



## Organization for Security and Co-operation in Europe

### Special Representative and Co-ordinator for Combating Trafficking in Human Beings

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#### Foreword

In November 2012, I had the pleasure to pay an official visit to Portugal. I held discussions with representatives of the national authorities and institutions, including the Secretary of State for Parliamentary Affairs and Equality, Ms. Teresa Morais, and with other senior officials as well as with academics and representatives of civil society organizations.

The objectives of this visit were to promote the implementation of OSCE commitments and other international instruments in the country, to establish an open dialogue with the authorities and non-State actors as well as to suggest action-related recommendations to strengthen the fight against human trafficking.

In this regard, I would like to praise the authorities for having taken concrete measures in relation to my recommendations. First of all, I welcome the recent legislative amendments that broaden the scope of definition of trafficking in human beings and that authorize the use of seized or confiscated funds to improve victim rights to compensation. Further, I note with great appreciation the creation of the Support and Protection Network for Victims of Trafficking (RAPVT) composed by State and non-State actors that will increase the referral mechanism, enhance knowledge of victims about compensation and improve protection and reintegration of victims. Finally, I acknowledge the significant steps taken by the authorities to increase the role of NGOs and their involvement in particular through their participation to the inter-ministerial committee and the Coordinating Body for the National Action Plan on Trafficking in Human Beings.

I appreciated exchanging with the authorities and non-State actors on good practices and challenges in the country. The visit was a great opportunity to strengthen the existing constructive dialogue with Portugal. Concrete co-operation with Portuguese authorities started before the visit and I am glad that it continued after my visit especially with the participation of the Secretary of State for Parliamentary Affairs and Equality to the OSCE Seminar on "Enhancing Co-operation to Prevent Trafficking in Human Beings in the Mediterranean Region" held in Rome in February 2013 and to the Alliance against Trafficking in Persons Conference in June 2013. Furthermore, I had the pleasure to address the International Conference for Magistrates and Judges organized by the Secretary of State, in close co-operation with the Prosecutor's Office and the Centre for Judicial Studies, in October 2013.

Finally, I encourage the Portuguese authorities to continue fighting human trafficking by implementing other suggested recommendations mentioned in my report.

I look forward to further continuing our exchange and co-operation on the occasion of a follow-up to this report.

A handwritten signature in blue ink, appearing to read 'M. Giammarinaro', with a horizontal line extending to the right.

Maria Grazia Giammarinaro



## Organization for Security and Co-operation in Europe

### Report by Maria Grazia Giammarinaro, OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, following her visit to Portugal from 26-30 November 2012<sup>1</sup>

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#### Introduction

1. The present Report is based on a visit to Portugal by the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Maria Grazia Giammarinaro (hereinafter referred to as the Special Representative) from 27 to 30 November 2012.<sup>2</sup> This was the first visit of the Special Representative to Portugal and as such afforded an important opportunity to meet with key state and civil society stakeholders in all fields related to anti-trafficking work in Portugal and to learn from the Portuguese experience to date. During her visit, the Special Representative (SR) met counterparts in Lisbon, Porto and Coimbra.

2. In the course of this visit, the Special Representative held discussions with representatives of the national authorities and institutions, including the Secretary of State for Parliamentary Affairs and Equality, the National Rapporteur on Trafficking in Human Beings, the Inter-ministerial Committee on Human Trafficking, the Portuguese Observatory on Trafficking in Human Beings (OTSH), the Ministry of Justice, including the Commission for the Protection of Victims of Crime (CPVC), the National Authority for Labour Conditions and the Ministry of Foreign Affairs.<sup>3</sup> She also addressed the parliamentary Sub-committee on Equality at the Portuguese Parliament during a hearing on human trafficking held on the occasion of her visit.<sup>4</sup> The Special Representative also opened a training

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<sup>1</sup> The report was finalized on 14 June 2013.

<sup>2</sup> During her visit, the Special Representative was accompanied by her Advisers, Ms. Georgina Vaz Cabral and Ms. Astrid Ganterer.

<sup>3</sup> See Appendix I for the agenda of meetings held by the Special Representative during the visit.

<sup>4</sup> The Special Representative was invited to speak at a hearing of the Subcommittee on Equality of the Portuguese Parliament on 28 November (see agenda in appendix 1 for details). Also the Vice-Chair of the OSCE Parliamentary Assembly General Committee on Democracy, Human Rights and Humanitarian Questions participated at the hearing.

workshop on trafficking in human beings for labour inspectors held in Porto.<sup>5</sup>

3. The Special Representative, who emphasizes non-governmental organizations and civil society as crucial partners in the fight against trafficking in human beings (THB), also held discussions with civil society representatives including from non-governmental organizations Movimento Democrático de Mulheres, Irmãs Adoradoras, Associação Comunitária, the Association for Family Planning (APF) which runs the Center for Shelter and Protection (CAP), the Portuguese Association for Victim Support (APAV), Oikos, Saude em Portugues, the Union of Women Alternative and Response (UMAR), O Ninho, the Jesuit Refugee Service Portugal as well as from the trade union federation, General Confederation of the Portuguese Workers (CGTP). The SR also held a lecture at the Centre for Social Studies (CES) at the University of Coimbra.<sup>6</sup>

4. The Special Representative wishes to thank the Portuguese authorities, and in particular the Permanent Representation of Portugal to the OSCE and the Department of Political Multilateral Organizations at the Ministry of Foreign Affairs, for their assistance in organizing the visit and facilitating its execution, including the in-country travel. She also wishes to thank all of her interlocutors, from the national authorities, civil society and academia she visited, for their willingness to share their knowledge and insights with her.

5. Consultations during the visit focused on the legislative, policy and practical responses to the THB situation in the country, particularly in the area of the prevention of labour exploitation and victims' access to justice and effective remedies which are two of the priorities established by the Special Representative during her term.<sup>7</sup>

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<sup>5</sup> The training workshop for labour inspectors was held on 29 November 2012 in Porto and co-organized by the Commission for Citizenship and Gender Equality (CIG), the National Authority for Labour Conditions and the Center for Shelter and Protection.

<sup>6</sup> The Special Representative delivered a lecture on 29 November 2012 on trafficking for the purpose of labour exploitation at the Center for Social Studies of the University of Coimbra. For more details see also the university's webpage: <[http://www.ces.uc.pt/eventos/index.php?id=6534&id\\_lingua=2](http://www.ces.uc.pt/eventos/index.php?id=6534&id_lingua=2)>, accessed 11 June 2013.

<sup>7</sup> See OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *An Agenda for Prevention: Trafficking for Labour Exploitation* (December 2011): a special thematic addendum to the 2011 Annual Report of the Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings. See also OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Combating Trafficking as Modern-Day Slavery: A Matter of Non-Discrimination and Empowerment* (December 2012).

6. The Special Representative wishes to express appreciation for the political commitment Portugal has shown over the last years to strengthen its anti-trafficking efforts, in particular with regard to combating trafficking for labour exploitation, and establishing a mechanism that ensures that victims are given assistance and support. She notes the strong leadership the Secretary of State on Parliamentary Affairs and Equality has taken in pursuing and directly following the implementation of the National Action Plan as well as the important role played by the National Rapporteur (who is also the National Co-ordinator) and the inter-ministerial committee supporting the Co-ordination Body for the National Action Plan on THB.<sup>8</sup>

7. Portugal is currently implementing its second Action Plan against Trafficking in Human Beings (2011 – 2013), adopted in 2010, which focuses on four areas: acknowledgment, awareness and prevention; education and training; protection and support; and criminal investigation and co-operation.<sup>9</sup> The Special Representative highlights as good practice the three monthly meetings to review the implementation under the Action Plan of the inter-ministerial committee under the leadership of the Secretary of State on Parliamentary Affairs and Equality and the National Rapporteur.<sup>10</sup> She welcomes the State Secretary's plan to invite civil society organizations to join the meetings of the inter-ministerial group from 2013 onwards in order to support confidence-building, and to enhance co-operation and build effective partnerships between authorities and civil society organizations. The Special Representative also welcomes the fact that the Action Plan includes a specific provision on the evaluation of the Plan's implementation as an important step in the development of the new Action Plan (starting in 2014). She notes with appreciation the openness she encountered during her visit from the inter-ministerial committee which considered her visit very timely, stimulating welcome reflection on key issues on policy and practice and contributing to the process of evaluation and planning.

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<sup>8</sup> The Secretary of State on Parliamentary Affairs and Equality oversees the Commission for Citizenship and Gender Equality (CIG) which is also the responsible entity for assisting in the National Action Plan's co-ordination and follow-up on the implementation of its measures. The National Rapporteur is appointed under the Commission for Citizenship and drafts the annual implementation reports of the National Action Plan and reports accordingly to Government members.

