



COMMUNITY OF DEMOCRACIES
GOVERNING COUNCIL MEMBERSHIP RENEWAL
Warsaw declaration Evaluation Form

PORTUGAL

Transparência e Integridade is the Portuguese Chapter of Transparency International global coalition against corruption and the Civil Society Focal Point for the Community of Democracies.

TI-PT is the only NGO working in Portugal on research, information sharing and awareness-raising about the causes and consequences of corruption and poor governance. Advocating for public transparency and accountability on behalf of a more participatory and inclusive democracy, develops projects and practical tools to foster civic monitoring and engagement towards integrity.

Community of Democracies Governing Council Membership Renewal

Warsaw Declaration Evaluation Form - PORTUGAL

Cover Photo: Arnaud Jaegers/ Unsplash

© 2018 Transparência e Integridade (TI-PT). All rights reserved.

SECTION I - DEMOCRATIC GOVERNANCE

Please describe your government's commitment to the following principles of democratic governance and any challenges that it faces in terms of transparency and accountability.

That government institutions be transparent, participatory and fully accountable to the citizenry of the country and take steps to combat corruption, which corrodes democracy.

- *That the legislature be duly elected and transparent and accountable to the people.*
- *That civilian, democratic control over the military be established and preserved.*
- *The obligation of an elected government to refrain from extra-constitutional actions, to allow the holding of periodic elections and to respect their results, and to relinquish power when its legal mandate ends.*

According to a study of the Institute of Social Sciences (ICS), Portugal is one of the European countries where citizens are less satisfied with Democracy. The quality of the Portuguese democracy registered significant setbacks in terms of governance and sovereignty mainly due to the severe economic and financial crisis that lasted almost a decade¹. People tend to be unsatisfied when the levels of unemployment are higher, but we cannot ignore that Portugal has been evaluated by the Economist Democracy Index (EDI) as a *flawed democracy* since 2006², meaning that there are several weaknesses and/or imperfections in terms of electoral process and pluralism, civil liberties, governance, political participation and political culture.

In 2015, the United Nations (UN) approved the 2030 Agenda for Sustainable Development, integrating the three dimensions (economic, social and environmental). The SDGs are therefore based on universal goals to be implemented by all countries and not only by developing ones.

Portugal has shown itself proud for having been an active contributor to the 2030 Agenda and has postulated that it should be based ***on genuine shared responsibilities [...] between developed and developing countries, in addition to the traditional North-South approach***³. **However, the country's** contribution to the SDGs has been mainly based on an external policy perspective. It is its overseas development agency that is taking the lead on this process, proving that the government regards the SDG mainly as a developing world issue to which Portugal can contribute with expertise and resources.

Nevertheless, Portugal still has a long way to go, both in its own good governance and in its ability to act in favour of good governance in territories of affection, such as those of the Lusophony, constituted by the Portuguese speaking countries all over the world (Angola, Brazil, Cape Verde, East Timor, Equatorial Guinea, Guinea-Bissau, Mozambique, São Tomé and Príncipe and Portugal).

1 Gorbunova, Ekaterina & Sanches, Edalina & Costa Lobo, Marina. (2015). A Satisfação com a Democracia – Portugal no Contexto Europeu. 9-18. ICS, Lisboa

https://www.researchgate.net/publication/292323244_A_Satisfacao_com_a_Democracia_-_Portugal_no_Contexto_Europeu

2 Economist Democracy Index (EDI) – Portugal: <https://infographics.economist.com/2018/DemocracyIndex/>

3 Sustainable Development Goals Knowledge Platform, Portugal: <https://sustainabledevelopment.un.org/memberstates/portugal>

Taking to reference SDG16- **“Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”**, which covers targets related to the fight against corruption and transparent institutions, there is still much progress to be made domestically to increase the quality of government, to fight corruption or even assist other low-income countries to build stronger and better institutions.

The Portuguese government selected strategic priorities for the implementation of the 2030 Agenda for Sustainable Development from SDGs 4, 5, 9, 10, 13 and 14. Good governance and anticorruption measures have not received sufficient attention in the national implementation plan, although they are crucial instruments to the fulfilment of above-mentioned goals, besides being at the core of SDG16 itself.

In 2017, TI PT conducted an independent assessment on the Portugal’s progress towards the specific SDG 16 targets on the fight against corruption and good governance (16.4, 16.5 and 16.10)⁴. It made clear that the inefficiencies in preventing money laundering and the promotion of foreign investment without any regard over their origin may contribute to the impoverishment of **developing countries, as those countries’ elites find Portugal a safe** haven for their stolen assets and illicit funds. In fact, over the years, a transnational type of corruption emerged, largely associated with the growing role of Portuguese businessmen in emerging markets.

Simultaneously, Portugal also needs to increase the transparency and integrity of its own institutions, particularly concerning political office holders, political financing and lobbying. Strong and trustworthy public institutions are the cornerstone of healthy democracies and contribute to the fulfilment of all other SDG.

