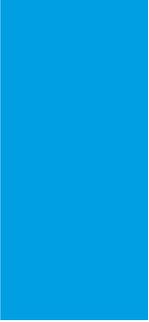


Alternative report  
to Portugal's Fifth  
and Sixth Periodic  
Report under the UN  
**Convention on the  
Rights of the Child**

November 2018



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# INTRODUCTION

1. The Portuguese National Committee for UNICEF (hereafter UNICEF Portugal) welcomes the fifth and sixth report of Portugal to the UN Committee on the Rights of the Child, in particular how it addressed the Concluding Observations of the Committee in the previous reporting cycle (2001-2014).
2. The Alternative Report aims to contribute to the development of national strategies, to accelerate achievement of child-related goals and to the fulfilment of the rights of every child living in the country. This Report presents an assessment of the status and progress on implementing Committee's recommendations, including the possible causes of some inequities or child deprivations. It also raises suggestions towards the implementation of the Convention on the Rights of the Child (hereafter Convention), particularly concerning its principles - non-discrimination; adherence to the best interests of the child; the right to life, survival and development; and the right to participate.
3. UNICEF Portugal prepared this report based on literature review on different areas of relevance to the Convention and on consultations with non-governmental organisations and children across the country.
4. Since the last examination in 2014, the State has made progress on a number of the Committee's recommendations. The most significant advances include the changes and adoption of a wide range of legislative provisions, policies and programmes for children resulting in increased access to preschool education, most efficient processes for children to acquire Portuguese nationality and improved social protection for families with children.
5. Notwithstanding, and despite the steps taken by the State on implementing the Committee's recommendations, more action is needed to ensure access to high-quality healthcare, including to mental health services; and to tackle inequities in opportunity for children from ethnic groups and from the poorest households, mainly in housing, water and sanitation, and education. Further appropriate action would be important to ensure adequate and timely response to cases of abuse and neglect, and make better allocation of financial resources as employment does not significantly alleviate poverty among families with children. Children in poverty and social exclusion, facing discrimination, victims of violence, living in residential care, with disabilities and mental health problems and refugees or asylum seekers face particular challenges.
6. In other areas, limited progress has been made, such as investing in data to identify gaps and deprivations, ending child poverty, prohibiting corporal punishment, ensuring alternatives to residential care, adopting policies to address the needs of refugees and asylum seekers and implementing a rights-based approach to disabilities.
7. It is possible to reduce inequities in opportunity among today's children if action is taken in the timeframe of the developing child. Since the last reporting cycle, a national strategy to implement the CRC with adequate resources to assess its implementation across all areas is yet to be defined. The realisation of children's rights without discrimination of any kind requires a strong leadership and an accountable system for children, able to reach every child. There is a need to strengthen leadership and commitment in relation to children's rights by allocating adequate human and financial resources to implement legislation, policies and programmes. In addition, to set up an accountable system and ensure that the national regulatory framework is rights-based, recognising that children are the subject of their own rights, not object of protection.

# WHAT CHILDREN SAY

8. To provide insights for the Alternative Report, 64 children aged 9 to 17 years old participated in workshops, sharing their views on how their rights are respected and promoted in their everyday lives, including at home, school and in the community. Undertaken with the aim of generating data with children around key topics (knowledge about rights; perspectives on issues and concerns affecting children; views on participation; and needs and priorities), children reflected on their rights through a series of creative exercises, questions and a survey.
9. Participants demonstrated an understanding of their rights and responsibilities, recognising, for instance, both the need for protection and to respect others (“we don’t have to give our opinion if that hurts people”). Children also shared a clear understanding of the universality of children’s political, educational, social, civic and cultural rights; the right to a house, food, education, play and protection were the most addressed, as well as freedom of speech and the right to express their own opinions.
10. **Where did you learn about your rights?** Participants’ responses to this question showed that 61% learned at school and 44% at home. Similarly, 67% said they would like to learn about rights at school and 31% at home. Taken together these two findings, it suggests that human rights education, with a focus on child’s rights, is welcomed and important to expand children’s opportunities in schools to learn about and through rights and to take action to its realisation.
11. **Areas of concern:** Participants shared that there are “children that live in the streets”, “don’t go to school”, “are victims of bullying”, “are hungry”, “parents beat them” or “are treated as babies”. Participants also raised concerns over children from Roma community (“don’t go to school and get married at the age of 15”), racism (“I was once discriminated for being black”) and discrimination based on nationality.
12. **Family:** Children valued good and caring relations within their families (“children should have the right to peace and a family”). Participants shared episodes that restrict their self-determination rights, as adults stop them from engaging in some actions that could result in potential harm (“my mother does not let me walk on my own and I’m at year 6! At my grandmother’s, I can’t even peel fruit because they are afraid I will cut myself”). In regards to play, participants also shared they have little time to play because of homework and school hours. Along with the lack of autonomy and time to play, participants are worried over housing conditions (“the cost of housing is so expensive that we cannot live with minimum conditions”). In addition, some children raised questions on adoption: “how are families selected? Is there a waiting list of adoptive families? What happen to brothers and sisters? Are they separated?”.
13. **School:** situations of violence and limited opportunities to participate were some of the issues raised. “Schools don’t protect children from bullying” and there are “teachers who scream”. In addition, some teachers still do not respect children with special needs and children’s opinions are generally not taken into consideration (“school does not care about our opinions”).
14. **Violence, abuse and neglect:** violence from parents, peers and teachers was highly mentioned throughout the workshops, as well as the lack of security and violence in the streets. Domestic violence was also reported, along with gender-based violence. Accordingly, for the question “**where do you think children’s rights are less safeguarded**”, 57% said in the streets, 38% at school and 18% in public spaces.
15. Participants are also worried about children in other countries, mainly refugees who are being separated from their parents in Mexico and those trying to arrive in Europe by boat. Human rights education can take a crucial role to promote understanding, tolerance and advancement of rights.
16. **Do adults listen to what you have to say?** Participants shared that they are listened to when there is an issue (“I was discriminated”; “bad

# WHAT CHILDREN SAY

behaviour”, “racism, bullying”; “when I’m angry”) or on daily routines (“what to wear”, “decide dinner”). 21% said that adults almost never or never listen to them and 25% don’t usually give their opinion on matters about their life. As stated by a participant “[they listen] when they ask me but not when I raise questions”. Their right to be heard was nevertheless considered important (“It is like here, we are giving our opinion. The world it is better this way”). It would be crucial to understand how are children listened to and whether their views are taken into consideration.

## 17. Who is responsible for safeguarding your rights?

82% said is their parents/caregivers, followed by the State (43%). Overall, 39% of participants stated the children’s rights are reasonably protected in Portugal.

## 18. Listening to young children may lead to some children sharing concerns and suggestions and they called on State to “condemn adults for maltreating children”, as “they should not commit

violence acts against us” and ensure “more policing”, “greater control of streets at night” and generally, to implement the Convention.

## 19. The results revealed that non-discrimination, protection, security, respect and dignity are the main areas of concern by children. Listening to children is a matter of respecting their rights and taking their views into account in all decisions affecting them is of urgency.

## 20. The results of the workshops provide a picture of children’s knowledge about rights and their concerns, pointing towards some directions for future research. Nevertheless, a degree of caution should be exercised in terms of the generalizability of the results given the limited sample, methodology and approach of the workshops. Enabling children to participate constructively in their communities and nations is crucial and further collaborative action, among all stakeholders, should be undertaken.

## “SERÁ QUE O ESTADO NOS VAI OUVIR?” WILL THE STATE LISTEN TO US?



# 1. GENERAL MEASURES OF IMPLEMENTATION

21. The Convention (article 4) obliges States to undertake all available measures to make sure children's rights are respected, protected and fulfilled and to do so to the maximum extent of available resources with regard to economic, social and cultural rights.

## LEGISLATION

22. In the previous Concluding Observations, the Committee encouraged the State party to continue to take steps to ensure that domestic legislation is fully compatible with the principles and provisions of the Convention and ensure the effective implementation of child-related laws at the national, provincial and municipal levels.

23. Since the ratification of the Convention, the State has progressively adopted legislation that enshrines its principles in various domains of relevance. This effort has resulted in a clear reinforcement of the national regulatory framework in relation to child rights.

24. Relevant legislative changes took place during the last reporting cycle, in particular on nationality, social benefits, justice and education:

- a) Organic Law No. 2/2018, extending the access to the nationality by origin and to the naturalization;
- b) Decree Law No. 37/2018, providing access to adequate housing;
- c) Decree Law No. 90/2017, introducing changes in the legal framework of the income support supplement;
- d) Ordinance No 160/2018, updating the national family and prenatal allowances;
- e) Decree Law No. 2/2016, changing the percentage of family allowance applied to single-parent families;
- f) Law No. 130/2015 (Amendment to the Code of Criminal Procedure), Victims Statute, transposing directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012, laying down rules on the rights, support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA;

- g) Amendments to the Law No. 147/99 on the Protection of Children and Young People in Danger: 1) Law No. 142/2015 on giving preference to foster families and family-based placements for children; 2) Law No. 23/2017 that provides for the extension of the protection period up to 25 years of age; and 3) Law No. 26/2018, which addresses the legal status of children and young people of foreign nationality hosted in State institutions or equivalent;
- h) Law No. 143/2015, which approved the legal regime of the adoption process, bringing together in a single text the various rules that exist regarding the adoption process;
- i) Law No. 2/2016, which eliminates discrimination in access to adoption, foster care and other family legal relationships, including unmarried couple and same sex marriages;
- j) Decree Law No. 54/2018 on inclusive education.

25. However, it remains of concern the discrepancies between the legislation adopted and its practice, as highlighted throughout the report. For instance, adoption processes and other legal procedures, such as parental responsibilities, child protection or criminal cases continue to be lengthy, with detrimental effects to children, including repeated interviews and exposure to harmful abuse or neglect. In addition, despite legal provision (Law No. 142/2015), foster care for children has also not been the preference solution for children up to 6 years old, as the majority continue to be placed in residential care.

## RECOMMENDATION

26. Carry out an analysis of the impact of legislation in the advancement of the situation of children in the country, ensuring a rights-based and accountable system for all children is in place.

# 1. GENERAL MEASURES OF IMPLEMENTATION

## COMPREHENSIVE POLICY AND STRATEGY

27. In 2014, the Committee encouraged the State to establish a comprehensive national strategy for the implementation of the Convention, linking it to national, sectoral and municipal strategies and budgets.

28. **National Entity:** In a welcome step, the State created the National Commission for the Promotion of the Rights and Protection of Children and Youth (CNPDPCCJ; Decree Law No. 159/2015). The new Commission (under the Ministry of Labour, Solidarity, and Social Security), aims at, *inter alia*, planning, monitoring and evaluating a national strategy for the implementation of the Convention and overall planning, preparation of guidelines, coordination and audit the Children and Youth Protection Units (CPCJ).

29. Despite State's commitment to adopt a National Strategy, a very significant step towards a more accountable system to children, no strategy has been adopted. The National Commission (CNPDPCCJ) does not have the scope, reach and resources to implement a national holistic child rights strategy. The lack of progress on this matter is of great concern.

30. **Action plans at municipal level:** Law No. 142/2015 (Protection of Children and Young People in Danger) provides that "entities with competence in the field of childhood and youth should, within the scope of their attributions, promote primary and secondary prevention actions, in particular through the definition of local action plans for children and youth, aiming at promoting the rights of the child and the youth". This is an important step and could reinforce coordination of comprehensive policies.

31. However, the above-mentioned local action plans, within the legal framework of "Children and Youth in Danger" are limited to children in vulnerable circumstances. Organisations should be encouraged to prepare strategic action plans for all children, ensuring the effective implementation of the CRC. For instance, the Child Friendly Cities Programme, promoted by UNICEF Portugal, is

currently collaborating with municipalities to adopt holistic and comprehensive strategies for every child in the community.