<sup>9</sup> For the Action Plan in English, see <<http://ec.europa.eu/anti-trafficking/showNIPsection.action?country=Portugal>>, accessed 11 June 2013.

<sup>10</sup> See the interim implementation report on the Second National Action Plan Against Trafficking in Human Beings, published by the Commission for Citizenship and Gender Equality in March 2013, <[http://195.23.38.178/cig/portalcig/bo/documentos/Relatorio\\_Intercalar\\_Execucao\\_2012\\_3.pdf](http://195.23.38.178/cig/portalcig/bo/documentos/Relatorio_Intercalar_Execucao_2012_3.pdf)>, accessed 11 June 2013.

8. Portugal ratified the UN Trafficking Protocol and the Council of Europe Convention on Action against Trafficking in Human Beings and is committed to the OSCE Ministerial Council decisions and the OSCE Action Plan to Combat Trafficking in Human Beings. In 2007 the Portuguese Criminal Code – which until then only criminalized trafficking for sexual exploitation - was amended to include trafficking for forced labour, removal of organs and other forms of trafficking into the criminal offence of human trafficking (Art. 160). The 2007 revision of the Criminal Code also made human trafficking within the national borders an offence and introduced a provision on criminal liability of legal persons. In addition to the criminal offence of human trafficking, the Portuguese Criminal Code also includes the criminal offence of slavery (Art. 159). This legal reform was instrumental in bringing the human trafficking provisions in the criminal code in line with international commitments. The Special Representative notes, however, that the numbers of traffickers prosecuted and convicted are very low. The official statistics also show that the number of investigations into human trafficking cases has been decreasing (43 in 2008, 39 in 2009, 28 in 2010, 25 in 2011 and 22 in 2012).<sup>11</sup> Until 2012 eight convictions are reported under Art. 160 CC in the official statistics, all of them related to trafficking for sexual exploitation. Investigations and convictions under the slavery provision are not separately reported in the official crime statistics published by the Ministry of Justice or included in the annual reports on trafficking in human beings prepared by the Observatory on Trafficking in Human Beings (OTSH).

9. The Special Representative appreciates the fact that, taking into account the above mentioned low number of prosecutions and convictions on human trafficking, the Portuguese authorities have identified the need to strengthen the criminal justice response in this area. She welcomes the capacity building measures that have been initiated for criminal justice actors involving their professional training institutions, most recently also for prosecutors and judges, and encourages the authorities to intensify these efforts.<sup>12</sup> The Special

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<sup>11</sup> See the official statistics of the Ministry of Justice on crimes registered with the police at <[http://www.siej.dgpj.mj.pt/webeis/index.jsp?username=Publico&pgmWindowName=pgmWindow\\_634989583205781250](http://www.siej.dgpj.mj.pt/webeis/index.jsp?username=Publico&pgmWindowName=pgmWindow_634989583205781250)>, accessed 24 May 2013. See also Observatory on Trafficking in Human Beings (OTSH), *Annual Report on Trafficking in Human Beings 2010* (2011) and Observatory on Trafficking in Human Beings (OTSH), *Trafficking in Human Beings: Statistical Report 2011* (2011).

<sup>12</sup> The UNODC Manual against trafficking in persons for criminal justice actors has been translated in Portuguese and has been widely distributed amongst criminal justice actors in Portugal. The Manual is available at: <<http://www.otsh.mai.gov.pt/?area=000&mid=000&sid=000&ssid=000&cid=CNT4cd98fd10c8b0>>, accessed 24 May 2013.

Representative believes that greater awareness and understanding of the complexities of the offence amongst all criminal justice actors, including prosecutors and judges, would result in a greater number of investigations and successful human trafficking prosecutions. She also encourages the use of proactive and financial investigations in human trafficking cases, aimed at ensuring the confiscation of criminal proceeds and assets, as a measure to ensure victim compensation, deterrence for the perpetrators and also funding for further state action. In particular with a view to developing targeted measures for the next Action Plan, she encourages the authorities to analyse what the specific challenges in relation to effective prosecution are in practice and develop action points to overcome them in order to prevent impunity for the offenders and ensure victims' access to justice.

10. Identification of victims of trafficking remains a major challenge in most OSCE participating States. In Portugal, since 2008 over 466 persons were flagged as possible victims by law enforcement and NGOs, with 108 of them recognized by law enforcement as victims of trafficking in human beings (following an investigation into the facts of the case). The ratio between victims flagged (presumed) and confirmed (identified) in Portugal, has been approximately four to one (in 2010 from 84 presumed, 22 confirmed; in 2011 from 48 presumed, 11 confirmed). Also, with regard to victims exploited in Portugal (as opposed to Portuguese exploited abroad) a decrease in the number of identified victims over the years can be noted: 27 in 2008, 17 in 2009, 22 identified in 2010 and 11 in 2011. While among the victims confirmed, with relation to trafficking for labour exploitation the vast majority were male and Portuguese or EU nationals, with regard to trafficking for sexual exploitation, the vast majority were female and third country nationals.<sup>13</sup> Both civil society and state actors alike have noted the discrepancy between the high number of flagged victims and the low number of confirmed victims. Some civil society organizations noted that currently they are refraining from referring victims to the police given past experiences in which they did refer victims, but law enforcement did not confirm their clients as victims which left them without access to state support. There is little information on and analysis of why victims have not been confirmed and what happened to them in

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<sup>13</sup> For the statistics in relation to flagged and confirmed victims see Observatory on Trafficking in Human Beings (OTSH), *Annual Report on Trafficking in Human Beings 2010* (2011) and Observatory on Trafficking in Human Beings (OTSH), *Trafficking in Human Beings: Statistical Report 2011* (2011), as well as the Portugal country information on the European Commission website at <<http://ec.europa.eu/anti-trafficking/showNIPsection.action?country=Portugal>>, accessed 11 June 2013.

terms of assistance.<sup>14</sup> The Special Representative encourages the Portuguese authorities, and in particular the OTSH, to look in depth into the issue of failed identification and referral for assistance, to identify and address current obstacles in relation to various groups of victims, such as minors/adults, women/men, nationals/EU citizens/third country nationals, and forms of trafficking (labour, sexual or/and other exploitation), and thus prevent that certain victims fall outside the net of state support or are even punished as offenders instead of identified and protected as victims.<sup>15</sup>

11. The Special Representative emphasized that one important tool to enhance victim identification and referral for assistance is to establish a comprehensive National Referral Mechanism that provides a framework for co-operation between all relevant actors from state and civil society to identify victims and assist them to claim their rights as well as prevent trafficking and bring the offenders to justice.<sup>16</sup> The Special Representative welcomes the plans of the Portuguese authorities to promote and formalize the co-operation between police and non-governmental organizations on victim identification and referrals.<sup>17</sup> Currently, Memoranda of Understanding exist between the OTSH and civil society organizations for reporting purposes only (“flagging”), but not for identification and referral for assistance. The SR notes that while informal co-operation can be effective in individual cases, practice throughout the OSCE region shows that a

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<sup>14</sup> Often lack of proof is the reason given for the filing of the case, with some cases categorized as smuggling, pimping or as illegal entry/stay instead. Civil society organizations have noted that some criminal justice actors are still not familiar with the indicators for human trafficking or interpret them very restrictively, in particular with regard to labour exploitation affecting third country nationals.

<sup>15</sup> During the parliamentary hearing at which the SR spoke, a parliamentarian raised the issue of punishment of victims as a problem in practice which needs to be given more attention and should be addressed. The principle of non-punishment is not explicitly recognized in Portuguese law, and according to the Portuguese Ministry of Justice the transposition of the EU Directive on Trafficking in Human Beings is the appropriate momentum to reflect again on this question and to consider the explicit inclusion of this principle in the law. See handout on the National Legal Framework in the field of action against trafficking in human beings provided to the SR during her meeting with the Ministry of Justice (print copy available with the OSR/CTHB).

<sup>16</sup> See OSCE Permanent Council, *Decision No. 557/Rev.1 OSCE Action Plan to Combat Trafficking in Human Beings* (Vienna, 7 July 2005), Chapter V “Protection and Assistance”, paragraph 3. See also OSCE ODIHR, *National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook* (Warsaw, 2004), <<http://www.osce.org/odihhr/13967>>, accessed 11 June 2013.

