

# **G R E T A**

Group of Experts on Action  
against Trafficking in Human Beings

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## **Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Portugal**

First evaluation round

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## Preamble

As the Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) and the monitoring mechanism to evaluate its implementation are relatively new, it is appropriate to set out their salient features at the beginning of the first report to each Party to the Convention.

The Convention was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005, following a series of other initiatives by the Council of Europe in the field of combating trafficking in human beings. The Convention entered into force on 1 February 2008. It is a legally binding instrument which builds on already existing international instruments. At the same time, the Convention goes beyond the minimum standards agreed upon in other international instruments and aims at strengthening the protection afforded by them.

The main added value of the Convention is its human rights perspective and focus on victim protection. The Convention clearly defines trafficking as being first and foremost a violation of human rights and an offence to the dignity and integrity of the human being; greater protection is therefore needed for all of its victims. The Convention also has a comprehensive scope of application, encompassing all forms of trafficking (whether national or transnational, linked or not linked to organised crime) and taking in all persons who are victims of trafficking (women, men or children). The forms of exploitation covered by the Convention are, at a minimum, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.

As trafficking in human beings is a world-wide phenomenon, one of the express purposes of the Convention is to promote international co-operation in the efforts to combat trafficking. In this context, it is noteworthy that the Convention is not restricted to Council of Europe member states; non-member states and the European Union also have the possibility of becoming Parties.

To be effective, and given the nature of the phenomenon, a strategy for combating trafficking in human beings must adopt a co-ordinated and multidisciplinary approach, incorporating prevention, protection of victims’ rights and prosecution of traffickers. The Convention contains various provisions in each of these three areas, placing obligations on states to take appropriate measures, in partnership with civil society and in co-operation with other states.

The measures provided for by the Convention in the area of prevention include awareness-raising for persons vulnerable to trafficking; economic and social initiatives to tackle the underlying causes of trafficking; actions aimed at discouraging demand; and putting in place border control measures to prevent and detect trafficking in human beings.

The Convention also provides for a series of measures to protect and promote the rights of victims. Victims of trafficking must be identified and recognised as such in order to avoid police and public authorities treating them as “irregular migrants” or criminals. Victims should be granted physical and psychological assistance and support for their reintegration into society. Further, by virtue of the Convention, victims are entitled to a minimum of 30 days to recover and escape from the influence of the traffickers and to take a decision about their possible co-operation with the authorities. A renewable residence permit should be granted if their personal situation so requires and/or if their continued presence is needed in order to co-operate in a criminal investigation. In addition, the Convention establishes the right of victims to receive compensation and provides for measures for their repatriation and return with due regard to the rights, safety and dignity of the victims.

In the area of substantive and procedural criminal law, the Convention places on Parties a series of obligations aimed at enabling the effective prosecution of traffickers and ensuring that they are punished in a proportionate and dissuasive manner. Particular attention is paid to the issue of victim and witness protection during investigation and court proceedings. Parties should also provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities.

Another important added value of the Convention is the monitoring system set up to supervise the implementation of the obligations contained in it, which consists of two pillars: the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties.

GRETA is composed of 15 independent and impartial experts chosen for their recognised competence in the fields of human rights, assistance and protection of victims, and action against trafficking in human beings, or because of their professional experience in the areas covered by the Convention. The task of GRETA is to evaluate the implementation of the Convention by the Parties, following a procedure divided into rounds. At the beginning of each round, GRETA defines autonomously the provisions to be monitored and determines the most appropriate means to carry out the evaluation, being guided by the Rules of procedure for evaluating implementation of the Convention adopted at GRETA's 2nd meeting (16-19 June 2009). GRETA has decided that the duration of the first evaluation round shall be four years starting at the beginning of 2010 and finishing at the end of 2013.

In carrying out its monitoring work, GRETA has the right to avail itself of a variety of means for collecting information. As a first step, GRETA sends a detailed questionnaire to the authorities of the Party undergoing evaluation. It may also make additional requests for information. By virtue of the Convention, Parties are obliged to co-operate with GRETA in providing the requested information. Another important source of information is civil society and, indeed, GRETA maintains contacts with non-governmental organisations which can provide relevant information. In addition, GRETA may decide to carry out a visit to the country concerned in order to collect additional information or to evaluate the practical implementation of the adopted measures. This visit allows for direct meetings with the relevant bodies (governmental and non-governmental) and is also an occasion for GRETA to visit facilities where protection and assistance are provided to victims of trafficking and other related structures. Furthermore, GRETA may decide to organise hearings with various actors in the field of action against trafficking in human beings.

GRETA's evaluation reports are thus the result of information gathered from a variety of sources. They contain an analysis of the situation in each Party regarding action taken to combat trafficking in human beings and suggestions concerning the way in which the country may strengthen the implementation of the Convention and deal with any problems identified. In its assessment, GRETA is not bound by the case law of judicial and quasi-judicial bodies acting in the same field, but may use them as a point of departure or reference. The reports are drawn up in a co-operative spirit and are intended to assist states in their efforts; they can offer support for the changes on which the national authorities have already embarked, and lend legitimacy to the direction of national policies. Because of its multidisciplinary and multinational composition, and as a consequence of its independent approach, GRETA provides a professional and impartial international voice in this process.

As regards the procedure for the preparation of reports, GRETA examines a draft report on each Party in plenary session. The report is sent to the relevant government for comments, which are taken into account by GRETA when establishing its final report. This final report is adopted by GRETA in a plenary session and transmitted to the Party concerned, which is invited to submit any final comments. At the expiry of the time-limit of one month for the Party to make comments, the report and conclusions by GRETA, together with eventual comments made by the national authorities, are made public and sent to the Committee of the Parties. In the context of the first evaluation round, this completes GRETA's task in respect of the Party concerned, but it is only the first stage in an on-going dialogue between GRETA and the authorities.

The second pillar of the monitoring mechanism, the Committee of the Parties, is composed of the representatives in the Committee of Ministers of the Parties to the Convention and of representatives of Parties non-members of the Council of Europe. On the basis of GRETA's reports, the Committee of the Parties may adopt recommendations addressed to a Party concerning the measures to be taken to implement GRETA's conclusions.

## Executive summary

The Portuguese authorities have taken a number of important steps to prevent and combat trafficking in human beings. The anti-trafficking legal framework has evolved over the years in line with Portugal's international commitments. Two national action plans have been adopted since 2007, the current one covering the period 2010-2013 and aiming to address all aspects of action against human trafficking. The co-ordination of anti-trafficking activities has been entrusted to the Citizenship and Gender Equality Commission, within which a National Rapporteur for Human Trafficking was appointed in 2012. In 2008, the Observatory of Trafficking in Human Beings was also set up within the Ministry of the Interior to collect and analyse data and monitor trafficking trends. Further, a Technical Committee comprising representatives of relevant public authorities was set up in 2010, with a view to monitoring the implementation of the national action plan.

That said, GRETA notes that non-governmental organisations have not been sufficiently involved in the planning and implementation of anti-trafficking measures. Furthermore, GRETA considers that the Portuguese authorities should adapt anti-trafficking policy by focusing more attention on trafficking for the purpose of labour exploitation and taking greater account of male and child victims of trafficking.

Measures to prevent human trafficking have involved several awareness-raising campaigns organised by the authorities, in collaboration with international organisations, or by civil society. However, GRETA notes that these campaigns have not been targeted and their impact has not been assessed. GRETA welcomes the criminalisation of the use of services or organs of victims of human trafficking, with the knowledge that the person concerned is a victim of trafficking, and invites the Portuguese authorities to continue their efforts to address demand as a root cause for human trafficking. The authorities have also taken measures concerning groups experiencing socio-economic difficulties which increase their vulnerability to human trafficking, such as women, immigrants and Roma/Gypsy communities. That said, GRETA considers that it is necessary to step up measures addressing the root causes of human trafficking.

In order to improve the identification of victims of human trafficking, the Portuguese authorities have introduced a "Reporting - Identification - Integration" system and encourage non-governmental organisations to signal suspected cases of human trafficking to the Observatory of Trafficking in Human Beings. A multi-disciplinary team based in Porto is supposed to receive reports on potential victims of human trafficking and assist the police in the victim identification procedure. However, this team has limited capacity to intervene. Identification is thus the exclusive responsibility of the police forces. GRETA notes a degree of reluctance among some civil society actors to report trafficking cases for fear that the police investigation might expose victims to their traffickers or result in their removal from the country as irregular migrants. GRETA urges the Portuguese authorities to ensure that in practice the identification of victims is dissociated from their participation in the investigation and court proceedings, and that all stakeholders involved in the identification of victims adopt a more proactive approach and step up their outreach work. GRETA also considers that the Portuguese authorities should strengthen the multi-disciplinary approach to victim identification.

The Portuguese authorities have set up one specialised shelter, run by the Family Planning Association, which provides accommodation and assistance to victims of trafficking. This shelter is open only to women victims of trafficking and has a limited capacity. GRETA urges the authorities to step up the assistance provided to trafficking victims and to ensure that the services available are sufficient and appropriate to their specific needs. The authorities should also improve the assistance system for child victims of trafficking with regard to accommodation and the introduction of medium and long-term support programmes appropriate to children's needs.

GRETA welcomes the provision in Portuguese law of a recovery and reflection period longer than the minimum of 30 days envisaged in the Convention. That said, it urges the authorities to ensure that victims of trafficking are systematically informed of the possibility of being given a recovery and reflection period and are effectively granted such a period. Further, GRETA invites the Portuguese authorities to ensure that victims of trafficking can fully benefit from their right to obtain a renewable residence permit, particularly when they are unable to co-operate with the authorities.

Concerning the compensation of victims of trafficking, despite the existence of legal possibilities, this aspect remains largely unexplored. GRETA urges the Portuguese authorities to ensure that victims of trafficking are made aware of the right to compensation and of the procedures to follow, and can effectively enjoy this right, particularly through access to legal assistance in this respect.

Most of the substantive criminal law provisions of the Convention are adequately reflected in Portuguese law. However, in order to be fully consistent with the definition of trafficking in human beings in the Convention, GRETA considers that the Portuguese authorities should explicitly include slavery and practices similar to slavery and servitude in the forms of exploitation resulting from human trafficking. Further, the authorities should include as aggravating circumstances all situations envisaged under Article 24 of the Convention.

GRETA is concerned by the low number of convictions for human trafficking and urges the Portuguese authorities to take steps to identify gaps in the investigation procedure and the presentation of cases in courts, with a view to ensuring that human trafficking offences are effectively investigated and prosecuted, leading to proportionate and dissuasive sanctions. Furthermore, GRETA considers that the Portuguese authorities should take steps to guarantee the effective application of the legal provisions concerning the confiscation of traffickers' assets.

Finally, GRETA stresses the need for improving the knowledge and sensitivity of judges, prosecutors, investigators and lawyers about trafficking in human beings and victims' rights. Future training programmes should be designed with a view to improving the knowledge and skills of relevant professionals which enable them to identify victims of trafficking, to assist and protect them, and to secure convictions of traffickers.



## I. Introduction

1. Portugal deposited the instrument of ratification of the Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”) on 27 February 2008. The Convention entered into force for Portugal on 1 June 2008.

2. As established in Article 36(1) of the Convention, the Group of Experts on Action against Trafficking in Human Beings (“GRETA”) monitors the implementation of the Convention by the Parties. GRETA does so in conformity with the procedure laid down in Article 38 of the Convention and the Rules on the evaluation procedure of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties. For the first evaluation round (2010-2013), GRETA drew up a monitoring timetable according to which the Parties to the Convention were divided into groups, Portugal being in the second group of 10 Parties.

3. In accordance with Article 38 of the Convention, GRETA proceeded with the examination of the measures taken by Portugal to implement the provisions set out in the Convention. The “Questionnaire for the evaluation of the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the Parties – first evaluation round” was sent to the Portuguese authorities on 1 February 2011, with a deadline for responding of 1 September 2011. Portugal submitted its reply to the questionnaire on 27 August 2011.

4. In preparation of the present report, GRETA used the reply to the questionnaire submitted by the Portuguese authorities, other information collected by GRETA and information received from civil society. In addition, an evaluation visit to Portugal took place from 13 to 17 February 2012. It was carried out by a delegation composed of:

- Mr Nicolas Le Coz, President of GRETA;
- Ms Vessela Banova, member of GRETA;
- Ms Petya Nestorova, Executive Secretary of the Council of Europe Convention on Action against Trafficking in Human Beings;
- Ms Clémence Bouquemont, Administrator at the Secretariat of the Convention.

5. During the visit, the GRETA delegation met with Ms Teresa Morais, State Secretary for Parliamentary Affairs and Equality and Mr Manuel Albano, National Rapporteur on action against trafficking in human beings, as well as with officials from relevant Ministries and other public bodies (see Appendix II). The GRETA delegation also had the opportunity to hold discussions with members of the Parliamentary Committee on Constitutional Affairs, Rights, Freedoms and Safeguards.

6. The GRETA delegation held separate meetings with members of non-governmental organisations (NGOs) working in the field of action against trafficking in human beings and representatives of the offices of the International Organisation for Migration (IOM) and the International Labour Organisation (ILO) in Portugal. GRETA is grateful for the information provided by them.

7. Further, in the context of the evaluation visit to Portugal, the GRETA delegation visited the country’s only shelter for victims of trafficking in human beings. The shelter, which is financed by the State, is managed by the Family Planning Association (APF).

8. GRETA is grateful for the assistance provided by the contact person appointed by the Portuguese authorities, Mr Nuno Gradim, of the Citizenship and Gender Equality Commission (CIG).

9. The draft version of the present report was adopted by GRETA at its 14th meeting (25-29 June 2012) and was submitted to the Portuguese authorities on 30 July 2012 for comments. The comments were received on 28 September 2012 and were taken into account by GRETA when establishing its final report, which was adopted at GRETA’s 15th meeting (26-30 November 2012).

## **II. National framework in the field of action against trafficking in human beings in Portugal**

### **1. Overview of the current situation in the area of trafficking in human beings in Portugal**

10. Portugal is primarily a destination country for victims of trafficking in human beings (THB). Over the period 2008-2011, the majority of identified victims originated from Portuguese-speaking countries (Brazil with 35% of all victims, Mozambique with 15% of the victims) and from Eastern Europe (in particular Romania, with 16% of victims). Portugal is also a country of origin, with a growing number of Portuguese nationals (35% of the victims identified over the same period) exploited on the territory of Portugal or in neighbouring states, in particular Spain.

11. According to official data collected by the Observatory of Trafficking in Human Beings (OTSH), 479 potential victims were reported by the police or by NGOs between 2008 and 2011. Of them, 122 were officially recognised as victims of THB, some 60% of them being women. While trafficking for the purpose of sexual exploitation remains significant (47% of the identified victims), a new trend has emerged: an increase in the number of cases of trafficking for the purpose of labour exploitation (46% of all victims over the reference period), which principally affects men. The figures show that male victims outnumbered female victims in 2010 and 2011.

12. Few children have been identified as victims of human trafficking (17 between 2008 and 2011, of whom 14 were girls). Most of them were trafficked for sexual exploitation, but there were also three cases of trafficking for labour exploitation and three for attempted adoption. While the children were mainly of foreign nationality (Romania, Brazil), five Portuguese children were also identified as victims of trafficking during the reference period. The median age was 14 years.

### **2. Overview of the legal and political framework in the field of action against trafficking in human beings**

#### **a. Legal framework**

13. At international level, in addition to the Council of Europe Convention on Action against Trafficking in Human Beings, Portugal has ratified the United Nations Convention on Transnational Organised Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons in April 2004. Portugal has also acceded to several international instruments relevant to action against trafficking in human beings, such as the Convention on the Elimination of All Forms of Discrimination against Women (ratified in 1980), the Convention on Children's Rights (ratified in 1990) and the ILO Convention on child labour (ratified in 2000). Furthermore, Portugal is party to a number of Council of Europe conventions on co-operation in criminal matters<sup>1</sup> and has recently ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (decision of 8 March 2012, published on 28 May 2012).

<sup>1</sup> In particular the European Convention on Mutual Assistance in Criminal Matters; European Convention on Extradition; Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime; Criminal Law Convention on Corruption; Convention on Cybercrime and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems; Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

14. Portugal is bound by the European Union (EU) instruments on action against trafficking in human beings, in particular Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who co-operate with the competent authorities, Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, and Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings.

15. The national legal framework in the field of action against human trafficking has evolved over the years and especially since 2007, in line with Portugal's international commitments. There is no single piece of legislation covering all aspects of the fight against human trafficking. The main legal provisions relating to THB are contained in the Criminal Code (CC), which was revised in 2007 to include a general definition of trafficking in human beings (Article 160, Chapter IV "Crimes against personal freedom"). Prior to that, only trafficking for the purpose of sexual exploitation was criminalised. A separate provision of the CC (Article 159) criminalises slavery (see paragraphs 44 and 161).

16. In addition to the CC, a number of other legislative instruments make up the national legal framework in the field of action against THB, in particular:

- Law 23/2007 of 4 July 2007 on the legal framework governing the entry, stay, exit and removal of foreigners ("Immigration Law"), which has a section on victims of THB laying down the rules relating to their residence permits, reflection period and rights; this law was amended through Law 29/2012, in force since 8 October 2012;
- Legislative Decree 368/2007 of 5 November 2007 on the conditions for granting a reflection period and a residence permit to victims of THB who are unwilling or unable to co-operate with the justice system;
- Law 229/2008 of 27 November 2008 establishing the Observatory of Trafficking in Human Beings (OTSH);
- Law 93/99 of 14 July 1999 guaranteeing assistance to witnesses and victims of offences, amended by Law 29/2008 of 4 July 2008 in order to include, *inter alia*, the possibility of not disclosing the identity of a victim when the testimony or statement concerns the crime of human trafficking;
- Law 5/2002 of 11 January 2002 laying down measures to combat organised crime, and in particular measures relating to the confiscation of assets, and Law 45/2011 of 24 June 2011 establishing an assets recovery office;
- Law 104/2009 of 14 September 2009 on compensation to victims of violent crime;
- Law 38/2009 of 20 July 2009 defining the objectives, priorities and directions of penal policy in the period 2009-2011, according to which the fight against human trafficking is one of these priorities, and related circular letter 4/2010;
- Law 49/2008 of 27 August 2008 on the organisation of criminal investigations which, *inter alia*, empowers two police forces, the Immigration and Borders Service (SEF) and the Criminal Police (PJ), to conduct investigations relating to THB.

b. National Action Plans

17. Portugal's first National Action Plan against human trafficking was adopted by Council of Ministers' Resolution 81/2007 of 22 June 2007. The plan covered the period 2007-2010 and was aimed at putting in place procedures for assisting and protecting victims of THB. It included four strategic fields of action – information, prevention, protection and prosecution – and envisaged measures such as the introduction of a reflection period and a residence permit for victims, training of relevant professionals, and the setting up of the Observatory of Trafficking in Human Beings (see paragraph 27). The first Action Plan focused in particular on trafficking for the purpose of sexual exploitation.

