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**Promotion et protection de tous les droits de l'homme,
civils, politiques, économiques, sociaux et culturels,
y compris le droit au développement**

Visite au Portugal

Rapport du Rapporteur spécial sur la question des obligations relatives aux droits de l'homme se rapportant aux moyens de bénéficier d'un environnement sûr, propre, sain et durable, David R. Boyd*

Résumé

Le Rapporteur spécial sur la question des obligations relatives aux droits de l'homme se rapportant aux moyens de bénéficier d'un environnement sûr, propre, sain et durable, David R. Boyd, a effectué une visite au Portugal du 19 au 27 septembre 2022, à l'invitation du Gouvernement portugais. Cette visite devait lui permettre d'examiner comment le Portugal donnait effet au droit à un environnement propre, sain et durable, de recenser les bonnes pratiques et de se renseigner sur les problèmes environnementaux auxquels le pays était confronté. Il en ressort que le Portugal s'est doté d'un cadre juridique solide pour la protection des droits de l'homme et de l'environnement, et qu'il a joué un rôle moteur dans la fermeture des centrales électriques alimentées au charbon et la garantie de l'accès à l'eau potable, ce qui mérite d'être salué. Le Portugal doit relever les défis liés à la pollution de l'air, à la gestion des déchets, à l'adaptation à la crise climatique et à l'application effective des lois et politiques environnementales. Le Rapporteur spécial lui recommande notamment de réduire les émissions des véhicules automobiles, d'investir dans l'efficacité énergétique, d'accélérer la production d'énergie renouvelable, de renforcer les normes de qualité de l'air et de passer à une économie circulaire.

* Le résumé du présent rapport est distribué dans toutes les langues officielles. Le corps du rapport, annexé au résumé, est distribué dans la langue de l'original seulement.



Annexe

Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, on his visit to Portugal

I. Introduction

1. The Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, David R. Boyd, visited Portugal from 19 to 27 September 2022, at the invitation of the Government. The purpose of the visit was to examine the implementation of the right to a clean, healthy and sustainable environment in Portugal, to identify good practices and to investigate the environmental challenges that the country faces.

2. Portugal has played a leadership role in the recognition of the right to a healthy environment in law. The country was one of the first United Nations Member States to recognize this right in its constitution, back in 1976. Portugal has also consistently championed the human right to a clean, healthy and sustainable environment at the international level, actively supporting historic resolutions at the Human Rights Council, in 2021, and the General Assembly, in 2022¹. The visit of the Special Rapporteur was focused on the steps that Portugal has taken to respect, protect and fulfil this right, and the challenges it faces in doing so.

3. Portugal has experienced incredible development since 1970, when there were low rates of access to safe drinking water, sanitation and electricity. The peaceful democratic Revolution of the Carnations in 1974, the progressive Constitution of 1976 and the entry into the European Union in 1986 catalysed a new era of progress. One inspiring example is the availability of safe drinking water, which increased from 50 per cent to 99 per cent of households between 1993 and 2015.

4. Nonetheless, the population of Portugal and the country's diverse ecosystems are being deeply affected by heatwaves, wildfire and drought, which are exacerbated by the climate crisis. In 2022, more than 1,000 deaths were related to the heatwave during the hottest July in 92 years, and close to 110,000 ha of forest were lost to fires². These are powerful reminders of the close relationship between the health of the planet and the health and well-being of people. The urgent need to address the world's triple environmental crisis requires all States not only to recognize the human right to a clean, healthy and sustainable environment, but also to rigorously respect, protect and fulfil that right.

5. Over the course of his visit, the Special Rapporteur met with the Minister for Environment and Climate Action, the Secretary of State for Internationalization, the Secretary of State of Agriculture, representatives of the Portuguese Environmental Agency, the Portuguese Ombudsperson, the Constitutional Court and the Deputy Attorney General's Office and members of the National Council of the Environment and Sustainable Development. The Special Rapporteur had a productive conversation with the Working Group of the National Human Rights Committee, which covers the following government areas: presidency of the Council of Ministers; foreign affairs; home affairs; justice; finance; citizenship and gender equality; economy and maritime affairs; education; labour, solidarity and social security; health; environment and climate action; infrastructure and housing; territorial cohesion; and agriculture and food. He also met with Members of Parliament (from the Committee on Constitutional Affairs, Rights, Liberties and Guarantees and the Committee on Environment and Energy), the Deputy Mayor of Porto, the Mayors of Boticas

¹ Council resolution 48/13 and Assembly resolution 76/300.

² Catarina Demony, Miguel Pereira and Pedro Nunes, "Portugal reports more than 1,000 heat-related deaths", Reuters, 20 July 2022.

and Covilhã, other local officials, young people, academics and representatives of civil society, United Nations entities, local communities and the private sector.

6. The Special Rapporteur travelled to numerous places, including Lisbon, Porto, Covilhã and Serra da Estrela, where he witnessed the devastating damage inflicted by wildfires and met with numerous stakeholders, including local authorities and the National Guard and Civil Protection, whose courageous efforts prevented any deaths in the large fire in 2022. The Special Rapporteur also visited the communities of Boticas and Covas do Barroso to learn about the potential environmental and human rights impacts of a proposed lithium mine. Finally, he visited the Dunas de São Jacinto nature reserve.

II. Legal and policy framework

A. International law and policy

7. Portugal is a party to all major global human rights treaties, except for the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which the State should consider joining. Environmental protection is essential to fulfilling many of the rights recognized in these agreements, including the rights to life, health, food, water and sanitation and cultural rights. Of critical importance is protecting the rights of those who may be most vulnerable to environmental harms and climate change, including women, children, older persons and persons with disabilities.

8. Portugal has joined all major global environmental treaties and is a party to the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. Fulfilling these procedural rights is often a prerequisite to environmental protection and sustainable development.

9. In 2021, the Parliamentary Assembly of the Council of Europe recommended the development of a new additional protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), recognizing the right to a clean, healthy and sustainable environment. Given the leadership of Portugal in advancing recognition of this right at the Human Rights Council and the General Assembly, it would be well placed to serve as a vocal champion for the proposed protocol.

10. Portugal is also a party to many international trade and investment treaties, including the European Energy Charter, most or all of which contain problematic provisions on investor-State dispute settlement mechanisms. These mechanisms enable foreign businesses to bypass national court systems and make claims for huge amounts of damages against States before international arbitration panels for allegedly enacting and implementing laws and policies that reduce profits. Given the rising tide of lawsuits being brought by fossil fuel corporations and other businesses in resource-extraction industries, the Special Rapporteur recommends that Portugal negotiate the removal of investor-State dispute settlement mechanisms or withdraw from the relevant treaties.

B. National legal context

11. In 1976, Portugal became one of the first nations in the world to recognize the human right to a healthy and ecologically balanced environment (art. 66 of the Constitution). The Constitution also includes references to preventing pollution, respecting the principle of intergenerational solidarity and guaranteeing the conservation of nature. Portugal has a strong legal framework and a multitude of environmental policies, plans and strategies. The Framework Law on the Environment contains strong provisions on the right to a healthy and ecologically balanced environment. The Framework Law on Climate includes innovative provisions that identify a safe climate as a human right and recognize a stable climate as the

common heritage of humanity. A pilot project to assess the impact of legal acts on climate action began in 2021³.