<sup>17</sup> The second National Plan against THB, under section 3 on Protect and Assist foresees the formalization of the Support and Protection net for Victims of Human Trafficking (RAPVT) through the development and adoption of protocols for co-operation between various state authorities and civil society organizations with regards to victim assistance. See II Plano Nacional Contra o Tráfico de Seres Humanos, in: Resolução do Conselho de Ministros n. 94/2010, Diário da República, 1 série – N 231 – 29 de Novembro de 2010. In her 25 June 2013 opening remarks at the 13<sup>th</sup> *Alliance against Trafficking in Persons* conference, State Secretary Teresa Morais announced that on 21 June 2013 the RAPVT network was officially established with nine public bodies and 14 NGOs as members.

certain level of formalization is needed to ensure that certain procedures are in fact followed, and are transparent, inclusive and sustainable. She notes that partnership with NGOs on identification and assistance has proved to be crucial across the OSCE region to ensure victims' access to assistance and justice and also increase the likelihood of holding exploiters and traffickers accountable in criminal and other proceedings. MoUs can be an important step towards strengthening the relationship between state actors and civil society, both in terms of partnership and trust as well as on a common basis for enhanced co-operation in individual cases.

12. Portugal has set up a system of victim assistance which aims not to make victim assistance conditional on the initiation or success of criminal or legal proceedings and also allows victims of trafficking to work and be socially included. The Special Representative welcomes this comprehensive approach to victim protection as a good practice and a model. The Shelter and Protection Center (CAP) for victims of trafficking was set up in 2008 through a protocol between the main institutions involved and the Family Planning Association (APF) which runs the shelter. The CAP is open to female victims of trafficking and their children and has accommodated 25 persons since 2008.<sup>18</sup> Over the last years, Portugal has also been able to identify and assist male victims of human trafficking, although assistance measures for male victims, such as temporary accommodation in shelters for homeless people, still tend to be ad hoc. The Special Representative acknowledges that Portugal has already taken some steps to develop responses for male victims of trafficking and suggests reviewing the existing responses with a view to identifying gaps and ensuring comprehensive and quality assistance, including outreach, housing and legal assistance.<sup>19</sup> Particular attention could be given to those vulnerable groups which so far have remained under the surface, such as male third country nationals exploited in Portugal.<sup>20</sup> The Special Representative also encourages the

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<sup>18</sup> This information is based on the handout on the National Legal Framework in the field of action against trafficking in human beings provided to the SR during her meeting with the Ministry of Justice (print copy available with the OSR/CTHB). The 2012 Interim Implementation Report on the National Action Plan notes that in 2012 the CAP accommodated seven victims (and three minor children of victims). See the interim implementation report on the Second National Action Plan Against Trafficking in Human Beings, page 29.

<sup>19</sup> On 25 June 2013, in her opening remarks to the 13<sup>th</sup> *Alliance against Trafficking in Persons* conference "Stolen Lives, Stolen Money: The Price of Modern-Day Slavery", the Portuguese Secretary of State for Parliamentary Affairs and Equality, Teresa Morais, announced that the first shelter for male victims of human trafficking opened in Portugal in mid June 2013.

<sup>20</sup> The vast majority of male victims identified have been Portuguese (exploited abroad) and nationals from the new EU Member States exploited in Portugal. See OTSH annual reports on human trafficking 2010 and 2011.



Portuguese authorities to review how the unconditional path of assistance, initially adopted in 2007, which foresees the possibility for victims who are in a special personal situation regarding security, health, family situation or vulnerability, and are unwilling or unable to cooperate with the justice system, to obtain a residence permit, has been applied.<sup>21</sup> However, the official reports do not document how many victims have received unconditional assistance, including residence permits.<sup>22</sup> The Special Representative notes that the challenge today – and in view of developing the Action Plan for the years 2014 and beyond – is to make this forward-looking model work for a larger number of people and to identify and address shortcomings in the existing system.

13. In Portugal there are numerous civil society organizations working on women's rights issues, migrants' and migrant workers' rights issues, labour rights, victims' rights and children's rights which are in contact with exploited and trafficked persons and vulnerable groups. There is, however, still little specialization on human trafficking within civil society. The Special Representative recommends that the Portuguese Government support capacity building activities for civil society organizations in order to increase trafficking-specific knowledge and skills amongst the NGOs and trade unions. Such capacity building could draw on civil society actors from other countries in the OSCE region where civil society is already more specialized, trained and actively involved in the National Referral Mechanism. Generally, similar to the state support system, NGO support is so far focused on housing and social assistance more than on victims' access to justice and compensation. The Special Representative notes that in this context the European Action for Compensation for Trafficked Persons (COMP.ACT Europe), which her Office has supported, has produced a number of studies and useful tools aimed at enhancing victims' access to compensation that could be useful for Portuguese stakeholders, state and civil society.<sup>23</sup>

14. Victims' access to justice and remedies, including compensation, has been a priority for the Special Representative both as a preventive and protective measure as it empowers victims and deters exploitation. A precondition for

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<sup>21</sup> Legislative Decree 368/2007 of 5 November 2007.

<sup>22</sup> In 2011 three residence permits were provided to victims of trafficking, all of them female. See Observatory on Trafficking in Human Beings (OTSH), *Trafficking in Human Beings: Statistical Report 2011* (2011), p. 24.

<sup>23</sup> See <<http://www.compactproject.org/>>, accessed 3 July 2013.

access to justice is access to legal assistance. Good practice across the OSCE region shows that victim identification is most effective in cases where civil society organizations have early and effective access to vulnerable groups and an active role in outreach and victim identification. The Special Representative emphasized during her visit that ensuring legal counselling and making compensation a reality for every trafficked and exploited person is a crucial aspect of an empowerment strategy that enables trafficked persons to move forward with their lives and prevents re-trafficking. She welcomes that Portugal has a legal aid mechanism for victims of crime in place and that there is also a specialized non-governmental organization which provides legal assistance to victims of crime, the Portuguese Association for Victim Support (APAV).<sup>24</sup> She also notes as a good practice that in Portugal mechanisms to claim compensation exist in criminal and civil procedure and that also a Crime Victim Compensation Fund exists in Portugal, which allows all victims of crime that took place on Portuguese territory, regardless of their nationality, to claim compensation for moral and material damages.<sup>25</sup>

15. The Special Representative notes, however, that there is little information and analysis - in official and NGO reports - on legal assistance to victims, in terms of needs, type of assistance offered and results. According to interlocutors from the state and civil society, to the best of their knowledge, no victim has received compensation from the courts so far and only in one case was compensation awarded to a victim. Additionally, no victim of trafficking has received compensation from the Crime Victim Compensation Fund so far; in fact no victim of trafficking has ever applied. A number of interlocutors pointed out that there is a lack of information amongst victims and vulnerable groups about their rights and how to claim them, including the existence of the Fund. In this context, the Special Representative recommends as a first, immediate step, to ensure that information about victims' rights, including information on various mechanisms to claim compensation and how to access them, is provided to vulnerable groups and victims as well as civil society organizations and authorities which might come in contact with trafficked persons. Furthermore, the

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<sup>24</sup> According to its 2011 statistical report, in 2011 three victims of trafficking for labour exploitation, six victims of trafficking for sexual exploitation and five victims of slavery contacted APAV for assistance. See at <[http://www.apav.pt/apav\\_v2/images/pdf/statistics\\_2011\\_EN.pdf](http://www.apav.pt/apav_v2/images/pdf/statistics_2011_EN.pdf)>, accessed 11 June 2013. For the report and details on the mandate and work of APAV see <<http://www.apav.pt>>, accessed 11 June 2013.

<sup>25</sup> For more details on the Crime Victim Compensation Fund see Law nr. 104/2009 of 14 September 2009 on compensation for victims of violent crime and DL n 120/2010 of 27 October 2010.

Special Representative encourages the authorities to look into the issue of why victim access to compensation has not been effective in practice thus far, with a view to identifying current obstacles and developing and implementing concrete measures to make victim access effective.

16. With regard to child trafficking, not much information seems to be available. Several interlocutors have mentioned the need to pay special attention to domestic trafficking, in particular the sexual exploitation of minors in the region of Algarve; some have also mentioned the issue of non-Portuguese minors exploited in begging and petty crime. The Special Representative suggests conducting research looking into child trafficking in Portugal and existing child specific responses as well as related challenges and gaps. She emphasized the need for comprehensive responses to child trafficking that strengthen the system of child protection and focus on the protection of children's rights. This implies that timely, inclusive and tailored interventions must be put in place to prevent and tackle any type of exploitation and violence against children, child abuse or neglect, regardless of whether trafficking is involved.

