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Summary record of the 2937th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 24 October 2012, at 10 a.m.

Chairperson: Mr. O'Flaherty (Vice-Chairperson)

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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant
(continued)

Fourth periodic report of Portugal (continued) (CCPR/C/PRT/4; CCPR/C/PRT/Q/4 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Portugal took places at the Committee table.*
2. **Mr. Inácio** (Portugal) said that the National Plan for the Integration of Immigrants contained 295 goals, 67 of which had to be achieved every year. Fifteen of the 20 areas in the plan had recorded an implementation rate of over 70 per cent, 4 areas had scored over 50 per cent and only 1 area had fallen short of 50 per cent. That gave an overall implementation rate of 81 per cent. The reason why not all targets had been met was that the plan had been formulated in 2006 and 2007, in an entirely different financial and economic context; a subsequent lack of resources had impeded its fulfilment.
3. He wished to correct the information contained in the written replies to point 11 in the list of issues. Under Act 23/2007 it was impermissible for the police to hold an illegal immigrant in pretrial detention or for the courts to order such detention.
4. **Mr. Thelin** asked whether the lack of shadow reports from Portuguese non-governmental organizations (NGOs) and the absence of Portuguese NGOs at the meeting were due to a lack of burning issues.
5. Referring to point 11, in the list of issues, he sought confirmation that an illegal immigrant could be held in pretrial detention only if he or she had engaged in criminal activities and that there had to be firm evidence that he or she had done so. More generally, he wished to know what the average length of pretrial detention was. How long did a suspect have to wait before being sent for trial?
6. Turning to point 12, he noted that the delegation's responses had made it plain that the 6-hour period of detention for identification purposes was an administrative measure and should not be confused with the 48-hour period of coercive detention. However, given that the physical environment remained the same, it was unclear whether a formal decision had to be taken to move from one form of custody to the other. He wished to receive assurances that any time left over from the first period would not be used to extend the second. He wondered whether the authority of the internal mechanisms of control mentioned in paragraph 66 of the replies to the list of issues also covered the period of time a person could be held for identification purposes.
7. Moving on to point 13, he enquired whether the right of access to legal counsel could be exercised during the identification phase. Could that right be waived in certain circumstances? Also in that context, he wished to know to what extent legal counsel was present during the pretrial detention phase.
8. With reference to point 14 in the list of issues, could he take it that Portugal abided by the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials? Were law enforcement officers allowed to use tasers? He wished to know how many complaints had been received of ill-treatment during pretrial detention and police custody. Did the phrase "were filed" in the table in paragraph 78 of the State party's replies mean that the cases concerned had been disposed of? If that was the meaning of the term, he was anxious to know how many cases had ended with the acquittal of the suspect and how many had resulted in that person's conviction. He requested an explanation for the discrepancy in the figures concerning the number of complaints in paragraphs 77 and 80. Were the

complaints investigated by the Ombudsman included in the numbers of complaints quoted in the replies?

9. As far as point 15 was concerned, he sought confirmation that the draft Code on the Execution of Sentences and Security Measures had in fact entered into force on 12 April 2010. Would the building of the new prison in Angra do Heroísmo alleviate overcrowding? Lastly, he enquired whether the inmates of other prisons had access to the drug-free facilities mentioned in paragraph 84 of the replies, or whether they were open only to persons convicted of certain crimes. In other words, he wondered what criteria applied.

10. **Mr. Neuman** asked why juvenile offenders over the age of 16 were not separated from adult offenders in some prisons. Were the reasons financial or a matter of convenience? Were juvenile defendants over the age of 16 housed with adult defendants during pretrial detention? He was anxious to learn if there were any circumstances in which accused or convicted juveniles were not separated from adult offenders. If the State party was not complying with article 10 of the Covenant, what plans were there to remedy the situation?

11. He asked if there had really been only 189 convictions for domestic violence between 2008 and the first half of 2012, or whether that number referred to a special subset of criminal proceedings? He wished to know exactly how many victims and offenders had been targeted for specialized technical support. He would also welcome a brief description of the kinds of specialized technical support that were available to offenders. What criteria were used by the State party when deciding whether to respond to domestic violence by means of non-punitive measures as opposed to criminal prosecution? Further, he wished to know how the current shelter capacity mentioned in paragraph 94 of the replies compared with the real need for shelter space in the context of tens of thousands of annual complaints. As the reply to the issues raised in point 17 did not specifically mention restraining orders or protective measures accompanying such orders, he wondered if the evaluation of the Third National Plan against Domestic Violence had led to any conclusions about the growing penchant of the judicial authorities to impose more robust restraining orders.