## RECOMMENDATION

32. **Adopt a comprehensive National Strategy, in accordance to a rights-based approach to planning and in line with the Convention; and accompanied by adequately resourced and integrated action plans at national and local levels, with specific time-bound and measurable goals and targets to effectively monitor progress in the implementation of child's rights throughout the country.**

## COORDINATION & INDEPENDENT MONITORING

33. In 2014, the Committee recommended the State to review and clarify the role of the National Human Rights Committee and to take the necessary steps to ensure an effective coordination of the implementation of the Convention concerning legislation, policies and programmes at national, regional and local level.

34. **Human Rights Committee:** The National Human Rights Committee, under the Ministry of Foreign Affairs, was created with the aim to fulfil Portugal's obligations under international instruments, in particular to coordinate with the different Ministries at the time of preparation of periodic reports to the various UN Committees and follow-up on recommendations. Therefore, the National Human Rights Committee is not a coordinating entity in the implementation of child rights policies and programmes, as its coordination role relates "solely with regards to compliance with international obligations (...) [and] monitoring the follow-up to the conclusions and recommendations of the Committee" (State Report to the Committee, 2018).

35. Concerns over the lack of leadership and coordination in relation to the implementation of child rights amounts for almost two decades, resulting in continuous delays of processes and

# 1. GENERAL MEASURES OF IMPLEMENTATION

ineffective decision and policy-making.

**36. Parliamentary Debates:** In 2018, Parliament has promoted a series of debates of relevance to leadership and coordination<sup>1</sup>. Among the four draft resolutions under discussion, recommendations to the Government included: to provide the Ombudsperson with the responsibility of coordinating and monitoring the implementation of the Convention (No. 570/XIII/2); to establish a National Committee on the Rights of the Child (No. 1203/XIII/3) and a National Commission on Child and Youth Rights (No. 700/XIII/3); and to extend the CNPDPCJ competences and powers (No. 344/XIII/1). These public debates are very welcome to further implement the Committee's previous recommendations. However, there remains no decision on the role of independently monitoring and assessing the Convention and the State has not yet responded to these recommendations.

**37.** Furthermore, in 2014, the Committee recommended that the State to provide the Office of the Ombudsperson and its Department on Children, Elderly Persons and Persons with Disabilities with adequate human, technical and financial resources for the effective implementation of their mandated functions. This recommendation has not been acted upon.

**38. Office of the Ombudsperson:** the Ombudsperson has recently stated the Office's lack of resources to effectively promote and protect the rights of the child<sup>2</sup>. In addition, the work of the Department on Children, Elderly Persons and Persons with Disabilities of the Office of the Ombudsperson remains insufficient to ensure an effective monitoring and implementation of the Convention. In particular, children are addressed alongside other groups with age and disability related vulnerabilities, which means that the child is considered in need of protection or assistance and not as subject of rights, as it is foreseen by the Convention.

## RECOMMENDATION

**39. Undertake structural changes to ensure a national structure with independence and impartiality is responsible for the promotion and protection of the rights of all children living in Portugal, namely:**

- a) with adequate resources and a clear and global mandate based on the CRC, covering the civil, political, economic, social and cultural rights of all children without discrimination;**
- b) that encourage and support public entities to develop and adopt legislation and policies that promote children's rights;**
- c) and highlight and investigate issues relating to children's rights and monitor the fulfilment of the rights enshrined in the Convention, including by assessing public policies and auditing the performance of relevant institutions.**

**40.** In 2014, the Committee also encouraged the State party to raise awareness among the general public, and children in particular, of their right to file a complaint directly with the Ombudsperson.

**41.** The Office of the Ombudsperson received an average of 13 calls by children per year in the last five years. The majority of children in vulnerable circumstances are still not making complaints to the Ombudsperson.

## RECOMMENDATION:

**42. Promote the existing complaints mechanisms available to children, increasing the number of children that are aware of and have access to them.**

## ALLOCATION OF RESOURCES

**43.** In 2014, the Committee made a number of recommendations to the State concerning the adoption of child-friendly budgeting mechanisms, increase budget allocated to social sectors and address disparities on the basis of indicators related to children's rights.

# 1. GENERAL MEASURES OF IMPLEMENTATION

44. There has been a clear investment in policies to tackle multidimensional child poverty, including a progressive increase in family-related benefits (i.e. child benefit to single-parent families, prenatal allowance and income support supplement). Other provisions are also welcome, such as universal preschool education for four-years-old, free school textbooks for all children in public schools and free access of healthcare for children.

45. However, far too many children still live in poverty and there are no mechanisms in place to monitor and evaluate the efficacy, adequacy and equitability of the distribution of resources allocated to the implementation of the Convention<sup>3</sup>. The State Budget still does not disaggregate information to show the proportion allocated to the implementation of the rights of the child.

## RECOMMENDATION

46. Step up its efforts and investment against child poverty or in disadvantaged or vulnerable situations and enhance its efforts to adopt policies in line with the principles of child-friendly budgeting, allowing for the collection of disaggregated information concerning public policies on the implementation of the rights of the child.

## DATA COLLECTION

47. In 2014, the Committee encouraged the State to strengthen its efforts to establish a more comprehensive and integrated data collection system on children and to introduce indicators on children's rights.

48. Available data is fragmented between Ministries and other entities, with significant gaps concerning disaggregated data from different groups of children and issues of relevance. The information is not analysed and used to improve services for children where data is collected (i.e. at national and local levels). The National Institute for Statistics does not provide the number of children up to 18, as its classifications do not correspond to the definition of child as per the Convention. Furthermore, there

is no official data on the number of children with disabilities not their disability status. There is also a knowledge gap related to the children who have had contact with the child protection system.

49. A recent positive development has been the creation of the Observatory of Roma Communities in 2014. A major study has been carried out, the 'National Study on the Roma Community'<sup>4</sup> and important data has been published on education enrolment, the 'School Profile of Roma Community'<sup>5</sup>. These initiatives represent a major achievement in overcoming a barrier in data collection, which was previously considered not feasible due to constitutional constraints.

50. Overall, the lack of data assessing impact of legislation, policies and programmes remains as one of the most significant and persistent gaps related to data collection, monitoring and evaluation.

51. According to the Government, the adoption of the National Strategy for the implementation of the Convention will have a major role in changing the situation of data collection. In that case, it will be important to create the conditions to integrate data currently available and collected through different areas and actors, to identify gaps in data collection and to provide the appropriate human and financial resources to carry out this crucial action.

52. Since the creation of the National Commission (CNPDPJC), two Action Plans have been approved for the years 2016<sup>6</sup> and 2017<sup>7,8</sup>. While these contribute towards putting in place a more accountable and informative system, there are many gaps in terms of the process and content of the documents. In particular, the monitoring and evaluation framework of the Action Plans includes mostly generic activities and there are no *outcome* or *impact* indicators identified. Accordingly, the annual reports provide no analysis on the impact of the activities or programmes on the situation of children and the realisation of their rights in the country.

# 1. GENERAL MEASURES OF IMPLEMENTATION

## RECOMMENDATION

**53.** Create a comprehensive and integrated data collection system, based on an accurate assessment of the reality, guided by the best interests of the child and covering the entire period of childhood in line with the Convention; and that includes rights-based output, outcome and impact indicators. The data collected would be important to improve national regulatory framework and inform the planning of appropriate, rights and evidence-based programmes and services for children.

## TRAINING

**54.** In 2014, the Committee recommended to the State to ensure systematic, mandatory and ongoing training on children's rights for the society, children and professionals working with and for children. In 2014, the Committee also recommended that the State continue its efforts to incorporate child-rights issues into all curricula at the various levels of education and strengthen awareness-raising programmes.

**55.** There are different public authorities in Portugal providing training for professionals working with and for children, including at undergraduate and graduate levels, as well as, continuous training for professionals, as highlighted in the State report. Some independent initiatives carried out in the country show that there are some gaps in terms of the training provided and the skills of professionals.

**56.** In 2017, a research<sup>9</sup> concluded that 12 per cent of professionals interviewed<sup>10</sup> did not know whether the Convention had legal force in the country and despite children over 16 years-old can legally give consent, only 68,8 per cent of the professionals said that they ask for their consent. In another recent study<sup>11</sup> with 38 medical doctors working, 33 professionals stated that they had received training on providing information to children, but 36 mentioned that there are gaps in their undergraduate and continuous professional training. In relation to the education sector, the OECD has stated that teacher assessment in Portugal "focuses more on

accountability for purposes of career progression than on improvement"<sup>12</sup>. Moreover, it is unclear how the provisions of the Convention are taught during undergraduate and at-work training courses and used to inform awareness raising activities.

**57.** Furthermore, a study<sup>13</sup> with 49 Public Prosecutors and Magistrates showed that both categories of professionals "reported the lack of preparation for the hearing of children" and difficulty in understanding children's stage of development. Justice professionals also reported the need to understand different techniques to facilitate communication and interviews with children<sup>14</sup>. Nevertheless, the justice sector has been making progress in regarding to training and awareness raising of professionals<sup>15</sup>, improving professionals' knowledge and support them in their work. Progress around the Council of Europe Guidelines on Child-Friendly Justice has contributed to this advancement.

**58. Guidelines to Practice:** The National Commission (CNPDPJC) committed in its Action Plan 2017 to "start the work of updating the Guidelines for Professionals and facilitate their use in an integrated way" to promote a culture of protection of the Rights of the Child and the corresponding actions needed for its implementation<sup>16</sup>. However, there is no information available to understand its implementation and impact.

**59.** The Convention continues not to be systematically disseminated among children, the public and professionals working with and for children. Despite the trainings offered, there may be a high number of professionals in the country lacking the adequate knowledge, attitudes and skills to respect, promote and fulfil children's rights.

## RECOMMENDATION

**60.** Ensure training courses for professionals working with children are in line with the Convention and adopt a practical approach that guide professionals on how to apply its provisions.

## 2. GENERAL PRINCIPLES

### NON-DISCRIMINATION

61. In 2014, the Committee recommended the State to intensify efforts to ensure the effective elimination of any form of discrimination against certain groups of children and reinforce training of professionals to guarantee equal rights for all children.
62. **Roma:** Children belonging to the Roma minority are still particularly vulnerable in the country. The first national study on the Roma community (2014)<sup>17</sup> demonstrated the overall lack of opportunities available for children, adding that social inequalities, feelings, and practices of racism, discrimination and being anti-Roma persist. This study, from the Observatory of Roma Communities, was the first of its kind and presented a breakthrough in relation to a major data collection gap concerning ethnic minorities in the country.
63. **Discrimination in school:** After 25 years of not collecting data on children from Roma community, as it was perceived to be unconstitutional, new data on school enrolment of Roma community (2018)<sup>18</sup> showed some progress. Data available from participating schools shows that 60 per cent of children from the Roma minority enrolled in primary school in the school year 2016/17 had attended pre-school education. Despite the progress, enrolment rates are still too low. In addition, the number of children that remain in school beyond primary school, particularly through to secondary school, is of great concern. In 2016/17, 256 children belonging to the Roma community (from at least 2 700 secondary school age children living in the country) were attending secondary school. Almost half of those were girls (46 per cent), showing that other factors, beyond gender, are preventing school attendance. The data collected was an important step to understand the reality but it is fundamental to fully assess and analyse the situation of children, taking into account all factors affecting their right to education and develop strategies that are more informed, leading to equality of access and achievement in education.
64. **Racial discrimination:** National data from the Commission for Equality and Against Racial Discrimination<sup>19</sup> on racial discrimination is not disaggregated by age, creating a challenge in assessing the situation of children.
65. There have been some legal changes since 2014 with the adoption of a legislation (Law No. 93/2017) to combat racial and ethnic discrimination, aligning it to national, European and international guidelines, and allowing for a more effective fight against discrimination and greater protection of victims. This legislation also foresees the preparation of an annual report on the state of equality and non-discrimination based on racial and ethnic origin, colour, nationality and territory of origin. It would be crucial to focus on addressing racism, prejudice, stereotyping and xenophobia amongst children.
66. **LGBTI+:** Concerning discrimination against Lesbian, Gay, Bisexual, Intersexual, and Transgender children at home, school and in the community, data from 2017 shows that 17 per cent of victims are children below 18<sup>20</sup>. Moreover, a survey<sup>21</sup> concluded that 36.8 per cent of children feel insecure because of their orientation and 27.9 per cent because of their gender, making them avoid certain places. 15.4 per cent missed classes in the previous month for feeling insecure or discomfort. The majority of children and young people reported having heard homophobic comments at school on a regular or frequent basis (61.1 per cent). Children also reported that they have received comments from colleagues (75.1 per cent) or from teaching or non-teaching staff (62.0 per cent). In addition, more than half of the children and young people (55.6 per cent) stated that, in situations where teaching or non-teaching staff were present, they did not intervene to help.
67. In 2018, the National Strategy for Equality and Non-Discrimination - Portugal + Equal (ENIND) was adopted<sup>22</sup>, which encompasses different non-discriminatory actions and policies to be undertaken across the various ministries. Despite references to promote education free of gender stereotypes and combat the school dropout of children belonging to Roma communities, particularly girls, the reference to children is scarce.

