



# International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General  
4 July 2018

Original: English  
English, French and Spanish only

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## Committee on Enforced Disappearances

### List of issues in relation to the report submitted by Portugal under article 29 (1) of the Convention\*

#### I. General information

1. In the light of paragraph 27 of the State party's report (CED/C/PRT/1), please provide further information about the status of the Convention in national law and clarify whether the provisions of the Convention can be directly invoked before, and applied by, courts or other relevant authorities.
2. Please provide information on the participation of the Portuguese Ombudsman in the preparation of the State party's report and on any other activities carried out by the Ombudsman in relation to the implementation of the Convention. Please also inform the Committee about the measures taken by the State party in order for the Office of the Ombudsman to be in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

#### II. Definition and criminalization of enforced disappearance (arts. 1–7)

3. In the light of paragraph 48 of the State party's report, please explain whether any legislation and/or practices concerning terrorism, national security or other grounds, that the State party may have adopted, includes any possibility of derogating from any of the rights and/or procedural safeguards provided for in domestic legislation or in international human rights instruments to which Portugal is a party (art. 1).
4. Please indicate whether there are any initiatives to define enforced disappearance as an autonomous crime in domestic legislation. Please clarify whether the State party's interpretation of article 9 (1) of the Convention is that placing a person outside the protection of the law is a consequence of the offence of enforced disappearance, not a constitutive element of the offence (arts. 2 and 4).
5. In relation to paragraphs 67 and 68 of the State party's report, please explain how the responsibility of superiors is ensured in full accordance with article 6 of the Convention. Please provide, if available, examples of instances where such provisions have been invoked and/or applied (art. 6).
6. Please provide information on legal provisions that ensure, in all instances, prohibition of the invoking of orders from superiors, including from military authorities, as a justification for enforced disappearance. In relation to paragraph 36 of the State party's report, please (a) clarify whether subordinates are allowed to invoke an order from a

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\* Adopted by the Committee at its fourteenth session (22 May–1 June 2018).



superior as a justification for their acts if they have demanded that the order be transmitted in writing and have indicated that they consider the order illegal; and (b) elaborate on the “doctrine” which advocates disobeying orders to commit acts that are null. With reference to paragraph 37, please explain what situations are considered detrimental to the public interest so that subordinates are required to fulfil an illegal order from a superior. Additionally, please describe legal recourse available to subordinates against any potential disciplinary measures resulting from their refusal to carry out a criminal act ordered by a superior (art. 6).

### **III. Judicial procedure and cooperation in criminal matters (arts. 8–15)**

7. Please clarify how a statute of limitations for criminal procedures and sanctions would be applied to an autonomous crime of enforced disappearance, considering the continuous nature of the crime (art. 8).

8. With reference to paragraphs 87 and 88 of the State party’s report, please indicate measures adopted to ensure in practice that persons deprived of their liberty for the purpose of identification are immediately afforded fundamental safeguards, including the right to access a lawyer and to contact their families or any person of their choice, as well as consular representatives in cases where the detainee is a foreign national (arts. 10 and 17).

9. Please indicate whether military authorities are competent under domestic law to investigate and/or prosecute persons accused of enforced disappearance, and if so, please provide information about the applicable legislation (art. 11).

10. In relation to paragraph 105 of the State party’s report, please provide information on measures adopted to ensure in practice that prompt and impartial investigations are conducted into allegations of enforced disappearance. Please also clarify whether a case of enforced disappearance as an autonomous crime would also be investigated ex officio (art. 12).

11. Please indicate (a) whether domestic law provides for immediate suspension from duties during an investigation into a reported enforced disappearance when the alleged offender is a State agent; and (b) whether there are any procedural mechanisms to exclude any civil or military law enforcement or security force from the investigation into an alleged enforced disappearance in the event that one or more of its members are suspected of having committed the crime. If so, please include information on the implementation of the relevant provisions (art. 12).

12. Please indicate whether the nature of the facts in the crime of enforced disappearance would, in principle, lead to cooperation even in the absence of a bilateral agreement or of reciprocal cooperation. Please indicate whether any limitations or conditions set out in domestic laws could be applied in relation to requests for judicial assistance or cooperation under the terms set out in articles 14 and 15 of the Convention (arts. 14 and 15).

