



## **Questionnaire on the situation of human rights defenders**

### **Contribution from the Portuguese Ombudsman**

*12.06.2018*

The Portuguese Ombudsman institution, in its capacity of national human rights institution fully in line with the Paris Principles and accredited with “A” status since 1999, hereby replies to the questionnaire from the *Special Rapporteur on the situation of human rights defenders*.

The current mandate holder, Maria Lúcia Amaral, took office in November 2017.

#### ***1. Submission category. Who is participating in this survey?***

Portuguese Ombudsman. National Human Rights Institution.

#### ***2. Situation of human rights defenders in which location?***

A single State. Portugal.

#### ***3. Context: What is the relevant social, economic and political context which affects the situation of human rights defenders?***

According to article 1 of the Portuguese Constitution, Portugal is a sovereign Republic, based on the dignity of the human person and the will of the people and committed to building a free, just and solidary society. The Portuguese Republic is a democratic state based on the rule of law, the sovereignty of the people, plural democratic expression and political organisation, respect for and the guarantee of the effective implementation of the fundamental rights and freedoms, and the separation and interdependence of powers, with a view to achieving economic, social and cultural democracy and deepening participatory democracy (article 2 of the Constitution).



Freedom of speech, expression and assembly are enshrined in the Portuguese Constitution and may not be hindered or limited by any type or form of censorship. Regarding the particular case of freedom of assembly, all the people have the right to form associations freely without the prerequisite of any authorisation, on condition that such associations are not intended to promote violence and their purposes are not contrary to the criminal law. Associations shall pursue their purposes freely and without interference from the public authorities, and may not be dissolved by the state or have their activities suspended other than in cases provided for by law and then only by judicial decision.

After the establishment of democracy in Portugal, civil society participation gained a strong dynamism in several areas through the foundation of unions and solidarity, humanitarian, cultural, sports and recreation associations. With the entry of Portugal into the then European Economic Community, there was an increase in the number of organizations, namely associations, foundations and cooperatives. In more recent years, Portuguese society has experienced the increase of social movements (organic and inorganic), although less expressive than in other countries.

Portugal has a deep-rooted democracy and it is safe to affirm that the political context doesn't present particular risks to the autonomy and security of NGO's operating in the country and for human rights defenders. However, regarding the economic context – being Portugal a peripheral economy within the EU, and, for that reason, more exposed to negative shifts that may occur in the region – the availability of public and private funding and the reduced diversity of funding sources represents a very important challenge for NGOs

***4. Human rights community: how many non-governmental organisations operate within the State? How many of these are active on human rights issues? In which way these organisations are connected with each other and the concerned State?***

According to the most comprehensive study on Portuguese NGO's, carried out in 2015 by *Universidade Católica* with the support of the *Fundação Calouste Gulbenkian*



and EEA Grants, there are 17012 organisations that can be qualified as NGO's. The concept of NGOs used in this study is the following: *i)* legally established in Portugal; *ii)* pursue purposes of general interest or of the common good; *iii)* are independent of any local, regional or national public bodies or business organizations; *iv)* are not party organizations or political parties; *v)* are not religious organizations.

Alongside this broad concept, the Portuguese law also recognizes a specific regime for three special types of NGOs: Environmental NGOs; Cooperation and Development NGOs; Persons with Disabilities NGOs.

The Law no. 35/98, from July 18<sup>th</sup>, establishes the legal framework under which the Environmental NGOs operate. These non-profit institutions aim exclusively at the defence and valorisation of the environment, the preservation of the natural heritage, as well as nature conservation. There are 106 Environmental NGOs registered in Portugal

Regarding the Development NGOs, their legal regime is provided by the Law no. 66/98, from October 14<sup>th</sup>. This law determines that the Development NGOs design and implement social, cultural, environmental, civic and economic support programs relative to humanitarian assistance, emergency aid and protection and promotion of human rights. There are 170 NGOs registered in Portugal.

Finally, the Persons with Disabilities NGOs are established under the framework of the Decree-Law no. 106/2013, from July 30<sup>th</sup>. They have has a common goal the defence and promotion of the rights and interests of persons with disabilities and their families, the elimination of all forms of discrimination and the promotion of equal treatment. There are 228 Persons with disabilities NGOs registered in Portugal.

