



International Convention for the Protection of All Persons from Enforced Disappearance

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Summary record of the 260th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 7 November 2018, at 10 a.m.

Chair: Ms. Janina

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The meeting was called to order at 10.10 a.m.

Consideration of reports of States parties to the Convention (*continued*)

Initial report of Portugal (continued) (CED/C/PRT/1; CED/C/PRT/Q/1 and CED/C/PRT/Q/Add.1)

1. *At the invitation of the Chair, the delegation of Portugal took places at the Committee table.*
2. **Mr. Ravenna** (Country Rapporteur) asked whether Act No. 144/99 on international judicial cooperation in criminal matters afforded the possibility of concluding special agreements on cooperation with forensic anthropologists.
3. He noted that, pursuant to article 33 of the Constitution, extradition was not permissible for crimes punishable with the death penalty or life imprisonment. He asked whether the State party had established procedures for the admission of forced migrants and whether there was a body tasked with granting them refugee status. The right to asylum, which was mentioned in paragraph 130 of the report, was more limited and political than the rights enshrined in the Convention relating to the Status of Refugees, which Portugal had ratified in 1960. He therefore wished to know whether forced migrants could be denied refugee status.
4. According to the report, the European Committee for the Prevention of Torture and Human or Degrading Treatment or Punishment (CPT) paid unannounced visits to detention facilities. He requested additional information concerning the State party's interaction with the Committee.
5. When the Convention was being drafted, some States had claimed that they would be unable to provide the information specified in article 18 to relatives of persons deprived of their liberty unless the detainee agreed in writing thereto. As it was clearly impossible to impose such a condition in cases of enforced disappearances, steps had been taken to reduce to a minimum the restrictions that could be imposed on the provision of information concerning detainees. He asked whether the State party imposed any restrictions that might be incompatible with the provisions of article 20 (2).
6. With regard to the definition of a victim, article 67-A of the State party's Code of Criminal Procedure contained a provision applicable to especially vulnerable victims. He requested additional information concerning the scope of that concept in normative terms.
7. According to the report, the police authorities ran a database of missing persons. He asked whether it included genetic data, which would serve as a useful means of identification, especially of missing children or unidentified remains in hidden graves.
8. **Mr. Decaux** (Country Rapporteur) noted that, according to the State party's reply to question No. 14 of the list of issues, extradition was possible for offences that were punishable under both Portuguese law and the law of the requesting State. Enforced disappearance was classified in the State party as a crime against humanity and described as a serious violation of human rights. He asked how the requirement of dual incrimination could function when enforced disappearance was neither recognized as a crime against humanity nor defined as an autonomous crime.
9. The State party admitted in its reply to question No. 17 of the list of issues that the Office of the Ombudsman did not possess sufficient financial, human and technical resources to perform its functions effectively as a national preventive mechanism. He requested further details regarding the difficulties encountered by the Ombudsman.
10. While the content of the registers kept in places of deprivation of liberty complied with international standards, he enquired about safeguards to ensure that the rules were properly respected. In particular, he asked whether sanctions were imposed, in accordance with article 22 of the Convention, on officials who failed to record a person's deprivation of liberty, who recorded information that they knew to be inaccurate, or who refused to provide information or provided inaccurate information on persons deprived of their liberty.

11. The State party's reply to question No. 20 of the list of issues contained little information about procedures whereby relatives and other persons with a legitimate interest, including lawyers, representatives of bodies such as trade unions and members of the grass-roots community, could obtain access to information concerning disappeared persons.

12. While general human rights training courses were useful for law enforcement officers, steps should be taken to ensure that the requirements of article 23 of the Convention were met in all courses organized for judges, police officers and prison guards. He requested specific information on procedures for familiarizing military personnel with humanitarian and human rights law.

13. He noted that Portuguese law did not provide for the guarantee of non-repetition, which was enshrined in article 24 (5) (d) of the Convention. The State party argued in its reply to question No. 23 of the list of issues that there was no absolute right to such reparations, since the Convention used the words "where appropriate". He disagreed with the State party's interpretation of the provision. General measures should be taken to improve prison registration procedures and to regulate transfers between prisons.

14. The State party also stated that Portuguese law criminalized and punished the offence of enforced disappearance as an autonomous offence, referring to Act No. 31/2004, which reflected the Rome Statute of the International Criminal Court. He asked how the notion of an autonomous offence was implemented outside the context of the Rome Statute.

