

# PORTUGAL 2012 HUMAN RIGHTS REPORT

## EXECUTIVE SUMMARY

Portugal, which includes the archipelagos of the Azores and Madeira, is a constitutional democracy with a president, prime minister, and parliament elected in multiparty elections. National parliamentary elections in June 2011 and regional elections in the Azores on October 14 were free and fair. They were held in accordance with international standards, and there were no reports of abuses or irregularities. Security forces reported to civilian authorities.

The most important human rights problems included excessive use of force and abuse of detainees and prisoners by police and prison guards, poor and unhealthy prison conditions, and the incarceration of juveniles with adults and pretrial detainees with convicted criminals.

Other problems included lengthy pretrial detention, violence against women and children, discrimination against women, sexual harassment of women, and trafficking in persons for sexual exploitation and forced labor.

The government usually prosecuted and punished officials who committed abuses.

### **Section 1. Respect for the Integrity of the Person, Including Freedom from:**

#### **a. Arbitrary or Unlawful Deprivation of Life**

There were no reports that the government or its agents committed arbitrary or unlawful killings.

#### **b. Disappearance**

There were no reports of politically motivated disappearances or kidnappings.

#### **c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

While the constitution and law prohibit such practices, there were credible reports of excessive use of force by police and of mistreatment and other forms of abuse of prisoners by prison guards.

During the year the Inspectorate General of Internal Administration (IGAI) investigated reports of mistreatment and abuse by police and prison guards. Complaints included physical abuse, threatening use of firearms, excessive use of force, illegal detention, and abuse of power. The majority of the complaints were against the Public Security Police (PSP) and the Republican National Guard (GNR), 392 and 257 complaints, respectively, in 2010, the most recent year for which statistics were available. The IGAI investigated each complaint; punishment for officers found to have committed abuses ranged from temporary suspension to prison sentences. During 2010, the government conducted 738 investigations of members of the security forces. Punishment included letters of reprimand, temporary suspension from duty, prison sentences, mandatory retirement with pension cuts, and discharge from duty.

### **Prison and Detention Center Conditions**

There were reports that guards mistreated prisoners at some prisons. Other problems included overcrowding, inadequate facilities, poor health conditions, and violence among inmates.

Physical Conditions: According to the Directorate-General of Prison Services, on December 31 there were 13,504 prisoners and detainees in the country's prisons (94.5 percent male inmates and 5.5 percent female inmates), 77 of whom were youths between 16 and 18 years of age (74 boys and three girls). The maximum number of prisoners that facilities were designed to accommodate was 12,077. During the year the prison system operated at 112 percent of capacity. There was a youth prison in Leiria, but elsewhere in the prison system juveniles were sometimes held with adults. Pretrial detainees were held with convicted criminals.

Between January 1 and June 25, there were 26 deaths in the country's prisons. According to the Directorate-General of Prison Services, illness caused 18 deaths and suicide accounted for eight deaths. Infectious diseases associated with drug abuse caused the majority of deaths due to illness. In 2010, the latest year for which data was available, approximately 10 percent of the prison population had HIV/AIDS, and more than half of these (57 percent) were also infected with hepatitis C. Prisoners had access to potable water.

Administration: Recordkeeping on prisoners was adequate. The Directorate-General of Prison Services managed a publicly available Web site with constantly updated statistics on the country's prisons. Under the government's "open regime" system, prisoners may earn the right to work outside of the prison and to see their

families at home on a regular basis. An ombudsman can serve on behalf of prisoners and detainees to consider such matters as alternatives to incarceration for nonviolent offenders to alleviate overcrowding; address the status and circumstances of confinement of juvenile offenders; and improve pretrial detention, bail, and recordkeeping to assure that prisoners do not serve beyond the maximum sentence for the charged offense.

Authorities permitted prisoners and detainees reasonable access to visitors and to religious observance. Authorities permitted prisoners and detainees to submit complaints to judicial authorities without censorship and to request investigation of credible allegations of inhumane conditions. Authorities investigated credible allegations of inhumane conditions and documented the results of such investigations in a publicly accessible manner. The government investigated and monitored prison and detention center conditions.

Monitoring: The government permitted visits by independent human rights observers and the Council of Europe's Committee for the Prevention of Torture (CPT). During the year university researchers and news media visited prisons. In February the CPT visited detention centers and prisons in the country. The delegation presented preliminary observations to authorities, but at the end of the year the full report was not yet public.

