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the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-fifth session

SUMMARY RECORD OF THE 1661st MEETING

Held at the Palais des Nations, Geneva,
on Friday, 13 August 2004, at 10 a.m.

Chairman: Mr. YUTZIS

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Tenth and eleventh periodic reports of Portugal (continued) (CERD/C/447/Add.1; HRI/CORE/1/Add.20)

1. At the invitation of the Chairman, the members of the delegation of Portugal resumed their places at the Committee table.
2. Mr. ABOUL-NASR said that Portugal had a commendable human rights record, as illustrated in the periodic report under consideration. While the delegation had affirmed that Muslim fundamentalism did not exist in the reporting State, the Committee would be grateful for additional information on political parties that were permitted to promote Christian fundamentalism, in breach of article 4 of the Convention.
3. Mr. VAZ PINTO (Portugal) replied that, while both Muslim and Christian fundamentalism existed in Portugal, the Muslim minority was very small. No political party had any racist or fundamentalist principles.
4. Turning to the questions posed by the Committee at the previous meeting, he said that integration, as implemented in Portugal, was the opposite of assimilation. Integration involved recognition of the cultural, religious and social diversity of all people living in the country. Immigrant and minority communities in Portugal had always had rights and obligations; people who wished to live in Portugal were required to respect human rights, the secular State, the fundamental principles of democracy and gender equality. Those who did so were respected by the State, and their cultural, religious, linguistic and other types of diversity were encouraged.
5. The word "cigano" (gypsy) was used in Portugal without any pejorative connotations. The Roma themselves used the word to refer to their own association (associação cigana). The term "Roma" was rarely used, except in newspaper reports referring to European Union (EU) matters. Clarification had been requested on the number of Roma living in Portugal. The statistics were unreliable because Portuguese law did not permit the collection of information based on race, ethnicity or colour. While that legal provision made it difficult to comply with the Committee's reporting requirements, it should be respected, given that collecting such data could be regarded as a form of racial discrimination.
6. His delegation had not suggested that the Roma should change their traditional way of life in order to integrate into Portuguese society. Rather, a number of unresolved cultural issues involving some Roma groups (relating to the status of women, nomadic lifestyle and difficulties with school attendance) had hindered integration.
7. Several alleged cases of female genital mutilation had hit the headlines the previous year. While those cases had not been proved, the allegations had focused on people who were originally from Guinea-Bissau. The Criminal Code expressly prohibited such practices in Portugal.

8. Many Eastern European immigrants had integrated more quickly than their African counterparts because the former were usually more highly qualified than the Portuguese with whom they competed in the labour market, which enabled them to secure good jobs and integrate easily into society. From the State's perspective, all immigrants were treated equally.

9. While the Catholic Church worked with immigrants all over the country through the Obra Católica Portuguesa de Migrações, there was no gypsy religious association.

10. Shanty towns and ghettos were a reality in some regions. After they had gained independence, migrants from former Portuguese colonies had started arriving in Portugal. At the outset, the State had taken no measures to help the new immigrants or to control the growing influx of people into the country. Most immigrants from Africa had settled around Lisbon and Setúbal, and several ghettos and neighbourhoods had developed in which the quality of life was sub-standard. The problem had been recognized, and an extensive rehousing programme was under way in some regions.

11. The major remaining challenge concerning migrants and minorities was to turn theory into practice. While in constitutional and legislative terms, Portugal was currently a democratic State that welcomed immigrants, problems still arose as a result of bureaucracy and people's attitudes and prejudices. Perseverance and patience were needed, and measures to combat those problems, particularly in partnership with the media, had begun to bear fruit. The priority of the Office of the High Commissioner for Immigration and Ethnic Minorities was to encourage a more positive attitude among the police and local and central government officials, in order to overcome remaining discriminatory tendencies.

12. Ms. CARDOSO FERREIRA (Portugal) said that the Office of Multiculturalism was a national body, responsible for designing and coordinating inter-ministerial projects, particularly for schools, for the promotion of tolerance, harmony, dialogue and solidarity between cultures. Part of its mandate was to provide educational support and resources for those projects, as required by the Ministry of Education. The Office had taken several initiatives, such as conducting research into intercultural education, running seminars and training courses to raise awareness, issuing publications for teachers, establishing a resources centre, maintaining a database on the number, ethnic make-up and attainment levels of school pupils, and establishing a database of immigrants' associations. The Office had taken part in many international projects, particularly in conjunction with the SOCRATES and Comenius 2 programmes, and Council of Europe initiatives.

