



With the financial support of the Prevention
of and Fight against Crime Programme European
Commission – Directorate – General Home Affairs

IMPACT

Improving & Monitoring Protection Systems
Against Child Trafficking and Exploitation

PORTUGAL
National Report





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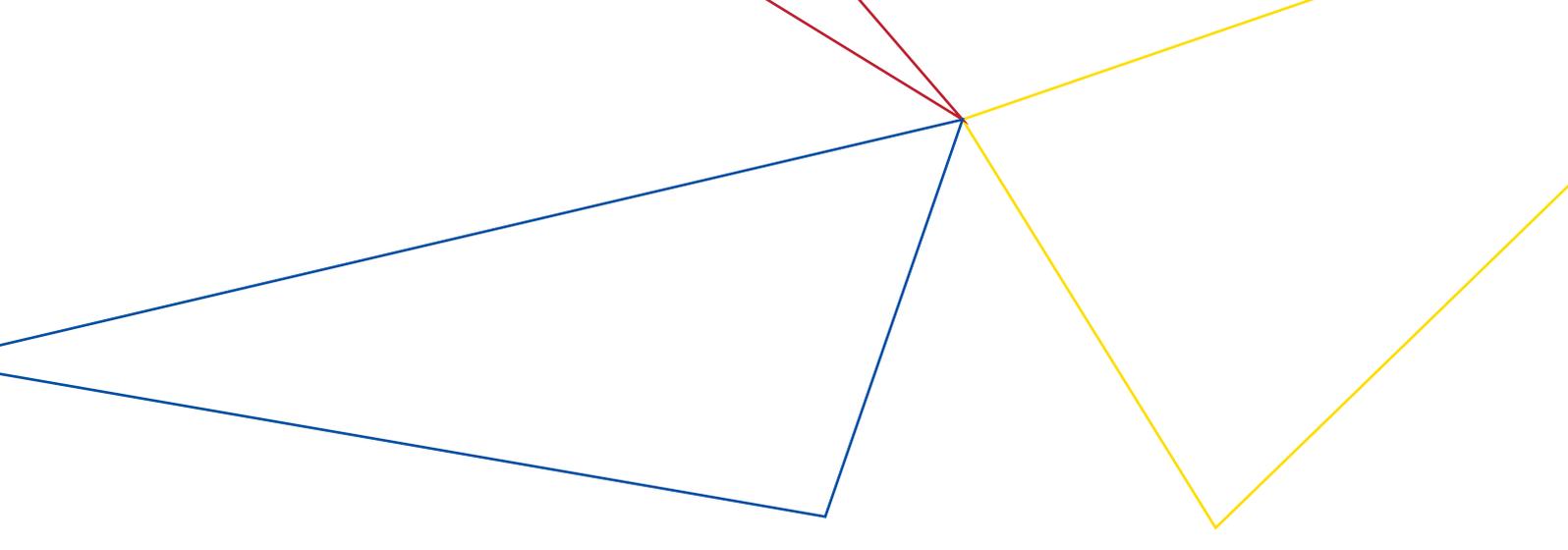
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JANUARY 2014

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The project 'Improving Monitoring and Protection Systems Against Child Trafficking and Exploitation' (IMPACT) was implemented by four partner organisations in Cyprus, Greece, Italy and Portugal between September 2012 and February 2014. The project partners are the Centre for the Advancement of Research & Development in Educational Technology (CARDET) in Cyprus, the Family and Childcare Centre (KMOP) in Greece, Defence for Children International (DCI) in Italy, and the Centre for Social Intervention Studies (CESIS) in Portugal. KMOP was in charge of the project management whereas DCI Italy developed and coordinated the research.

This report was written by Daja Wenke, Research Coordinator, in close cooperation and consultation with Pippo Costella, Research Adviser, and the IMPACT national teams. It builds significantly on the national IMPACT reports and integrates parts of the texts developed by the research teams in Cyprus, Greece, Italy and Portugal. The national teams for IMPACT were composed as follows:

CYPRUS

CARDET - Centre for the Advancement of Research & Development in Educational Technology
Sotiris Themistokleous, National Coordinator
Chrysovalanti Charalambous, National Researcher
Despina Cochliou, National Consultant
Charalambos Vrasidas, National Consultant

GREECE

KMOP - Family and Childcare Centre
Antonia Torrens, Project Manager
Maria Markaki, National Coordinator and Researcher
Georgia Avatangelou, Assistant Researcher

ITALY

DCI - Defence for Children International – Italy
Daja Wenke, Transnational Research Coordinator
Pippo Costella, Research Advisor and National Trainer
Annalisa Furia, National Coordinator
Mariapaola Lanti, National Researcher
Laura Squintani, Assistant Researcher
Gabriella Gallizia, Webmaster
Ana Isabel Fernandes Guerreiro: Finalisation of the Italian Report
Patrizia Testai: Editing and Translation

PORTUGAL

CESIS - Centro de Estudos para a Intervenção Social
Pedro Perista, National Coordinator
Ana Brázia, National Researcher

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EXECUTIVE SUMMARY

The IMPACT project – Improving Monitoring and Protection Systems Against Child Trafficking and Exploitation – was implemented through a partnership cooperation of four non-governmental organisations in Cyprus, Greece, Italy and Portugal. It was conceived as part of a longer-term strategy for studying and informing the development of innovative approaches to prevent the exploitation of children, from a perspective focused on the rights and well-being of the child.

IMPACT builds on a method developed for GATE¹ ('Guardians Against Child Trafficking and Exploitation') and informs RESILAND² ('Participation, capacities and resilience of children on the move against trafficking and exploitation'). These projects are implemented in continuity by a core group of partner organisations with funding from the Prevention of and Fight Against Crime (ISEC) Programme of the European Commission – Directorate-General Home Affairs.³

There is a significant body of research on child exploitation and trafficking in Europe, including in the four countries studied by IMPACT. The study process developed for IMPACT builds upon and complements this knowledge base and reflects upon it from a specific angle. The focus is shifted from the situation analysis of child trafficking and a review of anti-trafficking responses to an understanding of the structural factors that contribute to creating an environment in which the exploitation of children is made possible.

In the IMPACT countries and throughout Europe, national governments have developed specific anti-trafficking responses, including targeted laws, policies and institutions. In the short-term, these measures have shown success by achieving the identification and assistance of individual victims and, in some cases, the successful prosecution of perpetrators. In the longer term, the struggle to reduce child trafficking continues unabated. Policy makers and practitioners continue struggling to develop methods for the identification of child victims and children at risk, they continue struggling to make children gain trust in national authorities, to see them accept assistance and testify against perpetrators, and they continue facing myriads of dilemmas and unresolved controversial issues.

There is sufficient evidence to identify the shortcomings of anti-trafficking responses as they are currently planned and implemented in Europe. Research reports keep reiterating findings that point to the weak capability of governments to intercept the disempowering cycle of vulnerability, exploitation and trafficking. This evidence is however not yet capitalised on to guide an effective strategy for change.

Reforms are pursued mainly in terms of law reform, creating institutions, defining mandates and offering support services. Yet, there are concerns that these reforms continue lagging behind the dynamics of child exploitation and achieve only marginal success. Innovative approaches embracing the lessons learned are rare. The underlying structural factors that create vulnerability to exploitation and trafficking are well known but little progress is seen in redressing them in an effective and sustainable way.

Addressing structural vulnerabilities offers however invaluable opportunities for prevention. It would be cost-efficient to invest in longer-term strategies that prevent exploitation and scale up the protection and empowerment of children. Reflecting about a new perspective on prevention is not only timely in the times of the financial and economic crisis in Europe, it is also a human rights imperative.

1 See: GATE (2011), *Guardians Against Child Trafficking and Exploitation*, available at: <http://gate-eu.org/>.

2 EC-funded project, 2013-2015. See: RESILAND - *Participation, Capacities and Resilience of Children on the Move Against Trafficking and Exploitation*, available at: www.resiland.org.

3 See: European Commission, Directorate-General Home Affairs, *Prevention of and Fight Against Crime (ISEC)*, available at: http://ec.europa.eu/dgs/home-affairs/financing/fundings/security-and-safeguarding-liberties/prevention-of-and-fight-against-crime/index_en.htm (accessed December 2013).

Against this background, IMPACT proposes to re-focus the attention of the anti-trafficking debate. From measuring progress in law reform, action plans and programmes, specialised shelters, victims assisted, and successful prosecutions, the proposal is to move towards measuring also the capability of the public administrations to implement their national laws and policies into practice. Methods and approaches are needed to measure not only the capability of administrations to implement but also the progress they make in advancing their capability in this regard.

