**Contribution of Portugal to the Secretary General’s Report pursuant General Assembly Resolution A/RES/71/181**

**"A global call for concrete action for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action"**

**- Part 2 -**

Portugal is part of the Convention on the Elimination of all forms of Discrimination (CERD) which entered into force in 23 September of 1982. According to article 8 of the Portuguese Constitution, international human rights instruments duly ratified by Portugal and in force in the national legal system, form an integral part of the domestic legislation and can thus be invoked before national courts. Domestic law is already in compliance with the principles and rules of the Convention and our judicial decisions refer to them whenever is necessary.

1. **Criminal Framework on Racial and Religious Discrimination**

Racial Discrimination is typified as a crime in the Portuguese Criminal Code (CC). Article 240 CC that criminalises “racial, religious or sexual discrimination” was amended recently by Law 19/2013, 21 February, establishing gender identity (besides the reference to sex) as a ground of discrimination covered by this criminal offence.

The transposition of Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia is also reflected in our legal framework in Articles 240, 132 (2) (f) and 145 (2) of the Criminal Code.

Article 240/1 states that whoever founds or sets up an organization, or develops activities of organized propaganda inciting or encouraging discrimination, hate or violence against a person or a group of persons on the grounds of their race; or takes part in such an organization or in its activities or gives support thereto shall be punished with imprisonment from 1 to 8 years.

According to paragraph 2, who, in a public meeting, in writing for dissemination or through any media or computer system for dissemination: provoke acts of violence against a person or group of persons on account of their race, colour, ethnic or national origin, religion, sex, sexual orientation or gender identity; or defame or injure a person or group of persons on the basis of race, colour, ethnic or national origin, religion, sex, sexual orientation or gender identity, including denial of war crimes or peace and humanity; or threaten a person or group of people because of their race, colour, ethnic or national origin, religion, sex, sexual orientation or gender identity - shall be punished with imprisonment from six months to five years.

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

Also, in the cases of homicide (article 132,2f) CC) and offences to physical integrity (article 145,2CC), the fact that the crime was committed on the grounds of racial hatred (including ethnical or national origin) is considered an aggravating circumstance implying more severe penalties. Racial motivation can also be taken into account when determining the measure of the penalty, as the court must consider, among other circumstances, the offence intentions revealed to the commission.

* 1. Disciplinary proceedings

In order to ensure that all incidents of misconduct by law enforcement officials are duly investigated and that those found guilty are punished there is a multi-layered system of controls (checks and balances) put in place: internal control entities of the law enforcement agencies themselves (Criminal Police and Prison Services); high level inspection bodies (The General Inspectorate for Justice Services and the Internal Audit of the Prison Services) and at the top, the judicial control (Public Prosecution and Judiciary) or the Ombudsman.

The Portuguese system applies the principle of autonomy of disciplinary proceedings *vis à vis* criminal proceedings. Whenever there is sufficient evidence, in the course of internal disciplinary proceedings, that a crime may have occurred, the Public Prosecution must be informed and notify the relevant high level inspection bodies mentioned if criminal enquiries related to the behaviour of police forces are initiated. Therefore, the launching of criminal proceedings also gives rise to a disciplinary enquiry.

According to article 14 of Law 37/2008, of 6 of August (Statute of the Judicial Police) – prohibition of discrimination by inspectors of the Judicial Police – racial discrimination is a breach of duties by the Judicial Police inspectors, and can trigger a disciplinary procedure and a disciplinary sanction. Likewise, Article 3/3 and Article 4/4 of the Code for the Enforcement of Sanctions approved by Law 115/2009, 12 October, refers to non-discrimination of inmates belonging to ethnic or religious minorities. Racial discrimination is a breach of duty, and can origin disciplinary responsibility of the Prison Guards.

1. **Protection of victims**
	1. Statute of the victim

Law 130/2015, 4 September, approved the Statute of the Victim, which embodies the transposition of the EU Directive 2012/29/UE, of the Parliament and the Council, of 25 October 2012, on the rights, support and protection of victims of crime.

Article 67-A of the CPC now defines a broader concept of victim which includes not only the person directly affected by the crime but also those around him/her that suffer consequences from it, including the victim's family.

* 1. Commission for the Protection of Victims of Crimes (CPVC)

Law 104/2009, of 14 September – established the legal framework for the state compensation of victims of crimes, including victims of violent crimes of racist nature, and created the Commission for the Protection of Victims of Crimes (CPVC). Decree-Law 120/2010, 27 October regulates the establishment and functioning of that Commission.