#### **d. Arbitrary Arrest or Detention**

The constitution and law prohibit arbitrary arrest and detention, and the government generally observed these prohibitions.

#### **Role of the Police and Security Apparatus**

There were approximately 50,000 law enforcement officials, including police and prison guards. The Ministries of Internal Administration and Justice are primarily responsible for internal security. The Ministry of Internal Administration oversees the Foreigners and Borders Service (SEF), the PSP, and the GNR. The SEF has jurisdiction over immigration and border problems. The PSP has jurisdiction in cities, and the GNR has jurisdiction outside cities. The Judiciary Police are responsible for criminal investigations and report to the Ministry of Justice.

Civilian authorities maintained effective control over the SEF, the PSP, and the GNR, and the government has effective mechanisms to investigate and punish abuse and corruption. There were no reports of impunity involving the security

forces during the year. An independent ombudsman chosen by parliament and the IGAI investigates complaints of abuse or mistreatment by police. However, nongovernmental organizations (NGOs) criticized the slow pace of investigations and the lack of an independent oversight agency to monitor the IGAI and the Ministry of Internal Administration.

### **Arrest Procedures and Treatment While in Detention**

The constitution and law provide detailed guidelines covering all aspects of arrest and custody, and authorities generally followed the guidelines. Persons can be arrested only on a judicial warrant, except that law enforcement officials and citizens may make warrantless arrests when there is probable cause that a crime has just been or is being committed, or that the person to be arrested is an escaped convict or a suspect who escaped from police custody. Authorities informed detainees promptly of charges against them.

A suspect may not be held for more than 48 hours without appearing before an investigating judge. Under the law the investigating judge determines whether an arrested person should be detained, released on bail, or released outright.

Investigative detention for most crimes is a maximum of four months; if a formal charge is not filed within that period, the detainee must be released. In cases of serious crimes, such as murder, armed robbery, terrorism, violent or organized crime, and of crimes involving more than one suspect, the investigating judge may decide to hold a suspect in detention while the investigation is underway for up to 18 months and up to three years in extraordinary circumstances.

Bail exists, but detainees are not released on their own recognizance. Depending on the severity of the crime, a detainee's release may be subject to various legal conditions.

Detainees have the right to legal counsel from the time of arrest, but police did not always inform detainees of their rights. In the report on its 2008 visit, the CPT stated that "facts found during the visit...clearly indicate that few detained persons have an effective right of access to a lawyer during police custody." The government assumed legal costs for indigent detainees.

Pretrial Detention: Lengthy pretrial detention remained a problem. As of December 31, 2,688 individuals (20 percent of the prison population) were in pretrial detention, an increase from the previous year. The average detention was

eight months; pretrial detainees spent an average of six months to a year in incarceration. Lengthy pretrial detention was usually due to lengthy investigations and legal procedures, judicial inefficiency, or staff shortages. If a detainee is convicted, pretrial detention counts against his prison sentence. If found innocent, a detainee has the right to request compensation.

Amnesty: In December the president granted one reduction of prison sentence and one revocation of the penalty of expulsion from the country for one foreigner. There were 205 requests.

### **e. Denial of Fair Public Trial**

The constitution and law provide for an independent judiciary, and the government generally respected judicial independence in practice.

Observers, including the media, business corporations, and legal observers, estimated the backlog of cases awaiting trial to be at least a year.

### **Trial Procedures**

The constitution provides for the right to a fair trial, and an independent judiciary generally enforced this right. All defendants are presumed innocent and have the right to be informed promptly and in detail of the charges (with free interpretation when necessary). Trials are public. A suspect in investigative detention must be brought to trial within 14 months of being charged formally. If a suspect is not in detention, the law specifies no deadline for going to trial. Jury trials are rare in criminal cases. When the crime in question is punishable by a prison sentence whose maximum limit is more than eight years, either the public prosecutor or the defendant may request a jury trial. Juries consist of three judges and four public members.

Defendants have the right to be present at their trial and to consult with an attorney upon arrest, at government expense if necessary. Defendants have adequate time and facilities to prepare their defense. They have access to government-held evidence, can confront and question witnesses against them, and present witnesses and evidence on their own behalf. Defendants cannot be compelled to testify or confess guilt. Those convicted have the right of appeal. The law extends these rights to all citizens and foreign residents.