18. The first Action Plan was evaluated by a team from the University of Coimbra<sup>2</sup>. The evaluation underscored Portugal's efforts in the fields of prevention, awareness raising, training and investigation and suggested some improvements that could be made in the second Action Plan. Among other things, it urged the Portuguese authorities, to adjust measures more closely to the reality in Portugal, and highlighted, in particular, trafficking for the purpose of labour exploitation, which affects both foreign nationals in Portugal and Portuguese nationals in other countries. According to information available to GRETA, only a small number of NGOs and civil society representatives were contacted in connection with this evaluation, which, moreover, was apparently not completed until after the second Action Plan had entered into force. This would suggest that the second plan was not designed on the basis of the evaluation of the first plan and the recommendations made therein.

19. The second National Action Plan against THB, which covers the period 2010-2013, was adopted by Council of Ministers Resolution 94/2010 of 29 November 2010. It contains 45 measures in four fields of action: study of the phenomenon, awareness raising and prevention; education and training; protection and support; criminal investigation and co-operation. Provision is made for the development of awareness-raising campaigns, the inclusion of modules on trafficking in secondary and higher education, the enhancement of training for judges, police officers and social workers, the funding of projects to protect and assist victims of trafficking, and the introduction of legal aid arrangements for victims of trafficking. According to the Portuguese authorities, the second Action Plan is designed as an instrument for cross-cutting, multidisciplinary and integrated action involving ministries, other public authorities, the private sector and civil society. Particular attention is paid to the issue of trafficking for the purpose of labour exploitation.

20. Despite a change of government in the period covered by the second Action Plan, the Portuguese authorities have indicated that they intend to continue implementation of the plan drawn up under the previous government. It is noteworthy that the second Action Plan was drawn up in conjunction with the fourth National Action Plan against Domestic Violence and the fourth National Action Plan for Gender Equality, Citizenship and Fight against Discrimination.

21. The Citizenship and Gender Equality Commission (CIG) is tasked with co-ordinating the National Action Plan against THB. In that capacity it is required to submit annual reports on its implementation, to monitor implementation of the measures for which the respective ministries are responsible, and to develop a network of contacts, including with civil society. It is backed, in its co-ordinating role, by a technical committee bringing together the public institutions concerned (see paragraph 26).

22. As regards funding of the National Action Plan, co-ordination measures are funded from the CIG's budget, while measures related to the implementation of activities for which ministries are responsible are supported by the ministries' respective budgets. In addition, funding is set aside for projects conducted by civil society (see paragraph 58).

23. An interim evaluation of the second Action Plan was submitted to Parliament in March 2012 and has been made public through publication on the CIG website ([www.cig.gov.pt](http://www.cig.gov.pt)). It provides a better understanding of the difficulties encountered and identifies the measures which need to be reinforced.

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<sup>2</sup> *Estúdio de avaliação do I plano nacional contra o tráfico de seres humanos, Centro de Estudos sociais, Universidade de Coimbra.*

### **3. Overview of the institutional framework for action against trafficking in human beings**

#### **a. Citizenship and Gender Equality Commission and National Rapporteur for Human Trafficking**

24. The Citizenship and Gender Equality Commission (CIG) is placed under the Bureau of the Presidency of the Council of Ministers and the State Secretariat for Parliamentary Affairs and Equality. It is tasked with promoting citizenship and gender equality. According to the Portuguese authorities, responsibility for co-ordinating action against trafficking in human beings was originally entrusted to the CIG because, at the time, this issue only affected women.

25. In 2008, a National Co-ordinator for Human Trafficking was appointed within the CIG<sup>3</sup>, and was subsequently designated as National Rapporteur<sup>4</sup> in 2012. The National Rapporteur is responsible for co-ordinating and monitoring implementation of the Action Plan, promoting the development of information structures and networks at national and international level, and liaising with equivalent bodies in other countries and at international level. The National Rapporteur may also propose legislative amendments and research. With reference to Article 29, paragraph 4, of the Convention and paragraph 298 of the Explanatory Report to the Convention concerning the establishment of an independent National Rapporteur, GRETA stresses the importance of clarifying the respective responsibilities and the relationship between the National Co-ordinator, National Rapporteur and the Observatory of Trafficking in Human Beings.

#### **b. Technical Committee**

26. The Technical Committee was set up pursuant to Council of Ministers Resolution 94/2010 with the task of supporting the CIG in its work of co-ordinating the Action Plan and monitoring the implementation of measures. The committee comprises, in addition to the CIG and the National Rapporteur, the Presidency of the Council of Ministers (represented by the High Commission for Immigration and Intercultural Dialogue), the Ministry of the Interior (represented by the Immigration and Borders Service and the Observatory of Trafficking in Human Beings), the Ministry of Justice (represented by the Criminal Police), the Ministry of Foreign Affairs, the Ministry of Solidarity and Social Security, and the Ministry of Health. It is expected to meet four times a year at the level of technical experts<sup>5</sup>.

#### **c. Observatory of Trafficking in Human Beings**

27. The Observatory of Trafficking in Human Beings (OTSH), established by Legislative Decree 229/2008 of 27 November 2008, is placed under the Ministry of the Interior and works in close co-operation with the police. It is tasked with collecting, processing and disseminating information and knowledge about human trafficking and other forms of violence against women. The OTSH is composed of a Director and two staff members.

<sup>3</sup> Order 596/2008 of 2 January 2008.

<sup>4</sup> Order 1003/2012 of 10 January 2012 of the State Secretariat for Parliamentary Affairs and Equality.

<sup>5</sup> Appointment Order 1703/2012 of the State Secretariat for Parliamentary Affairs and Equality.

d. Police forces

28. The Criminal Police (PJ) is subordinated to the Ministry of Justice. Its mission is to assist the judicial authorities and the Public Prosecution Service in conducting investigations and to carry out preventive, detection and investigative activities which fall within its ambit, particularly with regard to organised crime, or which have been entrusted to it by the competent judicial or investigative bodies<sup>6</sup>. The PJ has some 1 800 investigators nationwide. There are specialist teams dealing, *inter alia*, with organised crime, which includes human trafficking.

29. The Immigration and Borders Service (SEF) reports to the Ministry of the Interior and is responsible for issuing residence permits, carrying out border checks, monitoring the activities of foreign nationals in Portugal, and co-ordinating and implementing measures related to those activities or to migration flows. Where trafficking in human beings is concerned, the SEF is responsible for investigations in the same way as the PJ, as well as for issuing residence permits to foreign nationals who are or have been victims of THB<sup>7</sup>. The SEF has a staff of 1 300, including 800 investigators.

30. The Public Security Police (PSP) and the Republican National Guard (GNR) are present in the field at local level and may be called upon to report victims of THB and take the first steps to protect them and get the investigation under way. However, they have no formal jurisdiction in relation to THB investigations, which are the sole preserve of the SEF and the PJ. Contact persons for THB cases have been designated at central level within the four police forces in Portugal.

e. Public Prosecution Service

31. A specialist organised crime unit within the Investigation and Criminal Prosecution Department (DIAP) of the Lisbon Public Prosecutor's Office deals with cases relating to THB. It has a staff of four. There is also a public prosecutor specialising in organised crime, including THB, in Porto, Coimbra and Evora. Furthermore, a network of contact persons for THB cases was set up within the Public Prosecutor's Office in May 2012, as part of the implementation of the second National Action Plan.

f. Social Security Institute

32. Established in January 2011, the Social Security Institute (ISS) is a public agency overseen by the Ministry of Solidarity and Social Security. It runs the social security system and finances the legal aid system. The ISS allocates monthly funding to the Family Planning Association which runs the only specialised shelter for victims of THB (see paragraph 125). It also gives financial support to NGO-run crisis centres for victims of violence which may receive victims of trafficking.

g. Non-governmental organisations and civil society

33. While there are no NGOs dealing exclusively with the issue of THB in Portugal, some organisations involved in combating violence against women and assisting victims of such violence have expanded their activities to include victims of trafficking. As noted above, the Family Planning Association (APF) is responsible for running the only specialised shelter for victims of THB and is also involved in awareness raising, training and research. Assistance to victims of trafficking is also provided by the Portuguese Victim Support Association (APAV), Women's Union - Alternative and Response (UMAR), the Association of Women against Violence (AMCV), as well as religious associations such as the Jesuit Refugee Service (JRS), all of which may be called upon to provide shelter to victims of THB in centres run by them. Further, NGOs such as Saúde em Português and the Women's Democratic Movement (MDM) are active in the field of prevention and awareness raising. The contributions by NGOs are discussed in later sections of the report.

34. Civil society is also involved in research on THB. For example, the Institute of Strategic and International Studies (IEEI) is preparing an extensive study of THB in Portugal (see paragraph 73).

<sup>6</sup> Law 49/2008 of 27 August 2008 on the organisation of criminal investigations.

<sup>7</sup> Pursuant to Law 23/2007 of 4 July 2007.

### III. Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Portugal

#### 1. Integration into domestic law of the core concepts and definitions contained in the Convention

##### a. Human rights-based approach to action against THB

35. Article 1(1)(b) of the Convention establishes as one of its purposes the protection of the human rights of the victims of trafficking. Further, Article 5(3) includes the obligation for Parties to promote a human rights-based approach in the development, implementation and assessment of the policies and programmes to prevent THB. The Explanatory Report of the Convention states that the main added value of the Convention is its human rights perspective and focus on victim protection. In the same vein, the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking emphasise that “the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims”<sup>8</sup>.

36. THB constitutes an offence to the dignity and fundamental freedoms of the human being and thus a grave violation of human rights. GRETA emphasises the obligations of states to respect, fulfil and protect human rights, including by ensuring compliance by non-state actors, in accordance with the duty of due diligence. The human rights-based approach entails that a state that fails to fulfil these obligations may, for instance, be held accountable for violations of the European Convention on Human Rights (in case the state concerned is a Party to it). This has been confirmed by the European Court of Human Rights in its judgment in the case of *Rantsev v. Cyprus and Russia*, where the Court concluded that THB “within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention, falls within the scope of Article 4 of the European Convention on Human Rights”<sup>9</sup> (which prohibits slavery, servitude and forced or compulsory labour). The Court further concluded that Article 4 entails a positive obligation to protect victims, or potential victims, as well as a procedural obligation to investigate trafficking.

37. GRETA considers that the human rights-based approach to action against THB requires states to set up a comprehensive framework for the prevention of THB, the protection of trafficked persons as victims of a serious human rights violation, and the effective investigation and prosecution of traffickers. Such protection includes steps to secure that all victims of THB are properly identified. It also includes measures to empower trafficked persons by enhancing their rights to adequate protection, assistance and redress, including recovery and rehabilitation, in a participatory and non-discriminatory framework, irrespective of their residency status. Further, measures to prevent THB should be taken in the field of socio-economic, labour and migration policies.

38. GRETA wishes to stress the need for states to also address THB as a form of violence against women and to take account of gender-specific types of exploitation, as well as the particular situation of child victims of THB, in line with the relevant international legal instruments<sup>10</sup>.

39. The Portuguese authorities have referred to Article 8(2) of the Portuguese Constitution pursuant to which “the norms contained in duly ratified or approved international conventions come into force in Portuguese internal law once they have been officially published, and remain so for as long as they are internationally binding on the Portuguese state”. The provisions contained in the Convention therefore form an integral part of Portuguese law.

<sup>8</sup> Addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/Add. 1), <http://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

<sup>9</sup> *Rantsev v. Cyprus and Russia*, no. 25965/04, paragraph 282, ECHR 2010.

<sup>10</sup> Such as the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse; the United Nations Convention on the Rights of the Child and the Optional Protocol thereto on the Sale of Children, Child Prostitution and Child Pornography; and the United Nations Convention on the Elimination of All Forms of Discrimination against Women.

40. Furthermore, the Portuguese authorities have stated that the second National Action Plan was inspired by the Convention, as well as by the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons and other international initiatives. The Action Plan and a number of documents relating to action against THB stress that trafficking in human rights is a violation of human rights.

41. The human rights-based approach to action against THB entails transparency and accountability on the part of the state through the adoption of a national policy and action plans for combating trafficking in human beings, the co-ordination of the efforts of all relevant actors, the regular training of relevant professionals, research and data collection, and the provision of adequate funding for the implementation of all these measures. The following sections of this report examine in detail the policies and measures taken by the Portuguese authorities in these fields.

b. Definitions of “trafficking in human beings” and “victim of trafficking” in Portuguese law

i. *Definition of “trafficking in human beings”*

42. In accordance with Article 4(a) of the Convention, trafficking in human beings includes three components: an action (“the recruitment, transportation, transfer, harbouring or receipt of persons”); the use of certain means (“threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person”); and the purpose of exploitation (“at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”). In the case of children, pursuant to Article 4(c) of the Convention, it is immaterial whether the means referred to above have been used.

43. Article 160(1) of the Portuguese CC defines trafficking in human beings as “offering, delivering, recruiting, accepting, transporting, harbouring or housing any person for the purpose of sexual exploitation, labour exploitation or the removal of organs, by violence, abduction or serious threat, by deception or fraud, with abuse of authority resulting from a relationship of hierarchical, financial, work or family dependence, by taking advantage of the victim’s mental incapacity or situation of special vulnerability, or by obtaining consent from the person who has control over the victim”.

44. The Portuguese definition of trafficking in human beings incorporates the three constituent elements specified in Article 4(a) of the Convention. All the means envisaged by the Convention are included in it. As regards the purposes, GRETA notes that slavery or practices similar to slavery and servitude are not expressly mentioned in Article 160 of the CC. Portuguese legislation criminalises slavery as a distinct offence in Article 159 of the CC, which defines slavery as reducing another person to the state or condition of slavery or transferring ownership of, selling or buying a person with the intention of keeping him or her in such a situation (see also paragraph 161). GRETA notes that the latter provision carries a sanction of five to 15 years of imprisonment, which is harsher than that applying to trafficking, and the requirements for the verification of evidence do not include proof of any means. There have been a number of convictions under Article 159 of the CC. The Portuguese authorities have indicated that the existence of a separate criminal provision on slavery has a long legal tradition in Portugal (dating back to 1886) and have argued that the inclusion of slavery under Article 160 of the CC would not contribute to enlarging the protection of victims or result in a better implementation of the Convention. That said, the Portuguese authorities are not opposed to the idea of amending the definition of THB under Article 160(1) of the CC, in order to remove potential difficulties of interpretation. GRETA would like to point out that, while Portuguese law punishes slavery, it is vital that the text making trafficking a criminal offence also cover slavery, so that it is possible to prosecute those persons who have committed an act which has led to a person being placed in a situation of slavery. **In order to be fully consistent with the definition of THB in the Convention, GRETA considers that the Portuguese authorities should explicitly include slavery and practices similar to slavery and servitude in the forms of exploitation resulting from human trafficking.**



45. Pursuant to Article 4(b) of the Convention, the consent of the victim of THB is irrelevant where any of the means set forth in the definition of THB have been used. There is no specific reference in Article 160 of the CC to the issue of consent of a victim of trafficking to the intended exploitation. Article 38(2) of the CC does contain a general provision on consent, but its implementation seems to pose problems to the judicial authorities. The Portuguese authorities have indicated that there is no case law on the issue of consent of a victim of THB and that invoking the victim's consent where any means have been used to obtain this consent would be incompatible with the general principles of Portuguese law and in particular Article 38(2) of the CC. Nevertheless, **GRETA considers that stating explicitly the irrelevance of the consent of a victim of trafficking to the intended exploitation could improve the implementation of the anti-trafficking provisions.**

46. As regards children, Article 160(2) of the CC defines trafficking in children as “enticing transporting, harbouring or housing a juvenile or transferring, offering or accepting him/her for the purpose of sexual exploitation, labour exploitation or the removal of organs.” GRETA notes that this definition contains only two of the elements mentioned in paragraph 42, i.e. the action and the purpose of exploitation, irrespective of the means used, which is in conformity with the Convention. The use of any means vis-à-vis a child constitutes an aggravating circumstance.

47. The CC also contains, in Article 160(4), a provision stating that “whoever, in return for payment or other compensation, offers, delivers, solicits or accepts a juvenile<sup>11</sup> or obtains or gives consent for his/her adoption is also engaging in trafficking of human beings”. The Portuguese authorities have indicated that there have been no convictions on the basis of this provision. GRETA wishes to draw attention to paragraph 94 of the Explanatory Report to the Convention, which reads as follows: “The definition of trafficking in human beings does not refer to illegal adoption as such. Nevertheless, where an illegal adoption amounts to a practice similar to slavery as defined in Article 1(d) of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery, it will also fall within the Convention’s scope”. The Portuguese authorities have indicated that Article 160(4) of the CC was designed to criminalise the purchase and sale of children, without there being a requirement to prove the purpose of exploitation, as is obvious from the preparatory works of the 2007 penal reform.

48. For a more detailed analysis of Article 160 of the CC and related offences a substantive criminal law perspective, see paragraph 159 and following.

## *ii. Definition of “victim of trafficking”*

49. The Convention defines “victim of THB” as any natural person who is subjected to THB as defined in Article 4 of the Convention. Recognition of victims of THB as such is essential as it gives rise to their entitlement to the broad range of protection and assistance measures set out in the Convention.

