

Submission of the Portuguese Refugee Council
to the Human Rights Committee
regarding the 5th periodic review of Portugal
for consideration at the 128th session

1. Introduction

1. The Portuguese Refugee Council (Conselho Português para os Refugiados, hereinafter, CPR) is a non-governmental organisation that upholds the rights of applicants and beneficiaries of international protection and the quality of the asylum system in Portugal.
2. Within its mandate, CPR provides direct, free and independent legal, social and integration assistance to applicants and beneficiaries of international protection in Portugal.
3. Moreover, the Portuguese Asylum Act recognises CPR as an integral part of the national asylum system through mechanisms such as mandatory communications from the authorities and the right to intervene in procedures, as well a specific supervisory role in line with article 35 of the Convention relating to the Status of Refugees.
4. Within the reception system, CPR manages three reception centres for applicants and beneficiaries of international protection devoted to spontaneous applicants, resettled refugees and a specialised centre for unaccompanied children.
5. This submission focuses on the situation of applicants and beneficiaries of international protection as well as on statelessness in Portugal, following the Committee's List of Issues (LOI)¹.
6. Unless otherwise stated, the information and analysis contained herein draw on the experience of CPR in the provision of assistance to applicants and beneficiaries of international protection, as well as on other actions developed by the organisation, namely within the context of its supervisory role in the national asylum system and its statelessness-related activities.²

¹ Human Rights Committee, *List of issues in relation to the fifth periodic report of Portugal*, CCPR/C/PRT/Q/5, 13 August 2019.

² Data for 2019 should be regarded as provisional.



2. Treatment of aliens, including refugees and asylum seekers (arts.7, 9, 10, 3, 24 and 26)

A. Legislative and operational framework

7. The Portuguese Asylum Act entered into force in 2008 and was recast in 2014³. The recast transposed to the domestic legal order the second generation of the European Union (EU) asylum *acquis*.

8. While Portugal has traditionally received a low number of spontaneous applications for international protection, consecutive significant increases occurred in recent years: 2014 – 442 applications, 2015 – 872 applications, 2016 – 691 applications, 2017 – 1004 applications, 2018 – 1190 applications, 2019 – 1711.

9. Portugal has a national resettlement program since 2006, with an annual quota of 30 resettled refugees.

10. Laudably, Portugal has expressed its support for solidarity mechanisms within this field at EU level.

11. Such positive stance is echoed, for instance, in its active participation in the EU relocation mechanism, as well as in ad-hoc solutions for the disembarkation of persons rescued in the Mediterranean Sea.

12. Portugal has also been welcoming to resettle refugees under the EU resettlement scheme (having pledged 1.010 resettlement places for 2018 and 2019).

13. In 2017, under a pilot project involving the Portuguese authorities, the National Confederation of Solidarity Institutions (CNIS) and the Greek organisation Metadrasí, four unaccompanied children and one young adult were transferred from Greece to Portugal following the application of art.17(2) of the Dublin Regulation.

14. In October 2018, the Portuguese government announced the conclusion of a bilateral agreement with Greece to create a pilot mechanism to relocate 100 applicants for international protection. As highlighted in the national report for the Asylum Information Database (AIDA)⁴: *“The agreement was signed in early 2019 and covers asylum seekers and beneficiaries of international protection who are in refugee camps in Greece. According to the Ministry of Home Affairs, the process may lead to the transfer of up to 1000 seekers and beneficiaries of international protection. The Ministry also reported that the project has received green light from the European Commission and will be supported by IOM.”*⁵

B. Reception conditions (par.20 LOI)⁶

15. According to the Asylum Act, the responsibility for providing material reception conditions to applicants for international protection lies with the Ministry of Home Affairs within admissibility

³ Act no.27/2008 of 30 June 2008, amended by Act no.26/2014 of 5 May 2014, available at <http://bit.ly/1jd3hcG> (in Portuguese) and <https://bit.ly/2MFwJtK> (in English).

⁴ CPR, *AIDA Country Report: Portugal – 2018 Update*, p. 33, available at: <https://bit.ly/2FFaBvn>.

⁵ At the time of writing, CPR did not have further information on the implementation of this agreement.