***5. Specific categories of human rights defenders: are specific categories of human rights defenders recognized by the State? How has the State responded to the situation of women human rights defenders and other categories of human rights defenders facing particular risks and challenges?***



All human rights defenders are protected within the above mentioned constitutional framework, as well as by the general provisions established in the labour code, the penal code and other laws that ensure that all persons individually or in association with others, may exercise their fundamental rights and freedoms in a safe environment.

There is no specific legal framework regarding human rights defenders *per se*, however there is a special statute for voluntary workers that exercise their functions in NGOs. Through this special statute (Law no. 71/98, November 3<sup>rd</sup>) the State recognizes the social value of volunteering as an expression of the free exercise of an active and supportive citizenship and promotes and guarantees its autonomy and pluralism.

Also regarding the voluntary work, there is a special statute for the members of NGOs governing bodies establishing, *inter alia*, that they may not be discriminated in their rights, in their employment by virtue of the exercise of management positions in NGOs.

***6. Specific protection of rights: What measures does the State take to protect and promote the rights recognised in the Declaration on Human Rights Defenders?***

The State has recognised the key role of NGOs in the design, development and implementation of policies regarding the promotion and protection of human rights.

This recognition is particularly evident in the relevance given to NGOs in the establishment of sectorial national action plans that provide concrete measures to fulfil the State's responsibilities under the Constitution, international obligations and the law.

There are several examples action plans that considerably rely on the participation of NGOs and in the work developed by human rights defenders in order to accomplish their goals. In the Strategic Plan for Migrations (approved by the Council of Ministers Resolution no. 12-B/20015, March 20) the immigrants NGOs



are, for example, supported by the State to develop projects to prevent and combat the exploitation of immigrants in an irregular situation in the country and to cooperate with the national authorities to provide a better service when dealing with administrative issues. In the National Strategy for the Integration of Roma Communities (Council of Ministers Resolution no. 25/2013, March 27) the intervention of Roma rights NGOs and mediators is specifically provisioned in the law and it is deemed essential for the success of any actions regarding the promotion and protection of Roma communities.

Other examples of this kind of recognition can be seen in the National Plan for Gender Equality, Citizenship and Non-Discrimination; National Plan for the Prevention and Combat Against Domestic Violence; National Program for the Elimination of Female Genital Mutilation;

***8. Implementation of the Declaration: What steps has the State Taken to implement the Declaration on Human Rights Defenders? Has the State made public commitments to the Declaration and/or the right to defend human rights? What good practices in relation to the implementation of the Declaration have been developed in the State (including by other actors) that should be disseminated to a wider audience)?***

As mentioned above, the Portuguese context does not present particular risks to the autonomy and security of NGO's operating in the country and for human rights defenders.

According to the Declaration the State has the responsibility to take legislative, judicial, administrative or other appropriate measures to promote the understanding by all persons under its jurisdiction of their civil, political, economic, social and cultural rights. Such initiatives shall contain, amongst others: *(a) the publication and widespread availability of national laws and regulations and of applicable basic international human rights instruments; (b) full and equal access to international documents in the field of human rights, including the periodic reports by the State to the bodies established by the international human rights*



*treaties to which it is a party, as well as the summary records of discussions and the official reports of these bodies.*

In this context, the Documentation and Comparative Law Cabinet of the General Prosecution Office publishes all Human Rights International Treaties that are binding on the Portuguese State, as well as national reports, final observations of the respective Committees, list of questions, recommendations, and communication or complaints procedures<sup>1</sup>. The National Human Rights Commission, on its turn, has also been publishing some national reports and respective conclusions and observations in its website<sup>2</sup>.