17. The Special Representative was pleased to learn more during her visit about the efforts Portugal has undertaken in the fight against trafficking for labour exploitation. Thanks to strengthened awareness and measures, Portugal has been able to identify a number of cases of trafficking for labour exploitation, both of Portuguese nationals exploited abroad (including posted workers) and foreign nationals exploited in Portugal. The Special Representative welcomes the measures Portugal has taken to prevent trafficking for labour exploitation, especially capacity building measures for labour inspectors and criminal justice actors, including the translation of the ILO Manual for Labour Inspectors into Portuguese.<sup>26</sup> She recommends including labour inspectors and trade unions as actors in the National Referral Mechanism with a role in identifying situations of workplace exploitation and victim identification, referral and assistance. Interlocutors from both trade unions and labour inspectors have mentioned that in their work they have, in fact, come into contact with exploited workers. They noted, however, that none of their referrals were confirmed by police and thus currently the incentive for further referral is low. Currently, the border police (SEF)

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<sup>26</sup> International Labour Office, *Forced Labour and Human Trafficking. Handbook for Labour Inspectors* (Geneva, 2008), available in Portuguese at: <[http://www.act.gov.pt/\(pt-PT\)/crc/PublicacoesElectronicas/Documents/Trabalho\\_forcado\\_e\\_trafico\\_de\\_pessoas.pdf](http://www.act.gov.pt/(pt-PT)/crc/PublicacoesElectronicas/Documents/Trabalho_forcado_e_trafico_de_pessoas.pdf)>, accessed 11 June 2013.

has a leading role in cases involving workers who are third country nationals and Romanian and Bulgarian EU citizens. The Special Representative encourages strengthening the labour inspectors' role in identifying victims directly and referring them to service providers (such as trade unions, lawyers, NGOs), and in helping them to claim unpaid wages, social assistance, residence status and compensation. In addition, the Special Representative encourages the authorities to ensure adequate implementation of the EU Sanction Directive<sup>27</sup> to ensure enhanced access to justice of exploited migrant workers, even in cases in which they are not qualified as trafficking victims by the competent authorities.

18. Trafficking for domestic servitude in diplomatic households is an issue that the Special Representative has highlighted over the last couple of years, including through the publication of a research paper on Trafficking in Human Beings for the Purpose of Domestic Servitude in the OSCE Region and the dedication of the 10<sup>th</sup> *Alliance against Trafficking in Persons* conference to the topic of "Unprotected Work, Invisible Exploitation: Trafficking for the Purpose of Domestic Servitude".<sup>28</sup> The Special Representative notes with appreciation Portugal's active participation in the workshop on prevention of trafficking in human beings for domestic servitude in diplomatic households held in Geneva in June 2012 and welcomes the update of the Portuguese Manual for Foreign Diplomats as a follow-up to the Seminar. She recommends, as good practice already introduced in other OSCE participating States, amongst others, to require every employee of a diplomat to personally appear before the Protocol Department of the Ministry of Foreign Affairs and require a proof of payment of salary from the employer. She also welcomes the idea of the Protocol Department of the Ministry of Foreign Affairs to develop, in co-operation with NGOs, a brochure with information on victim assistance that would be handed out to every worker in diplomatic households, and would facilitate victim referrals. The Special Representative is happy to offer her services to facilitate contacts with NGOs and Ministries of Foreign Affairs in the OSCE region who have established good practices in this field. Finally, the Special Representative encourages the Portuguese authorities to take steps to increase the access to justice of victims in diplomatic households by, as a minimum, enabling victims to access compensation, including through mediation or state funds, also in cases

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<sup>27</sup> European Union (EU), *Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals* (18 June 2009), in Official Journal L 168/24, 30.6.2009.

<sup>28</sup> See <<http://www.osce.org/cthb/75804>>, accessed 11 June 2013.

where the perpetrators enjoy full diplomatic immunity.

19. The Special Representative welcomes the efforts Portugal has dedicated to establishing a monitoring and data collection system on human trafficking under the responsibility of the Observatory on Trafficking in Human Beings (OTSH). The data collected by OTSH, which have recently started to include data on Portuguese nationals exploited abroad, are the foundation of the Annual Report on Trafficking in Human Beings published by the Portuguese Ministry of Interior which also includes concrete recommendations for action. The Special Representative notes that such data collection and reporting is crucial for the development and review of anti-trafficking policies and measures. She encourages the Observatory to include cases qualified as slavery in data collection and analysis, as slavery and human trafficking are intrinsically interlinked. It will also be important to review whether protection and prosecution responses differ, and if so how, in cases qualified as slavery or human trafficking. The Special Representative also recommends complementing the existing data collection with qualitative research and in depth analysis, including on issues that have not been the focus of monitoring so far, such as victims' access to legal assistance (including free legal aid), compensation and residence permits. This would strengthen the added value of the annual reports as well as the monitoring function of the OTSH and thus the ability of all stakeholders to better identify and address weaknesses and gaps in the current response.

20. In conclusion, the Special Representative encourages the Portuguese authorities to continue to strengthen their anti-trafficking work and to consider some recommendations based on OSCE anti-trafficking commitments, in particular the OSCE Action Plan to Combat Trafficking in Human Beings. The Special Representative and her Office stand ready to provide technical assistance where desired and requested by the authorities and civil society, and welcome further dialogue and co-operation to promote the appropriate follow-up to these recommendations, in particular with a view to fostering the discussion on the preparation and implementation of the new National Action Plan which will be initiated in the second half of 2013.

## **Recommendations**

The Portuguese authorities are encouraged to take into consideration the following recommendations, including for the development of the next National Action Plan:

### **1. Enhance the National Referral Mechanism, through:**

- Developing memoranda of understanding/co-operation agreements with victim support organizations, from all relevant areas - such as trade unions, victims' rights organizations, migrants' rights organizations, women's rights organizations - for the identification and assistance to victims of trafficking;
- Ensuring that labour inspectors systematically check work conditions during their inspections and that they can refer victims to victim support organizations, for legal counselling and assistance;
- Enhancing outreach and access to rights information to vulnerable groups, including through providing victim support organizations and lawyers regular access to immigration detention centres and prisons, as part of the National Referral Mechanism;
- Ensuring state funding is available for victim assistance (legal, housing, social, medical, etc.) and accessible to victims and victim support providers.

### **2. Improve identification of victims, their assistance, and protection of their rights by:**

- Conducting qualitative research on the reasons why a significant number of "flagged" victims have not been confirmed and what kind of assistance they have received – both in terms of the path and scope - depending on whether presumed victims have been confirmed by law enforcement or not;
- Mapping all vulnerable groups and sectors prone to exploitation in co-operation with civil society actors and establishing clear outreach and referral procedures for each;
- Reviewing the scope and the accessibility of the assistance offered so far (rights information, legal, housing, medical, residency, work, etc.) – for women, men and children respectively – and identifying areas for improvement and action points;
- Reviewing how the non-punishment principle is applied in practice and identifying action points, if needed;
- Providing, as a matter of priority, information, including in writing, on rights and referral contacts for free legal assistance, to vulnerable groups and victims to facilitate rights awareness and support effective access to rights (including on reflection period, residence permit, compensation claims, criminal proceedings against the traffickers, social and medical care, work, education).

- Providing information to all relevant stakeholders, including law enforcement, prosecutors and civil society organizations, NGOs, and the victims themselves, about the possibility of and procedure for unconditional assistance to victims of human trafficking to ensure a more effective implementation.

### **3. Strengthen victims' access to justice by:**

- Providing exploited and trafficked persons with early and comprehensive rights information and legal counselling on all available remedies and relevant procedures including criminal, civil, labour law and administrative procedures;
- Enhancing knowledge amongst victims and vulnerable groups about the victim compensation fund and how to access it, including through assistance from the Portuguese Association for Victim Support;
- Identifying the obstacles victims of trafficking face in accessing the victim compensation fund and developing action points;
- Analysing in co-operation with all relevant actors – state, civil society and the victims and vulnerable groups themselves - what obstacles victims of trafficking face in accessing justice and effective remedies, with a special focus on victims with an irregular immigration status or exploited in illegal activities, and develop action points;
- Building the capacity of all justice system actors to make victims' access to compensation more effective (through awareness raising, training, guidance, etc.)
- Analysing the impact of return procedures on victims' access to justice and remedies, including compensation.

### **4. Enhance the accountability of offenders, including through a more effective criminal justice response to trafficking by:**

- Analysing what the challenges are in holding criminal recruiters and intermediaries, and exploitative employers accountable, in criminal, civil, labour law and administrative proceedings and developing action points at the policy and operation level;
- Providing systematic training to all justice actors, on new features of human trafficking, and on applicable provisions in different areas of law, with a view to enhancing the capacity of the judiciary as a whole, to hold exploiters accountable and ensure victims' rights (including the principle of non-punishment);
- Generalizing financial investigations in trafficking cases (for all forms of exploitation) to ensure seizure, freezing and confiscation of the proceeds of crime, which is instrumental to effective compensation

to victims; their use for victim assistance and funding for state actors in the fight against human trafficking should also be promoted.