⁴ SDG16 Portugal, July 2017: <https://transparencia.pt/wp-content/uploads/2018/02/SDG16PTfinal.pdf>

SECTION II – FREEDOM OF EXPRESSION

Please describe how your government approaches freedom of expression and press freedom as well as any restrictions that have been placed on the press.

- *The right of every person to freedom of opinion and of expression, including to exchange and receive ideas and information through any media, regardless of frontiers.*
- *The right of the press to collect, report and disseminate information, news and ^{and} opinions, subject only to restrictions necessary in a democratic society and prescribed by law, while bearing in mind evolving international practices in this field.*

Portugal is a free and democratic country that ensures constitutional protection of fundamental freedoms.

Journalists, political activists and civil society organizations can act in full freedom, both to form media outlets or NGOs and operate without restriction. However, as regards media freedom and pluralism, two major problems persist.

Firstly, the media market in Portugal is concentrated around four major media groups that hold the main news outlets, limiting competition and pluralism. Secondly, shrinking advertising revenue means newsrooms have been losing resources in the past few years, and journalists are more often employed through precarious contracts which may limit their independence to report freely.

Access of information is also guaranteed by law, but public institutions remain passive in their information disclosure. Proactive disclosure obligations are limited (and even then, not conveniently enforced) and generally the onus is on citizens or journalists to request information from public authorities, which have often refuse to allow access to sensitive information without proper legal justification. Not having clear penalties for non-compliance with access to information legislation remains a major hindrance to the exercise of the access to information rights.

Finally, although freedom of expression is protected by the Constitution and laws of Portugal, defamation and libel laws remain a very real practical obstacle to the full exercise of free speech.

Defamation is a criminal offense in Portugal and there is an unfortunate practice by public institutions and large corporations to target critics via defamation proceedings, both in criminal and civil courts, forcing journalists and/or political activists to expend a lot of time, money and effort in their own defense against such defamation suits.

Portugal has been convicted several times by the European Court of Human Rights for violating freedom of expression commitments in cases where Portuguese courts have convicted journalists, civil society activists or regular citizens of defamation offenses.

This also has an impact on corruption repression and prevention, since whistleblowing protection has been completely disregarded by Portuguese authorities and there is no dedicated law for whistleblowers, who are then discourages to speak out against abuses for fear of reprisals which often include defamation proceedings being opened against them.

SECTION III - POLITICAL PARTICIPATION

Please explain how your government provides for regular, free, and fair elections and full participation for all citizens. Please also detail any challenges citizens face in exercising their participation in elections and public service

The will of the people shall be the basis of the authority of government, as expressed by exercise of the right and civic duties of citizens to choose their representatives through regular, free and fair elections with universal and equal suffrage, open to multiple parties, conducted by secret ballot, monitored by independent electoral authorities, and free of fraud and intimidation.

- *The right of every person to equal access to public service and to take part in the conduct of public affairs, directly or through freely chosen representatives.*
- *The right of those duly elected to form a government, assume office and fulfill the term of office as legally established.*

While the legal framework is generally strong and citizens and civil society organizations (CSOs) are granted the freedom to assemble and operate without interference, in practice some very real constraints remain that prevent the strengthening of civil society engagement and public participation in the Government of their communities.

There is a clear need to bridge this gap between the legislative guarantees and practice, on what concerns capacities and resources of CSOs, but also the actual access to decision makers. This requires a persistent effort from civil society to organize in more impactful ways, but also public policies that effectively create more and better conditions for the Constitutional and legal rights of citizens to be exercised in practice.

On the legal side, laws applicable to the civil society organizations are abound, dispersed in different legal statutes and sometimes difficult to navigate. Citizens enjoy the right to petition Parliament and even start legislative processes by popular initiative, but the administrative burden of such proceedings makes them less accessible to informal groups and hard to reach even for more well-resourced civil society organizations. Most petitions submitted to Parliament are read and debated at breakneck speed (or not debated at all) and not properly acted on by political decision makers.

In some areas, namely urban planning, projects with environmental impacts or major legislative reforms, the government is legally required to open public consultation processes that allow citizens or civil society organizations to provide input. Such public consultations regulations, though, are often very poorly implemented. Deadlines for participation, for instance, are often tight.

Similarly, although Portugal has a fairly comprehensive law on access to information, its practical implementation is lagging, and citizens still face resistance from public institutions on sharing information and being publicly accountable. Requests of access to administrative documents are too often denied by institutions without proper legal ground, forcing citizens to sue the institution in administrative court, a lengthy and costly process most people avoid.

Since the mid-1980s to early 1990s, public policy (both at the national and at local government levels) has prioritized partnerships with civil society organizations to provide a myriad of social services to populations. This is the reason why the civil society sector in Portugal is mainly comprised of the so-called IPSS – Private institutions for social solidarity. These are civil society organizations which provide social services to local populations, ranging from child care to food provision, special education, elderly care, etc.

IPSS are generally very reliant on public subsidies to operate, which limits their practical independence. Furthermore, they do not frequently engage with political decision-makers in advocating for specific public policies.