13. The Office of Multiculturalism had targeted the gypsy community because gypsies had often been marginalized by other sectors of Portuguese society. Gypsy children had the highest school failure and dropout rates among Portuguese pupils, and while that was linked to tradition, the lack of curricular content on gypsy culture had doubtless been a contributory factor. Teaching materials highlighting gypsy culture, traditions and language had therefore been produced, in order to help gypsy children feel that they formed an integral part of the school system, and to encourage teachers and other pupils to recognize and respect gypsy pupils and their families.

14. While some gypsies living in Portugal and Spain spoke Romany, all Portuguese gypsies spoke Portuguese. Romany had previously been the language used by older people; younger members of the community currently used only certain words and expressions of that language.

15. Mr. FIGUEIREDO (Portugal) recalled that the Office of the High Commissioner for Immigration and Ethnic Minorities had been established under Decree-Law No. 251/2002, and gave a brief outline of its mandate (cf. CERD/C/447/Add.1, paras. 80-83).

16. The Commission on Equality and Racial Discrimination was responsible for ensuring the enforcement of Acts Nos. 134/99 and 18/2004. Members were appointed to the Commission through various selection procedures and currently included a member of the gypsy community.

17. Since the entry into force of Decree-Law No. 251/2002, the Consultative Council on Immigration Affairs had included representatives of the Chinese community, Romania, Ukraine, the Russian Federation, Sao Tome and Principe, Angola and Guinea-Bissau.

18. While it was true that judicial procedures could be protracted in Portugal, that was true of all judicial matters; not only immigrants and members of ethnic minorities were affected. In accordance with the law, the case of Fernando Conceição Costa (12/2001) had been referred to the appropriate court in Albufeira.

19. Mr. MARQUES ALVES (Portugal) said that the latest statistics on the number of foreign citizens resident in Portugal had shown a significant increase since the submission of the previous periodic report in 2001. Decree-Law No. 4/2001 had played a large part in that increase, since between January 2001 and March 2003 the State had issued 180,000 long-term residence permits. According to estimates, there had been 435,000 immigrants legally residing in Portugal at the end of 2003.

20. Significant growth was expected in the foreign population, given that family members of immigrants who held permanent residence permits were entitled to receive short-term residence permits. Foreign citizens who had made social security and tax contributions in Portugal also had the right to become legal immigrants, as did Brazilian citizens.

21. All matters concerning the provision of legal and medical assistance to asylum-seekers were handled by the Portuguese Council for Refugees, an NGO which had recently signed an agreement with the Government. The Council had a reception centre for asylum-seekers near Lisbon with approximately 30 places.

22. The asylum application process consisted of two phases: first, a decision was taken on admissibility; then, the application was considered on the merits. The Director-General of the Aliens and Border Service (SEF) was responsible for the first phase. If he declared an application inadmissible, the applicant could seek review by the National Commission for Refugees, an independent body consisting of two judges. There were two separate avenues of appeal should the National Commission uphold the decision of non-admissibility. Both the submission of an application for review and the filing of an appeal had the effect of suspending expulsion proceedings. Applications declared admissible were transmitted to the Ministry of the Interior, which decided on the merits on the basis of a recommendation by the

National Commission. The Ministry's decisions could be appealed before the Supreme Administrative Tribunal. During the second phase of the asylum process, applicants were issued with temporary residence permits and had the right to work.

23. Decree-Law No. 244/98 set forth the legal regime governing aliens' entry into, stay in, and departure and removal from Portuguese territory. The Decree-Law had been revised on two occasions to take account of changes in migratory flows and migration policy. First, in January 2001, Decree-Law No. 4/2001 had established the concept of the long-term residence permit. Then, in February 2003, Decree-Law No. 34/2003 had introduced amendments aimed at combating illegal immigration and trafficking in persons. In addition, Regulatory Decree No. 6/2004 had amended the regime governing the right of family reunification and brought the definition of a minor into line with that contained in general law. It had further been decided that foreign children who had been born in Portuguese territory before the entry into force of Decree-Law No. 34/2003 and had not left that territory would not require an authorization to obtain a long-term residence permit. Those rules also applied to the child's parents provided that they exercised parental authority over the child.

