INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE
NEW YORK, 20 DECEMBER 2006

PORTUGAL: OBJECTION TO THE RESERVATION MADE BY OMAN TO ARTICLE 33 OF THE CONVENTION UPON ACCESSION

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

The above action was effected on 14 June 2021.

(Original: English)

“The Government of the Portuguese Republic has examined the reservation made by the Government of the Sultanate of Oman on 12 June 2020 to Article 33 of the International Convention for the Protection of All Persons from Enforced Disappearance, adopted in New York, on 20 December 2006 (henceforth referred to as “the Convention”).

Firstly, the Government of the Portuguese Republic notes that a reservation through which a State Party generally excludes action by the Committee on Enforced Disappearances (henceforth referred to as “the Committee”) under Article 33 defies a systematic interpretation of the Convention.

Articles 31 and 32 of the Convention provide for the cases where a State may declare to generally recognise the competence of the Committee for certain purposes. Conversely, possible action by the Committee under Article 33 of the Convention is not reliant on such a recognition of competence; on the contrary, it necessarily rests on a [case-by-case] assessment.

Article 33 establishes procedures for the Committee to – subject to certain conditions and with a view to provide observations and recommendations – conduct a visit to a State Party if it receives reliable information indicating that said State Party is seriously violating the provisions of the Convention. Such possible action by the Committee is subject to cumulative conditions under Article 33:

i) The Committee must have received reliable information indicating that a State Party is seriously violating the provisions of the Convention;

ii) The Committee must consult the State Party concerned on that received information;

1 Refer to depositary notification C.N.201.2020.TREATIES-IV.16 of 15 June 2020 (Accession: Oman)
iii) Only then, having decided to do so, may the Committee request one or more of its members to undertake a visit and report back to it without delay (i.e., it is not mandatory for the Committee to conduct the visit);

iv) For that visit to take place, the State Party concerned needs to agree to it, having been prior[ly] notified by the Committee, in writing, of the intention to organize a visit, indicating the composition of the delegation and the purpose of the visit. The modalities of the visit are defined by the Committee and the State Party concerned.

Consequently, even in the cases where a State Party has declared to accept the competence of the Committee in relation to Article 31 and/or Article 32 of the Convention, action by the Committee under Article 33 is still subject to those conditions, including the express consent by the State Party concerned.

Secondly, the Government of the Portuguese Republic recalls that, according to customary international law codified under subparagraph c) of Article 19 of the Vienna Convention on the Law of Treaties, reservations that are incompatible with the object and purpose of the Convention shall not be permitted.

Possible action by the Committee under Article 33 is an essential mechanism to the protection of persons from enforced disappearance, as an important monitoring procedure of the Convention.

The object and purpose of a treaty should be understood from a functional perspective, i.e., including not only the guiding principles and general objectives of the treaty, but also all the mechanisms and procedures established for the prosecution of said objectives.

The object and purpose of the Convention is the protection of all persons from enforced disappearances and the Convention provides mechanisms and procedures – including the possible action by the Committee under Article 33 – aimed at preventing and mitigating violations of the rights and freedoms protected under the Convention.

Thus, a reservation through which a State Party generally excludes action by the Committee under Article 33 as a matter of principle is incompatible with the object and purpose of the Convention.

Article 33 establishes a possible (non-mandatory) monitoring procedure by the Committee in cases of reliably alleged serious violations of the Convention. That monitoring procedure entails visits of one or more member of the Committee to the State Party concerned, visits that are authorized on a case-by-case basis. Should a visit take place, its outcome are observations and recommendations by the Committee.

In this regard, the Government of the Portuguese Republic considers that this reservation, insofar as seeks to generally exclude possible action by the Committee under Article 33 of the Convention, is inadmissible for being incompatible with the object and purpose of the Convention.
Hence, the Government of the Portuguese Republic objects to this reservation.

Notwithstanding, this objection shall not preclude the entry into force of the Convention between the Portuguese Republic and the Sultanate of Oman.”

28 June 2021