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# PORTUGAL

## “Small problems ...”?

### A summary of concerns

*On 3 and 4 May 2000 the Committee against Torture examined Portugal's third periodic report on its implementation of the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). Following Amnesty International's submission to the Committee (the CAT), this report summarizes, comments upon and updates the organization's concerns about Portugal to the end of 2000. As the title suggests, it is a summary and does not claim to be exhaustive.*

“A small problem in a Lisbon street ...” The quotation in the title derives from a remark attributed to the Interior Minister in 1998 when asked to comment on the reported ill-treatment of a Spanish citizen who required hospital treatment after being held in a Portuguese police station. (See point 6.b, page 12)

#### **1. Scrutiny by the Committee against Torture**

The Convention against Torture entered into force in Portugal on 11 March 1989. The initial report submitted by Portugal to the Committee against Torture (the CAT) was examined in November 1993. The Committee expressed concern that incidents of ill-treatment and sometimes torture continued to take place in police stations and other places of detention across the country, that there were frequent delays in opening inquiries into allegations of torture and ill-treatment, and that those responsible for such acts were not always brought to justice. It concluded that this situation, together with the lightness of the sentences passed in cases of conviction of a law enforcement officer for acts of torture and ill-treatment, created an “impression of relative impunity ... highly prejudicial to the application of the provisions of the Convention”<sup>1</sup>.

The second periodic report covered the period between 31 March 1992 and 31 March 1996, and was examined by the CAT in November 1997. On that occasion the Committee welcomed, among other things, the introduction into the new Portuguese Penal Code of a definition of torture, and adoption and implementation by the Portuguese authorities of education programs in the area of human rights. However, it expressed its serious concern about cases of ill-treatment, torture and suspicious deaths, attributable, in particular, to the police, and about the apparent absence of an appropriate response by the authorities. The CAT urged the Portuguese authorities to make greater attempts to bridge the gap between the law and its application, to apply appropriate punishment where due and to clarify the laws governing torture

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<sup>1</sup>Concluding observations of the Committee against Torture: Portugal.12/06/94. UN doc A/49/44 paras. 106-117, para. 113.

or ill-treatment by law enforcement officers to ensure that inquiries were “automatically and systematically” opened into all cases where there was reason to believe that torture had occurred<sup>2</sup>.

The third periodic report of the Portuguese government covered the period between March 1996 and February 1998, and was examined by the CAT in May 2000. Conclusions and recommendations of the CAT noted several “positive aspects”. They included reference to the imminent establishment of a new prison inspectorate and the initiation of a practice of prison visits on a monthly basis by magistrates to receive prisoner treatment complaints; the enactment of regulations governing police use of firearms that brought Portugal into line with the UN Basic Principles on the Use of Firearms by Law Enforcement Officials; the enactment of regulations relating to conditions of detention in police lockups, setting out the minimum standards to be observed, and the introduction in 2000 of a new system of police training.

The Committee’s subjects of concern were the “Continuing reports of a number of deaths and [cases of] ill-treatment arising out of contact by members of the public with police” and “Continuing reports of inter-prisoner violence in prisons”. It recommended that the Portuguese authorities continue to “engage in vigorous measures, both disciplinary and educative, to maintain the momentum moving the police culture in Portugal to one that respects human rights”. It also urged Portugal to “particularly ensure that criminal investigation and prosecution of public officers are undertaken where appropriate as a matter of course [the Committee’s emphasis] where the evidence reveals the commission of torture, or cruel or inhuman or degrading treatment and punishment by them”. Portugal was additionally urged to take the necessary steps to curtail inter-prisoner violence.

## **2. Portuguese legislation on torture and cruel, inhuman or degrading treatment**

Both the CAT and Amnesty International (AI) have welcomed the introduction into the Portuguese Penal Code of specific crimes of torture and ill-treatment. Article 243 defines “torture, and other cruel, degrading or inhuman treatment” as “acts inflicting intense physical or psychological suffering or severe physical or psychological fatigue or involving the use of chemical substances, drugs or other natural or artificial means, intended to impair the victim’s ability to make decisions or freely express his will”. Article 243 punishes perpetrators of this crime with a prison sentence of between one and five years, while Article 244, which covers “grave torture and cruel, inhuman or degrading treatment”, provides for prison terms of between three and 12 years, and in cases leading to suicide or death as a result of such torture, of between eight and 16 years.

However, AI believes that many acts of cruel, inhuman or degrading treatment which have been reported to it would not necessarily qualify to be considered under Article 243. Often cases of ill-treatment by law enforcement officers are more likely to be considered crimes of common assault (*ofensas corporais simples*) under Article 143 of the Portuguese Penal Code.

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<sup>2</sup>Concluding observation of the Committee against torture: Portugal.21/11/97. UN doc: A/53/44, paras. 70-79.

Currently clause 2 of this article stipulates that any criminal investigation into such acts requires a judicial complaint by the victim. AI considers that there are many valid reasons why the victim of an assault by a law enforcement officer may legitimately not wish to make a complaint. For example, those who have made complaints sometimes refer to threats and intimidation from officers and are not infrequently the subject of counter-complaints. If there is no such complaint then there will be no judicial action and the victim is denied a remedy.<sup>3</sup>

This problem was recognized by the Inspector General of the Inspectorate General of Internal Administration (IGAI) when, in a comment on Article 243, he stated: “We consider that the problem of ill-treatment of citizens by police officers, where they constitute an abuse of authority, should generally be considered not as a crime of common assault (*ofensas corporais*), which depends on a complaint being filed, but as a crime of abuse of authority, which is classed as a public crime”, where the filing of a judicial complaint is automatic.<sup>4</sup>

This does, however, appear to beg the question as to how the qualifying phrase “when they constitute an abuse of authority” should be interpreted. In December 1996 the Minister of Justice assured AI that Article 143 would be re-categorized to a *crime publico* and that judicial action in a case alleging ill-treatment by a law enforcement officer would then be automatic, but only where the officer was suspected of having committed an offence with a *grave* abuse of authority.

AI continues to believe that, where an officer is suspected of ill-treatment, judicial action should automatically follow.

### 3. Portuguese codes of conduct on the use of force

The Constitution of the Portuguese Republic provides that “The functions of the police are to defend the democratic rule of law and guarantee the internal security and rights of the citizens”

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<sup>3</sup>As mentioned under Article 12 in the third periodic report of Portugal, “Any victim of ill-treatment, abuse of authority or of the use of excessive force is entitled to lodge a complaint, which must necessarily be accepted. The complaint may be lodged with either the administrative or judicial authorities, or simultaneously with both. The acts in question are dealt with through internal police disciplinary measures, as well as administrative inquiries ordered by the internal hierarchy of the bodies concerned, or through criminal proceedings before the competent courts. The decision to institute disciplinary proceedings lies with the hierarchy of the security forces and relevant [sic] the Ministry. The possibility of appealing the decisions of these authorities to the competent administrative courts is, however, always available”.

<sup>4</sup>“*Consideramos que a problemática dos maus tratos cometidos por agentes policiais sobre cidadãos quando exprimam situações de abuso de autoridade, em sentido comum deverá ser encarada não numa perspectiva de um crime de ofensas corporais dependente de queixa, mas sim, na perspectiva de um crime de abuso de autoridade, com natureza de crime público*” - “**Os parâmetros jurídicos do uso da força**”, António Henrique Rodrigues Maximiano, Cadernos de Cidadania, Biblioteca Museu República e Resistência, 1996.

(Article 272). It also provides that state functionaries must act with respect for the principles of equality, proportionality, necessity, justice, impartiality and good faith (Article 266). However, different codes of conduct traditionally governed the use of force by the police forces (including the National Republican Guard - GNR - and Public Security Police - PSP) and custodial staff. The Portuguese authorities admitted that these codes of conduct, and particularly the measures relating to the PSP, which established a list of about nine different situations in which officers could use firearms, had a wider application than the provisions laid down in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. These provide that the intentional and lethal use of firearms may only be a measure of last resort to protect life.