In some areas, a close cooperation between the State and the NGOs was established. For example, the High Commissioner for Migration relies strongly on the role of the immigrants' associations to develop its activity, namely through the appointment of intercultural mediators, who are responsible for translating and providing other types of support to foreign citizens. Another example can be given by the Portuguese Asylum Law (Law n. 27/2008, of 30 July). According to Article 13 (3), the Portuguese Council for Refugees, an NGO responsible for providing reception to refugees and asylum seekers and who may act as representative of the UNHCR, must be informed of all asylum requests made in the national territory. The purpose of this provision is to enable this NGO to provide information and support to asylum seekers. Other examples can be provided by the composition of some governmental organisations, that may encompass NGOs representatives. For example, some NGOs are represented in the Commission for Equality and Against Racial Discrimination, which shall encompass a representative of the migrants' associations, a representative for NGO's dedicated to fight against racial discrimination, a representative from the NGO's dedicated to the refugees' rights, and a representative of the NGO's dedicated to Human Rights defence. Moreover, the National Human Rights Commission, which is an interministerial organ, organises a meeting with the representatives of the civil society working in the area of human

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<sup>1</sup> <http://gddc.ministeriopublico.pt/pagina/o-sistema-das-nacoes-unidas?menu=direitos-humanos>

<sup>2</sup> <https://www.portugal.gov.pt/pt/gc21/area-de-governo/negocios-estrangeiros/informacao-adicional/cndh.aspx#ra>



rights at least once a year (pursuant to paragraph 8 of Resolution of the Council of Ministers no. 27/2010).

Despite fulfilling the essential of the Declaration and having a longstanding tradition of respect for human rights instruments and international commitments, there are still improvements to be made in the education for human rights, namely in more sensible areas as security forces training. Moreover, we believe that a general statute for NGOs could be an advantage to strengthen their activities.

***9. Challenges facing the State: What are the main challenges facing the State in protecting the rights of human rights defenders and in implementing the Declaration?***

As stated in question 3, the economic context and the difficult access to private and public funding poses challenges to the sustainability of Portuguese NGOs and to their capacity to intervene more decisively at the national and international levels. The constant struggle that NGOs face to fund their activities is time consuming and implies that many of their efforts are channelled to solving administrative problems.

Furthermore, the large majority of the managing bodies' members are volunteers engaged in other professional activities. This means that, with the exception of a very few number of NGOs, the most part lack a professional central structure required, not only to solve the day-to-day issues that may be present in any kind of organisation, but also to be able to spend time in defining strategies and actions to promote and defend human rights.

***10. Recommendations: has the State received or implemented any recommendations on human rights defenders made by UN or regional bodies (eg. UPR, special procedures, treaty bodies, etc.)?***

There aren't specific recommendations regarding human rights defenders. However, there are several recommendations concerning the support of civil society and NGOs.





For example, in the first and second UPR cycles there were recommendations concerning: the promotion of the active involvement of civil society stakeholders, including human rights non-governmental organizations, in the UPR process; increase the support of NGOs to fight racial discrimination and promote the rights of most vulnerable groups. These recommendations were supported by the State and, as mentioned above, steps were taken to promote the participation of NGOs in the design of relevant human rights policies and action plans.

***11. Good practices and pledges: in commemoration of the 20<sup>th</sup> anniversary of the Declaration on Human Rights Defenders, what future actions and/or commitments to the protection and recognition of the importance of human rights defenders are you able to make? Are there any good practices or key issues that you can identify that would be important to disseminate on the 20<sup>th</sup> anniversary?***

The Portuguese Ombudsman's action plan for 2018 established as one of the its strategic pillars the promotion and dissemination of human rights knowledge. To accomplish this, the Portuguese Ombudsman will celebrate, through several initiatives during the year, the 70<sup>th</sup> anniversary of the Universal Declaration of Human Rights. One of the key issues that are of the most relevance to address in these events will be the role of civil society and human rights defenders in the promotion and protection of human rights.

On the matter of good practices the Portuguese Ombudsman has a very strong and effective relationship with civil society. This relationship encompasses the different characteristics of its mandate (classical Ombudsman, National Human Rights Institution and National Preventive Mechanism. The knowledge and the experience obtained by civil society organisations in their day-to-day work is essential for the Portuguese Ombudsman fulfil its mission and, for that reason, formal and informal instruments were put in place in order to enrich the decisions, the reports or other public pronouncements made by this State body. One of these instruments consists in the formal representation of NGOs in the Advisory Council of the





National Preventive Mechanism, determined by the Portuguese Ombudsman. This representation brought an added value to the intervention of the NPM, since its torture preventive actions can be specifically directed to the vulnerable groups identified on the basis of NGOs information.

***12. Other information***

No other information.

***13. Contact information: please provide contact information for the individual participating in this survey***

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