12. Portugal carried out a green tax reform, which amended the environmental tax rules in the energy and emissions, transport, water, waste, land use planning, forests and biodiversity sectors. It also introduced a tax regime for plastic bags and a planned incentive regime for scrapping end-of-life vehicles⁴. In 2015, Portugal established a carbon tax to cover sectors not included in the European Union Emissions Trading System. The result is that virtually all carbon emissions in Portugal are subject to a pricing instrument, creating a powerful incentive to shift towards a low-carbon society. Portugal was also an early adopter of modifying motor vehicle taxes on the basis of their carbon dioxide emission rate. This policy is influencing changes in the Portuguese car fleet and has resulted in an increase in the number of electric and other low-emission vehicles being sold.

13. Portuguese climate and environmental laws can be divided into three categories: (a) laws that transpose European Union directives into domestic law; (b) laws that are stronger than European Union requirements; and (c) additional laws that are not required by the European Union. For example, the country's 2017 environmental impact assessment decree goes beyond directive 2014/52 of the European Parliament and of the Council in stipulating that if an environmental impact assessment concludes that a proposed project will have substantial adverse effects, it cannot be approved. However, the Special Rapporteur is concerned that, in practice, projects identified as being in the national interest (under resolution 49/2005 of the Council of Ministers) are not subjected to the same standard. In fact, it appears that for projects identified as being in the national interest, administrative organs are under pressure to accept significant environmental impacts as a result of economic and political factors related to development⁵.

14. Implementation of the many strong laws and policies is where Portugal faces major challenges. Perhaps the most compelling evidence of this problem is the fact that, because of its failure to comply with European Union directives related to air quality, wastewater treatment, energy efficiency, the energy performance of buildings, the Natura 2000 network and others, the European Commission has commenced many infringement proceedings against Portugal⁶. These infringements illustrate numerous negative impacts on human rights, in particular in relation to the substantive elements of the right to a healthy environment.

15. For example, in 2021, the European Commission decided that Portugal had continually and persistently exceeded the annual nitrogen dioxide limit value in three air-quality zones (Lisboa Norte, Porto Litoral and Entre Douro e Minho), thus failing to comply with limits on air pollution established in directive 2008/50/EC. Portugal had no exceedances of the European Union air quality limit for nitrogen dioxide in 2020, but this could be an anomalous result caused by reduced traffic during the coronavirus disease (COVID-19) pandemic. As a second example, the European Commission is calling upon Portugal to comply with the requirements established in directive 91/271/EEC on urban waste water treatment⁷. According to the Commission, 1 community in Portugal has no system to collect urban waste water and 62 communities fail to meet the standards required under the directive.

16. An impediment to implementation is the inadequate level of government investment in environmental protection. According to Eurostat, average government environmental

³ See Council of Ministers resolution No. 5/2021 of 19 January 2021.

⁴ Law No. 82-D/2014.

⁵ Alexandra Aragão, "Environmental standards in the Portuguese Constitution", in *Environmental Rights: The Development of Standards*, Stephen J. Turner, ed. (Cambridge, Cambridge University Press, 2019).

⁶ See https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/index.cfm?lang_code=EN&typeOfSearch=false&active_only=1&noncom=0&r_dossier=&decision_date_from=&decision_date_to=&EM=PT&DG=AGRI&DG=CLIMA&DG=ENER&DG=ENV&title=&submit=Search.

⁷ INFR(2022)2028. Available from https://ec.europa.eu/commission/presscorner/detail/EN/inf_22_3768.

protection spending in 2019 was 0.5 per cent of gross domestic product in the European Union as a whole, but only 0.3 per cent in Portugal⁸.

17. In terms of good practices, the Fundo Ambiental (Environmental Fund) – for climate change, the circular economy, nature conservation and environmental awareness – is of specific relevance because of its contribution to improving implementation⁹. Created by consolidating several other funds in 2016, the Fund’s annual budget, financed in part by taxes on carbon, pollution and waste, grew from €41 million in 2017 to more than €1.1 billion in 2022.

C. Political structure and economy

18. Portugal is a semi-presidential republic, and the administrative division of the country includes 308 municipalities, subdivided into 3,092 civil parishes. The country has a population of more than 10 million people and a territory of 92,225.20 km², spread over its continental territory and the two autonomous regions of Azores and Madeira¹⁰. While agriculture, fishing and forestry accounted for only 2.2 per cent of Portugal’s gross domestic product in 2021, it should be highlighted that part of the population relies on such activities for their livelihood¹¹. In fact, traditional practices in those sectors are of key importance for the realization of cultural rights and represent good practices in terms of climate- and biodiversity-friendly land use and management.

III. Fulfilling the right to a clean, healthy and sustainable environment

19. The right to a clean, healthy and sustainable environment has both procedural and substantive elements. The procedural elements include the rights of access to environmental information, public participation in environmental assessments and decision-making, and access to justice and adequate remedies in cases where the right to a clean and healthy environment is threatened or violated. The substantive elements include a safe climate, clean air, safe drinking water and adequate sanitation, healthy and sustainably produced food, non-toxic environments in which to live, work, study and play, and healthy biodiversity and ecosystems.

A. A safe climate

20. The world is embroiled in a climate emergency, which is already violating human rights across the planet and threatening to do so on an almost unimaginably vast scale in the coming years. The need for rapid decarbonization is clear: humans’ dependence on fossil fuels must be eliminated as quickly as possible, while the human rights of all persons affected must be safeguarded. In the words of the Secretary-General: “We have a choice. Collective action or collective suicide. It is in our hands.”¹²

21. Among the nations of the global North, Portugal is one of the most acutely vulnerable to the adverse impacts of climate change, including devastating wildfires, deadly heatwaves, worsening droughts, desertification, coastal erosion and the increasing intensity of extreme weather events. Between 2001 and 2016, more than 2 million ha were burned by wildfires in Portugal, contributing to air pollution and climate change and resulting in numerous deaths and injuries, in addition to a series of negative human rights impacts and damage to housing, livelihoods, infrastructure, farms and communities, ecosystems and forest health.

⁸ See <https://ec.europa.eu/eurostat/cache/egd-statistics/>.

⁹ Created by Decree-Law No. 42A/2016, amended by Decree-Law No. 114/2021.

¹⁰ See https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_indicadores&contexto=pi&indOcorrCod=0008350&selTab=tab0.

¹¹ See <https://data.worldbank.org/indicator/NV.AGR.TOTL.ZS?locations=PT>.

¹² See <https://press.un.org/en/2022/sgsm21376.doc.htm>.

22. The terrible wildfires of 2017 claimed more than 100 lives and burned almost 500,000 ha of forests, creating a legacy of pain, loss and anxiety that continues to this day. In July 2022, the Directorate-General for Health reported more than 1,000 deaths related to punishing heatwaves. Children, persons who are chronically ill and older persons are particularly vulnerable to the negative health effects of exposure to intense heat. The Ministry of Health is actively attempting to reduce risks through public education and outreach programmes, including warnings, recommendations and guidelines.

23. As of August 2022, 60.4 per cent of Portugal was suffering from severe drought, and 39.6 per cent from extreme drought¹³. Droughts affect agricultural productivity, posing risks to the olive-growing, wine and fishing sectors and jeopardizing the right to food. Large areas of Portugal, in particular in the interior of the southern regions of Algarve and Alentejo, are prone to desertification due to climate change and decades of unsustainable agricultural practices.

24. The Special Rapporteur visited the blackened landscape near Serra de Estrela and Covilhã and met with local residents. He spoke to the Ombudsperson, Maria Lúcia Amaral, who had carried out a year-long extrajudicial process regarding the Pedrógão Grande wildfires in 2017, including a programme for the compensation of victims and their families¹⁴. Between December 2017 and February 2018, 309 requests from relatives linked to 115 fatalities had been received, involving 65 deaths in the fires of June 2017 and 50 deaths in the fires of October 2017. High temperatures and droughts, exacerbated by climate change, are lengthening the fire season and increasing the risk of severe and intense wildfires¹⁵. Portugal experienced wildfires that burned an average of 75,000 ha per year in the 1980s, 100,000 ha per year in the 1990s, 150,000 ha per year since 2000, and 475,000 ha in 2017.