The duty to compensate falls to the offender but, in some cases, the State may advance this compensation when the victim is facing financial difficulties as a result of the crime and it is impossible to obtain compensation from the offender within a reasonable period.

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

1. **Criminal policy for the biennium 2015-2017**

Aware that there must be a clear commitment to prevent and control manifestations of violence, racism, xenophobia and intolerance, the adoption of Law 72/2015, 20 July, which defines the objectives, priorities and guidelines of the criminal policy for the biennium 2015-2017 gives priority in its article 2 to the prevention of crimes committed against children, youth and other vulnerable groups, including ethnic minorities in the latter category.

This law gives also specifically attention to combat these phenomena in sports events (article 11), in compliance with the regime established by the Law 39/2009, 30 of July, amended by Law 52/2013, 25th July, which prohibits the promoters of sporting events to support organized groups adopting signals, symbols or expressions inciting to violence, racism, xenophobia or intolerance in sporting events. It also prohibits from accessing or remaining in the sporting area anyone showing posters, flags, symbols or other signals considered racists, xenophobic or with offensive messages; as well as anyone singing songs considered racist, xenophobic or inciting to violence.

1. **Nationality Law**

The acquisition and loss of nationality in Portugal is regulated by Law 37/81, of 3 October. On 29 July of 2013, Organic Law No. 1/2013 introduced an amendment to article 6 of the Nationality Law, allowing the descendants of the Sephardic Jewish community, a community that lived in Portugal in the XV and early XVI centuries, to request the Portuguese nationality and to return to Portugal.

Decree-Law 30-A/2015, 27th February, in force since March 2015, proceeded to the regulation of that amendment. Since then, and until 30 April 2017, **711** requests for nationality to descendants of the Portuguese Sephardic Jewish were granted.

1. **Fight against Hate Speech**

Incitement to racial hatred is a criminal offence, as established by article 240 of the Criminal Code, which sanctions the incitement to hatred either through an association or using the Internet.

According to both the Constitution of the Portuguese Republic (CPR) and the Law on Political Parties (Law 2/2003 of 22/08 as amended by Law 2/2008 of 14/05), fascist or racist parties are prohibited, since these ideologies are considered to threaten the basic constitutional and democratic values.

The General Principle is that Associations pursue their purposes freely and without interference from the public authorities as determined in Article 46 of the CPR, but in order to participate in the democratic system, parties have to register in the Constitutional Court. This Court does not allow the registry of armed associations, military, militarised or paramilitary-type associations and organisations that are racist or display a fascist ideology, according to Article 46 (4) of the CPR.

In any case, if there is a suspicion that a crime may have been practiced, this will be investigated by the police authorities and the Public Prosecution Services.

On the other hand, the Ministry of Justice is highly committed with the promotion and protection of human rights and the fight against discrimination, racial hatred and related intolerance. In this sense it took part in several initiatives within the European Union and in particular in the High Level Group against Racism, Xenophobia and other forms of intolerance, which is a platform launched in June 2016 to promote greater exchange and dissemination of good practices and help national authorities to better combat hate crime and hate speech.

The Portuguese Ministry of Justice also takes part in other subgroups dedicated to “common methodologies for the collection and recording of hate crimes and incidents”, chaired by the European Fundamental Rights Agency (FRA) and on “Combating online hate speech ".

In the context of the latter subgroup, a Code of Conduct against hate speech and online terrorist propaganda was adopted in June 2016[[1]](#footnote-1). Through this Code of Conduct, information technology companies like Facebook, Google, Twitter and Microsoft take their share of the Responsibility for combating the illegal spread of hate speech through computer platforms for dissemination, and commits themselves to putting into practice a set of twelve (12) basic rules to achieve such a goal, block or remove illegal content at the request of the authorities in less than 24 hours.

Portugal has designated a focal point within the National Unit against Terrorism of the Criminal Police, responsible for co-assisting the judicial authorities in preventing, detecting and investigating hate crimes, in order to exchange information between IT companies and law enforcement authorities.

Portugal has recently assessed the internal implementation of this Code of Conduct, which was perceived as very positive, despite the fact that no judicial decision to block or delete online hate content has been issued. It should be noted that without the cooperation of IT platforms and the most important social networks it would not be possible to overcome the obstacles that arise daily to identify and investigate online hate content.

* 1. Project “Hate no More”

In February 2016, the Portuguese Criminal Police received an invitation from the Portuguese Association for Victim Support (APAV) to participate in the Project “Hate No More” (Ódio Nunca Mais)[[2]](#footnote-2), co- financed by the European Union, with other national partners such as the Public Prosecution Office (PGR) and the Commission for Citizenship and Gender Equality (CIG).