24. Concerning trafficking in persons, perpetrators could be prosecuted under the provisions of Decree-Law No. 244/98, which established the offence of facilitating illegal immigration. The Decree-Law also provided for the granting of residence permits to victims of trafficking in persons who assisted the authorities with their inquiries. In that connection, he noted that the Director-General of the SEF had set up a central unit for the collection, analysis and dissemination of information on organized networks of people-smugglers so as to facilitate cooperation among law enforcement agencies.

25. The charge for the granting or extension of a long-term residence permit was roughly equivalent to the fee paid at Portuguese consulates abroad for the issuance of a work permit or visa. The main advantage for Brazilians of acquiring Portuguese citizenship was that, by so doing, they also acquired all the rights and benefits of citizens of an EU member country.

26. Mr. MARRECCAS FERREIRA (Portugal) said that his Government had introduced a range of measures to prevent the disproportionate use of force by the police, regulate police use of firearms and improve conditions of detention. Those measures were described in the information provided by the Government on its response to the recommendations contained in the concluding observations of the Human Rights Committee (CCPR/CO/78/PRT) on the third periodic report of Portugal (CCPR/C/PRT/2002/3), which had been distributed informally.

27. In 1995, his Government had established an external oversight body, the General Inspectorate of Internal Administration (IGAI), to monitor the activities of the law enforcement agencies under the authority of the Ministry of the Interior. The IGAI had been instrumental in securing the issuance of Decree-Law No. 457/99, which had brought the regulations on the police use of firearms into line with international standards, and the enactment of regulations on conditions of detention in police stations. It had also contributed to the development of a police code of ethics.

28. His Government was systematically promoting better police practice with respect to the protection of human rights by organizing training courses and seminars and disseminating manuals, including on the Internet. It had established a consultative council to advise on the

training of law enforcement officials in such areas as prevention of torture, ill-treatment and racial discrimination, immigration and ethnic minorities. Allegations of disproportionate use of force by the police were investigated by the IGAI, which also conducted random inspections of police stations. As well as being subject to disciplinary proceedings, police officers incurred civil and criminal liability for acts or omissions committed in the exercise of their duties that resulted in violations of the legally protected rights or interests of citizens. Complaints of police misconduct could also be lodged with the Ombudsman.

29. Principles 9, 14 and 16 of the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials had been incorporated in Portuguese law. All police training institutes included in their curricula a module on reducing the use of firearms; the module was an integral part of both initial and in-service training. In 2003, the Public Security Police had instituted a 70-hour training course on marksmanship, operational tactics and the use of non-lethal force, which had been attended by some 7,000 serving officers. An investigation was conducted automatically whenever the use of a firearm by a police officer resulted in death or injury. He noted that, when considering the issue of police conduct, there was a need to balance the legitimate rights of citizens against the legitimate right of the police to use appropriate force when necessary. Concerning the representation of minorities in the police, while there were no gypsies, there were a number of black officers.

30. The case mentioned in paragraphs 120-122 of the periodic report (CERD/C/447/Add.1), which had been tried in Paredes district court, was the first in which a person had been convicted for the offence of racial discrimination under article 240 of the Criminal Code. There was no reference to the reaction of members of the Afro-Portuguese community because their views had not been sought; that did not imply, however, that the impact of racial discrimination on that section of the population was overlooked. He would convey to his Government the suggestion that the commission of an offence with racial enmity should be considered an aggravating factor for the purpose of sentencing. Regrettably, he had no data on the provision of assistance by NGOs to persons wishing to lodge complaints of racial discrimination.

31. Female genital mutilation was prohibited under article 143 of the Criminal Code, and offenders were liable to a sentence of at least five years' imprisonment. While there was no specific reference to clitoral excision, it was punishable under the same provisions.

