



# International Covenant on Civil and Political Rights

Distr.: General  
28 April 2020

Original: English

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## Human Rights Committee

### Concluding observations on the fifth periodic report of Portugal\*\*

1. The Human Rights Committee considered the fifth periodic report of Portugal (CCPR/C/PRT/RQ/5) at its 3696th and 3697th meetings (see CCPR/C/SR.3696 and 3697), held on 5 and 6 March 2020. On 27 March 2020, the Committee adopted the present concluding observations.

#### A. Introduction

2. The Committee welcomes the timely submission of the fifth periodic report of Portugal and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's delegation on the measures taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/C/PRT/RQ/5) to the list of issues (CCPR/C/PRT/Q/5), which were supplemented by the oral responses provided by the delegation, and for the supplementary information provided to it in writing.

#### B. Positive aspects

3. The Committee welcomes the adoption by the State party of the following legislative and policy measures:

(a) The establishment of the Transparency Entity, an independent body within the Constitutional Court, which is responsible for assessing and supervising the income declarations, assets and interests of political office holders and high-ranking public officials (Organic Law No. 4/2019 of 13 September 2019);

(b) Organic Law No. 1/2019 of 29 March 2019, which raised from 33.3 per cent to 40 per cent the minimum threshold of women in electoral lists to the national and European parliaments, elective bodies of municipalities, and members of the Parish Councils;

(c) Law 26/2019 of 28 March 2019, which established a minimum 40 per cent threshold of women among top civil servants in public administration, and in public higher education institutions and public associations;

(d) Law No. 38/2018 of 7 August 2018, on the rights of lesbian, gay, bisexual, transgender and intersex persons;

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\* Reissued for technical reasons on 1 May 2020.

\*\* Adopted by the Committee at its 128th session (2–27 March 2020).



(e) Law No. 93/2017 of 23 August 2017, on the prevention, prohibition and combat of discrimination based on racial and ethnic origin, colour, nationality, descent and place of origin;

(f) Law No. 94/2017 of 23 August 2017, which introduced the possibility of enforcing prison sentences up to 2 years through house arrest with electronic monitoring;

(g) The Action Plan on preventing and combating violence against women and domestic violence (2018–2030).

## C. Principal matters of concern and recommendations

### Implementation of the Covenant and its Optional Protocol

4. The Committee notes that courts have invoked the provisions of the Covenant while reviewing domestic cases. While the Committee notes that article 8 (2) of the Constitution provides that ratified international conventions come into force in national law, it is concerned about the non-conformity of domestic legislation with articles 14 (3) (d) and (5) of the Covenant. In this respect, the Committee notes the explanation provided by the delegation that the right to have criminal convictions reviewed by a higher tribunal, contained in article 14 (5) of the Covenant, was submitted to the Constitutional Court and is awaiting a decision. It regrets, however, the current position of the State party with respect to the implementation of article 14 (3) (d) of the Covenant, which was the object of Views of the Committee in communication No. 1123/2002 (*Correia de Matos*) (CCPR/C/86/D/1123/2002 and Rev.1), adopted in March 2006 (art. 2).

**5. The State party should take all necessary institutional and legislative measures to ensure the full implementation of the rights protected by the Covenant in the domestic legal system and to ensure the implementation of the concluding observations and Views adopted by the Committee so as to guarantee the right of victims to an effective remedy when there has been a violation of the Covenant, in accordance with articles 2 (2) and (3) of the Covenant. The State party should consider amending its legislation to ensure conformity with articles 14 (3) (d) and (5) of the Covenant. It should continue its efforts to inform and educate lawyers, prosecutors, judges, law enforcement officers and the public about the Covenant and its Optional Protocol.**

### National human rights institution

6. While welcoming the A status of the Office of the Ombudsperson of Portugal, the Committee is concerned about reports that the office lacks the financial resources necessary to carry out its mandate effectively (art. 2).

**7. The State party should review the financial resource needs of the Office of the Ombudsperson of Portugal and ensure that it has the financial resources necessary to implement its mandate effectively and independently.**

### Anti-corruption measures

8. While appreciating the information provided by the State party on the legislative, institutional and enforcement measures taken to prevent and combat corruption, the Committee is concerned about recent scandals involving high-level cases of corruption in the State party (arts. 1, 2 and 25).