### **Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

### **Civil Judicial Procedures and Remedies**

There is an independent and impartial judiciary in civil matters. All persons, both citizens and foreign residents, have access to a court to bring lawsuits seeking damages for, or cessation of, a human rights violation, and they can appeal decisions to the European Court of Human Rights (ECHR). Civil cases do not have jury trials. Besides judicial remedies, administrative recourse exists for alleged wrongs. The government complied with rulings against it in domestic judicial and administrative fora.

### **Regional Human Rights Court Decisions**

The country is subject to the ECHR under the European Convention on Human Rights. It complied promptly with the court's decisions.

### **f. Arbitrary Interference with Privacy, Family, Home, or Correspondence**

The constitution and law prohibit such actions, and the government generally respected these prohibitions in practice.

## **Section 2. Respect for Civil Liberties, Including:**

### **a. Freedom of Speech and Press**

The constitution and law provide for freedom of speech and press, and the government generally respected these rights in practice. An independent press, an effective judiciary, and a functioning democratic political system combined to ensure freedom of speech and press. The law criminalizes the denigration of ethnic or religious minorities and the engagement in offensive practices such as Holocaust denial. Prison sentences for these crimes run between six months to eight years.

### **Internet Freedom**

There were neither government restrictions on access to the Internet nor reports that the government monitored e-mail or Internet chat rooms without appropriate

legal authority. According to statistics from the International Telecommunication Union, 55 percent of the population used the Internet in 2011.

### **Academic Freedom and Cultural Events**

There were no government restrictions on academic freedom or cultural events.

### **b. Freedom of Peaceful Assembly and Association**

The constitution and law provide for freedom of assembly and association, and the government generally respected these rights in practice.

### **c. Freedom of Religion**

See the Department of State's *International Religious Freedom Report* at [www.state.gov/j/drl/irf/rpt](http://www.state.gov/j/drl/irf/rpt).

### **d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons**

The constitution and law provide for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice. The government cooperated with the Office of the UN High Commissioner for Refugees and other humanitarian organizations in providing protection and assistance to refugees, asylum seekers, stateless persons, and other persons of concern.

### **Protection of Refugees**

Access to Asylum: The laws provide for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees. In 2011 the country granted asylum to 27 persons.

Safe Country of Origin/Transit: The government considers other EU countries to be safe countries of origin or transit and returned asylum seekers to their country of entry into the EU for adjudication of their applications.

Temporary Protection: In addition to refugees and applicants for political asylum, the government also provided temporary protection to individuals who may not qualify as refugees. The country provides subsidiary protection to individuals who

do not satisfy the legal criteria for refugee status but who cannot return to their country of origin due to a real risk of serious harm. Under EU guidelines, individuals granted subsidiary protection are supposed to be entitled to temporary residence permits, travel documents, access to employment, and equal access to health care and housing. During the first six months of the year, the country granted subsidiary protection to 56 persons and asylum to five persons. In 2011 the country granted humanitarian protection to 38 persons and asylum to 27 persons.

### **Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government**

The constitution and law provide citizens the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections based on universal suffrage.

#### **Elections and Political Participation**

Recent Elections: In June 2011 the country held national parliamentary elections that were considered free and fair. Madeira last held elections in October 2011 while the most recent elections in the Azores were in October; both were considered free and fair.

Participation of Women and Minorities: The law reserves to each gender a minimum of one-third of the places on electoral lists in national, local, and European parliamentary elections. There were 67 women in the 230-member parliament and two women in the 12-seat cabinet. One member of parliament was born in Angola; there was no minority person in the cabinet.

### **Section 4. Corruption and Lack of Transparency in Government**

The law provides criminal penalties for corruption by officials, and the government generally implemented these laws effectively. There were no reports of corruption in the executive or legislative branches of the central government during the year. However, the media reported corruption involving local government officials.

Public officials were subject to financial disclosure laws.

The Central Directorate for Combating Corruption, Fraud, and Economic and Financial Crime is the government agency responsible for combating corruption.

The constitution and law provide for public access to government information, and the government provided access in practice for citizens and noncitizens, including foreign media.

### **Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights**

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were generally cooperative and responsive to their views.

Government Human Rights Bodies: The country has an independent human rights ombudsman appointed by parliament who is responsible for defending the human rights, freedom, and legal rights of all citizens. The Ombudsman's Office operated independently and with the cooperation of the government.

The ombudsman had adequate resources and published mandatory annual reports as well as special reports such as on problems regarding women's rights, prisons, health, and the rights of children and senior citizens.

