

**QUESTIONNAIRE IN RELATION TO HUMAN RIGHTS COUNCIL  
RESOLUTION A/HRC/RES/44/7  
ON HUMAN RIGHTS AND CLIMATE CHANGE**

**- CONTRIBUTION BY THE PORTUGUESE OMBUDSMAN –**

Current Ombudsman: Professor Maria Lúcia Amaral

- 1. Please describe the impacts of adverse effects of climate change on the full and effective enjoyment of the human rights of older persons. Where possible, please share specific examples and stories.**

I. Europe is increasingly affected by desertification. The European Union Court of Auditors Special Report of 2018 has highlighted the risk of climate change scenarios resulting in an increasing vulnerability to desertification in the EU throughout this century, with increases in temperatures, droughts and less precipitation in southern Europe<sup>1</sup>.

Among the most affected countries, Portugal is at the head of the list. In fact, “the risk of desertification is most serious in southern Portugal, parts of Spain and southern Italy, south-eastern Greece, Malta, Cyprus, and the areas bordering the Black Sea in Bulgaria and Romania”<sup>2</sup>. Studies report these areas to be impacted by soil erosion, salinization, loss of soil organic carbon, loss of biodiversity and landslides. The long period of high temperatures and low rainfall in Europe in the summer of 2018 reminded the pressing importance of this problem.

In Portugal, the climate is greatly arid, with three to five months of drylands and with 65% of its area classified as prone to desertification. Data indicates that between 1998 and 2010 desertification has affected more than half of the Portuguese territory, currently reaching 58% of the mainland plus the arid areas of southeast Madeira, Porto Santo, and the islands of Desertas and Selvagens<sup>3</sup>.

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<sup>1</sup> Available here:

[https://www.eca.europa.eu/Lists/ECADocuments/SR18\\_33/SR\\_DESERTIFICATION\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/SR18_33/SR_DESERTIFICATION_EN.pdf)

<sup>2</sup> See [https://www.eca.europa.eu/Lists/ECADocuments/SR18\\_33/SR\\_DESERTIFICATION\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/SR18_33/SR_DESERTIFICATION_EN.pdf), p. 7.

<sup>3</sup> See <https://unric.org/pt/onu-pede-menos-consumo-e-menos-producao-para-combater-desertificacao/>

Desertification increases significantly the risk of wildfires, which are in of themselves cause of more desertification. Indeed, of the main causes of wildfires is “the land abandonment and the lack of proper management of the land, and once fires occur, erosion and land degradation can trigger the desertification process”<sup>4</sup>.

Together with the rise of average temperatures, especially during the summer and in the interior, and the decrease of rainfall, desertification puts Portugal in the face of significant climate changes and extreme events in the next decades.

II. Scientific data indicates therefore that climate change has been one of the main factors in increasing the risk and extent of wildfires<sup>5</sup>. Portugal has been consistently affected by such phenomenon occurring typically in the summer, during the months of July to September and affecting mostly rural areas<sup>6</sup>.

In 2017, however, wildfires of unknown proportion broke in mainland Portugal, affecting several counties located in the interior part of the country, during the months of June and October. Between 17 and 24 June and 15 and 16 October 2017, devastating forest fires broke out in the districts of Leiria, Coimbra, Viseu and Aveiro, located in the centre and north of Portugal.

In this context, 115 people lost their life (65 in the fires of June and 50 in the fires of October; 110 people as a direct consequence of the fires and 5 indirectly as a consequence of injuries caused by the fires). The fires of 2017 affected people of all ages, sex and economic conditions. Without prejudice, data discloses a particular adverse effect of said fires on the elderly.

On 27 October 2017, the Portuguese Government assumed responsibility for these tragedies and decided to pay damages to the families of the victims, establishing a non-judicial mechanism for the purpose of determining and paying said compensation in a prompt and swift manner (Resolution 157-C/2017 of Council of Ministers, of 28<sup>th</sup> of October<sup>7</sup>). Participation on said mechanism was entirely voluntary.