**9. The State party should continue its efforts, including through international cooperation and effective implementation of legislation and preventive measures, to combat corruption and promote good governance, transparency and accountability. It should provide relevant training to law enforcement agencies, prosecutors and judges on detecting, investigating and prosecuting corruption, and on strengthening the operational and structural independence and specialization of law enforcement agencies and prosecutors dealing with corruption cases, in order to enable the investigation of complex and high-level corruption cases.**

### **Anti-discrimination legal framework**

10. Despite the explanation provided by the delegation, the Committee notes with concern that article 240 of the Penal Code, which criminalises discrimination, constrains the scope of the crime to “organized propaganda activities” and does not cover incitement to discrimination. It also notes that article 240 does not cover discrimination on grounds of language and other status, as required under the Covenant. While noting the State party’s position that discrimination on grounds of language is prohibited by Protocol No. 12 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), which was ratified by the State party, the Committee was not provided with information on effective protection against discrimination on such grounds in practice (arts. 2 and 26).

**11. The State party should consider amending article 240 of the Penal Code to ensure its compatibility with articles 20 and 26 of the Covenant and take all measures to ensure that its application provides for comprehensive and effective substantive and procedural protection against discrimination on all the prohibited grounds under the Covenant in all spheres and sectors, including incitement to discrimination. The State party should guarantee access to effective and appropriate remedies for victims of discrimination.**

### **Discrimination against Roma and African descendants**

12. While welcoming the various programmes to improve the situation of Roma and the African descendant population and the progress achieved in certain areas, the Committee is concerned at reports that these communities continue to suffer from discrimination, especially in the areas of education, employment and housing. In particular, it is concerned at the high dropout rates at school and the low employment rate among these communities. The Committee is concerned about the negative implications for the ability to further combat discrimination of the prohibition under the Constitution against collection of data that are disaggregated by race or ethnic origin (arts. 2, 24, 26 and 27).

**13. The State party should intensify its efforts to address stigmatization and discrimination against the Roma and African descendent population and ensure that complaints are investigated and victims have access to remedies. It should consider measures to ensure access by the Roma and African descendants to the labour market and to increase school enrolment and completion rates among children in the education system. It should consider allowing the collection of relevant disaggregated data about different minority groups and developing tools to assess and ensure the effective enjoyment by racial and ethnic minorities of all human rights and fundamental freedoms and make use of such data for planning and evaluation purposes.**

### **Hate speech and hate crimes**

14. While noting the legislative and other measures taken by the State party to combat hate speech and hate crimes, the Committee is concerned about reports of intolerance, prejudice, hate speech and hate crimes against vulnerable and minority groups, including Roma, African descendants, Muslims and lesbian, gay, bisexual and transgender persons, particularly in the media and on social networks. The Committee is further concerned at the low number of complaints and lack of information on convictions of hate crimes and information on penalties imposed, which is covered by the State party statistical secrecy policy (arts. 2, 19, 20 and 26).

**15. The State party should:**

(a) **Strengthen its efforts to combat intolerance, stereotypes, prejudice and discrimination towards vulnerable and minority groups, including Roma, African descendants, Muslims and lesbian, gay, bisexual and transgender persons, by, inter alia, increasing training for law enforcement personnel, prosecutors and the judiciary and conducting awareness-raising campaigns promoting sensitivity and respect for diversity among the general public;**

(b) **Increase its efforts to prevent hate speech and hate crimes and ensure that any advocacy of national, racial or religious hatred, hostility or violence is prohibited by law, in accordance with articles 19 and 20 of the Covenant and the Committee's general comment No. 34 (2011) on the freedoms of opinion and expression;**

(c) **Encourage the reporting of hate crimes and hate speech and ensure that such crimes are identified and registered, including through the establishment of a comprehensive, disaggregated data-collection system;**

(d) **Strengthen the investigation capacity of law enforcement officials on hate crimes and criminal hate speech, including on the Internet, and ensure that all cases are systematically investigated, that perpetrators are held accountable with penalties commensurate with the crime and that victims have access to full reparation.**

#### **Sexual orientation, gender identity and intersexuality**

16. While welcoming the recent adoption of Law No. 38/2018, the Committee notes with concern reports that children born with intersex traits are sometimes subjected to invasive and irreversible medical procedures aimed at assigning them with a sex, that such actions are often based on a stereotyped vision of gender roles and that they are carried out before the persons in question are of an age to give their free and informed consent (arts. 3, 7, 9, 17, 24 and 26).