Decree Law nº 457/99 of 5 November, on the use of firearms by the police, which came into force on 6 December 1999, brought about the unification of the different codes. According to the new law, recourse to a firearm is permitted only in a case of "absolute necessity", as an extreme measure when other, less dangerous means of control would be ineffective, and it has to be proportional to the circumstances. The officer is bound to act in such a way as to minimise injury or damage, and to respect and preserve human life.<sup>5</sup> In general, therefore, the changes bring Portugal closer into line with the UN Basic Principles and the change was welcomed by the CAT in May 2000.

#### **4. IGAI: A new development in police oversight**

In a paper entitled "*PORTUGAL: A brief perspective on Amnesty International's concerns, past and present*", published in December 1996, AI pointed out that, while on the death penalty Portuguese legislation had led the world,<sup>6</sup> the problem of torture and ill-treatment and, in some instances, suspected unlawful killings by law enforcement officers, remained of serious concern to the organization, as did the related issue of length of judicial proceedings and effective impunity for public officials.<sup>7</sup>

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<sup>5</sup>The law does, however, include among the specific circumstances in which the use of firearms may be permitted, the capture of a person suspected of having committed a crime which is punishable by more than three years' imprisonment.

<sup>6</sup>"On the death penalty, Portuguese legislation led the world. The death penalty was abolished for political offences in 1852 and for common criminal offences in 1867. The 1976 Constitution outlawed its use and, finally, the Military Penal Code was changed in 1977". (AI Index: EUR 38/15/96)

<sup>7</sup>1996 was, in fact, a bad year for human rights violations in Portugal. Within the space of only two months in 1996 four young men died in separate incidents, and in disputed circumstances (Olívio Almada, Fernando Pinto, Vítor Campos and Carlos Araújo). In May 1996 Carlos Rosa was shot and beheaded by a GNR sergeant at Sacavém, and the head and body were concealed. In this extraordinary case the officer was sentenced to a total of 17 years' imprisonment - 12 for the killing itself and the remainder for breach of official duty and for concealing and mutilating the corpse.

The concerns expressed by AI in that document remain largely the same, although a significant attempt was made by the Portuguese Government at around that time to improve the inspection of police forces and monitoring of reports of human rights violations by law enforcement officers. As mentioned in the third periodic report, a high-level inspection and prosecution service within the Ministry of the Interior (known in Portugal as the Ministry of Internal Administration), the *Inspecção-Geral da Administração Interna* (IGAI), was created by Decree Law No. 227/95 of 11 September, modified by Decree Law 154/96 of 31 August. The first Inspector General was appointed to the service in February 1996. Its main purpose has been to monitor and supervise the activities of the law enforcement forces that fall under the responsibility of the Interior Ministry, to defend the rights of citizens and to achieve a better and quicker implementation of disciplinary justice in situations of major social importance. This police oversight agency has thus added a new level of control to that exercised by the courts, the parliament-appointed Ombudsman (*Provedor de Justiça*) and the internal supervisory agencies of the Public Security Police (PSP) and Republican National Guard (GNR). IGAI can, and does, open inquiries into particularly severe reports of police abuse, and opens automatic inquiries into deaths in custody as a result of alleged ill-treatment or shootings, although it cannot carry out its own disciplinary proceedings or impose penalties of its own accord. (Its recommendations are submitted for consideration to the Interior Minister). IGAI has undertaken a number of initiatives to modernize and improve the efficiency of the PSP and GNR, to diminish the scope for human rights violations by police officers and to introduce or improve training programs. It publishes activity plans and annual reports.

The third periodic report of Portugal mentions that IGAI's 1997 report "...highlights a reduction in cases of alleged physical abuse by members of the police forces, a situation which gave rise to 34 complaints in the first 10 months of 1996 and 22 in 1997, a downward trend which also applies to 1998." However, IGAI's annual report for 1998, published in 1999, referred to an increase in cases of alleged physical ill-treatment compared to 1997 (46 in 1998 compared to 26 in 1997 - almost double) and the 1999 report, published in 2000, referred to a significant increase compared to previous years (96)<sup>8</sup>. It should also be borne in mind that, although IGAI is an oversight agency independent of the police forces, its inspectors include, among others, such as magistrates, officers from the Judicial Police (JP) as well as from the PSP and GNR, and it remains directly responsible to the Interior Ministry. As such, it cannot be seen as an independent external agency. This does not detract from the fact that a large amount of positive work has been done, within a relatively short time span, and with relatively few resources. Nevertheless, questions remain over the thoroughness of some of the investigations

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<sup>8</sup>Of the 96 cases 16 (13 involving the PSP and three involving the GNR) were considered particularly serious, but 10 of these were closed following investigation, on grounds of lack of evidence. The remaining six were the subject of disciplinary inquiries. IGAI explains the increase in 1999 by the fact that it is now obligatory for all prosecuting magistrates in Portugal to inform IGAI of all judicial complaints involving alleged criminal acts by police officers. Almost all these cases related to violence that took place during the carrying out of arrests.

that have been carried out by this fairly new body into cases of alleged physical abuse by police (see, for example, section 6.c). It should be noted that the Inspector General is himself reported as recommending the establishment, apart from IGAI, of a human rights inspectorate answerable to Parliament or the Prime Minister.<sup>9</sup>

### 5. Deaths in, or after, police custody

Between 1996 and 1999 14 deaths in police custody were reported. This figure would not include cases where people have been found dead in situations never fully clarified, shortly after being held in police custody. In 2000 at least three deaths were reported of men who had, shortly before, allegedly been ill-treated in police custody. AI has monitored a number of cases of deaths in or immediately after police custody, involving people who died either from alleged or proven ill-treatment or from use of excessive force. This organization is concerned that, in some instances, the judicial and/or disciplinary proceedings that were opened have still not concluded or the circumstances of these deaths have never been fully clarified. As with a number of cases of ill-treatment, or alleged ill-treatment, the judicial and administrative machinery has often worked ineffectively and without diligence, and even in the case of convictions, court judgments have rarely imposed penalties which reflect the gravity of the crimes committed (see under section entitled **Effective Impunity**). The deaths which took place in Oporto in January 2000 (see below) also highlighted two continuing problems associated with the PSP: inadequacy of training and the absence of a deontological code.<sup>10</sup> Despite the increase in training programs since the creation of IGAI, and the introduction in 1989 of human rights issues into the curriculum, some officers are reported to have criticized the continuing lack of courses specifically directed at deontology and ethics, and the shortness or superficiality of others.

#### *a) Deaths in 2000, allegedly as a direct result of severe beatings*

During the night of 14 January 2000 two people died in separate incidents in Oporto, after being taken into police custody. **Paulo Silva** died of internal injuries, including a ruptured spleen, at the Hospital de São João, allegedly after being beaten by PSP officers in the Cerco district, where he had reportedly gone to buy heroin. The police denied responsibility, arguing that Paulo Silva must have been beaten by others, before they arrived in the area. IGAI reportedly stated nevertheless that there was “suspicion of police involvement”. Judicial and administrative inquiries were still continuing at the end of the year.

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<sup>9</sup>*Expresso*, 24 December 1999, in an interview with Rodrigues Maximiano. The human rights inspectorate is, however, only mentioned in passing and it is not clear whether its mandate, in the view of IGAI's Inspector General, would cover the activities of the PSP and GNR as well as the Judicial Police.

<sup>10</sup>In October 2000 AI was informed by the IGAI that a working group had been set up to draft a deontological code common to the PSP and the GNR.