32. The 13-year-old gypsy who had committed a rape in Póvoa de Lanhoso (CERD/C/447/Add.1, para. 62) had until recently been held at an education centre run by the Social Reintegration Institute. He had been released and returned to his home community on 21 July 2004. The case had been referred to in the report in order to highlight the commendable work of the Institute.

33. On the question of migrant workers, he said that Portuguese policy on all matters relating to immigration, asylum and the movement of persons was determined at the EU level. Ratification of the Convention on Cybercrime was a matter for Parliament.

34. Mr. BOYD said that the State party had made significant progress in tackling all forms of racial discrimination. He noted with satisfaction that the police were giving consideration to alternatives to the use of lethal force. While training in that area was resource-intensive, experience showed that it not only saved lives, but also contributed to the development of better

relations between the police and ethnic minority communities. The Government should encourage the continuation of the 70-hour training programme conducted by the Public Security Police, since shorter courses were ineffective. He looked forward to learning about the impact of the training in the State party's next periodic report. It was always instructive to see how States parties balanced their obligation under article 4 of the Convention to prohibit the dissemination of ideas based on racial superiority or hatred and incitement to racial discrimination with the protection of the rights to freedom of opinion and expression. In that connection, he asked whether the authors of the racist announcement published in a newspaper in May 2000 (CERD/C/447/Add.1, para. 58) would have been prosecuted had they been identified.

35. Mr. LINDGREN ALVES said that, while he was not opposed to giving members a second opportunity to put questions to State party representatives, the Committee must recognize that the delegation would not be able to respond to every point raised. He had been very satisfied with the answers already given, which had been detailed and precise.

36. The delegation had not stated how Roma in Portugal liked to be referred to. The Committee insisted on the use of the term "Roma", although that was not always the preference of the communities themselves. In his view, members were unduly concerned about the situation of Roma. Clearly, they were entitled to the protection of their rights, but there was a need to examine the extent to which they wished to contribute to the societies in which they lived. The Committee needed to engage in a dialogue with Roma communities so as to produce more realistic recommendations concerning their treatment. It could then turn its attention to other groups, including blacks, who greatly wished to be integrated in society yet faced even greater discrimination than the Roma.

37. The CHAIRMAN said that Committee members were free to ask any questions they saw fit while the delegation of a State party was present. Several delegations had in fact expressed satisfaction with the second round of questions. Although the delegation was not obliged to respond immediately and could choose to include answers in the next periodic report, interactive dialogue could only take place on the basis of questions and answers.

38. Several members of the Committee were experts on Roma issues. He agreed that the names used when discussing certain minority groups were controversial, and should be considered from the point of view of the group itself. Although that might not be the case in Portugal, many minority groups considered the term "gypsy" to be pejorative.

39. Mr. AMIR thanked the delegation for its replies and praised the Portuguese Government's willingness to develop a global strategy on discrimination. The Government had made commendable efforts to raise public awareness of racial issues, and had demonstrated the strength of political will necessary to implement the provisions of the Convention effectively.

40. Mr. PILLAI expressed appreciation to the delegation for the amount of information it had provided on aliens. Several legislative changes had been made as a result of the increase in the number of aliens resident in Portugal. In the past, foreign citizens had been granted short-term residence permits if they had signed a contract of employment. He wished to know whether that was still the case, or whether under the new legislation a residence permit was necessary in order to obtain a work permit.

41. According to information from a number of NGOs, there had been instances of the SEF using excessive and discretionary powers to revoke visas that had been issued by Portuguese consulates abroad. The Committee had also been informed that the SEF had been unable to employ professional interpreters, which had led to problems when questioning foreigners who were not proficient in Portuguese. He wondered whether any measures were being taken to improve the services provided by the SEF.

42. Mr. de GOUTTES noted with interest the government training schemes for law enforcement officials, which were very important for eradicating prejudice, and the measures that had been taken to encourage anti-discrimination and intercultural activities in the media and on the Internet. He had also been interested to hear about new measures concerning the investigation of possible racial motivation of offences, which responded fully to the Committee's recommendations.

43. Although the Portuguese Constitution prohibited the collection of data based on race or ethnicity, such statistics were fundamental for the Committee to be able to fulfil its mandate. Measures must be taken to respect privacy and the right to anonymity, and ethnic or racial identification must be voluntary. Such data collection would depend on the willingness of members of the public to affiliate themselves to a certain ethnic group. Limits could be set to protect the public, but at the same time enable the Government to collect the necessary statistics, which could have interesting results.

