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HUMAN RIGHTS COMMITTEE

Seventy-eighth session

SUMMARY RECORD OF THE 2110th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 21 July 2003, at 10 a.m.

Chairperson: Mr. AMOR

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

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 6) (continued)

Third periodic report of Portugal (CCPR/C/PRT/2002/3)

1. At the invitation of the Chairperson, the members of the Portuguese delegation took places at the Committee table.

2. Mr. da COSTA PEREIRA (Portugal) said that the members of his delegation viewed their encounter with the Committee as an opportunity for learning, but also for providing an honest and open portrayal of the situation in Portugal during the 13 years that had elapsed since the country's second periodic report. Among the many significant developments during that period had been the return of Macao to Chinese administration. The handover process had been painstakingly negotiated, with reference to more than 100 international instruments, chief among them being the Covenant.

3. Ms. GOMES FERREIRA (Portugal), introducing her country's third periodic report (CCPR/C/PRT/2002/3), said that the many recent legal developments in Portugal, which reflected the country's desire to implement the principles enshrined in the Covenant, included revisions of the Constitution in 1997 and 2001. The Penal Code had also been revised, in 1995 and 1998, so as to place greater emphasis on crimes against the person. Family planning legislation had been enacted, and the regime governing the expulsion of aliens had been revised.

4. Mr. SIMÕES (Portugal), referring to question 1 on the list of issues (CCPR/C/78/L/PRT), said that, with certain exceptions, aliens enjoyed the same rights and duties as Portuguese citizens, in accordance with article 15 of the Constitution. Aliens could not, however, exercise the same political rights as citizens, perform public functions that were not of a technical nature or perform military or diplomatic service. Yet there were exceptions even to those exceptions: citizens of Portuguese-speaking countries permanently residing in Portugal could enjoy rights not normally granted to aliens, provided that such rights did not contravene the law and provisions for reciprocity with the aliens' country of nationality existed. Such individuals could hold any public office except those of President, President of Parliament, Prime Minister and President of the Supreme Court. Likewise, contingent upon provision for reciprocity, citizens of States members of the European Union residing in Portugal could vote and be elected to the European Parliament from Portugal. Lastly, all aliens resident in Portugal had the right to vote in local elections and be elected to local office.

5. With regard to legislation governing the expulsion of aliens (question 2), he said that aliens could be expelled if convicted of criminal offences. However, expulsion did not follow automatically when an alien was convicted; the circumstances of the case were taken into consideration by the sentencing judge, specifically with a view to ensuring that the convicted alien enjoyed the right to a normal family life. An effort was made to determine the extent to which the offender had become integrated in social life while residing in Portugal. Moreover, there were certain circumstances in which expulsion was not permitted: if the alien offender had been born and regularly resided in Portugal; if the offender had children under the age of 18 residing in Portugal; or if the offender had resided in Portugal since before the age of 10.

6. Ms. GOMES FERREIRA (Portugal) said that discrimination and incitement to hatred (question 3) were banned by both the Portuguese Constitution and Portuguese law. Article 41 of the Constitution guaranteed freedom of conscience, religion and worship, while article 46 (4) prohibited the existence of organizations espousing fascist or racist ideologies. The criminal law contained a number of provisions banning discrimination and incitement to national, racial or religious hatred, including articles 239 and 240 of the Penal Code, dealing with genocide and racial discrimination respectively, and articles 251 and 252 of that Code, which dealt with attacks based on religious belief and disruption of acts of worship.

7. Mr. MARRECAS FERREIRA (Portugal) said that practical examples of the application of legislation to address discrimination against gypsies and the actions of fascist organizations had already been brought to the attention of the Committee on the Elimination of Racial Discrimination, and details of particular cases, including the notorious National Action Movement (MAN) case, could be found in Portugal's eighth periodic report to that body (CERD/C/314/Add.1, paras. 80-89, 100-103 and 104-105).