15. **Ms. Galvis Patino** enquired about the legal and institutional arrangements for conducting a search for disappeared persons if such cases arose in the State party. Would the search be conducted, for example, solely as a criminal investigation or would the criminal investigation be combined with other procedures for locating the victim?

The meeting was suspended at 10.35 a.m. and resumed at 10.55 a.m.

16. **Mr. Folgado** (Portugal) said that his country was committed to engaging in international judicial cooperation on criminal matters based on instruments such as the United Nations Convention on Transnational Organized Crime and the United Nations Convention against Corruption. Cooperation was also based on bilateral or multilateral agreements and, where no such agreement existed, the authorities could invoke Act No. 144/99, which provided for cooperation on the basis of reciprocity. Article 6 of the Act stated that extradition could be refused if it was suspected that the person in question might be subjected to enforced disappearance. The authorities undertook investigations in such cases with the help of experts, including forensic anthropologists from the National Institute for Legal Medicine and Forensic Sciences. Teams comprising both Portuguese and foreign experts could also be established.

17. **Mr. Carrilho** (Portugal), responding to the questions on refugee status, said that Portugal had maintained an open and humane refugee policy in recent decades. Act No. 23/2007 governed the entry into and stay in Portuguese territory of third-country nationals, as well as their departure and removal therefrom, while Act No. 27/2008 regulated the granting of asylum or international protection. Legal mechanisms were in place to ensure that Portugal applied international and European principles and obligations, including those under the Convention relating to the Status of Refugees. Asylum requests could be submitted by individuals already on national territory, at international airports or other border posts, or via diplomatic or consular missions located in third countries. The Asylum and Refugees Unit of the Immigrants and Borders Service analysed such requests, together with other relevant information collected by the authorities within a 60-day period, and proposed a decision on whether to grant refugee status that was subsequently approved by the member of the Government responsible for home affairs. Portugal had established a resettlement programme under which it expected to receive about 1,000 people from Egypt and Turkey in 2019, and it was committed to the relocation mechanism of the European Union. In the previous 10 years, the Portuguese authorities had recorded a huge increase in the number of applications for international protection, 50 to 60 per cent of which had been successful. Applicants whose requests for international protection had been denied were entitled to seek legally established remedies and their rights were safeguarded pending the outcome of those proceedings. Lastly, he drew the Committee's attention to statistical

information on asylum and refugees contained in the annual report on immigration, borders and asylum of the Immigrants and Borders Service.

18. **Ms. Ávila** (Portugal) said that the Government maintained open and cooperative relations with CPT, which had visited Portugal in 2008, 2012, 2013 and most recently in September and October 2016. CPT had issued a report on that visit and the Government had published its response in February 2018. When CPT wished to visit the country, it contacted the Ministry of Foreign Affairs and the visit was then prepared by the National Human Rights Commission with the involvement of several line ministries, in view of the Committee's broad mandate and aims. The Committee members visiting the country were given credentials, signed by the Minister of Justice or the Minister of the Interior, that provided them with unhindered access to places of detention and other sites, such as psychiatric hospitals, without the requirement to give prior notice.

19. **Mr. Carrilho** (Portugal) said that as well as being able to access to places of detention and the documents that were kept there, members of CPT were invited to speak with detainees and security personnel. CPT also had a close relationship with the General Inspectorate for Internal Affairs, which was the authority responsible for monitoring conduct of security forces and services with a view to preventing abuses of authority. CPT had been provided with access to all of the Inspectorate's records, including on procedures undertaken in response to cases of abuse of authority.

20. **Ms. Homem** (Portugal) said that the written consent of the detainee was not required in order to provide family members with access to the information envisaged under article 18 of the Convention; however, persons requesting such information were required to prove a legitimate interest and the detainee's right to privacy was taken into consideration. Access to the information was granted on a case-by-case basis, following examination of the reasons put forward by the requesting party, and administrative and judicial remedies were available in the event that the request was denied. Prisoners had the right to contact their family members and a lawyer at the outset of and during the period of imprisonment. A team of the criminal investigation police, which operated 24 hours a day, was able to provide information on the whereabouts of detained persons, subject to restrictions on the disclosure of information that might be prejudicial to a criminal investigation. Family members or other persons able to demonstrate a legitimate interest were always provided with confirmation of the detention and were informed of the location of the detainee. Moreover, family members and the prisoner's lawyer were always notified of transfers between prisons, including those requested by the prisoner.

21. **Mr. Carrilho** (Portugal) said that persons deprived of their liberty could access medical or psychosocial support if they should request or require it. Third-country nationals who were in the process of being removed from the country, or whose applications for asylum or international protection were under examination, were referred to relevant non-governmental organizations or representative associations, such as associations of citizens of the same nationality, so that access to all possible support mechanisms was provided.