50. Portuguese law has no provision defining the term “victim of trafficking” and no general definition of victim of an offence. However, according to Legislative Decree 368/2007 of 5 November 2008 on the conditions for granting a reflection period and a residence permit to victims of THB who are unwilling or unable to co-operate with the justice system, a victim of trafficking is a person in respect of whom the judicial authorities or the criminal police find evidence that the offence of THB has been committed or where the National Rapporteur for Human Trafficking deems that there are sufficiently serious grounds for believing that the person is a victim of THB (see paragraph 115).

51. Victims of human trafficking enjoy rights (assistance, reflection period, residence permit, etc.) deriving from their identification as such. These aspects are dealt with in more detail in the parts of the report devoted to victim identification and assistance measures.

<sup>11</sup> In Portugal, a juvenile is a person under 18 years of age.

- c. Comprehensive approach to action against trafficking, co-ordination of all actors and actions, and international co-operation

*i. Comprehensive approach and co-ordination*

52. One of the aims of the Convention is to design a comprehensive framework for the protection and assistance of victims and witnesses. To be effective, any national action to combat THB must be comprehensive and multi-sectoral, and take on board the required multidisciplinary expertise. Article 29(2) of the Convention requires Parties to take measures to ensure the co-ordination of national policies and actions against THB, including through the setting-up of specific co-ordinating bodies. Further, the Convention refers to the need to co-operate and build strategic partnership with civil society through co-operative frameworks that can help governments fulfil their obligations under the Convention (Article 35).

53. The framework for action against human trafficking in Portugal is designed to cover all victims of THB subjected to different types of exploitation. The second Action Plan aims to involve all relevant actors and cover all aspects of action against THB (see paragraph 19). However, in practice, anti-trafficking action seems more restricted because it stems directly from the system in place for combating violence against women and sexual violence. The project CAIM (“Co-operation, Action, Investigation and Global Vision”) in particular, which ran from 2004 to 2007, focused on ways of combating prostitution and trafficking in women for the purpose of sexual exploitation<sup>12</sup> and shaped the Portuguese framework for action against THB accordingly. This is why the shelter for victims of human trafficking, founded in 2008, admits women only.

54. It was, undoubtedly, in response to this initial one-sidedness that the second Action Plan sought to lay greater emphasis on other forms of trafficking, in particular labour exploitation and the exploitation of minors through forced begging. In practice, however, there is still a gap regarding action to address forms of trafficking such as trafficking for the purpose of labour exploitation, which is increasingly widespread, and to provide assistance to male and child victims of THB. The Portuguese authorities have pointed out that the second Action Plan contains measures specifically related to labour exploitation, such as training of labour inspectors, distribution of the ILO handbook on forced labour, and conducting a study on THB for labour exploitation. As regards male victims of trafficking, according to the Portuguese authorities, the majority of those identified have been Portuguese nationals trafficked abroad, who reintegrated their families or communities after returning to Portugal.

**55. GRETA considers that the Portuguese authorities should adapt their anti-trafficking policy to the current trends in THB, in particular by focusing more attention on trafficking for the purpose of labour exploitation and taking greater account of male and child victims who are not appropriately catered for under the current system.**

56. As mentioned in paragraph 24, the CIG was designated as the co-ordinating body for the National Action Plan against THB, and an official of the CIG was appointed National Rapporteur for Human Trafficking. The Technical Committee comprises, in addition to the National Rapporteur and the CIG, representatives of the Ministries concerned (see paragraph 26) and holds four meetings a year at which it monitors the implementation of the Action Plan. The fact that the co-ordinating body is attached to the Presidency of the Council of Ministers, rather than to a particular ministry, indicates a political will to ensure that this body operates on an inter-institutional basis. **GRETA encourages the Portuguese authorities to continue this good practice, in keeping with the spirit of the Convention, which entails that co-ordinating bodies should be given the necessary authority to ensure effective co-ordination between public agencies.**

<sup>12</sup> Pilot project under the aegis of the CIG bringing together various public and private players, including the Family Planning Association, with funding from the EQUAL Community Initiative.

57. Notwithstanding the co-ordination between relevant public agencies, NGOs have voiced concerns about the absence of a multi-sectoral approach to action against THB and consider that they are not sufficiently involved in preparing, co-ordinating and implementing plans and policies. NGOs have no formal status within the CIG or the Technical Committee. According to the Portuguese authorities, NGOs were consulted during the drafting of the first and the second National Action Plans and there are no impediments to them participating in co-ordination meetings as observers. It should be noted that the CIG is currently working on the setting up of a national support and protection network for victims of trafficking (RAPVT)<sup>13</sup>, in which NGOs will participate alongside the main public agencies concerned. According to information provided by the Portuguese authorities, the first meeting with relevant NGOs took place on 13 September 2012 in order to discuss ways of enhancing collaboration. As a result of that meeting, several NGOs proposed amendments regarding the RAPVT. It is intended to set up structured and standardised intervention practices and mechanisms. The goal is to produce a Protocol of Social Commitment, which should improve the national referral system. **GRETA would like to be provided with a copy of this Protocol in due course.**

58. According to the Portuguese authorities, the CIG has funded a number of NGO projects in the field of THB. Some 20 projects in the prevention, awareness-raising, training and assistance fields, amounting to some 1,3 million euros, have been funded since 2008. Nevertheless, NGOs have reported that state funding in this field has decreased in the last few years.

**59. GRETA invites the Portuguese authorities to continue strengthening links with NGOs, to involve them as fully as possible in the design, implementation, co-ordination and evaluation of national action plans and policies, and to allocate an appropriate level of funding to them.**

*ii. Training of relevant professionals*

60. The Portuguese authorities have reported that a total of 310 000 euros were allocated to training of relevant professionals. Under the "Human potential" programme, nine 30-hour training courses have been organised since 2008 to train frontline staff (police, social workers) in preventing and combating THB; 161 people have received training under this programme. There is a handbook for the training of relevant professionals, drawn up under the CAIM project, to help identify victims of trafficking for the purpose of sexual exploitation and provide assistance to them<sup>14</sup>, and a guide to the "Reporting-Identification-Integration" procedure described in paragraphs 109 *et seq.*<sup>15</sup> Further, the IOM and ILO offices in Portugal have helped with the Portuguese translations of, respectively, the IOM handbook on direct assistance for victims of trafficking and the ILO handbook on forced labour and human trafficking, which are distributed to relevant professionals.

61. As regards police officers, the Portuguese authorities have indicated that initial and in-service training include modules on investigation techniques specific to THB, including on the questioning of victims and victim protection. Staff of the Immigration and Border Service (SEF) are provided with a course each year as part of in-service training. Special training courses on preventing and investigating THB are organised regularly with the participation of national and international experts, notably representatives of the IOM and ILO offices in Portugal. Further, several training sessions for investigators dealing with THB cases, dedicated to victim interviews and data analysis, were developed by the Criminal Police in the second semester of 2012.

<sup>13</sup> Pursuant to measure No. 30 of the second National Action Plan.

<sup>14</sup> *Tráfico de Mulheres para Fins de Exploração Sexual: kit de apoio à formação para a prevenção e assistência às vítimas.*

<sup>15</sup> *Modelo de sinalização, Identificação-Integração de Mulheres Vítimas de Tráfico para Fins de Exploração Sexual: construção de um guião.*

62. 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). A training course organised in 2008 on the revision of the Criminal Code, and in particular the incorporation of an article on THB, was attended by 3 000 prosecutors, judges and lawyers. In February 2012, a co-operation protocol was signed between the CIG and the CEJ, with the aim of increasing the CIG's involvement in judicial training, which should start in the academic year 2012/2013. The CEJ also works in co-operation with the Observatory of Trafficking in Human Beings (OTSH). In February 2012, these two entities organised jointly a two-day training for prosecutors and judges on illegal immigration and THB. A compendium of relevant national, European and international legislation and case law on THB was published and disseminated among prosecutors and law enforcement officers.

63. The OTSH also offers training on THB issues. In 2009, training sessions were organised for some 60 labour inspectors. To date, 75 labour inspectors out of a total of 384 have been trained in THB issues. Training sessions were held in 2010 and 2011 for the police, the Attorney General's Office and NGOs to inform them about the setting up of a new database. Furthermore, the OTSH organised a training session in April 2011, in partnership with UNODC, which was attended by representatives of all the police forces, prosecutors, the CIG and the CEJ. In 2012 the OTSH is planning to organise a training course in Lisbon for relevant professionals from Portuguese-speaking countries. The UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners has been translated, adapted and disseminated to all Portuguese-speaking countries. The OTSH, with the financial support of the Portuguese Institute for Development Studies and the Community of Portuguese-Speaking Countries (CPSC), organised in September 2012 the first training week for some 20 criminal justice practitioners in CPSC countries in Lisbon. Further, it is foreseen to organise training of labour inspectors in 2012/2013 on the basis of the ILO handbook on forced labour and human trafficking.

64. While welcoming the efforts made to train relevant professionals, **GRETA considers that there is need for further investment in continuous training and awareness raising, in particular of law enforcement officials, prosecutors, judges, labour inspectors, social workers and staff members of NGOs likely to come into contact with victims of THB.**

### *iii. Data collection and research*

65. The human rights-based approach to anti-trafficking policies advocated by the Convention requires adequate monitoring and evaluation. An essential element is the regular availability of comprehensive statistical information on both trends in human trafficking and on the performance of main actors in the fight against trafficking. The collation of data from different state institutions and NGOs raises concerns about data protection, especially when personal data are involved. International standards have been set for the collection, storage, transfer, compilation and dissemination of data. In order to ensure full compliance with these standards, Parties are expected to apply appropriate measures and techniques of data protection. An additional requirement for human rights-based anti-trafficking policies is the conduct of research and analysis with special attention to the rights and interests of victims.

66. In Portugal, the Observatory of Trafficking in Human Beings (OTSH) under the Ministry of the Interior has a specific brief to collect, analyse and disseminate information about THB and other forms of violence against women. In that context, it is required to promote the development of data collection, analysis and processing software, and to support policy decisions in its fields of action.

67. The OTSH has signed two co-operation protocols, one letter of procedure and one memorandum of understanding with 12 governmental and non-governmental organisations, primarily in order to place data collection on a formal footing, but also to promote the development of research related to THB. New memoranda of understanding were about to be signed in 2012, notably with the Prosecutor's Office and the authority monitoring labour conditions. However, some NGOs are apparently reluctant to provide the OTSH with data on victims of THB and have raised questions about the confidentiality of these data. At present, the data collection system run by the Observatory seems to receive the great majority of its input from the police. The Portuguese authorities have affirmed that no personal data on victims of THB is required or collected by OTSH, regardless of the data provider, because the national database is kept for statistical purposes and not for case management. Furthermore, data from the police is not shared with NGOs and vice versa. For these reasons, according to the OTSH, concerns about reporting illegal victims to the police or the privacy of victims are groundless.

68. Furthermore, the OTSH is currently developing a unified database with a geographical component. The project, entitled "Towards a Pan-European Monitoring System on THB", was approved by the European Commission and is expected to start in January 2013. Its purpose is to create a transnational harmonised system for data collection, management and analysis, based on comparable indicators.

69. GRETA welcomes the development of what is intended to be a comprehensive and coherent statistical system on THB and **invites the Portuguese authorities to ensure that statistical data are collected from all the main actors. GRETA recalls that this should be accompanied by all the necessary measures to ensure respect for the rights of data subjects to personal data protection, including when NGOs working with victims of human trafficking are asked to provide information to feed into the national database.**

70. As regards research in the area of THB, the CIG has terms of reference to encourage research in all fields relevant to citizenship and gender equality issues, in order to obtain basic statistical data permitting a proper assessment of the situation of women at all levels and in all areas of life, and particularly the social, political, economic and cultural dimensions. In 2008 the CIG published a report in Portuguese and English on a study conducted by a team from the Centre for Social Studies of the University of Coimbra on trafficking in women for the purpose of sexual exploitation in Portugal. Further, in 2012 the Centre for Social Studies of the University of Coimbra, with the participation of the CIG, initiated a research project on human trafficking for labour exploitation.

71. The OTSH has also produced several research reports, including a report entitled "Inhuman Trafficking" and 2010 and 2011 annual statistical reports on trafficking in human beings which review the current situation in Portugal. The 2011 report is based on data collected from a range of governmental and non-governmental bodies (a total of 69 organisations were contacted nationally and internationally) and is available online.<sup>16</sup>

72. Furthermore, the second National Action plan against THB contains measures aimed at developing university research into new forms of human trafficking. The Ministry of Education and Science has indicated that it is currently financing theses on trafficking (through higher education grants).

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<sup>16</sup> [www.otsh.mail.gov.pt](http://www.otsh.mail.gov.pt)

73. The Institute for Strategic and International Studies (IEEI) is finalising a study on THB in Portugal, the purpose of which is to assess the situation in both qualitative terms (human rights approach, multi-sectoral approach, assistance to victims, etc.) and quantitative terms (data collection, particularly from NGOs, and comparison with official OTSH data). The IEEI study should include a guide to international good practices and recommendations to the Portuguese authorities.

**74. GRETA invites the Portuguese authorities to continue conducting and supporting research on THB issues, including when such studies are carried out by Portuguese civil society, as an important source of information for future policy measures. Areas where research is needed in order to shed more light on the extent of the problem of THB include trafficking within Portugal, trafficking for the purpose of labour exploitation and trafficking in children.**

*iv. International co-operation*

75. The Convention requires Parties to co-operate with each other “to the widest extent possible” in order to prevent and combat THB, protect and assist victims, and investigate related criminal offences (Article 32).

76. Law 149/99 of 31 August 1999 on international judicial co-operation in criminal matters governs the main forms of co-operation, particularly in the fields of extradition and mutual judicial assistance, and provides that the principle of reciprocity shall be the basis for all international co-operation. Portugal is party to the Council of Europe conventions on extradition and mutual judicial assistance and has signed several bilateral or regional agreements providing for international co-operation in criminal matters, including:

- an agreement with Spain on transnational co-operation in border policing and customs matters, which provides for the collection and exchange of information and includes THB among the areas of crime prevention and suppression in border regions;
- a quadripartite plan with Argentina, Brazil and Spain on the prevention and suppression of THB and on victim protection, adopted in March 2011;
- 2006 and 2009 agreements with Brazil providing for concrete measures to prevent and suppress trafficking in human beings and criminal networks;
- a co-operation agreement with the Russian Federation on fighting crime (2002);
- a co-operation agreement with Ukraine concerning in particular human trafficking, the exploitation of prostitution by third parties, and sexual exploitation of minors (March 2011);
- several multilateral agreements in the context of co-operation on criminal matters within the Community of Portuguese-Speaking Countries<sup>17</sup>, as well as a bilateral agreement with Mozambique on legal and judicial co-operation (not specifically on trafficking in human beings);
- several agreements not yet in force (e.g. a 2011 co-operation agreement with Bulgaria on combating crime) or still under negotiation (with Latvia, Malta, Slovenia, Italy and Uzbekistan).

77. According to the Portuguese authorities, information on the preparation or commission of offences, data relating to the identity of suspects (including photos, fingerprints, DNA and a wide range of information based on police observation or from different databases) can be provided spontaneously. It is also possible to officially report facts which may be of interest for investigations in other countries.

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<sup>17</sup> Convention on Extradition between the states of the Community of Portuguese-Language Countries (2005); Convention on the Transfer of Sentenced Persons among states of the Community of Portuguese-Language Countries (concluded in 2005); Convention on Legal Assistance in Criminal Matters between the Member States of the Community of Portuguese-Language Countries (concluded in 2005).

78. The public prosecution service is generally responsible for information exchange, which can be carried out directly between judicial authorities or via the National Europol Office or the National Interpol Office. Information may also be passed on via the Immigration Liaison Officers (OLI) in place in some foreign countries<sup>18</sup> who, through their close contacts with the local authorities, can participate in the exchange of information both in the victims' countries of origin and in Portugal. These liaison officers, designed as "an effective instrument for combating illegal immigration, by hindering the activities of the organised networks which engage in it and exploit it, and at the same time by facilitating legal immigration procedures"<sup>19</sup>, come under the authority of the SEF (see paragraph 99).

79. According to the Portuguese authorities, a joint operation was carried out at the request of the Spanish and Italian authorities in connection with a case of trafficking between Ukraine and the Iberian Peninsula in 2008. It resulted in the simultaneous arrest of 19 suspects (eight in Portugal, 10 in Spain and one in Italy). The Portuguese authorities have provided other examples of international police co-operation involving Spain and Romania. Further, GRETA understands that Portugal has recently set up a joint investigation team (JIT) concerning human trafficking with the United Kingdom.

80. The Portuguese authorities have indicated that the SEF is currently participating in an IMCPD project alongside Brazil, Spain, Italy and Austria with the aim of developing an instrument for early identification of victims before they leave Brazilian territory.

81. GRETA welcomes the efforts made in the field of international co-operation **and invites the Portuguese authorities to continue to explore possibilities for international co-operation, particularly as regards protecting and assisting victims of human trafficking and prosecuting traffickers.**

## **2. Implementation by Portugal of measures aimed to prevent trafficking in human beings**

82. According to Article 5 of the Convention, Parties must take co-ordinated action to prevent THB, with the involvement of relevant NGOs, other organisations and members of civil society as appropriate. The Convention requires Parties in particular to take measures to discourage demand, strengthen border controls and ensure the integrity, security and validity of travel or identity documents (Articles 6 to 9).

### **a. Awareness raising and education**

83. Several campaigns to raise awareness about human trafficking were conducted in Portugal up to 2010, in particular:

- a campaign launched by several partners including the CIG, the Ministry of the Interior, the Ministry of Justice, the IOM and the Family Planning Association as part of the CAIM project (see paragraph 53). It involved posters, flyers distributed in 12 regional newspapers with an average daily circulation of 15 000, and a radio campaign broadcast for 21 days on seven regional radio stations. Information was available in nine languages (Portuguese and the languages of the main countries of origin of the human trafficking victims present in Portugal);
- the campaign "You're not for sale", organised by the SEF in 2007 and based on the Council of Europe campaign of the same name, which was aimed mainly at students, health professionals, associations for the defence of immigrants and associations with a social purpose. According to the Portuguese authorities, this campaign reached some 14 000 persons;

<sup>18</sup> In the Russian Federation, Brazil, Ukraine, Angola, Guinea-Bissau, Romania and the Republic of Moldova, Morocco and Cape Verde.