IMPACT builds on the assumption that strengthening the implementation of the UN Convention on the Rights of the Child (hereafter CRC or the Convention) into practice will contribute to reducing risks of exploitation and trafficking. There are currently no empirical studies to prove the direct causality between a more effective implementation of the CRC and a reduced prevalence of child exploitation and trafficking. Nevertheless, an overwhelming body of circumstantial evidence indicates that children who are exposed to exploitation have often previously experienced multiple infringements against their rights. Based on this evidence, the hypothesis is that children are better protected from exploitation when their rights to a safe and healthy development are safeguarded in practice, in line with international standards.

In order to gather evidence and test out the guiding hypothesis of IMPACT, the project was rolled-out as a multi-step study process in COUNTRY and in the other three IMPACT countries. Each partner organisation carried out a national study guided by a common research protocol. The national studies combined a desk review of relevant literature, laws and policies with primary data collection through key informant interviews. National and transnational consultations were held with representatives from national and local authorities, social workers and service providers, anti-trafficking institutions, representatives from independent institutions, NGOs and other experts. The consultations offered a platform at which the IMPACT approach was presented and discussed. The participants informed the national and transnational research process with their contributions, strongly encouraging the IMPACT approach.

This report presents the findings and analysis that resulted from the national IMPACT study in Portugal.⁴ The report reviews national laws, policies and practice in a wide range of child rights sectors. The focus of analysis aimed to understand the capability of the public administrations to plan and implement child rights policy in a way that is inclusive, appropriate, effective and compliant with international standards. The Portuguese national report pinpoints structural, administrative, budgetary and practical challenges of implementation. These challenges were identified to varying degrees in each of the four countries studied by IMPACT. Paired with elements of weak governance, fragility, and the harmful impact of the financial and economic crisis, they have implications for the risks of children to be exposed to exploitation and trafficking.

The four national reports developed in the context of IMPACT provide the basis upon which the IMPACT transnational analysis was developed. The transnational analysis assesses, through a review of selected examples from each of the countries, if and how the national administrations are capable to implement the Convention and other relevant international and regional standards in a way that prevents exploitation and trafficking, protects and empowers children at risk and child victims.

⁴ The national IMPACT reports are available at: www.impact-eu.org.

The IMPACT report from Portugal starts by stressing that norms and principles of general or common international law are an integral part of Portuguese law. Norms contained in regularly ratified or approved international conventions are in force at the domestic level provided that they have been published in the Official Gazette and while they are binding upon Portugal at the international level.

Within this scope, the Convention on the Rights of the Child (CRC) has the force of law in Portugal, and may be directly invoked before the courts and applied by national authorities. Moreover, should the Convention conflict with national law, it takes precedence unless national law is more favourable to the rights of the child.

Despite this, the Committee on the Rights of the Child expressed its concern with the lack of a comprehensive national strategy on the implementation of the Convention and thus recommended Portugal to develop a comprehensive national strategy for the implementation of the Convention, as well as to set priorities and define a time frame for implementation and to define and allocate the human, financial and technical resources that would be necessary for the strategy's implementation which, notwithstanding different initiatives and measures still remains largely to be accomplished.

As a response, in 2008, the former government created the INIA – National Initiative for Childhood and Adolescence 2009-2010, an initiative defining the national strategies for the promotion of rights and the protection of children and young people in Portugal. INIA was stated to be based on the CRC and its respective guiding principles and should guarantee the respect for the universality of children's rights, based on a participatory method involving all areas and public sectors, civil society, citizens in general, children, adolescents, parents and other caregivers.

However, the INIA 2009-2010 had no continuity. As such, the overall approach and governance in this area seems to be characterised by an ambiguous evolution where different initiatives regarding childhood have been created with wide understanding that all the right words are in the right places. Conversely, strategic continuity in addressing children's issues has been missing, rather replaced by the production of sequential plans and establishment of commissions from which the creation, in May 2012, of a working group with the objective of laying the foundations for a Child Agenda (Agenda da Criança) is the latest development.

The working group's mission was to evaluate the operational, functional and legal mechanisms aiming to guarantee the best interests of the child and to suggest initiatives to remove obstacles to the child's integral development and wellbeing.

In June 2013, the results of the work developed were summarised, assuming that "in spite of the efforts, there are still serious difficulties in the concretisation of several segments of the above-mentioned system [system of protection of children and young people in peril], which is still weakening child protection" (Resolution of the Council of Ministers 37/2013: Unfortunately, the text of the resolution does not provide any clarification regarding which are the segments lacking concretisation.

Despite the overarching objectives of the Child Agenda working group, the suggestions issued focus exclusively on changes regarding the child protection system and the adoption regime. Suggestions included the gradual evolution of the current framework to "a more integrated system, with improvements regarding its services (...) and integrating the existing means that may better enhance the answers and distribute them, in a more balanced way, to the most urgent needs."

In any case, three basic principles of the Convention are, to a higher or lesser degree, reflected, per se, in Portuguese law. The Portuguese Constitution proclaims the principle of equality and the right of every individual to freely express and publicise his thoughts. The right of the child to be heard and to participate,

in accordance with his/her age and understanding, takes a special importance in the Civil Code, in the Civil Sponsoring Law and in the Law of Protection of Children and Youth in Peril, which is also specifically addressing the principle of the best interests of the child.

Additionally, specific measures and programmes are also contributing to upholding these principles such as the second National Action Plan for Immigrant Integration 2010-2013, entailing several measures which are specifically directed to children and the “Mobile School” programme which, despite positive evaluations regarding its potential regarding the protection of the rights of children and, in particular, of Roma children has been discontinued.

Another example is the Programme “Escolhas”, which is very positively evaluated and has been internationally acknowledged, receiving recognition as a best practice in several occasions though still not reaching full potential in what regards the involvement of older children and those belonging to the Roma/Gypsy population.

Another concrete element of concern regards the fact that despite all existing legislation, programmes and measures, there is evidence that this is not enough, per se, for guaranteeing without doubts that implementation is inclusive, appropriate and effective. There is a widespread feeling that ‘one thing is laws, another thing is practices’ and that a gap between the two remains largely to be bridged.

This leads, for instance that, in practice, the implementation of the right of the child to be heard is still revealing flaws. Even if there is the feeling that improvements have been managed, leading to concrete results in terms of effective implementation, there is also the opinion that, in some cases, the process is primarily a formality.

Another aspect that needs to be considered is the framing of one of the guiding principles of intervention in terms of promotion and protection – the prevalence of the family – within a comprehensive analysis of the situations as it is not always corresponding to the child’s best interest.

There is also the feeling that a coordinated comprehensive intervention of services is still to be fully achieved. Policies are deemed to be still very scattered. Different ministries have been assigned roles for policy planning regarding children in their specific areas. For instance, child welfare and child protection are under the specific responsibility of the Ministry of Solidarity, Employment and Social Security. The Ministry of Justice has specific responsibilities regarding children who are perpetrators or victims of crime while migrations, asylum and trafficking are under the responsibility of the Ministry of Internal Administration.

Another example is that the Observatory on trafficking in human beings runs under the Ministry of Internal Administration while the National Rapporteur on trafficking in human beings and the entity coordinating the II National Plan Against the Trafficking in Human Beings operate under the Presidency of the Council of Ministers.

Despite the identified difficulties of coordinated work on a daily basis, the situation is reported as an on-going process of improvement. There are examples of collaborative platforms translated, for instance, in the National and local commissions for the Protection of Children and Youth in Peril and in the Observatory on trafficking in human beings. Also other formal – such as e.g. the Protocol on the Creation of a National Trafficking Victims Support and Protection Network (RAPVT) – or informal partnerships are identified as providing positive inputs to this respect.

Finally, also the current financial and economic crisis is impacting on the rights of children. The Commissioner for Human Rights of the Council of Europe concluded for the negative impact of fiscal austerity measures on the enjoyment of human rights, considering that these have disproportionately affected the most

vulnerable social groups, especially children, the elderly and Roma (Muižnieks, 2012).

The Portuguese Constitution is consecrating the protection of children as a duty of society and of the State, aiming to their full development. This has direct and immediate implications, first of all in terms of the IMPACT dimension of Survival.

Childcare, healthcare and social security for children are addressed by different plans and measures. The Immediate Intervention Plan, the DOM Plan and the Plan SERE+, for instance, are important contributions for the definition of compliant, inclusive, appropriate and effective childcare.

In the field of healthcare, article 64 of the Portuguese Constitution is specifically entitling all individuals to health protection, to be concretised through the National Health System. Additionally, the access of undocumented immigrants is specifically mentioned by law which is also making clear that victims of trafficking enjoy the same rights of access to healthcare as Portuguese nationals. Regarding children in particular, the Health Action for Children and Youngsters at Risk and the National School Health Programme are examples of further care to be provided to children, especially to those most vulnerable.

The Programme of Social Emergency and the Programme “Ser Criança” are also examples of measures where children are specifically addressed within the context of social security protection.

However, despite positive and specific elements of protection of the Portuguese framework, signs of flaws and frailties in implementation can be detected. In spite of encouraging improvements in the last few years, situations of children in childcare without any protective measures and/or without having their legal situation in order still persist. Additionally, many children in care do have a defined life project and these are most of the times, expressing care planning options rather than taking into account the overarching aspects of the child’s life.