Parliament's First Committee for Constitutional Issues, Rights, Liberties, and Privileges exercises oversight over human rights problems. It drafts and submits bills and petitions for parliamentary approval. During the year new laws went into effect in areas such as the protection of DNA-profile databases, the protection of emigrants' rights, and the regulation of procedures regarding living wills.

### **Section 6. Discrimination, Societal Abuses, and Trafficking in Persons**

The constitution and law prohibit discrimination based on race, gender, disability, sexual orientation, language, and social status, and the government effectively enforced these prohibitions.

#### **Women**

Rape and Domestic Violence: The law makes rape, including spousal rape, illegal, and the government generally enforced the law when the victim chose to press charges and the cases were not settled out of court through mediation by both parties' lawyers. During 2011, the most recent year for which data is available, 94

cases of rape were reported to the Association for Victim Support (APAV), a nonprofit organization that provides confidential and free services nationwide to victims of any type of crime.

The law provides for criminal penalties of up to 10 years' imprisonment in cases of violence by a spouse, and the judicial system prosecuted persons accused of abusing women; however, traditional societal attitudes discouraged many abused women from using the judicial system. According to data from the Directorate-General for Internal Administration, during the first three months of 2011, there were 58 convictions for domestic violence. Only 6 percent of these cases resulted in actual prison sentences for the abusers; courts acquitted 52 percent of the suspects.

Violence against women, including domestic violence, continued to be a problem. During 2011, 15,724 crimes of domestic violence were reported to the APAV, including 348 cases of sexual offense and 108 cases of sexual violence. According to preliminary data by NGOs and media reports, during the year there were 36 deaths related to domestic violence.

The government encouraged abused women to file complaints with the appropriate authorities and offered the victim protection against the abuser. In addition the law allows third parties to file domestic violence reports. The government's Commission for Equality and Women's Rights operated 14 safe houses for victims of domestic violence and maintained an around-the-clock telephone service. Safe-house services included food, shelter, and health and legal assistance. The government-sponsored Mission against Domestic Violence conducted an awareness campaign against domestic violence, trained health professionals, proposed legislation to improve legal assistance to victims, and signed protocols with local authorities to assist victims.

Sexual Harassment: Sexual harassment is a crime with penalties ranging from one to eight years in prison. If perpetrated by a superior in the workplace, the penalty is up to two years in prison, or more in cases of aggravated coercion.

The Commission on Equality in the Workplace and in Employment, composed of representatives of the government, employers' organizations, and labor unions, examines, but does not adjudicate, complaints of sexual harassment. In 2011, 67 cases of sexual harassment were reported to the APAV.

Reproductive Rights: Couples and individuals have the right to decide freely the number, spacing, and timing of their children, and to have the information and means to do so free from discrimination, coercion, and violence.

Discrimination: The civil code provides women full legal equality with men; however, in practice women experienced economic and other forms of discrimination. According to 2011 data from the National Statistics Institute, women made up 47 percent of the working population and were increasingly represented in business, science, academia, and the professions. However, according to the Ministry of Solidarity and Social Security, women's average salaries were approximately 27 percent lower than men's, and the gap was widening.

The state secretary for parliamentary affairs and equality addresses, among other topics, problems such as economic discrimination and integration of women into the mainstream of society.

## **Children**

Birth Registration: Citizenship is derived by birth within the country's territory and from one's parents. Authorities registered all births.

Child Abuse: Child abuse was a problem. The APAV reported 795 crimes against children under the age of 18 during 2011, the most recent for which data was available. There were reports that Romani parents used minor children for street begging.

Child Marriage: The minimum age for marriage is 18 for women and men, but both sexes may marry at 16 with the consent of either both parents exercising parental authority, or a guardian, or, in default of the latter, a court decision. In 2011, the most recent year for which data is available, 52 girls and three boys younger than 17 years of age married; 828 girls and 183 boys aged 17 to 19 years married.

Sexual Exploitation of Children: Statutory rape is a crime. Penalties for statutory rape range up to 10 years in prison. The minimum age for legal consensual sex is 16. The law prohibits child pornography; penalties range up to eight years in prison.

International Child Abductions: The country is a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

### **Anti-Semitism**

The Jewish community was estimated at 3,000. There were no reports of anti-Semitic acts during the year. The government does not collect such statistics, and none was reported to the ombudsman.

### **Trafficking in Persons**

See the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

### **Persons with Disabilities**

The constitution and law prohibit discrimination against persons with physical, sensory, intellectual, and mental disabilities in employment, education, air travel and other transportation, access to health care, and the provision of other state services. The government effectively enforced the law. The law also mandates access to public buildings for persons with disabilities, and the government implemented these provisions in practice; however, no such legislation covers private businesses or other facilities.

