

**INTERNATIONAL  
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ON CIVIL AND  
POLITICAL RIGHTS**



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HUMAN RIGHTS COMMITTEE

Thirteenth session

SUMMARY RECORD OF THE 293rd MEETING

Held at the Palais des Nations, Geneva,  
on Wednesday, 15 July 1981, at 10.30 a.m.

Chairman: Mr. MAVROMMATIS

CONTENTS

Organizational and other matters

Consideration of reports submitted by States parties under article 40 of the  
Covenant

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The meeting was called to order at 10.55 a.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2)

1. The CHAIRMAN informed the Committee that at their last meeting the officers had taken no decision on matters concerning the Committee session to be held in Bonn, including its agenda and programme of work. Nor had they decided which reports of States parties would be considered.
2. With regard to the programme of work for the current session, the Committee was expected to take up consideration of matters concerning "follow-up", particularly in connection with the periodicity of reports on the morning of 16 July, and in the afternoon to hear the replies of the representative of Jamaica to the questions put to him. On the morning of 17 July the Committee would again be considering matters concerning "follow-up", and possibly the periodicity of reports, and the Chairman/Rapporteur of the Working Group on Communications would introduce the communications. On 17 July in the afternoon, the representative of Portugal would answer the questions asked him during the 293rd and 294th meetings. On Monday, 20 July, the Committee was scheduled to consider the report of Guinea. But if the representative of that country was absent, the Committee would take up the draft general comments prepared by the Working Group on "Follow-up" in the morning and various communications in the afternoon. On Tuesday, 21 July, the Committee was expected to consider the report of Norway. If it followed that timetable, it would be able to draw up its annual report before going on to matters of "follow-up" and to the communications.
3. He further informed the Committee that the officers had decided to publish the text of the decisions taken at the last session of the Committee.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Portugal (CCPR/C/6/Add.6)

4. Mr. CUNHA RODRIGUES (Portugal) said that Portugal was now able to speak with pride and humility of human rights: pride because, after fifty years of dictatorship and despite the uncertainty of the brief revolutionary surge, it had set about establishing a democratic society respecting freedom and the primacy of law and human rights; and humility because, as everyone knew, it was not really possible fully to ensure respect for the dignity of the human person. Portugal was consequently willing to recognize any errors and omissions of which it might be justly accused and would do its best to put matters right. After 25 April 1974, the date of the coup d'état, the Armed Forces Movement had sought to pave the way for integration of the country within the international community and for effective observance of fundamental freedoms and rights, which implied disbandment of the political police, abolition of censorship, and the development of means of ensuring freedom of thought and expression, the right of assembly and freedom of association.

A little over two years after the coup d'état, a legally based State had come into being in Portugal. A new constitution defined Portugal, in its preamble, as a sovereign republic based on the dignity of the human person and the will of the people, and the Portuguese State as a democratic State based on the sovereignty of the people, on respect for and the safeguarding of fundamental rights and freedoms, and on plurality of democratic expression and democratic political organization. Part I of the Constitution concerned fundamental rights and duties and was described in detail in the report CCPR/C/6/Add.6. In addition to establishing formal protection of human rights, the authors of the Constitution had endeavoured to ensure their effective implementation. The Constitution further stipulated that provisions relating to rights, freedoms and safeguards were directly applicable and binding on public and private juridical persons, that rights, freedoms and safeguards could be restricted by law only in those cases expressly provided for in the Constitution, and that laws restricting rights, freedoms and safeguards must be general and abstract in character.

5. The new legal framework offered by the Constitution had prompted Parliament and the Government to undertake thorough political, legislative and administrative reforms. For example, six years after the coup d'état all sectors of the political and administrative structure had undergone profound changes. The political and administrative autonomy of the Azores and Madeira was reshaping those regions. Reform of the judicial system was improving access to justice. The recommendations and intercessions of the Ombudsman generally produced results. Workers' commissions and trade union associations systematically exercised their right to participate in framing labour legislation. To intensify participation in local administrative activities, residents' associations were increasing in number, submitting petitions to local authorities and taking part in meetings of municipal assemblies. Far-reaching reforms had been introduced regarding the press, trade union freedom, guarantees of administrative legality, the penitentiary system, criminal prosecution, the right of the family, the protection of minors, workers' rights, housing, health protection, quality of life, protection of the disabled, and education. Portugal had signed most international instruments concerning human rights. It had accepted the competence of the European Commission of Human Rights to hear and determine applications submitted in accordance with article 25 of the European Convention on Human Rights and was seeking to publicize facilities for access to international machinery for the protection of human rights.