<sup>19</sup> Joint Order 189/2005.

- the “Wake up to reality” campaign, conducted by the CIG in 2008 by means of messages in the press, on television and radio, in cinemas and via leaflets in order to raise awareness among potential victims of sexual and labour exploitation, as well as among the population at large;
- an exhibition entitled “Inhuman trafficking” organised by the OTSH on 18 October 2010 on the occasion of European Day against Trafficking. It comprised various information panels on trafficking, some aimed more particularly at children, others at potential victims and professionals active in the anti-trafficking field or with a potential awareness-raising role. The OTSH has subsequently turned this into a travelling exhibition and, in co-operation with the local authorities, presents it in the main Portuguese towns, where it organises debates with students and the general public.

84. Campaigns have also been organised by civil society actors, including the “Mercadoria Humana” (“Human Merchandise”) campaign conducted by the NGO Saúde em Português in collaboration with town halls, health centres, schools, universities, etc. The campaign was aimed at the general public, victims and potential victims. Various media and outreach strategies were used in implementing this campaign, including posters, flyers, radio commercials, newspaper advertisements, publicity through social networks, the Internet, exhibitions of photography and visual arts, and theatre. The Women’s Democratic Movement (MDM) has also been active in raising awareness about THB, with its project “Breaking the silence”.

85. That said, there has been a shortage of State-run awareness-raising measures since 2010, owing to a shortage of funds. NGOs have drawn GRETA’s attention to the lack of awareness-raising measures aimed in particular at children and young people, as well as measures conducted at local level, and have pointed out that the campaigns were not targeted and their impact has not been assessed.

86. GRETA notes that the UNODC’s campaign “Blue Heart” was launched in the spring of 2012. In April and May, paid inserts were disseminated on the radio and in the press, and free inserts were disseminated on various TV channels and at airports. A re-launch of the “Blue Heart” campaign was scheduled for October 2012.

**87. GRETA encourages the Portuguese authorities to continue their awareness-raising efforts and to launch new campaigns and/or support those organised by civil society. GRETA considers that future awareness-raising actions should be designed on the basis of an assessment of previous measures and should target identified needs.**

b. Measures to discourage demand

88. In accordance with the Convention, measures to discourage demand for the services of victims of human trafficking, especially women and children, should be understood as a positive obligation on Parties to adopt and reinforce such measures as regards THB for the purpose of any form of exploitation (see paragraph 108 of the Explanatory Report on the Convention). As it is stated in the Recommended Principles and Guidelines on Human Rights and Human Trafficking, strategies aimed at preventing THB shall address demand as a root cause of trafficking<sup>20</sup>.

89. The use of services of a victim of human trafficking has been made a criminal offence in Portugal through Article 160(5) of the CC, which provides that “whoever [knowingly] uses the services or organs of a victim [of THB] shall be liable to a prison sentence of between one and five years [...]”. According to information provided by the Portuguese authorities, there have not yet been any convictions on this basis. Furthermore, Article 195-A, paragraph 5, of the amended Immigration Law, in force since 8 October 2012, criminalises the use of labour or services of an illegal migrant with the knowledge that the person is a victim of human trafficking (the penalty being two to six years imprisonment).

<sup>20</sup>

Addendum to the Report of the United Nations High Commissioner for Human Rights (E/2002/68Add.1).



90. The second National Action Plan does not include any preventive measures designed specifically to discourage demand, apart from the previously mentioned awareness-raising measures. According to the Portuguese authorities, the awareness-raising campaigns always carry an element of discouraging demand. GRETA notes that the second Plan for the Integration of Immigrants (2010-2013) includes a measure designed to educate and inform professionals who work with immigrants about ways of preventing trafficking in human beings, particularly for the purpose of labour exploitation. An ILO study on forced labour in Portugal<sup>21</sup> showed that recruiters of undeclared workers and temporary employment agencies were responsible for cases of exploitation and forced labour of unskilled immigrant and Portuguese workers.

**91. GRETA considers that the Portuguese authorities should continue their efforts to discourage demand for services provided by victims of THB.**

c. Social, economic and other measures for groups vulnerable to THB

92. According to the Portuguese authorities, no group has been identified as being specifically at risk of human trafficking in Portugal. The data collection system developed by the Observatory on Trafficking in Human Beings should enable the identification of geographical areas with a high concentration of victims of THB. Measures targeting certain categories of people, not as groups vulnerable to THB, but as groups liable to encounter socio-economic difficulties, have been conceived by the authorities. Such measures are aimed in particular at women and immigrants.

93. The fourth National Plan for Gender Equality, Citizenship and the Fight against Discrimination (2011-2013) includes 97 measures structured around 14 strategic fields of action, including women's economic independence and access to the labour market, education, higher education, lifelong learning, etc. The Portuguese authorities have indicated that a large proportion of the financial assistance granted by the European Union for the framework programme 2007-2013 has been allocated to the promotion of gender equality. The sub-themes of this programme include encouragement for female entrepreneurship, which is regarded as a major step towards the economic emancipation of women.

94. The second Plan for the Integration of Immigrants (2010-2013) provides for a series of socio-economic measures designed to make immigrants less vulnerable, including measures to promote education, labour market access, training, entrepreneurship, etc. The Portuguese authorities have also made reference to measures to empower immigrants undertaken by the High Commission for Immigration and Intercultural Dialogue (ACIDI), such as language training programmes ("Portuguese for All Programme", which involved 16 738 persons in language training workshops in 2010 and 2011, and "Consolidation of Portuguese as Non-Mother Tongue"), an immigrant entrepreneurship programme, specialised training for mediators working in local immigrant integration support centres, etc. Thus ACIDI spent some 8.6 million euros in 2010 and some 12.6 million euros in 2011 on programmes targeting immigrants. As regards support to destitute immigrants, the Institute of Social Security assisted 85 292 persons in 2010, and 82 945 in 2011.

95. GRETA notes that the Council of Europe's Commissioner for Human Rights, Nils Muižnieks, declared in May 2012, following a visit to Portugal, that "fiscal austerity measures implemented so far in Portugal have disproportionately affected the human rights of the most vulnerable social groups, especially children, the elderly and Roma".<sup>22</sup>

<sup>21</sup> Sónia Pereira and João Vasconcelos, *Combate ao tráfico de seres humanos e trabalho forçado - Estudo de casos e respostas de Portugal*, 2007.

<sup>22</sup> [http://www.coe.int/t/commissioner/News/2012/120509Lisboa\\_en.asp](http://www.coe.int/t/commissioner/News/2012/120509Lisboa_en.asp)

96. The social security system funds an action plan designed to combat school dropout. There are reportedly a growing number of children in Portugal who leave school early in order to look for a job and try to support themselves and their family, which entails the risk of a resurgence in child labour and exploitation. The school system aims to provide teaching more adapted to certain communities, such as the Roma/Gypsy community, and combat early school dropout of girls from that community by offering an education tailored to their needs.<sup>23</sup>

97. It is estimated that in Portugal there are 40 000 to 60 000 members of the Roma/Gypsy community, some of whom still lack access to basic goods and services. A national Strategy for the Integration of Roma Communities (ENICC) has been drafted by the Government in 2012. It follows EU guidelines and brings together the efforts of eight ministries, local councils, civil society and Roma communities' representatives. Designed on an intercultural basis, ENICC seeks to ensure the Roma communities' inclusion in society, and to safeguard the respect of their values and traditions. In this strategy, to the education, employment, health and housing axis recommended by the EU, the Portuguese Government has added a transversal one which deals with citizenship, combating discrimination, gender equality, justice and safety. The ENICC is mainly directed to Portuguese gypsies, given that the number of non-Portuguese gypsies is small (coming mostly from Bulgaria and Romania). As regards the latter, they are covered by the National Plan against the Trafficking of Human Beings.

98. GRETA welcomes the measures taken by the Portuguese authorities to help vulnerable groups at risk of human trafficking. **However, GRETA considers that the authorities should step up the implementation of economic and social measures which address the underlying causes of THB (economic and social situation, lack of education, unemployment, etc.) and, as much as possible, make the necessary human and financial resources available to them.**

d. Border measures and measures to enable legal migration

99. The Immigration and Borders Service (SEF), which is responsible for overseeing the entry, residence, exit and removal of foreign nationals, participates in a FRONTEX project aimed at providing border guards with the necessary tools to detect human trafficking cases. The information obtained is analysed and passed on to the SEF's investigators. According to the SEF, this project has led to an increase in reports of potential human trafficking cases at border crossings and a better knowledge of this phenomenon among the parties concerned. Furthermore, immigration liaison officers have been appointed in the main countries of origin (see paragraph 78).

100. The Portuguese authorities have indicated that border guards are provided with training on profiling in THB cases. The training is continuous and includes refresher courses. The close relations and co-operation between staff placed at airports and investigators of the Central Directorate for Investigation, Research and Information Analysis (DCIPAI) allow any suspicious cases to be further investigated inside the country.

101. The Portuguese authorities implement several projects to enable legal migration. The High Commission for Immigration and Intercultural Dialogue (ACIDI) has produced a leaflet designed to provide candidates for immigration with information, before any official visa application, on the documents and procedures required in order to legally enter Portugal. This leaflet provides answers to a series of questions frequently asked by persons wishing to obtain a visa to enter Portugal. It was distributed in Cape Verde as part of the project CAMPO ("Centre for Supporting Migrants in Countries of Origin"). In partnership with the Ministry of Foreign Affairs, the leaflet is to be printed in 12 000 copies, translated into two languages (English and Ukrainian), and distributed through Portuguese consulates in the countries where there is high demand for visas (Angola, Brazil, Cape Verde, China, India, Singapore, South Korea, Thailand and Ukraine).

<sup>23</sup> See the 3rd ECRI report on Portugal (CRI(2007)4), and in particular paragraph 29 *et seq.* on the social exclusion of Gypsy communities in Portugal.

102. The ACIDI also has a network of national support centres for immigrants (in Porto, Algarve and Lisbon) to which the SEF and the IOM contribute by providing information on the conditions for staying in Portugal and the IOM voluntary return programme, or by providing legal assistance to regularise the situation of immigrants.

103. The ACIDI also operates the “SOS Immigrant” helpline, which enables immigrants, including potential victims of THB, to obtain information about their rights. Such information is available in several languages (Portuguese, English, French, Spanish, Russian, Romanian and Cape Verdean Creole). This helpline can also be used to report potential victims of human trafficking (see paragraph 110).

104. While welcoming the measures already taken by the Portuguese authorities, **GRETA considers that the authorities should continue their efforts to detect cases of THB when carrying out border checks.**

105. **GRETA also invites the authorities to provide training to consular staff on THB issues to make it easier for them to detect risks of THB during the visa application procedure.**

e. Measures to ensure the quality, security and integrity of travel and identity documents

106. According to the Portuguese authorities, the SEF has invested substantial human and technical resources to ensure the security of identity documents. The Department of Identification and Document Examination is responsible for expert examination of fake documents. The SEF also provides the training needed by its staff to keep track of trends and technical developments in this field. Further, it has participated in the development of electronic passports and has contributed to the development of the document production chain.

107. According to Article 160(6) of the CC, “whoever retains, conceals, damages or destroys travel or identity documents belonging to a person who is a victim of the crime [of trafficking in human beings] shall be liable to a prison sentence of up to three years”. No conviction has yet been handed down on that basis.

### 3. Implementation by Portugal of measures to protect and promote the rights of victims of trafficking in human beings

#### a. Identification of victims of trafficking in human beings

108. Article 10 of the Convention requires Parties to adopt measures to identify victims. In order to do so, Parties must provide their competent authorities with persons who are trained and qualified in preventing and combating THB and in identifying and helping victims, including children. Identifying a trafficking victim is a process which takes time, and therefore the Convention provides that if the competent authorities have reasonable grounds to believe that a person has been a victim of human trafficking, that person shall not be removed from the country until the identification process is completed and shall receive the assistance required by the Convention.

109. In order to improve the identification of victims of trafficking, the Portuguese authorities have set up a “Reporting - Identification - Integration” system<sup>24</sup>. At the first stage - reporting - any police force, NGO, potential victim or member of the public may report possible cases of trafficking.

110. Any member of the public or the victim him/herself may use the “SOS Immigrant” helpline referred to in paragraph 103 which, although not specific to trafficking in human beings, has a section dedicated to it. According to data provided by the ACIDI, which manages this helpline, it was used to report potential victims of trafficking on three occasions in 2007, two in 2008 and six in 2009. The ACIDI phone line has been criticised by some NGOs, which have highlighted deficiencies linked to the fact that it is not specific to victims of trafficking, calls are not free-of-charge and the service is open during limited hours. There is also a hotline run by the multi-disciplinary team set up by the Family Planning Association (see paragraph 114), which is accessible around the clock. The Portuguese authorities have indicated that it is not considered a priority to set up a specific helpline for victims of human trafficking as the two existing hotlines reportedly cover the needs. The numbers of the two hotlines have been publicised on the materials used in the “Blue Heart” campaign.

111. Six NGOs<sup>25</sup> which have concluded a memorandum of understanding with the Observatory of Trafficking in Human Beings are required to fill in a form called the “reporting/flagging guide” when detecting a potential victim of THB and to send it to the monitoring system managed by the Observatory. The form contains a brief list of indicators and questions intended to facilitate the identification of victims. NGOs are free to decide whether to report the case to law enforcement agencies in order to initiate a criminal investigation. Sometimes the victim is reported simultaneously to a law enforcement agency and the Observatory’s monitoring system. Some NGOs send the “reporting guide” to the multi-disciplinary team based in Porto (see paragraph 114) in order for it to be forwarded to the Observatory, while others send it directly to the Observatory.

112. Certain NGOs have referred to a degree of reluctance on their own and the victims’ part to make a report to the law enforcement agencies, raising the question of victims’ safety and well-being. The NGOs fear in particular that the police investigation prior to identification might jeopardise the victim by exposing her/him to the traffickers as a witness, and might prevent NGOs from providing the victim with the necessary assistance. Another issue which was highlighted concerns persons who are in an irregular situation and therefore reporting them as victims of human trafficking might expose them to the risk of being sent back to their countries. Furthermore, according to some NGO representatives, the form for reporting potential victims has been designed primarily for statistical purposes. Concerns have been expressed about the confidentiality of the information included in the form, which apparently resulted in some NGOs refusing to complete it.

<sup>24</sup> “Modelo de Sinalização, Identificação, Integração de Mulheres Vítimas de Tráfico para Fins de Exploração Sexual: construção de um guião”.

<sup>25</sup> Amongst them APF, APAV, UMAR and JRS.

113. For their part, law enforcement officials have to complete a “unified registration form” and forward it to the anti-trafficking unit set up within each police force. Like the form used by NGOs, it contains a brief list of indicators and questions intended to facilitate the identification of victims of trafficking. Once filled, the “unified registration form” is sent directly to the monitoring system operated by the Observatory. It is the responsibility of the law enforcement agency to update the data and information, in co-operation with the Observatory.

114. A multi-disciplinary team based in Porto within the Family Planning Association (APF), comprising a lawyer from CIG, a psychologist, a welfare assistant and a teacher, is supposed to receive reports on potential victims of trafficking and assist the police in the victim identification procedure. In order to cover the whole country, a network of partnerships has been set up with other institutions (police forces, NGOs, reception centres). However, this team seems to lack the financial and human capacity to intervene in the identification procedure systematically. It also seems to receive few reports from NGOs or the police.

115. As regards the second stage of the procedure - identification - it does not seem to follow a multi-disciplinary approach, despite the existence of the above-mentioned multi-disciplinary team. Identification of victims of human trafficking is the exclusive responsibility of the police forces, cases being distributed between the SEF where foreign nationals are concerned and the judicial police in the case of Portuguese nationals. If the police investigation is inconclusive or the necessary evidence for an identification of a victim does not exist, the National Rapporteur may, when justified by the situation of the victim and especially in cases of high vulnerability, ask the Ministry of the Interior to grant victim status and the assistance that goes with it. As far as GRETA is aware, this procedure has never been implemented.

116. According to information at GRETA's disposal, victims' co-operation with the police and the judicial authorities, although theoretically not compulsory, seems to be a major factor in the smooth conduct of the “Reporting – Identification - Integration” procedure. Some NGOs have suggested that victims have to co-operate with the police and the judicial authorities in order to be recognised as victims of trafficking and to benefit from the assistance which, in principle, goes with that status. The Portuguese authorities have affirmed that the possibility of identification of victims is dissociated from their participation in the investigation and court proceedings.

117. The statistical information provided to GRETA reveals a considerable gap between the numbers of reported and identified cases of trafficking victims. For example, of the 479 potential victims reported by law enforcement agencies and NGOs between 2008 and 2011, only 122 were confirmed as such; 37 cases are still in the progress of confirmation by law enforcement agencies and 42 cases were detected by NGOs without a criminal investigation associated with them. The unconfirmed victims (278) were illegal migrants (82), victims of sexual exploitation (54), smuggled migrants (six), abducted persons (five) or victims of slavery (four). In 34 cases, the conclusion was reached that no crime had been committed, and in 28 cases, lack of evidence or the disappearance of the victim prevented identification<sup>26</sup>. According to information at GRETA's disposal, the prevailing majority of identified victims have been detected by the police. Potential victims reported by NGOs are said to be very rarely formally identified. NGOs have expressed concern about this situation, particularly because, in the absence of formal identification, victims receive no assistance and, in most cases, simply exit the system, without the NGOs being able to find out what has happened to them.

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In the remaining cases, there is no information on the reasons why there was no trafficking victim identification.