**Álvaro Rosa Cardoso**, a Rom market stall holder, was arrested by PSP officers, who had been called to a street fracas in the Aldoar district, and taken, with his 17-year-old son-in-law, Franquelim Romão, to the 16<sup>th</sup> PSP police station of Pinheiro Manso. Later that night Álvaro Cardoso was taken to the Hospital de Santo António, where he died. As he was being transported to hospital, he reportedly caught sight of Franquelim Romão and told him that he had been badly beaten. According to a police statement, endorsed by the General Commander of the PSP of Oporto, Ramos de Campos, the cause of death was one or two heart attacks. The autopsy report, however, referred to a number of external and internal injuries, stating that the cause of death was bleeding from a ruptured spleen. A judicial inquiry was immediately opened. An inquiry was also opened by IGAI. IGAI's preliminary report found sufficient evidence to link the death with use of violence by one or more PSP officers. Subsequently the Interior Minister ordered the opening of disciplinary inquiries into the conduct of two police officers attached to the station of Foz and who had arrived in the Aldoar area to reinforce the officers from Pinheiro Manso. The General Commander of the Oporto PSP was removed from his post. The two officers were provisionally detained and examined in connection with a homicide charge.

Disciplinary and judicial inquiries were also still continuing into the death of **António Mendes dos Santos**, who died about 10 days after being held at a police station in Coimbra in June. He too was reported to have died from injuries to the spleen.

The case of Álvaro Cardoso continued to repercuss throughout 2000. The decision to arrest the two officers led to angry police protests on the streets. Many officers surrendered their weapons and some were reported to have threatened a prosecuting magistrate after a judge's decision not to release the officers. However, AI was informed that no action was taken in connection with the allegations of threatening behaviour against the judge because a complaint had not been lodged.

In July a decision extended the provisional detention of the officers at the prison of Paços de Ferreira. In October, however, the criminal investigation was closed by the *Tribunal de Instrução Criminal* (TIC) of Oporto, the court which decides whether an investigation should continue. The two officers were released. The court apparently decided that there was insufficient evidence to pursue the homicide charge after hearing the testimony of nine witnesses called by the defence, many of whom were police officers who had previously been suspects in connection with the death.

The court's decision left only one person still accused in the judicial proceedings. Franquelim Romão, who had been arrested with Álvaro Cardoso, still faced a charge of assaulting police officers.

The prosecutor announced that an appeal would be made against the TIC's decision to the appeal court (*Tribunal da Relação*). The prosecutor was reported to have questioned, among other things, the nature of the testimony, given the identity of the witnesses, and the interpretation placed on apparently contradictory evidence supplied by the forensic doctor.

The police claimed throughout the proceedings that Álvaro Cardoso died as a result of involvement in a fight between Roma in the Aldoar area of Oporto, and not as a result of a police beating.

*b) Other inquiries into unclarified deaths involving reports of ill-treatment by the police*

Two other cases monitored by AI involved people who died shortly after having been held in police custody. Although their deaths did not occur in police custody - in the second case, however, it remains unclear where or exactly when the death occurred - there were (a) allegations of ill-treatment, and (b) the police officers involved were suspected of committing irregularities in connection with the arrests.

In February 1997 **Vítor Manuel Soares Santos**, a 23-year-old carpenter, was found shot through the head near Vila Franca de Xira. The ownership and origin of the gun were not known. The autopsy report concluded that the cause of death was serious head wounds caused by a firearm, but was unable to state conclusively that Vítor Santos had committed suicide. The previous night he had been arrested, after reportedly deliberately spilling beer over a PSP officer at the Maioral café and refusing to give his identity. He was taken to the police station. After leaving the station Vítor Santos claimed to family members and neighbours that he had been ill-treated (beaten and kicked, in particular on his arms and feet) by the PSP officers who had detained him. He and his father attended the emergency clinic of the local hospital. A doctor did not note any external signs of a beating, but reported that the young man was in a highly nervous and agitated state. An inquiry carried out by IGAI found no evidence of assault by officers and affirmed that, contrary to some press reports, forensic doctors had not discovered any signs of external violence on the body that could relate to ill-treatment. The officers nonetheless faced disciplinary proceedings for telling lies. They said that they had been called to the café while on duty because Vítor Santos was being drunk and disorderly. In fact they had gone to the café for a drink and were already there as customers before arresting Vítor Santos. The fact that they were shown to have lied in connection with the arrest of Vítor Santos (whose body was found by the autopsy report to contain no trace of alcohol or other abusive substance) is particularly unfortunate in the light of subsequent events, even if no evidence of ill-treatment by the police was found. AI also remains concerned that the facts of the case have never been fully clarified, and that some testimony appears contradictory.

The case was re-examined by the public prosecutor in November 1997 because the first inquiry had not been sufficiently thorough. However, it was again closed in February 1998, reportedly on the grounds that there was insufficient information to justify the opening of a new judicial inquiry.

IGAI informed AI in November 1999 that judicial and disciplinary inquiries were continuing - three years after PSP officers had arrested a 21-year-old Cape Verdean man, **Olívio dos Santos Almada** on the night of his death in 1996. Olívio Almada, who was out drinking with friends, was detained by police officers, ostensibly for an identity check. The officers appear to have been the last people known to have seen him alive; his body was found floating in the Tagus river a week later. The officers did not take Olívio Almada to a police station and did not register his arrest, as required by law. They claimed they had let him out of the patrol car at the Cais da Rocha, some distance from where he had arranged to meet his friends. The death certificate stated that the cause of death was "asphyxia by drowning".

However, press reports stated that his body showed signs of violence, with his head split open and injuries to his face. In January 1999 IGAI told AI that a judicial inquiry had not been able to find any evidence to link the illegal detention of Olívio Almada with his death, but that the officers faced criminal charges in connection with illegal detention. The officers were scheduled to appear in court on 29 November 1999. Two were convicted, for the crime of abduction (*sequestro*), and sentenced to a suspended one-year prison term each, and were ordered to pay the family compensation. No appeal was submitted and it is not currently known how much compensation was awarded or whether this has yet been paid. In 1999 the case was raised with the Portuguese authorities by the UN Special Rapporteur on torture.<sup>11</sup>

*c) Deaths as a result of shooting*

Fewer cases of deaths as a result of shootings by police officers have been reported each year since 1996, when five such deaths were recorded. However, AI remains concerned that police officers too frequently resort to the argument of “legitimate defence” to justify their actions, or use their weapons in disproportionate situations. It should also be noted that Article 33 of the Penal Code (“*excesso de legítima defesa*”) provides that, although the act may be illegal, the officer should not be penalized if it resulted from agitation, fear or surprise. In addition, it is widely recognized - by police officers, among others - that there is still inadequate police training in firearms. Such inadequacy may be used by courts to justify relatively mild sentences against officers convicted of shooting offences.<sup>12</sup> In almost all reports which have caused concern to AI the fatal shot is fired at a person who is fleeing the police and is unarmed. In some cases it can certainly not be argued that the person attempting to escape arrest is strongly suspected of having committed a serious crime. For instance, Carlos Araújo was shot dead in December 1996 after being caught in the act of stealing from a shop selling jeans.

In September 1997 **Paulo Jorge**, 32, was fatally shot in the back by a police officer while attempting to escape a police checkpoint that had been set up at Torres Vedras. The police were attempting to capture those responsible for an armed robbery at Peniche hours before. The officer had reportedly stopped his car on a hard shoulder when he saw Paulo Jorge crawling away across some scrub and pine trees. He claimed that he shot him in low visibility when he saw the fugitive stand up. The case was under investigation by the court of Caldas da Rainha. The officer was subsequently sentenced, for negligent homicide (*homicídio negligente*), to a suspended term of one year’s imprisonment. An appeal was submitted.