## 2. GENERAL PRINCIPLES

68. While these initiatives and legal reforms are welcome, the right of every child to no discrimination should be considered in every programme and activity implemented. Immediate action is needed to ensure compliance of legislation and practice with Article 13 of the Constitution and the CRC.

### RECOMMENDATION

69. Undertake policy changes and adapt programmes addressed to eliminate all forms of discrimination among children, including using the findings from recent studies on the Roma communities, racial, gender, sexual orientation or identity based discrimination, to ensure that every child has the same right to develop his/her potential without discrimination.

70. **Housing conditions:** In 2016, the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living (UN Human Rights) had expressed concern about the discrimination of some groups, including the Roma community, on their right to housing, water and sanitation<sup>23</sup>. The report noted that the programme for Social Housing has led to social exclusion and there is a lack of adequate housing conditions, especially for the Roma community. The report concludes by adding, “it is important to recognize that, regardless of the economic conditions in the country, the right to adequate housing must be legally protected and implemented, particularly for those in vulnerable situations”. The situation of children in these circumstances is of great concern.

71. Some positive developments have taken place since 2014 to strengthen the housing conditions. A Resolution of the Council of Ministers (50-A/2018) established the vision and objectives of a New Generation of Housing Policies, to ensure that every one has access to adequate housing. In addition, Decree Law No. 37/2018 provides for access to adequate housing for people living in undignified housing situations. Decree Law No. 29/2018 addresses situations of urgent housing need of persons who are temporarily or permanently deprived of the dwelling or place

where they were permanently resident or who are in imminent risk of being in that situation, as a result of unforeseeable or exceptional events. Special attention should be paid to the needs of children when implementing the new Housing Policies and legislative reforms. The conditions in which Roma children grow up must be cared for and improved.

### RECOMMENDATION

72. Implement policies and strategies to ensure access to housing and water and sanitation of every child and their families, by increasing investments in social and affordable housing for low-income families and other families with children who are particularly vulnerable, such as the Roma community.

### BEST INTERESTS OF THE CHILD

73. In 2014, the Committee recommended that the State strengthen its efforts to ensure that the principle of the best interests of the child is appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings as well as in policies, programmes and projects relevant to and with an impact on children. The Committee also called attention to the importance of adopting appropriate guidance, procedures and criteria.

74. **Daily routines:** Services planned for children must take into account their age, level of maturity, needs, views and overall framework of rights. If not done so, it may have a negative impact on children’s lives. For instance, pre-school institutions have progressively increased its opening times to adjust to parents/caregivers needs, however it is often reported by institutions that children stay in school/centre for long periods (including 12 hours), which can be detrimental to children’s well-being and family life. Similarly, children in other educational levels stay on beyond their lecture time in curricular enrichment activities. Children spending long hours at school, may lead to consequences concerning a sedentary lifestyle, lack of time with

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their parents, isolation and aversion to school. The overall lack of adequate sleep, rest and time for leisure and play is of great concern. Data from the HBSC study (2015)<sup>24</sup> shows that children in Portugal sleep less time than recommended in international guidelines<sup>25</sup> and that results in difficulty in waking up in the morning, reported fatigue/exhaustion and other symptoms.

- 75. Justice:** The principle of the best interests of the child has received more attention in the justice sector with significant advancements to apply a child-friendly justice system. However, organisations further report that conditions in which the child inquiries are carried out are not the most appropriate due to the lack of appropriate spaces to hear children. In addition, there are no concrete guidelines or criteria to assist professionals in assessing and determining the best interests of the child for any category of professionals.
- 76.** There has been explicit reference to the importance of the principle of the best interests of the child in several diplomas approved. Namely, Law No. 142/2015 provides that the best interests of the child must prevail in adoption procedures. In addition, the Parliamentary Decree No. 228/XIII (on the right to self-determination of gender identity and expression of gender and protection of the sexual characteristics of each person) establishes that the decisions should take into consideration the best interests of the child. Moreover, Law No. 5/2017 (on custody in case of divorce by mutual consent) establishes the Public Prosecutor to guarantee the safeguarding of the principle of the best interests of the child by hearing the child.
- 77.** In addition, Law No. 59/2017 (amendment to Law No. 23/2007) regulates the entrance, stay and exit of foreigners in Portugal and provides for prohibition of expelling from the country those who were born and live in Portugal, who have lived in Portugal from the age of 10 or have dependent children (article 135). This is a positive development to keep families together and safeguard child's interest.

**78. Regulate criteria on how to assess and determine the best interests of the child in justice, healthcare, child protection, asylum procedures, education and other areas of relevance to children's well-being; and provide training materials for professionals of different categories on how to assess and determine the best interests of the child.**

### RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT

- 79.** In 2014, the Committee made reference to its previous recommendations and called upon the State to strengthen its plan of action for child safety.
- 80.** In 2015, unintentional injuries (accidents) accounted for 13.6 per cent of mortality up to 19 years of age and 65.2 per cent of deaths were related to external causes<sup>26</sup>. However, mortality rates do not show all the consequences of an accident: many dozens are hospitalised and hundreds are cared in hospital. For instance, in 2015, 73 children died (up to the age of 19) and 5 082 were hospitalised (up to the age of 18) as a result of an accident.
- 81.** Despite Committee's recommendation, there is still no specific strategy to intervene in this area and the National Program for Prevention of Accidents has not yet been updated.
- 82.** As for the prevention of drowning, which remains the second leading cause of accidental death (13 deaths and 42 hospitalised children in 2015) there was no change in terms of legislative measures. Existing law only applies to swimming pools integrated in sports facilities for public use but the majority of deaths occur in private swimming pools. European and National Safety standards are not mandatory and are unknown by most designers or municipalities.
- 83.** For children, falls are the most common accident and are the third leading cause of accidental death in Portugal<sup>27</sup>. From 2000 and 2013, 60 500 were hospitalized and 30% of the 109 child deaths resulted from a fall from building and construction sites. There is a need to strengthen legislation

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and regulations at municipal level to effectively safeguard children's safety, everywhere.

- 84.** The lack of progress with regard to children's unintentional injuries is of great concern. The Plan of Action for Child Safety remains to be adopted and there is still no mechanism that can respond promptly to denounced situations of children being transported without a safety belt or a child restraint system in family or school/collective transport, putting their safety in danger.

### RECOMMENDATION

- 85.** Adopt a comprehensive framework on child safety and protection from unintentional injuries, including legislative provisions and an integrated action plan.

- 86. Well-Being:** Data from the latest edition of the WHO/HBSC<sup>28</sup> study demonstrates that out of 5 939 children, 53,4 per cent have an ideal self-perceived body, 32,3 per cent considered themselves overweight and 14,3 per cent consider themselves too thin. Despite the fact that younger children have higher rates of overweight, it is older children that consider themselves as such, more frequently. Indeed, 23,3 per cent consider that they should lose weight.

- 87.** Overall, positive trends in well-being include the decrease in drinking and smoking (in 2014, 95 per cent of children reported never having drunk before and 92,5 per cent reported they do not smoke). On the other hand, more children seem to be using drugs (3,8 per cent in 1998 and 8,8 per cent in 2014 reported having tried "marijuana" one or more times)<sup>29</sup>.

- 88.** In 2010, given the trends related to self-harm at international level, the WHO/HBSC study started to collect data on that topic and concluded that the number of children never having harmed themselves decreased from 84,4 per cent in 2010 to 79,9 per cent in 2014. Nonetheless, the number of children reporting harming themselves 4 or more times increased from 3 per cent to 4,8

per cent in 2010 and 2014, respectively<sup>30</sup>.

- 89. Equity and Well-Being:** Portugal has one of the lowest relative gap in children's self-reported health symptoms, among EU and OECD countries<sup>31</sup>. However, the mean life satisfaction score of children in the bottom half of the distribution is only 72 per cent of the score of a child at the median.

### RECOMMENDATION

- 90.** Promote and support healthy lifestyles for all children and reduce inequalities in child well-being, using available data, such as from WHO/HBSC and UNICEF Reports, to analyse and address trends related to children's well-being and development.

### RESPECT FOR THE VIEWS OF THE CHILD

- 91.** The Concluding Observations made by the Committee in 2014 clearly call upon the State to expand its efforts around respect for the views of the child to other areas, beyond the justice field; and to provide adequate training to professionals.

- 92. Child participation in justice:** Since 2014, some progress has been made. Law No. 141/2015 - the General Regime of the Civil Protection Process - was adopted and recognises the child's right to be heard, particularly in the determination of his/her best interests. Article 5 specifies the conditions for carrying out hearing of the child, which follows principles of child-friendly justice.

- 93.** Despite the legal framework, research shows that "children continue to be heard several times and by various people, according to a multiplicity of interview techniques, and in advanced stages of investigation. Child hearings do not meet, with few exceptions, the reservation and protection requirements of the witness and the judicial facilities are not properly prepared."<sup>32</sup> Empirical studies show that "children who are victims of intra-family sexual abuse are heard on average eight times<sup>33</sup>, which they considered the most painful procedure of the judicial process. Even

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when physical and biological signs of sexual abuse exist, children are heard 4-9 times. (...)”<sup>34</sup>.

- 94.** To further illustrate the challenges, 10 children between the ages of 12 and 18<sup>35</sup>, who had direct experience with the justice system or the child protection system, stated that despite the fact that their opinion was sought, it was not taken into account. Children believe that adults consider them immature and their opinion as invalid, not only within the judicial and child protection systems, but also within the family.

### RECOMMENDATION

- 95.** Enhance training for professionals to ensure high standards in child hearings and establish child-friendly facilities to hear children, as well as, assess the methodologies used to ensure that children do not suffer re-victimisation.

- 96. Child participation in healthcare:** Portugal has introduced regulations that transfer the right to consent to the child, as recommended by the Committee in General Comment No. 12 on the right of the child to be heard<sup>36</sup>.