More politically engaged civil society organizations are rare in Portugal and tend to be centred more on environmental issues and labour issues (in the case of workers' unions). These also suffer from a lack of funding sources that can guarantee their effectiveness and independence, which limits the scope of civil society work in Portugal.

SECTION IV - PROTECTION AND PROMOTION OF HUMAN RIGHTS

Please describe your government's commitment to protecting and promoting human rights, particularly those of minorities and disadvantaged groups.

- *The right of every person to equal protection of the law, without any discrimination as to race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*
- *The right of every person to freedom of thought, conscience and religion.*
- *The right of every person to equal access to education.*
- *The right of every person to respect for private family life, home, correspondence, including electronic communications, free of arbitrary or unlawful interference.*
- *The right of every person to freedom of peaceful assembly and association, including to establish or join their own political parties, civic groups, trade unions or other organizations with the necessary legal guarantees to allow them to operate freely on a basis of equal treatment before the law.*
- *The right of persons belonging to minorities or disadvantaged groups to equal protection of the law, and the freedom to enjoy their own culture, to profess and practice their own religion, and use their own language.*
- *That all human rights – civil, cultural, economic, political and social – be promoted and protected as set forth in the Universal Declaration of Human Rights and other relevant human rights instruments.*

Both the Portuguese Constitution and law provide ample guarantees of independence, freedom of assembly and organization and the ability to operate free from harassment or constraints by the Government – with the exception of people and organizations promoting militaristic, racist, fascist and/or anti-democratic values.

Other constraints regarding hate speech also apply.

Beyond those guarantees, Portuguese legislation or institutional practice involves civil society in issues of public policy, namely related to the protection and promotion of Human Rights

SECTION V - RULE OF LAW

Please describe how your government upholds the rule of law and detail any challenges to the independence and impartiality of the country's judiciary.

- *The right of every person to be free from arbitrary arrest or detention; to be free from torture and other cruel, inhumane or degrading treatment or punishment; and to receive due process of law, including to be presumed innocent until proven guilty in a court of law.*
- *That the aforementioned rights, which are essential to full and effective participation in a democratic society, be enforced by a competent, independent and impartial judiciary open to the public, established and protected by law.*
- *That elected leaders uphold the law and function strictly in accordance with the constitution of the country concerned and procedures established by law.*

Since the Carnation Revolution on the 25th April 1974, the Portuguese Judiciary is completely independent from the political system and authority. Nevertheless, we need to distinguish between the organization of the judicial system, allowing judges and public prosecutors to perform independently from the executive and legislative powers, from the judicial structure and resources available to judges and public prosecutors (strictly connected to governance issues) that in fact greatly constrain their work. 5

Over the years, the systemic lack of financial and human resources had impact on the public perceptions on the Judiciary – the sense of social injustice -, but fortunately not on the rule of law **nor on the Judiciary's democratic legitimacy.**

As regards the conduct of law enforcement authorities, persistent complaints have been made of abuses by police forces and prison authorities, namely against ethnic minorities.

The latest report by the Council of Europe's anti-torture committee⁶ clearly indicates that problems persist of violence and ill-treatment against prisoners, requiring greater attention and commitment from Government and internal oversight bodies responsible for investigating abuse allegations involving the police or prison services.

5 Dias, João Paulo & Almeida, Jorge. (2010) Efectividade da independência e/ou autonomia do Poder Judicial em Portugal: reflexões sobre as condições externas e internas. Julgar – Revista da Associação Sindical dos Juizes Portugueses, Nº 10 <http://julgar.pt/wp-content/uploads/2015/10/077-101-Independ%C3%Aancia-do-poder-judicial.pdf>

6 <https://www.coe.int/en/web/cpt/-/anti-torture-committee-urges-portugal-to-tackle-police-ill-treatment-and-the-poor-treatment-of-prisoners>

RECOMMENDATIONS

We welcome the renewal of the commitment of Portugal to the principals of the Warsaw Declaration.

Nevertheless, we would like to see commitment translated into concrete and efficient measures regarding transparency and accountability of the political and public sphere.

More effective anticorruption initiatives, including the prevention and fight against illicit financial flows and money laundering, as stated in the UN SDG16.4 target, would foster civic engagement towards democracy, builds trust in democratic institutions, and prevent populism.

Therefore, we recommend the following measures:

A. Combat illicit financial flows and money laundering:

1. *Enforce the compliance of the AML obligations of the DNFBP and the respective regulators*
2. *Enforce international judiciary cooperation and asset recovery policy with non-EU countries*

B. Increase the transparency, integrity and accountability of the institutions

3. *Ensuring equal access of all interested parties, including civil society, to the various stages of the law-making process.*
4. *Draft and implement a comprehensive and efficient conflict of interest policy, with reporting, oversight and sanctions*
5. *Draft and implement a more comprehensive and efficient Freedom of Information Law*

C. To take concrete steps to combat corruption, mainly through:

7. *Drafting a Whistleblower Protection Law;*
8. *Increasing the financial and budgetary autonomy of the judiciary bodies*