8. In February 2002, article 240 of the Penal Code had been applied in two cases in northern Portugal involving defamation and insults by an elected official, in one case directed at gypsies and in the other at a political adversary. The official had been convicted of both offences and had been required, inter alia, to issue an apology to the gypsy community. Although the sentence imposed had been light, the fact that the provision had been successfully invoked was noteworthy.

9. Mr. FIGUEIREDO (Portugal) said that racial discrimination was a matter of concern to his Government, which believed that such exclusionary behaviour undermined both social and legal norms. Act No. 34/199, as regulated by Decree-Law No. 111/2000, explicitly prohibited racial discrimination, which was defined in detail in article 3, and identified, in article 4, as specific practices that constituted discrimination in a broad range of areas, such as employment, the provision of services, commerce, housing and education. Some 30 cases of racial discrimination had been brought to the attention of the competent administrative authorities during the period 2000-2002; 12 had been investigated, with proceedings brought in 5 cases and 4 referred to the Public Prosecutor's Office.

10. Mr. RIBEIRO de ALMEIDA (Portugal) said that he would address the five cases cited in question 4 from the point of view of the Office of the Inspector-General for Internal Administration, which undertook external monitoring of the action of law enforcement personnel from a human rights perspective. The Office conducted investigations but referred matters for prosecution to the Ministry of Internal Administration. Disciplinary proceedings were then conducted by judges and magistrates assigned to serve as inspectors in the Office.

11. In the case of Paulo da Silva, who had died in 2000, disciplinary proceedings had been instituted in respect of a deputy chief and eight officers of the Public Security Police. Following the investigation phase, the inspector in charge of the case had suspended proceedings until a decision on the matter had been reached within the criminal justice system.

12. In the case of Alvaro Rosa Cardoso, who had also died in 2000, disciplinary proceedings had been brought against two Public Security Police officers. The inspector assigned to the case had recommended to the Ministry of Internal Administration that the case should be closed on grounds of insufficient evidence, as stipulated in the Code of Penal Procedure.

13. In the case of Antonio Mendes dos Santos, who had also died in 2000, disciplinary proceedings had been brought against two officers of the Public Security Police. The inspector in charge of the case had decided to suspend proceedings until a decision was reached in the criminal trial.

14. In the case of Antonio Pereira, who had died in 2000, disciplinary proceedings had been brought against an officer of the Public Security Police, who had been suspended from duty for 225 days.

15. In the case in which police officers had intervened against a group of Brazilians celebrating Brazil's victory in the World Cup at Costa de Caparica in 2002, an investigation had found that the use of force by the police had been necessary, proportionate and adequate to the circumstances. Physical force had been used only as a last resort, when all other means of restraint had been exhausted, and had served to counter the real threat posed to the physical safety of the police. The inspector had proposed that the case should be closed.

16. Ms. GOMES FERREIRA (Portugal) said that she would comment on the same cases from the standpoint of the Ministry of Justice. Under the Code of Penal Procedure, criminal investigations were conducted by magistrates from the Public Prosecutor's Office, who enjoyed complete independence. A council of magistrates, which had an advisory and disciplinary function, was headed by the public prosecutor, who in turn could issue circulars to guide the magistrates examining criminal cases, particularly cases involving police officers. She drew attention in that connection to circular No. 3/93, which required examining magistrates to inform the Public Prosecutor's Office as soon as possible of any criminal cases resulting in the investigation of any officer of the law and of the outcome of such investigations. In cases that went to trial, a copy of the verdict must also be submitted to the public prosecutor. Those arrangements had governed the proceedings in the cases identified by the Committee in question 4.

17. In the da Silva case, a criminal investigation had been opened against the officers charged, but sufficient evidence to support the charges had yet to be found.

18. In the Cardoso case, a criminal investigation had been undertaken, resulting in the bringing of criminal charges against two police officers. However, the officers had asked for an optional investigation procedure to be conducted in which an outside magistrate was called on to rule on the manner in which the original investigation had been carried out. At the end of that optional phase the examining magistrate had decided not to bring charges against the two officers. That ruling had been appealed by the Public Prosecutor's Office but upheld by the court of appeal.

