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Summary record of the 2936th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 23 October 2012, at 3 p.m.

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

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The meeting was called to order at 3.05 p.m.

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

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

1. *At the invitation of the Chairperson, the delegation of Portugal took places at the Committee table.*
2. **Ms. Andresen Guimarães** (Portugal) recalled the major initiatives taken since the submission of the State party's third periodic report in 2002 to follow up on the Committee's recommendations, including the adoption of rules concerning the registration of detentions and the use of measures of restraint, and of a new code on the enforcement of sentences and measures to address overcrowding in prisons; the harmonization of domestic legislation with the prohibition of extradition, expulsion or refoulement to a country where there were reasons to believe that a person might be subjected to torture and the granting of suspensive effect to appeals against administrative decisions rejecting asylum applications; the adoption of a plan to eliminate the exploitation of child labour; ongoing efforts to combat discrimination against Roma; the establishment of a national human rights commission and other competent bodies in this area; the inclusion of sexual orientation in the list of grounds of discrimination prohibited by the Constitution; and the introduction of amendments to the Code of Civil Procedure and the Code of Criminal Procedure to ensure that final judgements that were inconsistent with international judicial decisions binding upon Portugal could be reviewed.
3. **Mr. Santos Pais** (Portugal), summarizing the written replies by the Government of Portugal to the questions in the list of issues, explained that while statistics had not been provided with regard to cases that included references to the Covenant, that did not necessarily mean that the Covenant had not been mentioned, but perhaps that the constitutional provisions on the protection of rights and freedoms were so detailed that the need to refer to international treaties seemed less compelling.
4. Portugal was still considering the best way to implement the Committee's Views in the Correia de Matos case, taking into account that the European Court of Human Rights had issued a decision with force of *res judicata*.
5. Notwithstanding the increase in women's participation in political and public life and their representation in decision-making positions, Portugal was still far from having reached the desired goals even though, for the first time, a woman had been appointed Prosecutor-General and the President of Parliament was also a woman.
6. A new Labour Code had been adopted to strengthen compliance with the basic principle of equal pay for work of equal value and ministerial decisions had called on all public companies to adopt gender equality plans, but there was still room for improvement.
7. Special procedures that might need to be used in combating terrorism, particularly in relation to obtaining evidence and the rights of the defence, were always supported by appropriate guarantees of their compliance with the provisions of the Covenant. Incommunicado detention was not permitted under Portuguese law.
8. **Mr. Neuman** said that it would not be surprising if the judicial community of Portugal attached more importance to the European Convention on Human Rights and the National Constitution than to the Covenant, but that some of the rights enshrined in the Covenant were not — or only minimally — protected by the European Convention. It would be interesting to know how much emphasis was placed on the Covenant in the

training of judicial personnel and what knowledge lawyers had of its provisions as an additional legal resource, taking into account that the Covenant was part of domestic law.

9. Although the Committee had found a violation of the Covenant by the State party only in one case, information would be welcome on whether a mechanism responsible for implementing the Committee's Views had been set up, and whether the implementation of the Committee's decisions fell within the remit of the national human rights commission. Regarding the Correia de Matos case, the *res judicata* force of the decision of the European Court of Human Rights was not at stake. The absence of any violation of the European Convention on Human Rights did not rule out the possibility that an offence might have been committed under the provisions of the National Constitution or of the Covenant – which had some provisions that were more stringent than those of the European Convention. There was no conflict between the obligations under the Convention and those under the Covenant. Dialogue with the delegation in that regard would be welcome.

10. **Mr. Fathalla** requested information on the new mechanism for the continuous monitoring of the application of measures to overcome the structural obstacles to implementing gender equality policies, on the ways in which civil society would be involved in the mechanism, and on the initiatives taken to appoint more women to decision-making positions in the public sector.