⁶ Information on this issue draws on the detailed reporting contained in the national AIDA report. For additional information on reception conditions, including housing, please refer to the full report - CPR, *AIDA Country Report: Portugal – 2018 Update*, pp.66 *et seq.*

procedures (including Dublin), accelerated procedures, border procedures, subsequent applications and applications following a removal decision. The provision of material reception conditions to applicants who pass the admissibility stage and whose process is then analysed under the regular procedure lies with the Ministry of Employment, Solidarity and Social Security.⁷

16. The Law allows the authorities to cooperate with other entities, namely non-profit organisations, to ensure the provision of such conditions.⁸

17. In practice, in the current reception system for spontaneous applicants, adults and families are accommodated in CPR's Refugee Reception Centre (CAR) or in private accommodation provided by the organisations (mostly in hostels) during admissibility and accelerated procedures. The official capacity of CAR stands at 52 places but, in practice, the centre can accommodate up to 80 persons due to recent renovation work.

18. CPR also manages the Refugee Children Reception Centre (CACR), a facility dedicated exclusively to unaccompanied children within the asylum system. The official capacity of CACR stands at 13 places but, in practice, it often accommodates a higher number of children.

19. All the centres managed by CPR are open.

20. CPR ensures accommodation of applicants after the end of admissibility and accelerated procedures until the competent entity takes over in order to ensure that alternative accommodation is secured and there are no gaps.

21. The increase in the number of asylum applications led to a significant and continuous increase in the number of referrals to accommodation, resulting in persistent overcrowding of CAR in recent years. As mentioned in the AIDA report:

“The significant increase in the number of referrals from SEF meant that overcrowding in CAR persisted throughout the year. Between January and December 2018, CPR provided accommodation at CAR and in private accommodation to 1112 applicants. Aggravating factors included the fact that the CAR was partially closed for long due renovation works starting in the last quarter of 2018 and ending in March 2019, and that despite the existing arrangements, asylum seekers who have appealed the rejection of their application at the border are systematically referred to the CAR upon their release for purposes of transitional accommodation during the referral process to the GTO. Furthermore, the transition into private accommodation provided by SCML as per the existing arrangements has experienced significant delays throughout the year. Along with the difficulties faced by asylum seekers in finding private housing due to the lack of available properties and increased market prices all these factors contributed to stays in CPR's CAR or private accommodation of up to 6 months.”⁹

⁷ Article 61 Asylum Act.

⁸ Article 61(1) and (2) Asylum Act in fine.

⁹ CPR, *AIDA Country Report: Portugal– 2018 Update*, p. 76.

22. In 2019, CPR had to suspend the reception of new adult applicants (with the exception of particularly vulnerable applicants such as pregnant women and families with children) between the end of August and October due to overcrowding of CAR and cash flow issues impairing reception in hostels and private accommodation. Applicants arriving within such period were provided accommodation directly by the Immigration and Borders Service in hotels in different parts of the country.

23. It must be underlined that a constructive dialogue between CPR and the Government was maintained during such period, with both parties working towards solutions.

24. Overcrowding is also a concern at CACR. In 2019, CPR revisited its accommodation strategy to unaccompanied children. While some were provisionally accommodated at CAR due to shortage of places at CACR, young applicants at more advanced stages of integration were transferred to CAR 2 in a process of progressive autonomy.

25. In 2019, a new reception centre for refugees (CAR 2) managed by CPR started its operation. The facility has a maximum of 90 places of which 30 to unaccompanied children. The remaining 60 places are however particularly devoted to the temporary reception of resettled refugees.

26. While recognising governmental efforts to find solutions in particularly acute situations, CPR considers that repeated instances of overcrowding and difficulties in the provision of reception conditions must be addressed in an integrated manner given the significant increase of spontaneous asylum applications in recent years (namely through the increase of reception places and revision of referral procedures in light of the current operational context).

C. Asylum procedures (par.21 LOI)¹⁰

27. As the data highlighted above demonstrates, while the number of spontaneous asylum seekers in Portugal remains relatively low if compared with other States, there has been a significant increase in the last 5 years.

- **Increase of asylum applications and duration of procedures**

28. With regards to the duration of procedures, two concerns should be highlighted: (i) the excessive use of accelerated procedures to refuse applications for international protection, and (ii) the duration of regular procedures.