12. **Ms. Waterval** asked for more details about the national campaign “Raise your hand against smacking!”. Had the results of all the new and revised laws and the campaign to protect children against violence and abuse been evaluated?

13. She requested a more detailed breakdown of the data on victims of human trafficking and persons convicted of that offence. She sought information about the follow-up to the First National Plan against Trafficking of Human Beings. Would there be a second plan? She would welcome more information about the way in which the two challenges mentioned in paragraph 117 of the replies had been met. What had been the outcome of the study on trafficking in women for the purpose of sexual exploitation? Was it enough to have only one shelter and protection centre for victims of trafficking? Lastly, she was curious to know more about the “various institutions” referred to in paragraph 113 of the replies.

14. Turning to point 20, she asked if there had been any follow-up to the Plan of Action for the Integration of Persons with Disabilities and whether the outcome of the plan had been evaluated.

15. **Ms. Motoc** asked what practical steps had been taken to enforce the ban on the corporal punishment of children.

16. **Mr. Fathalla** wished to know if representatives of ethnic and minority groups had participated in the drafting of the State party’s report. Had women’s NGOs been consulted during its preparation?

17. **Ms. Ávila** (Portugal) said that when the National Commission for Human Rights had been established, one of its prime objectives had been to expand the dialogue with civil society and NGOs which were specifically active in the field of human rights. During the preparation of the report, working group meetings had been held at which interested NGOs had been asked to submit their comments on the draft report. Those meetings had also been used to encourage civil society to present shadow reports and to attend the Committee's meetings in Geneva. The delegation was disappointed by their absence. NGOs promoting women's rights and equality were very active and very vocal in national civil society. They worked closely with the Commission for Citizenship and Gender Equality and they had been involved in the preparation of the report. Representatives of ethnic and minority groups had also participated in its drafting. The High Commissioner for Immigration and Intercultural Dialogue had likewise provided valuable input to the fourth report and to the replies to the list of issues.

18. **Mr. Santos Pais** (Portugal) explained that detention for identification purposes was a police measure. At that stage there would be no evidence that the person detained might be a suspect. That person had the right to communicate by telephone with a relative in order to ask him or her to bring identity documents to the police station. Once those documents had been supplied, the person would be released. There were specific rules governing situations in which a person could be taken to a police station for identification. Persons found on the scene of a suspected crime had a duty to identify themselves to law enforcement officers. If they were not carrying any identity documents they would be taken to a police station. In principle, the 6-hour identification period did not overlap with the 48-hour period allowed for judicial scrutiny, because following positive identification the person concerned was sent home, unless he or she was suspected of committing a particular crime. The 48-hour coercive detention period would begin as from the time the person became a suspect and subject to further investigation by the Public Prosecution Department.

19. There had been important changes in ordinary pretrial monitoring mechanisms in the past few years. All law enforcement agencies, within either the Ministry for Internal Affairs or the Ministry of Justice, had internal audit agencies responsible for conducting investigations into any alleged misconduct by one of their members. In some cases, the persons responsible for those units were members of the Public Prosecution Department, while in others they were members of the law enforcement agency itself. There was also an external monitoring mechanism. In the case of the Ministry of Internal Affairs, the General Inspectorate for Internal Affairs, which was run by a member of either the judiciary or the Public Prosecution Department, conducted fully independent investigations. There was also an independent inspectorate to conduct investigations related to services supervised by the Ministry of Justice, such as the prison services. The inspectorates usually forwarded to the Public Prosecution Department any information that could lead to criminal proceedings. It was possible for several investigations to be conducted in parallel, by the internal and external mechanisms and the Public Prosecution Department.

20. Specific rules on matters such as police custody and the interventions of law enforcement agencies had been drafted on the basis of some of the Committee's concluding observations on Portugal's previous report. In addition to the monitoring mechanisms in place, detainees could submit complaints to the Ombudsman. The office of the Ombudsman also frequently made unannounced visits to prison and police detention facilities. Detention of any kind was always subject to judicial scrutiny, either after the prescribed 48-hour period of custody or during the phase of investigation by the Public Prosecution Department. The examining judge had always to be present for certain actions of the Public Prosecution Department that could potentially infringe the rights of the accused.

21. The concerns about legal counsel raised by Mr. Thelin and Sir Nigel Rodley would be brought to the attention of the Ministry of Justice, in order to ascertain whether the relevant legislation could be made more flexible.