118. As regards more specifically the identification of victims of trafficking for the purpose of labour exploitation<sup>27</sup>, the Working Conditions Authority (ACT) has the power to monitor any company, on its own initiative or when a suspicion exists. The ILO handbook on forced labour and human trafficking, which has been translated into Portuguese and supplemented by indicators specific to the Portuguese situation, is available to labour inspectors. When labour inspectors consider that they have detected a case of human trafficking, they contact the SEF which is responsible for carrying out an investigation. Joint operations may also be carried out.

119. In actual fact, there seem to be few proactive inspections making it possible for labour inspectors to report victims of trafficking, and only a limited number of labour inspectors have been specifically trained to deal with trafficking (see paragraph 63). In the light of information indicating that the number of cases of trafficking for the purpose of labour exploitation is increasing, involving both foreign and Portuguese victims (mainly in agriculture), and that some Portuguese temporary recruitment agencies are involved in cases of trafficking for the purpose of labour exploitation, the Portuguese authorities should carry out more proactive investigations into trafficking for the purpose of labour exploitation and improve labour inspectors' awareness of and training on this subject. According to information provided by the Portuguese authorities, the OTSH, in partnership with NGOs, labour inspectors and other public institutions, has established a working group in order to produce two "reporting/flagging cards" for victims of THB, one of which is intended for labour inspectors. These cards contain a set of specific questions and indicators to assess whether a person is a potential victim of human trafficking, as well as relevant contact details of victim referral support centres and hotlines.

120. **GRETA urges the Portuguese authorities to:**

- **ensure that in practice the formal identification of victims is dissociated from their participation in the investigation and court proceedings;**
- **review the indicators used for the purposes of reporting and identification of victims, so that they cover every possible situation;**
- **ensure that all stakeholders involved in the identification of victims of trafficking adopt a more proactive approach and step up their outreach work so that victims are identified more efficiently;**
- **step up victim identification training for front-line professionals (particularly members of the police, labour inspectors, social workers, health professionals and NGO staff).**

121. **GRETA also considers that the Portuguese authorities should strengthen the multi-disciplinary approach to victim identification, by building on the experience of the multi-disciplinary team run by the Family Planning Association (APF) and by setting up similar multi-disciplinary teams in other parts of the country.**

<sup>27</sup> See, *inter alia*, the report entitled "Human Trafficking and Forced Labour - Case studies and responses from Portugal", written and published under the aegis of the ILO in 2007.

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b. Assistance measures

122. The Convention requires Parties to take measures to assist victims in their physical, psychological and social recovery, taking account of the victim's safety and protection needs, in co-operation with NGOs and other organisations engaged in assistance to victims. This assistance must be provided on a consensual and informed basis, taking account of the special needs of persons in a vulnerable position, as well as children, and it must not be made conditional on the victim's willingness to act as a witness (Article 12). The need to take account of victims' needs is also referred to in the Convention's provisions concerning temporary residence permits (Article 14) and the rights of children victims of THB (Article 12(7)). The Convention also establishes that the assistance to victims of THB must include appropriate and secure accommodation.

123. In accordance with the "Reporting - Identification - Integration" procedure, identification is followed by the third stage - integration - during which co-ordinated and comprehensive support is to be provided to victims, based on an offer of accommodation to ensure victims' safety and facilitate their reintegration into society and the labour market. It should be noted that, in principle, a potential victim is entitled to assistance even before the formal identification, although this seems rarely to be the case in practice.

124. Law No. 23/2007 of 4 July 2007 stipulates that protection and assistance are to be provided to victims of trafficking if they agree to co-operate with the courts or on the grounds of their personal situation. Trafficking victims are entitled to a residence permit, after a reflection period, as well as to medical care, social and psychological assistance, legal assistance, translation and interpretation services, training to improve their occupational skills or to prepare for return to their countries of origin, and, in the case of child victims, access to the education system on the same basis as Portuguese nationals.

125. Accommodation is provided in the Shelter and Protection Centre (CAP) for victims of trafficking which was set up in 2008 following signature of a protocol between the main public institutions concerned (Ministry of Justice, Ministry of the Interior, police forces, Social Security Institute, Prime Minister's office) and the Family Planning Association (APF) which runs the shelter. The GRETA delegation visited the CAP, which is open only to women victims of trafficking and, where applicable, their children. It has a total capacity of six beds (in three shared rooms) and has accommodated 25 persons since 2008. It has a staff of six (including a welfare assistant, a teacher and a psychologist) who provide assistance to victims on a 24-hour rota basis.

126. The CAP provides victims with basic assistance (accommodation, food, personal hygiene) and more specific assistance (legal, psychological, medical, social, educational, vocational training). Victims may stay at the centre for up to one year, although this period may be extended for another year if necessary. As soon as the victim's situation has stabilised, a life project is devised by the victim and the centre's team. Whenever possible, the CAP assists victims in pursuing education or vocational training or finding work. The centre is financed through the social security system, which contributes 8 600 euros per month. This financial limitation prevents additional staff from being taken on, the centre from being expanded and the quality of the services from being improved.

127. Because of the centre's limited capacity, some victims of trafficking are accommodated at other centres managed by NGOs, mostly shelters for victims of domestic or other kinds of violence, which are not necessarily appropriate to the specific needs of victims of trafficking and lack the requisite level of security. A Portuguese NGO called UMAR (União de Mulheres Alternativa e Resposta) and the SEF began an informal partnership two years ago, with a view to providing emergency accommodation for women victims of trafficking.

128. For other victims, and more specifically unaccompanied children, the only accommodation available is that provided by NGOs or religious organisations. NGOs have informed GRETA that they are not always able to provide an appropriate level of assistance and security. One case highlighted was that of two children accommodated at an emergency centre in southern Portugal who were taken away by the traffickers who claimed to be members of their families. According to the Portuguese authorities, the low official figures for trafficked children (see paragraph 12) show that there is no need to set up specific structures for child victims of trafficking. Yet, according to data collected by some NGOs, the true situation is very much underestimated, there being apparently five times as many child victims of trafficking as the official figures indicate.

129. In Portugal, there is a system for the protection of children at risk (set up by Law 147/99 on the protection of children and young people in danger) which, however, does not provide for specific measures for child victims of trafficking. A trafficking victim aged under 18 is entitled to assistance in the same way as any child in danger. There are three levels of intervention: at the local level (public and private institutions), by the departmental committee for the protection of children at risk, or at judicial level, with the public prosecutor's office intervening in more complex cases. In the event of imminent danger, children may be subject to emergency placement at one of the child institutions managed by the Portuguese social security system or by private bodies which receive funds from the social security system. Portuguese law stipulates that children at risk should, as far as possible, be represented by their parents or other members of their families. When this is not possible, the Attorney General's Office acts as their legal representative. Portugal has no system of legal guardians<sup>28</sup>. Once a child victim of THB has been identified by the police, court, Commission for Protection of Children and Youth or another entity, the case must be reported to the public prosecutor. The latter immediately requests the court to enact an interim measure of protection. If there is no known suitable adult person connected with the child, the court usually puts the child in the custody of an institution, which has legal powers to act in the best interest of the child.

130. Whenever possible, male victims benefit from the assistance of the APF. For example, the GRETA delegation was informed that one male victim of THB was accommodated near the CAP and the APF team was providing him with assistance. That said, cases like this are reportedly rare, and in the great majority of cases the assistance provided by NGOs to male victims of trafficking cannot be tailored to their specific needs.

131. NGOs have indicated to GRETA that the lack of state funding prevents them from providing all the necessary assistance to victims of trafficking. Apart from the APF, which receives specific funding for the management of the CAP, other NGOs designated as "special social solidarity institutions" (IPSS)<sup>29</sup> receive funding from the social security system for each victim taken into one of their centres, without any distinction being made between victims of trafficking and other victims. Any health expenditure incurred by victims accommodated in centres is also paid by the social security system, as is any legal aid.

<sup>28</sup> See Fundamental Rights Agency report on Portugal: "Thematic Study on Child Trafficking", page 12.

<sup>29</sup> IPSS signifies approved institutions under the authority of the Ministry of Solidarity, which enjoy a special status similar to that of public bodies.



132. **GRETA urges the Portuguese authorities to step up the assistance provided to trafficking victims, and in particular to:**

- **provide appropriate and safe accommodation throughout the country's territory for victims of trafficking, including for men and children, in the light of an assessment of trafficking trends in Portugal;**
- **ensure that the services available are adapted to the specific needs of trafficking victims and that minimum standards are guaranteed when victims of trafficking are accommodated in structures not specifically designed for such victims;**
- **when assistance is delegated to NGOs as service providers, ensure that adequate human and financial resources are allocated to guarantee that the necessary assistance is provided to all victims;**
- **improve the assistance system for child victims of trafficking with regard to accommodation and the introduction of medium and long-term support programmes appropriate to children's needs.**

133. **GRETA also invites the authorities to continue providing regular training to all professionals responsible for implementing assistance measures for victims of trafficking**

c. Recovery and reflection period

134. As victims of THB are extremely vulnerable after the trauma they have experienced, Article 13 of the Convention introduces the obligation for Parties to provide in their internal law for a recovery and reflection period of at least 30 days. The minimum 30-day period constitutes an important guarantee for victims and potential victims and serves a number of purposes, including to allow them to recover and escape the influence of traffickers. During this period, Parties must authorise the person concerned to stay on their territory and expulsion orders cannot be enforced.

135. Article 111 of Law 23/2007 of 4 July 2007 (amended through Law 29/2012) governing the entry, stay, exit and removal of foreigners provides for a reflection period as follows: "Prior to the issue of a residence permit [...], the SEF shall allow the person concerned a reflection period in order to enable him or her to recover and to escape from the influence of the perpetrators of the offences concerned". The reflection period lasts a minimum of 30 days and a maximum of 60 days and begins when the responsible authorities request the victim's co-operation, or when the victim offers to co-operate with the authorities in charge of the investigation, or when the person is identified as a victim of trafficking. When the trafficking victim is a child, this maximum period may be extended if this is in the child's best interest. During this period, no expulsion order may be enforced. Furthermore, a victim must benefit from access to emergency medical treatment, psychological assistance, adequate protection, interpretation and legal assistance, if necessary.

136. That said, the right to a reflection period seems not to be effective in practice. GRETA was unable to obtain information on the number of cases in which victims of trafficking had been allowed to benefit from the reflection period. According to the Portuguese authorities, victims apply immediately for a residence permit, which removes any risk of expulsion while that application is being examined, thus making it unnecessary to grant a reflection period. Further, the authorities have pointed out that victims are systematically informed of their rights, including the reflection period; however, many refuse assistance, preferring to either return to their countries or stay with friends, as is the case of many Brazilian victims. GRETA nevertheless wishes to point to the importance of this period for the recovery of victims and their effective access to the ensuing rights; as such, it should be granted to any presumed or identified victim of trafficking in human beings. Furthermore, GRETA notes that the recovery and reflection period should not be confused with the issue of the residence permit and that it is not conditional on the victim's co-operation with the investigative or prosecution authorities (see the Explanatory Report on the Convention, paragraph 175).

137. GRETA welcomes the provision in Portuguese law of a recovery and reflection period longer than the minimum of 30 days envisaged in the Convention and **urges the Portuguese authorities to ensure that victims of trafficking are systematically informed of the possibility of being given a recovery and reflection period and are effectively granted such a period.**

d. Residence permit

138. Article 14(1) of the Convention provides for two possibilities when it comes to the issuing of residence permits to victims of THB: on the basis of their personal situation and/or their co-operation with the competent authorities in the investigation or criminal proceedings. However, EU member states have been encouraged to follow the second option in the application of EU Council Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, and who co-operate with the competent authorities. In this context, it is noteworthy that Article 4 of the Directive allows member states to adopt or maintain more favourable provisions for third-country nationals who are victims of THB.<sup>30</sup>

139. In Portugal, Article 109 of Law 23/2007 of 4 July 2007 provides for a residence permit to be issued on expiry of the reflection period subject to three conditions which must all be met: if it is necessary to extend the residence of the person concerned on the national territory, account being taken of the potential benefit of that presence for the purposes of the investigation and criminal proceedings; if the person clearly expresses his/her intention to co-operate with the authorities to facilitate the investigation; if the person has ceased all relations with the persons suspected of having committed the offences concerned.

140. The residence permit may be issued before the expiry of the reflection period if the victim clearly expresses his/her intention to co-operate. It is valid for one year and may be renewed for a further year. It may be withdrawn at any time in the following circumstances: if the holder has actively, voluntarily and on his/her own initiative re-entered into relations with the persons suspected of involvement in trafficking or of facilitating illegal immigration; if the authority responsible considers that the victim's co-operation is fraudulent or that his/her complaint is false or fraudulent; or if the victim stops co-operating.

141. Furthermore, as recommended in the Convention, a residence permit may be issued to a victim failing to meet the criteria of Article 109 of the Law 23/2007 if this is justified by the personal situation of the victim or of members of his/her family, particularly with regard to the security, health, family situation or vulnerability of those persons<sup>31</sup>. The conditions that the victim's presence on Portuguese territory must be of benefit for the purposes of the investigation or for judicial purposes and that he/she must co-operate with the authorities do not apply in such cases. The victim must nevertheless have broken off all relations with the alleged traffickers. Such permits are issued by the Ministry of the Interior, at its own initiative or at the request of a police force or the National Rapporteur. They are valid for the same period and subject to the same renewal conditions as residence permits issued on grounds of co-operation with the police.

142. Persons holding a residence permit are entitled to the same rights as persons benefiting from a reflection period (see paragraph 135). They are also entitled to general medical care (rather than just emergency care), as well as programmes intended to make possible a return to normal social life, including vocational training or preparation for an assisted return to their country of origin (Article 113 of Law 23/2007). An information document describing the rights of victims of THB was released in October 2012. The document is intended for all health professionals and civil society, and makes it clear that victims of trafficking enjoy the same rights of access to health care as Portuguese nationals.

<sup>30</sup> Certain EU member States provide for residence permits on the basis of the vulnerable position of the victim of THB, although this is sometimes limited to particular categories of persons, such as minors.

<sup>31</sup> Legislative Decree 368/2007 of 5 November 2007 on the conditions for granting a reflection period and a residence permit to victims of THB who are unwilling or unable to co-operate with the justice system

143. When victims of human trafficking are children, the child's best interest must be taken into account. Every effort should be made to establish their identity, nationality and the whereabouts of their family as quickly as possible. In accordance with Article 79 (5) of Law 27/2008 concerning unaccompanied minors, it is the competence of the Aliens and Borders Service, together with other entities involved and the Ministry of Foreign Affairs, to perform the necessary research in this context. Furthermore, child victims of human trafficking should have access to the education system under the same conditions as nationals and benefit from legal assistance if necessary. As part of the criminal investigation, the prosecution and the police assist in the international investigation to identify the origin of the child, using mechanisms of police or judicial co-operation. Protection mechanisms applicable to children at risk are simultaneously triggered, placing them in a foster institution adequate for their age. The institution must make provision for the food, health, welfare, safety and education of the child in the same manner that such care would be provided to a Portuguese child. Article 58 of Law 147/99 establishes these rights, and in particular the right of children accepted into the institution to "receive education that ensures the full development of the child's personality and potentials and being assured the provision of health care, education and vocational training and participation in cultural, sporting and recreational facilities."

144. According to the report of the European Commission to the European Parliament and the Council on the application of Directive 2004/81/EC of the Council<sup>32</sup>, Portugal has adopted explicit provisions on the safety and protection needs of victims of trafficking. Portuguese law makes no provision for possible withdrawal of residence permits for reasons relating to public policy or to the protection of national security, or when the competent authorities decide to discontinue the proceedings.

145. According to official statistics, 15 residence permits were granted to victims of trafficking in 2008, two in 2009 and 10 in 2010, on each occasion because of the victims' co-operation with the competent authorities. GRETA is unaware of any residence permits issued on grounds of the victim's personal situation or any cases in which the National Rapporteur has used his powers in this respect.

**146. GRETA invites the Portuguese authorities to ensure that victims of trafficking can fully benefit from their right to obtain a renewable residence permit, particularly when they are unable to co-operate with the authorities.**

e. Compensation and legal redress

147. Article 15 of the Convention establishes the obligation for Parties to provide in their internal law for the right of victims of trafficking to legal assistance and free legal aid. Parties must also provide for the right of victims of trafficking to compensation from the perpetrators as well as adopt legislative or other measures to guarantee compensation for victims from the state. Further, Article 15(1) of the Convention establishes that victims of trafficking must have access to information on relevant judicial and administrative proceedings in a language which they can understand.

148. As mentioned in paragraph 131, victims of trafficking in Portugal are entitled to legal assistance, and particularly to legal aid. Legal aid is financed by the social security system and applications for legal aid must be submitted to local social security offices. Subject to a means test, court costs and fees incurred for the services of a lawyer may be waived. An officially appointed lawyer may also be provided.

<sup>32</sup>

European Commission, COM(2010) 493 final, Brussels, 15 October 2010.

149. There is no specific provision in Portuguese legislation on compensation for victims of trafficking. Generally speaking, criminal courts may order the offender to pay the victim damages and interest, even if the victim has not so requested. The Portuguese authorities have indicated that there have not been any cases of victims of human trafficking receiving compensation by the perpetrators; however, the Court of Bragança recently imposed a sentence for the crime of slavery, which involved four years of imprisonment, to be suspended on condition of payment of compensation to the victim of 4 000 euros (see also paragraph 177).

150. Pursuant to Law 104/2009 of 14 September 2009 on compensation to victims of violent crime and domestic violence, it is possible to obtain advance compensation from the State. Portugal has recently set up a special fund to compensate victims of violent crimes and domestic violence for damages and interests. Compensation may be awarded by a board which comes under the Ministry of Justice and is currently chaired by a member of the Criminal Police, even if the identity of the offender is unknown or the offender cannot be charged. It is not necessary for the victim to be on Portuguese territory. This compensation is awarded on three conditions which must all be met: if the victim has a temporary or permanent incapacity for work lasting at least 30 days or is deceased; if the victim's life is severely disrupted; and if the offender is unable to pay the damages and interest.

