

TARGETED STAKEHOLDER CONSULTATION 2021 RULE OF LAW REPORT

UN HUMAN RIGHTS REGIONAL OFFICE FOR EUROPE (OHCHR)

This document presents the UN Human Rights Office's contribution to the targeted stakeholder consultation held by the European Commission in 2021 in the context of the second annual rule of law report.

It is a compilation of information related to Portugal, included in reports and documents of United Nations Treaty Bodies, Special Procedures and the Universal Periodic Review of the UN Human Rights Council, presented in a summarized manner. It also refers to statements and reports of the UN High Commissioner for Human Rights and her Office. The cited material covers the period 2018-2020.

It mentions both positive developments and challenges to the rule of law in Portugal, as well as recommendations issued by the UN Mechanisms on how these challenges can be addressed and how the rule of law can be further strengthened.

In light of the methodology proposed by the European Commission the submission is divided in four pillars: national justice systems, anti-corruption frameworks, media pluralism and freedom and other institutional issues related to the checks and balances essential to an effective system of democratic governance.

PORTUGAL REVIEW

Justice System

➤ *Quality of justice*

In 2020, the UN Human Rights Committee in its concluding observations expressed concern about reports that detainees, particularly foreigners, are not always promptly informed of their rights in a language that they understand, including of their right to access legal counsel from the time of arrest. The Committee was also concerned about the lack of effective access to legal assistance for persons detained, and recommended Portugal to ensure those fundamental legal standards ([CCPR/C/PRT/CO/5](#), para 38, 39). These echoed similar concerns expressed in the 2019 concluding observations by the UN Committee against Torture, which had recommended Portugal to ensure that all arrested or detained persons are afforded in practice all fundamental safeguards from the very outset of their deprivation of liberty, including the rights to be assisted by a lawyer and to be brought before a judge without delay ([CAT/C/PRT/CO/7](#), para 13, 14). The UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had formulated similar recommendations after its 2018 visit to Portugal in its report ([CAT/OP/PRT/1](#), para 62, 63, 64).

In 2019, the UN High Commissioner for Human Rights in her letter following the third cycle of Universal Periodic Review of Portugal recommended that Portugal continue efforts to improve

women's professional empowerment by increasing the representation of women the Supreme Court of Justice, available at https://lib.ohchr.org/HRBodies/UPR/Documents/Session33/PT/HC_letter_33rdSession_Portugal.pdf.

Regarding the International Convention of the Rights of the Child, the UN Committee on the Rights of the Child, in its 2019 observations, recommended to introduce mandatory training for judges who are to enter family and juvenile courts. The Committee further recommended to ensure training on hearing and considering children's views in all decisions affecting them. In the context of sale, trafficking and abduction of children, the Committee also recommended Portugal to adequately train professionals on the procedures for the identification and care of child victims of sale, sex trafficking and forced labour to ensure that victims receive the support they are entitled to under the law ([CRC/C/PRT/CO/5-6](#), para 13, 20c, 43).

In its 2018 concluding observations, the UN Committee on Enforced Disappearances noted the lack of information on the provision of training on international human rights law, including the International Convention for the Protection of All Persons from Enforced Disappearance, and recommended to provide specific and regular training on the provisions of the Convention ([CED/C/PRT/CO/1](#), para 22, 23).

The UN Committee against Torture, in its 2019 concluding observations, recommended Portugal to develop mandatory initial and in-service training programmes on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee further recommended to expand specialized training programmes for both judges and prosecutors to ensure their ability to effectively identify torture and ill-treatment and investigate all allegations of such acts ([CAT/C/PRT/CO/7](#), para 33, 34, 45, 46).

In its concluding observations from 2020, the UN Human Rights Committee issued several recommendations to Portugal with regards to training on the International Covenant on Civil and Political Rights. Besides the general recommendation to educate about the Covenant and its Optional Protocol, the Committee also referred to specific training, in particular, in the context of hate speech and hate crimes against vulnerable and minority groups. Other specialized training that the Committee considered necessary was on gender-sensitive detection, handling, investigation and prosecution of cases of violence against women and training on procedures for identifying victims of trafficking in persons ([CCPR/C/PRT/CO/5](#), para 4, 5, 14, 15, 22, 23, 32, 33).

➤ ***Efficiency of the justice system***

In its 2020 concluding observations, the UN Human Rights Committee expressed concern about reports of persons being held in pretrial detention for long periods and regretted the lack of information on measures taken to reduce the length of investigations and on legal procedures to improve judicial efficiency ([CCPR/C/PRT/CO/5](#), para 40).

➤ ***Other***

In its 2019 concluding observations, the UN Committee on the Rights of the Child expressed concern at the continued absence of legislation on and guidelines for the determination and application of the best interests of the child in justice (among other sectors) and that this lack of guidance may result in contradictory interpretations of the law and decisions by different instances. It recommended Portugal to ensure that the principle of the best interests of the

child is incorporated into legislation and into all relevant policies, programmes and projects. Further, the Committee recommended to expand the right of the child to be heard in all civil, administrative and criminal judicial and administrative proceedings affecting the child ([CRC/C/PRT/CO/5-6](#), para 18a, 18b, 20a, 20b).