The definition of the criteria, time-limits and procedures according to which the right to damages was to be enforced was entrusted to a Council composed of three prominent jurists: one appointed by the Superior Council of Judges, one appointed

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<sup>4</sup> See [https://www.eca.europa.eu/Lists/ECADocuments/SR18\\_33/SR\\_DESERTIFICATION\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/SR18_33/SR_DESERTIFICATION_EN.pdf), p. 2.

<sup>5</sup> See e.g., [file:///C:/Users/pfm/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/53C62FE1/CO\\_P21\\_HelpAge\\_PositionPaper\\_Final\\_0.pdf](file:///C:/Users/pfm/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/53C62FE1/CO_P21_HelpAge_PositionPaper_Final_0.pdf), p. 5.

<sup>6</sup> See <http://www2.icnf.pt/portal/florestas/dfci/inc/estat-sgif>.

<sup>7</sup> Available here: <https://dre.pt/pesquisa/-/search/114109968/details/maximized>.

by the Council of Rectors of Portuguese Universities and the third indicated by the association of families and heirs of the victims that had lost their life. By the end of November 2017, this Council issued its report fixing the criteria for compensation (notably, on the notion of “victims” and relevant damages)<sup>8</sup>.

The determination of the compensation amount to be paid to families and heirs of fatal victims was delegated in the Portuguese Ombudsman<sup>9</sup>. Hence, as a matter of law, the Ombudsman was granted an unprecedented and extraordinary competence. All in all extraordinary for two sorts of reasons: first, because it would not normally fit in its legal and statutory functions; and secondly, because it was delegated in the context of truly tragic circumstances.

The execution of this highly demanding task mostly dominated the work of the Ombudsman during the year of 2018. It implied an extremely demanding joint effort of all the departments of the institution, from the legal staff to all administrative services, secretaries and phone operators.

At the outset, the Ombudsman immediately created a dedicated phone line and email address to support the applicants and made available a frequently asked questions list (FAQs) on the institution’s website.

It also was necessary to promote a wide-ranging awareness campaign, which involved the media, the Bar Association, municipalities and civil society organisations. In the municipalities most affected by the fires, public information sessions were held in order to clarify procedures and answer questions. The Ombudsman convened with municipal councils, which ensured due cooperation through the whole process, notably by providing information and assistance in filling in requests and referring them to the Ombudsman.

Guided by the principles of universality and equality, and seeking a fair and adequate outcome that would take into consideration the absolutely dramatic circumstances of the wildfires of 2017, the Ombudsman decided:

- a) With regard to damages inflicted on the victims:
  - i. to fix at €80.000 (eighty thousand euros) the compensation for loss of life; and,
  - ii. to set at €70.000 (seventy thousand euros) the base value for compensation for the *ante mortem* suffering (which was to be increased in the case of relatives who shared the circumstances of the death and the agony of the deceased).

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<sup>8</sup> Decree no. 8599-B/2017, of 30<sup>th</sup> of November.

<sup>9</sup> Para. 5 of Resolution 157-C/2017.

- b) With regard to damages incurred by surviving family members:
- iii. to set at €40.000 (forty thousand euros) the base value for compensation for the pain of loss, for spouses/partners, parents and children (which was to be increased when the family member accompanied the victim at the time of the event as well as in the case of minors whose parents were both killed in the fire or mothers/fathers who lost a child minor at the date of the events):
  - iv. in the absence of the above family members, to set the base value at €20.000 euros (twenty thousand euros) for grandparents or siblings who lived with the deceased and to fix the base value of €10.000 (ten thousand euros) for compensation of siblings and nephews (in both cases, an increase would be due when the applicant was with the deceased at the time of the event, and the latter increase was higher when a minor was at stake);
  - v. determine that material damages would be compensated according with the criteria established by the abovementioned Council; and,
  - vi. to determine the payment of non-material damages, and eventually patrimonial damages, suffered by the holders of the right to compensation.