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<sup>11</sup>UN doc: E/CN.4/1999/61 at para.594

<sup>12</sup>For instance, a judge trying the case of a police officer charged with the manslaughter of Carlos Araújo in December 1996, gave the officer’s lack of training as an attenuating rather than aggravating factor in deciding the sentence. [See under **Effective impunity**].

In July 1998 **Fernando Azevedo**, reportedly known to police as a petty criminal, was shot dead in Oporto in the course of a routine operation by the Transit Division of the PSP. He was unarmed. Fernando Azevedo was found in possession of a car with false number plates. He returned to the car, with his girlfriend, and after seeing the two officers, attempted to drive away. A warning shot was fired. One officer reportedly clung to one of the car doors, and Fernando Azevedo tried to shake him off by bumping into other cars. Another shot penetrated the car window and Fernando Azevedo was shot in the back.

An inquiry carried out by IGAI found that there were no grounds to take disciplinary action against the officer who fired the fatal shot. Fernando Azevedo had not respected police orders to stop and had tried to escape by performing dangerous manoeuvres, thus creating a risk to the lives of the police officers. IGAI concluded that the officer who fired the fatal shot had "followed all the rules governing the use of a firearm". He had fired warning shots in the air and the car driver had been killed when the officer lost his balance and was attempting to defend himself. However, it remained unclear to AI how the interests of "proportionality" had been observed in this case and why the officer had, if reports were true, clung to the car while it was being driven by a driver in a state of panic, or used a firearm to prevent a petty theft, and while in an inherently unstable position. Use of the gun inevitably, in these circumstances, also caused a danger to the passenger if, as reported, a passenger was in the car at the time.

**Manuel Magalhães Silva** was shot dead in December 1998 while trying to escape arrest by officers of the Anti-Crime Brigade (BAC) of the PSP, in the context of an operation against drug trafficking. AI was concerned by a report about the circumstances of the shooting. This stated that a drug user who had been arrested by police hours before for possession of heroin was used as "bait" to arrest Manuel Silva and was driven to a rendezvous with him at Serrinha, Amarante, by three plainclothes BAC officers. Apparently noticing the presence of police and realizing that a trap had been set, the alleged dealer started to pull away, and was then fired on from behind with a sub-machine gun. A bullet entered his spinal column. The officers were said to be operating outside their geographical area and to have received no authority to carry out the operation. Disciplinary proceedings were opened against the officers and the officer who fired the fatal shot was found to have acted with excessive force. He was suspended from duty. Judicial proceedings were continuing.

## 6. Reports of ill-treatment by police officers

During the two-year period between the beginning of 1998 and the end of 2000 AI continued to receive allegations that people had been subjected to ill-treatment by PSP officers in particular. Many of the cases of alleged ill-treatment of concern to this organization involve people arrested, and sometimes illegally detained, in the course of an identity check. The following are brief resumés of only some of the cases that have come to AI's attention:

a) **Rui Pedro**, 17, and his elder brother, **José Pedro Batista dos Santos Mecha**, claimed that, in February 1998, they were severely beaten by PSP officers at Moita. They said they were

repeatedly kicked and beaten on the head, back and all over the body with batons and dragged along the ground by the hair to a patrol car. José Mecha said the beatings continued after he was handcuffed. Both were taken to the PSP station at Moita, and then to hospital. Rui Mecha said he suffered severe head pains, dizziness, vomiting and bleeding from the ears. José Mecha described injuries to the left leg and back, and temporary partial facial paralysis. Both remained in hospital for four days. They lodged judicial complaints against the police officers in July 1998. In October 2000 IGAI informed AI that it had closed its investigation of the case because it could not be proved that the officers had acted wrongly. IGAI added that police intervention had been requested as a result of an incident of public disorder, involving a large number of people, and which had originated in a racist provocation. The use of violence was considered “necessary and legitimate” and some officers were injured and received hospital treatment. At the end of the year it was not known whether the judicial inquiry was continuing.

b) **Carlos Zurita**, 55, Duke of Soria and brother-in-law of King Juan Carlos of Spain, was reportedly ill-treated in the Bairro Alto police station of the PSP in Lisbon. According to reports Carlos Zurita was taken to the police station in February 1998 after two officers found his car, with a Portuguese number plate, was illegally parked and he did not have identity papers with him. According to reports, as Carlos Zurita opened the glove compartment to retrieve the car documents, the police, fearing he had a gun, dragged him out of the car, then threw him to the ground, handcuffed him and took him to the station. He was also reportedly hit in the face and his ear was cut. He subsequently received hospital treatment at the Hospital de CUF. Carlos Zurita did not lodge a complaint, but the Portuguese president, Jorge Sampaio, reportedly confirmed that the assault had taken place and expressed his regrets to the King of Spain. A spokesperson for the Ministry of Foreign Affairs was said to have stated: “These regrettable things do happen”. The Interior Minister, then Jorge Coelho, was reported to have said: “Relations between Portugal and Spain cannot be affected by a small problem in a Lisbon street, where an individual the police do not know, has parked a car illegally and refuses to identify himself ...”<sup>13</sup>. This regrettable remark appears to show a lack of sensitivity to what can, in fact, be a very serious problem in Portugal: the disproportionate response of the police to what begins as a relatively trivial incident.

c) **Pedro Sousa** and **Pedro Azevedo e Silva** took part in a “Reclaim the Streets” festival/demonstration by young people in Lisbon in January 1999. Pedro Sousa alleged he had been assaulted by a plainclothes police officer at rua Taipas police station after the festival. According to reports, he claimed he was held for several hours in handcuffs without being able

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<sup>13</sup>*Público* (Portugal), 14 April 1998, *El País* (Spain), 15 April 1998. *Público* attributes to a spokesman for the Foreign Affairs Ministry the remark: “*São coisas lamentáveis que acontecem*”. Jorge Coelho is quoted as saying: “*As relações entre Portugal e Espanha não podem ser afectadas por um pequeno problema numa rua de Lisboa, onde um cidadão, que a polícia não sabe quem é, tem um carro mal estacionado e recusa a identificar-se ...*”

to go to the toilet and later, after being taken to a lower room in the station, was punched, kicked, kneed and insulted several times during a two-hour period. Police reportedly accused festival participants of using "baseball bats" as weapons, although the latter maintained that the "bats" were in fact juggling clubs. IGAI confirmed that, after it had opened an inquiry into the incident, it established that both Pedro Sousa and Pedro Azevedo e Silva had been victims of police violence. In the case of Pedro Azevedo e Silva the police officer responsible was identified and given a disciplinary punishment. In the case of Pedro Sousa, however, although the allegations of police violence were found to be true, it had not been possible to identify those responsible. This was because there were discrepancies in depositions by the officers and because several dozen police officers from other units had passed through the police station. IGAI expressed the belief that all possible investigations had been made and all known witnesses heard.