Other aspects of concern regard the prolonged length of stay in institutions of a high number of children and young people and the specific situation of children that despite their specific needs, remains out of the childcare system. This is particularly the case of those living in the street.

Regarding the specific situations of unaccompanied child asylum-seekers/refugees and child victims of trafficking, the last few years have also witnessed important improvements. In 2012, a temporary reception centre for refugee and asylum-seeking children was settled, avoiding the lingering of the previous situation when they were referred to the Refugee Admission Centre, where they used specific premises.

A specialised centre providing accommodation and assistance to women victims of trafficking and, where applicable, their under-age children was set-up in 2008 and, in 2013, a similar centre for male victims was also established.

However, because of the centres’ limited capacity, some adult victims of trafficking are accommodated at other centres managed by NGOs, mostly shelters for victims of domestic or other kinds of violence, which are not necessarily appropriate to the specific needs of victims of trafficking and lack the requisite level of security.

This is also the case regarding unaccompanied children victims of trafficking who, following the approach used by the system that a trafficked child equals a child in peril, are usually accommodated in childcare facilities.

The present situation of economic and financial crisis experienced by Portugal is having concrete repercussions in what the IMPACT dimension of survival is concerned. The report of the Commissioner for

Human Rights of the Council of Europe (Muižnieks, 2012) shares a concern regarding the way how, in a context of budget cuts, the full functioning of first line entities and of the Commissions for the Protection of Children and Young People will be guaranteed, particularly as the number of cases has peaked in 2012.

The report also notes the Commissioner's concern that other factors may have had a particularly negative impact on children's lives, among which the increase in prices of health care, stressing that the packages of austerity measures and the considerable cuts in childcare benefits have impacted significantly on the income of many families with children, increasing the risk of children being exposed to poverty.

This concern is shared by Eurochild for whom austerity measures in Portugal are limiting the access of children and families to health, education and other care services, also limiting their full participation in family and social life.

The apprehension of international entities is backed-up by figures of the Ombudsperson's Office that reported to have received an increasing number of complaints related to social protection issues in 2011 and 2012, many of which regarding the introduction of stricter accessibility conditions for child benefits.

Within the framework of the IMPACT dimension of Development, the last few years witnessed relevant changes in terms of general and vocational education. From 2008, with the launch of the Programme for Support with Extending the Pre-School Education Network there was an increase of the number of places for children between the ages of three and five. However, the State only compromises to guarantee universality from the age of five onwards. Overall, this network is insufficient. As such, the facilities of the private sector run by entities recognised as private entities of social solidarity have State subvention and the costs for families are calculated according to household income.

Compulsory schooling is universal and free from the age of 6. Since 2012, it was extended, now covering the entire childhood, i.e. up till the age of 18. Additionally, the Programme 'Sports at school' provides pupils from the 5th to the 12th grade the opportunity to engage in physical and sports activities. In addition, the Youth Institute has a programme for the occupation of free time of youngsters aged 15 to 25.

However, education felt the impacts of the crisis and of fiscal austerity measures. The report of the Commissioner for Human Rights of the Council of Europe stresses that the cuts in child benefits appear to have had a particularly negative impact on education. In addition, the tightening of the budgets both of central and local authorities has impacted on education as it results in less funds being available to support public schools. Sports activities also receive insufficient financial support and the number of children taking part in sports activities is low in comparison to other European countries.

Child victims of human trafficking or of facilitation of undocumented immigration are entitled to accede the Portuguese educational system in the same conditions as national citizens. Also undocumented children and unaccompanied refugee and asylum-seeking children have similar access to education/training as national children and documented immigrant children. Moreover, a specific programme such as the "SEF goes to school" is an important way of enforcing the access to education and training.

As access to education is granted also to undocumented children, they also have access to the "Sports at school" Programme though not to the programmes of the Youth Institute, as documentation is required for registering.

Also the access to education/training is not always achieved properly in practice, despite all the provisions in law, and even if it is recognised that there is a significant number of educational programmes to which it is possible to resort, such as the educational territories of priority intervention (TEIP), the apprenticeship courses or the education and training courses. Another important programme is the Integrated Education

and Training Programme (PIEF), now included within the Programme for Inclusion and Citizenship (PIEC) and condensing an already consolidated experience initiated with the Programme for the Prevention and Elimination of Child Labour (PETI). However, in many cases, the criteria and conditionalities inherent to the programmes of education and training end up preventing its take-up by the most vulnerable children.

PIEC is directly connected to the fight against child labour, to which the country is bound, namely through the ratification of ILO's Convention 182 on the worst forms of child labour and the Labour Code. The situations where working is forbidden are clear and the situations where it is allowed even have a specific follow-up. Employers must assess specific labour conditions and must distinguish, in written, what children can or cannot do, as well as an assessment of the risks for health.

In approximately a decade, since 1999 and the collective complaint brought against Portugal before the European Committee of Social Rights, Portugal stopped being a country that was internationally accused for having child labour and for not acting against it, to become an example of good practice and of a country that was, in fact, able to solve this issue. A specific positive sign was the establishment of a working group aiming to produce two 'reporting/flagging cards' for victims of THB, one of which intended for labour inspectors.

However, in 2011, the European Committee of Social Rights reported a few remaining problems concerning child labour in Portugal. Additionally, there seem to be few proactive inspections making it possible for labour inspectors to report victims of trafficking, and only a limited number of labour inspectors have been specifically trained to deal with trafficking.

At the same time, there is concern that the economic and financial crisis, growing unemployment and the shrinking sources of family incomes due to the austerity measures may have led families to make use of child labour once again. In a context already marked by high rates of early drop-out from school, particular vigilance is therefore required from the authorities to monitor possible developments in this field.

Within the legislative framework regulating the IMPACT dimension of Participation, the set of laws orienting the fields of migration, asylum and residence are deemed to be compliant with international standards and considered, by relevant entities, to be addressing properly their respective scopes.

The new law regulating the entrance, permanence, exit and removal of non-national citizens came into force in the end of 2012 harmonised the rules and procedures to be applied to the returning of undocumented third-country nationals by implementing Directive 2008/115/EC and includes specific provisions regarding the situation of unaccompanied children and the situation of victims of human trafficking.

The latest Nationality Law reinforced the principle of "ius soli", as a criterion for the acquisition of Portuguese nationality, though "ius sanguinis" is still privileged. Namely, the law does not automatically grant nationality to all those who are born in Portugal, even if birth registration is mandatory for all people born in Portugal, even non-nationals.

Birth registration operates within the context of the project "Nascer Cidadão", established namely in view of fulfilling the fundamental right of the child to have a name and aiming at promoting the registration of children immediately after birth in three dimensions: registry office, health services and social security services.

Portugal is not amongst the countries with the highest figures regarding asylum request and, more specifically, asylum request by (unaccompanied) children. In 2012, Portugal received 299 applications, 54 of which regarding children (31 unaccompanied children). However, in the first nine months of 2013, these figures were already overpassed.

The Asylum Law, establishing the conditions and procedures for granting asylum or subsidiary protection or refugee status contain norms which are closely connected with the protection of child rights and is considered by governmental and non-governmental as complying and being effectively implemented, in line with international obligations.

Despite these positive notes, there is concern e.g. with the reports that no specific refugee status determination procedure for child asylum-seekers is provided and that children do not always have access to psychological care when needed.

Another issue regards the fact that, even if legislation guarantees all children, including undocumented children and asylum-seeking children, training in the Portuguese language and integration in the school system, in practice the situation reveals some flaws in implementation.

The need to prove academic qualifications and the need of proficiency in the Portuguese language are examples of conditionalities hampering the actual access to systems that is formally guaranteed by law. Also the procedures regarding unaccompanied children, from the moment of their arrival, is deemed to be subject of improvement and of a more comprehensive and coordinated support.

Other matters of concern regard the fact that the assisted voluntary return programme is not specific for victims of human trafficking and that EU nationals do not have access to it, as well as the situation of children that though having been born in Portugal are nonetheless non-nationals and lacking proper documentation.

Within the scope of the IMPACT dimension Protection, the Law of Protection of Children and Youth in Risk is the central, orienting instrument regarding the protection of children in peril being applicable to any child residing or present in Portuguese territory. This law is widely considered to be compliant with the essence of the Convention of the Rights of the Child, very appropriate, thorough and complete. The definition of children at risk used comes in line with the commonly used definitions used by the World Health Organisation.

Additionally, other instruments contribute to the protection of children from all forms of violence, exploitation, abuse and neglect. The latest revisions of the Penal Code included provisions regarding the sexual exploitation and sexual abuse of children, an explicit prohibition of all forms of corporal punishment against children and an article punishing all kinds of mutilation affecting sexual fruition. Besides, this matter is specifically addressed by the Second Programme of Action for the Elimination of Female Genital Mutilation, operating under the Fourth National Plan for Equality, Gender, Citizenship and Non-Discrimination.