11. The Government had noted that the Gender Equality Act did not apply to the election of representatives to the legislative assemblies of the autonomous regions of the Azores and Madeira, and that the laws governing those elections had been drafted by the regions and submitted to the national Parliament. It would therefore be useful to know whether the Parliament could make prior recommendations to the assemblies. He asked why the regulatory and legislative measures taken to ensure equal pay for work of equal value did not achieve all the expected results and what action was taken to ensure that that same principle was observed in the private sector. Lastly, he would welcome information on the results of the pilot project for municipal mediators supporting Roma communities completed in September 2012 and wondered whether a decision had been made to extend it to other municipalities. The delegation was also invited to provide information on the mechanism that was scheduled for implementation, under the National Action Plan for Inclusion 2008–2010, to monitor the progress achieved in the integration of the Roma community, as well as on the National Roma Integration Strategy.

12. **Ms. Motoc** asked how the Government ensured the compliance of counter-terrorism measures with international standards and requested clarification of the restriction of the rights of the defence authorized by the Code of Criminal Procedure in the case of terrorist suspects. She also asked for more information on the assistance provided to Brazil and several African countries in combating terrorism.

13. **Ms. Waterval** asked whether, under article 143 of the Code of Criminal Procedure, a person suspected of terrorism or violent or highly organized crime could be denied the right to contact a lawyer and whether the restrictions under that provision were subject to judicial review. She would also welcome information on the findings of the suspected rendition flights.

14. **Mr. Bouzid** noted in paragraph 15 of the State party report that the Ombudsman was competent not only to receive complaints against public bodies and officials but also to intervene in disputes between private bodies. He wished to know how the Ombudsman intervened in such situations and how his or her decisions were implemented.

The meeting was suspended at 4.05 p.m. and resumed at 4.25 p.m.

15. **Mr. Santos Pais** (Portugal) said that the Constitution was the supreme law of the domestic legal order, followed by the international instruments to which Portugal was a

party, and domestic law. Once ratified and published in the official gazette, international instruments were self-executing and binding. In the years that had followed the adoption of the new Constitution in 1976 and the ensuing comprehensive legislative reform, regular training courses had been held for judges and prosecutors so that they could integrate into their practice the primacy of international standards where there was a conflict with domestic legislation. Since then, constant attention had been paid to training judges, prosecutors and lawyers in respect of their obligations under international human rights law.

16. In the *Correia de Matos* case, the complainant's right to defend himself in person had been denied on the grounds that it would have been contrary to his interests. There was extensive Constitutional Court case law supporting that. Conversely, the Committee had concluded that there had been a violation of article 14, paragraph 3 (d), of the Covenant and had recommended that Portugal amend its legislation to bring it into line with that provision. No decision had yet been made on the follow-up to be given to that recommendation. The Minister of Justice was responsible for deciding whether the Code of Criminal Procedure should be amended or not as recommended by the Committee. However, such an amendment would be inconsistent with the legal doctrine and case law of the Constitutional Court and other higher courts.

17. **Ms. Ávila** (Portugal) said that the process of ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment should be completed in the coming weeks. The third national plan for gender equality (2007–2010) had been assessed independently, revealing that 80 per cent of the planned measures had been effectively implemented. There were new legislative provisions aimed at better reconciling professional and family life but substantial specific changes were required that would take time to implement. The action plan against trafficking and the action plan against domestic violence were part of a range of measures to combat violence against women provided for under the national plan for gender equality. The Commission for Citizenship and Gender Equality, which was responsible for implementing the national plan, cooperated closely with civil society organizations. The fourth national plan for gender equality, currently under way, included measures to remove structural obstacles to the implementation of policies promoting gender equality. There were no positive discrimination measures promoting the participation of women in the conduct of public affairs.

18. **Mr. Santos Pais** (Portugal) said that there was no specific mechanism to implement the Committee's Views as it had concluded that Portugal had violated the Covenant only in one case. The same procedure had been followed as for the judgements of the European Court of Human Rights, with the transmission of the decision to the competent State bodies so that they could decide on the action to be taken.

19. Discussions were under way regarding the designation of the future national preventive mechanism under the Optional Protocol to the Convention against Torture, which was about to be ratified. The autonomous regions had their own political and administrative statutes and self-governing bodies, and the elections to the latter were governed by those statutes. Accordingly, the Gender Equality Act, which applied to the national Parliament elections, European Parliament elections and municipal elections, did not apply to the aforementioned elections.