6. The question was whether those measures could overcome all the difficulties experienced by Portugal in the field of human rights. While it was proud of its institutions, Portugal recognized that the soundest systems could not compel recognition unless matched with everyday reality. It was important not only to improve institutions but to ensure that they functioned smoothly, to acknowledge past errors and to make unremitting efforts to rectify them. Within that framework Portugal would do its best to discharge its responsibilities.

7. Mr. ERMACORA observed that the report of Portugal made no mention of the difficulties encountered by the country, which had undergone a revolutionary period and had had many problems to overcome, some of which were referred to in articles 309 and 310 of the Constitution. In that connection, he wished to know how many people were affected by those two articles, what the position was with regard to equality of the law in the case of persons falling under the provisions of those articles, and whether those persons had been reincorporated in Portuguese society or were still in prison.
8. With regard to the legal system of fundamental rights and duties (page 6), he noted that under article 22 of the Constitution the right of asylum was guaranteed to foreigners and stateless persons persecuted as a result of their activities in support of democracy, social and national liberation, peace between peoples or individual freedom or rights. In Austria thousands of persons had been granted asylum because they had been persecuted for yet other reasons. He therefore considered that provision of article 22 to be somewhat restricted and was unclear about the fate of persons who could not claim to have been persecuted on those grounds. Article 22, paragraph 2, of the Portuguese Constitution provided for definition of political refugee status by law. He wished to know whether any such law had been drawn up.
9. He welcomed the fact that Portugal had instituted the Ombudsman system, for the various countries which had tried it had found that the institution was one of the guarantees of sound administration of justice. He wished to know whether the institution and the courts referred to in the last sentence of section 2.3, page 10 of the report were already in operation, whether the Ombudsman referred to under item 2.5.5. on pages 21 and 22 had already been appointed and whether he was a judge, a senior civil servant or a deputy.
10. He would appreciate explanations regarding the final text (document No. 26) mentioned in connection with consideration of article 3 of the Covenant, which had been submitted for public discussion and again amended. He wished, in particular, to know whether the instrument had entered into force or was still under preparation and, in the latter case, when it was due to take effect?
11. With regard to the death penalty (pages 26 and 27), abolition of which had been sought in the Council of Europe and the United Nations, he noted that article 25, paragraph 1, of the Constitution guaranteed the right to life. But paragraph 2 of the article, which provided that "In no circumstances shall the death penalty be pronounced" was somewhat vague. Did it mean that the death penalty had been abolished?
12. Referring to article 4 of the Covenant, he said that the corresponding article in the Constitution, article 19, was not very clear and that it was hard to see to what extent the Constitution was consistent with article 4, paragraph 2.
13. As to article 5 of the Covenant, he observed that the report seemed to suggest that the European Convention was directly applicable in Portugal. He asked what the status of the Covenant was in that case and whether it was treated in the same way as the Convention?

14. With regard to article 13 of the Covenant, he wished to know whether Portugal could concurrently apply article 23 of its Constitution and the International Convention on the Suppression and Punishment of the Crime of Apartheid, which laid specific obligations on States regarding extradition. In addition, he would like further information on the outcome of the legislation mentioned on page 37.

15. After quoting article 33, paragraph 1, of the Constitution, corresponding to article 17 of the Covenant, he asked what treatment was accorded to persons who had undertaken particular functions under the previous régime, for instance those who had belonged to the PIDE or had committed atrocities in the African territories. He asked how their "good name and reputation" stood and whether any court proceedings had been instituted on the subject.

16. He wished to know whether the special Penal Code applicable to the armed forces was still valid and, if so, whether that did not present a problem of inequality among citizens.

17. He regretted that Portugal had not reported on the difficulties encountered in the practical application of the new legal framework, for it would seem from the Covenant that States were required to inform the Committee of that type of problem. In that respect, he would have liked to know how Portugal viewed the question of property, though the right to property was not guaranteed under the Covenant. The problem of nationalizations could have been mentioned in connection with the difficulties experienced in applying the new legal system. He considered the report of Portugal excellent although he felt that it dealt with the issue from just one angle.

