareness to the Fight against Racial Discrimination. For instance, from the 18th to the 21st March 2011, all football players from the Portuguese Premier League entered the field showing a banner saying "Football against Racism! Join us." In 2012 a flash mob composed by 300 youngsters performed in the Final of the Football Portuguese Cup with the message “Football against discrimination”. In 2013, ACM launched a poetry contest, around the theme of Racial Discrimination, where over 500 applications were received. This led to the publication of a book where the work of the 39 finalists, including the winners, was displayed.

1. **Kindly provide information or many comments your country might have on the issue of procedural gaps to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), including any legal and judicial frameworks and practices, substantive and procedural measures.**

No comments.

1. **Would your country have any comments on the issue of the impact of reservations on the implementation to the ICERD? Is there a need for reservations and why?**

No comments.

1. **Would your country have any comments concerning Article 14 of the ICERD (declaration by state Party recognizing the competency of the Committee to receive/consider individual complaints)?**

No comments.

1. **Which CERD recommendations has your country implemented which regard to national mechanisms and xenophobia, including any legal and judicial frameworks and practices, substantive and procedural measures? What has been your national experience (including challenges) in this regard?**

*CERD Recommendation n. 12: Take measures to significantly increase confidence of the population in the judicial system, shorten the judicial procedures where possible and allow victims of racial discrimination access to legal remedies.*

In this regard, Law 104/2009, of 14 September, established the legal framework for the State compensation of victims of crimes, including victims of racist violent crimes, and created the Commission for the Protection of Victims of Crimes.

According to legal criteria, this Commission is the body in charge of deciding whether applicants have the right to compensation as victims of violent crimes, and the amount of said compensation.

The Commission publishes an annual reportin cooperation with public or private entities, where it is made available to the general public its activity as well as the remedies that victims can use to obtain compensation for the violent crimes.

*CERD Recommendation 14: Take effective measures to combat racial discrimination in the judicial system*

Racial discrimination is explicitly forbidden at all levels (Constitutional and ordinary law). Besides being inviolable and constitutionally safeguarded, equality and non-discrimination are cornerstone principles of the Portuguese legal system that bind the legislative, administrative and judicial powers.

In Portugal, everyone is equal before the Law and there are no prosecutions or convictions by reason of political ideas, racial or ethnic origin, religion, sexual orientation or gender identity. Regarding judges and prosecutors, there are regulatory bodies in charge of monitoring the fulfillment of professional duties in the administration of justice.

Prevention of racial discrimination is carried out in different manners: e.g. judges and prosecutors are under control of the competent regulatory bodies; Criminal Police and Prison Services are subject to inspections from the Inspectorate General for Justice Service and by internal services; among others.

Additionally, prison service provides conditions, within prison establishments, for prisoners who want to practice their religion, as well as (within reasonable limits) food according to their own religious commandments.

*CERD Recommendation 15: Training of law enforcement officials in the protection of human rights; ensure that training sessions organized for law enforcement officials equip them to fully respect and protect the fundamental rights of all persons without discrimination on the basis of race, color or ethnic or national origin.*

In order to ensure that law enforcement personnel refrain from racist and discriminatory conduct Portugal has been making considerable efforts in training activities, including the training on the subject of Human Rights and Procedural Guarantees for criminal police and prison guards. Themes such as sexual orientation and gender identity are also some of the topics focused on during the training provided. Therefore, Human Rights is an essential component of the training provided to law enforcement personnel and plays an important role in the prevention of racist and discriminatory conduct.

For further information, please see answers to point ii and iii.

1. **How is assistance provided to victims and/or affected communities of racism, racial discrimination, xenophobia and related intolerance at the domestic level? How victims and/or affected communities participate fully and effectively in relevant processes and national mechanisms?**

Portugal created a *Victim Support Unit to Immigrant and Victims of Racial and Ethnic Discrimination* (UAVIDRE) in 2005. This Unit is integrated in a Portuguese NGO, the *Portuguese Association for Victim Support* (APAV), which receives public financing on a yearly basis from ACM. This Unit provides free of charge support to victims of racial discrimination and to immigrant victims in general discrimination.

The number of victims helped by the “Support Unit for Migrant Victims and Victims of Racial and Ethnical Discrimination” (UAVIDRE) has increased since 2005 (see detailed annual figures in the table below). The number of victims of racial discrimination that sought UAVIDRE’s support has also increased each year from 2005 until 2011: from 13 victims in 2005 to 26 in 2009; 45 in 2010 and 61 in 2011. UAVIDRE registered 49 victims of discrimination in 2012 and 50 in 2013.

| *Year* | *Number of Victims* |
| --- | --- |
| 2005 | 131 |
| 2006 | 249 |
| 2007 | 300 |
| 2008 | 372 |
| 2009 | 377 |
| 2010 | 404 |
| 2011  2012 | 470  482 |
| 2013 | 439 |
| Total | 3.468 |

1. **With regard to the topics of this questionnaire:**
2. **Kindly indicate any possible recommendations your country would wish to provide; and,**

Portugal has been promoting several initiatives of raising awareness for racism and xenophobia that have important impacts in society. The initiatives promoted with the Portuguese Football League in the past years (as stated in point iii.) were particularly successful and had a strong media impact (e.g. "Football against Racism! Join us"; “Football against discrimination”). Portugal would recommend countries to promote these kinds of national wide campaigns with public figures, namely sportsmen or sportswomen.

1. **Are there any additional comments or information your country wishes to provide in relation to xenophobia, national mechanisms or procedural gaps?**

No comments.