**5. Enhance prevention of child trafficking and protection of child victims by:**

- Undertaking a specific study about assistance and protection measures in place for child victims of trafficking and their actual implementation, to identify obstacles and action points needed;
- Ensuring that responses to child trafficking, including for exploitation in organized begging, are monitored and reported on by child rights professionals;
- Reviewing the issue of non-punishment of victims in relation to child victims, with a particular focus on trafficking of children for illicit activities and begging;
- Ensuring that child victims have access to compensation, including through the state fund.

**6. Enhance responses to prevent and counter trafficking for labour exploitation by:**

- Strengthening the effective access of all workers, including those in irregular situations, to rights' information, legal counselling and assistance, to enable them to report their exploiters and claim their rights, including compensation;
- Including labour inspectors in the National Referral Mechanism and establishing a mechanism that enables them to refer victims to support organizations for identification and assistance;
- Developing, in co-operation with civil society organizations, a brochure with information on victims' rights and support mechanisms especially targeted to victims of domestic servitude including in diplomatic households;
- Exploring how labour inspectors can facilitate victims' access to effective remedies, including compensation and provide guidance to all labour inspectors on how to do so;
- Including trade unions, from all relevant sectors if possible, in the National Referral Mechanism, and exploring ways in which they can empower and protect exploited and trafficked workers and contribute to holding exploitative employers accountable;
- Analysing, by sector of work and with a gender perspective, how workers with an irregular immigration status have so far been able to file complaints against their exploiters and access compensation and identify obstacles and how to overcome them;



- Ensuring that the fight against labour exploitation and trafficking is a priority and that all relevant state actors are well equipped to implement actions in this field as a priority;
- Taking measures to prevent any abuse of diplomatic immunities for the purpose of exploiting domestic workers by putting in place special arrangements to ensure that the diplomatic status of the employer does not hamper access to assistance and support to victims, as well as regulating and monitoring the delivery procedure of visas/residence permits for domestic workers employed by members of the diplomatic corps.
- Considering ways to allow migrant domestic workers in diplomatic households to change their employer in order to reduce their dependency on the original employer, at least in cases of abuse and exploitation;

**7. Strengthen data collection and monitoring of anti-trafficking action by:**

- Considering action against slavery, including relevant criminal, legal and social measures, as part of anti-trafficking action and therefore including it also in the monitoring and reporting on trafficking in human beings to ensure a comprehensive perspective, understanding and response;
- Increasing qualitative research and in depth analysis in the Annual Reports on Trafficking in Human Beings;
- Ensuring that all relevant state institutions provide data and insight into the reports on trafficking in human beings, and inviting also civil society actors to contribute to the reports;
- Preparing regular specific in-depth thematic reports on key issues, either as a part of the annual report or in addition to it.

## APPENDIX I

### RESPONSE TO THE OSCE REPORT ON HUMAN TRAFFICKING (received 21 November 2013)

The Portuguese Government is fully committed to take into consideration the recommendations contained in this report, including for the development of the next National Action Plan against trafficking in human beings (THB).

We would like to highlight some general updates that took place after the country visit:

- Since its meeting of February 14, 2013, NGOs have been invited to take part in the inter-ministerial committee supporting the Coordinating Body for the National Action Plan on THB and have since participated in 2 meetings.
- The external evaluation of the Second National Action Plan on THB by an external institution (Minho University) was concluded in October.
- In June 2013, and in accordance with the Second National Action Plan, the Support and Protection Network for Victims of Trafficking (RAPVT) was implemented. It is a structure that brings together the governmental and non-governmental organizations working in Portugal, directly or indirectly, on THB, namely in the field of psychosocial intervention with victims or at the level of criminal investigation. The RAPVT allows for a more integrated intervention on the ground, and serves as a source of information for criminal investigation and repression of THB. The civil society organizations that belong to this network were given training.
- In order to comply with Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, Portugal changed the article of the Penal Code regarding trafficking in human beings (article 160.º) through Law n.º 60/2013 of 23th of August. As a result, besides sexual and labour exploitation and removal of organs, begging, slavery and the exploitation of criminal activities are included as motivations. The same article makes it clear that the consent of a victim of trafficking in human beings is irrelevant. Some new aggravating penalties were included.

#### **Comments to the Recommendations:**

##### **1. Enhance the National Referral Mechanism, through:**

*Developing memoranda of understanding/co-operation agreements with victim support organizations, from all relevant areas -such as trade unions, victims' rights organizations, migrants' rights organizations, women's rights organizations-for the identification and assistance to victims of trafficking.*

As mentioned above, the RAPVT connects different entities that have as a main purpose to improve intervention on the ground by strengthening the skills of the different stakeholders.

It was created in June 2013 through an Agreement involving the following governmental and non-governmental organizations:

Governmental organizations:

- Commission for Citizenship and Gender Equality (CIG – Coordinating entity)
- Observatory on Trafficking in Human Beings (OTHB)
- High Commission for Immigration and Intercultural Dialogue (ACIDI)
- Directorate-General for External Policy of the Ministry of Foreign Affairs
- Immigration and Border Service (SEF)
- Criminal Police (PJ)
- Authority for Labour Inspection (ACT)
- Directorate-General for Health of the Ministry of Health

Non-governmental organizations:

- Institute for Social Security
- ComuniDária Association
- Women's against Violence Association
- Portuguese Association for Victims Support
- Association for Family Planning
- Institute for Child Support
- Irmãs Adoradoras (Religious organization)
- Women's Democratic Movement
- O Ninho
- Irmãs Oblatas (Religious organization)
- OIKOS – Cooperation and Development
- Olho-Vivo
- Saúde em Português
- Jesuit Refugee Service
- Women's Union Alternative and Response- UMAR

*Ensuring that labour inspectors systematically check work conditions during their inspections and that they can refer victims to victim support organizations, for legal counseling and assistance.*

- During the years of 2012 and 2013, all labour inspectors received training on THB issues (including assistance to victims).

*Ensuring state funding is available for victim assistance (legal, housing, social, medical, etc.) and accessible to victims and victim support providers.*

- One of Portugal's major concerns is improving the assistance to victims of THB. At the present moment, Portugal has two shelters for VoT. One is specific for women and the other is for men, both of them state-funded.
- It is important to highlight that all victims (women, men and children) are supported and have assistance. The implementation of the RAPVT is intended to reinforce it. One of the major concerns of the Third National Action Plan on THB will be to reinforce victim assistance and support providers even further.

## **2. Improve identification of victims, their assistance, and protection of their rights by:**

*Conducting qualitative research on the reasons why a significant number of “flagged” victims have not been confirmed and what kind of assistance they have received – both in terms of the path and scope - depending on whether presumed victims have been confirmed by law enforcement or not.*

- The RAPVT will aim at improving the national referral mechanism in order to map out all vulnerable groups. It will adopt common instruments for signaling, data collection and referral of victims of trafficking in human beings, providing a response network that integrates the components of prevention of human trafficking and victim-support. Also, it aims to identify the support services best suited among network partners, taking into account their geographical location and the victim’s specific needs.
- At the present moment, there is an ongoing study (coordinated by Minho University) that aims to analyse and evaluate the entire criminal procedure of the crime of trafficking in persons, from the stage of reporting by police agencies until the final court decision. It will be a qualitative and quantitative analysis of the entire process that eventually leads to the conviction for this crime.

*Reviewing the scope and the accessibility of the assistance offered so far (rights information, legal, housing, medical, residency, work, etc.) – for women, men and children respectively –and identifying areas for improvement and action points.*

- The Third Action Plan on THB will aim to reinforce the scope and the accessibility of the assistance offered so far.

*Providing, as a matter of priority, information, including in writing, on rights and referral contacts for free legal assistance, to vulnerable groups and victims to facilitate rights awareness and support effective access to rights(including on reflection period, residence permit, compensation claims, criminal proceedings against the traffickers, social and medical care, work, education).*

- With the Third Action Plan on THB, Portugal will reinforce the scope and the accessibility of the assistance, especially concerning information on rights and referral contacts, in order to facilitate rights awareness and support effective access to them.

*Providing information to all relevant stakeholders, including law enforcement, prosecutors and civil society organizations, NGOs, and the victims themselves, about the possibility of and procedure for unconditional assistance to victims of human trafficking to ensure a more effective implementation.*

- The training of police, both initial and in-service, has included modules on research techniques specific to THB, and the questioning of victims and victim protection.
- The staff of the SEF is provided with a course each year as part of their in-service training.