151. Law 104/2009 further specifies that, when the act of violence is detrimental to a person's sexual self-determination or freedom or harms a child, the condition of temporary or permanent incapacity condition may not be applied. If the offence caused the victim's death or severe physical injury, the maximum amount of compensation is set at 34 680 euros. If physical injury is caused to several persons as a result of the same offence, the maximum amount of compensation is set at 30 600 euros per person, with a maximum total amount of compensation of 91 800 euros.

152. Notwithstanding the provisions of Portuguese law, GRETA notes with concern that no victims of trafficking have been compensated and that no application for compensation has even been lodged by a victim of trafficking, which suggests that there is a lack of information in Portugal for victims and those who assist them about the existence and operation of the State compensation system. Consequently, **GRETA urges the Portuguese authorities to ensure that victims of trafficking are made aware of the right to compensation and of the procedures to follow, and can effectively enjoy this right in practice, particularly through access to legal assistance in this respect.**

f. Repatriation and return of victims

153. Article 16 of the Convention requires Parties to establish repatriation programmes which aim at avoiding re-victimisation and involve relevant national or international institutions and NGOs, as well as to make efforts to favour the reintegration of victims into the society of the state of return. Parties must also make available to victims of trafficking contact information or structures that can assist them in the country of return, such as law enforcement offices, NGOs, legal professionals and social welfare agencies. The return of victims of trafficking must preferably be voluntary and needs to be carried out with due regard for the rights, safety and dignity of the person and for the status of any legal proceedings related to the fact that the person is a victim of THB.

154. The Immigration and Borders Service (SEF) and the Portuguese office of the IOM have concluded a protocol on the assisted voluntary return to their country of origin of regular or irregular immigrants in a situation of financial vulnerability. In this context, assistance in all the procedures relating to departure and payment of the cost of transport are provided. Once back in their countries of origin, the persons concerned are dealt with by the national office of the IOM and may benefit from reintegration assistance, for example with the starting of a business. This programme, costing a total of 800 000 euros, is 75% financed by the European Return Fund and 25% by the Portuguese government.

155. GRETA notes that the assisted voluntary return programme is not specific for victims of human trafficking. Furthermore, nationals of EU member States do not have access to it and GRETA was informed that victims of Romanian nationality referred by the APF had not been able to be dealt with. The IOM office in Portugal stated that no victims of human trafficking had requested the benefit of the assisted voluntary return programme in the past two years, and that the programme was very seldom used for victims of trafficking (twice in the past five years). The IOM office is aware of 112 cases of men of Ukrainian nationality who contacted the IOM office in Ukraine, stating that they had been victims of trafficking for the purpose of labour exploitation in Portugal, without having gone to the Portuguese office of the IOM to organise their return.

156. The Portuguese authorities stated that simplified procedures could be implemented in those countries where Immigration Liaison Officers (OLI) are stationed, in order to facilitate the return of trafficking victims to their countries of origin and their reintegration.

157. The Portuguese authorities have also informed GRETA that when a Portuguese victim of trafficking is detected and the Shelter and Protection Centre (CAP) is contacted, all the necessary assistance and protection measures are provided by the CAP, including social inclusion and support that are available to every national citizen.

**158. GRETA considers that the Portuguese authorities should determine whether the existing assisted voluntary return provisions are appropriate for victims of trafficking, who constitute a specific group of candidates for return, and should take additional measures to:**

- **ensure that victims of trafficking effectively have access to return and repatriation procedures which take due account of the individual's rights, security and dignity and make it possible to prevent re-trafficking;**
- **develop co-operation with countries to which trafficking victims return, in order to conduct an appropriate assessment of the risks, ensure victims' safety on their return and improve their reintegration.**

#### 4. Implementation by Portugal of measures concerning substantive criminal law, investigation, prosecution and procedural law

##### a. Substantive criminal law

159. Pursuant to Article 18 of the Convention, Parties have the obligation to establish THB as a criminal offence when committed intentionally. Further, the Convention requires Parties to consider taking measures to criminalise the use of services which are the object of exploitation, with the knowledge that the person is a victim of THB (Article 19). In addition, forging travel or identity documents, removing, concealing or destroying them, as well as procuring or providing them, must also be established as criminal offences, when committed intentionally and for the purpose of enabling THB (Article 20).

160. Article 160 of the Portuguese CC<sup>33</sup> makes trafficking in human beings a criminal offence punishable by a prison sentence of between three and 10 years (Article 160, paragraph 1-e) when the characteristics of the offence of trafficking as defined in Article 4 of the Convention are present. An identical prison sentence is imposed on any person who traffics children (Article 160, paragraph 2), but the use of means is immaterial when the victim is a child. When one of the means set out in Article 160, paragraph 1, of the CC is used against a child, or when the offence is committed for professional purposes or with a view to profit making, the penalty is increased to between three and 12 years' imprisonment (Article 160, paragraph 3).

161. While Article 160 of the CC makes provision for "labour exploitation" situations, it does not refer to "forced labour or services, slavery or practices similar to slavery, or servitude" as mentioned in Article 4 of the Convention. As stated in paragraph 44, the CC contains a specific provision on slavery (Article 159), which is punishable by a prison sentence of between five and 15 years. According to the judicial authorities, a number of cases relating to trafficking of human beings have been prosecuted on the basis of Article 159 of the CC, which is easier to implement as the requirements in terms of verification of evidence do not require the proof of any means, and carries a harsher punishment than the one which applies to human trafficking. That said, GRETA recalls that the offence of trafficking is distinct from the offences of exploitation which it is intended to prevent. Thus, while Portuguese law punishes slavery, it is vital for the text making trafficking a criminal offence also to cover slavery, so that it is possible to prosecute those persons who have committed an act which has led to a person being placed in a situation of slavery.

<sup>33</sup> Article 160 of the CC:  
 "1. Whoever offers, delivers, recruits, accepts, transports, harbours or houses any person for the purpose of sexual exploitation, labour exploitation or the extraction of organs:  
 a) by violence, abduction or serious threat;  
 b) by deception or fraud;  
 c) with abuse of authority resulting from a relationship of hierarchical, financial, work or family dependence;  
 d) by taking advantage of the victim's mental incapacity or situation of special vulnerability; or  
 e) by obtaining consent from the person who has control over the victim;  
 shall be liable to a prison sentence of between three and ten years.  
 2. The same sentence shall be applied to someone who, through any means, entices, transports, harbours or houses a juvenile or transfers, offers or accepts him/her for the purpose of sexual exploitation, labour exploitation or the extraction of organs.  
 3. In the cases set out in (2), if the agent uses any of the means set out in the sub-sections of (1) or acts on a professional basis or with a view to monetary gain, he/she shall be liable to a prison sentence of between three and twelve years.  
 4. Whoever, in return for payment or other compensation, offers, delivers, solicits or accepts a juvenile or obtains or gives consent for his/her adoption shall be liable to a prison sentence of between one and five years.  
 5. Whoever, in the knowledge that the crime set out in (1) or (2) has been committed, uses the victim's services or organs, shall be liable to a prison sentence of between one and five years, unless a longer sentence is applicable under another legal provision.  
 6. Whoever retains, conceals, damages or destroys travel or identity documents belonging to a person who is a victim of the crime set out in (1) or (2) shall be liable to a prison sentence of up to three years, unless a longer sentence is applicable under another legal provision."

162. Three of the aggravating circumstances set out in the Convention do not appear in the text of Article 160 of the CC: when the offence was committed by a public official in the performance of her/his duties, when the offence deliberately or by gross negligence endangered the life of the victim, and when the offence was committed within the framework of a criminal organisation. The Portuguese authorities nevertheless have indicated that such situations could be taken into account for the purposes of increasing the penalty in accordance with the “concurrency of offences” procedure (Article 17 of the CC). Membership of a criminal organisation, for example, is punishable under Article 299 of the CC, and heavier penalties are imposed for any trafficking offence committed within the framework of a criminal organisation. If the offence is committed by a public official in the performance of his/her duties, it is considered a crime not just in view of THB but also as concerns Chapter IV of CC, in particular Article 372 et seq. (receiving undue advantage). As regards the aggravating circumstance of “deliberately or by gross negligence endangering the life of the victim”, the Portuguese authorities have indicated that for the purpose of determining the concrete sentence, the court takes into consideration all circumstances, namely the degree of unlawfulness of the act, the way it was executed and the seriousness of its consequences, as well as the intensity of the intentional conduct, or of the negligence (Article 71 of CC). **Nevertheless, in order to be fully consistent with the Convention, GRETA considers that the Portuguese authorities should include as aggravating circumstances all situations envisaged under Article 24 of the Convention.**

163. As stated in paragraph 90, knowingly using the services of a victim of trafficking is punishable by a prison sentence of between one and five years (Article 160, paragraph 5 of the CC). GRETA welcomes the inclusion of this provision in the article relating to trafficking; that said, there have not yet been any convictions under it.

164. Pursuant to Article 160(6) of the CC, anyone who retains, conceals, damages or destroys travel or identity documents belonging to a person who is a victim of trafficking is punishable by a prison sentence of up to three years. Falsification or forgery of documents is punishable under Article 256 of the CC, which is not specific to trafficking and provides for imprisonment of up to three years and a fine, increasing in the event of aggravating circumstances.

165. In accordance with Article 11(2) of the CC, legal and equivalent entities, with the exception of central government, other public-law legal entities<sup>34</sup> and public-law international organisations, may be held responsible for the offences defined in Article 160 of the CC if these are committed: (a) for their own account and in the collective interest by persons holding management authority within them; (b) by any person acting under the authority of the persons mentioned in (a) because of a failure to fulfil the obligations of supervision or control devolving on them. The main penalties applicable to legal entities are fines or closure<sup>35</sup>. According to the information provided to GRETA, no legal entity has been found guilty of trafficking.

b. Non-punishment of victims of human trafficking

166. Pursuant to Article 26 of the Convention, Parties must provide for the possibility of not imposing penalties to victims of THB for their involvement in unlawful activities, to the extent that they have been compelled to do so.

<sup>34</sup> Within the meaning of criminal law, “public-law legal entities” are legal entities governed by public law, particularly public undertakings, public service providers, irrespective of ownership, or other legal entities which exercise public authority.

<sup>35</sup> The following additional penalties may also be imposed on them: court order; prohibition of activity; prohibition of entering into certain kinds of contracts or of the conclusion of contracts with certain entities; loss of entitlement to subsidies or incentives; closure of the establishment; publication of the judgment.

167. There is no specific provision in Portuguese law on the non-punishment of victims of trafficking. According to the judicial authorities, a victim of trafficking who has taken part in unlawful activities must be prosecuted in accordance with the principle of legality (Article 219 of Constitution). The Portuguese authorities have nevertheless indicated that, generally speaking, the application of a criminal penalty presupposes that the offender acted in complete freedom and conscience in order to achieve a known and desired result. There is therefore no penalty in the absence of free will. Furthermore, there are general clauses providing for exemption from responsibility, such as a state of necessity (Articles 34 and 35 of the CC<sup>36</sup>), which could apply to victims of trafficking.

168. Article 281 of the Code of Criminal Procedure (CCP) provides for a procedure whereby the public prosecution service may provisionally suspend proceedings, with the agreement of the examining judge, on his or her own initiative or at the defendant's request, by issuing "orders or rules of conduct"<sup>37</sup> instead of a more severe penalty. This procedure is possible when the offence committed is punishable by a prison sentence of less than five years or by a sentence other than deprivation of liberty, provided that other conditions are met, such as absence of previous convictions for similar acts, absence of a high degree of guilt and a high level of probability that the orders or rules of conduct will suffice to fulfil the preventive needs. The proceedings may thus be suspended for a maximum period of two years. If, at the end of that period, the person concerned has complied with the orders and rules of conduct, the proceedings will be discontinued.

169. Reference should also be made to the "discontinuance for discharge" procedure whereby the public prosecution service may in certain circumstances decide at the end of the investigation to discontinue a case with the agreement of the examining judge if the conditions are met (Article 280 of the CCP<sup>38</sup>). The Portuguese authorities have indicated that Article 280 of the CCP may be applied to victims of trafficking who have taken part in unlawful activities under duress, if the proceedings are for a crime in relation to which the law expressly establishes the possibility of "discontinuance for discharge". The requirements of discharge are provided for in Article 74(1) of the CC<sup>39</sup>.

<sup>36</sup> Article 34 of the CC: An act is not unlawful if it is committed as an appropriate means of preventing a danger which jeopardises the legally protected interests of the person concerned or of a third party in the following conditions:

(a) the danger was not deliberately created by the person committing the act other than to protect the third party's interests;

(b) the protected interest is appreciably higher than the interest sacrificed;

(c) it is reasonable to impose on the victim the sacrifice of his or her interest, taking into account the nature or value of the interest jeopardised.

Article 35 of the CC:

1. Anyone who commits an unlawful act in order to prevent a danger which cannot otherwise be prevented and which jeopardises the life, physical integrity, honour or freedom of the person concerned or of a third party, when it is not reasonable to expect, given the circumstances of the case, different conduct not entailing an offence

2. If the danger jeopardises legal interests other than those mentioned in paragraph (1), and if the other conditions mentioned are met, the penalty may be reduced or, by way of an exception, the person concerned may be discharged without penalty.

<sup>37</sup> These may, for example, require compensation to be given to the victim in pecuniary or non-pecuniary form, a certain sum to be paid to the state or to the IPSS or community service to be provided for their benefit, programmes or activities to be followed, certain occupations not to be exercised, certain places not to be visited, certain persons not to be received or accommodated, items which could be used to commit another offence not to be possessed, certain meetings not to be attended, and so on.

<sup>38</sup> Article 280 of the CCP ("Closing in the event of discharge without punishment"):

"1. If the proceeding is for a crime in relation to which the criminal law expressly establishes the possibility of discharge without punishment, the Public Prosecution, with the agreement of the investigating judge, may decide for the closing of the proceeding, if the requirements of such discharge are verified.

2. If the charge has already been brought, the investigating judge may, during its course, close the proceeding with the agreement of the Public Prosecution and of the defendant, if the requirements of discharge without punishment are verified.

3. The decision to close the proceeding, under the previous numbers, may not be challenged."

<sup>39</sup> Article 74 of the CC ("Discharge without punishment"):

"1. When the crime is punishable with sentence of imprisonment for not more than six months, or only with fine penalty for not more than 120 days, the court may declare the defendant guilty but not apply any sentence if:

a) The unlawfulness of the act and the agent's guilt are small;

b) The damage has been repaired; and

c) There are no prevention reasons opposing to the discharge without punishment.

2. If the judge has reasons to believe that the repairing of the damage is soon to occur, he may postpone the judgment to a review of the case within one year, in a day which will be immediately scheduled.



170. GRETA is concerned that the absence of a specific provision on the non-punishment of victims of trafficking entails a risk of treating them differently depending on the prosecutor in charge of the case. **GRETA therefore invites the Portuguese authorities to clarify the situation through the adoption of a provision on non-punishment of victims of trafficking for their involvement in unlawful activities to the extent that they were compelled to do so or, at the very least, by issuing guidance to public prosecutors advising them on the steps to be taken when prosecuting suspects who might be victims of trafficking.**

c. Investigation, prosecution and procedural law

171. One of the purposes of the Convention is to ensure the effective investigation and prosecution of THB (Article 1(1)(b) of the Convention). In this context, Parties are required to co-operate with each other regarding investigations or criminal proceedings related to THB (Article 32). Further, the Convention establishes that the investigation or prosecution of THB offences must not be dependent on victims' reports, and that associations or NGOs aimed at fighting THB or protecting human rights must be able to assist and support victims during criminal proceedings, in accordance with the conditions established in the internal law and with the victim's consent (Article 27).

172. In Portugal, the public prosecution service may start a criminal investigation without any need for a complaint by the victim. Unlike judges, who for historical reasons have no specialisation in dealing with contentious proceedings, the public prosecutor's office does have a degree of specialisation. There is, for example, a specialist organised crime unit, whose remit includes THB, within the Investigation and Criminal Prosecution Department (DIAP) of the Lisbon Public Prosecutor's Office, comprising four persons. In Porto, Coimbra and Evora, there is a prosecutor specialised in organised crime. A directive of the Attorney General on crime policy and priority objectives for investigations includes trafficking among those priority objectives. Furthermore, two police forces, the Criminal Police (PJ) and the Immigration and Borders Service (SEF), have power to investigate THB cases (see paragraphs 28 and 29). Investigations are distributed between these two police forces by the public prosecution service, with cases relating to foreign nationals in practice going to the SEF, and those relating to Portuguese nationals to the PJ, although this distinction has not been formalised.

173. There exists in Portuguese law a range of investigation techniques which the police forces and public prosecutor's office may use, some under ordinary law and others (interception of telecommunications, surveillance, search, mobile phone tracking, infiltration) under special law. The crime of THB being considered as a "highly organised crime", all the previously mentioned investigation techniques can be applied in cases of THB. However, GRETA notes the view of prosecutors and police officers that legislation on investigation techniques is complex and dispersed<sup>40</sup>, and that different provisions may conflict. GRETA stresses that the obligation to conduct effective investigations implies the availability of special investigation techniques. In Committee of Ministers Recommendation Rec(2005)10 of 20 April 2005 on special investigation techniques in relation to serious crimes, including acts of terrorism, such techniques are defined as "techniques applied by the competent authorities in the context of criminal investigations for the purpose of detecting and investigating serious crimes and suspects, aiming at gathering information in such a way as not to alert the target persons". **GRETA invites the Portuguese authorities to harmonise the legislation related to special investigation techniques.**

3. When another rule allows on a facultative nature the discharge without punishment, this can only take place upon verification in the case of the requirements included in paragraph 1."

<sup>40</sup>

In the CCP, the Law on Cybercrime, the Law on Undercover Officers, the Law on Organised Crime, etc.