13. Please provide information on investigations carried out, and their results, in respect of the use of Portuguese airspace and airports in the “extraordinary renditions programme”, which also involved the transfer of detainees, and on the cooperation granted to other States with regard to investigations related to this matter (arts. 12 and 14).

### **IV. Measures to prevent enforced disappearances (arts. 16–23)**

14. Please provide information about the mechanisms and criteria applied in the context of procedures of expulsion, return, surrender and extradition to evaluate and verify the risk that a person may be subjected to enforced disappearance. Please specify whether any decision on expulsion, return, surrender or extradition can be appealed against, which authorities the appeal can be made to and what the applicable procedures are. Please also clarify whether the decision resulting from such an appeal is final or any other authority can

refuse to implement the decision. Please describe any other measures in place to ensure strict compliance with the principle of non-refoulement under article 16 (1) of the Convention. Furthermore, please indicate whether the State party accepts diplomatic assurances when there is reason to believe that there is a risk that the person may be subjected to enforced disappearance (art. 16).

15. Please indicate what the procedures of expulsion, return, surrender or extradition of persons are, how often these procedures are reviewed, and whether, before proceeding to the expulsion, return, surrender or extradition of a person, a thorough individual assessment is made of whether the person concerned is in danger of being subjected to enforced disappearance (art. 16).

16. With reference to paragraph 145 of the State party's report, please confirm whether all persons deprived of their liberty have access to legal counsel, including free legal aid, from the very outset of deprivation of liberty and whether in practice they are immediately informed of such right (art. 17).

17. With reference to paragraphs 134 and 150 of the State party's report, please indicate whether the Portuguese Ombudsman possesses sufficient financial, human and technical resources to enable it to carry out its functions, in particular the function of national preventive mechanism, effectively and independently. Please also provide information on existing guarantees to ensure that the Ombudsman has immediate and unrestricted access to all places of deprivation of liberty (art. 17).

18. In the light of paragraph 159 of the State party's report, please indicate measures adopted to ensure in practice that the official register kept in all places of deprivation of liberty, regardless of the nature of the place, contains all the information listed in article 17 (3) of the Convention (art. 17).

19. Please indicate any steps taken to amend article 143 (4) of the Code of Criminal Procedure with a view to affording the right to communicate with other persons to all persons deprived of liberty, including those detained for terrorism (art. 17).

20. With reference to paragraph 168 of the State party's report, please explain what criteria are used in determining whether a person, who is not a legal representative of a disappeared person, has demonstrated a legitimate interest and thus has access to a record. Please elaborate on the situation where a record is kept secret on account of an investigation that is being undertaken, which restricts access to information by a person with a legitimate interest (art. 18).

21. Please indicate whether the State party provides or envisages providing specific training on the provisions of the Convention to civil or military law enforcement personnel, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty, including judges and prosecutors. In this regard, please indicate the nature and frequency of the training provided as well as the authorities in charge of facilitating such training (art. 23).

## **V. Measures to provide reparation and to protect children against enforced disappearance (arts. 24–25)**

22. In the light of paragraph 201 of the State party's report and article 67 of the Statute of the Victim, please explain what steps have been taken to bring the definition of victim in domestic legislation into line with article 24 (1) of the Convention (art. 24).

23. In relation to paragraph 209 of the State party's report, please indicate whether, besides compensation, domestic law provides for other forms of reparation, such as guarantees of non-repetition, in accordance with article 24 (5) of the Convention. In the absence of a law specifically criminalizing enforced disappearance, please explain how a victim of enforced disappearance that is committed as an autonomous crime and thus would fall under several criminal offences can be guaranteed the right to reparation and compensation. Please indicate whether there is a time limit for victims of enforced disappearance to access reparation (art. 24).

24. With reference to paragraph 223 of the State party's report, please provide information on relevant criminal provisions that would apply if the offences encompassed in article 25 (1) of the Convention occurred. Please also indicate whether any steps have been taken to bring national legislation into line with article 25 (1) of the Convention. Please describe the existing procedures to guarantee the right of disappeared children to have their true identity re-established. Please also indicate whether there is any restriction in place when a concerned child accesses information about his or her origin (art. 25).

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