19. In the Mendes case, the investigation had been terminated by a decision that grievous bodily harm had been inflicted, there having been insufficient evidence to accuse the police officers of homicide. Following the investigation in the Pereira case, the public prosecutor had

decided to accuse the police officers of homicide and the case would be heard in November 2003. In the case of the group of Brazilians, there had been an investigation but it had been suspended, since the individuals involved could not be identified.

20. Ms. MATOS (Portugal), referring to cases of ill-treatment and abuse of authority by prison staff and violence among prisoners (question 5), said that the issue was of continuing concern to the Department of Penitentiary Services. In recent years, particular importance had been accorded to preventive measures by training prison staff in deontology, psychology and human rights. In the context of repressive measures, a programme had been designed on the basis of the international instruments for the protection and defence of human rights, particularly the United Nations Convention against Torture and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

21. Numerous internal communications had been circulated with the aim of preventing abuse. All complaints by prisoners or their families, or in press articles, were immediately followed up and, if it was proved that an offence had been committed, the public prosecutor was informed. Decree-Law No. 146/2000, which adopted the new statute of the Ministry of Justice, created the Office of the Inspector-General of Justice Services to inspect and monitor the services and bodies attached to the Ministry. Prisoners were entitled to correspond confidentially with the Inspector-General.

22. In relation to the deaths in Vale de Judeus prison in October 2001, a criminal inquiry had been initiated and had revealed that drug-trafficking was taking place within the prison. The last stages of the investigation had been reached and a final decision would be issued within the next two months. In 1999 members of the Committee against Torture had visited the prison. It had been found that many of the problems were due to overcrowding and the use of drugs. As a result, efforts had been made to reduce the prison population, increase prison staff and monitor prison visits, as most drugs entered the prison via visitors. Specifically, up to 300 prisoners were being transferred to another prison near Porto and two prison guards had been convicted of drug-trafficking.

23. Ms. GOMES FERREIRA (Portugal) said that guaranteed easy access to contraception measures and family planning consultations (question 6) continued to be prime concerns of the Ministry of Health, which had conducted a survey of fertility and the family in 1997. The survey had showed that policies in that area had been successful because the birth rate had declined to 1.5 children per woman. The initial legislation on contraception and family planning dated back to 1984, but it had recently been strengthened by Decree No. 12,782/98, Act No. 120/99, which reinforced guarantees concerning the right to reproductive health, and Act No. 12/2001 on the availability of “emergency contraception”.

24. The Health Department had published updated technical guidelines on reproductive health and family planning in 1998 and 2001, and had evaluated their implementation in hospitals and health centres in 1999 and 2000.

25. There were no specific statistics relating to illegal abortions; however, records had been kept of women who had been hospitalized as a result of complications following an illegal abortion, they had numbered 1,616 in 2002. According to the National Institute for Statistics, 5 per cent of the women surveyed in 1997 said that they had had at least one abortion. Lastly, the deadline for allowing a pregnancy to be terminated had been extended in 1997.

26. Mr. SIMÕES (Portugal) said that the right of persons held in detention to medical care (question 7) was guaranteed by the Constitution. Specifically, Decree-Law No. 265/79 applied to all prisons under the responsibility of the Ministry of Justice; it stated that all prisoners had the right to receive medical care and regulated the question of health care exhaustively.

27. Both the Constitution and the Code of Penal Procedure stipulated that a person had the right to be accompanied by a lawyer at all stages of the proceedings, and a person who had been detained could communicate with his lawyer in private, at any time, by telephone or in person.

28. The law established that a first interrogation must be conducted within 48 hours of the arrest. All cases of detention must be recorded by the police and reported immediately to a judge or public prosecutor. Lastly, all decisions relating to detention must be communicated to a relative or other person named by the detainee.