25. The Special Rapporteur commends the Government of Portugal for taking the climate emergency seriously. The Government closed down the last two coal-fired power plants, Pego (628 megawatts) and Sines (1,250 megawatts), in 2021, becoming the fourth European nation to stop burning coal and the first with no nuclear facilities to have done so. Large investments in wind and solar energy have enabled a major increase in renewable electricity, from 40 per cent in 2017 to 60 per cent in 2021¹⁶. There are plans for two large solar photovoltaic power plants (1 gigawatt each), which, if built, would result in Portugal quadrupling its solar capacity between 2022 and 2024. In addition, 10 gigawatts of offshore wind energy are expected to be added by 2030. Unfortunately, the severe and repeated droughts, exacerbated by climate change, are sabotaging hydroelectric power production, forcing an increased reliance on natural gas. In September 2022, Portugal approved a package of measures to save energy, cutting natural gas use by up to 17 per cent by the end of 2023 as part of the European response to the crisis in Ukraine¹⁷.

26. As the Special Rapporteur travelled around Portugal, he was surprised at the lack of solar panels on rooftops or mounted on the ground. Portugal currently ranks a disappointing thirteenth in the European Union in terms of installed solar electricity panels¹⁸. However, 100 megawatts per year in local solar installations have been added since 2020, totalling a deployment of close to 1,000 megawatts in 2022. Portugal fares better on wind power (eighth place in the European Union), but generating capacity from wind has increased by less than 20 per cent since 2012.

27. Greenhouse gas emissions in Portugal declined 32.3 per cent between 2005 and 2020, and reportedly fell another 4.8 per cent in 2021. Per capita greenhouse gas emissions, at 5.7 tons per capita, are among the lowest in Europe¹⁹. Porto reduced emissions by 52 per cent between 2004 and 2020 with a range of innovative initiatives that incorporate both climate

¹³ See <https://www.ipma.pt/en/oclima/observatorio.secas/>.

¹⁴ Established by Council of Ministers resolution No. 157-C/2017.

¹⁵ Patricia Tarrin-Carrasco and others, "Impact of large wildfires on PM10 levels and human mortality in Portugal", *Natural Hazards and Earth Systems Sciences*, vol. 21, No. 9 (September 2021).

¹⁶ See <https://www.dgeg.gov.pt/pt/>.

¹⁷ Sergio Goncalves, "Portugal approves energy-saving plan, may beat EU target", Reuters, 8 September 2022.

¹⁸ See <https://www.irena.org/publications/2022/Apr/Renewable-Capacity-Statistics-2022>.

¹⁹ See <https://ec.europa.eu/eurostat/cache/egd-statistics/>.

action and human rights, such as placing solar panels on the roofs of social housing (also done in Covilhã).

28. With a vision of protecting the nation from severe rural fires, Portugal recently approved a new law and a national plan for integrated rural fire management, as well as a preventive strategy and a national action programme. The Government is making substantial investments, raising public awareness and improving data on land ownership, but needs to accelerate the pace of fire prevention through the implementation of climate-smart and fire-smart land management. The former includes afforestation and reforestation; the latter involves farmland recovery and agroforestry and using fuel reduction and fuel-conversion techniques that promote less flammable and more resilient types of land cover²⁰. The Special Rapporteur saw extensive monocultures of eucalyptus trees during his visit and recommends taking steps to reduce the area of land covered by this non-native species. Experts recommend planting native species that are more fire-resistant, such as oak, cork and chestnut, and creating more diverse landscape mosaics. The Special Rapporteur was concerned to learn that almost one in four municipalities does not have an up-to-date forest fire defence plan²¹. Because of the large proportion of older persons in rural communities in Portugal, targeted steps should be taken to ensure that evacuation procedures and emergency plans fulfil their needs²². Persons with disabilities and children also merit special consideration in disaster risk-reduction planning.

29. In response to the commitment assumed by Portugal in 2016 to achieve net-zero emissions by 2050, the Carbon Neutrality Roadmap 2050 was approved, identifying the main decarbonization policies and actions needed in all sectors of the economy (energy and industry, mobility and transport, waste and wastewater and agriculture and forestry). Under the roadmap, Portugal strengthened its previous 2030 target (30–40 per cent below 2005 levels) to 45–55 per cent below 2005 levels. Additionally, a long-term trajectory was established, comprising emission reductions of 65–75 per cent by 2040 and 85–90 per cent by 2050 compared with 2005. The National Energy and Climate Plan is the main policy instrument for achieving the 2030 targets.

30. The goal of Portugal is to produce 80 per cent of its electricity from renewable sources by 2030. The Special Rapporteur encourages the Government to accelerate the shift to renewables, in particular solar and wind, in order to meet this goal ahead of schedule and reach 100 per cent by 2030. These ambitious goals may also require upgrades to the electricity grid and increased interconnections with other States. Other priority climate actions include investments in energy efficiency (e.g. heat pumps for heating and cooling, better insulation for buildings); increased investment in public transport and active transport instead of roads; and increasing support for climate-smart, precision, regenerative, local and organic agriculture. Support for decentralized solar energy should be made easily accessible to households and businesses and rapidly scaled up.

31. A rights-based approach to climate action will ensure that policies and programmes are focused on those who are most vulnerable or marginalized, such as people facing poverty who live in buildings that are not energy-efficient. The Vale Eficiência, which provides vouchers of €1,300 plus value-added tax to economically vulnerable households to improve the thermal comfort of their homes, is an example of a good practice in this area that should be streamlined and rapidly scaled up. It was estimated that, in 2021, more than 16 per cent of the population in Portugal lived in energy poverty, the situation being among the worst in Europe²³. Programmes that require homeowners to co-finance energy efficiency upgrades may not be suitable for the poorest households that cannot afford to pay their share.

²⁰ João C. Campos and others, “Climate regulation ecosystem services and biodiversity conservation are enhanced differently by climate- and fire-smart landscape management”, *Environmental Research Letters*, vol. 17, No. 5 (May 2022).

²¹ Nuno Miguel Ropio, “Fogos: um quarto do país sem defesa da floresta”, *Visão*, 8 September 2022.

²² A/HRC/42/43.

²³ Eurostat, “Population unable to keep home adequately warm by poverty status”, Tables on EU Policy database. Available at https://ec.europa.eu/eurostat/databrowser/view/sdg_07_60/default/table?lang=en (accessed on 3 January 2023).

32. Young people are among the most likely to suffer adverse impacts from climate change, including negative impacts on physical and mental health, which may constitute human rights violations. A recent survey of 10,000 young people (aged 16–25) from 10 countries, including 1,000 from Portugal, found profoundly worrisome results²⁴. Among those from Portugal: (a) 81 per cent said that they thought that the future was frightening; (b) 62 per cent said that they believed that humanity was doomed; and (c) 37 per cent were hesitant about having children.

33. Two thirds of young people in Portugal were very worried (35 per cent) or extremely worried (30 per cent) about the climate crisis, the highest level of worry in the global North. A study from the University of Coimbra showed that, in municipalities affected by the 2017 fires (which caused the death of more than 100 people, injured more than 250 people and destroyed over 500 houses), 25.4 per cent of children had some kind of psychological disorder and 8.1 per cent had symptoms of post-traumatic stress disorder²⁵.