In October 2019, the UN Special Rapporteur on the right to adequate housing praised Portugal for the new Basic Housing Law. She welcomed that the law provides protection measures for those at risk of evictions, such as consultation, information, legal aid and accompaniment, as well as the prohibition to conduct evictions at night. She stated that she would be watching closely to ensure that the provisions relating to access to justice for violations of the right to housing, including complaints to the Ombudsman, are fully implemented, without which, the right to housing would not be ensured. (available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25083&LangID=E>).

Anti-corruption framework

➤ *Repressive measures*

In its 2020 concluding observations, the UN Human Rights Committee, while appreciating information on legislative, institutional and enforcement measures taken to prevent and combat corruption, expressed concern about recent scandals involving high-level cases of corruption in Portugal. The Committee recommended Portugal to continue its efforts, including through providing training to law enforcement agencies, prosecutors and judges on detecting, investigating and prosecuting corruption, and on strengthening the 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 ([CCPR/C/PRT/CO/5](#), para 8, 9). Portugal previously supported recommendations from its third Universal Periodic Review in 2019 to strengthen work on anti-corruption and to establish rules on professional conduct in the area of corruption prevention to judges and prosecutors as well as Members of Parliament ([A/HRC/42/7](#), para 137.93; 137.04).

Other institutional issues related to checks and balances

➤ *The process for preparing and enacting laws*

To guarantee the right of the child to have his or her best interests taken as a primary consideration, the UN Committee on the Rights of the Child recommended Portugal in its 2019 concluding observations to establish compulsory processes for ex-ante and ex-post impact assessments of all laws and policies relevant to children on the realization of the right of the child to have his or her best interests taken as a primary consideration, ([CRC/C/PRT/CO/5-6](#), para 18c).

To guarantee the right of the child to be heard into legislation on the civil protection process, in its 2019 concluding observations, the UN Committee on the Rights of the Child recommended Portugal to develop toolkits for the consultation of children on national policy

developments that affect them so as to standardize such consultations at a high level of inclusiveness and participation ([CRC/C/PRT/CO/5-6](#), para 20d).

➤ ***Independent authorities***

In 2018, Portugal supported several recommendations from the Universal Periodic Review recommending to provide Office of the Ombudsman, which is the national human rights institution, with appropriate financial, material and human resources ([A/HRC/42/7](#), para 137).

These concerns were also raised by several UN mechanisms and the UN High Commissioner for Human Right in her letter following the third cycle of UPR of Portugal. In 2018, the UN Committee on Enforced Disappearances in its concluding observations recommended Portugal to ensure that the Ombudsman is provided with the necessary financial, material and human resources to effectively and independently carry out its mandate, including that as national preventive mechanism under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ([CED/C/PRT/CO/1](#), para 10, 11). The concerns were shared by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on its visit to Portugal undertaken from 1 to 10 May 2018 ([CAT/OP/PRT/1](#), para 16, 17), and the UN Human Rights Committee in its concluding observations in 2020 ([CCPR/C/PRT/CO/5](#), para 6, 7).

In 2019, the UN Committee on the Rights of the Child in its concluding observations recommended the State party as well to ensure adequate human, technical and financial resources to the Office of the Ombudsman for the effective implementation of its mandated functions. Further, it recommended to designate a specific mechanism within the Office of the Ombudsman for monitoring children's rights, and to raise awareness among the general public, and children in particular, and support the awareness-raising efforts carried out by the Office of the Ombudsman on the right to file a complaint directly with the Ombudsman ([CRC/C/PRT/CO/5-6](#), para 12).

➤ ***Accessibility and judicial review of administrative decisions***

In its 2019 concluding observations, the UN Committee on the Rights of the Child expressed concern about the weaknesses in policy and practice relating to legal representation and guardianship of unaccompanied and separated children during refugee determination processes. The Committee recommended Portugal to strengthen policies and practices to improve the identification and registration of unaccompanied and separated children, including through ensuring that they are provided with effective legal representation and an independent guardian immediately after they have been identified ([CRC/C/PRT/CO/5-6](#), para 41, 42).

In its 2019 concluding observations, the UN Committee against Torture had similarly expressed concern about access by lawyers to individuals held in detention facilities at airports, noting that entrance fee for the airport terminal, charged by a private company, impeded such access. The Committee recommended Portugal to refrain from retaining asylum seekers and irregular migrants for prolonged periods, and to guarantee that individuals retained have unhindered, prompt and adequate access to counsel, including legal aid services ([CAT/C/PRT/CO/7](#), para 39, 40). The same concerns were shared by the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment after its 2018 visit to Portugal ([CAT/OP/PRT/1](#), para 43).

➤ ***The enabling framework for civil society***

In October 2020, several UN Special Rapporteurs initiated a dialogue with Portugal on the case of Mr. Mamadou Ba, a human rights defender, one of the founding members of the European Network Against Racism (ENAR) and leader of SOS Racismo. The defender had been the target of repeated and increasing racist harassment, intimidation and threats since 2012, including several death threats against him and his family in 2020. This eventually led to his departure from the country out of safety concerns late 2020. The Special Rapporteurs expressed concern with the initial denial of police protection and the two-week delay in offering protection in some circumstances. They also reaffirmed the importance of bringing perpetrators to justice and ensuring a safe and enabling environment for all human rights defenders, in particular those advocating for equality and non-discrimination and documenting racist speech, behaviour and related human rights violations ([PRT 1/2020](#), available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>).