44. Mr. SHAHI said the Committee had been informed that the Pakistani community in Portugal faced particular problems in relation to integration. He wished to know what specific problems had arisen for that community, and why.

45. Mr. HERNDL (Country rapporteur) requested confirmation that the new appeal system for asylum applications was suspensive, i.e. that asylum-seekers could not be expelled until the entire appeal procedure had been completed and a final decision issued.

46. Mr. THORNBERRY asked whether nomadism was characteristic of Roma communities in Portugal, or whether such communities were sedentarized. Nomadism was not necessarily detrimental to the educational process, since measures could be taken to use peripatetic teaching in community education, distance learning, electronic communication and temporary attendance at mainstream schools.

47. Paragraph 109 of the periodic report gave information on additional educational support for itinerant children. He wondered whether Roma children were generally considered to have education-related problems. The situation of the Roma was a sensitive one, which was reported on by many countries and formed an important part of the Committee's work. The Committee played a significant role in raising awareness of Roma issues, and until conditions for those people improved considerably, members would continue to put Roma-related questions to State party delegations.

48. He agreed with the Chairman that minority communities should be called by the name they preferred. He also supported the point made by Mr. de Gouttes concerning ethnic and racial data collection, which was very important, but must be carried out with sensitivity to the privacy of respondents. The Committee had previously encouraged States parties to be creative when

collecting data, by using indirect means to make the necessary assessments of the ethnic composition of the population. The collection of such statistics was in the interests of the Government, as well as the Committee.

49. Mr. ABOUL-NASR said he did not agree that the collection of ethnic and racial data should be obligatory. If the provision of such information created problems for the State party, it should not be requested. The decision as to whether or not to embark upon data collection should be left to the State party concerned.

50. The CHAIRMAN said that all the United Nations human rights treaty bodies agreed on the importance of receiving disaggregated data from States parties. A considerable number of treaty body decisions and recommendations had been issued on that subject, and the Committee would not cease to make requests to States parties for ethnic and racial statistics. All States were free to decide the extent to which they wished to respond to such requests.

51. He invited the members of the Portuguese delegation to answer the Committee's second round of questions.

52. Mr. VAZ PINTO (Portugal) said he was in favour of the collection of statistics if the privacy of respondents was respected. The collection of racial and ethnic data was in violation of the Portuguese Constitution and could therefore not be effected, although the Committee's concerns would be transmitted to the Government.

53. He did not have any specific information on the Pakistani population in Portugal but was unaware of that community having any particular integration problems.

54. Mr. MARRECCAS FERREIRA (Portugal), replying to a question on the compatibility of freedom of expression and the prohibition of racist language, said that he did not see any conflict between articles 4 and 5 of the Convention. According to Portuguese legislation, editors were held accountable for publications with a racist or discriminatory content and were competent to take action against the journalists responsible. In serious cases, criminal proceedings could be instituted under article 240 of the Criminal Code.

55. A question had been asked about the existence of fascist political parties. The Constitution stipulated that racist organizations, or those that subscribed to fascist ideologies, were not permitted. No fascist party had been formed since the 1974 revolution. Extremist parties, on the other hand, did exist. Portugal's eighth periodic report (CERD/C/314/Add.1) had contained information on jurisprudence concerning the National Action Movement (MAN). The public prosecutor had instituted proceedings against the MAN, seeking its dissolution. The Constitutional Court's decision to declare the MAN defunct, however, had been pre-empted by the movement's disbandment.

56. Racist organizations and political parties that propagated racist views were prohibited. While no formal procedure was in place to prosecute fascist organizations, proceedings seeking their disbandment could be instituted, with reference being made to the above-mentioned precedent.

57. While it was true that some of the most extremist elements of the National Renovation Party were skinheads, the association was very limited in scope. Instead of prohibiting extremist parties, it might be preferable to copy France's approach to the National Front and integrate such parties into the democratic system, thus vesting the power to eliminate them in the electorate.