34. Despite these challenges, young people in Portugal are vigorously defending their right to a safe and liveable climate. Six young people from Portugal filed a case against 33 European Governments (including Portugal) before the European Court of Human Rights, arguing that their rights to life, respect for private and family life and not to be discriminated against were being violated by Governments' inadequate climate action²⁶. The case is currently pending before the Grand Chamber of the European Court of Human Rights. The latest global climate strike by students was held on 23 September 2022. Teresa Nuncio, spokesperson for the student climate strike in Lisbon, said "What we are facing is the possibility of a collapse of civilization if we do nothing and do not change drastically."²⁷

B. Clean air

35. Clean air is one of the basic elements of the right to live in a clean, healthy and sustainable environment²⁸. Globally, air pollution causes 7 million premature deaths annually and harms billions of people. For example, exposure to fine particulate matter causes respiratory illness, cardiovascular disease, stroke and lung cancer, as well as other adverse health effects²⁹. Nitrogen oxides, sulphur dioxide, ozone, benzene and other air toxics also raise concerns.

36. In some areas and in terms of some pollutants, air quality in Portugal has improved. For example, average annual concentrations of fine particulate matter have declined, from 11.3 micrograms per cubic metre in 1990 to 8.2 micrograms per cubic metre in 2019³⁰. However, air quality remains unsatisfactory, as there are pollution hotspots in urban areas, including Lisbon, with significantly higher levels of fine particulate matter concentrations. The World Health Organization (WHO) recently reduced its annual guideline for fine particulate matter, from 10 micrograms per cubic metre to 5 micrograms per cubic metre, reflecting new scientific evidence about the risks to health even at lower concentrations.

37. According to the State of Global Air Quality, 2,410 premature deaths in Portugal were caused by air pollution in 2020 (including fine particulate matter and ozone)³¹. However, the European Environmental Agency provides a higher estimate (3,958 premature deaths), a figure that also includes nitrogen dioxide³². Recent Portuguese studies confirm that air

²⁴ Caroline Hickman and others, "Climate anxiety in children and young people and their beliefs about government responses to climate change: a global survey," *The Lancet Planetary Health*, vol. 5, No. 12 (December 2021).

²⁵ José Rocha and others, "Livro de resumos do 1o congresso de psicologia do trauma e do luto" (Porto, Faculdade de Psicologia e de Ciências da Educação da Universidade do Porto, 2018).

²⁶ See <https://youth4climatejustice.org>.

²⁷ See <https://observador.pt/2022/09/23/jovens-ativistas-voltaram-a-greve-global-para-exigir-medidas-climaticas-dos-governos/>.

²⁸ See A/HRC/40/55.

²⁹ See [https://www.who.int/news-room/fact-sheets/detail/ambient-\(outdoor\)-air-quality-and-health](https://www.who.int/news-room/fact-sheets/detail/ambient-(outdoor)-air-quality-and-health).

³⁰ See https://stats.oecd.org/viewhtml.aspx?datasetcode=EXP_PM2_5&lang=en.

³¹ See <https://www.stateofglobalair.org/data/#/health/plot>.

³² See <https://www.eea.europa.eu/themes/air/country-fact-sheets/2021-country-fact-sheets/portugal>.

pollution has a significant impact on mortality caused by respiratory illnesses, diseases of the circulatory system and cancer³³. A study of air quality in Lisbon estimated that meeting the previous WHO guideline for fine particulate matter would prevent 423 premature deaths annually, extend average life expectancy by 18.7 months and provide nearly €46 million in annual benefits³⁴. Meeting the current, more stringent WHO guideline for fine particulate matter would produce even greater benefits. Portugal could demonstrate global leadership by adopting the new WHO guideline as a national standard.

38. The Government acknowledged that women living in one of the country's pollution hotspots (within 500 meters of Avenida da Liberdade in Lisbon) were more likely to have babies with a low birth weight, resulting in increased health risks and jeopardizing their human rights to health and a healthy environment.

39. Reducing emissions from road traffic is key. Porto has ambitious plans for new subway lines, rapid bus lines and electric buses, as well as smart traffic lights. Porto makes public transit free for everyone aged under 18, offers discounted transit passes for students and residents, and has an innovative programme to subsidize taxi use for older persons. In Lisbon, public transit is free for those aged under 23 or over 65. A recent study indicated that placing greater emphasis on active transport (walking and cycling) in Porto, which would require substantial infrastructure changes, would produce major health and economic benefits³⁵. The findings are applicable throughout urban areas in Portugal.

40. Other important initiatives under way or needed to improve urban air quality include low-emission zones (where more polluting vehicles are not permitted), electrification of public transport vehicles, tax incentives for bicycles and 100 per cent electric vehicles (including e-bikes), strong tax disincentives for diesel vehicles and temporary incentives, including free parking for electric vehicles. Portuguese cities would benefit from the creation of large car-free zones in central areas, which have been highly successful in other European cities. A good practice pioneered by Portugal in 2010 is a legal framework for electric mobility that defines the rules of the sector and creates an interoperable model, in which all users have access from a single means (card or mobile application) to all public charging points in the country³⁶.

41. It is vital to note that the country's most important strategy for both climate change and air pollution involves electrifying energy end uses (transport, heating, etc.) and powering those end uses with electricity generated by renewable sources³⁷. This will produce climate and air quality co-benefits, with the caveat that biomass burning can produce substantial volumes of air pollution and carbon emissions, making it less attractive as a renewable energy option. Additional actions are needed to substantially reduce fine particulate matter and nitrogen dioxide by 2030³⁸.

³³ José Brito and others, "Quantitative analysis of air pollution and mortality in Portugal: current trends and links following proposed biological pathways", *Science of the Total Environment*, vol. 755, No. 1 (February 2021); and Pedro Torres and others, "Air pollution: a public health approach for Portugal", *Science of the Total Environment*, vol. 643 (December 2018).

³⁴ Karina Camasmie Abe, Matilde Alexandra Rodrigues and Simone Georges El Khouri Miraglia, "Health impact assessment of air pollution in Lisbon, Portugal", *Journal of the Air and Waste Management Association*, vol. 72, No. 11 (November 2022).

³⁵ P.F. Rodrigues and others, "Health economic assessment of a shift to active transport", *Environmental Pollution*, vol. 258 (March 2020).

³⁶ Decree-Law No. 39/2010.

³⁷ Joana Monjardino and others, "Carbon neutrality pathways effects on air pollution: the Portuguese case", *Atmosphere*, vol. 12, No. 3.

³⁸ Directive 2016/2284 of the European Parliament and of the Council on the reduction of national emissions of certain atmospheric pollutants. See also <https://www.eea.europa.eu/publications/measures-to-reduce-emissions-of>.

42. Indoor air pollution is also a potential threat to the right to a healthy environment. Ventilation issues and/or indoor pollutant levels that exceeded recommended limits have been found in a substantial number of classrooms surveyed in Portugal³⁹.

C. Safe and sufficient water and adequate sanitation

43. The Special Rapporteur wishes to commend Portugal for its progress in the area of the rights to water and sanitation, with 96 per cent of dwellings currently served by a public water supply and a safe water index of 99 per cent: a jump from 50 per cent to 99 per cent in 20 years⁴⁰. However, Portugal is unfortunately among the most unequal countries in Europe in terms of income distribution⁴¹. In 2019, 16.2 per cent of the population was living below the poverty line, and the COVID-19 pandemic has caused an increase in that percentage in the past three years⁴². During his visit to Portugal in 2016, the Special Rapporteur on the human rights to safe drinking water and sanitation expressed concerns about members of specific communities, including the Roma population, who faced difficulties regarding access to water, highlighting that the National Roma Communities Integration Strategy (2013–2020) did not mention access to water and sanitation⁴³.

