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Report of the Working Group on the Universal Periodic Review*

Portugal

Addendum

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

* The present document was not edited before being sent to the United Nations translation services.



1. Portugal welcomes the recommendations made during its third universal periodic review on 8 May 2019.
2. A total of 245 recommendations were formulated during the interactive dialogue. Portugal immediately accepted 229 (Recommendations 136.1 and 137.1–137.228.) – 228 of which were considered to have already been implemented or in the process of implementation – and took note of 10 (Recommendations 139.1–139.10).
3. Portugal deferred consideration on 6 recommendations (Recommendations 138.1–138.6). The latter have been examined within the framework of the Portuguese National Human Rights Committee and Portugal would like to provide the following responses.

Recommendations enjoying the support of Portugal which considers that they are already implemented or in the process of implementation

138.3 – Continue to combat racial discrimination and hate speech, and safeguard the rights of ethnic minorities

138.4 – Ensure that its policies, legislation, regulations and enforcement measures effectively serve to prevent and address the heightened risk of business involvement in abuses in conflict situations, which include situations of foreign occupation

4. Businesses operating in Portugal must respect and ensure compliance with national law, human rights, the United Nations Guiding Principles on Business and Human Rights and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises.
5. Portugal is finalizing its National Action Plan on Responsible Business Conduct and Human Rights and is planning to adopt it before the end of 2019.
6. Portugal is committed to preventing involvement of any Portuguese company in human rights abuses and we discourage investment or joint ventures with companies that are known to do so.

Recommendations noted by Portugal

138.1 – Ratify the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity

7. The Portuguese criminal legislation already foresees the non-applicability of statutory limitations to war crimes and crimes against humanity.
8. In fact, Portuguese legislation establishes that criminal proceedings and the penalties imposed with respect not only to war crimes and crimes against humanity but also to crimes of genocide and crimes of aggression shall not be subject to any statute of limitations.
9. Therefore, the purpose aimed by the Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity is already addressed, with a wider scope of application, by the Portuguese criminal legislation.

138.2 – Take legal measures to adopt a definition of child pornography in line with the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

10. The crime of child pornography foreseen in article 176 of the Criminal Code encompasses a wide range of conducts in line with the Optional Protocol to the Convention on the Rights of the Child.
11. Although the Criminal Code does not define “child pornography”, it should be noted that the reception of the rules enshrined in international conventions in the Portuguese legal order is automatic, which means that the definition of the Optional Protocol to the

Convention on the Rights of the Child is applicable and must be considered by the relevant authorities when dealing with such crimes, regardless of its formal transcription into the Criminal Code.

12. Moreover, given the broad range of the conducts described in the Criminal Code, which are subject to the courts' and doctrine's interpretation and densification, the catalogue of behaviors effectively prosecuted in Portugal as child pornography may even extend beyond those included in the Optional Protocol.

13. Therefore, the adoption of a legal definition of child pornography is unwarranted.

138.5 – Take the necessary measures to adequately address sexual violence in laws and policies, and ensure that all forms of non-consensual sexual acts are included in the definition of rape under the Criminal Code

14. Following the Council of Europe's Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) evaluation in January 2019, Portugal is preparing legislative measures to implement its recommendations, which involve restructuring the description of the crime of rape and sexual coercion focusing unequivocally on the central element of lack of consent.

15. Pursuant the Portuguese legal tradition, however, the qualification of all non-consensual sexual acts as rape cannot be accepted. In fact, the Portuguese Criminal Code foresees a range of crimes against sexual freedom which entail lack of consent (such as sexual coercion or sexual abuse) but that are not qualified as rape. This differentiate catalogue of crime is grounded on a political option of the Portuguese legislator taking into consideration the severity of the conducts and of the harm produced as a consequence. It is Portugal's understanding that qualifying all these conducts as rape could lead to undermining the protection granted to the victims and add unwanted complexity to this provision.

138.6 – Adopt specific legal provisions to criminalize child trafficking for sexual purposes and sexual exploitation in the context of travel and tourism

16. The Criminal Code already criminalizes and adequately punishes child trafficking for sexual purposes as well as the many forms sexual exploitation of children may take.

17. Article 160 of the Criminal Code foresees the crime of trafficking in persons, including children, in line with the Palermo Protocol. The description of the crime of trafficking in persons encompasses several purposes, including sexual exploitation.

18. The Criminal Code criminalizes a range of conducts of sexual nature perpetrated against children (sexual abuse, resort to children's prostitution, incitement to prostitution of children, child pornography, grooming). These conducts are punished regardless of the context in which they are undertaken, be it in the context of travel or tourism or other. Therefore, the criminalization of sexual exploitation specifically in the context of travel and tourism is unwarranted.

19. Moreover, a proposal for the criminalization of preparatory acts for this effect is currently under appreciation, namely, the organization of travel arrangements for the purpose of sexual exploitation of children. This amendment will increase the protection conferred to children in risk of being sexually exploited.