29. The Portuguese Asylum Act contains a list of grounds that determine that an application is subject to and accelerated procedure and deemed unfounded.¹¹ The rules governing such procedures provide for the basic guarantees of the regular procedure but entail significantly shorter deadlines for the adoption of a decision on the merits of the application and reduced procedural guarantees for the applicants concerned.¹²

¹⁰ Information on this issue draws on the detailed reporting contained in the national AIDA report. For additional information on asylum procedures, please refer to the full report - CPR, *AIDA Country Report: Portugal – 2018 Update*, pp.18 *et seq.*

¹¹ Article 19 Asylum Act.

¹² CPR, *AIDA Country Report: Portugal – 2018 Update*, pp.21, 47-49.

30. Applications on national territory subjected to accelerated procedures must be adjudicated on the merits in 30 (working) days.¹³ Applications analysed at the border under an accelerated procedure must be adjudicated on the merits in 7 (working) days.¹⁴

31. While CPR was not able to obtain official data on the number of decisions adopted under an accelerated procedure in 2018, according to data compiled based on the communications received according to the law, at least 342 applications were rejected in such procedures (of which 231 at the border, where deadlines and guarantees are even further reduced and compounded by detention).¹⁵

32. CPR is concerned that the systematic use of accelerated procedures impairs adequate analysis of the verification of inclusion criteria and the capacity of applicants to fully present their cases, and may increase the risk of *refoulement*.

33. Once an application for international protection is deemed admissible (i.e. no inadmissibility clauses or accelerated procedure clauses are verified), it proceeds for eligibility assessment. According to the law, this second stage of the assessment may last up to 6 months. Such time limit may be extended to 9 months in cases of particular complexity. The extension must be communicated to the applicant that may also receive, upon request, information on the reasons for the extension and the predictable deadline for issuance of the decision.¹⁶

34. The law does not provide for consequences in case such time limits are not complied with, and applicants are usually reluctant to act against delays on the basis of general guarantees.

35. During such assessment, applicants are entitled to a provisional residence permit, valid for 6 months and renewable until a final decision is reached. In addition to rights granted at first stage, such residence permit entitles the applicant to work.¹⁷

36. According to information gathered by CPR for its AIDA report, the increase of the number of spontaneous and relocated applicants (as such applicants were also subjected to determination procedures) led SEF to increase its asylum-dedicated staff in the past.

37. CPR is not aware of the existence of official data on average duration of regular asylum procedures.¹⁸ Official data on pending cases was also not provided when requested.

38. As previously reported, in the four cases of final decisions on the regular procedure communicated by SEF to CPR according to the provisions of the Asylum Act, the duration of the regular procedure ranged between 302 and 1,394 days.¹⁹ CPR is uncertain whether the low number of communications is related to gaps in communications and/or further delays in the decision-making process.

¹³ Article 20(1) Asylum Act.

¹⁴ Article 24(4) Asylum Act.

¹⁵ CPR, *AIDA Country Report: Portugal – 2018 Update*, p.48.

¹⁶ Article 28(2) Asylum Act.

¹⁷ Article 27 Asylum Act.

¹⁸ CPR, *AIDA Country Report: Portugal – 2018 Update*, p.24.

¹⁹ CPR, *AIDA Country Report: Portugal – 2018 Update*, p.25.

39. CPR is also not aware of the systematic provision of information to applicants regarding the extension of the analysis of their case.

- **Measures taken to ensure justice and transparency of RSD procedures**
 - **Supervision of the asylum procedure**

40. It is commendable that the Portuguese Asylum Act recognises a supervisory role not only to UNHCR but also to an NGO, as its representative.

41. The provision of mandatory communications from the authorities to CPR (depending, in some cases, of the consent of the applicant) and of rights to intervene in procedures, is critical for the ability to effectively monitor the functioning of the asylum system.

- **Legal assistance**

42. The Asylum Act entitles applicants for international protection to free legal assistance at all stages.²⁰

43. At first instance (administrative stage), free legal assistance is provided by CPR on the basis of Agreements with the Ministry of Home Affairs and UNHCR.²¹

44. With regards to legal assistance (representation) in appeals, the Asylum Act entitles applicants to access to the free legal aid system.²²

45. While this legal and operational framework is overall positive, it must be underlined that there are persisting challenges with regards, for instance, to the overall quality of free legal aid at appeals stage (due to a significant lack of specific training in the relevant field of Law by eligible lawyers), insufficient use of available translation resources that exacerbate communication challenges between clients and appointed lawyers.²³

- **Appeals**

46. The Asylum Act provides for appeals against first instance decisions, regardless of the type of procedure. First appeals are automatically suspensive. Onward appeals are possible before a second instance court and to the Supreme Administrative Court (only with regards to points of law and in cases of fundamental relevance for legal or social motives or to improve the quality of legal reasoning in decision-making).²⁴ Onward appeals are automatically suspensive with the exception of subsequent inadmissible applications²⁵ and of applications following a removal order²⁶.