29. The general time limit for pre-trial detention (question 8) was six months before a charge was brought and two years before a final judgement. All other circumstances were fully described in the report. When the time limit had expired, the detainee had to be released immediately, and the release was verified by a judge; failing that, the detainee had the right to invoke habeas corpus. The Code of Penal Procedure established that, when the time limit for pre-trial detention had expired, other measures of restraint could be applied. However, such measures, which included the obligation to report to the police at regular intervals and house arrest, were also subject to time limits.

30. Ms. GOMES FERREIRA (Portugal) said that pre-trial detention (question 9) was an exceptional and residual measure; it could only be applied when all other measures were considered insufficient or inadequate. The respective time limits were very rigid and, once they expired, a detainee was freed immediately. Under the system in force, pre-trial detention continued until a final decision had been confirmed; in other words, until any possible appeal had been decided.

31. The total prison population in Portugal was 14,226; 4,236 persons were being held in pre-trial detention, which represented 29.7 per cent of that total. In 2001, judgements had been handed down in the case of 2,501 persons held in pre-trial detention and 2,351 of them, or 94 per cent, had been sentenced to imprisonment; of the latter, 70 per cent had been convicted for drug-trafficking or associated offences, such as robbery with violence.

32. Her Government was trying to improve the situation and was implementing measures that could provide alternatives to pre-trial detention. For example, a system of electronic surveillance was being used, with the consent of the person involved, whereby his whereabouts could be monitored through the use of a special bracelet. The measure had already been utilized with 417 persons in Lisbon; of those 75 per cent were at the pre-trial stage. It was hoped to extend the measure to Porto.

33. Mr. SIMÕES (Portugal), said that under article 225 (1) of the Code of Penal Procedure, any person subjected to unjustified pre-trial detention (question 10) had had the right to compensation if particularly serious damage had been caused. That provision had been modified by Act No. 59/98, and there was no longer any need to prove serious damage.

34. Article 301 (1) of the Penal Code described terrorist acts (question 11) in the following terms: acts that attacked national integrity or independence; acts that prevented, modified or undermined the functioning of the State institutions established in the Constitution; acts that forced the public authorities to commit a particular act, abstain from committing an act or tolerate an act to be committed; acts that intimidated certain persons, or groups of persons, or the general population; offences against the life, physical safety or freedom of persons; acts against the safety of transport and communications; acts that created special dangers using fire, radioactive or toxic substances, contamination of food and water intended for human consumption, or dissemination of disease or illness; acts of sabotage, and offences involving the use of nuclear energy, firearms and explosives. The most important element was the intention behind the act.

35. His Government was now incorporating the Council of Europe's "Guidelines on human rights and the fight against terrorism" into Portuguese law, so as to bring legislation into line with that of other European countries. There had been no specific cases of terrorism in Portugal over the past 10 to 15 years.

36. The CHAIRPERSON invited members of the Committee to raise any additional points relating to questions 1 to 11 of the list of issues.

37. Mr. KHALIL thanked the members of the Portuguese delegation for their very frank and clear answers to the list of issues and noted that there had been several positive developments since the last country report. The Constitution and the Penal Code had been amended and advances had been made in the areas of family planning and the expulsion of foreigners, all of which were bringing the Portuguese legal system and practice more into line with the provisions of the Covenant.

38. Mr. RIVAS POSADA said the delegation had helped clarify some of the questions the Committee had raised, particularly with regard to the constitutional and legal provisions on the rights of nationals as compared with the rights of aliens. However, some issues required further clarification. For example, regarding expulsion, the Committee had expressed a wish to know the consequences of the expulsion of aliens, as an accessory penalty for certain offences, particularly in the specific case of aliens with family members in Portugal, because that might violate the rights of the family.

39. Paragraph 13.31 of the country report made it clear that, in the case of resident aliens, there were a number of provisions that protected the situation of children and the family. However, the same paragraph established differences with regard to non-resident aliens, as if the latter were not covered by those guarantees and the prohibition of the penalty of expulsion. Consequently, there could be discrimination against the protection due to children and the family. He would like to know if, in practice, the accessory penalty of expulsion was applied differently to resident and non-resident aliens.

