

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

Discussion of the first National Report in the context of the fifteenth session of the
Committee on Enforced Disappearances

Madam President,
Honourable Rapporteurs,
Honourable Members of the Committee,

It is an honour for me to head the Delegation that stands before this distinguished Committee today to discuss, on behalf of Portugal, the first Report on the implementation of the International Convention for the Protection of All Persons from Enforced Disappearance.

I have the privilege of addressing you in my native language, Portuguese, a language with a truly global vocation, spoken by nearly 250 million people worldwide, and, which we hope may become, in the near future, one of the official languages of the United Nations.

I greet and address a word of appreciation to all members of the Committee, in particular to the Madam President and the Rapporteurs for Portugal. I thank the Committee for the attentive analysis of the Report, as well as the list of issues submitted to us, of great relevance and pertinence, which will guide our dialogue during this session.

Allow me, Madam President, to introduce the Portuguese delegation, composed by representatives of different Ministries, which reveals the importance that Portugal attaches to all matters related to the promotion and protection of Human Rights, as is the case of this Convention.

I am accompanied by: Rosa Vieira Neves, Advisor to the Minister of Justice, former chief of Cabinet of the Ombudsman, and former member of the National Preventive Mechanism against Torture, António Folgado and Filipa Homem, from the Ministry of Justice; Maria Cândido, from the Ministry of Defence; Ricardo Carrilho, of the Ministry of Home Affairs; and Vera Ávila, Filipa Pereira and Ana Costa Pereira, from the Ministry of Foreign Affairs as well as by the Permanent Mission of Portugal in Geneva.

Allow me as well to introduce myself. I am a Supreme Court Judge, in the criminal section: I have been a Public Prosecutor for 38 years; Secretary of State for Justice, and I have represented the Portuguese State in Eurojust - European Union's Judicial Cooperation Unit, entity that I have had the privilege to help build and to preside. It is, therefore, an enormous honour for me to have the opportunity to lead this delegation and to actively participate in this dialogue with the honourable Members of the Committee.

Madam President, honourable Members of the Committee,

We present ourselves before you with total openness and in a spirit of dialogue. The purpose of this interactive exercise is shared: we wish to clarify the Committee on the Portuguese legal framework, on the relevant practices and action put in place for the purpose of ensuring the protection of all persons against enforced disappearance, underlining the progress achieved.

We will take under careful consideration the observations and guidance of this Committee in order to help us remedy any deficiencies that may still persist.

Allow me to stress that this draft report, which we will soon start discussing, as well as the reply to the list of issues submitted, were prepared in the context of our National Human Rights Committee (CNDH). The CNDH was created following the commitment made by Portugal during the first cycle of Universal Period Review (UPR) and has already been identified as a good practice by the United Nations High Commissioner for Human Rights. All departments of the Public Administration with responsibilities on matters related to human rights are part of this Commission. The Portuguese Ombudsman and the Public Prosecution Office also participate as permanent guests.

Further to this, Portugal also attributes paramount importance to the participation of civil society in the process of implementing and developing a system for the promotion and protection of human rights and in preparing and drawing up reports in this context. For this effect, NGOs are invited to participate in the works of the CNDH.

Madam President, honourable Members of the Committee,

Portugal ratified the Convention in 2014.

However, the commitment of the Portuguese State to eradicate the practice of enforced disappearances dates from much earlier. The commitment formally made before the international community at the moment of ratification should be understood in the light of the Portuguese legal system as a whole, a system deeply rooted in the value and protection of human dignity.

Portugal is a young and consolidated democracy, with little over 40 years, which is structured and continuously evolving in the framework of the universal system for the protection of human rights. Portugal utterly rejects any practice of enforced disappearances.

The Portuguese State is a party to all human rights treaties adopted in the framework of the United Nations. These treaties emanate from a common basis, the Universal Declaration of Human Rights, which 70th anniversary we celebrate this year.

Portugal is also a member of the Council of Europe and a State Party to the European Convention on Human Rights. This November we mark the 40th anniversary of the accession of the Portuguese State to this landmark document. We are also a Member State of the European Union, which action is guided by the Charter of Fundamental Rights, that, since 2009, is legally binding throughout the Union.

Madam President, honourable Members of the Committee,

The Portuguese legal and constitutional order is completely incompatible with a violation of human dignity such as those that the practice of enforced disappearance involves.

Portugal is, we stress, a Republic founded on the dignity of the human person. It is a democratic State governed by the rule of law and based on the separation of powers, which guarantees the independence and impartiality of the Courts, as well as of the criminal investigation, directed by the Public Prosecution – which enjoys full autonomy from other

powers of the State. These elements, taken as a whole, constitute the fundamental pillars for the defence and guarantee of civil liberties and fundamental rights.

In reaction to the excesses and abuses of the past, the 1976 Constitution and the law provide for strict limits to the performance of the State's functions, in particular in what regards the activities of the military and police forces, including in the field of crime prevention and repression, in which ample guarantees are consecrated.

The activity of the Armed Forces in Portugal is strictly limited and conditioned. It should always be carried out with respect for the constitutional order, the democratic institutions and the international conventions. The operation of Armed Forces officials is subject to principles and rules which are common to other State powers.

The operation of security forces and services is bound by strict criteria demanding respect for the constitutional order and fundamental rights, notably in what concerns the use of force and the conditions under which someone may be deprived of liberty.