- Special training courses on preventing and investigating THB are organized regularly with the participation of national and international experts, namely representatives of the IOM and ILO offices in Portugal.
- Prosecutors and judges receive training on THB issues in the context of their initial or in-service training provided by the Centre for Judicial Studies (CEJ), the school for magistrates.
- As mentioned above, during the years of 2012 and 2013, all labour inspectors received training on THB issues (including assistance to victims).
- Also several NGOs are frequently provided with training and there are several projects developed by NGOs that promote sensitization initiatives.

*Recommendations 2 (5th e 6th paragraphs) and 3 (1st paragraph) refer to the importance of the need to inform victims of their rights, namely in what concerns obtaining legal support and compensation.*

- In this domain, one should recall the work already done by:
  - setting up the Immigrant SOS Helpline (available Mon-Sat: 8.30 a.m. to Midnight), which is especially dedicated to explaining victims' rights. Information about the helpline has been disseminated through thousands of leaflets that have already been distributed (including to all Criminal Police Bodies, so they can provide them when identifying potential victims) in Portuguese, English, French, Spanish, Russian, Chinese and Romanian versions, as well as via the Internet.
  - publishing the *Cartão de Sinalização* (a Practical Guide with hundreds of leaflets handed out to all law enforcement agencies, dedicated to disseminating information on victims' rights, among other aspects), as well as setting up special support lines for victims of trafficking, in the North, Centre and Alentejo regions of Portugal (available Mon-Fri: 9.00 am - 6.00 pm) aimed at disseminating victims' rights, among other aspects.

### **3. Strengthen victims' access to justice by:**

*Providing exploited and trafficked persons with early and comprehensive rights information and legal counseling on all available remedies and relevant procedures including criminal, civil, labour law and administrative procedures.*

- Victims are systematically informed of their rights, especially by the border services and also by NGOs, namely about the reflection period and all other social, legal, and medical support they might need at the moment of detection.

*Enhancing knowledge amongst victims and vulnerable groups about the victim compensation fund and how to access it, including through assistance from the Portuguese Association for Victim Support.*

- The creation of the RAPVT (see above) aims at enhancing knowledge amongst victims about the victim compensation fund. That objective will

be reinforced even further with the implementation of the next National Plan against THB.

*Analysing in co-operation with all relevant actors – state, civil society and the victims and vulnerable groups themselves – what obstacles victims of trafficking face in accessing justice and effective remedies, with a special focus on victims with an irregular immigration status or exploited in illegal activities, and develop action points.*

- The co-operation with all relevant actors is a key factor in better supporting victims of trafficking. With the implementation of the RAPVT, Portugal will reinforce capacity-building to support vulnerable groups. It is important to highlight that regarding victims with an irregular immigration status, the Second National Plan against THB interacts with the Immigrant Integration Plan (IIP), which is coordinated by the High Commission for Immigration and Intercultural Dialogue (ACIDI). The latter is a public institute with the mission to collaborate in the conception, implementation and evaluation of public policies, both cross-cutting and sector-specific, relevant for the integration of immigrants and ethnic minorities, as well as promote dialogue between various cultures, ethnicities and religions.

*Building the capacity of all justice system actors to make victims' access to compensation more effective (through awareness raising, training, guidance, etc.).*

- Training has always been one of the most important areas of all National Action Plans, and the third Plan will focus on various strategic actors, such as prosecutors, judges, social workers and members of NGOs. Strengthening the skills of relevant actors in the judicial system is an issue of particular importance to Portugal. A protocol between the Commission for Citizenship and Gender Equality (CIG) and the Centre for Judicial Studies (CEJ) was signed in order to reinforce the training of judges and public prosecutors.

#### **4. Enhance the accountability of offenders, including through a more effective criminal justice response to trafficking by:**

*Providing systematic training to all justice actors, on new features of human trafficking, and on applicable provisions in different areas of law, with a view to enhancing the capacity of the judiciary as a whole, to hold exploiters accountable and ensure victims' rights (including the principle of non-punishment).*

- The training of police, both initial and in-service, has included modules on research techniques specific to THB, and the questioning of victims and victim protection.
- The staff of the SEF is provided with a course each year as part of their in-service training. Special training courses on preventing and investigating THB are organized regularly with the participation of national and international experts, notably representatives of the IOM and ILO offices in Portugal.

- Prosecutors and judges receive training on THB issues in the context of their initial or in-service training provided by the CEJ,. Recently, the Secretary of State of Parliamentary Affairs and Equality, in close cooperation with the Prosecutor's Office and CEJ, organized an International Conference for Magistrates and Judges, where the Special Representative for THB from the OSCE and the Dutch National Rapporteur on THB were present, to reflect on human trafficking in a victim-centered approach and to discuss the perception of legal issues raised by the type of crime of human trafficking – from the legal text to its application.

*Generalizing financial investigations in trafficking cases (for all forms of exploitation) to ensure seizure, freezing and confiscation of the proceeds of crime, which is instrumental to effective compensation to victims; their use for victim assistance and funding for state actors in the fight against human trafficking should also be promoted.*

- Portugal has an Asset Recovery Office (ARO), Law n<sup>o</sup>45/2011, of 24<sup>th</sup> June, that has been changed by Law 60/2013, of 23<sup>rd</sup> of August. It states that the use of seized and confiscated funds and the proceeds from THB can be channeled to support victims' assistance and protection programs. Legislation has been adapted in order to promote more efficient investigation tools for law enforcement agents.
- With the recent amendment of Law n. <sup>o</sup> 5/2002, of 11th January (by Law n. <sup>o</sup> 60/2013, of 23th of August), THB was included in the list of crimes where a special legal framework for the collection of evidence, breach of confidentiality and loss of property to the State is foreseen.
- Also, with the latest amendment of Law n. <sup>o</sup> 101/2001, of 25th of August, (by Law n. <sup>o</sup> 60/2013, of 23th of August) undercover actions for the purpose of preventing and detecting criminal agents were made possible for the crime of trafficking in persons.

*Recommendation 4 (2nd and 3rd paragraphs) refers to the need for training and encouragement on the use of pro-active investigation techniques in parallel to economic and financial investigations.*

- The Criminal Police (Polícia Judiciária – PJ) is aware of the importance the above referred investigation techniques have in the fight against THB. These techniques are already common practice by the PJ in all investigations against organized crime – including THB – where appropriate, and they are already part of all the initial and in-service training courses provided to the investigation officials of PJ.
- It should also be pointed out that such investigation tools have been reinforced by the creation of the Portuguese Asset Recovery Office under the remit of PJ (Law nr. 45/2011, of 24 June 2011), exclusively devoted to tracing, identifying and seizing assets derived from crime (where THB is included).

## **5. Enhance prevention of child trafficking and protection of child victims**

- The next National Action Plan on THB will include more specific measures in that area. The recent amendment to article 160 of the Penal Code, which added begging, slavery and the exploitation of criminal activities, reinforces prevention and support regarding child trafficking.

- Some of the activities that were included in article 160<sup>o</sup> of the Penal Code (such as begging and the exploitation of criminal activities) have children as victims.

Please see comments below relating to paragraph 16 of the main body of the report.

## **6. Enhance responses to prevent and counter trafficking for labour exploitation by:**

*Including labour inspectors in the National Referral Mechanism and establishing a mechanism that enables them to refer victims to support organizations for identification and assistance.*

- As for strengthening the labour inspectors' role in the referral mechanism and the possibility of identifying victims, it should be pointed out that Portuguese criminal law reserves the power to "identify" a person as a victim of a crime – and for all the crimes foreseen in the Penal Code – to the police. As the labour inspectors, in Portugal, are not a police force, they are unable to "identify" or qualify a worker as a victim. Within the current legal framework, labour inspectors can only flag victims based on the indicators published in the Portuguese version of the ILO's handbook for labour inspectors on trafficking of human beings and forced labour.

*Exploring how labour inspectors can facilitate victims' access to effective remedies, including compensation, and provide guidance to all labour inspectors on how to do so.*

- The Observatory on Trafficking in Human Beings (OTHB) and CIG have been cooperating with the Authority for Labour Inspection (ACT) since 2010, which includes training through data collection and the creation and dissemination of materials.