- 97.** In 2014, Norm No. 015/2013, by the Directorate-General of Health, provides that “the opinion of the child is taken into account as an increasingly determinant factor, depending on his/her age and degree of maturity.” The same Norm further provides that “children under the age of 16 have the right to be heard for diagnostic or therapeutic acts proposed to them; children over 14 years old, hospitalised in mental health units and capable of understanding, can give their consent to treatment.”<sup>37</sup>

- 98.** There is a limited body of evidence on how children’s right to informed consent is carried out in practice in Portuguese hospitals and primary healthcare facilities. In 2011, the Portuguese Commission of Maternal, Child and Adolescent Health and the former Office of the High Commissioner for Health carried out a national survey<sup>38</sup> in 43 hospitals (approximately 74 per cent of all the Paediatric Departments) and concluded that 36 had policies

on children’s informed consent. However, informed consent is only obtained from the parents in at least 17 cases. In 18 Paediatric Departments, informed consent is obtained from children aged 16; and in six Departments, it is obtained prior to that age. All Departments declared that children always receive information, when they are not allowed to give informed consent due to age or other factors.

### RECOMMENDATION

- 99.** Ensure that every child has access to child-friendly materials, is informed about the treatment and procedures and is able to give his/her consent, according to their age and maturity.

- 100. Child participation in school life:** In 2017, the Participatory Budget for Schools (Decree No. 436-A/2017) was launched, an innovative and positive project aiming at enhancing civic and democratic participation of students. Children from 12 to 18 years of age made suggestions and shared ideas for improvements in school. It is foreseen that an audit in a sample of schools will be carried out in order to assess the impact of the measure and to make recommendations for its improvement<sup>39</sup>.

- 101.** Moreover, guidance published in 2016 for pre-school education recognises the child can actively participate in their own learning and foresees children’s participation by “taking into account children’s experiences, values and knowledge as a foundation for new learning; listening and taking note of children’s views; and facilitating children’s initiatives”<sup>40</sup>.

- 102.** In 2018, a national initiative “The voice of students” was launched to act as a regular mechanism to seek the views of students on how they learn and what they are learning. Nevertheless, there is no data to understand if children can fully participate in decision-making in their school and their right to be heard is fully implemented at local level.

- 103.** The above mentioned initiatives are important advances in children’s participation in the country,

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however, involving children is more than just asking them for their ideas and views and requires listening to what they have to say and considering it seriously, making realist expectations and avoiding tokenism.

### RECOMMENDATION

104. Strengthen its efforts to increase child and youth participation opportunities in school to promote children's skills and knowledge and build more accountable institutions, in line with the Convention.

# 3. CIVIL RIGHTS AND FREEDOMS

## NATIONALITY

**105.** Article 7 provides that a child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality.

**106. Migrant children and migrants' children:** In 2018, the State adopted Organic Law No. 2/2018 (amendment of Law No. 37/81, on the Law of Nationality), establishing that children born in Portuguese territory are considered Portuguese by origin, provided that at least one of the parents has been residing legally in Portugal for at least 2 years. Concerning the acquisition of nationality by naturalisation, children born in Portugal, of whom at least one of the parents has been living in Portugal for at least five years or have completed either primary or secondary schooling in the country, will also qualify for citizenship.

**107.** These changes make it easier to obtain nationality by origin or by naturalisation and may contribute to ensuring non-discrimination of children that were facing problems in the fulfilment of their rights.

**108. Migrant children in care:** Law No. 26/2018 (amendment of the Law on the Protection of Children and Young People in Danger) and Law on the Legal Regime of Entry, Stay, Departure and Removal of Foreigners from the National Territory, provide, inter alia, that children of foreign nationality hosted in a public institution, cooperative, social security or private partnership agreement with the State, shall enjoy resident status (article 124).

## RECOMMENDATION

**109.** Adequately and promptly implement Organic Law No. 2/2018 and Law No. 26/2018 provisions, ensuring that child's right to protection and nationality are guaranteed.

## PRESERVATION OF IDENTITY

**110.** In 2018, Parliamentary Decree No. 228/XIII on the right to self-determination of gender identity and expression of gender and protection of the sexual characteristics of each person, allows children aged 16-18 years old to change their name and gender, upon a medical report attesting to the free will of his/her decision.

## RECOMMENDATION

**111.** Continue its efforts to ensure the needs of transgender and intersex children are met and decisions are made in the best interests of the child, ensuring adequate procedures are in place for the standards and provisions to be respected (Convention, Article 3).

## PROTECTION OF PRIVACY AND PROTECTION OF IMAGE

**112.** In 2018, as a result of children's appearance in TV reality show 'Supernanny', several organisations, including UNICEF Portugal, recommended the State to take all measures to ensure every child's right to privacy is protected. The programme has been temporarily suspended but final decision is yet to be known.

## RECOMMENDATION

**113.** Intensify its efforts to regulate children's participation in TV programmes and work closely with the media to respect the privacy of children and their best interests in all TV shows.

# 4. VIOLENCE AGAINST CHILDREN

## CORPORAL PUNISHMENT

**114.** In 2014, the Committee recommended that the State continue its efforts to end the practice of corporal punishment in all settings.

**115.** Cultural values and social contexts are important to understand how lay people and professionals categorise and assess the severity of child maltreatment<sup>41</sup>. In the case of corporal punishment, the use of violence has not been considered a social problem in Portugal, rather an acceptable form of discipline, except for severe physical punishment<sup>42</sup>. Moreover, there is a normative consensus to distinguish between “reasonable and necessary” corporal punishment, and maltreatment or abuse that cause harm. The reasons range from considering corporal punishment a disciplinary tool to seeing the conduct irrelevant to the legitimacy of conviction, leaving the courts’ own exercise of discretion. In 2014, for instance, the Court of Appeal of Porto stated: “(...) A slap or a tug of ears alone are not behaviours that could constitute an illegal practice punishable by the type of crime involved, and caution should be exercised as to what the legislator intended to say by corporal punishment. Only those who have never had children or who have never cared for children and gave them affection and love, can associate an occasional slap or pull of ears, and motivated by serious misbehaviour by children; as conduct of a criminal nature, which goes beyond the limits of the educational power/limits of the responsible adult.”<sup>43</sup>

**116.** Corporal punishment is permissible and there is lack of information and awareness on alternative methods of discipline. In a recent report published in 2018<sup>44</sup> about the phenomenon in the country, promoting parent training programmes, investing in capacity building of CAFAP (Centres that offer counselling and support for parents and families) and training programmes for professionals that work with children were therefore considered a matter of urgency.

## RECOMMENDATION

**117.** Ban corporal punishment in its all forms, by advocating with the general public and educating parents about the unacceptability of corporal punishment and the importance of positive, non-violent alternative forms of discipline.

## ABUSE AND NEGLECT

**118.** In 2014, the Committee recommended that the State prioritise the elimination of all forms of violence against children, recalling the recommendations contained in the 2006 report of the independent expert for the United Nations study on violence against children (see A/61/299).

**119. Reporting of abuse:** In 2017, Children and Youth Protection Units (CPCJ) supported 69 967 children, less 1 049 than in the previous year<sup>45</sup>. The average number of children supported per year between 2015 and 2017 was 71 446, showing that the number does not vary significantly, despite annual decreases. In fact, the number of new admissions increased by 330 in 2017. In addition, out of the 309 CPCJ, 13 were responsible for a quarter of the cases in the country, i.e. dealing with more than 1 000 cases, which shows a disproportionate burden on a few Units and appears to be some geographical differences in the referrals.

**120.** The current child protection social system foresees that organisations that provide services for children and youth, including schools, have the primary duty of care<sup>46</sup>. In the case of child maltreatment, a public crime in Portugal, community professionals are among the primary agents in identifying and referring, along with lay people<sup>47</sup>. In fact, community professionals made more than half of the referrals for children “in danger” in 2017 (33 per cent by the police; 22.5 per cent by schools). In total, there was an increase in the number of communications to the Units (more 99 in 2017 than in 2016)<sup>48</sup>.

**121.** In the assessment of the ‘children in danger cases’ reported to the Children and Youth Protection Units, 30.1 per cent (11 809) were categorised

# 4. VIOLENCE AGAINST CHILDREN

as negligence, followed by exposure to domestic violence (22.3 per cent), risk behaviours in childhood and youth (16.5 per cent)<sup>49</sup> and situations that compromise children's right to education (16 per cent). The physical and psychological abuse, sexual abuse and child abandonment represented 10 per cent, approximately. In terms of 'abusive child labour', 52 cases were reported but there isn't enough information to further understand the situation of these children.

**122. Intervention:** For the new cases identified in 2017, the at-home intervention (with parents or with relatives) accounted for 90.7 per cent of the total, and 9.3 per cent were out-of-home placement, representing an effort to promote family based care and de-institutionalization. The data available also shows that around 8 200 cases of children were reopened every year, between 2015 and 2017 (8 328 in 2015, 8 352 in 2016 and 7 924 in 2017). In a welcome step, the CNPDPCJ commissioned a research project to understand the reopen proceedings. Nevertheless, the reports from the National Commission (CNPDPCJ) do not provide information on family support services and its impact on child well-being and development<sup>50</sup>.

**123.** Since 2014, a number of legislative provisions have been introduced to provide greater protection to children at risk or in danger<sup>51</sup>. The new measures introduced by the reforms include the new Regional Technical Teams that provide qualified support to Units and important outreach work. In addition, the role of the organisations that provide services for children and youth (ECMIJ) was strengthened in relation to prevention, assessment, diagnosis and intervention in risk and danger cases, which may justify the decreased number of cases not carried forward.

**124.** However, there is a lack of data and global/systemic view of the processes to assess and monitor the interventions in the Child Protection System<sup>52</sup>.

**125.** In a study on residential care placement decision in the context of a parental neglect cases<sup>53</sup>, researchers highlighted that the *worker* is a preponderant factor of the decision making process

and his/her judgement is influenced by multiple factors (emotional, cognitive, normative, etc.), conflict and ambivalence, feelings and emotions, and social influence (public opinion) processes. The researchers also add "these results not only sustain the view of decisions toward neglect cases as effortful, but also brings attention to the implications that all those forces and pressures might have in the worker's judgment and actions". The study suggests that is urgent to develop training programmes focused on the multiple factors affecting decision making processes and therefore, having an impact on children.

**126.** In another recent study conducted in Portugal<sup>54</sup>, psychological abuse and neglect are not consensual among those making the referrals (public and technical professionals) and the authors suggest that may be a result of lack of community awareness. Cultural values and social contexts play an important role in people's understanding and conceptualization of child maltreatment and therefore, "the decision-making process on the referral of maltreated children [should] be based on clearer and more objective assessment than that which is currently being done".

## RECOMMENDATION

**127. Develop an integrated and rigorous decision making process to assess the best interests of the child in all cases, keeping every child protected from all forms of violence, abuse or neglect, in line with the Convention and General Comment No. 14, including:**

- a) ensure that all professionals and staff working with and for children are provided with the needed training, supervision and background checks;
- b) undertake further measures to develop a systematic and comprehensive collection and analysis of child rights based indicators, for use in the monitoring and assessment of the intervention for children in danger or at risk.