These activities are duly supervised by independent bodies, namely for the purposes of monitoring their compliance with the obligations emanating from international instruments. It is incumbent upon security forces to ensure public safety and order, prevent and investigate the perpetration of crimes, and to protect the rights of citizens. In the context of criminal investigation, police forces intervene in the direct dependence of the Public Prosecution, assisting thereto, as well as to the judges and the Courts throughout the judicial proceedings.

Security forces officers, prison guards or any other person working in prison or other detention facilities, participate, periodically, in mandatory training in the field of human rights, which touch upon the matters covered by this Convention.

The Portuguese State is responsible and accountable before its citizens. The actions and omissions of the State, its officials or agents, may generate civil liability and the duty to

repair the damages. On the other hand, State officials and agents are subject to disciplinary duties and sanctions in case of infraction, further to criminal liability in case of offences of this nature, for instances, the involvement in a situation of enforced disappearance.

Portugal has a long-standing humanist tradition.

Portugal was pioneer in abolishing the death penalty, more than 150 years ago. We do not recognize value to life imprisonment sentences, convinced of the curial importance of resocialization as the purpose of the punishment. The deprivation of liberty, by arrest or imprisonment, has, among us, a specific purpose and scope strictly framed in the fundamental law. The provision enshrined in Article 27 (2) of the Constitution is categorical in that sense.

The Portuguese Constitution enshrines a broad catalogue of fundamental rights, including the fundamental right to *life, physical and moral integrity, protection from torture and degrading treatment, freedom and security, personal identity, personality development and protection against any form of discrimination*. Reference should also be made to the right to *freedom of expression, conscience, worship and religion, association and assembly and demonstration*, as well as the right to *constitute a family*, expressly stating that the children cannot be separated from their parents except by judicial decision and in cases of non-compliance with the fundamental duties of the parents.

The first guarantee against enforced disappearances results, therefore, from the constitutional consecration of the rights that this practice affects and the protection conferred to them.

Moreover, our Constitution is open to international law, which it receives as part of national law. Such is the case of the Convention against Enforced Disappearance. This Convention binds the Portuguese State and is in force in our legal system, with preference over the provisions of ordinary legislation. Several provisions of the Convention apply directly and, to that extent, can be invoked before the competent authorities.

With regard to the repression and punishment of enforced disappearances, Portugal criminalizes this practice in the context of a widespread or systematic attack, adapting

domestic legislation to the Rome Statute. It is a crime of a public nature, of *ex officio* investigation and not subject to any statute of limitation.

Apart from the cases that constitute a violation of international humanitarian law, Portuguese criminal law also allows for the persecution and severe punishment of these conducts. Enforced disappearance, as defined in the Convention, constitutes a complex and multiple violation of rights and falls within the provision of the type of various autonomous crimes. We make reference to, among others, illegal restraint, kidnapping, human trafficking, torture or degrading treatment, or denial of justice. These crimes are also qualified as public crimes and are subject to criminal penalties appropriate to the seriousness of the conducts. This legislation also foresees the aggravated punishment in the case of perpetration by State officials with abuse of authority.

From a different perspective, it should also be stated that the Constitution, as well as criminal and civil legislation, do not tolerate acts of superiors in contravention of the Law and the legal applicable provisions, punishing it accordingly. Subordinates are safeguarded from the obligation to carry out illegal orders, in particular if they lead to the commission of a crime, in which case the duty of obedience ceases.

Further, it should be mentioned the framework for extradition or mutual legal assistance in criminal matters, which is suited to the needs of criminal investigation and prosecution, but always ensuring the protection and respect for the human rights of the persons concerned. This regime, just as police cooperation, not only does it comply with the requirements of the Convention, as it goes beyond it. In fact, Portugal has extradition agreements in force with countries that are not yet part of the Convention. In any case, we stress that Portugal does not extradite people whenever they may be subject to death penalty or life imprisonment, as well as when the proceedings do not meet or respect the requirements laid down in international instruments, in particular, the International Covenant on Civil and Political Rights or the European Convention on Human Rights.

Another nuclear aspect of this Convention is the attention provided to the victims. Portuguese legislation on the rights and protection of victims has benefited from important and significant advances. The Statute of the Victim of 2015 grants particular attention to the most vulnerable victims, those who are victims of violent crime and children, ensuring

their protection, prevention from secondary victimization, restitution and compensation, as well as their rehabilitation and the guarantee of non-repetition. This subject is inherently multidisciplinary and has called for the intervention of professionals from various fields, from security to psychology, education and health care.

Madam President, honourable Members of the Committee,

The Convention remains an instrument of utmost relevance.

We note with dismay the extent this phenomenon reaches globally and which, despite the efforts of the United Nations and the States Parties, shows no sign of weakening. We continue to witness, in the international context and with increasing frequency, to the disappearance of people for political or other reasons.

Fortunately, in Portugal, the phenomenon of enforced disappearances has no expression; there have been no occurrences of this type since 1974, year of the transition to a democratic regime. However, we are aware that Portugal, like any other State, is not immune to situations of enforced disappearances. Therefore, we continue to dedicate great attention to the preventive dimension imposed by the Convention.

We are also impelled by the external vocation of the obligations of the Convention and by the duty of international solidarity incumbent on all states. Portugal, following the line of its historic tradition of building bridges, takes on its responsibilities in raising awareness to the importance of the ratification and implementation of this instrument, and will continue to do so.

Madam President, allow me to conclude,

As a State Party to the Convention, we reaffirm the commitment of the Portuguese State to the prevention and repression of enforced disappearances. We are now prepared to answer the questions you may see fit to pose.