Nevertheless, in September 1999 the Ombudsman asked IGAI to reopen the inquiry because he did not believe it had been sufficiently thorough. He reportedly stated that some witnesses had not been heard and that it was unsatisfactory that one of the officers had not been identified and therefore could not be disciplined or prosecuted. AI approached IGAI about the case, and expressed concern that charges were nonetheless reportedly being brought against Pedro Sousa. IGAI confirmed that the Ombudsman had asked it to reopen the inquiry and the National Command of the PSP had been asked to make a new attempt at identification. However, IGAI subsequently informed AI that there had been no developments in the case.

d) A GNR sergeant of the Territorial Group of Aveiro informed AI in August 1999 that ill-treatment of detainees was "almost systematic". He described some cases of ill-treatment or illegal detention that had occurred at the post he commanded at Anadia between May and July 1999, and which allegedly took place at the hands of officers of a GNR investigation unit stationed there, the Criminal Investigation Unit (NIC). His claim that **Jorge Manuel da Conceição Simões** was one of those ill-treated was corroborated in a separate statement by the alleged victim, a former drug addict undergoing rehabilitation, who complained that in May he was taken to the Anadia post and beaten about the head and chest when he refused to sign a confession. He was later treated for his injuries at Anadia District Hospital. He claimed that he had not taken drugs since February 1998 but that, after he had refused to sign a confession admitting to possession of drugs, the GNR officers visited his workplace and told his employers that he had stolen to feed a drug habit. As a result he lost his job. IGAI told AI that it had opened an inquiry into the sergeant's specific allegations. It was also undertaking an inquiry into the general functioning of the NICs, in view of reports that the units had ill-treated and illegally arrested suspects.<sup>14</sup> IGAI was also investigating the general functioning of the PSP's Anti-

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<sup>14</sup>The GNR sergeant referred to the new Regulations on the Material Conditions of Detention in Police Establishments, introduced in May 1999. These set out a large number of detailed requirements for improving conditions in police custody. They stipulate that all detainees must be treated with humanity and dignity and that all arrests must be registered at the police station or command post. The sergeant claimed that he had reported the cases of ill-treatment and illegal detention to his immediate superior, as required by these regulations. However, he had been

Crime Brigades. At the end of the year disciplinary proceedings against officers were continuing and a judicial inquiry was also under way.

e) **Marco Fernandes**, 19, claimed that between 23 and 24 September 1999 he had been approached by PSP officers while standing with friends in a street in Câmara de Lobos (Madeira). He was apparently known to local police officers for a history of petty crime and drug dependency. He tried to escape from the officers but was caught and reportedly beaten around the head with a police radio, later found broken nearby. Reports allege that he was then put into a PSP patrol car and taken to Cape Girão, a high promontory overlooking the sea. His head was covered and he was told he was going to be thrown over the cliff edge. He was then forced to crawl back to the car. Ordered to keep his head out of the window to prevent blood soiling the car seat, and to keep the car door ajar, he was next driven to Ribeira dos Socorridos and when he began to scream, claimed he was almost throttled with a piece of iron, beaten on the head with it and kicked in the mouth and stomach. He was finally abandoned to make his own way home on foot. He went with his mother to the accident and emergency department of the Cruz de Carvalho Hospital in Funchal and afterwards lodged a judicial complaint at the local PSP station. The Regional Command of the PSP in Madeira immediately opened an inquiry and disciplinary proceedings were also under way.<sup>15</sup> These were transferred to IGAI, and at the end of the year were, together with a judicial inquiry, continuing.

f) **Juvenal Reis Louro Ova** informed AI that, early in the morning of 29 January 2000, he was ill-treated by two of several PSP officers at the O Poeta café in Rua Emiliano da Costa in Tavira. He claimed that an officer interrupted a conversation he was having and hit him with a helmet, injuring his nose, which streamed with blood, and both his eyes. Juvenal Ova alleged that the firemen were called but that before they arrived he was threatened with further physical violence by the officer. A superior officer from the same police station intervened to prevent this. Juvenal Ova was, however, hit hard by another officer whose identity he did not know. The firemen took him to the Hospital de Faro where he was treated for his injuries, which reportedly included damage in particular to the lens of the right eye. Juvenal Ova further alleged that he

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transferred from the post and an inquiry had opened into allegations that he had committed “illegal acts”. IGAI assured Amnesty International that the disciplinary proceedings being taken against the sergeant were not connected with the allegations he had made against the NIC.

<sup>15</sup> Marco Fernandes was one of the children from poor areas of Madeira who were abused in 1991 by members of a paedophile ring. A large number of inquiries into crimes of child abuse and paedophilia against “street children” have taken place in Madeira since then, and have led to prosecution, but an inquiry into police ill-treatment of the children was never pursued by the public prosecutor, despite confirmation by the Ombudsman’s office that ill-treatment had occurred. Concern in the case of the “street children” of Madeira was shown by the Committee against Torture in November 1997.

again met the PSP officer who had hit him with the helmet on 4 February in Atalaia, and that he was warned against making a complaint. However, a judicial complaint was lodged with the prosecutor of Tavira.

g) **Mário João Augusto Rocha**, 20, who is black, claimed that on the night of 20-21 February 2000 he was violently punched and slapped by PSP officers from Odivelas, who intercepted him while he was walking to his girlfriend's home at Arroja in Odivelas. He told the newspaper *Jornal de Notícias* that an unidentified vehicle drew up alongside him and some men got out. He later realised they were plainclothes police officers. He alleged they beat him both before and after taking him to the police station at Odivelas, where they also racially abused him and punched him in the bladder, only later demanding to see his identity papers. As he did not have his passport he had to wait until the *Serviço de Estrangeiros e Fronteiras* (SEF) confirmed that his papers were in order, the confirmation arriving by fax at around 2am, when he was released. Mário Augusto Rocha went to the Hospital de Santa Maria, where he received treatment for his injuries between 1pm and 8pm on 21 February. He reported that he was still in pain from the injuries, with marks on his body and a swollen face. He lodged a complaint with the PSP of Santo António dos Cavaleiros (Loures). The Command of the Metropolitan Area of Lisbon of the PSP confirmed to the newspaper that a judicial inquiry had opened and that an internal police inquiry was also under way to determine whether disciplinary proceedings should be instituted.

h) There were reports that, on 3 August 2000, four people were injured, one seriously, in an incident in a restaurant on the island of Tavira, involving 11 PSP officers. Six complaints were registered at the PSP station of Tavira, including one by the proprietor of the restaurant, who was reportedly beaten with truncheons and head-butted and required treatment at Faro Hospital. According to the reports, the violence took place after officers, who were dining in civilian clothes, had been "provoked" by remarks from other customers. IGAI confirmed, in October 2000, that an internal PSP inquiry and a judicial inquiry had been opened and that IGAI was following the case, which was continuing.

i) **Cândido Ventura Coelho** and 17-year-old José Carlos Coelho, brothers of Mozambican origin, claimed they were stopped, on 27 December 2000, by two plainclothes police officers while they were crossing a bridge over a railway line by the station of Damaia, in the Lisbon area.

According to a report, the officers asked them for identification, which they produced. The officers then searched their bags, apparently for syringes. The brothers said they did not possess any syringes and that the officers should not search them without having some motive for suspecting them. They were taken to the PSP station at Damaia and were again subjected to an identity check and questioned. During the questioning, Cândido Coelho, who suffers from a mental disability, replied in a muddled way, notably with respect to his age. José Coelho informed the officers of Cândido Coelho's mental disability. He also asked if they could make a telephone call to their family, but this was refused.

After they had waited for a while, Cândido Coelho was reportedly taken into a bathroom within the police station, where an officer subjected him to physical ill-treatment. The officer allegedly pushed him hard against a wall, and Cândido Coelho banged his head. He was then kicked. He was also punched repeatedly in the face and head until a second officer approached and told his colleague to stop. As a result of the alleged beating, Cândido Coelho's face was seriously bruised. There were discharges from two black eyes and marks on the neck and he complained of aches and pains in his chest. A photograph taken three days afterwards shows injuries to the face and notably to one eye.

After leaving the police station Cândido Coelho was taken by one of his brothers to the Amadora-Sintra hospital for observation. Hospital records noted the brothers' claim that the bruising was a result of a beating by a police officer. A formal complaint was registered at the police station and the Judicial Police opened an inquiry into the allegations.