20. **Mr. Rodrigues Da Silva** (Portugal) said that the pilot project for mediators supporting Roma communities in various municipalities had received broad support from the stakeholders involved, who had noted substantially improved relations between the Roma community and the authorities. The Action Plan for Immigrant Integration had also been successful, with more than 80 per cent of the planned measures carried out. Information on the measures that had not been fully implemented would be provided at the

next meeting. A targeted programme to support the professional integration of immigrants had been introduced in 2008. In the first year, it had significantly exceeded the set targets, providing assistance to more than 14,000 immigrants compared to the predicted figure of 7,500 persons each year. The number of beneficiaries was more than 12,000 in 2010, more than 13,000 in 2011 and more than 9,000 by mid-2012. To facilitate immigrant access to vocational training, a network of 21 agencies specializing in the integration of immigrants had been established in 2010, and the number of registered users — 28,132 in 2010 — was increasing each year.

21. **Mr. Santos Pais** (Portugal) said that international cooperation between governments and judicial authorities was essential in combating terrorism and that Portugal actively contributed to that endeavour. The limitations on the rights of terrorist suspects provided for under the Code of Criminal Procedure were without prejudice to the fundamental rights of the defence. They were strictly regulated and could be applied only by order of the investigating judge.

22. **Ms. Redinha** (Portugal) confirmed that terrorist suspects enjoyed the same rights and safeguards as any other suspect. Special measures were nevertheless applicable to them in view of the exceptional nature of terrorism and the national security risks entailed. The right of suspects to communicate with third parties could also be restricted until their first hearing before the judge. That restriction, however, was without prejudice to the right to communicate with a lawyer, which was non-derogable, as the Constitutional Court itself had established that any measure denying a suspect access to counsel was unconstitutional. Other exceptional measures authorized under the Code of Criminal Procedure included the restriction of the right of suspects to meet privately with their lawyer, the conduct of searches outside working hours, and wiretapping. All those measures were taken in accordance with the principles of necessity and proportionality and were subject to judicial review.

23. **Mr. Santos Pais** (Portugal) said that the thorough investigation into the possible flight over Portuguese territory of aircraft carrying prisoners heading to Guantánamo, conducted by a special unit of the Prosecutor-General's Office that had made its findings public, had found no evidence to support the allegation. The Ombudsman was competent to consider complaints regarding acts or omissions of the authorities or, in some rare instances, of private bodies carrying out public functions. The 5,796 complaints received by the Ombudsman in 2011 concerned mainly social security, the civil service, the administration of justice, taxation, consumer law and citizenship law. The Ombudsman was empowered to make recommendations to State bodies on measures to be taken to prevent and redress injustices and could, as appropriate, refer the matter to the Constitutional Court. In 2011, it had made 15 recommendations, most of which had been acted upon.

24. **The Chairperson** thanked the delegation for its replies and invited Committee members who so wished to ask further questions.

25. **Mr. Flinterman** stressed that the elimination of discrimination, as required by the Covenant, might call for temporary positive discrimination measures, and wished to know the State party's position on the subject. It was his understanding that the central Government's ability to enforce the law — particularly the Gender Equality Act — in the autonomous regions was limited in the light of their constitutional status. It would be beneficial to know to what extent the State party could ensure the effective implementation of the law and, more generally, its international obligations, throughout the territory.

26. **Mr. Neuman** asked whether the new provisions of the Code of Criminal Procedure, which allowed for the review of judgements handed down by national courts, could be implemented in order to give effect to the views of the United Nations treaty bodies. With regard to the right to defend oneself in person, he recalled that in the case of *Carlos Correia*

de Matos v. Portugal, the Committee had emphasized that the right to defend oneself was not absolute and that it was the task of the competent courts to assess whether in a specific case the assignment of a lawyer was necessary in the interests of justice.