40. The laws against discrimination and incitement to ethnic, racial and religious hatred seemed sound, but statistics would be useful, together with an account of any such incidents, especially as between aliens and citizens or resident and non-resident aliens.

41. He would also like to know what disciplinary consequences were faced by police officers who abused their power, and, since administrative proceedings were normally suspended pending criminal proceedings, what was done about compensation in the meantime.

42. Mr. GLELE AHANHANZO asked for further information and statistics on ill-treatment, violence or abuse of authority inflicted on prisoners by prison staff, and on what the Government had done to curb or prevent such incidents. Regarding abortion and the fact that 5 per cent of Portuguese women surveyed had admitted to having at least one abortion, he asked what had been the social class of the women who had had the 1,616 clandestine abortions reported in 2002, whether their motivation had been religious or financial, and in general what the Government thought should be done about the situation. It would also be interesting to know the results of the 2001 Department of Health evaluation of the implementation by hospitals of the technical guidelines on reproductive health and family planning.

43. Mr. SOLARI YRIGOYEN, commending Portugal for its clear commitment to ensuring respect for human rights, asked for clarification as to when - once the time limits for pre-trial detention were exceeded - the accused was released automatically, and when it was necessary to apply for a writ of habeas corpus in order to obtain release. He would also like to know who could apply for a suspension of the counting of the period of pre-trial detention. The delegation had stressed the exceptional and residual nature of pre-trial detention, but that did not seem to be corroborated in practice. According to the statistics provided, one third of all detentions were pre-trial detentions, and he wondered if legal steps would be taken to reduce that high proportion. Also, it was not clear if judges automatically granted adequate compensation to persons subjected to pre-trial detention in the instance described in question 10, or only in response to an application by a lawyer.

44. He wished to know when the Council of Europe guidelines on the fight against terrorism had come into effect in Portugal and superseded its own legislation on the matter.

45. Mr. YALDEN observed, with reference to monitoring and enforcement of rights under articles 2 and 3 of the Covenant, that paragraphs 2.15, 2.16 and 2.33 of the report described the work of the Ombudsman, but only in the annexes were some scant statistics to be found. He would be interested in seeing the report that the Ombudsman presumably made to Parliament, and to read any general evaluation of the human rights situation that the Ombudsman might have made.

46. Copious statistics relating to women had been provided in the annexes, but the report itself contained no general analysis of the situation of women and the problems they faced in employment, in both the public and private sectors, and in rising to senior positions. Such information was called for in relation to articles 3 and 26 of the Covenant.

47. Ms. WEDGWOOD said that she would like more information on the Cardoso case, which had involved police violence. Why had there been a widespread police protest? And had the case been closed for lack of evidence? Since the events had occurred on police premises, they were undoubtedly shrouded by a wall of silence, given the well-known code of police solidarity. That practice must be overcome.

48. She also wondered why more severe punishment had not been meted out in connection with the death of Antonio Pereira at the hands of the police when he had intervened to stop a fight. And did the Government have available to it civil rights statutes that permitted it to transfer cases not dealt with satisfactorily at the local level to the national level?

49. Regarding abortion, she asked how many of the over 1,600 known cases of clandestine abortion had led to the death of the woman concerned. While abortion raised complicated religious and philosophical questions, many countries considered such statistics relevant in the debate on the morality of abortion.

50. She was bewildered by the answers on pre-trial detention. There was said to be a 48-hour limit, but at the same time, under article 216 of the Penal Code, it could be as long as six months before charges were brought, meaning that no probable cause had to be shown in the meantime. That would be an extremely long period under common law for bringing either initial or formal charges.

51. The CHAIRPERSON observed that some of the confusion might stem from the terminology used. In civil law, there was a distinction between being held in police custody and pre-trial detention.