22. **Ms. Homem** (Portugal) said that the concept of especially vulnerable victims had been established in the Victims' Statute contained in the Code of Criminal Procedure. Victims were defined as vulnerable depending on their needs and generally included victims of violent crimes and crimes against the physical integrity or freedom of the person. Especially vulnerable victims had the right to special protective measures designed to prevent their secondary victimization. Children were also regarded as vulnerable victims and benefited from measures such as the assignment of a lawyer to defend their interests in the event that they came into conflict with the interests of their parents, guardians or representatives. A special mechanism had been developed whereby courts could award compensation to especially vulnerable victims, even if they had not been admitted as civil parties or filed a claim for civil damages.

23. Regarding the inclusion of genetic information in police databases, the criminal investigation police maintained a computer database containing the records of missing persons, including data on their sex, physical characteristics, and dental records for possible post-mortem identification.

24. **Mr. Folgado** (Portugal) said that the National Institute of Legal Medicine and Forensic Sciences maintained a DNA database containing the genetic information of individuals. The Institute had signed a protocol with the criminal investigation police to provide assistance in cases of enforced disappearance or other criminal investigations.

25. **Ms. Vieira Neves** (Portugal) said that extradition was subject to the requirement of double criminality, meaning that the authorities had to verify that the offence was punishable under the laws of both the requesting and requested country. Perpetrators of enforced disappearance might be extradited regardless of whether it was defined as a crime against humanity or as an autonomous crime, considering that the provisions of Portuguese criminal law protected the rights to physical integrity, to personal liberty and to life, which were threatened by enforced disappearance. In the administrative phase of the extradition process, the authorities verified whether general and specific requirements were met, notably whether the facts of the case were described and would constitute a criminal offence under Portuguese law. A decision to allow the extradition request would be followed by a judicial phase whose aim was to ensure the fulfilment of the legal requirements for extradition.

26. **Mr. Lopes da Mota** (Portugal) said that he wished to clarify that in examining extradition requests, the Portuguese authorities were principally concerned with the facts of the case rather than the name that the requesting State gave to the offence. If an extradition request was denied, the authorities applied the principle of *aut dedere aut judicare*, which led to the initiation of criminal proceedings.

27. **Ms. Costa Pereira** (Portugal) said that financial resources were not always allocated in the manner most conducive to the smooth functioning of public bodies. However, that did not mean that the activities of the Portuguese Ombudsman had been hampered; its work had not been jeopardized even during the recent period of severe financial austerity. Although in 2014 funds had not been allocated to the Ombudsman institution to perform its function as the national preventive mechanism under the Optional Protocol of the Convention against Torture, it had nonetheless managed to carry out all activities associated with the function, including visits to places of detention, and funding had since been restored. The annual reports of the national preventive mechanism to the parliament were available on the Ombudsman's website.

28. **Ms. Vieira Neves** (Portugal), addressing the question of the conduct required under article 22 of the Convention, said that the Criminal Code made provision for offences including the denial or obstruction of justice in disciplinary or judicial proceedings. Accordingly, any official who delayed, obstructed or interfered with the normal operation of procedures might incur disciplinary or criminal penalties. Internal control mechanisms such as the General Inspectorate for Internal Affairs and the General Inspectorate for Justice Services were tasked with identifying and reporting such conducts.

29. **Mr. Carrilho** (Portugal) said that in addition to registers of detainees, any security officer who made an arrest was obliged to sign an arrest report, which also had to be signed by the detainee, upon arrival at the place of detention. Detainees who were not asked to sign this document were given the opportunity to submit a complaint, to the effect that their rights may have been violated, either to the General Inspectorate for Internal Affairs or any other competent authority. Moreover, the Public Security Police, the National Republican Guard and the Immigrants and Borders Service all had internal inspection units, which reported directly to the senior director of the organization and which made regular unexpected visits to places of detention.

30. **Ms. Homem** (Portugal), replying to questions posed under article 18 of the Convention, said that journalists were also recognized as having a legitimate interest in accessing criminal case files, given the nature of their profession. Generally speaking, such files were accessible to the public and any person with a legitimate interest could consult their contents and obtain an extract or certified copy of the information that was of greatest interest to them. Requests for access to criminal case files were considered on a case-by-case basis so as not to preclude persons with a legitimate interest who were not related to the accused person from accessing that information.