# 4. VIOLENCE AGAINST CHILDREN

- 128. Bullying:** National data from the international comparative study<sup>55</sup> shows that 38,7 per cent of children reported being bullied and 30,9 per cent reported bullying others at school at least once in the past couple of months. Significantly, 34 per cent say that they have been bullied up to once a week and 4,7 per cent have been bullied several times a week. Data also shows that 46 per cent of adolescents reported being bullied at school at least once in the past couple of months and/or having been involved in a physical fight at least once in the past 12 months<sup>56</sup>.
- 129. Children as victims of other crimes:** in 2017, the majority of the 221 arrests for crimes “against freedom and sexual self-determination” involved child victims, namely 98 were related to child sexual abuse and 34 for pornography<sup>57</sup>. In relation to the crime of sexual abuse of children and adolescents, more than half of the victims had between 8 and 13 years old (68.5 per cent), followed by 7-4 years of age (19.1 per cent) and 0-3 years of age (6.7 per cent). In 44.5 per cent of cases, the perpetrator had a relationship with the family.
- 130.** As for human trafficking, 45 children were identified as presumed victims of human trafficking in Portugal, of which 24 were pending/under investigation and four unconfirmed, as of the date of the report. The Foreigners and Borders Service (SEF) cooperated with the Permanent Reception Centres for victims, guaranteeing permanent monitoring of trafficked victims in all situations in which it was necessary to protect and welcome them, as well as their follow-up in various procedural steps<sup>58</sup>.
- 131. Domestic violence:** 3 912 children under the age of 16<sup>59</sup> were victims of domestic violence. Additionally, children witnessed the occurrence in 34 per cent of domestic violence situations against adults<sup>60</sup>.
- 132.** Recalling Committee’s recommendations related to “(a) facilitate the physical and psychological rehabilitation of the victims” and “(d) ensure that victims have access to means of protection, including an adequate number of shelters set up for women and children”<sup>61</sup>, the State has conducted some legal reforms.
- 133.** Law No. 130/2015, which establishes the “Status of the Victim”, provides for the setting up of victim service rooms for assistance and information in each police and security forces units. Changes to the National Network of Support to Victims of Domestic violence<sup>62</sup> (Regulation Decree No. 2/2018), makes provision for timely, efficient and specialised response to victims of domestic violence through three responses: victim support units, emergency accommodation and shelters. All these structures apply to victims of domestic violence, including their children and children with disabilities under their care. These structures are crucial to ensure that every person victim of domestic violence access safe houses and refuge that are family friendly.
- 134.** In addition, Government adopted a new National Strategy on Equality and Non-discrimination<sup>63</sup> in 2017, that encompasses three National Action Plans on 1) gender equality, 2) violence against women and domestic violence, and 3) discrimination based on sexual orientation, gender identity and sex characteristics. The strategy is designed to tackle stereotypes and includes measures in areas related to parental protection, work life balance, gender equality in education (e.g. gender-sensitive curriculum) and violence prevention programmes (with a focus on “non-violent models of masculinity”). However, it is not clear how it will address the full range of protection risks faced by children: abuse, violence or discrimination.

## RECOMMENDATION

- 135. Continue to invest in training and support for professionals and stakeholders to promote compliance with the legal framework on all forms of violence against children, including domestic violence, and the National Strategy on Equality and Non-discrimination by conducting periodic and independent reviews of the implementation to fulfil its legal obligations to children.**

# 4. VIOLENCE AGAINST CHILDREN

**136. Female genital mutilation/cutting:** Progress was made with respect to female genital mutilation/cutting (FGM/C) and criminalisation of other acts of violence. Law No. 83/2015 provides for the female genital mutilation to be a separate crime, creates the crimes of persecution and forced marriage and changes the crimes of violation, sexual coercion and sexual harassment, in line with Istanbul Convention.

**137.** Notwithstanding, between 2014 and 2017, 237 FGM/C cases were reported in Portugal<sup>64</sup>, of which three were carried out in Portugal. Data available also shows that in 80% of the cases analysed the practice was made in children under 9 years old. FGM/C is a violation of girls' and women's human rights.

**138.** The Sustainable Development Goals (SDGs) include a target under Goal 5 to eliminate all harmful practices, such as child, early and forced marriage and FGM/C, by the year 2030. Accelerate action towards the end of FGM/C is needed, as well as child marriage.

**139. Child marriage:** In Portugal, marriage is allowed at the age of 16, with parent consent. Marriage before the age of 18 is a fundamental violation of human rights; children can experience isolation, violence, abuse and exploitation, and evidence shows the links between child marriage and school drop-out.

## RECOMMENDATION

**140. Strengthen legal system to protect the rights of every child and intensify efforts to end all forms of harmful practices, including female genital mutilation/cutting and child marriage.**

# 5. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

## FAMILY ENVIRONMENT

**141.** In 2014, the Committee recommended the State to continue its efforts to support families, particularly those experiencing poverty, to ensure that children's needs are met.

**142.** The Portuguese economy is recovering and unemployment is declining (OECD, 2017<sup>65</sup>), however, data shows that employment does not take all people from poverty<sup>66</sup>. It is estimated that 10.8 per cent of workers are living below the poverty line (EU SILC, 2017) and research indicates that in-work poverty is related to low levels of *work intensity*.

**143.** The 'intensity of poverty' has highly increased from 23.2 per cent in 2010 to 29 per cent in 2016, meaning that seriousness of the poverty of people living in poverty has worsened<sup>67</sup>. Families with children were among the group of people that felt more severely the effects of the crisis and austerity measures<sup>40</sup>. Social transfers also play a role in reducing relative income gaps among children but the pre and post-transfer income gaps in Portugal are very similar<sup>68</sup>. Therefore, the social welfare system does not effectively reduce income gap impact.

## RECOMMENDATION

**144.** Adopt a multidimensional rights-based strategy to end poverty, assessing the impact of social transfers on poverty alleviation and investing in public services accordingly.

## CHILDREN DEPRIVED OF A FAMILY ENVIRONMENT

**145.** In 2014, the Committee made a number of recommendations to the State to enhance the protection of children deprived of a family environment; from an increase of measures to support biological families, to undertake further efforts to promote deinstitutionalisation.

**146.** Article 20 provides that a "child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State." In this regard, residential care should be an opportunity to ensure effective gains in the life of the child, promoting the rehabilitation of family relationships and the establishment of the necessary conditions for the sustainable return in a child's best interests or for autonomous functioning<sup>69</sup>.

**147.** In 2016, there were 10 688 children in care, of which 2 513 (24 per cent) ceased their residential care situation during that year and 2.396 (22 per cent) entered the system, more 194 children than in 2015<sup>70</sup>. A total of 2 903 children (35 per cent) placed in residential care have had one more previous care placement. In that year, 52,3 per cent of children had already been reported to the child protection service for an at-home intervention. There has been an increase in the number of children with mental health disorders, antisocial and delinquent behaviour. From 2012 to 2016, the majority of children living in residential care were aged 12 to 17 and there were only 7 out of 310 residential care homes providing specialised support.

**148. Foster Care:** Of all children in care at the end of 2016 (i.e. 8 175), only 261 children (3,2 per cent) were in foster care placement<sup>71</sup>. Existing foster families were concentrated in the north of the country and there were none in Lisbon, the district with the highest number of children in care.

**149.** In 2014, the Committee called on Portugal to "take all the necessary measures to ensure that alternative care for young children, especially those under the age of 3 years, is provided in family-based settings" and despite new regulations (Law No. 142/2015) providing that all children in care up to the age of six should be placed in a foster placement, no changes were made in the care system in attempting to implement the law.

**150.** The rooting of residential care in the Portuguese society is due to socio-cultural and historical

# 5. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

reasons and also scarce investment and lack of political interest<sup>72</sup>. The high number of children under 3 years of age for whom residential care is the available alternative violates international standards and has a negative impact on the child's overall development.

**151.** Children continue to be affected by the lack of adequate supports and resources. The capacity and availability of resources to promote children's autonomy, family intervention, follow-up and aftercare to children and youth leaving care centres and improve performance of organisations are some of the challenges faced by care home staff<sup>73</sup>.

**152.** A traditional and reductive view that special qualifications are not needed to intervene with children is common in Portugal and it is urgent to recognise and ensure permanent qualification of the staff of the care system.

**153.** Since 2014, research<sup>74</sup> shows there has been some progress in the provision of support to children in care. The qualification of human resources and equipment of residential care homes have increased, the average time of stay in alternative care has reduced, as well as the home's capacity. It is also noted that new management instruments and intervention models have been put in place, supervisory mechanisms and evaluation were created and deinstitutionalization efforts were made.

**154.** Hence, there are significant gaps between statutory law and actual practice. For instance, the number of care staff has reduced in the last years; despite early detection, the procedures and interventions take a long time and young people are placed in institutions at an old age. Residential care staff also state that some parents are disengaged from their responsibilities, "promotion and protection" agreements show an absence of parental responsibility and there is a lack of "evaluation culture" in the system<sup>75</sup>.

**155.** There isn't a strategic action plan to ensure quality and more effective responses to children's deprived of a family environment - in foster and in residential care. Although literature shows that

investment in family and community prevention is more effective and less burdensome, there are practically no alternatives to residential care in the country. Moreover, the mismatch between the timeframes of the developing child, those of courts and those of the other institutions undermine children's development and protection.

**156. Participation:** There is evidence that children are not widely or adequately considered in decision-making processes in matters affecting them in residential care homes. Children and young people who have lived in residential care are experts and their personal experience is significant for improving the quality of the intervention.

## RECOMMENDATION

**157. Develop and implement a national strategy to ensure quality and more effective responses to children's foster and residential care, with priorities, goals, objectives and strategies for an extended period of time; and in particular:**

- a) **define national standards for foster care;**
- b) **invest in child and family support programmes aimed at children at risk of placement in care, within the child's timeframe;**
- c) **ensure that every child in care has adequate support and is heard in every decision that affects him/her.**

## ADOPTION

**158.** In 2014, the Committee recommended the State to review current legislation and policies on adoption with a view to ensuring that the best interests of the child should be of paramount consideration; and to address specific challenges related to adoption, such as the return of children, effective coordination of services and the provision of adequate information and preparation to prospective adoptive parents, and post-adoptive support to adoptive parents.

**159.** There has been some changes since the last reporting cycle. Law No. 143/2015 (legal regime of the adoption process), encompasses the various

# 5. FAMILY ENVIRONMENT AND ALTERNATIVE CARE

rules that exist regarding the adoption process and foresees the development of training programs for adoption candidates; the creation of the National Adoption Council to promote the harmonisation of the criteria for matching the needs of the child with the candidate families and to reduce the time frame; and aims to minimise the risk of failures, reducing the number of “returns” of adopted children.

**160.** Nevertheless, adoption procedures continue to be lengthy, taking longer than predicted, which is detrimental to children. In addition, it is still a matter of concern the number of children who re-entry into the alternative care system within adoption and pre-adoption procedures. In 2016, 48 children with approved adoption (already living with adoptive parents) were in danger, of which 19 re-entered the alternative care system. The same happened to 34 children in the period of pre-adoption and five were readmitted in the alternative care system.

**161.** The situation of these children requires urgent action and further investigation to support and safeguard all children and families.

## RECOMMENDATION

**162.** Enhance the support provided to adoptive parents during and after adoption, ensuring more effective and efficient procedures and the best interests of the child, in line with the Convention.