47. The law provides for simplified judicial procedures that are urgent and subject to reduced formalities.

²⁰ Article 49(1)(e).

²¹ For additional information on the content of such assistance, please refer to CPR, *AIDA Country Report: Portugal – 2018 Update*, pp.28-29.

²² Article 49(1)(f) Asylum Act. For more information on access to legal aid at appeals stage by asylum seekers, please refer to *AIDA Country Report: Portugal – 2018 Update*, pp.29-31.

²³ CPR, *AIDA Country Report: Portugal – 2018 Update*, pp.30-31.

²⁴ CPR, *AIDA Country Report: Portugal – 2018 Update*, p.28.

²⁵ Article 33(6) Asylum Act.

²⁶ Article 33-A(8) Asylum Act.

48. Appeals are free of charge, according to the law.²⁷

- **Identification of particularly vulnerable asylum seekers**

49. While the Asylum Act provides for the need to identify persons with special needs (and the nature thereof)²⁸, no specific mechanisms or procedures are in place to undertake such assessment.²⁹

50. In this regard, the Committee Against Torture (CAT) recently recommended Portugal to “[E]nsure the establishment of effective mechanisms to promptly identify victims of torture among asylum seekers.”³⁰

- **Other relevant issues**

51. CPR underlines that it is critical to ensure the systematic and continuous training of staff (from first instance adjudicators, to lawyers of the legal aid system and judges). In order to be effective, such training must cover, not only technical contents of Asylum and Refugee Law and Human Rights Law, but also training on specific skills such as interviewing techniques to particularly vulnerable persons (e.g. children, victims of torture or serious violence).

52. Moreover assessing the quality of the decision-making is critical to ensure respect for the applicable legal frameworks and to identify challenges and needs.

53. CPR is not aware of the grant of residence permits on the basis of respect for the principle of non-refoulement outside the asylum system.

D. Detention of applicants for international protection and detention conditions (par.22 LOI)³¹

54. CPR takes due note of the information provided by the State in this regard in the Reply to the List of Issues³². Notwithstanding, CPR remains concerned with the systematic detention of applicants for international protection, including vulnerable persons, at the border.

55. The Asylum Act determines that an applicant for international protection cannot be detained on the ground of its application alone.³³

56. According to the law, detention of such applicants may only occur on grounds of (i) national security, public order, public health; or (ii) risk of abscondment, following an individual assessment and if less burdensome alternative measures cannot be effectively implemented.³⁴

²⁷ Article 88 Asylum Act. The rule determines that international protection procedures (grant and loss) are free and urgent, both at first instance and appeal stage.

²⁸ Article 17-A Asylum Act.

²⁹ For additional information, please refer to CPR, *AIDA Country Report: Portugal – 2018 Update*, pp.50 *et seq.*

³⁰ Committee Against Torture, *Concluding observations on the seventh periodic report of Portugal*, CAT/C/PRT/CO/7, 18 December 2019, par.38(a).

³¹ Information on this issue draws on the detailed reporting contained in the national AIDA report. For additional information on asylum procedures, please refer to the full report - CPR, *AIDA Country Report: Portugal – 2018 Update*, pp.92 *et seq.*

³² Human Rights Council, *Replies of Portugal to the list of issues*, CCPR/C/PRT/RQ/5, 24 January 2020.

³³ Article 35-A(1) Asylum Act.

³⁴ Article 35-A(2) Asylum Act.