52. Sir Nigel RODLEY observed that the report, in detailing the conditions under which the police could use firearms (para. 6.41), had set out a very wide-ranging notion, based on threat per se and not simply threat to life or limb. If that was the case, it violated the case law of the Committee and of the European Court of Human Rights, and the United Nations Basic Standards and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. He did not believe that the notion of proportionality introduced in 1999 extended to the nature of the threat.

53. Since reports indicated that the police protests in the Cardoso case might not have been within the bounds of legality, he would like to know what action the Government had taken in that regard. He would also like some information on two other cases not on the list. The first was the case of Angelo Simado, shot dead in 2001 by the police, in which the officers involved had been sentenced by the administrative authorities to a 75-day suspension for violating the rules regarding the use of firearms. He wondered what kind of criminal investigation had been carried out. He would also like to know if there had been any criminal or disciplinary investigation of the police officer who had mortally wounded Nuno Lucas in 2002 while trying to arrest him. Also, when disciplinary and/or criminal proceedings were brought against police officers accused of using violence, were they allowed to continue to carry firearms in the meantime? Because neither the report nor the delegation had discussed the administrative procedures in the context of the underlying concern for the right to life, the impression that emerged from all those cases was that the police might feel free to use lethal force with little risk of being held to account.

54. Mr. LALLAH reiterated the Committee's concern about the length of pre-trial detention, both when a suspect was held in police custody and at the time of initial arrest. In the French system, because it was felt that those conducting the questioning of a suspect were not the best placed to decide on release, there was the institution of a judge responsible for releasing prisoners (juge de liberté). He wondered whether Portugal was thinking of adopting such a system.

55. He also wondered how the Government monitored compliance with the rule that all arrests must be recorded by the police, and what it did in the case of failure to comply. NGOs such as Amnesty International had indicated that was sometimes the case. When a detention was alleged to be illegal, who conducted the inquiry - the police themselves or a separate body? And from what perspective, that of criminal law or of disciplinary measures? He would like to know how many cases of illegal detention there had been, what inquiries had been made and what the results had been.

56. When an official was alleged to have committed an illegal act, there was the choice of dealing with it in either disciplinary or criminal proceedings. Since evidential requirements were much higher in criminal proceedings, in some jurisdictions the disciplinary proceedings were assigned to high, independent officials, but they normally had to await the outcome of the criminal proceedings. He would like to know whether the Government believed that such a system of determining criminal liability did not interfere significantly with the State's duty to sanction guilty persons. And he would like to have statistics on how many cases had been dealt with disciplinarily only after criminal prosecution.

57. There was also the grave problem of prisoners dying as a result of violent action by the police while in police custody. Surely a State that deprived citizens of their liberty must be responsible for their personal security, especially since they were in a position of great disadvantage, under the complete control of armed men who had power over their very lives. The Committee needed to know how seriously such cases of police killings had been treated.

58. Ms. MATOS (Portugal), replying to question 12 of the list of issues, said that the most serious disciplinary measure applicable to detainees was internment in a single room pursuant to article 133 of Decree-Law No. 265/79. However, article 143 of the Decree-Law accorded them the right of appeal to a judge of the Court responsible for the Enforcement of Sentences where the internment exceeded eight days, such appeal having suspensive effect from the eighth day if the appeal had not yet been assessed. Detainees could also complain to many other bodies, both internal and external. At all events, the legislation was about to be reviewed and the possibility of broadening the scope of appeals against disciplinary measures would be considered.

59. Turning to question 13, she said that an ambitious "Plan of action for the penitentiary system" had been launched in 1996. Overcrowding had already been reduced from 56 per cent to 22 per cent. Sanitary facilities had been provided in individual cells, and educational and vocational training and sports facilities had been constructed or upgraded. Opportunities had been created for external employment of prisoners so as to prepare them for their reintegration into society.