# 6. DISABILITY, BASIC HEALTH AND WELFARE

## CHILDREN WITH DISABILITIES

- 163.** In 2014, the Committee made a number of recommendations to the State to ensure that the rights of children with disabilities are fulfilled. These included allocation of the necessary resources for the effective implementation of the National Strategy for Disability; better integration for children in all social areas, as well as, better and more inclusive education; and appropriate training of professionals.
- 164.** In general, Portuguese law guarantees the rights of children with disabilities; however, some children and their families face challenges in receiving adequate support to allow their full development. Thus, access to care is assured, but the level of social benefits available is generally very low, as per the *Parallel Report about the Monitoring of the Rights of Persons with Disabilities in Portugal*.<sup>76</sup>
- 165. National Strategy:** In 2014, the Committee recommended the State to “adopt a human rights based approach to disability and continue to strengthen its efforts in promoting and protecting the rights of children with disabilities, including by allocating the necessary resources for the effective implementation of the [2011-2013]<sup>77</sup> strategy”. However, Portugal has no national strategy to improve the lives of people with disabilities since 2013. An ‘Agenda for inclusion of people with disabilities’ is under consideration, though no further data is available.
- 166. Data on child disability:** In 2017, the Disability and Human Rights Observatory<sup>78</sup> reported a lack of precise data on children with disabilities. For instance, children under the age of 6 years were not included in the 2011 Census survey, which aimed at determining limitations in daily life activities. The inadequate data collection and the general focus on purely self-assessed disability in the Census make it difficult to understand the reality of people with disabilities in Portugal and the barriers that children face. The development of relevant policies and programmes, therefore, has been constrained by a lack of data on children with disabilities and producing statistics on children with disabilities should be strengthened.
- 167. Early Intervention:** the National System of Early Intervention is ensuring that more children with disabilities are supported<sup>79</sup>. However, the lack of adequate resources is undermining the quality of the support provided, which is detrimental to the well-being of children that require therapeutic and educational support, especially children with severe or multiple disabilities.
- 168. Inclusive Education:** 99 per cent of the students with disabilities are placed in regular schools and 86 per cent of those attend public schools. As for class attendance, 57 per cent students with ‘Specific Individual Curriculums’ spend less than 40 per cent of their time with their class and almost 30 per cent of students spend less than 20 per cent of time with their class<sup>80</sup>. Moreover, the number of hours of therapy almost dropped to half in 2017.
- 169.** In 2016, in a study to assess the ‘special education needs activities’ in 368 schools (45 per cent of existing schools)<sup>81</sup> concluded that more than half of the schools involved did not include goals and strategies for the development of special education in their structuring documents. Almost half did not define service delivery criteria within the framework of special education. It is also noted that 45 per cent did not have a training strategy for the staff working in ‘special education’.
- 170.** Since 2014, the Government has made substantial efforts to enhance the situation of children with disabilities in school. It is worth mentioning the Inclusion Programme for Students with Special Education Needs, adopted in 2015, which foresees, among others, the preparation of the Individual Education Plan<sup>82</sup>. The Legislative Order No. 1-H/2016, stipulates that students with special needs of education may benefit of a class reduction if they spend, at least, 60 per cent of their time there.
- 171.** In a welcome step, the Government adopted a new reform on inclusive education (Decree Law No. 54/2018), shifting the approach from a ‘special needs education’ to a more holistic ‘inclusive education’ to ensure that every child can achieve his/her potential, regardless of their personal and

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social situation. Notwithstanding, concerns have been raised on the lack of quality and quantity of resources needed to provide adequate care for all children, in particular for students with disabilities, as emphasised by the Committee on the Rights of Persons with Disabilities in its Concluding Observations on report from 2016<sup>83</sup>.

**172. Discrimination:** the Disability and Human Rights Observatory reports that people with disabilities still suffer from discrimination<sup>84</sup>. However, data on concerns/referrals from/for children with disabilities are scarce, hindering the development of effective policies to tackle the problem.

**173.** Since 2014, a number of legislative provisions have been introduced to provide greater protection for people with disabilities. The Council of Ministers Resolution No. 68/2014 establishes the national monitoring mechanisms of the implementation of the Convention on the Rights of Persons with Disabilities; and the Decree Law No. 125/2017, changed the regime of Accessibility of buildings and public places, ensuring that places are accessible to everyone. The Decree Law No. 125/2017 creates a 'Commission for the Promotion of Accessibilities' and each governmental area should define 'technical teams' to implement the provisions.

## RECOMMENDATIONS

**174.** Ensure inclusive education for all, providing adequate resources needed to ensure a prompt and appropriate implementation of Decree Law No. 54/2018;

**175.** Adopt a National Strategy for People with Disabilities, with a special focus on children, to ensure a comprehensive and integrated approach to service delivery and a systematic collection of data is undertaken to identify key issues that should be addressed in future policies.

## HEALTH AND HEALTH SERVICES

**176.** In 2014, the Committee drew the State's attention to general comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (art. 24) and to minimise the impact of the financial crisis on children's health and well-being. The Committee also made a number of considerations towards improving available quality services and programmes of mental health for children.

**177.** There have been some positive developments generally in the area of health. Since 2014, the total expenditure on health per capita increased<sup>85</sup> and a number of legislative provisions have been introduced to provide free access to healthcare to every child. Namely, Decree Law No. 61/2015 (amendment to Decree Law No. 113/2011), article 4(b), provides that all children are exempt from paying fees within the NHS and an exemption extends beyond 18 years of age for young people in care.

**178.** In addition, Portugal rates first among 41 countries of the European Union and the OECD in ensuring healthy lives and promoting well-being for all at all ages, based on neonatal mortality (< 4 weeks of age), suicide rates (0–19 years), mental health symptoms (11–15 years), drunkenness (11–15 years) and teenage fertility rates (15–19 years)<sup>86</sup>.

**179. National Policy:** Since 2016 and as part of the National Child and Youth Health Programme (2013)<sup>87</sup> the projects "Born as User" (Nascer Utente) and "Birth News" (Notícia Nascimento) provide that every newborn is automatically entitled to have a family physician and a NHS number at the maternity hospital. These measures respond to a real concern reiterated since 2014 and are fundamental to the realisation of a number of rights and practical needs including providing access to healthcare and offering preventive opportunities throughout childhood and adolescence.

**180.** However, there remains no data on the impact of national policy on children's access to healthcare services, especially for children from the most

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disadvantaged backgrounds. As mentioned by the Directorate-General for Health<sup>88</sup> (2016), defining child-centered quality indicators and empowering children to participate in their own health care is crucial.

**181. Discrimination in access to healthcare:** Less affluent households have the poorest health outcomes, despite the overall decline in bottom-end inequality between 2002 and 2014. The gap in health inequality changed from 22.5 per cent in 2002 to 26.4 per cent in 2014, as children from households with income below the median improved but their peers in the middle regressed<sup>89</sup>. Inequality in healthy eating (includes eating fruit and vegetables) showed the largest increase, as the bottom lost out, while the middle remained the same. Research suggests that overall improvement in health outcomes is very difficult to achieve without closing the gap at the bottom of the distribution. Promoting healthy lifestyles at an early age is likely to pay short- and long-term dividends, and is urgent to do more to open up opportunities for less-affluent children. Low income should not be a barrier to accessing quality healthcare or fall behind in health.

**182. Food insecurity:** The prevalence of food insecurity in Portugal (i.e. lack of secure access to sufficient, safe and nutritious food that can ensure normal growth and development, as well as an active and healthy lifestyle) among children under the age of 15 is above the average of EU and OECD countries (18.2 per cent and the average being 12.7 per cent)<sup>90</sup>. The general availability of food is not a problem in the country but too many families struggle to satisfy their children's nutritional needs. No level of food insecurity is acceptable.

## RECOMMENDATION

**183. Undertake a review to assess the impact to date of the reforms on children's health, producing Annual Reports on the National Child and Youth Health Programme, with child-centered quality indicators; and take other steps necessary to address the unacceptable inequalities in health services of the most disadvantaged and most in need children.**

**184. Healthy lifestyle:** In relation to healthy lifestyle, an OECD Report from 2017 of 15 year olds, states that 35 per cent consume fruit daily, 3 per cent above the average of OECD countries<sup>91</sup>. Nonetheless, it has one of the lowest consumption of vegetables daily (23 per cent), mainly among girls. In addition, the physical activity practiced daily is low (11.5 per cent), specially again for girls (5 per cent, one of the lowest among the OECD countries). When self-reporting, data from HBSC study<sup>92</sup>, shows that 84,8 per cent children and adolescents stated they have breakfast every day and more than half eat fruit and vegetables at least once a week (50,5 per cent and 57,8 per cent, respectively). In addition, 51 per cent mentioned they practice sports three or more times a week, decreasing with age.

**185.** Regular exercise is key to adolescent well-being and there has been some State intervention in ensuring physical activity at school. The Government has indeed adopted the School Sports Programme (2017-2021)<sup>93</sup>, echoing WHO and Assembly of the Republic recommendations<sup>94</sup> and extended the number of hours for school sports in the academic year 2018/19 (Order No 7814/2018). The Government has also adopted an inter-ministerial and Integrated Strategy for the Promotion of Healthy Eating (Order No 11418/2017<sup>95</sup>), which provides for the existing school food guidelines to be expanded, for measures on raising awareness and increasing fruit and vegetable consumption and promotion of nutrition education in school. It also includes giving children the best start in life through food literacy among pregnant women and parents and skill training for health professionals on breastfeeding.

**186.** Despite these legal reforms and positive initiatives, gaps remain and the high rates of obesity and low levels of physical activity are a matter of urgent priority.

**187. Self-reported health:** There is a strong link between lack of physical activity and being overweight. The HBSC study (2015), states that overweight and obesity have increased progressively. Children's well-being progressively improved between 1998 and 2006 in most categories, but since 2010, reports

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of symptomatic pains, feeling nervous or tired and difficulty in going to sleep at night increased.

**188. Overweight:** In a State report (2018)<sup>96</sup>, 30.7 per cent of children are overweight and 11.7 per cent are obese. Obesity has been linked to multiple health conditions in childhood, to lower self-esteem and to a heightened risk of cardiovascular disease and diabetes in adulthood. As the article 6(2) bounds States Parties to guarantee “to the maximum extent possible the survival and development of the child”, there is an existing gap in the promotion of a healthy lifestyle that guarantees the development and well-being of all children living in Portugal.

## RECOMMENDATION

**189. Adopt comprehensive policies on food insecurity and obesity and continue the efforts on physical activity and healthy eating in schools.**

**190. Breastfeeding:** Data from a National Health Survey<sup>97</sup> show a positive development in the practices of breastfeeding at three, four and six months, with a statistically significant increase in exclusive breastfeeding rate (at 3 and 4 months) between 1995 and 2014. Nevertheless, data show that in 2014, exclusive breastfeeding rate (EBR) was 55.9 per cent at three months and 48.5 per cent at four months. In addition, the report indicates that 30.3 per cent of infants at 6 months of age were breastfed. The World Health Organization (WHO) recommends that infants should be breastfed exclusively for the first six months of life and continue up to two years of age, yet the EBR seem to decrease sooner than recommended. Progress to improve exclusive breastfeeding is crucial, as the UNICEF-WHO Baby Friendly Hospital Initiative (BFHI) has been promoting in the country and globally, by ensuring that practices that protect, promote and support breastfeeding are in place and in line with international recommendations.

**191.** The State has been protecting breastfeeding through implementation of supportive policies guaranteeing five months’ paid maternity leave and have created a Reference Group by ministerial

decree (Order No. 4411/2018) to elaborate a proposal for a National Strategy on Infant and Young Child Feeding, as recommended by the BFHI, to be integrated into a government policy. This is a positive investment in child well-being and it is crucial that parents continue to receive proper support and professionals are trained to support breastfeeding. An enabling environment is also required to achieve better breastfeeding outcomes for children, including encouragement and support from employers and policymakers. Paid family leave and workplace policies to support mothers that breastfeed are essential to improving breastfeeding practices.

## RECOMMENDATION

**192. Continue its efforts to implement national infant and young child feeding policies, and to facilitate current strategic public and private partnerships for improvement of infant and young child nutrition, such as the Baby Friendly Hospital Initiative.**

## MENTAL HEALTH

**193.** One of the most prevalent health challenge is mental health. There is a reported lack of child mental health specialists, adequate facilities and adjusted outpatient services capable of responding to situations of psychosocial rehabilitation<sup>98</sup>.

**194.** In 2017, Government has committed to increase mental health care and services for children and adolescents and create 500 places by 2020 for children/adolescents who require continuous mental health care<sup>99</sup>.

**195.** During 2017 and 2018, Government has proceeded to a reorganization of mental health services for children and adolescents in the country. While the 2017 Report on the National Programme on Mental Health is welcomed, it does not fully satisfy the constitutional provision to guarantee the full development of the child (art. 69°); does not contain child-centered indicators on the needs and prevalence of children and adolescent with mental health disorders, symptoms or difficulties. In addition, even though it is settled as one of

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health's priority areas, by the government order 6401/2016, it does not seem to be treated as one.