17. **The State party should strengthen the measures to end the performance of irreversible medical acts, especially surgical operations, on intersex children who are not yet capable of giving their free and informed consent, except in cases where such interventions are absolutely necessary for medical reasons.**

#### **Persons with psychosocial or intellectual disabilities**

18. While the Committee notes the explanation provided by the delegation on the barriers to granting social benefits for persons with disabilities and measures taken to overcome such situations, it is concerned about reports of delays in issuing social benefits, which are related to both medical examinations and the processing and subsequent payment of pensions. It is also concerned about the lack of information on the criteria for conducting forced medical interventions, including termination of pregnancy and psychosurgical interventions, on persons with disabilities who have been declared legally incapacitated, as well as the lack of statistics in this regard. The Committee further notes with concern the undue restrictions imposed on the right to vote for people with mental disabilities.

19. **The State party should:**

(a) **Continue its efforts to overcome the shortcomings and delays in granting social benefits for persons with disabilities, including by allocating sufficient financial and human resources to the relevant departments and providing retroactive coverage;**

(b) **Ensure that medical treatment or surgical interventions involving persons with disabilities who have been deprived of their legal capacity are compatible with the need to make every effort to obtain the free, prior and informed consent of the persons concerned and are carried out pursuant to appropriate legal and procedural safeguards; guarantee effective legal remedies; and ensure that any abuse is effectively investigated and prosecuted;**

(c) **Ensure that it does not discriminate against persons with mental, intellectual or psychosocial disabilities by denying them the right to vote on grounds that are disproportionate or have no reasonable and objective relation to their ability to vote, taking account of article 25 of the Covenant.**

#### **Equality between men and women**

20. While noting the various measures taken to promote gender equality, the Committee is concerned about the persistently low representation of women in senior positions in the private sector (arts. 2, 3, 25 and 26).

21. **The State party should continue its efforts to increase women's participation in public and private sectors and their representation at the highest levels. It should also strengthen strategies to raise public awareness with a view to combating gender stereotypes in the family and in society.**

#### **Violence against women**

22. The Committee notes that a number of important steps have been taken to combat violence against women, including the adoption of the Action Plan on preventing and combating violence against women and domestic violence (2018–2030). However, it is concerned that domestic violence against women persists. In particular, it is concerned by the low level of reporting of gender-based violence and the low level of prosecution and conviction of perpetrators. While noting the explanation provided by the delegation on the difficulties encountered in investigating cases of domestic violence, including when the victim refuses or is unable to cooperate with the inquiries, the Committee reminds the State party of its obligations to take all necessary measures to realize the rights enshrined in the Covenant (arts. 2, 3, 6, 7 and 26).

23. **The State party should ensure the effective implementation of the Action Plan on preventing and combating violence against women and domestic violence, including by:**

(a) **Pursuing campaigns about the unacceptability and adverse impact of violence against women and systematically informing women of their rights and the avenues available for obtaining protection, assistance and redress;**

(b) **Encouraging the reporting of cases of violence against women and ensuring that women who are victims of violence have access to adequate reporting mechanisms;**

(c) **Ensuring that law enforcement officials, the judiciary, prosecutors and other relevant stakeholders receive appropriate training on gender-sensitive detection, handling, investigation and prosecution of cases of violence against women;**

(d) **Ensuring that cases of violence against women are thoroughly investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that victims have access to effective remedies.**

#### **Excessive use of force**

24. The Committee is concerned about the persistence of reports of cases of violence committed by police officers against members of ethnic minorities, particularly Roma and African descendants. It is concerned that these crimes are not adequately investigated and prosecuted and that the number of convictions is low. Despite the explanation provided by the delegation, it notes with concern reports that police officers assigned to areas densely populated by ethnic minorities are insufficiently trained (arts. 7 and 24).

25. **The State party should ensure that accessible complaint mechanisms are in place, that all reports of violence are thoroughly investigated and that such investigations, where warranted, lead to proportionate sanctions. It should also consider the use of body cameras, where appropriate and subject to adequate privacy controls. Furthermore, it should strengthen its efforts to eradicate stereotyping and discrimination against ethnic minorities, particularly Roma and African descendants, by conducting public awareness campaigns to promote tolerance and respect for diversity and by providing adequate training to all law enforcement officials, particularly those working in sensitive areas.**

#### **Prohibition of torture and cruel, inhuman or degrading treatment and of the excessive use of force**

26. The Committee is concerned about allegations regarding the excessive use of force, including torture and ill-treatment, by law enforcement officials at the time of arrest, during interrogations and in detention centres, and about the very low number of prosecutions and

convictions in such cases. The Committee also regrets the lack of information on compensation awarded to the victims of acts of torture and ill-treatment (arts. 7 and 10).