31. **Mr. Folgado** (Portugal), replying to questions posed regarding the training of judicial officials, said that the Centre for Judicial Studies (Centro de Estudos Judiciários) was responsible for providing judges and public prosecutors with initial and ongoing training, including on human rights. The human rights component of the annual training programme covered all United Nations human rights instruments. Criminal police officers attended a specialized training college, where they received compulsory, ongoing training on a variety of subjects, including human rights and, more specifically, on relevant international human rights instruments. Civil servants had received similar human rights training from the Ministry of Justice.

32. **Mr. Carrilho** (Portugal) said that the Public Security Police had been providing training on human rights to its officers since 1984. The training was dispensed by qualified members of the security forces in cooperation with Portuguese universities and, on occasion, experts from the Office of the Ombudsman. Training on human rights was provided as part of the basic training for new recruits and as part of the ongoing training for officers of all ranks. The training focused on international human rights law, including the Convention, and was completed through e-learning platforms. Similar training was also made available to community police officers, who often dealt directly with victims of trafficking, older persons and at-risk groups such as migrants. Community police officers worked closely with schools and were well placed to identify children and young people who were at risk.

33. **Ms. Morgado** (Portugal) said that, in addition to basic training for new recruits, members of the armed forces underwent compulsory training on various subjects, including human rights, international humanitarian law and cooperation with civilians. The Military University Institute dispensed training on human rights to high-ranking officers, such as generals, and to members of the armed forces liable to undertake foreign missions. The training covered international human rights law, including the Convention, and international humanitarian law.

34. **Ms. Homem** (Portugal) said that Portugal was firmly committed to guaranteeing non-repetition and to combating impunity in cases of enforced disappearance and took steps to ensure that the acts referred to in article 2 of the Convention were punished. Act No. 130/2015 of 4 September, known as the statute of victims, guaranteed the right of victims of crime to reparation and rehabilitation and contained provisions aimed at preventing revictimization in the case of violent crimes. Victims of such crimes were not required to face the perpetrator in court and safeguards were in place to protect victims' privacy. Victims could also avail themselves of various forms of legal assistance, be provided with suitable temporary accommodation and access health-care services free of charge. Victim outreach units had been set up in criminal police stations for the purpose of providing victims of crime with the necessary information and directing them to other support services, which might be offered by civil society organizations. Under Portuguese law, the State could provide compensation to victims of violent crime even if the related criminal proceedings were still ongoing. Claims for reparation and/or protection submitted by victims of such crimes were considered by a specialized body.

35. **Ms. Vieira Neves** (Portugal) said that the Code of Criminal Procedure specifically provided for the right of victims to reparation in special cases, regardless of whether civil proceedings for compensation had been brought. The amount of compensation to be awarded was decided by the court in keeping with the established criteria for determining civil liability. Compensation could be awarded for moral and material damages and for any loss of income resulting from the criminal acts perpetrated.

36. **Mr. Lopes Da Mota** (Portugal) said that any property that may have been removed from victims of crime was also returned. Guarantees of non-repetition were also included in witness protection programmes. Even if a case had been heard in court, the personal safety of the victim could still be under threat, which could lead to their relocation and, in cases of terrorism or extremely violent crime, to their resettlement abroad.

37. **Mr. Folgado** (Portugal) said that the Public Prosecution Service was responsible for conducting criminal investigations and for collecting the evidence necessary to allow a case to be tried in court. In the event of enforced disappearance, however, the investigation

would be led by criminal police officers owing to the serious nature of the crime. If appropriate, representatives of the Public Prosecution Service could accompany criminal police officers in the field or take over the investigation. The Code of Criminal Procedure set out the approach to be followed for gathering evidence, including the rules for searching premises and people. When a person was reported missing, an alert was issued to the different police forces informing them of the need to mount a search. If there was evidence to suggest that the person was in fact a victim of enforced disappearance, an investigation would be undertaken by the criminal police. In missing person cases, citizens were called upon to provide the police with information about the fate and/or whereabouts of those persons.

38. **Mr. Carrilho** (Portugal) said that the community policing initiative, which had been deployed across the country, had proved useful in helping the security forces to identify possible victims of crime or at-risk persons. The weekly patrols conducted by community police officers brought them into close contact with persons belonging to those groups. If a community police officer noticed that vulnerable persons were absent from their usual place of residence, he or she would endeavour to obtain information from the local community on those persons' whereabouts and, if foul play was suspected, would refer the cases to the criminal investigation authorities.