**196. Psychologists in schools:** Government has indeed committed to hire Psychologists to schools, particularly in schools with higher numbers of child protection cases. The more recent ratio of students per school psychologist is yet to be clarified but Government estimated it to be 1 140 to 1<sup>100</sup> in 2017 and earlier in the year, the Order of Portuguese Psychologists estimated a 1 700 to 1 ratio<sup>101</sup>. Despite that, Government has committed to achieve 1 000 to 1 in public schools by 2020.

**197.** There has been much focus and some progress on child and adolescent mental health but no data collection on the prevalence and severity of the phenomenon has been undertaken.

## RECOMMENDATIONS

**198. Ensure the National Programme on Mental Health includes a comprehensive and coherent framework for every child to have access to mental health services and prevention programmes, including a separate section on children under 18 years, with its own set of guiding principles, such as the best interests of the child and the voice of the child.**

**199. Adequately resource mental health services to ensure children and young people receive timely and child-appropriate care and provide training to professionals working in child protection services so every child is supported to reach his/her full potential.**

## STANDARD OF LIVING

**200.** In the last reporting cycle, the Committee urge the state to address the increasing level of child poverty, suggesting designing sustainable policies and a national plan to combat child poverty. Poverty puts the adequate development of children at risk, increasing the probability of them being unsuccessful in school and later being unemployed.

**201. Income poverty:** In 2017, an estimated 368 000 children (20.3 per cent) up to 17 years old were

at risk of poverty, less 109 000 children than in 2014<sup>102</sup>. Despite the decreased number of children living in poverty, the numbers are higher than the total population (18.3 per cent). Since 2003, the child poverty rate is consistently above 20 per cent<sup>103</sup>, a staggering figure. These numbers show that children continue to be the most affected by poverty in Portugal.

**202. Inequalities:** Portugal has one of highest levels of bottom-end inequality when comparing EU and OECD countries. Income gaps have widened from 2008 to 2013 (54.8 per cent to 60.2 per cent, respectively)<sup>104</sup>. This means that the household income of the child at the 10th percentile is 60.2 per cent lower than that of the child in the middle of the income distribution.

**203.** The data available is not up to date and makes it challenging to make timely decisions and inform public debate. Timeliness and usefulness information about the well-being of children should be improved.

**204.** Since 2014, the State has adopted several measures and policies. The child benefits payments and the Reference Amount of Minimum Income Scheme (RSI) increased. As poverty is a multidimensional problem, the investment in pre-school education, in free school textbooks for all children in public schools and free healthcare for children reduce childcare costs for parents and have an impact on the well-being of children and in particular, on children in the most vulnerable circumstances.

**205.** Government has also shared its commitment to the Sustainable Development Goals (SGD) and in particular ending poverty and social exclusion<sup>105,106</sup>. However, the State has not made an explicit commitment to end child poverty nor adopted a national strategy to end poverty in all its forms.

## RECOMMENDATION

**206. Adopt a multidimensional rights-based strategy to end poverty, with a specific focus on children, investing in housing, transports and mobility, childcare, education and health.**

# 7. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

## EDUCATION

**207.** In 2014, the Committee made a number of recommendations to the State to enhance children's rights to education, including the expansion of pre-school education and strengthen efforts to reduce the rate of drop-outs and the national plan of action for human rights education.

**208. Early childhood development:** Since 2014, there has been significant investment in early childhood development. The enrolment rate in pre-primary education among 5-year-olds is 95 per cent and is 90 per cent and 83 per cent for 4-year-olds and 3-year-olds, respectively, above the respective OECD averages<sup>107</sup>. In addition, a recent legal provision, Law No. 65/2015, establishes the universality of pre-school education for children from 4 years of age.

**209.** Despite recent legislation, the number of pupils per teacher in pre-primary schools is one of the largest among OECD and partner countries with available data<sup>108</sup>; and early childhood education also has one of the lowest shares of total expenditure from public sources at this level<sup>108</sup>, meaning that households expenditure in pre-primary education is high.

## RECOMMENDATION

**210. Continue investing in the universality of preschool education, ensuring that all children have access to quality programmes.**

**211. School success:** Since 2014, the State has significantly addressed the issue of the high incidence of dropouts and low success rates. Resolution No. 23/2016 of the Council of Ministers created the National Programme for Promoting School Success<sup>109</sup>, a decentralised programme that focus on issues such as cooperation among teachers and early interventions at the first sign of difficulty. Most recent data on school success show that retention and early school leaving decreased the State could consider extending it to all schools, based on evidence.

**212. Equity:** OECD data shows that the impact of students' socio-economic background on their performance is higher in Portugal than the OECD average. Evidence shows that family background can also have a strong impact on the probability of students dropping out of school and not participating in tertiary education<sup>110</sup>. The Third Generation of the Priority Intervention Education Territories Programme, targeting geographical areas with a socially disadvantaged population and early school leaving rates above the national average, provides for schools to benefit from additional funding and support. However, there are no figures available or impact indicators to further analyse the implementation and effectiveness of the Programme.

**213. Inclusive education:** A positive development is the new reform on inclusive education (Decree Law No. 54/2018), that aims to ensure equity in education and that every child can achieve his/her potential, regardless of their personal and social situation. Government adds "this political priority realizes the right of each pupil to an inclusive education that responds to their potentialities, expectations and needs<sup>111</sup>". A rigorous inspection will be welcomed to assess the impact of this on children.

**214. Student Profile:** Since the last reporting cycle in 2014, the Government adopted the Student Profile by the End of Compulsory Schooling in 2017. This document highlights the values underpinning children's education and sets out the desirable outcomes of years of schooling. The document focuses on competences and values (i.e. freedom, respect for humanistic values, citizenship and participation, respect for others). A strength of this framework is that it reflects "the nature of the changes facing the world, as well as the knowledge, skills attitudes and values that will be needed to address them" (OECD, 2018<sup>112</sup>).

**215. Furthermore, significant changes have also been made in the curriculum.** Decree Law No. 55/2018 provides for a people-centred education policy that guarantee equal access to public school, promotes educational success and thus equal opportunities; gives school autonomy to, in collaboration with

# 7. EDUCATION, LEISURE AND CULTURAL ACTIVITIES

children, families and the community, adopt greater flexibility in curricular management, with a view to fostering interdisciplinary work.

**216.** The Autonomy and Curriculum Flexibility framework “may challenge the continuing centralisation of the education system and the prevailing method of didactic pedagogy<sup>70</sup>”. As pointed about by OECD (2014)<sup>113</sup>, “Portugal is gradually increasing decision-making at sub-national levels while trying to improve the efficiency of public services”. Municipalities have now more responsibilities on curricular enrichment activities, provision of social support (school meals and transportation), and management of school infrastructure and of non-teaching staff. In addition, schools have gained more autonomy over the curriculum and administration.

**217.** These educational reforms are positive developments, although Portugal should enhance capacities at local and school levels to deliver quality education with greater flexibility and achieve higher learning standards.

**218. Teaching:** The lack of leadership in education plays an important role in the implementation of educational policies. In 2016, the OECD reported “school principals in lower secondary education in Portugal show comparatively little involvement in some types of leadership activities<sup>114</sup>. For instance, only 5 per cent reported observing instruction in the classroom in 2013, by far the lowest percentage among OECD and partner countries. Some 61 per cent of school principals had worked on a development plan for the school, compared to 77 per cent on average across OECD countries. Moreover, 23 per cent of lower secondary principals in Portugal did not participate in any professional development activities in 2013, compared to the OECD average of 9 per cent.”

## RECOMMENDATION

**219.** Implement the ambitious agenda of Decree Law No. 55/2018 by preparing and delivering appropriate training for teachers with the aim to enhance their knowledge, skills and attitudes; and invest in the continuance of the reform plans to allow for both continuity and flexibility, ensuring efficient use of the resources, skills training and better and long-term results for children.

**220.** Several documents have been produced by the Directorate-General for Education, which reflect some of the values and principles enshrined in human rights treaties, although the Convention is not taken into account, such as in the National Education Strategy for Citizenship (2018)<sup>115</sup> that reintroduced citizenship education into the curriculum.

**221.** No data is available on child rights education in the curriculum, teacher education or teacher qualifications. Children’s rights are human rights. Consequently, child rights education should be a specific component of human rights education<sup>116</sup> and teacher training.

## RECOMMENDATION

**222.** Ensure the citizenship education curricula is in line with the Convention and include specific reference to the implementation of its provisions; and develop training for teachers to ensure that they have the skills to implement it.

# 8. SPECIAL PROTECTION MEASURES

## ASYLUM-SEEKING AND REFUGEE CHILDREN

**223.** In 2014, the Committee made a number of recommendations to the State to improve the reception, asylum procedures and life conditions of asylum-seeking and refugee children.

**224.** Article 22 obliges State to take appropriate measures to ensure that a child who is seeking refugee status (...), whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in Convention.

**225.** Portugal recognises its obligations to admit refugees and process asylum requests and the Government is having a leading role in respecting and promoting the rights of every person in the framework of the European Agenda for Migration Relocation programme, as well as the Resettlement Programme. In November 2017, Portugal had received 1 507 refugees of its commitment of 2 951<sup>117</sup>. Overall, there has been an increase in the number of requests for international protection from 1 469 in 2016 to 1 750 requests in 2017<sup>118</sup>. As of 2017, 455 children and 28 unaccompanied children applied for asylum in Portugal<sup>119</sup>.

**226.** Despite the commitments, there are some concerns over the rights of children and unaccompanied children seeking asylum in Portugal.

**227. Detention of children:** According to the AIDA Report (2017)<sup>120</sup>, “a very significant percentage of vulnerable applicants such as unaccompanied children, families with children and pregnant women were detained and subject to the border procedure in 2017.” Therefore, unaccompanied or separated children (UASC) and families with children seeking asylum waited long periods at the border, before officially entering national territory and being transferred to the specific reception centers. Officials have stated there is strong suspicion of child trafficking but the lack of data in this area makes it difficult to gauge the prevalence and seriousness of this situation.

**228.** In 2018, the Government has adopted a seven-day limit for the detention of all asylum-seeking children at the border. In addition, Government ordered an internal review to assess progress implementing the Ombudsperson’s 2017 recommendations on the Temporary Installation Centre at the airport (airport detention facility - CIT) and have given maximum priority to the construction of a new CIT with an area for families and for children.

**229. Reception system:** Concerns over the capacity of centers to care for all asylum seekers, including UASC and families with children, were also raised. For instance, in early 2017, a Residential Care Home responsible for the reception and integration of a great number of asylum seekers in the country, managed by the Portuguese Refugee Council (CPR)<sup>121</sup>, reached its maximum capacity. CPR also shared that a reception centre for adults, families with children, and UASC is to be open soon but the reception capacity will remain a concern due to increased arrivals and funding gaps.

**230.** The lack of comprehensive framework and procedures is an issue of concern. The best interests of the child should be the paramount consideration in all proceedings and decisions brought by the State on asylum-seeking and refugee children and the necessary procedures and practices should be in line with national and international obligations. Of particular note is the lack of appropriate procedures to determine and assess the best interests of the child and of qualified professionals to conduct age assessments<sup>122</sup>. The lack of clarity in this area may hinder a child’s right to protection.

## RECOMMENDATIONS

**231. Step up its efforts to end the detention of refugee and migrant children by creating practical alternatives and keeping families together;**

**232. Ensure adequate capacity, resources and procedures in reception of asylum seekers, giving due consideration to the needs of accompanied**

# 8. SPECIAL PROTECTION MEASURES

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and unaccompanied children (UASC); including conduct holistic and multidisciplinary methodology age assessments in line with international standards;

233. Continue efforts to maintain and strengthen refugee status determination, including by engaging in regular training, capacity building and quality assurance initiatives regarding the treatment of UASC in the asylum procedure.