174. Portuguese legislation allows criminal assets to be seized and confiscated at any stage of judicial proceedings<sup>41</sup>. An Assets Recovery Office (ARO) was set up recently in pursuance of Law 45/2011 of 24 June 2011, under the Criminal Police, to conduct investigations into finances and assets in relation to any kind of crime and, if applicable, to seize proceeds of crime<sup>42</sup>. The ARO's mission is to undertake financial investigations in order to identify, trace and freeze the proceeds from, or property related to, crimes punishable by imprisonment for not less than three years and where the estimated value thereof exceeds 102 000 euros, either at national or international level, to ensure the co-operation between assets recovery offices of other States and to perform all other powers legally conferred upon it. While all the necessary provisions exist in law, the judicial authorities have indicated that implementation is complicated, firstly because the applicable provisions are dispersed across several legal texts which lack harmonisation. Secondly, a link must be proved between the crime and the assets, i.e. the items which served to commit an offence or were intended for that purpose, or those resulting directly or as by-products from the offence. The Portuguese authorities are involved in initiatives to provide better training to the police and judicial authorities in the identification and seizure of assets. In this context, the Prosecutor General's Office has submitted an application to the European Commission for a project aimed at the development of a good practice guide and a guide to the identification of communication channels. The project was developed in partnership with the Criminal Police, the Prosecutor General's Office of Spain and the Asset Recovery Bureau of the Netherlands.

175. There have been only a few confiscations of traffickers' assets. GRETA stresses that the confiscation of assets of criminal origin is a vital means of making the penalty more effective and ensuring that compensation is paid to the victim. Confiscation presupposes the detection, identification and seizure of unlawful assets during the judicial investigation, as well as the introduction of the necessary procedures. **GRETA considers that the Portuguese authorities should take steps to guarantee the effective application of the legal provisions concerning the confiscation of traffickers' assets.**

176. According to statistics provided by the Portuguese authorities, law enforcement agencies started criminal investigations related to THB in 43 cases in 2008, 39 in 2009 and 28 in 2010. There were only three convictions in 2008 (all involving suspended prison sentences) and five in 2009 (all involving effective imprisonment sentences). Further, GRETA was informed that in the case 1/07.8ZCLSB.L1.S1 (final judgment of 20 May 2009), nine persons were sentenced to imprisonment ranging from two to 14 years. It should be noted that data concerning sentences are preliminary and may undergo changes as a result of verification and review proceedings that are being carried out. That said, GRETA is concerned by the low number of convictions for human trafficking. The judicial authorities themselves consider that this situation is due to a very complicated procedure for checking evidence and to misinterpretation by judges of Article 160 of the CC.

177. In this context, GRETA was informed that a number of human trafficking cases are prosecuted as slavery offences (Article 159 of the CC) or living on the earnings of prostitution (Article 169 of the CC). In 2011 the Court of Covilha convicted three persons under Article 159 of the CC to prison terms of eight, 12 and 20 years, as well as the payment of wages in compensation totaling 76 000 euros. Further, the Court of Bragança recently convicted a person under Article 159 of the CC to four years of imprisonment, suspended on condition of payment of compensation to the victim of 4 000 euros, and the Court of Lamego convicted two persons to respectively seven years and six months, and five years and six months. In the case of Article 169 of the CC, the range of penalties applicable is far lower than those for THB (six months to five years' imprisonment, or one to eight years if there are aggravating circumstances). Furthermore, Portuguese law allows judges not to enforce a prison sentence if the penalty imposed is less than five years' imprisonment. As a result, there are reportedly cases of traffickers who are not penalised commensurately with the seriousness of their acts.

<sup>41</sup> Particularly Articles 109ff of the CC and Law 5/2002 of 11 January 2002 laying down measures to combat organised crime and economic and financial crime. The latter law does not encompass THB as defined in Article 160 of the CC, but includes incitement to prostitution and incitement to trafficking in children.

<sup>42</sup> In application of Council Decision 2007/845/JHA of 6 December 2007 concerning co-operation between Member States' Asset Recovery Offices in the field of tracing and identification of proceeds from, or other property related to, crime.

178. GRETA urges the Portuguese authorities to take steps to identify gaps in the investigation procedure and the presentation to cases in courts, *inter alia*, with a view to ensuring that human trafficking offences are effectively investigated and prosecuted, leading to proportionate and dissuasive sanctions.

179. Furthermore, GRETA considers that there is need for improvement of the knowledge and sensitivity of judges, prosecutors, investigators and lawyers about THB and victims' rights. Future training programmes should be designed with a view to improving the knowledge and skills of relevant professionals which enable them to identify victims of trafficking, to assist and protect them, and to secure convictions of traffickers.

d. Protection of victims and witnesses

180. By virtue of Article 28 the Convention, Parties must take measures to provide effective and appropriate protection from potential retaliation or intimidation in particular during and after the investigation and prosecution of perpetrators. This protection can be of various types (physical, relocation, identity change, etc.) and is to be provided to victims of trafficking, to those who report it or otherwise co-operate with the investigating or prosecuting authorities, to witnesses who give testimony and, when necessary, to members of the families of those listed above. Further, Article 30 of the Convention includes a provision requiring Parties to take measures to protect victims' private life and identity and to provide for their safety and protection from intimidation in the course of judicial proceedings, including special protection measures for child victims of THB.

181. Law 93/99 of 14 July 1999 provides for the protection of witnesses and victims of offences, including victims of THB. Protection is to be provided to witnesses in criminal proceedings, i.e. anyone who holds information or intelligence useful to the discovery, perception or appraisal of the facts under investigation, the use of which might place them in danger or be detrimental to others. These measures may also concern members of witnesses' families and their close relatives.

182. Victims are entitled to social and psychological assistance, anonymity, concealment of their appearance, address and voice, transport in state-owned vehicles, secure accommodation, police protection for members of their families, the issuing of official documents under different identity, a change in their physical appearance through plastic surgery, new housing in the country or abroad, the creation of conditions enabling them to obtain means of subsistence and financial assistance for a limited period. During the investigation, these measures are implemented by special units of the police forces, upon a prosecutor's order which is made *ex officio*, or at the request of the witness or his or her lawyer, or on a proposal from the judicial police. After the investigation stage, the protection measures are ordered by the judge at the prosecutor's request. Some very specific measures are ordered by the special programmes security committee, which reports directly to the Minister of Justice, at the prosecutor's or judge's request. That said, GRETA was informed that the procedure was highly complicated and that, consequently, the police forces very seldom make use of it.

183. Furthermore, a procedure called "statement for future reference" (pursuant to Article 271 of the CCP) exists whereby victims and witnesses unable to be present during the final phase of the trial may record their evidence before a judge at the end of *inter partes* proceedings. Such statements may be used during the trial. This procedure is obligatory in the case of children. GRETA welcomes the existence of this procedure which makes it possible both to avoid confronting victims with traffickers during the trial and to have the evidence given by a victim unable to remain on Portuguese territory taken into account by the trial court.

184. Furthermore, Article 88 (2) (c) of the CCP prohibits both the presence of persons unconnected with the case during the conduct of proceedings relating to THB cases and the disclosure by the media of the identity of victims without their consent. The prosecutor may order that the holding of preliminary criminal proceedings be kept secret, so as to protect victims during the first phase of the proceedings. Thus suspects have limited and controlled access to information.

## 5. Concluding remarks

185. The legal and institutional framework in Portugal in general provides a solid basis for a victim-centred and human rights-based approach to action against trafficking in human beings. The independent evaluation of the first national Action Plan by a university team is a good practice which fosters transparency and accountability on the part of the state and should be continued. GRETA also welcomes the National Strategy for the Integration of Roma Communities, which is in the process of adoption, and other initiatives aimed at addressing the vulnerability of certain groups to trafficking. Moreover, GRETA endorses the decision of the Portuguese authorities to grant a reflection and recovery period longer than the minimum provided for in the Convention.

186. While GRETA praises the Portuguese authorities for the action taken so far, a number of important challenges still remain to be tackled through legislative, policy or practical measures, in order to meet the requirements of the human rights-based approach outlined in paragraphs 35-41. Notwithstanding the legal possibility of granting a recovery and reflection period, providing assistance, issuing residence permits and granting compensation and legal redress to victims of human trafficking, the authorities must ensure the effective access to these entitlements through the provision of adequate information and legal assistance to every identified or presumed victim.

187. GRETA also draws attention to the need for adapting the existing anti-trafficking policies to include measures specifically targeted at trafficking for the purpose of labour exploitation and taking greater account of male and child victims.

188. Certain aspects of the present anti-trafficking action in Portugal raise concerns as to their potential for contravening the core human rights principles and values required by the Convention. Thus the Portuguese authorities must ensure that the identification of victims of trafficking and the assistance and protection related to such status are detached from the conduct of police investigation and eventual criminal proceedings. Even though existing legislation allows for the identification of and the assistance to victims who do not wish to co-operate with the authorities, in reality this seldom takes place; this has a potential to undermine the credibility of the government's efforts in this field. This concern is reinforced by the fact that GRETA was unable to obtain information on the number of cases in which victims of trafficking have been allowed to benefit from the recovery and reflection period.

189. Strengthening the effectiveness of investigations and prosecutions of human trafficking-related offences with a view to securing proportionate and dissuasive sanctions is another area where further action is needed in order to fully apply the human rights-based and victim-centred approach promoted by the Convention.

190. All professionals who may come into contact with victims of human trafficking, including law enforcement officials, prosecutors, judges, labour inspectors and social workers, need to be continuously informed and trained about the need to apply a human rights-based approach to action against human trafficking on the basis of the Convention and the case-law of the European Court of Human Rights.

191. GRETA invites the Portuguese authorities to keep it informed on a regular basis of the developments in the implementation of the Convention and looks forward to continuing the good co-operation in further efforts in achieving the purposes of the Convention.

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## **Appendix I: List of GRETA's proposals**

### **Definition of trafficking in human beings**

1. In order to be fully consistent with the definition of THB in the Convention, GRETA considers that the Portuguese authorities should explicitly include slavery and practices similar to slavery and servitude in the forms of exploitation resulting from human trafficking.
2. GRETA considers that stating explicitly the irrelevance of the consent of a victim of trafficking to the intended exploitation could improve the implementation of the anti-trafficking provisions.

### **Comprehensive approach and co-ordination**

3. GRETA considers that the Portuguese authorities should adapt their anti-trafficking policy to the current trends in THB, in particular by focusing more attention on trafficking for the purpose of labour exploitation and taking greater account of male and child victims who are not appropriately catered for under the current system.
4. GRETA encourages the Portuguese authorities to continue this good practice, in keeping with the spirit of the Convention, which entails that co-ordinating bodies should be given the necessary authority to ensure effective co-ordination between public agencies.
5. GRETA invites the Portuguese authorities to continue strengthening links with NGOs, to involve them as fully as possible in the design, implementation, co-ordination and evaluation of national action plans and policies, and to allocate an appropriate level of funding to them.

### **Training of relevant professionals**

6. GRETA considers that there is need for further investment in continuous training and awareness raising, in particular of law enforcement officials, prosecutors, judges, labour inspectors, social workers and staff members of NGOs likely to come into contact with victims of THB.

### **Data collection and research**

7. GRETA welcomes the development of what is intended to be a comprehensive and coherent statistical system on THB and invites the Portuguese authorities to ensure that statistical data are collected from all the main actors. GRETA recalls that this should be accompanied by all the necessary measures to ensure respect for the rights of data subjects to personal data protection, including when NGOs working with victims of human trafficking are asked to provide information to feed into the national database.
8. GRETA invites the Portuguese authorities to continue conducting and supporting research on THB issues, including when such studies are carried out by Portuguese civil society, as an important source of information for future policy measures. Areas where research is needed in order to shed more light on the extent of the problem of THB include trafficking within Portugal, trafficking for the purpose of labour exploitation and trafficking in children.

### **International co-operation**

9. GRETA invites the Portuguese authorities to continue to explore possibilities for international co-operation, particularly as regards protecting and assisting victims of human trafficking and prosecuting traffickers.

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**Awareness raising and education**

10. GRETA encourages the Portuguese authorities to continue their awareness-raising efforts and to launch new campaigns and/or support those organised by civil society. GRETA considers that future awareness-raising actions should be designed on the basis of an assessment of previous measures and should target identified needs.

**Measures to discourage demand**

11. GRETA considers that the Portuguese authorities should continue their efforts to discourage demand for services provided by victims of THB.

**Social, economic and other measures for groups vulnerable to THB**

12. GRETA considers that the authorities should step up the implementation of economic and social measures which address the underlying causes of THB (economic and social situation, lack of education, unemployment, etc.) and, as much as possible, make the necessary human and financial resources available to them.

**Border measures and measures to enable legal immigration**

13. GRETA considers that the authorities should continue their efforts to detect cases of THB when carrying out border checks.

14. GRETA also invites the authorities to provide training to consular staff on THB issues to make it easier for them to detect risks of THB during the visa application procedure.

**Identification of victims of trafficking in human beings**

15. GRETA urges the Portuguese authorities to:

- ensure that in practice the formal identification of victims is dissociated from their participation in the investigation and court proceedings;
- review the indicators used for the purposes of reporting and identification of victims, so that they cover every possible situation;
- ensure that all stakeholders in the identification of victims of trafficking adopt a more proactive approach and step up their outreach work so that victims are identified more efficiently;
- step up victim identification training for front-line professionals (particularly members of the police, labour inspectors, social workers, health professionals and NGO staff).

16. GRETA also considers that the Portuguese authorities should strengthen the multi-disciplinary approach to victim identification, by building on the experience of the multi-disciplinary team run by the Family Planning Association (APF) and by setting up similar multi-disciplinary teams in other parts of the country.

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**Assistance measures**

17. GRETA considers that the Portuguese authorities should reassess trafficking trends in Portugal and provide appropriate and safe accommodation throughout the country's territory for victims of trafficking, including for men and children.

18. GRETA urges the Portuguese authorities to step up the assistance provided to trafficking victims, and in particular to:

- ensure that the services available are adapted to the specific needs of trafficking victims and that minimum standards are guaranteed when victims of trafficking are accommodated in structures not specifically designed for such victims;
- when assistance is delegated to NGOs as service providers, ensure that adequate human and financial resources are allocated to guarantee that the necessary assistance is provided to all victims;
- improve the assistance system for child victims of trafficking with regard to accommodation and the introduction of medium and long-term support programmes appropriate to children's needs.

19. GRETA also invites the authorities to continue providing regular training to all professionals responsible for implementing assistance measures for victims of trafficking.

**Recovery and reflection period**

20. GRETA welcomes the provision by the Portuguese authorities of a period longer than the minimum of 30 days envisaged in the Convention and urges the Portuguese authorities to ensure that victims of trafficking are systematically informed of the possibility of being given a recovery and reflection period and are effectively granted such a period.

**Residence permit**

21. GRETA invites the Portuguese authorities to ensure that victims of trafficking can fully benefit from their right to obtain a renewable residence permit, particularly when they are unable to co-operate with the authorities.

**Compensation and legal redress**

22. GRETA urges the Portuguese authorities to ensure that victims of trafficking are made aware of the right to compensation and of the procedures to follow, and can effectively enjoy this right in practice, particularly through access to legal assistance in this respect.

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## **Repatriation and return of victims**

23. GRETA considers that the Portuguese authorities should determine whether the existing assisted voluntary return provisions are appropriate for victims of trafficking, who constitute a specific group of candidates for return, and should take additional measures to:

- ensure that victims of trafficking effectively have access to return and repatriation procedures which take due account of the individual's rights, security and dignity and make it possible to prevent re-trafficking;
- develop co-operation with countries to which trafficking victims return, in order to conduct an appropriate assessment of the risks, ensure victims' safety on their return and improve their reintegration.

## **Substantive criminal law**

24. In order to be fully consistent with the Convention, GRETA considers that the Portuguese authorities should include as aggravating circumstances all situations envisaged under Article 24 of the Convention.

## **Non-punishment of victims of human trafficking**

25. GRETA invites the Portuguese authorities to clarify the situation through the adoption of a provision on non-punishment of victims of trafficking for their involvement in unlawful activities to the extent that they were compelled to do so or, at the very least, by issuing guidance to public prosecutors advising them on the steps to be taken when prosecuting suspects who might be victims of trafficking.

## **Investigation, prosecution and procedural law**

26. GRETA invites the Portuguese authorities to harmonise the legislation related to special investigation techniques.

27. GRETA considers that the Portuguese authorities should take steps to guarantee the effective application of the legal provisions concerning the confiscation of traffickers' assets.

28. GRETA urges the Portuguese authorities to take steps to identify gaps in the investigation procedure and the presentation to cases in courts, *inter alia*, with a view to ensuring that human trafficking offences are effectively investigated and prosecuted, leading to proportionate and dissuasive sanctions.

29. Furthermore, GRETA considers that there is need for improvement of the knowledge and sensitivity of judges, prosecutors, investigators and lawyers about THB and victims' rights. Future training programmes should be designed with a view to improving the knowledge and skills of relevant professionals which enable them to identify victims of trafficking, to assist and protect them, and to secure convictions of traffickers.



## **Appendix II: List of public bodies and intergovernmental and non-governmental organisations with which GRETA held consultations**

### **Public bodies**

- State Secretariat for Parliamentary Affairs and Equality
- Citizenship and Gender Equality Commission (CIG)
- National Rapporteur for action against trafficking in human beings
- High Commission for Immigration and Intercultural Dialogue (ACIDI)
- Ministry of the Interior
  - Immigration and Borders Service (SEF)
  - Republican National Guard
  - Public Security Police
  - Observatory of Trafficking in Human Beings (OTSH)
- Ministry of Justice
  - Criminal Police (PJ)
  - Attorney General's Office
  - Centre for Judicial Studies (CEJ)
- Ministry of Solidarity and Social Security
  - Social Security Institute
  - National Commission for the Protection of Children and Young People at Risk
- Ministry of Economic Affairs and Labour
  - Working Conditions Authority
- Ministry of Education and Science
- Portuguese Parliament Committee on Constitutional Affairs, Rights, Freedoms and Safeguards

### **Intergovernmental organisations**

- International Organisation for Migration (IOM) Office in Portugal
- International Labour Organisation (ILO) Office in Portugal

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**Non-governmental organisations**

- Associação para o Planeamento da Família (APF)
- 
- Associação Portuguesa de Apoio à Vítima (APAV)
- 
- Associação de Mulheres Contra a Violência (AMCV)
- 
- Instituto de Estudos Estratégicos e Internacionais (IEEI)
- 
- Movimento Democrático de Mulheres (MDM)
- 
- Saúde em Português
- 
- União de Mulheres Alternativa e Resposta (UMAR)

## **Government's comments**

### **The following comments do not form part of GRETA's analysis concerning the situation in Portugal**

GRETA engaged in a dialogue with the authorities of Portugal on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version.