58. Ms. CARDOSO FERREIRA (Portugal) said that many gypsies in Portugal continued to lead a nomadic lifestyle. To guarantee the education of itinerant children, so-called "mother schools" had been set up where the pupils were initially enrolled and stayed for most of their schooling. Those schools provided educational materials specifically prepared for itinerant children and maintained regular contact with parents and teachers of the other schools those children attended.

59. As to the official name given to that minority, the gypsies of Portugal were proud to be known as "ciganos" and did not wish to be referred to by any other name.

60. Mr. MARQUES ALVES (Portugal) said that a series of measures had been taken in response to the considerable influx of aliens over the past two years. Decree-Law No. 244/98 on the entry, stay, departure and removal of aliens had been amended with a view to addressing the problems of thousands of illegal immigrants. To that end, legislation had been amended to facilitate the issuance of "short-term residence permits". Between January 2001 and March 2003, approximately 180,000 such permits had been issued.

61. Applications for long-term residence permits must be submitted in the applicant's country of origin and the status of holders of such permits was higher than that of holders of short-term residence permits. In order to obtain a short-term permit, which was valid for one year and renewable, an alien was required to present a confirmed offer of employment. After a period of five years, provided the individual was still in employment, he or she was eligible to apply for a long-term residence permit. Previously, the main difference between a long-term and a short-term permit had concerned the alien's right of family reunification. However, pursuant to the second amendment of the 1998 Decree-Law, the families of aliens holding a short-term permit could also request short-term permits.

62. The Committee had expressed concern about the alleged misconduct of SEF officials. The conduct of all police personnel attached to the Ministry of the Interior was monitored by the IGAI, which was competent to advise the Minister on disciplinary measures or legal action to be taken against SEF personnel.

63. The reported delays in the processing of visa, permit or asylum applications had come about as a result of the considerable increase in the number of applications. The rise in Portugal's foreign population from 250,000 in 2001 to 435,000 in 2004 and the accompanying legislative amendments providing, inter alia, for the right of family reunification and the right of foreign minors born in Portugal to a residence permit had considerably increased the workload. Unfortunately, those developments had not been accompanied by an increase in personnel and appropriate measures were required in order to expedite all such procedures.

64. All aliens had the right to interpreting services when being interviewed by the SEF. Any case that had been heard without the presence of an interpreter was subject to annulment.

65. Portuguese asylum legislation stipulated that asylum application should be processed within 20 working days if submitted by an alien who was already present on national territory, and within 5 working days if submitted at a border post. The granting of asylum took place in two stages. The Director-General of the SEF was competent to decide on the admissibility of applications. Should the application be refused, expulsion procedures were instituted. However, the applicant had the right to appeal to the independent National Refugee Commission. If the Commission upheld the denial of asylum, the applicant could appeal to the Administrative Court of First Instance or, as a last resort, to the Supreme Administrative Court. Appeal procedures had suspensive effect vis-à-vis the expulsion order. Once applications for asylum had been approved, the Minister of the Interior would issue a temporary residence permit, valid for 60 days.

66. Mr. HERNDL (Country rapporteur) thanked the delegation for the frank and open dialogue and for its detailed replies to the Committee's questions. He commended the State party for its continuing commitment to combating racial discrimination. The Committee was satisfied with the legislative framework established to that end and encouraged the State party to take the necessary steps for the implementation of the Convention.

67. It appeared that the disparities in the numbers of foreign residents reported by the State party were due to the difference between foreign residents with valid documentation and illegal immigrants. Great diligence was required in the drafting of country reports to avoid such misunderstandings in the future. The Committee had taken note of the State party's detailed account of legislative provisions governing acts of police brutality.

68. While it was not the Committee's practice to focus heavily on the situation of Roma minorities, Portuguese gypsies warranted particular attention as they were the country's only national minority.

69. Mr. VAZ PINTO (Portugal) thanked the Committee for its comments and recommendations, which provided useful guidelines for his Government in its efforts to eliminate all forms of racial discrimination.

70. The CHAIRMAN expressed appreciation for the fruitful dialogue with the delegation which had not only clarified the situation in the reporting State but had given rise to an interesting discussion among Committee members on certain controversial issues. The Committee looked forward to further dialogue with the delegation of Portugal in the future.

The meeting rose at 12.55 p.m.