44. Portugal was fined €3 million for failing to comply with directive 91/271/EEC on urban waste water treatment. Non-compliance continues, and the European Commission is calling upon Portugal to comply with the requirements established in that directive⁴⁴. According to the Commission, 1 community in Portugal has no system to collect urban waste water and 62 communities fail to meet the water treatment standards required under the directive.

45. In 2021, the European Environment Agency published data on pesticide contamination in surface and groundwater in Portugal. The concentration of pesticides exceeded the acceptable rate in 12 per cent of the 100 monitoring sites in surface water, with the most worrying situation involving larger rivers, where pesticide concentrations exceeded limits in one third of sites monitored⁴⁵. Portugal exceeded the concentration limits for pesticides in 5 per cent of the 203 monitoring sites in groundwater.

D. Healthy and sustainably produced food

46. Through the implementation of its National Strategy for Organic Agriculture for the period 2017–2027, Portugal has been making good progress in the proportion of agricultural land dedicated to organic production, from 8 per cent in 2020 to 18 per cent in 2022. Portugal promotes family farming and supports family farms in the use of sustainable practices, including through a praiseworthy programme to subsidize the use of solar-generated electricity. Portugal is also engaged in experiments to test innovative regenerative agricultural techniques.

47. However, researchers found that 85 per cent of pears and 58 per cent of apples grown in Portugal contained residues of pesticides defined as “more hazardous” by the European Commission in the context of the European Union Farm to Fork Strategy⁴⁶. These are the

³⁹ M. Fonseca Gabriel and others, “Environmental quality in primary schools and related health effects in children. An overview of assessments conducted in the Northern Portugal”, *Energy and Buildings*, vol. 250 (November 2021).

⁴⁰ Information shared by the Government on 24 September 2022.

⁴¹ A/HRC/34/51/Add.2, para. 7.

⁴² Statistics Portugal, “The at-risk-of-poverty rate increased to 18.4% in 2020–2021”, 17 December 2021.

⁴³ A/HRC/36/45/Add.1, paras. 74–77. See also A/HRC/42/47/Add.3.

⁴⁴ INFR(2022)2028.

⁴⁵ See <https://www.eea.europa.eu/ims/pesticides-in-rivers-lakes-and>.

⁴⁶ Pesticide Action Network Europe, *Forbidden Fruit: The Dramatic Rise in Dangerous Pesticides Found on Fruits and Vegetables Sold in Europe and Evidence that Governments are Failing their Legal Obligations* (Brussels, 2022).

most dangerous and most heavily regulated category of pesticides. They are linked to a range of chronic diseases and are highly toxic to the environment and farmworkers.

48. Intensive agriculture raises extensive concerns related to the right to a clean, healthy and sustainable environment. For example, intensive agriculture based on non-native crops and production in greenhouses in the south (Algarve and Alentejo) adds strain to already stressed water resources. Three quarters of total water use in Portugal is for agriculture and livestock. Portugal has been implementing modernization measures to increase the efficiency of irrigation, which can significantly reduce water use. Intensive agriculture also raises concerns about the rights of workers, in particular the exploitation of migrant farmworkers from Africa and Asia, some of whom work in the informal sector. Action is under way to improve housing conditions for seasonal workers as well as to improve health and safety conditions, but allegations of trafficking in persons continue to be made⁴⁷.

49. The National Strategy for Food and Nutrition Security was created in 2021, with the objective of ensuring the human right to adequate food at the national level, including a focus on vulnerable populations. Portugal also led the development of a food and nutrition security strategy at the Community of Portuguese-speaking Countries, an initiative that will benefit nations in the global South, including Angola, Cabo Verde and Mozambique. Another good practice is the promotion by the Government of the Mediterranean diet, a healthy and nutritious diet that supports the adoption of more sustainable production systems, local agriculture, short supply chains, quality products and reduced meat consumption. Portugal has both a National Commission and a National Strategy to Combat Food Waste.

50. With 2,500 km of coastline and two autonomous regions located on islands (Azores and Madeira), the ocean is an important element of the culture and environment of Portugal. Portugal prioritizes ocean health, not only to protect it and contribute to the full realization of the right to a healthy environment, but also to reach targets related to Sustainable Development Goal 14, on life below water. Adopted in May 2021, the 2021–2030 National Ocean Strategy is aimed at promoting a healthy ocean to enhance sustainable blue development, the welfare of the Portuguese people and affirm Portugal as a leader in ocean governance, supported by scientific knowledge. Paying attention to life below water is key to ensuring a healthy biosphere for all and to avoiding potential negative human rights impacts. In this regard, it should be noted that some species of fish in Portugal are part of the 10.23 per cent of species for which the conservation status has been assessed as “bad” under the Habitats Directive of the Biodiversity Information System for Europe⁴⁸. The Special Rapporteur expresses concern about the sardine population, which has decreased in recent years due to overfishing, poor management of resources and the fragility of remaining stocks, caused by the warming and acidification of ocean waters⁴⁹. Sardine fishing is an important economic activity that employs about 20,000 workers in Portugal. While the health of sardine populations has improved, this sector should be closely monitored.

E. Non-toxic environments

51. Inadequate solid waste management can have negative effects on human and ecosystem health, jeopardizing the right to a clean, healthy and sustainable environment. Directive 2008/98/EC of the European Parliament and of the Council, on waste, clarified the waste management hierarchy as follows: (a) reduce the amount of waste generated; (b) maximize recycling and re-use; (c) limit incineration to non-recyclable materials; and (d) phase out landfilling, except for non-recyclable and non-recoverable waste.

⁴⁷ See <https://www.unodc.org/unodc/en/human-trafficking/glo-act/nepalese-migration-and-labour-exploitation-in-portugal.html>.

⁴⁸ See <https://biodiversity.europa.eu/countries/portugal>.

⁴⁹ Daniela Chiaretti, “Portugal faces the collapse of its sardine fishing industry”, Earth Journalism Network, 11 July 2022.

52. Given that the first priority of waste management is to reduce, the growing volume of municipal waste in Portugal is a concern, at 513 kg per capita, which is the eleventh highest in the European Union, and above the European Union average⁵⁰.

53. According to the Intermunicipal Waste Management Service of Greater Porto, in 2019, Portugal recycled or composted 29 per cent of municipal waste, used 19 per cent of waste to generate energy (by incineration) and sent 47 per cent to landfill, with data missing for the remaining 5 per cent. The most recent Eurostat data indicated 26.5 per cent recycling for 2020⁵¹. It is clear that Portugal failed, by a wide margin, to meet the European Union target of recycling 50 per cent of its waste by 2020. Major improvements are needed to meet the more ambitious European Union recycling targets of the future (55 per cent by 2025, 60 per cent by 2030 and 65 per cent by 2035).

54. As the European Commission has observed, managing waste efficiently remains a challenge for Portugal. Member States must take measures to ensure that only waste that has been subject to treatment is landfilled. In 2015, the Commission launched a study to investigate the landfilling of untreated municipal waste in member States. In Portugal, the study revealed shortcomings in four of the five landfills visited. At least 59 per cent of municipal waste is landfilled without any treatment. According to the Commission, Portugal has not established an integrated and adequate network of waste management installations for mixed municipal waste⁵².