Moreover, all the professionals working with children have the obligation of reporting the cases of violence to the Commissions for the Protection of Children and Young People (CPCJ) or to Courts. The same obligation exists for all citizens as violence against children is considered a public crime.

The measures of protection and promotion are guided by fundamental principles such as early intervention and subsidiarity in intervention. Also the prevalence of family is a guiding principle, giving echo to provisions in the Portuguese Constitution that state that children may not be separated from their parents unless the latter fail to perform their fundamental duties towards the former, and then only by judicial decision.

The measures of protection and promotion are applied by the CPCJ or by the Courts and followed up by qualified technical teams. An assessment of the effects of the intervention is made which may lead to possible changes and revisions of the measures.

An overarching weakness of the promotion and protection system regards the identified gap between

legislation and practice. Some of the provisions predicted in the Law on Protection are still not fully implemented and the response capacity is deemed to be insufficient regarding the needs.

The enforcement of the guiding principle of subsidiarity, in articulation with the reinforcement of the preventive nature of the principle of early intervention is pointed out as beneficial. This would include defining better the duties of the first line entities such as schools, kindergartens, hospitals, NGOs, etc. as well as providing them with more capability to intervene.

This could include more human and/or financial means though a major aspect regards the need for training in order to better tackle the phenomena being dealt with. Training is also regarded as beneficial for the other levels of the protection system, thus the CPCJs and the courts and it is identified, even by the Portuguese State in its latest report to the Committee on the Rights of the Child as one of major difficulties regarding the system of promotion and protection, the others being planning, coordination, assessment and cultural factors.

Also the Commissioner for Human Rights of the Council of Europe showed concern in its report with the possibility that increasingly difficult socio-economic situations for families and high levels of stress and pressure can result in serious risks of domestic violence towards children. The report also stresses the concern that the financial difficulties encountered by a number of local authorities and institutions and organisations providing social support at their level may adversely affect its efficiency and effectiveness (Muižnieks, 2012).

By taking in account all the situations mentioned in law, a child who is trafficked or illegally transited out of the country where he/she normally lives, is considered to be at risk whereby falling under the scope of the Law on Protection and being subject to the same protection laws and assistance as national children, regardless of his/her nationality.

In any case, the national legal framework in the field of action against human trafficking has evolved over the years, in line with Portugal's international commitments. The country has ratified different Conventions and protocols and is bound by the EU instruments on action against trafficking in human beings (THB).

Nationally, there is no single piece of legislation covering all aspects of the fight against human trafficking. The main legal provisions are contained in the Penal Code, which was revised and now defines THB as "by any means recruiting, enticing, transporting, harbouring or housing a child or transferring, offering or accepting him/her for the purpose of exploitation, including sexual exploitation, labour exploitation, begging, slavery, the removal of organs, adoption or exploitation of other criminal activities", thus incorporating the three constituent elements specified in the CRC: i) an action; ii) the use of certain means; iii) the purpose of exploitation.

Thus, the framework for action against human trafficking in Portugal is designed to cover all victims of THB subjected to different types of exploitation. The second National Action Plan against THB currently in force aims at involving all relevant actors and cover all aspects of action against THB.

The co-ordination of anti-trafficking activities has been entrusted to the Citizenship and Gender Equality Commission, within which a National Rapporteur for Human Trafficking was recently appointed.

The functioning of the co-ordinating body for the National Action Plan against THB under the Presidency of the Council of Ministers, rather than under a particular ministry, is considered as a positive sign regarding the political will to ensure that it operates on an inter-institutional basis. Another positive sign is the recent creation of a specific unit on human trafficking within the Immigration and Borders Service (SEF).

The creation of the Observatory on Trafficking of Human Beings (OTSH), in late 2008, is also deemed to be providing an important contribution. In order to improve the identification of victims of human trafficking, a “Reporting - Identification - Integration” system has been implemented, encouraging organisations to signal suspected cases of human trafficking to the OTSH.

The aforementioned Protocol on the Creation of a National Trafficking Victims Support and Protection Network (RAPVT), signed in mid-2013 is one of the latest developments regarding the matter of THB but other initiatives are also worth mentioning as, for instance, the Child Abduction Alert System, which allows for a quicker dissemination of information within the community, in order to trace missing children more effectively.

These aspects require the relevant involvement of different stakeholders, so far and overall, considered to be functioning in the right way. In any case, with the implementation of the RAPVT, the strengthening of the participation and involvement of NGOs and the adoption of a proactive approach in signalling and identification of victims of trafficking is expected.

All of these features should contribute for tackling the still identified reluctance of some civil society actors to report trafficking cases for fearing that the police investigation might expose victims to their traffickers or result in their removal from the country as undocumented migrants. There is the consideration that there is still much to be done in what regards the knowledge of indicators of human trafficking and the processes of case referral.

For the aforementioned situation it may also be contributing the fact that even if, in principle, a potential victim is entitled to assistance before the formal identification, this seems rarely to be the case in practice in Portugal, since in accordance with the procedures, the stage of integration only follows after identification.

Awareness-raising actions on the issue of THB have been developed and are scheduled to continue. However, awareness-raising measures aimed in particular at children and young people, as well as measures conducted at local level are considered to still be lacking.

Likewise, it has been pointed out that the impact of such campaigns has not been assessed and that future awareness-raising actions should be designed on the basis of an assessment of previous measures and should target identified needs. Evaluation of measures and interventions is besides identified as a common flaw that needs to be addressed.

In legal terms, the Penal Code foresees the criminal liability of legal persons, namely for crimes against sexual self-determination and for trafficking in human beings. Victims of trafficking in Portugal are entitled to legal assistance, and particularly to legal aid and every effort should be made to establish their identity, nationality and the whereabouts of their family, within a context of safeguarding the child’s best interest.

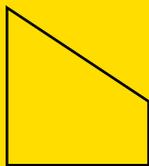
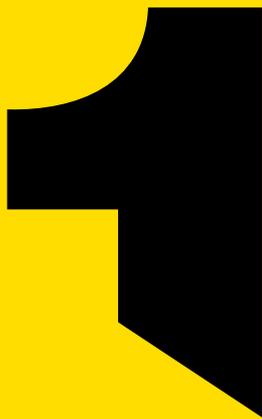
However, the number of convictions for human trafficking is low and there is concern regarding possible gaps in the investigation procedures and the presentation of cases in courts. Furthermore, the compensation of victims of trafficking, despite the existence of legal possibilities, is an aspect that remains largely unexplored suggesting that there is a lack of information in Portugal for victims and for those who assist them about the existence and operation of the State compensation system.

Another specific flaw regards the fact that, at the moment, there is no provision anywhere in Portuguese law that rules on appointing a specific guardian in cases where children are victims of trafficking.

There is also no specific provision in Portuguese law and, more specifically, in juvenile justice on the non-

-punishment of victims of trafficking, even if generally speaking, the application of a criminal penalty presupposes that the offender acted in complete freedom and conscience in order to achieve a known and desired result. There is therefore no penalty in the absence of free will.

This connects to another identified need: improving the awareness and knowledge of the professionals of the justice system (judges, prosecutors, investigators, lawyers, etc.) but also of professionals of all relevant areas about trafficking in human beings and victims' rights.



INTRODUCTION

The IMPACT project – Improving Monitoring and Protection Systems Against Child Trafficking and Exploitation – was implemented through a partnership cooperation of four non-governmental organisations in Cyprus, Greece, Italy and Portugal. It was conceived as part of a longer-term strategy for studying and informing the development of innovative approaches to prevent the exploitation of children, from a perspective focused on the rights and well-being of the child.

IMPACT builds on a method developed for GATE⁵ ('Guardians Against Child Trafficking and Exploitation') and informs RESILAND⁶ ('Participation, capacities and resilience of children on the move against trafficking and exploitation'). These projects are implemented in continuity by a core group of partner organisations with funding from the Prevention of and Fight Against Crime (ISEC) Programme of the European Commission – Directorate-General Home Affairs.⁷

There is a significant body of research on child exploitation and trafficking in Europe, including in the four countries studied by IMPACT. The study process developed for IMPACT builds upon and complements this knowledge base and reflects upon it from a specific angle. The focus is shifted from the situation analysis of child trafficking and a review of anti-trafficking responses to an understanding of the structural factors that contribute to creating an environment in which the exploitation of children is made possible.

In the IMPACT countries and throughout Europe, national governments have developed specific anti-trafficking responses, including targeted laws, policies and institutions. In the short-term, these measures have shown success by achieving the identification and assistance of individual victims and, in some cases, the successful prosecution of perpetrators. In the longer term, the struggle to reduce child trafficking continues unabated. Policy makers and practitioners continue struggling to develop methods for the identification of child victims and children at risk, they continue struggling to make children gain trust in national authorities, to see them accept assistance and testify against perpetrators, and they continue facing myriads of dilemmas and unresolved controversial issues.