This is a partnership that aims to respond to the needs in the areas of prevention and combat against racism, xenophobia and other forms of intolerance and discrimination and to create tools that can help to raise awareness and training to combat hate crimes and hate speech, through creation of proceedings and multidisciplinary training that include victim’s perspective, raise awareness of the general public and of potential victims, hoping it contributes to more hate crimes being reported and victims accessing support services.

1. **Training provided to legal practitioners and law enforcement officials**

Portugal has a clear commitment to strengthen public policies related to the fight against all forms of discrimination. Independency, integrity, transparency, impartiality and non-discrimination are fundamental values integrated in the Ethical and Deontological Codes of the Magistrates and the Police authorities.

Magistrates receive training on Human Rights issues, and in particular, racial discrimination, migrations, gender equality issues or Trafficking in Human Beings as well as procedural guarantees in the context of their initial or in-service training provided by the Centre for Judicial Studies (CEJ) in the segments of Constitutional Law, European and International Law as well as Jurisprudence on Fundamental Rights.

Focusing on the continuous training program 2014-2015[[3]](#footnote-3) and 2016-2017[[4]](#footnote-4), several training sessions to magistrates took place in the last years and more of them are scheduled for the coming months. Most of these training sessions (conferences and seminars) are available for all legal practitioners, such as lawyers or bailiffs.

To prevent racist and discriminatory behaviour by law enforcement officers, Portugal has also been making considerable efforts in initial training sessions and advanced training activities of the law enforcement personnel (criminal police and prison guards) on human rights issues and procedural guarantees.

In the last initial training course of the Criminal Police (2013), several training sessions took place in partnership with the Portuguese Government Agent of the European Court of Human Rights (ECHR) and non-governmental organizations[[5]](#footnote-5) that work on the field of humans’ rights, with the victims, in order to perform service simulation exercises with real cases, testing and working skills of the police officers investigators and sharing the best practices.

Efforts are also being made in providing adequate training in the area of Human Rights to Prison Guards. The last Initial Training Courses (2009 and 2012) of the Prison Guards had specific modules on Human Rights, as well as a Seminar entitled "Relevant International Norms and Principles on Human Rights" where the prevention and detection of situations of racial discrimination within the prison system are specifically addressed, with a total of 26 hours.

1. **Commission on Religious Freedom**

The Commission on Religious Freedom has an important role on the promotion of religious freedom and integration of the different religious communities established in Portugal.

This Commission is an independent advisory body of the Parliament and the Government responsible for supervising the full implementation of the Law on Religious Freedom (Law 16/2001, 22nd of June) under which it was established. On 5 September 2016, the Minister of Justice designated a new president of the Commission, José Eduardo Vera Jardim, as well as the other members of the Commission, which for the first time includes a member of the Buddhist community with the purpose to increase its plurality.

When he took up his position, the President expressed, in particular, his willingness to "broaden the representation in the Commission, to have a wider space to accommodate as many religious confessions as possible" and also to recover the debate on this issues.

The ceremony was followed by a solemn act of reading and signing, by 21 churches and religious communities, of the Declaration for Peace and Dialogue, a unique initiative that gains special relevance in a context in which issues related to religious tolerance have marked actuality.

The Commission on Religious Freedom, has also launched the "Religious Freedom prize – 2017”, with the support of the Ministry of Justice that aims to award scientific research in the area of Religious Freedom in Portugal, highlighting the theological, philosophical, juridical and sociological aspects.

1. <http://ec.europa.eu/justice/fundamental-rights/files/hate_speech_code_of_conduct_en.pdf> [↑](#footnote-ref-1)
2. <http://www.apav.pt/publiproj/index.php/71-projeto-odio-nunca-mais-formacao-e-sensibilizacao-no-combate-aos-crimes-de-odio-e-discurso-de-odio> [↑](#footnote-ref-2)
3. <http://www.cej.mj.pt/cej/recursos/ebooks/outros/Programas_acoes_formacao.pdf> [↑](#footnote-ref-3)
4. <http://www.cej.mj.pt/cej/forma-continua/fich-pdf/formacao_2016_17/Plano_FC_2016_2017.pdf> [↑](#footnote-ref-4)
5. Portuguese Association for Victim Support (APAV); Lesbian, Gay, Bisexual and Transgender Intervention (ILGA); Commission for Citizenship and Gender Equality (CIG); Center for Studies on Social Intervention (CESIS) and International Amnesty. [↑](#footnote-ref-5)