55. However, the Special Rapporteur's visit to the headquarters of the Intermunicipal Waste Management Service of Greater Porto revealed that a group of municipalities in one of Portugal's largest metropolitan areas is making substantial progress. The Service is rolling out a city-wide programme to collect organic waste, which is turned into valuable fertilizer and in the future may be used to generate biogas using an anaerobic digester. It has also developed a waste-prevention strategy⁵³. Less than 2 per cent of waste managed by the Service is now sent to landfill. Waste that cannot be recycled or composted is sent to an incinerator that generates energy. Incineration may be an interim solution but is not consistent with the long-term goal of a circular economy. Incineration produces not only heat, electricity and valuable metals, but also air pollution and greenhouse gas emissions, thus potentially jeopardizing the right to a clean, healthy and sustainable environment⁵⁴.

56. Portugal should accelerate the implementation of its circular economy strategy, with an immediate emphasis on increasing the recycling rate. A comprehensive system of extended producer responsibility that shifts the burden of operating and paying for recycling systems from Government to the industries that produce or import recyclable products and packaging, as employed in the Canadian province of British Columbia, warrants consideration⁵⁵.

57. Plastic pollution is a growing environmental and health concern. Scientists recently discovered a new form of plastic pollution, termed "plasticrusts", which is plastic debris encrusting the surface of rocks, in the intertidal zone along the shore of Madeira, in growing quantities over the study period 2016–2019⁵⁶. There are concerns that potential ingestion by marine organisms could provide a new pathway for plastics to enter the food web. Microplastics have been found in the wastewater effluent of industrial facilities in Portugal, with high levels in the paint and pharmaceutical sectors.

⁵⁰ See https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Waste_statistics.

⁵¹ See https://ec.europa.eu/eurostat/databrowser/view/cei_wm011/default/table?lang=en.

⁵² INFR(2021)2258.

⁵³ See https://www.lipor.pt/fotos/gca/gp_2022_en_compressed_140968723162470328c4269.pdf.

⁵⁴ Yolanda Fernandez-Nava and others, "Life cycle assessment of different municipal solid waste management options: a case study of Asturias (Spain)", *Journal of Cleaner Production*, vol. 81 (October 2014); and Ana Ramos and Abel Rouboa, "Renewable energy from solid waste: life cycle analysis and social welfare", *Environmental Impact Assessment Review*, vol. 85 (November 2020).

⁵⁵ See https://www2.gov.bc.ca/assets/gov/environment/waste-management/recycling/recycle/extended_producer_five_year_action_plan.pdf; and https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/449_2004.

⁵⁶ Ignacio Gestoso and others, "Plasticrusts: a new potential threat in the Anthropocene's rocky shores", *Science of The Total Environment*, vol. 687 (October 2019).

58. No group is more vulnerable to the planetary environmental crisis than children. More than 15 per cent of the population of Portugal are aged under 19. Environmental degradation has especially severe effects on children under the age of 5. Children are more susceptible to air pollution and toxic substances than adults, for physiological, behavioural and environmental reasons, including that their immune systems are still developing and that they breathe more quickly and take in more air per unit of body weight⁵⁷. Their developing brains and bodies are highly sensitive to toxic substances such as lead, and they can suffer lifelong health consequences as a result of exposure to such substances⁵⁸.

59. International law recognizes that environmental degradation interferes with the full enjoyment of the rights of children. The Convention on the Rights of the Child, adopted by the General Assembly in 1989, requires its parties to pursue full implementation of the rights of children to health and a healthy environment by taking measures to, inter alia, combat disease and malnutrition through the provision of adequate nutritious foods and clean drinking water, taking into consideration the dangers and risks of environmental pollution (art. 24 (2) (c)). According to the Committee on the Rights of the Child, States should take measures to address the dangers and risks that local environmental pollution poses to children's health in all settings⁵⁹. WHO has concluded that children have a basic human right to breathe clean air in their homes, schools and communities⁶⁰.

60. A recent study by the United Nations Children's Fund (UNICEF) found that: (a) 5.3 per cent of children in Portugal had elevated levels of lead in their blood; (b) 7.6 per cent of children in Portugal lived in areas where the risk of pesticide pollution was high; and (c) 25 per cent of families with children in Portugal were affected by noise pollution⁶¹.

61. Portugal should prioritize the health of children when addressing toxic substances and all forms of pollution.

F. Biodiversity and healthy ecosystems

62. Portugal is close to the European Union average in terms of terrestrial protected areas, at 22 per cent (compared with the European Union average of 26 per cent), but the area of protected marine territory is the subject of contradictory figures, ranging from less than 3 per cent to almost 17 per cent⁶². Although there are 401 protected areas in Portugal, concerns were raised following a recent civil society assessment that some activities being permitted in protected areas were incompatible with their primary purpose of nature conservation, and that inadequate resources were being dedicated to the management of those areas. It was stressed that further steps should be taken in order to fully implement the directives of the European Parliament and of the Council on the protection of birds and habitats and ensure effective conservation of threatened species and habitats through site designation, stakeholder engagement and public participation⁶³. The European Commission opened an infringement proceeding against Portugal concerning the ecological degradation of dry grassland protected areas, and the case is ongoing.

63. The European Commission proposed a new nature restoration law in 2022, which, if enacted, would include binding targets for the protection and restoration of pollinators, wetlands, forests, rivers, marine ecosystems, peatlands and urban areas. The European Union,

⁵⁷ United Nations Children's Fund (UNICEF), *Clear the Air for Children* (New York, 2016), pp. 8 and 40.

⁵⁸ WHO, "Don't pollute my future! The impact of the environment on children's health" (Geneva, 2017).

⁵⁹ General comment No. 15 (2013), para. 49.

⁶⁰ WHO, "Air pollution and children's health: a global health emergency", Background document prepared for the first World Health Organization Global Conference on Air Pollution and Health (Geneva, 2018).

⁶¹ UNICEF Office of Research, Innocenti, *Places and Spaces: Environments and Children's Well-being*, Innocenti Report Card 17 (Florence, Italy, 2022).

⁶² See <https://biodiversity.europa.eu/countries/portugal/>; and <https://data.worldbank.org/indicator/ER.MRN.PTMR.ZS>.

⁶³ See https://wwfeu.awsassets.panda.org/downloads/Nature_Scorecards_Report_March2018.pdf.

including Portugal, is investing hundreds of millions of euros in reforestation, afforestation (planting trees on scrubland) and soil restoration. The National Strategy for Nature Conservation and Biodiversity 2030 was approved by Portugal in 2018 and an ecosystem services payment programme in rural spaces was launched in 2019⁶⁴.

64. Access to green spaces for play is vital to the health and well-being of children. Neighbourhoods characterized by low income, low levels of educational attainment and high unemployment rates tend to have fewer and smaller areas of green space than those with high income, educational attainment and employment rates. This type of spatial segregation reflects and reinforces discrimination⁶⁵. In socioeconomically disadvantaged neighbourhoods of Lisbon, urban parks have less diverse facilities and vegetation than those in wealthier city areas⁶⁶.

65. A study in Porto found that green space in communities with a lower socioeconomic level was smaller in size and further away, indicating a deficit of both individual and community resources. Green spaces in those communities also had inferior facilities and presented safety concerns⁶⁷. However, the Deputy Mayor of Porto indicated that focused efforts were being made to make green spaces safer and more accessible in low-income communities, with a goal of increasing public access to green areas by 2030.

G. Information, public participation and access to justice in environmental matters

66. The Special Rapporteur received conflicting information about the extent to which the public was given timely information and meaningful opportunities to participate in environmental decision-making. On the one hand, the Government described extensive efforts to engage the public through various processes. On the other hand, many interlocutors, including representatives of civil society and academia, expressed concerns about their inability to gain easy, timely and affordable access to important information, to participate meaningfully and to have their concerns addressed. In this connection, the Government should empower everyone by increasing access to information, creating more open consultative processes, and ensuring that the Government responds to people's concerns and contributions.