### **7. Illegal detention by police officers**

Article 220 of the Code of Criminal Procedure, covering *habeas corpus* and illegal detention provides, *inter alia*, that a person may not be detained outside legally permitted areas. Furthermore, the Regulations on the Material Conditions of Detention in Police Establishments, which came into force in May 1999, lay down specific details governing the way in which a detainee may be held. According to the then Interior Minister, Jorge Coelho, the conditions under which suspects had, in the past, been held in police stations, had been "a frequent object of criticism by international human rights organizations", but in recent years the situation had improved and "it is now important to ensure that it does not deteriorate".

Article 16.1 of the Regulations provides that each police station or post shall contain a register, in which shall be entered the identity of the person detained, the day and hour of the detention and of the detainee's appearance before a judge, the place of detention, the identity of the officers involved in the detention and the reason for the detention and its legal motivation.

The need for such a provision can be clearly illustrated by the case of Olívio Almada, given above, since the officers who drove him away, never registered his arrest and were reportedly the last people to see him alive. By their action they immediately laid themselves open to the suspicion that they had ill-treated and possibly even killed him, although this has not been established.

After the new regulations came into force, AI continued to receive worrying reports that illegal detentions were continuing. The GNR infantry sergeant who commanded the post at Anadia (point 6.d) described several cases between May and July 1999 where he found persons to have been illegally detained. He alleged that in July he found one detainee, known as **Joacquin** (nickname "*O Ganso*"), in a cell with injuries to his eyes, wrists, arm and back and, after making inquiries, found that the detainee had been held since the afternoon of the previous day, without receiving any refreshment or medical attention, and that no record had been made of his arrest. The GNR sergeant stated that, in another case, he had heard cries coming from the floor below and, after inquiries, was told that a detainee known as **Amorim** (nickname "*Mulato*") had been taken into the cell by the commanding officer. The sergeant did not know

the reason for his arrest, which had not been registered. On another occasion, on 25 June 1999, returning to the post in the evening, he was approached by a detainee called **Gabriel Moreira**, who said he had been held there since midday but did not know why. He had been given nothing to eat or drink and urgently needed access to the medication he was prescribed for his drug dependency. Again, no record had been made of his arrest and detention at the post.

Other recent cases which have come to Amnesty International's attention include some who, like **Olívio Almada**, were never taken to a station. The case of **Marco Fernandes** is described above (point 6.e).

### **8. Effective impunity (including length of judicial proceedings)**

The malaise affecting the justice system in general is widely recognized in Portugal and is the subject of much debate. AI has, for a long time, been concerned about the failure of the judicial and administrative systems to deal effectively with cases of torture and ill-treatment. Judicial and administrative or disciplinary proceedings may last for years, while police officers remain in their posts; the occasions when offenders are brought to justice are comparatively rare and the sentences passed are in general so light as to contribute to an atmosphere of relative impunity.<sup>16</sup> AI's concern about effective impunity was shared by the CAT, which, in 1997, expressed grave concern not only at recent cases of "ill-treatment, torture and even suspicious deaths" but at the "apparent lack of appropriate reaction on the part of the authorities responsible". In various ways the following cases illustrate some of these problems.

a) **Romão Monteiro**, a 31-year-old Rom, was shot dead at a police station in Matosinhos in 1994 while handcuffed and under interrogation for drug offences. The PSP at first claimed that he had committed suicide. In March 1995 the Matosinhos court sentenced an officer to a three-year prison sentence, suspended for three years, for manslaughter. (The prosecutor had requested a 12-year sentence for homicide). The court also decided to expel him from the police service. The officer appealed. In December 1996 the Supreme Court of Justice reduced the sentence to a suspended term of two years and 10 months' imprisonment. It also annulled the decision to expel the accused officer from the police service on the grounds that this matter had to be determined by a disciplinary proceeding independent of the court. The officer was later reportedly assigned to police duty at Sá Carneiro airport, pending a lengthy disciplinary proceeding. In May 1998 the Interior Minister ordered his dismissal.

b) **Dr Vaz Martins**, a lawyer of Cape Verdean origin, reportedly became impatient after waiting 45 minutes to see a client at the PSP station in Alfragide, in September 1996. An argument about racism ensued with the duty officer and the lawyer was allegedly forced to leave the station at gunpoint. Vaz Martins had also alleged that, in December 1994, at the same station, an officer

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<sup>16</sup>Cases in which the police have lodged counter-complaints against alleged victims have been complicated by decisions to hold separate proceedings, one court inquiring into one complaint, a second into the counter-complaint. The disadvantages of such a proceeding are clear.

had assaulted him. He was reportedly punched in the face and hit with the handle of a firearm, after which he lost most of the sight of his right eye, requiring 39 stitches to his head, and enduring four operations in an attempt to restore his eyesight. In 1997 IGAI reported that, as regards the allegation made about the incident in 1996, no complaint had been made by Vaz Martins and therefore there was no investigation by the PSP, but that IGAI would open an inquiry into the press reports. A judicial inquiry was meanwhile still under way in connection with a complaint by Vaz Martins, and a counter-complaint by police officers in connection with the 1994 incident. In 1999 IGAI reported that it could find no evidence of misconduct by the police as regards the allegation that Vaz Martins had been forcibly ejected from the police station in 1996. As regards the 1994 incident, disciplinary proceedings against two officers had found no evidence against them "because Mr Vaz Martins had an aggressive attitude towards the officers, which justified the use of force." Judicial inquiries into the case were still pending and the complaint and counter-complaint had been united in one dossier (rather than the subject of separate court proceedings). Later, in November 1999 IGAI told AI that a new preliminary investigation was being conducted into the case (approximately 60 months after the event occurred).

c) **Dr Duarte Teives Henriques**, a lawyer, lodged a complaint that he had been assaulted by three PSP officers in July 1995. He had reportedly challenged the lawfulness of an officer's order to move his car when he was seized, pushed to the ground, kicked and verbally abused. He suffered a fracture of the left lower leg and spent the night in the cells before being taken to hospital. The police charged him with refusing to obey orders, failing to identify himself, damaging a vehicle and insulting authority. Internal disciplinary proceedings against the police were dismissed on the basis that the police officers were not responsible for ill-treatment, raising the obvious question as to who *was* in fact responsible for breaking the lawyer's leg. In January 1999 IGAI informed AI that the judicial inquiry had concluded but that it would remain confidential for a while. In November 1999 IGAI reported that judicial proceedings were in fact still pending because of a request for new preliminary investigations (over 53 months after the events had occurred).

d) **Rogério Alexandre de Almeida Camoesas**, 19, claimed he was beaten up and verbally abused by a GNR officer after walking with his girlfriend in a park in Penafiel in August 1995 and that he received injuries to his back and left arm. A medical report confirmed that he had suffered "traumatic injuries" as a result of being beaten and had contusions on the lateral thoracic region and left arm. Rogério Camoesas and his father went to GNR headquarters to lodge a complaint but were refused entry on the grounds that no one was there to see them. A lawyer subsequently filed a complaint, while one of the witnesses, a friend of Rogério Alexandre de Almeida Camoesas, reported that he had been threatened by a police officer not to appear as a witness at any inquiry. A senior GNR officer later told AI that an inquiry had ascertained that there were "strong indications" that the officer had acted disproportionately "and even violently" but in September 1996 the military tribunal acquitted the officer, who reportedly told

the court he had only had a “friendly conversation” with Rogério Camoesas. Other GNR officers testified on his behalf.

e) **Carlos Manuel Gonçalves Araújo**, 21, died in police custody in December 1996. Surprised by Anti-Crime Brigades (BAC) officers of the PSP while robbing a clothes shop in the centre of Évora, Carlos Araújo and two companions, who were unarmed, had fled in a car and were chased by the officers. Luis António Gomes Alfama Correia, 19, and 16-year-old Sérgio Filipe Reis Nogueira were caught and arrested. Carlos Araújo continued to elude pursuit until one of the officers fired his weapon several times. The three youths were taken to the police station at Évora and beaten (“without any of them having done anything” to justify the beating, in IGAI’s words<sup>17</sup>). Astonishingly, no attempt seems to have been made to check whether Carlos Araújo had been shot - a natural precaution in the circumstances. He became “suddenly ill” and was taken to the Hospital Distrital de Évora but was found to be dead on arrival. Contrary to police claims that no one had been struck by a police weapon, an autopsy later concluded that a bullet from a police firearm had been fired into Carlos Araújo’s back at a distance of up to three metres.