The Ministry of Solidarity and Social Security oversees the National Bureau for the Rehabilitation and Integration of Persons with Disabilities, which is responsible for the protection, professional training, rehabilitation, and social integration of persons with disabilities as well as for the enforcement of related legislation. Children with disabilities attended all levels of schooling (primary, secondary, and higher education). The Lisbon municipal government was carrying out a project to eliminate barriers that cause difficulty of movement to persons with physical disabilities.

### **National/Racial/Ethnic Minorities**

The government estimated the Romani population to be between 40,000 and 50,000 persons. The government tried to provide integration and access to services for the Romani population, including through a mediation program staffed by ethnic Romani mediators in the Office of the High Commission for Immigration

and Intercultural Dialogue. The mediation project had local successes, but societal discrimination against ethnic Roma persisted.

### **Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity**

The constitution and the law prohibit discrimination, including based on sexual orientation and gender identity. However, the law bars lesbian, gay, bisexual, and transgender couples and single women from receiving medically assisted reproductive health care applied by government-funded health-care providers.

### **Other Societal Violence or Discrimination**

There were no reports of societal violence or discrimination against persons with HIV/AIDS.

## **Section 7. Worker Rights**

### **a. Freedom of Association and the Right to Collective Bargaining**

The law protects the right of workers to form and join independent unions of their choice without previous authorization or excessive requirements; members of the armed forces are excluded from this provision. The law protects the right to strike. If a long strike occurs in an essential sector such as justice, health, energy, or transportation, the government may order strikers back to work for a specified period. Police may join unions and have recourse within the legal system, but they may not strike. The constitution and the labor code recognize and protect the right to bargain collectively. The law allows unions to conduct their activities without interference. The law prohibits antiunion discrimination, including firing an employee for union activity. A worker fired for union activity would have to be reinstated.

The government respected these rights in practice. There were few reports that antiunion discrimination occurred. The country's labor confederations were independent of the government and political parties, although some historical ties existed.

### **b. Prohibition of Forced or Compulsory Labor**

The law prohibits all forms of forced and compulsory labor. However, the government did not effectively enforce these laws, and such practices reportedly occurred. Women, men, and children were trafficked for forced labor. Men from Eastern Europe (typically from Ukraine, Moldova, Russia, and Romania) and African Portuguese-speaking countries were subjected through fraud, coercion, and debt bondage to conditions of forced labor in the farming and construction industries. According to the government, an increasing number of underage Portuguese girls were subjected to forced prostitution within the country. Police and NGOs also reported that family networks brought approximately 50 to 100 Romani children to the country and forced them to work as street beggars.

Also see the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

### **c. Prohibition of Child Labor and Minimum Age for Employment**

The minimum working age is 16. The Working Conditions Authority (ACT) of the Ministry of Solidarity and Social Security enforced the law effectively and registered cases during the previous two years (one or two per year). There were reports that Romani parents used children for street begging.

The government's principal entity to investigate and respond to reports of illegal child labor is the ACT. The ACT sponsors and finances the Integrated Program for Education and Professional Training, which attempts to return to school minors who are victims or at risk of child labor. During the 2011-12 school year the program worked with 2,852 students throughout the country.

### **d. Acceptable Conditions of Work**

The minimum wage, which covers full-time workers, rural workers, and domestic employees who are 18 years of age and older, was 485 euros (\$640) per month. The estimated poverty income level for 2010, the latest year available, was 421 euros (\$556) per month per adult. The legal workday may not exceed 10 hours, and the maximum workweek is 40 hours. There is a maximum of two hours of paid overtime per day and 200 hours of overtime per year, with a minimum of 12 hours' rest between workdays. Premium pay for overtime worked on a rest day or public holiday is 100 percent; overtime performed on a normal working day is paid at a premium of 50 percent for the first hour and 75 percent for subsequent time worked. The Ministry of Solidarity and Social Security effectively monitored compliance through its regional inspectors.

The ACT develops safety standards and is responsible for their enforcement. Employers are legally responsible for accidents at work and are required by law to carry accident insurance. The ACT's inspectors sufficiently and regularly monitored these standards, both proactively according to regulations and advanced scheduling, and reactively in response to complaints filed. The government generally enforced effectively inspection findings. According to the ACT, there were 161 deaths from work-related accidents in 2011.