18. Mr. TOMUSCHAT congratulated the Portuguese Government on the clarity and precision of its report, which was a model of its type and provided a good basis for fruitful dialogue between Portugal and the Committee. As to the Portuguese Constitution, he knew of no other modern constitution that dealt so extensively with human rights and fundamental freedoms. Its aims were ambitious, which probably explained the fact that it was not easy to attain them in practice, especially in the social field. He was also pleased to note that, before ratifying the Covenant, the Portuguese Government had carefully studied its provisions to ascertain whether they were, or would be, adequately covered by Portuguese law. He was also pleased to see from page 10 that the Portuguese Government had stated its readiness to take legislative steps, where required, to achieve stricter compliance with the provisions of the Pact. It was reassuring to observe that the Portuguese Revolution had been carried through by peaceful means, which showed that violence was not necessary for change.

19. Turning to specific aspects of the report, he noted, with regard to the status of aliens, that, whereas paragraph 1 of article 15 of the Constitution conformed to the relevant provisions of the Covenant, the same was not entirely true of paragraph 2, which referred to rights conferred exclusively upon Portuguese citizens by the Constitution and the law. The distinction between citizens and others did not seem to him to be strictly consonant with the spirit of the Covenant. The distinction was also apparent in other articles: thus, article 26 stated that the moral and civil integrity of citizens - not every person - was inviolable; article 31 seemed to say that only citizens enjoyed political rights; article 34, dealing with the inviolability of the home and correspondence, seemed to apply only to citizens; article 44 spoke of the right of every citizen, not every person, as stipulated in article 12 of the Covenant, to freedom of movement and choice of

residence anywhere within the national territory; and article 46 reserved freedom of association to citizens. He was also surprised that ownership of periodical and non-periodical publications was reserved to Portuguese: why forbid aliens to have a publication of their own in line with their particular concerns? He fully understood that such a measure should have been entertained to avert the danger of interference by foreign interests, but he thought such a drastic measure unnecessary.

20. He asked whether the Programme of Armed Forces Movement, referred to on page 8 of the report, was still in force. He would also like to be informed about the judicial decisions said, in the event of conflict, to have given international law precedence over national law, so that it could be established whether the Covenant was directly applicable or not.

21. He welcomed the establishment by Portugal of comprehensive machinery, in which the Council of the Revolution occupied a prominent position, to scrutinize the constitutionality of laws. He wished, however, to inquire what role the Council, which was not properly a judicial body, had effectively played in that regard, as it was open to question whether the members possessed the necessary knowledge and qualifications to decide the constitutionality of laws.

22. With regard to administrative tribunals, he inquired whether the bill mentioned in section 2.5.4.2 on page 19 of the report had been passed, or whether - in view of the fact that the area concerned was one in which the pursuit of perfection could lead to dislocations, for example as a result of congestion of the tribunals - difficulties had arisen.

23. He noted that the relevant provisions of the Portuguese Constitution were in complete accord with those of article 4 of the Covenant. He congratulated Portugal on having abolished the death penalty more than 100 years previously - a step which many countries had not yet taken - but he observed that what was said concerning article 9 did not cover all cases mentioned in the Covenant. It would have been desirable to know, for example, what guarantees there were against improper confinement in psychiatric hospitals, which was known to be common practice in certain countries.

24. With regard to right of asylum, which was covered in the Universal Declaration of Human Rights but not in the Covenant, he inquired whether, since mention was made of it in the report, it was a subjective right or an objective guarantee. Finally, he noted that Portuguese nationality legislation was in complete accord with the provisions of article 24 of the Covenant.

25. Mr. MOVCHAN noted that the report contained an analysis based on the provisions of the Covenant and followed the Committee's general guidelines regarding form and content. However, as usual, there were some outstanding points of general interest to the members of the Committee. In particular, there was the question of the constitutionality of laws which, as it had been raised by Mr. Tomuschat, did not require further comment. On the problem of analogies between international and internal law, he found the report insufficiently clear, but he admitted that the question was a highly complex one. Concerning racism and colonialism, which Portugal claimed to combat in all their forms, he inquired whether Portugal was a party to the international conventions on those matters.

26. The report stated that Portugal was combating racism and colonialism, but he wondered whether it was a party to the international conventions for combating colonialism and apartheid. He would like to know how Portugal ensured the enforcement of the provisions of the Convention through its legislation, particularly with regard to non-discrimination.

27. Article 24 of the Covenant provided that every child should have, without any discrimination, the right to such measures of protection as were required by his status as a minor. He wished to know what steps had been taken in Portugal to ensure the enforcement of those provisions, particularly in the framework of the provisions of article 1 of the Covenant. He wondered what provision was made to enable parents to ensure the protection of their children and their enjoyment of the rights conferred upon minors.