A judge of the Criminal Court of Évora took the unusual step of ordering the provisional detention of the police officer suspected of firing the weapon. Her decision caused widespread anger in police ranks. A protest took place in which, over the Christmas period, many officers surrendered their weapons. General Gabriel Teixeira, who commanded the PSP, publicly supported the officers’ protests and was subsequently dismissed by the Interior Minister. He was replaced by the first head of the PSP not to be directly appointed from the ranks of the military.

In February 1998 Carlos Araújo’s two companions were sentenced to two years’ imprisonment for theft. In November 1998 the officer who killed Carlos Araújo, after being convicted of manslaughter, was, on the other hand, fined 1,500 escudos a day for 90 days, (a total of about £430), discounted by the 48 days he had previously spent in provisional (pre-trial) detention. (The prosecutor had requested a sentence of eight years’ imprisonment, suspended for two years). During the trial the officer reportedly stated that he had fired twice in the air while attempting to arrest Carlos Araújo but was unable to explain how he had shot him in the back. The judge reportedly praised the officer’s honesty and attributed the fatal shot to an unfortunate combination of circumstances, in which the officer had been taken by surprise, was under “stress” and had not been adequately trained in the use of firearms. This lack of training was regarded by the court as a mitigating, rather than aggravating, factor in deciding the sentence and could be seen as encouraging the irresponsible use of weapons.

## **9. Ill-treatment of prisoners**

### ***9.1. Ill-treatment by prison guards***

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<sup>17</sup>Disciplinary proceedings were later brought against the officers involved but the outcome is not known to Amnesty International.

In January 1998 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published a report critical of ill-treatment - as well as “filthy and unhygienic” conditions in Oporto prison, which it visited in October 1996. The CPT delegation “... heard a considerable number of allegations of physical ill-treatment of inmates by custodial staff ... consistent as regards the forms of ill-treatment involved (namely, blows with batons, punches and kicks), and as regards the manner in which it had allegedly been inflicted (namely, removal of particular inmates from their cells after the Wing concerned had been locked for the night and subsequent beating of those inmates by prison staff in the main corridor which connects the Wings and/or at the ‘control’ point at the end of that corridor)”. The CPT stated that the credibility of the allegations was supported by the content of a number of formal complaints by prisoners and by the medical evidence. It recommended that “a person or authority independent of the prison service carry out a thorough investigation into the extent of the problem of ill-treatment by prison staff of inmates at Oporto Prison and that appropriate action be taken against any prison officers found to have engaged in ill-treatment.”

The Portuguese Government responded that “excesses” and “abuses” inflicted on prisoners by prison staff was a “permanent concern” and issued some measures to safeguard against ill-treatment, such as opening cells or dormitories at night only in exceptional circumstances, such as threat to life or physical integrity, or to the “liberty and dignity” of the inmates” or threat to order and security. The government also referred to a whole raft of measures that were being taken to attempt to reduce the problem of overcrowding and inter-prisoner violence and intimidation, and to improve hygiene and medical care. However, no direct response seems to have been made to the CPT’s recommendation that an independent authority be set up to inquire into ill-treatment at Oporto Prison.

During the period under review AI received a number of allegations from prisoners or detainees throughout Portugal about ill-treatment by custodial staff. In September 1998 the organization wrote to the Justice Minister to express its concern about several specific cases. Among these were the following:

a) **Belmiro Francisco Schaht Duarte dos Reis Santana**, imprisoned at Caxias, was reportedly severely beaten by five guards in June 1997 after an argument when a guard refused to allow him to return to his cell, during a visit by his mother, to fetch a legal document. Belmiro Santana claimed he had been kicked and beaten on the arms and groin with truncheons, that two of his teeth were broken and that the rings on his pierced nipples were torn out “in cold blood” leaving deep gashes in the flesh. He said he had been left for the remainder of the night in solitary confinement, without medical treatment, and did not see a doctor until the following day. In July 1998 the Justice Minister informed Amnesty International that a prison guard had been charged with a breach of discipline in connection with the use of disproportionate force against Belmiro Santana. This organization does not know, as yet, the outcome of the proceedings.

b) **Marcelino Avelino Ramos Soares**, 17, imprisoned in the south wing of Caxias prison, complained that on at least three separate occasions in September 1997, after protesting about

a refusal to allow his brother to visit him, he had been seriously beaten and racially abused by a number of prison guards, after which he was confined for three days to a punishment cell.

The Director General of Prison Services (DGSP) replied that an internal inquiry into the allegations was closed for lack of evidence, but that a criminal inquiry was continuing. Amnesty International does not know whether this has concluded.

c) **Augusto da Conceição Mata**, imprisoned at Vale de Judeus, Alcoentre, stated that he had been “brutally beaten by several guards” in January 1998 and did not receive prompt medical assistance. He lodged a judicial complaint with the court at Cartaxo. Again, the DGSP replied that an internal inquiry had closed, while a criminal inquiry was continuing.

d) **Alberico A. Lopes Correia**, also held at Vale de Judeus, alleged he had been beaten unconscious by several guards in January 1998, that his nose was fractured, he had been racially insulted and forcibly plunged into cold water. The DGSP replied that an inquiry had found the allegations unfounded and that, on the contrary, the prisoner was facing criminal charges for violence against custodial staff. The inquiry did establish that violence had been used against Alberico Correia, but found that it had been “necessary and proportional”. According to the DGSP no damage to his nose was revealed by X-ray examinations.

e) **António Palma**, imprisoned at Pinheiro da Cruz, and undergoing psychiatric treatment, was allegedly ill-treated in August 1999 when he refused to be locked into his cell at the end of the day. A group of between eight and ten guards, accompanied by two dogs and armed with batons and a riot shield, reportedly beat him to the ground, leaving marks across his back. He was taken to the prison infirmary and injected with medication. Concern was expressed that the number of guards and the dogs and equipment brought in to subdue the prisoner was a use of disproportionate force. An inquiry was opened by the prison authorities. The Justice Ministry subsequently told AI that António Palma, who was suffering from a psychotic condition, refused to take his prescribed medicine if left to do so himself. Force, therefore, had to be used. He had later been transferred to a prison in Alentejo.

Allegations were also made in 1999 by prisoners at Linhó (Sintra) that the prison governor and head of custodial staff seemed powerless to prevent beatings of inmates by guards “almost every day”. The prison authorities reportedly rejected the accusations, stressing the existence of “organized violence” among prisoners. However, by the end of December 2000 AI had continued to receive reports about ill-treatment by prison guards at Linhó prison, and was investigating a number of these.

Following publication of *Amnesty International Report 2000*, in which AI expressed concern, among other things, about ill-treatment allegations it had received and about reports of inhuman and degrading conditions in Portuguese prisons, the Ministry of Justice provided AI with further information about the general prison situation. According to the *Direcção-Geral dos Serviços Prisionais* (DGSP), the problem of overcrowding was diminishing. Between 1998 and

1999 there was a decrease in the prison population of 12.3 per cent, and by June 2000 the decrease in the “rate of overcrowding”, which had been falling since 1996, was 13.1 per cent. As regards complaints of ill-treatment of prisoners by custodial staff, the DGSP admitted that there were some cases in which custodial staff assaulted prisoners, but stated that such incidents were always the subject of inquiries. Out of a total of 1.164 proceedings for 1998 and 1999, only 117 related to alleged acts of violence by prison staff and 23 officers (out of a total of approximately 4000) were punished with dismissal or compulsory retirement. The DGSP cast doubt on allegations that rats and cockroaches infested some prisons.