67. Article 29 (1) of the Convention on the Rights of the Child defines development of respect for the natural environment as one of the goals of education. Portugal recently adopted a national strategy for environment education. Now, the key is to focus on implementing the strategy. The Ombudsperson offers a special phone line for children, which could be used to express environmental concerns.

68. In 2021, the UNICEF National Committee for Portugal organized a national consultation of children before the municipal elections. It was called "Tenho voto na matéria", which means "I have a say in the matter". The vast majority (80 per cent) of the approximately 10,000 children and young people consulted, from the north to the south of the country, said that they did not feel involved in decisions about where they lived or, when consulted, felt that their opinions or suggestions had no consequence or impact on the decisions taken⁶⁸.

69. Courts play an important role in holding Governments accountable for complying with both their human rights obligations and their environmental commitments. The Constitution of Portugal provides for an *actio popularis*, or public action (art. 52). Portuguese courts, including the Supreme Court of Justice and the Constitutional Court, have issued

⁶⁴ Resolution of the Council of Ministers No. 121/2019.

⁶⁵ See A/HRC/49/48.

⁶⁶ See <https://www.eea.europa.eu/publications/who-benefits-from-nature-in/who-benefits-from-nature-in>.

⁶⁷ Elaine Hoffmann, Henrique Barros and Ana Isabel Ribeiro, "Socioeconomic inequalities in green space quality and accessibility: evidence from a southern European city", *International Journal of Environmental Research and Public Health*, vol. 14, No. 8 (August 2017).

⁶⁸ See https://www.unicef.pt/media/3390/unicef_tenho-voto-na-materia-resultados.pdf.

some important decisions in environmental cases involving issues such as pollution, landfill and endangered species. A search of the jurisprudence of the Supreme Court of Justice revealed 109 cases between 1995 and 2020 dealing with a wide range of environmental harms, with many referring to the right to a healthy environment⁶⁹. A recent decision of the Constitutional Court confirmed that the right to a healthy environment included the conservation of biodiversity⁷⁰.

70. However, there are still some barriers related to access to justice. Civil society organizations raised concerns about challenges facing the most vulnerable individuals and groups, including costs, lengthy delays (e.g. cases involving dams, such as Baixo Sabor and Pisão, took many years to resolve), excessive judicial deference (related to the separation of powers) and judges lacking specialized training to address environmental cases. A programme to provide judicial training for environmental cases is under way, while a recent court decision confirmed that the right to a healthy and ecologically balanced environment should be considered a fundamental human right⁷¹. Portugal should consider creating a specialized environmental court, as many other nations have done.

71. Information was also received about harassment and strategic lawsuits against public participation targeting environmental activists and human rights defenders. For example, in 2018, a company operating a large pulp mill sued an environmental activist for €250,000 after he expressed concerns about the potential role of the business in the toxic pollution of the Tagus River⁷². Pursuant to the framework principles on human rights and the environment, the Government should have zero tolerance for these types of intimidation tactics, which are intended to suppress the right to freedom of speech and freedom of association.

IV. Businesses and human rights

72. Somewhat surprisingly, Portugal does not have a business and human rights action plan, although a decade has passed since the publication of the Guiding Principles on Business and Human Rights. A 2018 survey found that fewer than one in five businesses in Portugal had human rights and environmental due diligence plans, while fewer than half were aware of the Guiding Principles on Business and Human Rights⁷³.

73. Directive 2014/95/EU of the European Parliament and of the Council requires large businesses to disclose non-financial information, including climate-related information, meaning that entities such as banks and other large financial institutions are required to assess the climate impacts of their investments. The goal is to stimulate investment in economic activities that mitigate rather than exacerbate climate risks. However, evidence indicates that Portuguese financial institutions are falling short of meeting the new requirements⁷⁴. Their focus in the period 2016–2019 was on the direct impacts of bank operations rather than on the impacts of their financing activities.

74. There is no doubt that the world urgently needs an economic transformation from an inequitable, unsustainable, fossil fuel-based linear economy to a just and sustainable circular economy powered by renewable energy sources. However, it is of paramount importance to ensure that the transition takes place in a way that respects human rights by imposing the highest possible environmental standards, maximizing public benefits from the development

⁶⁹ See

[https://jurisprudencia.csm.org.pt/?queries\[freesearch\]=Defesa%20do%20ambiente%20ecologicamente%20equilibrado&sorts\[dataAcordao\]=-1&page=22&offset=105](https://jurisprudencia.csm.org.pt/?queries[freesearch]=Defesa%20do%20ambiente%20ecologicamente%20equilibrado&sorts[dataAcordao]=-1&page=22&offset=105).

⁷⁰ Ruling No. 83/2022, on the protection of the Iberian wolf.

⁷¹ Case No. 1491/06.1TBLSB.P2.S1, Judgment, 3 December 2015.

⁷² See <https://monitor.civicus.org/updates/2018/03/07/company-targets-activist-SLAPP-lawsuit/>.

⁷³ Claire Bright, “Some concluding remarks on business and human rights in Portugal”, Nova Center on Business, Human Rights and the Environment, 3 October 2021.

⁷⁴ Aldina Lopes Santos and Lúcia Lima Rodrigues, “Banks and climate-related information: the case of Portugal”, *Sustainability*, vol. 13, No. 21 (2021).

of publicly owned natural resources and protecting the rights of potentially affected communities⁷⁵.

75. The Special Rapporteur visited Covas do Barroso to explore those issues in the context of a controversy related to a proposed lithium mine. Savannah Resources, incorporated in 2010 with headquarters in London, is seeking approval to develop an open-pit lithium mine on a concession of 542 ha with plans to expand to 593 ha, the majority of which is community-owned land. The huge project would produce 1.5 million tons of rock containing lithium annually, as well as 6.85 million tons of waste material⁷⁶.

76. The area of Barroso is designated by the Food and Agriculture Organization of the United Nations as a Globally Important Agricultural Heritage System. This designation is reserved for world-renowned examples of traditional agricultural systems, led by local communities, that support cultural heritage, biodiversity, landscape conservation and resilience to human, climate and environmental changes⁷⁷. It is the only region in Portugal to enjoy this designation and one of only seven in Europe. Barroso sustainably integrates farming, livestock raising, forestry and nature conservation. The region is famous for its cheese, honey and unique breeds of cattle, sheep and goats.

77. The Special Rapporteur met with municipal and regional officials, farmers, lifelong residents, children and recent arrivals. Every single person expressed clear opposition to the project, related to concerns about loss of forests, water pollution, water shortages, potential disasters and the loss of traditional livelihoods. Residents also raised concerns about lack of access to timely and accurate information, inadequate public consultation and the use of intimidation tactics to silence opposition to the project. Local officials clarified that they did not oppose mining per se, and would support a project if it promised to be good for their constituents. However, it appears that the lion's share of the benefits from the proposed mine would go to a foreign corporation, with minimal benefits for the local communities who would bear a disproportionate burden of the adverse environmental, food security and social impacts. There is a case against Portugal under way with the Aarhus Compliance Committee, related to the alleged failure to respect the right of access to environmental information about the proposed mine⁷⁸.

78. In his most recent report to the Human Rights Council, the Special Rapporteur documented the growing global problem of sacrifice zones, defined as areas of intense pollution or environmental degradation where profits and private interests are placed ahead of human health, human rights and the environment⁷⁹. Sacrifice zones are completely incompatible with the human right to a healthy and ecologically balanced environment (art. 66 of the Constitution of Portugal) or to a clean, healthy and sustainable environment (General Assembly resolution 76/300).