60. Medical care and first-aid facilities were available in all prisons but there was also a general prison hospital with 17 special medical units, 5 drug-free units and 2 psychiatric and

mental health clinics. Smaller clinics had been established in a number of prisons. Information campaigns for prisoners dealt with subjects such as drugs, sexuality, AIDS, hepatitis and healthy lifestyles. Vaccination against hepatitis B was available on a voluntary basis, and condoms and bleach were distributed. Act No. 170/99 introduced measures to prevent the spread of infectious or contagious diseases, including testing facilities.

61. In reply to question 14, she said that judges of the Court responsible for the Enforcement of Offences were required by law to visit prisons at least once a month to hear prisoners' grievances. In practice, the judges' visits, especially to larger facilities, tended to occur more frequently, usually once a week. A judge of the same court presided over the technical boards of individual prisons and decided, in the light of the board's advice, on cases of conditional release. Prison authorities were monitored by the Office of the Inspectorate-General of Judicial Services, the Ombudsman, who had published reports in 1996 and 1999 and was about to publish a third report, committees of the Assembly of the Republic and international human rights bodies.

62. Mr. PEDRO (Portugal), responding to question 15, said that the purpose of the first stage in the asylum procedure (admissibility stage) was to determine whether the application was manifestly inadmissible, fraudulent or abusive. It was considered to be manifestly inadmissible if it was unfounded, was submitted by a petitioner who was a national or habitual resident of a country that could be characterized as a safe or host country, came within the scope of article 1-F of the Convention relating to the Status of Refugees, or was submitted, without due justification, after the legally prescribed deadline, i.e. eight days after entry into Portuguese territory, or if the applicant had previously been expelled from Portugal. An asylum-seeker whose application was deemed inadmissible could appeal within five days, with suspensive effect, to the National Commissioner for Refugees (NCR), who must take a decision within 48 hours. The NCR decision could be appealed, without suspensive effect, within eight days.

63. When an application for asylum was submitted at a point of entry into the country, the asylum-seeker was required to remain within the international area - an airport, seaport or special "temporary settlement area" - until the admissibility decision was taken. A frontier official sent a report on the application to the Aliens and Frontiers Service, which forwarded it to the Portuguese Refugee Council (an NGO). The Council was required to submit an advisory opinion within 48 hours, during which time applicants were interviewed. The Director of the Aliens and Frontiers Service had five working days to reach a decision on the application. If it was considered admissible or if no decision was reached within the time limit, the asylum-seeker was given permission to enter the country. An inadmissibility decision could be appealed to the NCR within 24 hours. If the decision was confirmed, the applicant was returned to the place from which he or she had originally set out or, if that was not possible, to the State that had issued his or her travel document or to a third host location. Under the Asylum Act, asylum-seekers had 48 hours to seek postponement of their departure so as to provide a lawyer with evidence to back their application. Negative decisions by the NCR could also be appealed to an administrative court, but without suspensive effect.

64. Under article 53 of the Asylum Act and Ministerial Order No. 30/2001, all asylum-seekers enjoyed the right to health and medical care, such as emergency and pharmaceutical assistance. The right to seek employment was granted once the application for asylum was approved.

65. Mr. SIMÕES (Portugal) said that the principle of the most favourable law (question 16 (a) was still applicable during criminal proceedings but not after final conviction. However, article 29 (4) of the Constitution stated that no one could be subjected to a harsher penalty than that in force at the time a crime was committed. Moreover, the offender could not be convicted if an offence was decriminalized under new legislation and would benefit from any more favourable regime unless a final judgement had been handed down. However, the Constitutional Court had looked into the matter and found the latter provision unconstitutional. In two cases convicted offenders had been granted the right to benefit from new legislation establishing lighter penalties.

66. Turning to question 16 (b) on indeterminate sentences, he said that the Constitutional Court had considered articles 83 and 84 of the Penal Code on two occasions and concluded that they did not breach the Constitution since they did not result in indeterminate penalties. Even where judges did not impose a sentence of a fixed duration, they always established a minimum and maximum period of detention.