The deadline for submitting requests for damages was 15 February 2018. The first requests arrived at the Ombudsman office on 14 December 2017.

The applications were processed by two dedicated teams, each one composed of three staff members (coordinators of the institution's units) that held regular meetings in order to guarantee the coherence of the proposals.

Overall, the Ombudsman received 309 requests and only 9 were dismissed. The remaining 300 gave rise to compensation proposals which were all accepted. Of these, only 46 proposals regarded material damage. The majority of 254 cases concerned exclusively non-material damages. The requests concerned 115 fatal victims and the global amount of compensations reached €31.000.000 (thirty one million euros). This task was fully completed by the Ombudsman in just roughly two months.

In parallel to the mechanism for compensation for loss of life, the Portuguese Government came also to assume responsibility for damages to the people that suffered serious injuries in the course of said wildfires (cf. Council of Ministers Resolution 179/2017, of 28<sup>th</sup> of November<sup>10</sup>).

The definition of the criteria for this compensation was done by the same Council that determined the criteria for the loss of life, now assisted by the President of the

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<sup>10</sup> Available at: <https://dre.pt/home/-/dre/114264987/details/maximized> .

National Institute of Legal Medicine and Forensic Sciences. The Council also defined the applicable deadlines and procedures<sup>11</sup>.

Again, the calculation of the compensation was handed over to the Ombudsman. This proved to be a more complex and demanding task than the first one, given the need to limit correctly the circle of victims that had suffered “serious injuries”.

The procedure established for that purpose was the following:

- i. The Ombudsman received the request and made a preliminary assessment;
- ii. Requests accepted were sent to the National Institute of Forensic Medicine and Forensic Science;
- iii. The National Institute of Forensic Medicine and Forensic Science carried out a medical and legal analysis and drew up an evaluation report that was referred to the Ombudsman;
- iv. The Ombudsman, on the basis of such report, presented the applicant a proposal for compensation;
- v. In case the proposal was accepted, it was sent to the Government for payment.

Information sessions were held in the municipalities where fires occurred and, once again, municipal councils cooperated in a decisive manner.

The first requests were received in March 2018. Of the 195 requests received, 8 were dismissed, 187 were admitted and forwarded to the National Institute of Forensic Medicine and Forensic Science. Of these, 75 victims were classified as seriously injured. Presently, only one case is still pending (due to court involvement at a certain stage of the procedure).

In August 2018, the Ombudsman decided to proceed with an interim payment to the victims of the fires who, after a clinical evaluation, were classified as "seriously injured" by the National Institute of Forensic Medicine and Forensic Sciences. In view of the high number of requests submitted, the complexity of each case and the different types of damages to be compensated, the Ombudsman considered that this was the best way to reconcile (i) the minimization of damages, (ii) possible procedural delays and (iii) the need to guarantee an adequate, fair and equitable treatment.

The Ombudsman determined compensation to be paid to all 75 cases considered to be of serious injuries, in a total amount of €10.767.243,43 (ten million and seven hundred and sixty seven thousand euros and forty three cents).

The task of calculating the compensations for damages due as consequence of the 2017 wildfires provided the Ombudsman a holistic perspective of the challenges that

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<sup>11</sup> Cf. Decree no. 2243-A/2018, of 5<sup>th</sup> of May.

affect the daily lives of Portuguese people, especially those living in interior and rural areas of the country.

As mentioned above, data discloses a particular adverse effect of the fires on the older population. Thus, of the 75 people seriously injured in the fires, 28 were above 65 years old, which translates into 37% of victims over 65 years old. Of the 115 fatal victims, 42 were above 65 years old. Hence, this data suggests an over representation of the elderly in these tragic events, taking into account the ageing of the Portuguese population<sup>12</sup>.

The intervention of the Ombudsman in the mechanisms for compensation of the wildfires of 2017 was reported autonomously in its 2018 Annual Report<sup>13</sup>.