79. Proponents of the proposed mine have attempted to justify the project by arguing that European lithium is needed for the green energy transition in Europe⁸⁰. While that may be the case, large resource extraction projects that may violate human rights in the name of the green transition are antithetical to sustainable development, as a number of national and regional courts and commissions have recently concluded⁸¹. Open pit metal mining is illegal in some leading green nations, such as Costa Rica, because of its environmental and human rights impacts. Although Portugal has strengthened its standards for the mining industry in recent years, the current framework may not be adequate to safeguard unique areas such as Barroso.

⁷⁵ In this regard, the early management by Norway of its oil and gas industry offers a useful model.

Norway established high environmental standards and imposed policies to ensure that public benefits exceeded private benefits, for example through a 75 per cent tax on petroleum industry profits.

⁷⁶ See <https://www.savannahresources.com/media/crvda0eo/ntr-of-mdb-april-2021.pdf>.

⁷⁷ See <https://www.fao.org/giahs/giahsaroundtheworld/designated-sites/europe-and-central-asia/barroso-agro-slyvo-pastoral-system/detailed-information/en/>.

⁷⁸ See https://unece.org/env/pp/cc/accc.c.2021.186_portugal.

⁷⁹ A/HRC/49/53.

⁸⁰ See, for example, <https://www.savannahresources.com/>.

⁸¹ A/HRC/49/53, paras. 67–77.

80. Portugal deserves credit for leading the world in recognizing the right to a healthy environment, ending the use of coal, rapidly accelerating renewable energy production and rejecting, by law, offshore oil and gas development nationwide, including near the Algarve. It would be difficult to reconcile this track record of leadership with approval of a massive open-pit mine in a community that is a globally recognized example of sustainable development.

V. Conclusion and recommendations

81. It is encouraging that the United Nations recently recognized that everyone has the right to a clean, healthy and sustainable environment. However, it is essential that all States, in particular those that championed the relevant resolutions, breathe life into these lofty and inspiring words by enacting and implementing strong, rights-based environmental laws, policies and programmes. As emphasized in the 2030 Agenda for Sustainable Development, the top priority is to leave no one behind. For Portugal, this means continuing to showcase good practices in the fields of climate action, environmental taxation and safe drinking water, but also tackling some of the urgent challenges identified in the present report related to clean air, pollution hotspots and biodiversity conservation.

82. The Special Rapporteur urges the Government of Portugal to employ a rights-based approach to all climate and environmental action, ensuring the protection of vulnerable and marginalized individuals and communities.

83. The Special Rapporteur would like to reiterate his heartfelt appreciation to all the people who took the time to share their views with him during his visit. It was an honour and a privilege for him to learn about this progressive European nation, its environmental challenges, its good practices and its ongoing efforts to fulfil everyone's right to live in a clean, healthy and sustainable environment.

84. The Special Rapporteur encourages the Government of Portugal to implement the recommendations set out below in order to enhance the fulfilment of its environmental and human rights commitments and to accelerate progress towards achieving the Sustainable Development Goals.

85. The Government should continue its admirable record of championing the right to a clean, healthy and sustainable environment, including by:

- a) Advocating for the immediate development and adoption of an additional protocol to the European Convention on Human Rights that recognizes this right;
- b) Supporting efforts to mainstream the right to a clean, healthy and sustainable environment in the post-2020 global biodiversity framework, the proposed plastic pollution treaty, the proposed pandemic prevention, preparedness and response treaty and the proposed treaty on businesses and human rights.

86. The Government should continue taking an effective, rights-based approach to domestic and international climate action, including by⁸²:

- a) Moving forward the timeline for generating 100 per cent of electricity from renewable sources to 2030 and commencing the production of green hydrogen by 2030;
- b) Electrifying end uses of energy, including heating, cooling and transportation;
- c) Accelerating measures to reduce the risk of wildfires and to protect vulnerable populations, including older persons, children and persons with disabilities;
- d) Contributing its fair share to funds for mitigation, adaptation and compensation (loss and damage) for climate change-vulnerable and low-income nations;
- e) Increasing investments and incentives for energy-efficiency, energy storage, public transport, active transport and climate-smart, precision, regenerative, local and organic agriculture;

⁸² See A/74/161.

f) Renegotiating trade and investment treaties, including the European Energy Charter, to eliminate investor-State dispute settlement provisions, or withdraw from those treaties.

87. The Government should improve air quality, including by:

- a) Following the seven steps set out in the report of the Special Rapporteur's report on the right to breathe clean air⁸³;
- b) Using the most recent guidance from WHO to strengthen air quality standards;
- c) Reducing emissions from motor vehicles, in particular in pollution hotspots such as Avenida da Liberdade in Lisbon;
- d) Subsidizing the replacement of heating sources using wood, coal or other fuels with electric heat pumps, prioritizing the poorest segments of the population.

88. The Government should ensure safe, sufficient water and adequate sanitation, including by⁸⁴:

- a) Taking immediate steps to provide safe drinking water to the few communities still lacking this vital service;
- b) Investing the funds in infrastructure and for ongoing maintenance necessary to comply with directive 91/271/EEC, on urban waste water treatment.

89. The Government should advance healthy and sustainably produced food, including by⁸⁵:

- a) Safeguarding world-renowned agricultural heritage systems;
- b) Promoting the transition away from industrial monocultures towards agroecology, organic, regenerative and other ecologically and culturally superior food systems;
- c) Safeguarding the rights of peasants and other rural workers.

90. The Government should further improve solid waste management and safely manage toxic substances, including by⁸⁶:

- a) Systematically applying extended producer responsibility in the context of solid waste management so that producers of paper, plastic, packaging, batteries, tyres and other materials become responsible for financing and operating an effective recycling programme, thus reducing government costs and moving towards a circular economy;
- b) Accelerating the separation of food waste and organic materials for use in composting and anaerobic digesters, which could reduce emissions of methane, increase the amount of compost for sale as fertilizer and provide a valuable source of biogas;
- c) Identifying and restoring any existing sacrifice zones where profits and private interests have been prioritized over human rights and the environment, while preventing any future sacrifice zones from being established.

91. The Government should protect and restore healthy ecosystems and biodiversity, including by⁸⁷:

- a) Expediting actions to formally designate additional marine protected areas, in line with commitments made under the Convention on Biological Diversity and in consultation with local communities, to ensure that their rights are respected;
- b) Ensuring that there are sufficient resources, strong rules and management plans for effectively and equitably managing human activities in protected areas;
- c) Expediting actions to comply with European Union nature conservation directives, including directives 2009/147/EC (Birds Directive) and 92/43/EEC (Habitats Directive).

⁸³ A/HRC/40/55.

⁸⁴ See A/HRC/46/28.

⁸⁵ See A/76/179.

⁸⁶ See A/HRC/49/53.

⁸⁷ See A/75/161.

92. The Government should take steps to improve access to environmental information, strengthen public participation and facilitate access to justice, including by⁸⁸:

- a) Establishing a national strategy to protect environmental human rights defenders;
- b) Considering the establishment of specialized environmental courts.

93. The Government should also, in order to advance the right of children to a clean, healthy and sustainable environment:

- a) Consistently appoint child and youth representatives to national advisory bodies and national delegations to international environmental meetings, such as conferences of the parties to climate, biodiversity, desertification and toxics conventions;
- b) Consider establishing a national children's parliament, as Scotland and other nations have done;
- c) Consider establishing a special ombudsperson for the rights of children, either as an independent officer or under the existing ombudsperson, as many other nations in Europe and elsewhere have done.

⁸⁸ See A/HRC/43/53.