67. In response to question 17, he said that since Portugal's second periodic report, Act No. 1/99 on the status of journalists, which accorded journalists the right to protect their sources, had been adopted. No journalist, lawyer or doctor could be forced to reveal facts learned through his or her professional activity. If a member of one of those professions refused a summons to give evidence before a lower court, the matter would be referred to a higher court. Two recent High Court decisions had absolved lawyers of the requirement to testify.

68. Turning to question 18, he said that Decree-Law No. 134/2003 on the registration of religious entities had been approved the previous month and would enter into force in December 2003. All other practical issues addressed by Act No. 16/2001, such as non-discriminatory tax benefits, acceptance of donations, freedom to run schools and access to tuition in public schools, depended to some extent on the entry into force of the Decree-Law.

69. Mr. MARRECAS FERREIRA (Portugal), responding to question 19, said that article 40 of the Constitution granted annual broadcasting rights to all political parties, labour associations and other nationwide social organizations. During electoral campaigns, political parties, coalitions of parties, presidential candidates and candidates for local authority bodies enjoyed broadcasting rights subject to certain conditions laid down in electoral legislation. Radio and television stations, which were required by law to offer candidates a certain amount of airtime, were subject to a fine for breaches of the legislation on presidential, parliamentary or local or regional authority elections. At the same time, candidates who used language or images that constituted a crime, an offence against democratic institutions, or incitement to hatred, violence or war, or who used commercial publicity were subject to suspension of their right to airtime for one day or more depending on the seriousness of the offence.

70. Turning to question 20, he said that Portugal had ratified all major international instruments relating to the employment of children such as the United Nations Convention on the Rights of the Child, the ILO's Minimum Age Convention, 1973 (No. 138) and Worst Forms of Child Labour Convention, 1999 (No. 182), and the European Social Charter, especially article 7, and had incorporated European Community Council Directive 94/33 on the protection of young people at work in its domestic legislation.

71. The findings of two studies, prepared in 1998 and 2001 in the context of the Government's action against child labour, had been compared by the Ministry of Labour and Solidarity, which had found that between 1998 and 2001 child labour had increased from 4 per cent to 4.2 per cent. A plan to eliminate the exploitation of child labour had been adopted by the Council of Ministers by Decision No. 1/2000.

72. Remunerated employment of school-age minors (under 16) was prohibited by article 69 (3) of the Constitution. Schools were required to inform regional social security centres of cases of dropout of minors under 16 years of age. Minors could not be admitted to employment if they were physically or psychologically unfit to work. A medical examination was compulsory prior to employment or within 15 days where there was an urgent need to start work, subject to the consent of the minor's legal representatives. No minor was authorized to work against the will of his or her legal representative. The regulations were applicable to all sectors of activity and all categories of enterprise, including family firms. The minimum employment age could be raised, either by law, in the case of certain types of employment from which minors were barred, or by collective agreement.

73. The minimum age could, however, be reduced to 15 for children who had completed their compulsory schooling and were employed in specific light tasks involving basic skills and placing them under no great physical or psychological strain. The child's best interest and his or her right to health, education and full development were taken into account in such cases. Employment involving long and uninterrupted working hours, night work or work for more than five days a week was excluded from the category of light work.

74. Minors were not allowed to work overtime or for more than four and a half hours without a break. Paid annual leave of at least 22 working days was compulsory.

75. Under the general regime governing administrative employment offences issued in 1999, breaches of the legal standards governing the employment of minors were serious offences punishable by fines of between 1,500 and 45,000 euros, depending on the size of the company and on whether the offence was committed through negligence or with fraudulent intent. If the Labour Inspectorate detected breaches of the law, it was required to order the offender, in writing, to terminate the activity in question forthwith on pain of being charged with the offence of aggravated disobedience, which was punishable by imprisonment for up to two years and a fine.

76. Mr. SIMÕES (Portugal), responding to question 21, said that, according to article 8 of the Citizenship Act, no one could be stripped of Portuguese citizenship unless he or she expressed a desire to renounce it.

The meeting rose at 1 p.m.