Some examples:

- In 2010, the OTHB (with the involvement of CIG) coordinated 3 training sessions for Labour Inspectors in 3 major cities: Lisbon, Porto and Aveiro. The following organizations were involved:
  - o Commission for Citizenship and Gender Equality – *National Strategy against THB and Legal Framework.*
  - o Observatory on Trafficking in Human Beings and Centre for Social Studies / Coimbra University – *THB in Portugal and Abroad.*
  - o Observatory on Trafficking in Human Beings and Association for Family Planning – *National Monitoring System and Model for Flagging -Identifying and Support THB victims.*
  - o Criminal Police and the Immigration and Borders Service – *The role of Law enforcement.*
  - o Department for Central Investigation and Penal Action – *Prosecutor's Office role.*
  - o Authority for Labour Inspection (ACT) – *The role of the ACT.*
- The Flagging Card developed for labour inspectors (see description in comments to paragraph 16 of the main report);



- The Memorandum of Understanding signed between OTHB and ACT.

*Taking measures to prevent any abuse of diplomatic immunities for the purpose of exploiting domestic workers by putting in place special arrangements to ensure that the diplomatic status of the employer does not hamper access to assistance and support to victims, as well as regulating and monitoring the delivery procedure of visas/residence permits for domestic workers employed by members of the diplomatic corps.*

- As a result of the participation in the OSCE “Workshop on domestic servitude in diplomatic households”, which took place in June 2012, the Portuguese Manual for foreign diplomats was updated. After the visit to Portugal of the OSCE Special Representative, the State Protocol Service of the Portuguese Ministry of Foreign Affairs (SPS) further improved the Manual and completed its translation into English. It should be released online by the end of 2013.
- Furthermore, SPS, in close co-operation with SEF and INCM (Imprensa Nacional Casa da Moeda) is currently developing a biometric diplomatic identification card for heads of mission, diplomats, consular agents, administrative and technical staff, as well as service staff, which will require the presence before the SPS. The biometric diplomatic identification card is expected to be launched in 2014 depending on the conclusion of the due legislative process ongoing.
- Portugal welcomes the idea of having access and contact with NGOs and Ministries of Foreign Affairs in the OSCE region who have implemented further good practices in this field.

#### **7. Strengthen data collection and monitoring of anti-trafficking action by:**

*Considering action against slavery, including relevant criminal, legal and social measures, as part of anti-trafficking action and therefore including it also in the monitoring and reporting on trafficking in human beings to ensure a comprehensive perspective, understanding and response.*

- Portugal fully agrees with this recommendation. For several years, PJ has been assigned the exclusive powers to investigate both offences (Law nr. 49/2008, of 27<sup>th</sup> August). PJ also has an internal structure and organization, which provides for both offences to be duly treated in a centralized and integrated manner, and for prevention, investigation and analysis to be closely followed up.
- In order to comply with the Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, Portugal changed the above mentioned article 160 of the Penal Code regarding trafficking in human beings.
- As already mentioned, besides sexual and labour exploitation and removal of organs, begging, slavery and the exploitation of criminal activities were also included in article 160. The new article also makes it clear that the consent of a victim of trafficking in human beings is irrelevant. Some new aggravating penalties were included.

- As a consequence of this new definition of THB, the OTHB will collect and analyse data on slavery.
- Portugal continues to focus on expanding the network of data providers. Also, the adoption of the Dynamic Application (a database and monitoring system for THB) by the OTHB and 22 other governmental and non-governmental entities, will be an important tool to improve monitoring and reporting.

*Ensuring that all relevant state institutions provide data and insight into the reports on trafficking in human beings, and inviting also civil society actors to contribute to the reports.*

- As mentioned above, Portugal is expanding the network of data providers. Several MoUs were signed with several stakeholders. Also, the Third National Action Plan will consolidate the Dynamic Application.

### **Main body of report**

Paragraph 8 emphasizes that the official statistics show that the number of investigations into human trafficking cases has been decreasing (43 in 2008, 39 in 2009, 28 in 2010, 25 in 2011 and 22 in 2012).

It is important to clarify that these numbers reflect the amount of cases registered by the police forces and do not necessarily correspond to the number of criminal files under investigation, namely by the Public Prosecution Service.

The same paragraph states that until 2012 eight convictions are reported under Art. 160 of the Penal Code in the official statistics, all of them related to trafficking for sexual exploitation.

The correct figures are 10 convictions for the period between 2008 and 2011. Also, the statement that the convictions by TSH are related to sexual exploitation should be deleted, due to the fact that the collection of data doesn't reveal the aim or motivation for the commission of the offence of THB.

Paragraph 9 acknowledges that the UNODC Manual against trafficking in persons for criminal justice actors has been translated into Portuguese and widely distributed amongst criminal justice actors in Portugal.

This was followed by 2 training courses:

- 2011(UNODC/Vienna): in cooperation with UNODC, the OTHB coordinated a one-week train-the-trainers course for 14 Portuguese experts (from law enforcement agencies and the Prosecutor's Office).
- 2012 (Lisbon): in cooperation with the Community of Portuguese Speaking Countries (CPLP), the OTHB coordinated a one-week training course for representatives of law enforcement agencies and the Prosecutor's Office from all the CPLP countries – Portugal, Brazil, Angola, Cape Verde, Guinea-Bissau, Mozambique, São Tomé and Príncipe and Timor-Leste (total of trainees: 40 professionals). The trainers were representatives from Portuguese governmental and non-governmental organizations, most of them belonging to the group previously trained in Vienna. The goal was to acquire

skills on preventing and combating THB and training competences to duplicate the training in their countries/organizations of origin.

Paragraph 10 refers to the existence of a large discrepancy between the number of victims reported by NGOs and those identified by law enforcement agencies and the Courts within criminal inquiries and concern is expressed regarding the fact that, due to strict criteria by the latter, some cases may arise where victims lack a support network.

Regarding this issue, in order to avoid such cases, an “outlet valve” has been created in the system, allowing the Coordinator for the National Action Plan on THB to qualify a person as a victim, when appropriate, thus ensuring the person has access to the whole support network provided to victims of THB (Decree-Law nr. 368/2007, of 5<sup>th</sup> November, Sole Article, paragraph 3).

On the other hand, although not known as “a victim of THB”, each and every person identified on the Portuguese territory in an emergency situation, whether for health, social or humanitarian reasons, or in need of access to legal redress, will always have access to the general support network provided by health, social security and solidarity systems, as well as to the justice system.

Still regarding Paragraph 10, after a statistical update, the numbers of (potential) THB victims for the period 2008-2012 (in Portugal – Portuguese and Foreign victims; and Abroad – only Portuguese victims) are:

619 victims flagged by law enforcement agencies and by NGOs. From these:

- 138 victims identified/confirmed as VoT by law enforcement agencies
- 309 victims not confirmed as VoT by law enforcement agencies
- 116 cases still under investigation by law enforcement agencies
- 56 flagged victims from NGO that didn't result in police investigation

A brief analysis of Identified/Confirmed Victims shows us the predominance of female victims (n=71). The average age of confirmed victims is 30 years, the minimum age register is of 1 year old and the maximum age 60 years old.

The top 3 nationalities are: - 48% Portuguese (n=66) – in Portugal and abroad; - 21% Brazilian (n=29); and 13% Romanian (n=18).

The main two types of confirmed exploitation are: 53% Labour exploitation (n=74); 39% Sexual exploitation (n=54).

As far as the issue of the apparent discrepancy between the high number of flagged victims and the low number of confirmed victims is concerned, the following should be noted:

In accordance with the methodological model of the monitoring system, a registration of a Presumed VoT by law enforcement (police investigation) can result in 3 possible classifications: *Confirmed*; *Not Confirmed*; *Presumed (Still under Investigation)*. The ratio between confirmed victims must be calculated with the subtotals “*Presumed / (under Investigation)*” and “*Non – Confirmed*” and not with the total of flagged victims where there are the victims flagged by NGOs that, for various reasons, were not forwarded to law enforcement agencies for further police investigation. Notwithstanding the lack of a formal “confirmation” by a law enforcement agents as a result of the criminal investigation, but in order to obtain a more complete picture of the dimension of the THB phenomenon, the

NGO VoT Registers are always included in our reports, with the denomination *NGO Presumed Victims*, precisely to report all those that were not given to Police for criminal investigation.

As far as the information on why victims have not been confirmed, please note that the OTHB Annual Reports always contain a chapter on “Non-Confirmed Victims”, where these cases are analysed by territory, type of exploitation (crossed with victim’s socio demographic features) and legal grounds given by law enforcement agencies for the non-confirmation. Consequently it is not so much a matter of “*failed identification*” but rather an initial suspicion of THB that was not confirmed later on by law enforcement agencies.

Paragraph 11 mentions the need to promote and set out cooperation between law enforcement agencies and NGOs.