**27. The State party should ensure that prompt, impartial, thorough and effective investigations are carried out into all allegations of excessive use of force, including torture and ill-treatment, by law enforcement officers at the time of arrest, during interrogation and in detention centres; that perpetrators are prosecuted and punished with appropriate sanctions; and that victims are adequately compensated. It should also ensure that training programmes for law enforcement officials include instruction in the investigation and prevention of torture and ill-treatment.**

#### **Conditions of detention**

28. While welcoming the measures taken to improve living conditions and prisoners' rights, and the assurances of the delegation that the situation has significantly improved in the State party, the Committee remains concerned (CCPR/C/PRT/CO/4, para. 11) about recent reports of poor conditions and overcrowding in places of deprivation of liberty. It is also concerned about reports indicating the lack of effectiveness of the complaint mechanisms available to detainees. It is further concerned at the rate of suicide among detainees and at the detention of persons with intellectual and psychosocial disabilities in psychiatric wards of prisons, where the care is insufficient and appropriate treatment is lacking (arts. 6, 7, 9, 10 and 14).

**29. The State party should:**

(a) **Consider alternatives to detention, including bail, and ensure that pretrial detention is an exceptional, reasonable and necessary measure based on individual circumstances and is as short as possible;**

(b) **Adopt measures to prevent suicide by detainees, including by establishing effective early intervention strategies and programmes and by improving the identification of persons at risk of committing suicide;**

(c) **Expedite its efforts to improve conditions and reduce overcrowding in places of deprivation of liberty, and ensure that conditions in places of detention are in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);**

(d) **Ensure that persons deprived of liberty are provided in practice with all legal safeguards from the very outset of such deprivation;**

(e) **Increase the use of alternatives to the deprivation of liberty for persons with mental disorders in prisons.**

#### **Solitary confinement**

30. Despite the information provided by the delegation that, according to a recommendation issued in November 2019, solitary confinement cannot be imposed for a period of more than 15 days, the Committee is concerned that the legislation in force (article 105 of Act No. 115/2009) allows for solitary confinement to be imposed as a disciplinary punishment for up to 30 days. The Committee is particularly concerned that such measures can be imposed for minors under the age of 18 (arts. 7, 9 and 10).

**31. The State party should bring its legislation and practice on solitary confinement into line with international standards as reflected in the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), by abolishing solitary confinement of minors and reviewing the total length of permissible solitary confinement for remand detainees, even if it is used as a measure of last resort. The State party should regularly evaluate the effects of solitary confinement in order to continue to reduce it and to develop alternative measures where necessary.**

### Trafficking in persons

32. While noting the efforts made by the State party to curb trafficking in persons, the Committee remains concerned by the low level of reporting about such crimes, as well as the low rate of prosecutions and convictions. It is concerned about the lack of an adequate identification mechanism for victims of trafficking in persons in the asylum procedures, including with respect to children (arts. 8 and 24).

33. **The State party should:**

(a) **Ensure that cases of trafficking in persons are thoroughly investigated, that those responsible are prosecuted and, if found guilty, are sentenced appropriately, and that victims are provided with full reparation and appropriate protection and assistance;**

(b) **Provide adequate training to judges, prosecutors, law enforcement officials, immigration officers and staff working in all reception facilities, including on procedures for identifying victims of trafficking in persons;**

(c) **Ensure that victims of trafficking in persons have access to asylum procedures in which their potential needs can be determined.**

### Rights of aliens, including migrants, refugees and asylum seekers

34. While acknowledging the increasing number of migrants arriving on the territory of the State party as well as the challenges involved and the efforts made by the State party to meet their needs, the Committee is concerned that some measures taken to address the influx of migrants may infringe the rights protected under the Covenant. In particular, the Committee is concerned about:

(a) Reported delays in the processing of regular asylum applications and in the issuance and renewal of residence permits;

(b) Excessive use of accelerated procedures, which might compromise the quality of the assessment of applications and increase the risk of refoulement;

(c) Lack of an adequate identification mechanism in place to identify vulnerable asylum seekers, including stateless persons;

(d) Reports of prolonged detention of asylum seekers at the border;

(e) Reports of unsatisfactory detention conditions affecting migrants, including overcrowding (arts. 2, 7, 9, 10 and 13).