22. The requirement for legal counsel to be present did not apply to custody for identification purposes, as no criminal charge was being brought against the detained person, and he or she could have immediate access to a relative. Of course, detained persons could contact their lawyers in such cases if they wished. In respect of pretrial detention, however, the Code of Criminal Procedure established the cases in which the presence of a lawyer was mandatory, such as any contact with the Public Prosecution Department, but the accused or suspect always had the right to contact his or her lawyer during any phase of the investigation procedure or pretrial detention. Restrictions were applied only in cases of highly organized crime, terrorism or violent crime.

23. The use of firearms and tasers by law enforcement personnel was very restricted and intended as a last resort. Rules had been drafted on the special use of such weapons, and law enforcement personnel were trained on how and when to use them. There was a follow-up procedure to ascertain whether they had been used correctly, and if there was any suspicion that there had been excessive use of force, disciplinary proceedings would be initiated.

24. **Ms. Carvalho** (Portugal), responding to point 11 in the list of issues on the average length of pretrial detention, said that there were no statistics available on that indicator. However, minimum and maximum durations for pretrial detention had been amended under the 2007 reform of the Criminal Code. The general limit had been reduced from 6 months to 4 months, while for more serious crimes it had been reduced from 18 to 14 months. There were periodic reviews of the conditions for pretrial detention every 3 months. It was the most serious coercive measure in the Portuguese system, and was applied only in very specific cases where the lawfulness of the pretrial detention needed to be monitored.

25. **Ms. Redinha** (Portugal) said that the adoption of the new Code on the enforcement of sentences and measures involving deprivation of liberty, which had been in force since 2010, had been one of the most important developments in the period under review, serving to update a system that had been introduced in 1979. The new Code had replaced the previous fragmentary legal framework with a single document that gave an overview of the whole penitentiary system and of the principles underlying the enforcement of sentences.

26. With regard to the legal status of inmates, the Code provided for the right to consultation with legal counsel, access to one's personal file, the possibility for inmates to have their children with them up until the age of 5, and the right to protection of private and family life. The Code reinforced the guarantees afforded to inmates vis-à-vis the prison administration. For instance, they now had the right to challenge decisions forbidding them to grant interviews to the media. The prison administration was also subject to tighter controls. For example, the decision to place an inmate in an open regime must be approved by the court, and decisions concerning the retention of mail were immediately communicated to the Public Prosecution Department for verification of their legality. There were new limits to the duration of more stringent security measures, such as placement in solitary confinement.

27. On the basis of an assessment of specific needs and risks, an individualized programme of interventions was drawn up for each inmate, together with an individual rehabilitation plan that was periodically evaluated and updated. Prisoners could work in business-oriented productive units, and a range of education and vocational training programmes were available.

28. Regarding the issue of overcrowding, a plan was under way to increase the capacity of the prison system, which included remodelling and extension of prison facilities and

building a number of new prisons. The first phase of the plan covered 2012 and 2013, and was intended to provide more than 2,000 additional places in the prison system. The second phase, which was to start in 2015, was still in preparation.

29. On the question of drug addiction, she said that early in the intake process, drug abusers were evaluated and encouraged to undergo treatment and participate in an abstinence programme. They could ask to be transferred to another prison to attend a treatment programme. Juvenile and adult offenders were never housed together.

30. **Mr. Santos Pais** (Portugal) said that 145 complaints of excessive use of force had been made to the Directorate-General for Prison Services in 2009; 125 of them had been withdrawn, 5 had resulted in disciplinary measures, and 15 were pending. As for the National Republican Guard — a force with more than 22,000 members — there had been 31 complaints in 2011, all of which had gone to court. Twenty-eight of those were still under investigation and three had been withdrawn. He also provided figures for the overlapping disciplinary proceedings. In respect of the Public Security Police, which also had more than 22,000 members, there had been three suspensions and no fines in 2011. The General Inspectorate of Internal Affairs had received 119 complaints since 2009, 17 of which had led to disciplinary proceedings.

31. The delegation would provide the Committee with information leaflets that were posted in places of police custody, outlining the rights of suspects or accused persons in several languages.