39. **Mr. Lopes Da Mota** (Portugal) said that public officials who learned of a crime were obliged to report it. The report was then transmitted to the Public Prosecution Service, which launched an investigation and, where appropriate, criminal proceedings. The fact that the investigation was led by the Public Prosecution Service had no bearing on the ability of the police to exercise their powers and take all the measures necessary to stop the crime, protect the victims and arrest the perpetrators. Authorization had to be sought from the examining magistrate before any investigative action that might interfere with or hamper the exercise of fundamental rights could be carried out. Examining magistrates were not competent to conduct an investigation on their own initiative; rather they analysed the outcome of the investigation and determined whether there were sufficient grounds for charges to be brought.

40. **Mr. Ravenna** said it was his understanding that, in cases where an application for refugee status had been refused, there was always a possibility of appeal. He asked whether that possibility still existed even if the decision to refuse the application had been upheld and, if not, what became of the applicant.

41. The State party might also consider how, in the future, it might address, through legislative measures, the conflict between the right of persons with a legitimate interest to access information about persons deprived of their liberty and the right of such persons to privacy, given that both rights enjoyed equal status.

42. **Mr. Carrilho** (Portugal) said that the country's immigration authorities were required by law to collect all the evidence that could provide grounds for granting an application for asylum or refugee status. That evidence included an assessment of the likelihood that the applicant had faced or could face inhuman and discriminatory treatment or persecution in his or her country of origin because of his or her race, religion or ethnicity. If the likelihood was unacceptably high, or if it was found to be likely that the applicant's rights had been or would be violated in any other way, he or she would automatically be granted international protection.

43. Decisions unfavourable to applicants could be appealed, and expulsions were not carried out until the appeals were resolved. In addition, no one, regardless of the outcome of his or her asylum application, could be removed from Portugal if it was found likely that he or she would be subjected to inhuman or degrading treatment upon removal to his or her country of origin. In sum, a foreign national whose application for asylum was rejected could nonetheless remain in Portugal.

44. **Mr. Ravenna** asked whether a safe third country could be sought for an applicant for international protection whose application was rejected by the Portuguese authorities.

45. **Mr. Carrilho** (Portugal) said that a third country could indeed be sought if it was not possible to allow an applicant for asylum to remain in Portugal. Such a search was generally conducted as a last resort, however.

46. **Mr. Lopes da Mota** (Portugal) said that Portugal, like all States members of the European Union, was bound by the stronger European rules on data protection that had entered into force in May 2018 and by a directive on the processing of personal data for purposes related to criminal justice. The aim of the legal framework in place was to strike a balance between the need to exchange information and the right to privacy.

47. Expulsion, which had already been discussed, was in some ways related to extradition. In one recent case, a man who had been granted refugee status by another European Union member State had been arrested by the Portuguese police, who had been executing an international arrest warrant, on a beach in the Algarve, where he had been vacationing with his family. His arrest and extradition had been requested by his country of origin, an undemocratic country where he had been wanted on suspicion of terrorist activities. Ultimately, the Portuguese Minister of Justice had refused the extradition request made by the man's country because, even though he had not been granted refugee status by Portugal, he had been entitled to protection under the international human rights instruments to which Portugal was a party. That case had been one of very few such cases in the past decade.

48. **The Chair** said that any additional information the State party wished to provide should be submitted in writing within 48 hours of the closure of the meeting.

49. **Mr. Ravenna** said that the readiness of the State party to respond to the questions asked by the Committee would be reflected in the Committee's concluding observations. There was still to work to be done — for example, with regard to making enforced disappearance an offence of its own — and that pending work, too, would be addressed in the recommendations made by the Committee in its concluding observations.

50. **Mr. Decaux**, welcoming the State party's clear commitment to human rights, said that article 1 (1) of the Convention, which stated that no one should be subjected to enforced disappearance, enshrined a principle of considerable added value. It was nonetheless necessary to understand what was meant by "enforced disappearance". The State party had brought its legislation into line with articles 3 and 5 of the Convention, but, as had been noted, it had still not taken the necessary measures, as required under article 4, to ensure that enforced disappearance constituted an offence under its criminal law. Taking those measures would be the logical outcome of ratifying the Convention.

51. **Mr. Lopes da Mota** (Portugal), summing up, said that he and the members of his delegation welcomed the opportunity they had been given to discuss the specificities of the Portuguese legal system and show how it was aligned with the provisions of the Convention. The Portuguese authorities shared the Committee's concern about the progress that was still to be made, but, as the Spanish poet Machado warned travellers, the only path they had was the trace of the footsteps they left behind them.

The meeting rose at 12.45 p.m.