35. **The State party should:**

(a) **Ensure that all applications for international protection at the border and in reception and detention facilities are promptly received, registered and referred to the asylum authorities;**

(b) **Continue its efforts to maintain and strengthen the quality of its refugee status determination procedures, in order to fairly and efficiently identify and recognize those in need of international protection and to afford sufficient guarantees of respect for the principle of non-refoulement under the Covenant;**

(c) **Establish an effective mechanism for the identification of vulnerable applicants, in particular stateless persons;**

(d) **Ensure that the detention of migrants and asylum seekers is reasonable, necessary and proportionate, in accordance with the Committee's general comment No. 35 (2014) on liberty and security of person, and that alternatives to detention are found in practice;**

(e) **Ensure that living conditions and treatment in immigration detention centres are in conformity with international standards;**

(f) **Strengthen training for the staff of migration institutions and border personnel on the rights of asylum seekers and refugees under the Covenant and other international standards.**

#### **Unaccompanied minors**

36. While noting the information provided by the delegation that Portuguese law does not allow for the detention of minors under the age of 18 for immigration purposes, the Committee notes the dispatch by the Ministry of Internal Administration released in July 2018 limiting the detention of children below the age of 16 to a maximum period of seven days. The Committee is concerned about the lack of clear legislation in this respect, including with regard to children below the age of 16, and about reports of detention of children at airports (arts. 2, 7, 9, 13 and 24).

**37. The State party should ensure that children and unaccompanied minors are not detained, except as a measure of last resort and for the shortest appropriate period of time, taking into account their best interests as a primary consideration with regard to the duration and conditions of detention and their special need for care. It should ensure that the physical conditions in all immigration detention and reception centres are in conformity with international standards. It should also ensure that guarantees are in place to protect child asylum seekers, in particular unaccompanied children, ensuring that they have access to adequate education, health, social and psychological services, and legal aid, and that they are provided with a legal representative and/or guardian without delay.**

#### **Right to a fair trial**

38. While the Committee takes note of the clarifications provided by the delegation in writing (CCPR/C/PRT/5, paras. 148–156) and orally with regard to information provided to detainees and on access to free legal aid, the Committee remains concerned about reports that detainees, particularly foreigners, are not always promptly informed in a language that they understand of their rights, including of their right to access legal counsel from the time of arrest. The Committee is also concerned about the lack of effective access to legal assistance for persons detained (arts. 7, 9 and 10).

**39. Recalling its previous recommendations (CCPR/C/PRT/CO/4, para. 8), the State party should strengthen measures to ensure that detained persons have an effective right of access to legal counsel from the time they become subject to police custody, and that law enforcement officials abide by the legal duty to inform all persons deprived of their liberty of their rights in a language they understand.**

#### **Pretrial detention**

40. While welcoming the adoption of Law No. 94/2017, which regulates house arrest with electronic monitoring, and the decrease in the rate of pretrial detention, the Committee remains concerned that article 215 of the Code of Penal Procedure provides for pretrial detention of excessive duration. The Committee regrets the lack of statistics on the average duration of pretrial detention, and is concerned about reports of persons being held in pretrial detention for long periods. It also regrets the lack of information on measures taken to reduce the length of investigations and to improve judicial efficiency (arts. 9 and 10).

**41. Recalling its previous recommendations (CCPR/C/PRT/CO/4, para. 9), the State party should take further steps to ensure that pretrial detention is used only as a measure of last resort and for the shortest possible time, in line with the provisions of the Covenant, and that it is reviewed on a regular basis. The State party should continue promoting non-custodial alternative measures and apply the measures in a systematic manner, and it should reduce the length of investigations and take measures to improve judicial efficiency.**



**Defamation**

42. The Committee notes with concern that the Criminal Code of Portugal criminalizes defamation and that the State party is not considering changing this law. It is also concerned about the chilling effect private prosecutions may have on free speech (art. 19).

43. **The State party should consider decriminalizing defamation and, in any case, resorting to criminal law only in the most serious cases, bearing in mind that imprisonment is never an appropriate penalty for defamation, as set out in general comment No. 34 (2011) on the freedoms of opinion and expression.**

**D. Dissemination and follow-up**

44. **The State party should widely disseminate the Covenant, its two Optional Protocols, its fifth periodic report, the written replies to the Committee's list of issues and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public. The State party should ensure that the report and the present concluding observations are translated into the official language of the State party.**

45. **In accordance with rule 75, paragraph 1, of the Committee's rules of procedure, the State party is requested to provide, by 26 July 2021, information on the implementation of the recommendations made by the Committee in paragraphs 33 (trafficking in persons), 37 (unaccompanied minors) and 41 (pretrial detention) above.**

46. **In line with the Committee's predictable review cycle, the State party will receive in 2026 the Committee's list of issues prior to the submission of the report and will be expected to submit within one year its replies to the list of issues, which will constitute its sixth periodic report. The Committee also requests the State party, in preparing the report, to broadly consult civil society and non-governmental organizations operating in the country. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words. The next constructive dialogue with the State party will take place in 2028 in Geneva.**

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