There is sufficient evidence to identify the shortcomings of anti-trafficking responses as they are currently planned and implemented in Europe. Research reports keep reiterating findings that point to the weak capability of governments to intercept the disempowering cycle of vulnerability, exploitation and trafficking. This evidence is however not yet capitalised on to guide an effective strategy for change.

Reforms are pursued mainly in terms of law reform, creating institutions, defining mandates and offering support services. Yet, there are concerns that these reforms continue lagging behind the dynamics of child exploitation and achieve only marginal success. Innovative approaches embracing the lessons learned are rare. The underlying structural factors that create vulnerability to exploitation and trafficking are well known but little progress is seen in redressing them in an effective and sustainable way.

Addressing structural vulnerabilities offers however invaluable opportunities for prevention. It would be cost-efficient to invest in longer-term strategies that prevent exploitation and scale up the protection and

⁵ See: GATE (2011), *Guardians Against Child Trafficking and Exploitation*, available at: <http://gate-eu.org/>.

⁶ EC-funded project, 2013-2015. See: RESILAND - *Participation, Capacities and Resilience of Children on the Move Against Trafficking and Exploitation*, available at: www.resiland.org.

⁷ See: European Commission, Directorate-General Home Affairs, *Prevention of and Fight Against Crime (ISEC)*, available at: http://ec.europa.eu/dgs/home-affairs/financing/fundings/security-and-safeguarding-liberties/prevention-of-and-fight-against-crime/index_en.htm (accessed December 2013).

empowerment of children. Reflecting about a new perspective on prevention is not only timely in the times of the financial and economic crisis in Europe, it is also a human rights imperative.

Against this background, IMPACT proposes to re-focus the attention of the anti-trafficking debate. From measuring progress in law reform, action plans and programmes, specialised shelters, victims assisted, and successful prosecutions, the proposal is to move towards measuring also the capability of the public administrations to implement their national laws and policies into practice. Methods and approaches are needed to measure not only the capability of administrations to implement but also the progress they make in advancing their capability in this regard.

IMPACT builds on the assumption that strengthening the implementation of the UN Convention on the Rights of the Child (hereafter CRC or the Convention) into practice will contribute to reducing risks of exploitation and trafficking. There are currently no empirical studies to prove the direct causality between a more effective implementation of the CRC and a reduced prevalence of child exploitation and trafficking. Nevertheless, an overwhelming body of circumstantial evidence indicates that children who are exposed to exploitation have often previously experienced multiple infringements against their rights. Based on this evidence, the hypothesis is that children are better protected from exploitation when their rights to a safe and healthy development are safeguarded in practice, in line with international standards.

In order to gather evidence and test out the guiding hypothesis of IMPACT, the project was rolled-out as a multi-step study process in the four IMPACT countries. Each partner organisation carried out a national study guided by a common research protocol. The national studies combined a desk review of relevant literature, laws and policies with primary data collection through key informant interviews. National and transnational consultations were held with representatives from national and local authorities, social workers and service providers, anti-trafficking institutions, representatives from independent institutions, NGOs and other experts. The consultations offered a platform at which the IMPACT approach was presented and discussed. The participants informed the national and transnational research process with their contributions, strongly encouraging the IMPACT approach.

This report presents the findings and analysis that resulted from the national IMPACT study in COUNTRY.⁸ The report reviews national laws, policies and practice in a wide range of child rights sectors. The focus of analysis aimed to understand the capability of the public administrations to plan and implement child rights policy in a way that is inclusive, appropriate, effective and compliant with international standards. The national reports pinpoint structural, administrative, budgetary and practical challenges of implementation. These challenges, paired with elements of weak governance, fragility, and the harmful impact of the financial and economic crisis have implications for the risks of children to be exposed to exploitation and trafficking.

The IMPACT report from Portugal is structured as follows:

Chapter 2 reviews the status of the Convention on the Rights of the Child and other international standards relevant for child rights and the protection from exploitation and trafficking in Portugal.

Chapter 3 discusses the general principles of the Convention and how they have been reflected in national laws and policies. It focuses on the right to non-discrimination (CRC Article 2), the best interests of the child (Article 3) and the right of the child to be heard and to have his or her views taken into account (Article 12). The Chapter aims to assess, through a discussion of examples from different thematic areas and policy sectors, how these principles are being applied and respected in practice.

Chapter 4 engages in a discussion of the laws, policies and practice in a wide range of child rights themes.

⁸ The national IMPACT reports are available at: www.impact-eu.org.

The Convention on the Rights of the Child is guiding a mapping and assessment of how the different rights and needs of the child are being addressed in policy and practice. The child rights themes, and the related policy sectors, have been grouped according to the four clusters Survival, Development, Participation and Protection.

Chapter 5 provides an overview of the main institutions involved in child rights policy planning and implementation, at the central and local levels. It examines relevant cooperation and coordination mechanisms across policy sectors, as well as independent institutions, human rights structures and other mechanisms for monitoring, reporting and complaints.

Chapter 6 concludes from the discussion throughout the report and offers reflections and recommendations for law, policy and practice.

The four national reports developed in the context of IMPACT provide the basis upon which the IMPACT transnational analysis was developed. The transnational analysis assesses, through a review of selected examples from each of the countries, if and how the national administrations are capable to implement the Convention and other relevant international and regional standards in a way that prevents exploitation and trafficking, protects and empowers children at risk and child victims.

1.1. THE IMPACT APPROACH AND METHODOLOGY

The IMPACT project was rolled-out as a multi-step process combining national and transnational activities. It consisted of three components that were developed in close coordination and mutually informed each other: a research component, a consultative learning component involving relevant professionals and officials from each of the countries, and the development of guiding determinants of risk and protection.⁹ The guiding hypothesis of IMPACT is that the full implementation of the UN Convention on the Rights of the Child into practice would contribute significantly to protecting children at risk and preventing the exploitation of children, including in the context of trafficking. The underlying assumption is that structural vulnerability to exploitation and trafficking needs to be redressed in order for anti-trafficking measures to take hold.

IMPACT proposes therefore to complement measures that address situations of exploitation with measures that are targeted at addressing the underlying socio-economic and structural factors that create an environment in which children are vulnerable to exploitation. From a policy making perspective, this has three implications: a) national child protection systems need to be strengthened to identify and respond to all forms and contexts of exploitation and children at risk; b) national child protection systems need to be embedded into broader strategies for the implementation of the CRC; and c) due attention needs to be given to ensure that these systems are operating effectively and that national laws and policies are implemented into child rights practice.

National child protection systems¹⁰ hold the central responsibility for providing support and assistance to child victims and children at risk. Yet, a protection-focused response will by itself not suffice to effectively address child exploitation and trafficking. Many vital measures for the prevention of exploitation and the empowerment of children fall into the remit of policy sectors that may not be under the control of a national child protection system. They include social and economic policies, the labour market and employment,

⁹ For more information, see the IMPACT website available at: www.impact-eu.org.

¹⁰ See the UNICEF definition of a 'national child protection system' available in the Glossary in Chapter 7.

migration regime, the education and health systems, and matters of governance, such as fiscal policies, budget allocation and the rule of law. In consequence, a national child protection system can only fulfil its mandate when it is understood as an integral part of a broader system for the implementation of the Convention on the Rights of the Child and when the public administration is operating effectively to make these systems work.

Against this background, IMPACT engages in a discussion of the capability of the public administrations to implement child rights standards effectively and consistently into child rights practice. Strengthening the capability of the public administration to implement is considered the key strategy for reducing the risk of exploitation, enhancing children's resilience and offering stronger protection from exploitation and trafficking. This approach shall be considered complementary to the traditional anti-trafficking responses, proposing strong partnerships, cooperation and coordination of all the relevant sectors and actors involved. The promotion of human rights standards and their implementation into practice is considered the foundation on which anti-trafficking responses can lead to more sustainable results. It provides an opportunity to leverage the impact of traditional anti-trafficking measures and is expected to render the precious resources invested in this field more effective.

The effective implementation of the Convention would essentially contribute to identifying and redressing the structural factors that contribute to creating vulnerability to exploitation and trafficking. The Convention provides for a continuum of measures for prevention, protection and empowerment and can thereby lead policy makers in the development of more inclusive and appropriate responses that are considered more cost-effective and sustainable. As has been noted by the Committee on the Rights of the Child, effective protection from violence, exploitation and abuse can only be achieved in an environment that safeguards and promotes all the human rights of the child in an integrated way.¹¹ The Convention guides an assessment of the rights and needs of the child across all aspects of the child's person and development. It has a programmatic character that expands the notion of rights to a holistic understanding of the person.¹²

IMPACT adopts the general measures of implementation of the Convention as a guiding framework for analysing the structural set-up of public administrations and their approach to implementing child rights standards.¹³ The 'IMPACT variables' (see Box 2) are applied as a framework for analysing the capability of the public administrations to implement child rights policy in a way that is compliant, inclusive, appropriate and effective. By comparing policy and practice across the different sectors and levels of the public administration, they are assessed for their coherence.