57. A subsequent provision further provides for the possibility to detain asylum seekers in case (i) the application is filled at the border; (ii) the application is filled following a removal decision; (iii) Dublin procedures. Similarly, according to this provision, detention can only be applied if it is not possible to effectively implement less coercive measures.³⁵

58. In practice, systematic detention of asylum seekers is limited to border procedures (where it can range from 7 working days if the application is admitted to the regular procedure to 60 days in case of appeal against a rejection).³⁶

59. Usually, persons who apply for international protection while detained following a removal order also remain in detention until their application is admitted to the procedure (10 working days) or for a maximum of 60 days in case of appeal against a negative decision.³⁷

60. The Asylum Act explicitly refers to reporting duties and residential detention with electronic surveillance as alternatives to detention.³⁸

61. Despite all the above-mentioned legal safeguards, in practice, detention of applicants at the border is systematic and criminal courts seldom conduct an individual assessment on the necessity and proportionality of such measure or the possibility to apply alternative measures.³⁹

62. With regards to vulnerable applicants, as detailed in the AIDA report⁴⁰:

While up to 2016, certain categories of particularly vulnerable applicants such as unaccompanied children, families with children, pregnant women and the severely ill were generally released without conditions, SEF changed its practice in this regard.

In 2017, the detention of an asylum-seeking family with children at the Lisbon Airport detention facility drew criticism from the Ombudsman, particularly regarding the inadequate detention conditions offered to a child with special health needs.

In July 2018, following media reports on detention of young children at Lisbon Airport, and remarks by the Ombudsperson and UNICEF, the Ministry of Home Affairs issued an order determining:

- *An internal review of the functioning of the CIT at Lisbon Airport;*
- *The urgent presentation by the SEF of a report on the recommendations issued by the Ombudsman in 2017 regarding the above-mentioned centre;*
- *That children under 16 years old (whether accompanied or not) cannot be detained in the CIT for more than 7 days;*

³⁵ Article 35-A(3) Asylum Act.

³⁶ Articles 26(1) and 35-B(1) Asylum Act.

³⁷ Articles 33-A(5) and 35-B(1) Asylum Act.

³⁸ Article 35-A(4) Asylum Act.

³⁹ CPR, *AIDA Country Report: Portugal – 2018 Update*, pp.94-95.

⁴⁰ CPR, *AIDA Country Report: Portugal – 2018 Update*, pp.95-96.



- *That the construction of Temporary Reception Centre of Almoçageme (CATA), located in the municipality of Sintra is given maximum priority. So far there is no definite information on whether it will be an open or closed centre.*

According to the information available to CPR, for the whole of 2018, a total of 24 unaccompanied children, of which one later determined to be an adult after a second-stage age assessment, were detained at the border for periods ranging from 1 to 15 days (on average 6 days). The information available to CPR regarding 51 children accompanied by adults reveals that they were detained at the border for periods ranging between 1 and 59 days (on average 16 days). While CPR has observed a tendency for the decrease of detention periods to which children were subjected following the order issued in July 2018 by the Ministry of Home Affairs, this practice remains concerning in light of international standards that prohibit any immigration detention of children.

63. Detention practices have been recently addressed by the CAT and the Committee on the Rights of the Child (CRC) in their latest concluding observations on Portugal.⁴¹ The European Commission Against Racism and Intolerance (ECRI) also made reference to the excessive use of detention in the context of asylum in its report published in October 2018.⁴²

E. Statelessness (par.21 LOI)

64. With regards to statelessness, and while much more limited information is available, CPR underlines that the inexistence of a statelessness determination procedure presents a significant obstacle to identification and protection of stateless persons.

65. CPR highlights that while the legal framework on Nationality is overall positive and in line with international standards, effective and efficient implementation is key to ensure prevention and reduction of statelessness.

66. The 2018 recast of the Nationality Act introduced new provisions that may have a positive impact in this field. Notwithstanding, according to information available to CPR at the time of drafting, the corresponding regulation has not yet been adopted.

67. CPR considers that it is critical to increase awareness and capacity of all relevant public actors in the field of statelessness, in order to ensure proper identification and referral of cases and adequate application of relevant safeguards.

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⁴¹ Committee Against Torture, *Concluding observations on the seventh periodic report of Portugal*, CAT/C/PRT/CO/7, 18 December 2019; Committee on the Rights of the Child, *Concluding observations on the combined fifth and sixth periodic reports of Portugal*, CRC/C/PRT/CO/5-6, 9 December 2019.

⁴² ECRI, *ECRI Report on Portugal (fifth monitoring cycle)*, CRI(2018)35, 2 October 2018, par.84, available at: <https://bit.ly/2sIFsAQ>.