### **9.2. Deaths in prison**

AI was also concerned about the following cases of death in prison:

a) **Francisco António Viceto Cordeiro** was found dead in a punishment cell at Vale de Judeus in September 1997, one day before his release. The prisoner’s family claimed they had received information from various sources that Francisco Cordeiro had been beaten to death. The DGSP stated that an inquiry had closed without having discovered any breach of discipline by prison guards, or by other prisoners.

B) **Dionísio Alberto Oriola** was serving a sentence of three years three months for theft from a domestic appliances store. He was found hanging in a punishment cell at Coimbra prison in July 1998. He had been taken there for psychiatric assessment. It was alleged he had been severely beaten by prison guards shortly before his death. He had staged a rooftop protest at Sintra prison earlier in the year, apparently in protest at prison conditions. An inquiry was still continuing into his death at the time that the DGSP replied to Amnesty International, and the outcome is not known by this organization.

### **9.3. Inter-prisoner violence**

The CPT delegates to Oporto prison reported that they were also concerned by “*a prison culture which is conducive to inter-prisoner intimidation/violence*” (CPT’s italics). They had been informed by inmates that incidents of inter-prisoner violence were virtually a daily occurrence and widely acknowledged as such by custodial and support staff. The delegates found that, in the absence of sufficient prison staff, responsibility for security functions was devolved to a small number of privileged prisoners known as “*faxinas*” - a practice that “reinforced the delegation’s impression that ... prisoners minded to exploit their fellow inmates enjoyed a virtually free hand”. *Faxinas* apparently determined the cells to which newly-arrived prisoners were allocated, had authority to transfer prisoners from one cell to another within a given wing, and maintained the records of inmate movements between wings. It appeared to the delegates that prison officers were, on a number of occasions, obliged to consult *faxinas* before being able to locate particular inmates. The CPT recommended that “the Portuguese authorities

carry out without delay a thorough investigation of the nature and scale of the problem of inter-prisoner violence at Oporto Prison” and that an effective strategy be put in place to ensure that staff were willing and able to intervene properly in such incidents and to be in a position more closely to supervise the activities of the prisoners.

In June 2000 the DGSP admitted to AI that inter-prisoner violence took place, but stated that measures were being taken to prevent this through an increase in the number of prison guards and improvements in training. The Justice Ministry also confirmed that a new, independent prison inspectorate, the *Inspecção-Geral dos Serviços de Justiça*, was being created. This would also be responsible for inspecting the JP. Its work was already being complemented by magistrates who carried out monthly visits to prisons and who were empowered to receive complaints from prisoners. At the same time the DGSP was strengthening its structures of internal control and the increased activity of its monitoring and inspection service was reflected in the number of proceedings in which it was now involved - 504 in 1997, for instance, compared to 228 in 1995.

#### **10. Cruel, inhuman or degrading treatment of prisoners**

During the period under review and particularly from January 1998 AI received numerous complaints about cruel, inhuman or degrading treatment from prisoners throughout Portugal. The allegations related to severe overcrowding; poor standards of hygiene and sanitation without effective access to the benefits of the national health service (SNS)<sup>18</sup> and corresponding prevalence of medical neglect; the continuing proliferation of cockroaches, fleas and rats; the spread and fear of contagious diseases such as tuberculosis; the escalation in the numbers of prisoners with HIV and AIDS and the widespread problem of drug addiction.<sup>19</sup>

Portugal's prison population stands at about 14,500 with a reported ratio of one prisoner to 800 inhabitants. By May 2000 the high percentage of the prison population in provisional detention (detention awaiting trial) had dropped slightly from about 34 per cent to 28 per cent. The average 60-70 per cent of drugs-dependent prisoners is reported to have risen to 70 or 80 per cent in Lisbon, Paços de Ferreira, Pinheiro da Cruz, Oporto, Caxias, Portimão, Sintra, Aveiro, Elvas and Évora and to as much as 90 per cent in Setúbal. According to data reportedly provided by the medical director of Linhó prison (Sintra) between 20 to 25 per cent of prisoners in Portugal committed acts of self-mutilation. A number of prisoners or detainees complained to AI that they had contracted diseases such as tuberculosis and hepatitis B in prison but had not received adequate or competent medical assistance. One prisoner reported that, unable to wait any longer to see a dentist, he had been forced to extract his own teeth. Some prisoners said they actively avoided necessary medical treatment for fear of contracting an illness in the

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<sup>18</sup>On 30 June 1999 the parliamentary health commission approved a draft law which would allow prisoners easier access to the national health service.

<sup>19</sup>As stated on page 22, the DGSP cast doubt on allegations that rats and cockroaches infested some prisons.

waiting rooms of the prison hospitals where, in many cases, no efforts had been made to separate those with contagious diseases.

A highly critical report on the state of Portuguese prisons was published in 1996 by the Ombudsman, Menéres Pimentel, who, in 1999, carried out a new inspection. He recognized that the authorities had made an “appreciable” effort to improve living and hygiene conditions over the last two years, but found that the overall situation was, if anything, “as or more black than in 1996”, largely owing to the pressures caused by drug dependency and the rise in infectious diseases.

In his January 1998 address in Lisbon to the Supreme Court, inaugurating the judicial year, the President of the Portuguese Republic, Jorge Sampaio, referred to the situation in Portuguese prisons as a “real national scandal”. His comments touched, among other matters, on the serious problem of overcrowding and on the excessively lengthy periods of provisional detention. Jorge Sampaio said there was an urgent need to seek alternatives to prison for many inmates.

## **11. Conclusions**

1. AI is concerned about continuing reports of ill-treatment and excessive use of force by police and deaths in police custody. It believes that recent serious allegations of ill-treatment by police point to the need for increased training in human rights issues for all officers, as well as for better and regular training in use of firearms. In relation to this, the organization also urges both courts and police officers to resist seeing as a mitigating, rather than aggravating, circumstance the fact that a police officer accused of a crime related to ill-treatment or use of excessive force, is not adequately trained in the use of his or her weapon.
2. AI is concerned that allegations of torture, ill-treatment or other abuse by police officers that are brought to the attention of the authorities are often likely to be considered crimes of common assault under Article 143, which requires a judicial complaint by the victim, and urges that all such allegations be automatically investigated as “public crimes”.
3. AI is concerned that, even where judicial proceedings are initiated they may be very lengthy and that the sentences delivered by the courts often fail to reflect the seriousness of the crimes committed. This continues to create, as the CAT has already pointed out, an “impression of relative impunity ... highly prejudicial to the application of the provisions of the Convention”.

4. This organization welcomes the establishment and work of a police oversight agency such as IGAI, and believes that such work is vital. However, IGAI's work, until now, has suffered from lack of resources and is under the control of the Interior Ministry. There is still no independent police oversight agency in Portugal.
  
5. AI remains concerned at the numerous reports of cruel, inhuman or degrading conditions in prison establishments, and of widespread violence by custodial staff or other prisoners, including those who are given positions of power over other inmates as a method of dealing with lack of resources. It believes there is an urgent need for better training for prison staff on human rights issues and that prison staff must be able to effectively monitor and protect the safety of inmates. AI also hopes that the creation of an independent and effective complaints body for prisoners and all those deprived of their liberty will be able to conduct prompt and thorough examinations of their complaints and, where there is evidence of torture and ill-treatment or cruel, inhuman or degrading treatment, be able to recommend the adoption of disciplinary procedures and/or submit their findings to the public prosecution service.