Against this background, the IMPACT study assessed to which degree national laws and policies are compliant with the standards afforded under the Convention. The study examined the level of inclusion of the various sector-specific approaches in policy and practice, and to which degree their implementation into child rights practice is appropriate and effective to respond to children's needs and rights. It analysed the coherence between different sector-specific policies from a child rights perspective as well as the coherence between legal obligations and political commitments and the practice.

The overall objective was to identify elements and strategies in law, policy and practice that help strengthening policies for child protection and the implementation of the CRC to the effect that they will prevent child trafficking and exploitation more effectively. Through research, analysis and a consultative process, IMPACT aimed to identify opportunities for the policies against child trafficking to evolve from a sector-specific, protection-focused and primarily responsive approach to a more proactive, rights-based and holistic approach (see Box 1).

¹¹ United Nations Committee on the Rights of the Child (2011), *Report on the Eighteenth Session, Sessional / Annual Report of the Committee*, 27 July 1998, CRC/C/79, p. 74. United Nations Committee on the Rights of the Child (2011), General Comment No. 13, The right of the child to freedom from all forms of violence, CRC/C/GC/12, 18 April 2011, par. 13.

¹² Costella, Pippo (1998), *Diritti dell'infanzia e processi di sviluppo, Note per la formulazione di una strategia di cooperazione internazionale fondata sui diritti dell'infanzia*, Arci Cultura e Sviluppo, Roma, pp. 3-4.

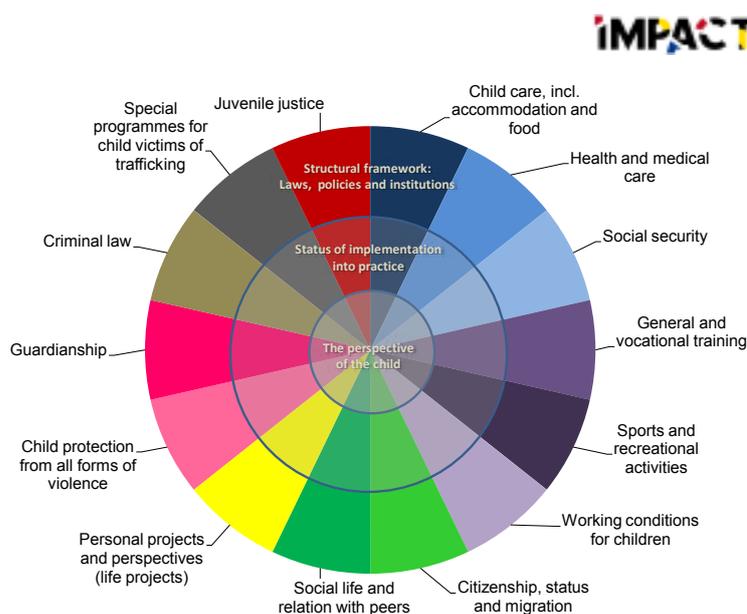
¹³ See: United Nations Committee on the Rights of the Child (2003), General Comment No.5, General Measures of Implementation for the Convention on the Rights of the Child, CRC/GC/2003/5, 3 October 2003.

Box 1: The objectives of IMPACT

Analyse existing structures and systems of law, policy and practice from the perspective of the child and his or her rights and needs;
Generate evidence of the strengths and weaknesses of national child protection systems and their capacity to prevent exploitation and trafficking;
Inform the development of more inclusive child protection systems that prevent and respond to child exploitation and trafficking as part of their mainstream child protection mandates; and
Understand how the national child protection systems are connected to or integrated into broader strategies for the implementation of the CRC.

In light of the background, approach and objectives of IMPACT, the project conducted research and consultations across a range of policy sectors reflecting the human rights of the child as afforded under the Convention. The sectors under analysis included health, education, protection, care and accommodation, work and employment, migration, sports and leisure time, and justice (see Figure 1). This broad approach reflects the aspiration to work with a holistic understanding of the person and his or her rights and needs, which are considered as inter-related and indivisible. It aimed to promote a child-centred approach to the analysis, and the CRC guided the identification of rights and needs and a mapping of the relevant responses in policy and practice.

Figure 1: IMPACT: The sectors under analysis



The IMPACT national reports are mapping policies in these sectors in order to achieve a vertical and horizontal analysis of each policy sector. The vertical analysis assesses the compliance of the relevant laws and policies in each sector with international child rights standards as well as the status of their implementation into practice. The horizontal analysis conducts a comparative analysis across policy sectors. It aims to identify opportunities for inclusion and synergy between sectors as well as incoherent standards, patterns of exclusion or discrimination. This broad-based analysis aimed to position the protection-focused approach to child exploitation and trafficking within a broader child rights perspective.

The sector-specific analysis is complemented by a review of cross-cutting dimensions such as the general principles of the CRC: the right to non-discrimination (Article 2), the best interests of the child (Article 3), the right to life, survival and development (Article 6) and the right of the child to have his or her views heard and taken into account (Article 12).

1.2. METHODOLOGY

IMPACT was conceived as an inter-disciplinary, participatory and consultative initiative. It built significantly on the project GATE ‘Guardians Against Child Trafficking and Exploitation’.¹⁴ Adopting the methodological framework developed in GATE, the analysis was guided by international child rights standards, structured according to the four clusters of survival, development, participation and protection (see Table 1). These four clusters and the associated rights and needs of the child were used as a simplified ‘map’ to investigate the living situations of different groups of children in each of the countries as well as the respective measures in law, policy and practice.

Table 1: The IMPACT dimensions: Survival, development, protection and participation

<p>SURVIVAL</p> <ul style="list-style-type: none"> • Child care • Accommodation and food • Health and medical care • Social security for children 	<p>DEVELOPMENT</p> <ul style="list-style-type: none"> • General and vocational education • Sports and recreation activities for children • Working conditions of children
<p>PROTECTION</p> <ul style="list-style-type: none"> • Child protection from all forms of violence • Guardianship • Criminal law • Special programmes for child victims of trafficking • Juvenile justice 	<p>PARTICIPATION</p> <ul style="list-style-type: none"> • Citizenship and migration status • Social life and relation with peers • Relation with family • Personal perspectives and life projects

Source: IMPACT Research Protocol, 2013.

Each partner organisation implemented the IMPACT study independently within the national context. The national studies were guided and coordinated by the IMPACT Research Protocol, which defined the background and approach, the method for data collection and analysis and a unified structure for the national reports.¹⁵

The national study in Portugal was informed by primary and secondary data. A literature review was developed on the basis of the reporting procedure to the UN Committee on the Rights of the Child as well as selected studies and reports on child rights themes, including in the areas of child protection, migration and trafficking, and socio-economic policies. In addition, the relevant national laws, policies and institutional frameworks were reviewed. The aim was to assess the application and implementation of national laws and policies into practice and their impact on children, to the extent that information was available and accessible. The objective was not to achieve a comprehensive analysis of all elements of the national

¹⁴ For more information on the GATE project, please see: GATE (2011), *Guardians Against Child Trafficking and Exploitation*, available at: <http://gate-eu.org/> (accessed December 2012). For an overview of the GATE standards, i.e. the four dimensions, guiding questions and the prevention and protection benchmarks, please see: CARDET, Defence for Children, et al. (2012), *GATE, Guardians Against Child Trafficking and Exploitation, National report Italy*, pp. 144-145.

¹⁵ CARDET, Defence for Children, et al. (2013), *IMPACT Research Protocol, Improving and Monitoring Protection Systems Against Child Trafficking and Exploitation*, available at: www.impact-eu.org.

systems but a discussion of selected examples that provide evidence for associated risks of exploitation and trafficking. With the 'IMPACT variables,' the study adopted a set of guiding questions of analysis that had previously been applied in the GATE project (see Box 2).

Box 2: The 'IMPACT variables': Guiding questions of analysis

- To which extent are the responses in law, policy and practice **inclusive or exclusive** in the sense that they apply to all children in the country?

The aim is to collect data and information on the capability of the national policies for child protection and CRC implementation to include each child, as well as on the main factors which can influence (enhance or reduce) the capability of the systems to promote inclusion.

- To which extent are the responses in law, policy and practice **appropriate** to the specific needs, rights and characteristics of the individual child?

The aim is to collect data and information on the capability of the national policies for child protection and CRC implementation to respond to each child's needs and rights in an appropriate way, as well as on the main factors which can influence (enhance or reduce) the level of appropriateness of the systems. The appropriateness is closely connected to the capacity of the child protection and social welfare systems to work with individual case and needs assessments that give due account to the specific situation and views of each individual child.

- To which extent are the responses in law, policy and practice **effective** in reducing the risks, enhancing the protection and promoting the empowerment of children?