27. **Sir Nigel Rodley** noted with satisfaction that all individuals held in custody, including terrorist suspects, had the right to be assisted by a lawyer. With regard to the Correia de Matos case, at a time when persons accused of the most serious crimes under international law defended themselves in person, the State party could consider taking a more flexible approach, based on the mandatory assistance of a lawyer solely for the provision of legal advice. That compromise solution would safeguard the interests of justice and the inherently autonomous exercise of all human rights, including the right to defend oneself.

28. **Ms. Ávila** (Portugal) agreed that positive discrimination measures could be useful in achieving the objectives of the Covenant. There was no obstacle to their implementation in the State party, which had already used such measures to promote gender equality in public enterprises.

29. **Mr. Santos Pais** (Portugal) said that the Gender Equality Act was not applicable to the regions because, under the Constitution, elections to the autonomous region bodies were devolved to the regions themselves. Apart from that exception, the Constitution and laws of Portugal applied throughout the territory. Any regional law inconsistent with the Constitution would of course be nullified by the Constitutional Court. Article 449 of the Code of Criminal Procedure referred to the decisions made by “international bodies”, which could be considered *prima facie* to cover the views of the United Nations treaty bodies.

30. **The Chairperson** thanked the delegation for the additional information it had provided and invited it to turn to questions 11 to 21 of the list of issues.

31. **Mr. Santos Pais** (Portugal) said that pretrial detention was subject to the conditions laid down in the Code of Criminal Procedure. It could be ordered only when a person was strongly suspected of committing an intentional offence punishable by more than 5 years’ imprisonment or a violent offence, a terrorist act or a highly organized offence punishable by more than 3 years’ imprisonment.

32. Detention for identification purposes – an administrative measure with a maximum duration of 6 hours, was entirely distinct from detention *per se*. If it was deemed necessary to keep a person in detention once his or her identity had been checked, the custodial regime applied. The individual would thus have to be brought within 48 hours before a judge, who would order his or her release or apply an appropriate coercive measure. Any person deprived of their liberty would be informed of their rights and receive the assistance of a lawyer of his or her choice in custody. Any person detained by the judicial police for purposes other than identity checks had the right to contact a third party, usually a relative.

33. To address the disproportionate use of force by the police, emphasis was placed on training and the ongoing monitoring of police activities. Responsibility for monitoring fell with various internal and external mechanisms, operating under the auspices of the Office of the Ombudsman, the Office of the Prosecutor-General and the judiciary. Specific rules clearly establishing the principles on the use of force and firearms had been adopted, as well as guidelines for the management of critical situations.

34. The problem of prison overcrowding was addressed in different ways, by: amending the legislation on pretrial detention — particularly its duration — refurbishing and expanding prisons, and building new facilities. All minors convicted of offences were detained in special units, separated from adults. Offenders aged 16 to 21 years were subject to a special prison regime and were in principle detained separately from adults.

35. The State party was making significant efforts to combat domestic violence. The actual concept of domestic violence had been clarified and now included physical and psychological abuse. The term “victim” referred to former spouses or persons who were or had been in a marital relationship with the perpetrator, even if they did not live under the same roof. Domestic violence was now automatically prosecuted and punished more severely. A law on compensation for victims of violent crimes and domestic violence, and a law on the legal regime applicable to the prevention of domestic violence and the protection and assistance of victims, had been adopted in 2009. Training, in victim support, in particular, was provided regularly to members of the police, the judiciary and the Office of the Prosecutor-General. That, together with the many awareness-raising campaigns, no doubt accounted for the significant increase in the number of complaints. The national network of shelters for victims of domestic violence, established in 2005, consisted of 36 centres with a total of 619 beds.

36. All forms of corporal punishment of children had been criminalized and awareness-raising campaigns had been organized for families, civil society, professionals, and public and private authorities. The Portuguese Institute for Rehabilitation had developed a guide with recommendations to promote alternatives to the institutionalization of children with disabilities. The national human rights commission had been established in March 2010. It was a permanent structure composed of Government representatives that was responsible for preparing the periodic reports to be submitted to the international human rights bodies and implemented their recommendations.

The meeting rose at 6 p.m.