In June 2013 the RAPVT (see above) was created through an Agreement involving several governmental and non-governmental organizations. The main goal is the creation of a network of cooperation and information sharing aimed at the prevention, protection and reintegration of VoT. The Agreement reinforces the Dynamic Application (see response to recommendation 7).

Concerning the statement “currently, Memoranda of Understanding exist between the OTHB and civil society organizations for reporting purposes only (“flagging”), but not for identification and referral for assistance” please consider the above clarification concerning Paragraph 10. Moreover, the database gathers data for statistical purposes and not for referral for assistance.

Paragraph 12 states that “the official reports do not document how many victims have received unconditional assistance, including residence permits”.

This information is incorrect. All the OTHB reports have data on assistance and on residence permits provided by SEF.

Paragraph 16 states that “with regard to child trafficking, not much information seems to be available” and “the Special Representative suggests conducting research looking into child trafficking in Portugal and existing child specific responses as well as related challenges and gaps”.

There is indeed a special chapter about child trafficking in the OTHB Annual Reports. Moreover and in order to improve the flagging of children victims of trafficking, the OTHB coordinated the following projects:

#### “Flagging Card”

Between 2011-2012, and after the one produced for law enforcement agencies, the OTHB coordinated a multidisciplinary team and produced a flagging card to be used by NGO’s and another by Labour Inspectors.

The goal is to enhance the professional skills on flagging of potential VoT. Each one of these cards has a set of questions and observation indicators to assess the existence of potential victims as well as relevant contacts to victim’s referral support centres and hotlines. Special attention was given to child trafficking as far as the observation indicators are concerned.

International Conference on “Domestic Servitude and Forced Begging: Invisible Forms of Trafficking for Labour Exploitation” (2012):

In order to debate the invisibility of THB and to exchange best practices aimed at fighting it, the OTHB, with the support of the Committee on Constitutional Affairs, Rights, Freedoms and Guarantees of the Portuguese Parliament, the International Labour Organization (ILO), the International Organization for Migrations (IOM) and the Organization for Security and Co-operation in Europe (OSCE), organized this International Conference with renowned national and international speakers (e.g. from OSCE, Anti-Slavery International, ECPAT – UK and the Austrian National Coordinator on Combating Human Trafficking).

This event was particularly focussed on the issue of child trafficking for forced begging.

#### Booklet and Manual on Forced Begging (2013)

These were outputs from the International Conference mentioned above. They were coordinated by the OTHB and included contributions from several organizations.

Their objective is to inform professionals and society at large on what THB is, what the relation between trafficking and forced begging is, the case of child begging, the presentation of some indicators, explanation on how to support victims and a list of national referral organizations – from law enforcement agencies to NGOs.

This information is also relevant in regard to recommendation 5, which calls for an enhancement of the prevention of child trafficking and protection of child victims, namely by “ensuring that responses to child trafficking, including for exploitation in organized begging, are monitored and reported on by child rights professionals”.

Paragraph 16 also specifically mentions the need for special attention concerning the issue of trafficking for domestic servitude and sexual exploitation of minors in the Algarve region; this need had apparently been referred by “various discussion partners”.

This matter is under the investigative competence of PJ (shared, in the first case, but exclusively, in the second one, according to Law nr. 49/2008, of 27<sup>th</sup> August). Headquarters and the staff directly in charge of this area of investigation in the Algarve region are unaware of such an issue. Although there are some cases of sexual exploitation of minors, they occur in reduced numbers, as they do in other areas of the country.

We are not aware of who the “various discussion partners” are providing this information, and therefore consider this particular information to be of questionable credibility. In fact, there is no particular risk or concern in the Algarve region.

Paragraph 17 mentions that the SEF leads the investigations of Human Trafficking cases for labour exploitation involving “third-country nationals and Romanian and Bulgarian EU citizens”. This matter falls under the remit of shared powers of investigation between the PJ and the SEF, as both institutions have leading roles in this regard.

## APPENDIX II

### AGENDA OF THE OSCE SPECIAL REPRESENTATIVE AND CO-ORDINATOR FOR COMBATING TRAFFICKING IN HUMAN BEINGS IN PORTUGAL 27-30 NOVEMBER 2012

#### Tuesday 27 November - Lisbon

- 10:00 – 12:00 Meeting with the **Observatory on Trafficking in Human Beings**
- **Ms. Joana Wrabetz**, Head of the Team
  - **Ms. Rita Penedo**, Consultant/Directorate-General for Home Affairs
  - **Mr. Rui Belchior**, Technical Officer/Directorate-General for Home Affairs
- 12:30 – 13:45 Working Lunch hosted by the Director of the **Department of Political Multilateral Affairs of the Ministry of Foreign Affairs with:**
- **Ms. Manuela Teixeira Pinto**, Director, MFA DMA
  - **Mr. Manuel Albano**, National Rapporteur on Trafficking in Human Beings
  - **Mr. David Oppenheimer**, Desk Officer, MFA DMA
- 14:00 – 15:30 **Roundtable with civil society organizations and trade unions**
- APAV – Portuguese Association for Victim Support
  - APF – Association for Family Planning
  - “Saúde em Português” (“Healthcare in Portuguese”) – Association of healthcare Professionals of Portuguese-speaking countries
  - MDM – Women’s Democratic Movement
  - “Associação ComuniDária” – NGO focused on gender violence and immigrant integration
  - Association “O Ninho” (“The nest”)
  - OIKOS
  - UMAR – Union of Women Alternative and Response
  - AMCV – Association of Women Against Violence
- 16:00 – 17:00 **Meeting with the Directorate-General for Justice Policy, Ministry of Justice**
- **Ms. Patrícia Ferreira**, Deputy Director-General
  - **Mr. António Folgado**, Head of the Criminal Justice Unit
  - **Ms. Fátima Russo**, Legal Adviser
  - **Ms. Mónica Gomes**, Legal Adviser

#### Wednesday 28 November - Lisbon

- 9:30 – 10:15 **Meeting at the Department for Ceremonial, Visits, Dispenses and Privileges at State Protocol of the Ministry of Foreign Affairs**
- **Mr. Pedro Marinho da Costa**, Director
  - **Ms. Mónica Moutinho**, Desk Officer

- 10:30 – 11:30 **Meeting at the Department for Multilateral Affairs of the Ministry of the Foreign Affairs**
- **Ms. Manuela Teixeira Pinto**, Director
  - **Ms. Ana Luísa Nunes Barata**, Desk Officer
- 14:00 – 16:00 **Meeting with the Inter-ministerial Committee supporting the Coordinating Body for the National Plan against THB at the Commission for Citizenship and Gender Equality (CIG)**
- Presidency of the Council of Ministers
  - Commission for Citizenship and Gender Equality (as coordinator of the second National Action Plan on THB)
  - National Rapporteur for Trafficking in Human Beings
  - Observatory of Trafficking in Human Beings
  - Ministry of Home Affairs
  - Ministry of Justice
  - Ministry of Employment and Economics
  - Ministry of Solidarity and Social Security
  - Ministry of Health
  - Ministry of Foreign Affairs
  - Public Attorney's Office
- 16:30 – 18:00 **Hearing on human trafficking at the Subcommittee on Equality of the Portuguese Parliament**

#### **Thursday 29 November – Porto and Coimbra**

- 10:00 – 10:30 **Opening of a Training Workshop on THB for Labour Inspectors (co-organized by CIG, the National Authority for Labour Conditions and the Association for Family Planning )**
- 10:45 – 11:15 **Meeting with the multidisciplinary team on THB**
- **Ms. Marta Pereira**, Centre for Shelter and Protection (CAP)
  - **Mr. Nuno Gradim**, Technical Officer/ Commission for Citizenship and Gender Equality
  - Representatives of NGO “Association for Family Planning”
- 14:30 – 15:00 **Meeting in Coimbra with NGO “Healthcare in Portuguese” (Association of healthcare professionals of Portuguese-speaking countries)**
- 15:30 – 17:30 **Seminar on the topic of “trafficking for the purpose of labour exploitation” at the Center for Social Studies of Coimbra University**

#### **Friday 30 November - Lisbon**

- 9:30 - 11:00 **Meeting with the Secretary of State for Parliamentary Affairs and Equality**
- **Ms. Teresa Morais**, Secretary of State for Parliamentary Affairs and Equality
  - **Ms. Teresa Cadavez**, Advisor
- 11:30 – 12:30 **Meeting with the National Authority for Labour Condition**
- **Mr. Daniel Eseguy**, Deputy Inspector-General for Labour Conditions
  - **Ms. Susana Luz**, Labour Inspector
- 12:00 – 13:00 **Interview with Portuguese media**