The aim is to collect data and information on the capability of the national policies for child protection and CRC implementation to prevent trafficking and exploitation and to protect child victims and children at risk in practice, as well as on the main factors which can influence (enhance or reduce) the level of effectiveness of the systems.

- To which extent are the responses in law, policy and practice **compliant** with international standards?

The aim is to collect data and information on the compliance of the national policies for child protection and CRC implementation and the way they operate in practice with national and international standards on children's rights, as well as on the main factors which can influence (enhance or reduce) the compliance of the systems.

Source: IMPACT Research Protocol, 2013.

The desk review was complemented by key informant interviews and consultations with children and young adults. Key informant interviews were conducted with policy makers and public officials in ministries and state institutions (GOV – 7 interviews), regional or municipal authorities (MUN – 2 interviews), independent institutions, child rights advocates and professionals working with and for children, in service provision or other contexts (ORG – 6 interviews). The consultations with children and young people were conducted with three groups: Children considered at risk of exploitation who are assisted in residential child care institutions, reception centres or other shelters (CHILD-in – 10 children involved); and young adults who have had experiences of exploitation or trafficking as children (YOUNG – 1 interview).

The enrolment of child and young participants was guided by the identification of supporting structures and centres where professionals working with them were providing support and facilitated the contact. It was aimed at a balanced gender representation. In some of the countries, the national research teams experienced difficulties in obtaining access to children and young adults as informants, so that the number and type of informants varies. An alternative approach was to conduct key informant interviews with professionals involved in service provision for the children or young people concerned (CHILD-Professional

– 2 interviews and YOUNG-Professional – 1 interview).¹⁶

The data collection tools were prepared as part of the research protocol and were adapted by the national research team to the specific questions identified in Portugal. The consultations with children and young adults were conducted as narrative sessions guided by the 'GATE Game' (see Box 3). The researchers facilitated the process without asking intrusive questions about the child's personal history. In order not to awaken memories of negative, dangerous or threatening experiences, and with a view to adopting an empowering and assets-based approach, the narrative sessions focussed on identifying real or potential sources of protection, i.e. the positive experiences that children have had, the empowering, protective factors in their lives and their related recommendations.

The participation of all key informants, including children, was voluntary, confidential and in respect of ethical standards. All informants were notified about the IMPACT study, the purpose of the interview and how the information they shared would be used. Informants consented to participate and were guaranteed that the information they shared would be coded and cited anonymously.¹⁷ Interviews were conducted in the national language of the country. The interviews aimed to solicit the opinions, views, experience and recommendations of the key informants in their professional or official capacity. The selection of key informants did not aspire to obtain a representative sample of all policy makers, officials, practitioners and experts involved in addressing the themes under study in Portugal. Likewise, the narrative sessions with children and young adults aimed to solicit the individual experiences, views and recommendations of the persons involved and are not considered representative of all children at risk of or exposed to exploitation and trafficking.

Box 3: The GATE Game¹⁸

The GATE Game is a card game consisting of 16 different cards designed in a cartoon style that is considered to appeal to children and adults alike. Each card relates to a specific need and right of the child, such as family relations, safety, food, accommodation, health, or friendship. Each GATE card displays two images, representing one positive side and an opposing negative side.

When used in narrative sessions with children, the GATE game aims to solicit the children's views, suggestions and recommendations on sources of protection and empowerment, as well as gathering implied information about sources of risk and disempowerment. The children are engaged in a playful narration on the needs and rights represented by the images on each card. The card game aims to inspire a non-intrusive narration guided primarily by the child's personal reaction to the cards.

Source: GATE, 2011.

The research process was complemented by a consultative process involving representatives from national and local authorities, social workers and service providers, anti-trafficking institutions, independent institutions, NGOs and other experts. Two national consultations were convened in each of the countries involved in IMPACT as well as one joint transnational consultation. The consultations provided a platform for debate and joint learning. The IMPACT approach was presented and discussed and the comments and inputs received from the participants informed the study process. The consultative process contributed also to fostering existing professional networks of key actors working in the areas of child rights, anti-trafficking, service provision and other relevant fields.

¹⁶ The details of the enrolment and selection process are discussed in the IMPACT research protocol and national reports.

¹⁷ For child participants, the informed consent was obtained not only from the participating children but also from each child's guardian or the responsible care person.

¹⁸ GATE (2011), Guardians Against Child Trafficking and Exploitation, The Gate Game.



INCORPORATION OF THE CONVENTION ON THE RIGHTS OF THE CHILD INTO NATIONAL LEGISLATION

What the CRC says on its incorporation into national legislation: Summary excerpt

Article 4 (Protection of rights): Governments have a responsibility to take all available measures to make sure children's rights are respected, safeguarded and translated into child rights practice. When countries ratify the Convention, they agree to review their laws relating to children and to bring them in line with the standards afforded by the Convention. They also commit to undertake all appropriate administrative and other measures for the implementation of the rights recognised under the Convention. With regard to social, economic and cultural rights, governments shall undertake such measures to the maximum extent of their available resources.

Who are the main actors with regard to the implementation of the CRC?

- Relevant ministries and their mandates at the level of the central government
- Other relevant state bodies
- Regional and local authorities
- Non-state actors (private service providers, NGOs, Foundations, and others)

Norms and principles of general or common international law are an integral part of Portuguese law. Norms contained in regularly ratified or approved international conventions are in force at the domestic level provided that they have been published in the Official Gazette and while they are binding upon Portugal at the international level (Art. 8 (1) and (2) CRP). In the case of self-executing Conventions, they become directly applicable; if there are non self-executing norms, application will be dependent on regulation.

Ratification of the CRC was established by Decree of the President of the Republic 49/90, of 12 September¹⁹. Thus the Convention has the force of law in Portugal, and may be directly invoked before the courts and applied by national authorities. Should the Convention conflict with national law, the Convention takes precedence unless national law is more favourable to the rights of the child.

“I believe that our legislation is not very different from the legislation of the countries we usually call ‘most developed countries’. The instruments ratified by the Portuguese State are formally in force in

¹⁹ Decree of the President of the Republic 49/90, *Government Gazette*, 1st Series No.211, 12 September 1990.

our legal system. (...) In any case, I think that the Portuguese State is in the front line regarding some matters". (GOV, PT06)

"This law of Promotion and Protection [Law 147/99 of 1 September] (...) was inspired directly by the Convention on the Rights of the Child. Thus, we find in it all the concepts of best interest, of wellbeing, of full and harmonious development, the addressing of danger situations, etc., all of which inspired by the CRC. For all due effects, the CRC is an internal legislative document and it has force of law." (GOV, PT04)

Portugal deposited its instrument of ratification of the Convention on the Rights of the Child on 21 September 1990, and the Convention entered into force in Portugal's internal legal order on 21 October of the same year. No reservation was formulated. Before ratification of the Convention by the Portuguese Government, a study was carried out, in which bodies responsible for solving the problems covered by the Convention participated, to determine the extent to which it was compatible with the country's internal legal order. The study concluded that there was no need to make any significant changes in the internal legal order in order to bring it into line with the provisions of the instrument in question (Portugal, 1994).

"We believe that our laws are adequate to the overall principles, to the civilisational acquisitions of our time. (...) Our law and our system complies with the major international values, principles and instruments, namely with the Convention on the Rights of the Child". (GOV, PT03)

"Portugal has been ratifying every international convention and all additional protocols, namely the optional protocols to the Convention on the Rights of the Child and the Convention of Lanzarote, of the Council of Europe, which is revealing of the effort of the Portuguese State in the field of child protection." (ORG, PT12)

In its concluding observations of 2001 (CRC, 2001: §6), the Committee on the Rights of the Child expressed its concern with the lack of a comprehensive national strategy on the implementation of the Convention and thus recommended Portugal to develop a comprehensive national strategy for the implementation of the Convention, as well as to set priorities and define a time frame for implementation and to define and allocate the human, financial and technical resources that would be necessary for the strategy's implementation.

In 2007, as a response to the CRC's recommendation and within other wider objectives, the National Initiative for Childhood and Adolescence (INIA) 2009-2010 was created. This was a government's initiative defining the national strategies for the promotion of rights and the protection of children and youngsters in Portugal.

According to the latest Portuguese report to the Committee on the Rights of the Child on the implementation of the CRC, the INIA aimed at the definition of an action plan guaranteeing the respect for the universality of children's rights. The action plan defined the major intervention strategies that would be common to all areas and sectors, public and private, that contributed for the process of development and socialisation of the child, since birth to adulthood. The INIA also aimed at the establishment of a culture of cooperation and networking between all those committed to the defence of children's rights. The conception and implementation of INIA was based on a participatory method involving all areas and public sectors, civil society, citizens in general, children, adolescents, parents and other caregivers. The planning and

coordination of the concept were under the responsibility of the Deputy Secretary of State of Social Affairs, supported by an Inter-Departmental Team for Technical Support (Portugal, 2011: §9-10).