32. The problem of domestic violence was still far from being resolved, but major efforts had been undertaken in the past few years to control and prevent such offences. The notion of shame often prevented victims from reporting cases. Systematic awareness-raising campaigns were being conducted, and the delegation would distribute to the Committee members a number of leaflets that used shocking images to raise awareness of the enormity of the problem. Criminal punishment was not necessarily the only solution. Attention was paid to preventing the occurrence of domestic violence and to giving adequate shelter and protection to the victims, as well as obliging the perpetrators to attend training courses and, if necessary, imposing alternative coercive measures besides detention.

33. **Ms. Carvalho** (Portugal) said that the most frequent form of domestic violence was between partners, and the majority of victims were women. In 2011, 23,743 cases had been reported to the police, although not all reports resulted in prosecution. There had been 109 court proceedings for domestic violence between partners in 2008, 856 in 2009 and 2,096 in 2010. The introduction of the law on domestic violence in 2009 and the ongoing campaigns were therefore clearly yielding results. The delegation would provide the Committee with DVDs produced by APAV, a Portuguese NGO providing support to victims that collaborated with the ministries of justice, internal affairs and social security. There had been 73 convictions in 2008, 418 in 2009 and 1,078 in 2010. Although the official statistics were not yet available, there had been approximately 1,900 convictions in 2011.

34. **Mr. Santos Pais** (Portugal) said that the psychosocial services available included crisis centres, emergency and victim information helplines, and shelters provided by public bodies and civil society. A national network of domestic violence centres had been established in 2005 to provide an integrated response to the phenomenon. There were currently 36 shelters with a capacity for more than 600 women and children. The State party had also been working on minimum standards for victim support. Law enforcement agencies attached particular importance to domestic violence, establishing special units throughout the country, and providing specific training to all personnel concerned.

35. The problem of restraining orders had to be seen in the light of the growing emphasis, under the revised Code of Criminal Procedure, on alternatives to imprisonment. There had been a major shift towards the use of electronic surveillance for perpetrators of domestic violence.

36. **Mr. Inácio** (Portugal) said that, according to police data, there had been 25 victims of human trafficking in 2008, 24 in 2009, 6 in 2010 and 15 in 2011. For statistical reasons, police data on cases of human trafficking sometimes included cases of procurement for prostitution. Fifty-nine cases of human trafficking or procurement had been tried in 2008 and 63 in 2010. In 2009, 91 individuals had been convicted for trafficking in persons or procurement and there had been 94 such convictions in 2010. The first National Plan against Trafficking in Human Beings had focused on prevention, awareness-raising, training and investigation. The general public was now aware that trafficking was a crime and more people realized that individuals they encountered in their daily lives might be victims of human trafficking. The second such plan, for 2010–2013, was currently being implemented by some 20 ministries and 20 NGOs.

37. As indicated in paragraph 112 of the written replies, the Shelter and Protection Centre provided comprehensive support for victims of trafficking. Women and child victims received physical and emotional care, information on their legal and social rights and help with social integration. Most victims stayed for a maximum of one year. A 2007 study on trafficking in women for the purpose of sexual exploitation, published in 2009, had recommended inter alia that policies to eliminate that phenomenon should be integrated with efforts to combat violence against women and that steps should be taken to raise awareness of the criminal nature of trafficking in women.

38. **Ms. Ávila** (Portugal) said that the National Rehabilitation Institute had monitored and regularly assessed the first Plan of Action for the Integration of Persons with Disabilities or Incapacity (2006–2009). Of the 99 objectives contained in the Plan, 68 had been achieved, 12 were in the implementation phase and 19 had not been met. In December 2010, it had been replaced by a National Disability Strategy (2011–2013) which focused on disability and multiple discrimination; justice and the exercise of rights; autonomy and quality of life; accessibility and design for all; and administrative modernization and information systems. The Strategy was also monitored by the National Rehabilitation Institute.

39. **Ms. Redinha** (Portugal) said that corporal punishment of children fell within the scope of the two specific crimes of domestic violence and ill-treatment of vulnerable persons. As far as domestic violence against children was concerned, 76 cases in 2008, 49 in 2009 and 28 in 2010 had led to 43, 24 and 13 convictions, respectively. In cases involving ill-treatment of children and other vulnerable persons, such as elderly persons, there had been 302 convictions in 2008, 363 in 2009 and 242 in 2010.

40. **Mr. Thelin** said that it would be interesting to know why data were not available on the average length of detention. Given that the Code of Criminal Procedure specified maximum periods of detention, he asked what action was taken if such periods were exceeded.