# END NOTES

- <sup>1</sup> Assembleia da República, Grupo de Trabalho – Iniciativas Legislativas sobre Direitos da Criança (2018, Abril 11). Audição Parlamentar N° 1-GT-ILDC-XIII.
- <sup>2</sup> Comissão de Assuntos Constitucionais, Direitos, Liberdades e Garantias (2018, Julho, 11). Audição da Provedora de Justiça – Relatório anual de atividades relativo ao ano de 2017.
- <sup>3</sup> UN Committee on the Rights of the Child (CRC), *Concluding observations on the third and fourth periodic reports of Portugal*, 31 January 2014, CRC/C/PRT/CO/3-4.
- <sup>4</sup> Mendes, M., Magano, O. & Candeias, P. (2014). *Estudo nacional sobre as comunidades ciganas*. Alto Comissariado para as Migrações, Lisboa, p.4.
- <sup>5</sup> Direção-Geral de Estatísticas da Educação e Ciência (2018). *Perfil Escolar da Comunidade Cigana*.
- <sup>6</sup> Comissão Nacional de Promoção dos Direitos e Proteção das Crianças e Jovens (2016). *Quadro de Avaliação e Responsabilização – 2016*.
- <sup>7</sup> Comissão Nacional de Promoção dos Direitos e Proteção das Crianças e Jovens. (2017). *Plano de Ação 2017*.
- <sup>8</sup> Comissão Nacional de Promoção dos Direitos e Proteção das Crianças. (2017). *Quadro de Avaliação e Responsabilização – 2017*.
- <sup>9</sup> Centro de Estudos para a Intervenção Social (2017). *Formação em Direitos das Crianças – A Convenção em Prática*.
- <sup>10</sup> Areas of profession: nursing, medicine, psychology, social work, sociology, childhood education, special education and sociocultural animation.
- <sup>11</sup> Sousa, R. *et al.* *Consentimento informado: Visão e perspetivas de adolescentes, pais e profissionais. Estudo multicêntrico em seis Hospitais* (not published yet).
- <sup>12</sup> Organization for the Economic Co-operation and Development (2014). *Education Policy Outlook: Portugal*.
- <sup>13</sup> Rodrigues, A. (2016). *A audição da criança: Desenho, implementação e avaliação de uma formação para Magistrados Portugueses* (Tese de mestrado do Mestrado de Psicologia Comunitária e Proteção de Menores). Disponível no Repositório ISCTE-IUL.
- <sup>14</sup> Agulhas, R. & Alexandre, J. (2017). *Audição da Criança. Guia de Boas Práticas*. Lisboa: Conselho Regional de Lisboa da Ordem dos Advogados.
- <sup>15</sup> For instance, the “*Good Practice Guide on Listening to Children in court proceedings*” - Agulhas, R. & Alexandre, J. (2017). Audição da Criança - Guia de Boas Práticas, <https://crlisboa.org/2017/imagens/Audicao-Crianca-Guia-Boas-Praticas.pdf>
- <sup>16</sup> Comissão Nacional de Promoção dos Direitos e Proteção das Crianças e Jovens. (2017). *Plano de Ação 2017*.
- <sup>17</sup> Mendes, M., Magano, O. & Candeias, P. (2014). *Estudo nacional sobre as comunidades ciganas*. Alto Comissariado para as Migrações, Lisboa.
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# APPENDIX 1: LIST OF RECOMMENDATIONS

## **General measures of implementation: Legislation**

1. Carry out an analysis of the impact of legislation in the advancement of the situation of children in the country, ensuring a rights-based and accountable system for all children is in place.

## **Comprehensive policy and strategy**

2. Adopt a comprehensive National Strategy, in accordance to a rights-based approach to planning and in line with the Convention; and accompanied by adequately resourced and integrated action plans at national and local levels, with specific time-bound and measurable goals and targets to effectively monitor progress in the implementation of child's rights throughout the country.

## **Coordination and independent monitoring**

3. Undertake structural changes to ensure a national structure with independence and impartiality is responsible for the promotion and protection of the rights of all children living in Portugal, namely:
  - a) with adequate resources and a clear and global mandate based on the CRC, covering the civil, political, economic, social and cultural rights of all children without discrimination;
  - b) that encourage and support public entities to develop and adopt legislation and policies that promote children's rights;
  - c) and highlight and investigate issues relating to children's rights and monitor the fulfilment of the rights enshrined in the Convention, including by assessing public policies and auditing the performance of relevant institutions.
4. Promote the existing complaints mechanisms available to children, increasing the number of children that are aware of and have access to them.

## **Allocation of resources**

5. Step up its efforts and investment against child poverty or in disadvantaged or vulnerable situations and enhance its efforts to adopt policies in line with the principles of child-friendly budgeting, allowing for the collection of disaggregated information concerning public policies on the implementation of the rights of the child.

## **Data collection**

6. Create a comprehensive and integrated data collection system, based on an accurate assessment of the reality, guided by the best interests of the child and covering the entire period of childhood in line with the Convention; and that includes rights-based output, outcome and impact indicators. The data collected would be important to improve national regulatory framework and inform the planning of appropriate and evidence-based programmes and services for children.

## **Training**

7. Ensure training courses for professionals working with children are in line with the Convention and adopt a practical approach that guide professionals on how to apply its provisions.

## **General Principles: Non-discrimination**

8. Undertake policy changes and adapt programmes addressed to eliminate all forms of discrimination among children, including using the findings from recent studies on the Roma communities, racial, gender, sexual orientation or identity based discrimination, to ensure that every child has the same right to develop his/her potential without discrimination.
9. Implement policies and strategies to ensure access to housing and water and sanitation of every child and their families, by increasing investments in social and affordable housing for low-income families and other families with children who are particularly vulnerable, such as the Roma community.

## **Best interests of the child**

10. Regulate criteria on how to assess and determine the best interests of the child in justice, healthcare, child protection, asylum procedures, education and other areas of relevance to children's well-being; and provide training materials for professionals of different categories on how to assess and determine the best interests of the child.

## **Right to Life, Survival and Development**

11. Adopt a comprehensive framework on child safety and protection from unintentional injuries, including legislative provisions and an integrated action plan.

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12. Promote and support healthy lifestyles for all children and reduce inequalities in child well-being, using available data, such as from WHO/HBSC and UNICEF Reports, to analyse and address trends related to children's well-being and development.

## **Respect for the views of the child**

13. Enhance training for professionals to ensure high standards in child hearings and establish child-friendly facilities to hear children, as well as, assess the methodologies used to ensure that children do not suffer re-victimisation.
14. Ensure that every child has access to child-friendly materials, is informed about the treatment and procedures and is able to give his/her consent, according to the age and maturity.
15. Strengthen its efforts to increase child and youth participation opportunities in school to promote children's skills and knowledge and build more accountable institutions, in line with the Convention.

## **Civil rights and freedoms: Nationality**

16. Adequately and promptly implement Organic Law No. 2/2018 and Law No. 26/2018 provisions, ensuring that child's right to protection and nationality are guaranteed.

## **Preservation of identity**

17. Continue its efforts to ensure the needs of transgender and intersex children are met and decisions are made in the best interests of the child, ensuring adequate procedures are in place for the standards and provisions to be respected (Convention, Article 3).

## **Protection of privacy and protection of image**

18. Intensify its efforts to regulate children's participation in TV programmes and works closely with the media to respect the privacy of children and their best interests in all TV shows.

## **Violence against children: Corporal punishment**

19. Ban corporal punishment in its all forms, by advocating with the general public and educating parents about the unacceptability of corporal punishment and the importance of positive, non-violent alternative forms of discipline.

## **Abuse and neglect**

20. Develop an integrated and rigorous decision making process to assess the best interests of the child in all cases, keeping every child protected from all forms of violence, abuse or neglect, in line with the Convention and General Comment No. 14, including:
  - a) ensure that all professionals and staff working with and for children are provided with the needed training, supervision and background checks;
  - b) undertake further measures to develop a systematic and comprehensive collection and analysis of child rights based indicators, for use in the monitoring and assessment of the intervention for children in danger or at risk.
21. Continue to invest in training and support for professionals and stakeholders to promote compliance with the legal framework on all forms of violence against children, including domestic violence, and the National Strategy on Equality and Non-discrimination by conducting periodic and independent reviews of the implementation to fulfil its legal obligations to children.
22. Strengthen legal system to protect the rights of every child and intensify efforts to end all forms of harmful practices, including female genital mutilation/cutting and child marriage.

## **Family environment and alternative care: Family environment**

23. Adopt a multidimensional rights-based strategy to end poverty, assessing the impact of social transfers on poverty alleviation and investing in public services accordingly.

## **Children deprived of a family environment**

24. Develop and implement a national strategy to ensure quality and more effective responses to children's foster and residential care, with priorities, goals, objectives and strategies for an extended period of time; and in particular:
  - a) define national standards for foster care;
  - b) invest in child and family support programmes aimed at children at risk of placement in care, within the child's timeframe;

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- c) ensure that every child in care has adequate support and is heard in every decision that affects him/her.

## **Adoption**

25. Enhance the support provided to adoptive parents during and after adoption, ensuring more effective and efficient procedures and the best interests of the child, in line with the Convention.

## **Disability, basic health and welfare: Children with disabilities**

26. Ensure inclusive education for all, providing adequate resources needed to ensure a prompt and appropriate implementation of Decree Law No. 54/2018;
27. Adopt a National Strategy for People with Disabilities, with a special focus on children, to ensure a comprehensive and integrated approach to service delivery and a systematic collection of data is undertaken to identify key issues that should be addressed in future policies.

## **Health and health services**

28. Undertake a review to assess the impact to date of the reforms on children's health, producing Annual Reports on the National Child and Youth Health Programme, with child-centered quality indicators; and take other steps necessary to address the unacceptable inequalities in health services of the most disadvantaged and most in need children.
29. Adopt comprehensive policies on food insecurity and obesity and continue the efforts on physical activity and healthy eating in schools.
30. Continue its efforts to implement the national infant and young child feeding policies, and to facilitate current strategic public and private partnerships for improvement of infant and young child nutrition, such as the Baby Friendly Hospitals Initiative.

## **Mental health**

31. Ensure the National Programme on Mental Health includes a comprehensive and coherent framework for every child to have access to mental health services and prevention programmes, including a

separate section on children under 18 years, with its own set of guiding principles, such as the best interests of the child and the voice of the child.

32. Adequately resource mental health services to ensure children and young people receive timely and child-appropriate care and provide training to professionals working in child protection services so every child is supported to reach his/her full potential.

## **Standard of living**

33. Adopt a multidimensional rights-based strategy to end poverty, with a specific focus on children, investing in housing, transports and mobility, childcare, education and health.

## **Education, leisure and cultural activities: Education**

34. Continue investing in the universality of preschool education, ensuring that all children have access to quality programmes.
35. Implement the ambitious agenda of Decree Law No. 55/2018 by preparing and delivering appropriate training for teachers with the aim to enhance their knowledge, skills and attitudes; and invest in the continuance of the reform plans to allow for both continuity and flexibility, ensuring efficient use of the resources, skills training and better and long-term results for children.
36. Ensure the citizenship education curricula is in line with the Convention and include specific reference to the implementation of its provisions; and develop training for teachers to ensure that they have the skills to implement it.

## **Special protection measures: Asylum-seeking and refugee children**

37. Step up its efforts to end the detention of refugee and migrant children by creating practical alternatives and keeping families together;
38. Ensure adequate capacity, resources and procedures in reception of asylum seekers, giving due consideration to the needs of accompanied and unaccompanied children (UASC); including conduct holistic and multidisciplinary methodology age assessments in line with international standards;



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39. Continue efforts to maintain and strengthen refugee status determination, including by engaging in regular training, capacity building, and quality assurance initiatives regarding the treatment of UASC in the asylum procedure.