28. In the light of the information in the report, concerning articles 19 and 20 of the Covenant, he wished to know whether the representative of the Portuguese Government thought that articles 19 and 20 of the Covenant were contradictory since article 19 established freedom of expression while article 20 prohibited propaganda for war. Pending completion of the Portuguese Penal Code, he wondered how the Portuguese authorities checked the activities of warmongers. More detailed information on that point would be required.

29. Article 25 of the Covenant stipulated that every citizen should have the right, under general conditions of equality, to take part in the conduct of public affairs in his country. The information in the report concerning article 25 of the Covenant, and article 308 of the Portuguese Constitution, concerned only elected persons and bodies. The question, therefore, arose how Portugal gave effect to the provision of article 25 of the Covenant. On that point, article 308 of the Portuguese Constitution seemed insufficient. He would like to have further information about Portuguese legislation on that point, or statistical data.

30. Mr. LALLAH did not regret that the Committee had had to wait a year for Portugal's report as that interval had made it possible for the Portuguese authorities to supply the Committee with more detailed information. He welcomed the fact that the report contained a great deal of information about the Constitution, legislation and the juridical set-up in Portugal, but he regretted that it did not deal more fully with the practical application of Portuguese laws. He would, for example, have liked it to indicate how many political parties there were in Portugal. In spite of the information provided about the way in which Portugal gave effect to the Covenant, some confusion persisted. Reading out some passages from the report (the penultimate paragraph of section VI on page 5, the second to fifth paragraphs of section 2.2 on pages 9 and 10, and the last paragraph of section 2.4.7. on page 15), he inquired whether, in the event of insufficiency of internal law or conflict between internal law (or the Constitution) and the Covenant, it was the latter or internal law (or the Constitution) that would prevail. Could the Covenant take precedence over the Constitution, or was that impossible?

31. Concerning article 4 of the Covenant, he had been interested to learn that the Portuguese Government was drafting a bill to establish a new system of national defence. The report did not, however, indicate what rights could be set aside or what the extent of derogations could be. He wondered whether, in drafting the bill, account could not be taken of the requirements of article 4 of the Covenant.

32. Several Portuguese laws gave effect to the provisions of article 14 of the Covenant, and the question arose about the practice followed in view of the fact that Portugal had moved away from a somewhat arbitrary system to a more democratic one. The political and constitutional set-up in Portugal would doubtless continue to be modified. The main point was that Portugal had undertaken to give effect to civil and political rights. Particular care should be taken to ensure that the political opinions of accused persons were not used as a covert reason for imposing heavier sentences. On that point, he wished to know whether in criminal trials the juridical system of Portugal admitted hearsay evidence, which did not seem to be admitted under the provisions of article 14 of the Covenant.

33. According to the report, the accused had the right to obtain the attendance of witnesses. He wondered whether that provision was effectively applied, particularly in the case of persons engaged in political activities. He also wished to know whether a court of appeal could quash the findings of a lower court which had pronounced judgement upon the facts. In some countries, courts of appeal did not have that power, while, in others, if the facts had not been correctly established by the lower court, the court of appeal could quash its findings.

34. According to paragraph 3 (c) of article 14 of the Covenant, everyone charged with a criminal offence had the right to be tried without undue delay. It was, therefore, requisite to know how much time elapsed in Portugal between the laying of a charge and the holding of the trial, and also the average length of time between trial and the hearing of appeal.

35. According to the report (page 2), decree law 173/74 of 26 April 1974 had amnestied political crimes and disciplinary offences of a similar nature. He wished to know how the decree had been applied in practice, and to what extent it was still applied in the case of politicians convicted of non-political offences. He also wished to know whether a law on terrorism had been passed in Portugal in recent months, and what steps had been taken to prevent torture, which was prohibited by article 7 of the Covenant. He wished further to know whether over the two previous years there had been complaints from political activists about acts of torture, and, in the event of inquiries having been held into that matter, what conclusions had emerged.

36. According to the report, Portugal intended to ratify ILO Convention 87 concerning trade union freedoms, and had perhaps already done so. Decree Law 215-B/1975 was said to have been superseded, presumably on account of its defects. He wished to inquire what defects had been discovered in it with regard to the establishment of workers' and employers' associations.

37. He inquired whether there was a law authorizing a worker to join a trade union representing his category in the region where he was working. That might carry the implication that only one trade union organization could exist for each category in each region and would raise the problem of trade union freedoms.

The meeting rose at 1. p.m.