The Convention requires that "the report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned." GRETA transmitted its final report to the Portuguese authorities on 4 January 2013 and invited them to submit any final comments. The Portuguese authorities' comments, submitted on 4 February 2013, are reproduced hereafter.





GOVERNO DE  
PORTUGAL

MINISTÉRIO DE ESTADO  
DOS ASSUNTOS PARLAMENTARES  
E DA IGUALDADE

Dear Ms Petya Nesicova,  
Executive Secretary of the Secretary of the Council of  
Europe, Convention on Action against Trafficking in Human  
Beings (GRETA)

Lisbon, 1 February 2013

**Report concerning the Implementation of the Council of Europe Convention on Action  
against Trafficking in Human Beings by Portugal, first evaluation round, Portugal Comments.**

The Portuguese Government would like to express its gratitude to the group of Experts on Action  
against Trafficking in Human Beings (GRETA) for their efforts and the constructive report on the  
implementation by Portugal of the provisions of the Council of Europe Convention on Action against  
Trafficking in Human Beings.

Taking this in note, we also like to say that we have evaluated all the recommendations and  
comments of the report and we consider it a good guide to improve our work.

Portugal would like to say that will take good note of all recommendations, and send some  
clarifications concerning the final Draft Report, and having regard to Article 38, paragraph 6, of the  
Convention and Rule 14 of GRETA's Rules of Procedure for evaluating implementation of the Convention,  
we submit some final comments on the report, to be published with the final report.

We would also like to stress, that the Government of Portugal is committed engaged in continuing  
the fruitful on-going dialogue and co-operation with GRETA.

Best regards,

Secretary of State for Parliamentary Affairs and Equality

Teresa Morais

## **General Comments**

### **Concerning bullet 25, page 13**

The national rapporteur is not responsible for coordinating and monitoring the implementation of the II National Plan. The coordination of the II National Plan against Trafficking in Human Beings is delegated to the Commission for Citizenship and Gender Equality (CIG).

The national rapporteur is part of the technical committee that supports the coordination of the II National Plan against Trafficking in Human Beings, and works in the Commission for Citizenship and Gender Equality.

The competences of the national rapporteur are:

Assisting the coordinator of PNCTSH II in particular in the following areas:

- a. Relationship with foreign counterparts and international organizations at the level of human trafficking;
  - b. Participation in the promotion and development of structures and networks nationally and internationally;
- (Order nº 1003/2012 of 25<sup>th</sup> January 2012).

### **Concerning bullet 127, page 31**

The number of victims of trafficking that were accommodated at other centers managed by NGOs that are not specialized in trafficking was not significant, and when is needed, they are placed in in other centers that are not specialized on trafficking, but the specialized team that works with victims of trafficking did all the support needed, concerning legal, social and psychological matters.

### **Concerning bullet 128, page 32**

Concerning the recommendations referring to children, we would like to state that each country has specific particularities when addressing the issues of human trafficking. Portugal has, in statistical terms, a residual impact regarding children victims of human trafficking. Accordingly, and based on the diagnosis of the current situation, the answers that Portugal has for situations involving children are appropriate since they meet the specifics needs of the minors.

As it was referenced in this report, Portugal has a comprehensive legal framework when confronted with situations of children at risk.

## **Appendix I: List of GRETA's proposals Comments from Portugal**

### **Definition of trafficking in human beings**

1. It is important to highlight that the crime THB contained in our Penal Code arises from the transposition into Portuguese legal system of the CoE Convention. In fact, slavery or practices similar to slavery and servitude are not expressly mentioned in Article 160º (1) of the CC which also does not specify the content of the concept of labour exploitation. It is considered that such practices are covered by the provision of art. 159º of CC which covers the most serious cases of slavery, punishing them by an imprisonment penalty between 5 and 15 years, and applies independently of the nature of the means employed.

The Article 159º of the Criminal Code goes beyond the punishment of slavery by the Convention for the crime of trafficking. Article 159º has more severe punishment and there will be no increase in criminal protection with its inclusion of article 160º.

The offense provided for in Article 159º does not oblige the use of certain means (violence, kidnapping, threat, deception, etc.), for it is wider. So the inclusion of slavery in article 160º, under the Convention, would reduce the scope of protection now integrated in the standard of Article 159º.

Moreover, the existence of an autonomous punitive type of slavery has support in Portuguese legal tradition, where his offense date at least to 1886

Nevertheless, Portugal will take note of this recommendation.

2. Considering the relevance of a will intention that one knows to be obtained by vicious means that led to a will intention that does not necessarily meets the true will of the subject, it is incompatible and even intolerable when facing the general guidelines of the Portuguese legal system. Furthermore, these principles are enshrined in paragraph 2 of article 38º of the Penal Code as assumptions of the relevance of consent as a means of precluding wrongfulness. Nevertheless, Portugal will take note of this recommendation.

### **Comprehensive approach and co-ordination**

3-4. This National Plan against Trafficking in Human Beings has established larger targets concerning labour trafficking. It should be noted that in late 2012 (November) two training initiatives to labour inspectors were held (that involved 95 inspectors). To reinforce the importance of this training moment, it should be highlighted that the special representative against human trafficking of OSCE - Maria Grazia Giammarinaro, opened the training course in Porto. During the year of 2013, it is intended that this training will cover all the inspectors labour (a total of 400 inspectors).

The launch of the UNODC in April and October 2012 was also a milestone that clearly underlined the increased focus that Portugal has given to the issue of trafficking for labour purposes. Indeed, this campaign reinforced the need for people to be alert to announcements and promises of work that can hide exploitative labour situations. Unlike other years in which the issue of sexual exploitation was more visible, this year's campaign focused exclusively on the labour side.

It's still an on-going exploratory study on Trafficking for Labour Exploitation at CES (Centre for Social Studies) at the University of Coimbra.

5. Several Memorandums of Understanding (MoU) were signed in 2011 and 2012 with the government and NGOs to strengthen collaboration with the Observatory on Trafficking in Human Beings (OTSH).

In drafting the first and second national THB plans, NGOs were auscultated in either phase of public debate and in meetings of the Advisory Council – NGO Section - of the Commission for Citizenship and Gender Equality (CIG).

Its involvement in the implementation of measures in the Plan II is properly addressed.

Usually the evaluations of the national plans are delivered to external entities, coming from academia. During these evaluation processes, NGO are involved.

A closer link will be made from now on with NGOs regularly presented in the meetings of the technical committee for the National Plan, as observers.

During the year of 2013, there will be a strengthening of multidisciplinary teams (total of 3) to promote a decentralized intervention – in the North, Centre and Alentejo, coordinated by the Association for Family Planning (APF).

With the implementation of the network of support and protection to victims of trafficking (RAPVT), it will be strengthened the participation and involvement of NGOs to adopt a proactive approach in signalling and identification of victims of trafficking. The joint action of/co-ordination between all these entities will allow that a multidisciplinary approach will be reinforced.

### **Training of relevant professionals**

6. As already said, the aspect of training is assumed as one of the most important areas of the Plan, since it clearly contemplates that bet on various strategic actors as prosecutors, judges, social workers and members of NGOs.

The strengthening of skills in judicial field is an issue Portugal pays particular attention. 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

Along with this initiative, a proposal with a program schedule of training activities during the year 2013 for prosecuting attorneys at the level of District Attorneys is further contemplated.

The Centre for Judicial Studies (CEJ), in partnership with the Observatory on Trafficking in Human Beings (OTSH), published a "compilation of selected legal instruments, policy and jurisprudence in Portugal, Europe and around the world."

Judges of the Centre for Judicial Studies (CEJ) were involved in several international conferences related to trafficking in Human Beings that were included in the project "Towards a European approach to judicial training on human trafficking"

During 2012, Portugal continued to develop a training project within the framework for the intervention of the guiding principles of the United Nations, that was a result off the translation and publication in Portuguese language of the Anti-Human Trafficking Manual for Criminal Justice Practitioners, UNODC conducted a first pilot training course that started with phase 1 on April 2011 in Vienna, phase 2 in Lisbon and phase 3 in the capital City of each Portuguese speaking country: Brazil, Angola, São Tomé and Príncipe, Cape Verde, Guinea Bissau, Mozambique and East Timor.

This project was financed by the Portuguese Government and was developed by UN experts, involving 15 Portuguese representatives of all the criminal polices, the Attorney General's Office and the Departments of Investigation and Prosecution.



This training course was a success and will hopefully be disseminated by UNODC in other countries. Recognizing that capacity-building is a key component in combating trafficking in persons, this training has a clear objective for Portugal: disseminate the Manual of the UNODC in CPLP countries.

In addition, consular agents have received training in order to be aware and able to detect potential Human Trafficking situations, during interviews regarding visa requests.

Also the Ministry of Health has made an informative document that contains the rights of the victims of trafficking in Human Beings, that is available to all the professionals of the Health System and public in general, through its web site ([www.dgs.pt](http://www.dgs.pt)). The Ministry is also committed to do special training to health professionals.

### **Data collection and research**

7. Portugal takes good note of the recommendations on 'Data Collection and Research' and on special focus to the continuous involvement / expanding of the network of data providers, action that is being reinforced every year with the signing of several Memorandums of Understanding (MoU), and with the adoption of Dynamic Application, that at the present moment involves 23 governmental and non-governmental organizations.

8. Portuguese authorities are committed to continue conducting and supporting research on THB issue: for instance, the an exploratory study on Trafficking for Labour Exploitation is being done at CES (Centre for Social Studies) at the University of Coimbra.

### **International co-operation**

9. Portugal is committed to continue to develop international co-operation especially in the areas of protecting and assisting victims. On that issue, transnational projects are a very important tool.

### **Awareness raising and education**

10. These areas are fundamental and Portugal is committed to continue its efforts to reinforce them. Portugal as launched the "Blue Heart" Campaign in the spring of 2012 and re – launched in October 2012, concerning labour exploitation.

In 2012, three gender awareness actions were developed by CIG with the issue of THB for the equality counselors of cities hall.

During the year of 2013 these gender awareness are intended to be reinforce.  
Portugal will take note of the "assessment of previous measures and should target identified needs".

### **Measures to discourage demand and Social, economic and other measures for groups vulnerable to THB**

11. On this issue, we would like to recall that our Penal Code in its article 160, entirely dedicated to THB, criminalizes those who knowingly, use the services provided by a victim with 1 to 5 years imprisonment.

Furthermore, our new Immigration Act (Law 29/2012), in its Penal Section, article 185-A, number 5, says that whomever uses the workforce of an illegal migrant knowing that he/she is a victim of any penal dispositions related to THB, incurs in a prison sentence of 2 to 6 years.

The most powerful means to discourage demand for service are campaigns that explain the contours of human trafficking. Therefore, the campaigns always carry an element of awareness and prevention and accordingly the issue of demand is addressed.

12. Portugal will take note of this recommendation, and we would like to recall that due to the fact that THB has its root problems associated with poverty and social inclusion, the Plan has an intertwined vision both with the IV Plan for Equality and Gender and the II Integration of Immigrants Plan.

Aside of what is written on the preliminary report, about ACIDI, I.P.'s mission and competences regarding the Plan for the Integration of Immigrants (PII), beyond the measures concerning the Trafficking of Human Beings, many others of social support were already put in practice with important achievements.

### **Border measures and measures to enable legal immigration**

Regarding proposal nº14, see comments on the proposal nº6.

### **Identification of victims of trafficking in human beings**

15. We would like to recall that Portugal has as a guideline the possibility of identification of victims dissociated from their participation in the investigation and court proceedings.

We have the Decree-Law no. 368/2007, of 5th November: it mentions that authorization of residence may be granted to a victim of trafficking of persons without the necessity of he/she shows a clear intention to cooperate with the authorities in the investigation and repression of trafficking in human beings.

The identification of a VoT and all the rights are given when personal circumstances of the victim with regard to his/her situations of vulnerability of his/her family members or people with whom he/she has close relationships justify it.

The list of indicators already in existence is very complete and covers almost every possible situation. Of course it could be improved, but we think that more important than that would be to spread that list as much as possible.

The new database encompasses a wide variety of indicators both from victims and traffickers, since the moment of detection until after sentencing. If, for the purpose of protection of victims there is a feel that new indicators are needed, they can be added.

Furthermore, and regarding proposal 16, as well, see comments on the proposals 3-5

### **Assistance measures**

17-18. One of Portugal's major concerns is the strengthening of the assistance to victims of THB. The assistance provided may change according to the kind of needs shown by the victims in every moment. Portugal is always updating the necessary adequacy of their policies, as far as trafficking is concerned, for the reality is quite changeable.

It is important to highlight that all victims (women, men and children) are supported and have assistance. Even if the services are not specific for THB, the minimum standards are guaranteed. In the case of male THB victims, they have been accompanied by the multidisciplinary team.

Also it is important to reinforce the fact that most men VoT are Portuguese exploited abroad. When they return to Portugal, normally they join their families, being integrated in their communities. Concerning children see comments on bullet 128.

## **Recovery and reflection period**

20. We take good note of this comment as a good practice and we can add that the victims are systematically informed of their rights, namely of the reflection period and all the other social, legal, and medical support they might need at the moment of detection.

## **Residence permit**

21. We take note of this recommendation, and as stated in the comments of the draft report, Portugal has as a guideline, the possibility of identification of victims dissociated from their participation in the investigation and court proceedings.

We have the Decree-Law no. 368/2007 of 5th November: it mentions that authorization of residence may be granted to a victim of trafficking of persons without the necessity of he/she shows a clear intention to cooperate with the authorities in the investigation and repression of trafficking in human beings.

The identification of a VoT and all the rights are given when personal circumstances of the victim with regard to his/her situations of vulnerability of his/her family members or people with whom he/she has close relationships justify it.

## **Compensation and legal redress**

22-23. Portugal will take note of this recommendation

## **Substantive criminal law**

24. Portugal will take note of this recommendation, and as stated in the comments to the draft report, we consider that the demand for social censorship included in the aggravating circumstances set forth in Article 24 of the Convention is equally envisaged in the Portuguese criminal law, either in the specific type of aggravating circumstances, by which heavier penalties may be applied, or when the penalty is aggravated by the rules and general principles of criminal law.

Thus,

As regards Article 24(a) of the Convention, the penalty is aggravated whenever “the offence deliberately or by gross negligence endangered the life of the victim”; such is consistent with the rules and general principles of the law, whereby the determination of the extent of the sentence, within the limits set forth by law, is commensurate with the offender’s guilt and the prevention demands. Moreover, for purposes of determining the concrete sentence, the court takes into consideration all circumstances that, although not making part of the type of the criminal offence, are in favour or against the offender, namely: the degree of unlawfulness of the act, the way it was executed and the seriousness of its consequences, as well as the intensity of the intentional conduct, or of the negligence (Article 71(1/2) of CC).

As concerns Article 24(b) of the Convention, Article 160(2/3) sets forth a heavier special penalty, according to the victims’ age, by aggravating the maximum limit of the penalty from 10 to 12 years if the victim is a minor.

In Article 24(c) of the Convention, if the offence has been committed by a public official in the performance of her/his duties, then it is considered a crime not just in view of THB, but also as concerns Chapter IV of CC, in particular in the section related to corruption in Article 372 et seq of CC (Receiving undue advantage) whereby the public official who, by himself or through another person, upon his consent or ratification, either demands or accepts, for himself or another, any undue advantage, whether patrimonial or non-patrimonial, is punished with imprisonment for not more than five years or with a fine for not more than 600 days (active and passive corruption).

In item d) the penalty is aggravated if the offence has been committed within the framework of a criminal organization, in view of the fact that a criminal organization under Article 299 of CC is an autonomous crime punished with imprisonment from one to five years.

Nevertheless, Portugal will take note of this recommendation

### **Non-punishment of victims of human trafficking**

25. As stated in the comments to the draft report: Article 280 of the Code of Criminal Procedure may be applied to victims of trafficking, who have taken part in unlawful activities under duress, if the proceeding is for a crime in relation to which the criminal law expressly establishes the possibility of "discontinuance for discharge".

The Portuguese Criminal Code includes several types of crime that expressly comprise the possibility of exemption of punishment, namely in cases of exculpatory necessity set for in Article 35 CC (1- Whoever commits an unlawful act appropriate to avoid a present danger, not differently removable, that threatens life, physical integrity, honour or freedom of the agent or of a third person, acts without guilt when it is not reasonable to demand, according to the circumstances of the case, a different behaviour)

The requirements of discharge are provided for Article 74 (1) CC, and, in these cases, the judge may decide to the "discontinuance for discharge" of the proceeding.

Nevertheless, Portugal will take note of this recommendation.

### **Investigation, prosecution and procedural law**

As stated in the comments to the draft report:

26. Given the on-going assessment of the legislative needs in order to comply with Directive 2011/36/CE on preventing and combating trafficking in human beings and protecting its victims, which replaces Council Framework Decision 2002/629 /JHA, this is being taken into account.

27. Portugal believes that the rules and procedures recently introduced by the creation of the Assets Recovery Office (ARO), under the remit of the Criminal Police, by Law n.r.45/2011, of 24 June, will contribute to fully implement this recommendation. This law is still in the implementation phase.

28-29. Regarding these recommendations, it is also important to highlight that the Portuguese authorities have identified all the concerned issues, (especially in what comes to the need of training), and are involved in initiatives in order to better training of police and judicial authorities, as already said in 6.

On the occasion of the 6th EU Anti-Trafficking Day, the Portuguese Ministry of the Internal Administration, the Minister of Justice and the Secretary of State for Parliamentary Affairs and Equality organized the conference on the topic "Human Trafficking: From Investigation to Judicial Decision".

Nevertheless, Portugal will take note of this recommendation.