41. **Mr. Santos Pais** (Portugal) said that the maximum periods for which persons could be held in pretrial detention had decreased since the previous reporting period. If the maximum period was exceeded, disciplinary action was taken against the relevant law enforcement personnel or the Public Prosecution Department. Any officials who were aware of such a situation were obliged to report it. If the detainee had still not been freed, he or she could institute a habeas corpus procedure, which was brought before the Supreme Court immediately. Anyone who was detained beyond the prescribed maximum period was entitled to compensation.

42. **Mr. Neuman** asked whether juvenile offenders between the ages of 16 and 18 were ever held together with adults.

43. **Ms. Redinha** (Portugal) replied that they were never held together, but could be housed in separate wings in the same facilities.

44. **Mr. Santos Pais** (Portugal) said that the Committee's questions and comments would assist the Portuguese authorities in improving the implementation of the provisions of the Covenant.

45. **Ms. Andresen Guimarães** (Portugal) thanked the Committee for the fruitful and constructive dialogue and its guidance, which was fundamental to the Government's continuing efforts to comply with its obligations under the Covenant. She reaffirmed Portugal's commitment to the promotion and protection of human rights. The United Nations treaty body system constituted a fundamental part of the international human rights framework. Her country had been actively engaged in the process of strengthening the treaty body system and would continue to support the treaty bodies and their independence. Her delegation regretted that no Portuguese NGOs had participated in the consideration of the fourth periodic report. In preparation for the Committee's current session, the Government had broadly consulted with civil society within the framework of the National Human Rights Commission and had encouraged NGOs to submit their reports and attend the meetings with the Committee. The Government would take the Committee's concluding observations into careful consideration, and they would be shared with all the members of the National Human Rights Commission and the NGO network. Portugal's candidature for membership of the Human Rights Council for 2015–2017 was a national priority and a means of consolidating its commitment to improving the human rights situation in her country. Speaking on United Nations Day, she thanked the Committee for ensuring that the dialogue with her delegation had been imbued with the spirit, values and principles enshrined in the Charter of the United Nations.

46. *The delegation of Portugal withdrew.*

The meeting was suspended at 12.30 p.m. and resumed at 12.35 p.m.

Organizational and other matters

47. **The Chairperson** invited Mr. Flinterman to present the proposals he had received for the agenda of the Committee's informal retreat, to be held in The Hague.

48. **Mr. Flinterman** said that the retreat would take place from 24 to 26 April 2013. It would be an excellent opportunity to discuss the changing atmosphere in which the Committee now worked, as one of nine treaty bodies. Other suggestions for the agenda included remedies within the framework of the individual communications procedure (on which Mr. Salvioli was currently preparing a paper); the presentation and drafting of the Committee's Views on individual communications; and the report of the United Nations High Commissioner for Human Rights on strengthening the treaty body system (A/66/860). The retreat would be financed by The Hague Institute for Global Justice, within the framework of a project funded by the Dutch Ministry of Foreign Affairs.

49. **Mr. Fathalla** said that the Committee should widen the discussion of its relationship with the other treaty bodies to include an examination of the provisions of the Covenant relative to the provisions of the other human rights treaties. A significant number of provisions were duplicated in the different treaties, which called for more coordination between the treaty bodies. He proposed that the Committee should also examine the role of the Meeting of the States Parties to the International Covenant on Civil and Political Rights, which was currently limited to electing the Committee members. It might be useful to assign a greater role to that Meeting in order to avoid interference in the Committee's work

from States that were not parties to the Covenant but were Member States of the United Nations.

50. **The Chairperson** noted that the Conference of States Parties to the Convention on the Rights of Persons with Disabilities engaged in substantive interaction with the Committee on the Rights of Persons with Disabilities.

51. **Mr. Salvioli** proposed that the Committee should examine the way in which it dealt with follow-up to concluding observations and individual communications. The current procedures were open to improvement, as they required a great deal of time and energy on the part of the Committee, yet did not often produce a significant impact on the ground.

52. **Sir Nigel Rodley** endorsed the proposals that had been made for the agenda. It would be useful to have the opportunity to meet with other human rights bodies based in The Hague.

53. **The Chairperson** said that the Bureau, together with Mr. Flinterman, would take account of the comments that had been made in preparing the draft agenda of the retreat.

54. **Mr. Flinterman** said that it would be useful to have a final discussion on the matter at the 107th session in March 2013, particularly in order to enable new Committee members to participate in setting the agenda. He was in the process of organizing a working dinner for the Committee with judges of the International Court of Justice and another with representatives of civil society in the Netherlands. He would welcome other suggestions in that regard.

The meeting rose at 12.55 p.m.