The issue has been considered in the press since 2017<sup>14</sup>.

III. Following the abovementioned tragedies, the Ombudsman also faced a rise in the complaints submitted with regard to the grant of public subsidies, notably to support agricultural activities as a consequence of the fires. In this regard, 40 complaints were submitted to the Ombudsman, a majority of them by individuals (only nine having been submitted by companies).

Likewise, the majority of these complaints focused mostly on procedural difficulties faced by individuals applying for said financial support, notably due to short deadlines to submit online applications providing extensive information on incurred damages.

In this respect, available data suggests that the older population has also been particularly affected, which might be explained by the lack of appropriate resources (*e.g.*, computers, internet access) and the considerable degree of digital illiteracy, as well as by social isolation in the rural parts of the country which are mostly inhabited by ageing people.

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<sup>12</sup> Cf. <https://www.pordata.pt/Portugal/Indicadores+de+envelhecimento-526> ; [https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine\\_destaques&DESTAQUESdest\\_boui=406534255&DESTAQUESmodo=2&xlang=pt](https://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_destaques&DESTAQUESdest_boui=406534255&DESTAQUESmodo=2&xlang=pt).

<sup>13</sup> Available at: [http://www.provedor-jus.pt/site/public/archive/doc/Relat2018\\_0.pdf](http://www.provedor-jus.pt/site/public/archive/doc/Relat2018_0.pdf), p. 11-23.

<sup>14</sup> *E.g.*, <https://observador.pt/2017/10/26/protecao-civil-divulga-lista-com-45-nomes-das-vitimas-dos-ultimos-incendios-ainda-ha-dois-desaparecidos/>.

- 2. Please describe any specific policy, legislation, practice or strategy that addresses the nexus between climate change and the rights of older persons. In particular, please share any information related to policies that ensure the participation of older persons in the design, implementation and monitoring of climate change mitigation and adaptation measures; learning from the knowledge and experience of older persons; as well as supporting the independence and autonomy of older persons. Please note and identify any relevant mechanisms for ensuring accountability for these commitments, including their means of implementation.**

To the best of our knowledge there are currently no relevant instruments addressing the nexus between climate change and the rights of older persons.

Requests for further information have been submitted to the Portuguese Agency for the Environment and the Secretary of State for the Environment. In that context, attention has been drawn to the following instruments:

- (i) Territorial planning and climate change<sup>15</sup>;
- (ii) Climate change and health policies<sup>16</sup>;
- (iii) Carbon neutrality goals 2050<sup>17</sup>.

The Government and administrative services are in a better position to provide possible additional elements.

- 3. Please share a summary of any relevant data that captures how the adverse effects of climate change have affected older persons, taking into account multiple and intersecting forms of discrimination (i.e., discrimination based on a combination of multiple grounds, including disability, gender, race, colour, sex, language, religion, nationality, and migration status) – including in older age cohorts.**

Please refer to question 1. To the best of our knowledge there is no relevant data available.

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<sup>15</sup> See Annex I.

<sup>16</sup> See Annex II.

<sup>17</sup> Annex III.



- 4. Please describe any mechanisms and tools that are in place to measure and monitor the impacts of climate change on the full and effective enjoyment of the human rights of older persons.**

To the best of our knowledge there are no mechanisms or tools available.

- 5. Please identify and share examples of good practices and challenges in the promotion, protection and fulfilment of the human rights of older persons in the context of the adverse effects of climate change, including any age-appropriate or sensitive support services that are provided.**

Please refer to question 1.

- 6. Please include examples and good practices that highlight international and multilateral cooperation and approaches that are implemented in close consultation with and with the active involvement of older persons, including through their representation organizations.**

To the best of our knowledge there are no mechanisms available.

- 7. Please provide any additional information you believe would be useful to support climate action that promotes the full and effective enjoyment of human rights of older persons.**

Not applicable.

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