Based on the Convention of the Rights of the Child and its respective guiding principles, 16 Strategic Objectives were defined: a) promote positive parenting and equity in parental responsibilities; b) ensure an alternative family environment to all children deprived of parental care and favour their deinstitutionalisation; c) support young people in their transition to an autonomous life; d) reinforce the economic means and integration in the labour market of families with children; e) increase and qualify the provision of social services of interest for children; f) promote healthy lifestyles for children and the follow-up of maternal - child health care; g) promote the access to dignified housing to families with children; h) ensure the effective participation of all children in matters involving them; i) promote information and training on the development and rights of the child; j) guarantee children's access to quality education; k) guarantee children's access to diversified and quality cultural activities and free time; l) develop articulated information systems on the child's situation; m) take action on all forms of violence against children; n) prevent and take action against all forms of juvenile delinquency; o) reinforce and increase solutions for children with disabilities and incapacity and their families; p) support the integration of immigrant children or ethnic minorities (Portugal, 2011: §11). However, the INIA 2009-2010 had no continuity. Deriving from the financial and economic crisis, in late 2010-early 2011 there was an escalation of a political crisis and, in March 2011, as a consequence of the rejection, by the Parliament, of the government's Programme to tackle the crisis, the centre-left government resigned. In mid 2011, a right-wing government took office. For the moment it is unclear what the coordinating body to coordinate and oversee the implementation of the CRC in Portugal will be.

The latest Portuguese report to the Committee on the Rights of the Child on the implementation of the CRC also mentions the National Action Plan for Inclusion (NAPIncl). One of the main objectives of this Plan, created in 2001 was to "eliminate situations of social exclusion which affect children and to give children every opportunity for social integration". Its priorities aimed at: 1) promoting the rights of the child and prevent, or put an end to situations of risk, poverty or social exclusion; 2) promoting incentives to maintain the child in a natural environment with his/her family by ensuring adequate parenting responsibilities; 3) favouring deinstitutionalisation and making adoption more flexible; 4) fighting the trend of young people entering the labour market at an early age (Portugal, 2011: §12-13).

However, the NAPIncl for 2008-2010 was the last of these instruments to be produced. Presently, the National Social Report (NSR) and, to a lesser extent, the National Reform Programme (NRP) – Portugal 2020 encompass some of the scope of the NAPIncl. However, while NAPIncl was an action plan involving a specific methodology where governance mechanisms were in place, the NSR is utterly a report and the social sphere in the NRP is clearly marginal.

One of the latest developments in terms of child protection regards the creation, in May 2012, of a working group with the objective of laying the foundations for a Child Agenda (Agenda da Criança), in which the obstacles to the fulfilment of the rights of children should be identified as well as the proposals in order to change the current situation. The working group's²⁰ mission was to evaluate the operational, functional and legal mechanisms aiming to guarantee the best interests of the child and to suggest initiatives to remove obstacles to the child's integral development and wellbeing (Dispatch 6306/2012 of 14 May)²¹.

20 The working group was composed by seven persons, stated as "personalities with relevant activity in the field of the defense of children's rights" (Dispatch 6306/2012 of 14 May).

21 Dispatch 6306/2012, *Government Gazette*, 2nd Series, No.93, 14 May 2012.

In June 2013, Resolution of the Portuguese Council of Ministers²² 37/2013 of 11 July²³, summarised the results of the work developed, assuming that “in spite of the efforts, there are still serious difficulties in the concretisation of several segments of the above-mentioned system [system of protection of children and young people in peril], which is still weakening child protection” (Resolution of the Council of Ministers 37/2013: p.3239). Unfortunately, the text of the resolution does not provide any clarification regarding which are the segments lacking concretisation.

As such, the working group suggested the gradual evolution of the current framework to “a more integrated system, with improvements regarding its services (...) and integrating the existing means that may better enhance the answers and distribute them, in a more balanced way, to the most urgent needs.”

Regarding the involvement of stakeholders, the document expresses the intention of the government to promote the participation of all relevant entities and personalities. However, and despite any future forms of participation, some awkwardness cannot be avoided in face of the composition of the only two commissions to be created (at least so far) for the revision of the legal frameworks of child protection, on the one hand, and of adoption, on the other.

In fact, three representatives of entities of the social economy field²⁴ are included in the commission for the revision of the juridical regime for adoption but not in the commission for the revision of the juridical regime for protection. Within this latter, there are only State representatives, from the ministries of Solidarity and Social Security, Home Affairs, Justice, Health, and Education and Science. The possible involvement of children is absent from the document.

“I would say that, in our daily activity, we are not often confronted with a situation when our legal system does not allow us to decide for the solution we consider being the best. I would say that the problems are not so much at the legislative level but rather, clearly, at the level of practices”. (GOV, PT06)

“A problem regards coordinated action. (...) Sometimes there are legal solutions that seem ideal when they are approved. However, regulation may come 3, 4, 5 or 10 years and with a completely iniquitous solution. (...) I would say there is a problem of organisation and a problem regarding the clear planning of priorities. (...) There is a lack of planning and that is very evident. Does money count? Yes, to a certain extent, but I think that it is not determinant.” (GOV, PT06)

22 Resolutions of the Council of Ministers are formal juridical acts defining the government’s policy for a given area.

23 Resolution of the Portuguese Council of Ministers 37/2013, *Government Gazette*, 1st Series, No.111, 11 June 2013.

24 Entities not pursuing a return on capital as primary purpose.

Status of ratification of key international standards on human rights and child rights in Portugal²⁵

INTERNATIONAL INSTRUMENTS	RATIFICATION
Convention on the Rights of the Child (CRC)	21 September 1990
CRC Optional Protocol on the Involvement of Children in Armed Conflicts (OPCA)	19 August 2003
CRC Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC)	16 May 2003
CRC Optional Protocol on a Communications Procedure	9 September 2013
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime	10 May 2004
Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms	9 November 1978
Protocol No. 12 to the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, on a general prohibition of discrimination	Signature
European Social Charter 1961 (revised 1996)	30 May 2002 (acceptance of collective complaint procedure in 20 March 1998)
Council of Europe Convention on Action Against Trafficking in Human Beings	27 February 2008
Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse	23 August 2012
ILO Convention No. 138 Minimum Age Convention, 1973	20 May 1998
Council of Europe Convention on the Exercise of Children's Rights	13 December 2013

²⁵ Sources available at: UN Treaty Body Database: <<http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>>; Council of Europe: <<http://conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG>>; European Social Charter: <www.coe.int/t/dghl/monitoring/socialcharter/Presentation/Overview_en.asp>; UNODC: <www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html>; <<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=005&CM=&DF=&CL=ENG>>; ILOLEX: <www.ilo.org/ilolex/english/convdisp1.htm>, <www.ilo.org/ilolex/english/convdisp1.htm> (accessed February/2013).



THE GENERAL PRINCIPLES OF THE CONVENTION ON THE RIGHTS OF THE CHILD

The general principles of the Convention on the Rights of the Child: Summary excerpts

Article 2 (Non-discrimination): The Convention applies equally to all children, regardless of the child's or his or her parents' or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, ability, birth or other status.

Article 3 (Best interests of the child): The best interests of children shall be a primary consideration in making decisions that directly or indirectly affect them. When adults make decisions, they should think about how their decisions will affect children. This general principle is cross cutting and needs to be understood in relation to all other rights afforded under the Convention. It applies to all formal and informal decisions concerning the child's living arrangement, development, care and wellbeing. It also applies to policy planning and budget allocation of States.

Article 6 (Survival and development): The right of the child to life, survival and development. (general principle of the CRC)

Article 12 (Respect for the views of the child): A child has the right to express his or her views freely in all matters affecting the child. The views of the child shall be given due weight in accordance with the age and maturity of the child. This applies to all matters concerning the child, including the daily life, living and care arrangements, development and well-being. The right to be heard, either directly or through a representative or an appropriate body, applies further to all judicial and administrative proceedings affecting the child.

Who are the main actors with regard to the general principles of the CRC?

- Relevant ministries and their mandates at the level of the central government
- Other relevant state bodies
- Regional and local authorities
- Non-state actors (private service providers, NGOs, Foundations, and others)

3.1.THE GENERAL PRINCIPLES OF THE CONVENTION: THE RIGHT TO NON-DISCRIMINATION

COMPLIANCE AND INCLUSION OF THE NATIONAL LAWS AND POLICIES: TO WHICH DEGREE DO THE NATIONAL LAWS AND POLICIES COMPLY WITH INTERNATIONAL STANDARDS?

Article 13 of the Portuguese Constitution²⁶ proclaims the principle of equality, and affirms that all citizens have the same social dignity and are equal before the law and that no one shall be privileged, deprived of any right or exempted from any duty because of his ancestry, sex, race, language, place of origin, religion, political or ideological beliefs, education, economic situation or social status. This constitutional principle - as all norms relating to rights, freedoms and guarantees - is directly applicable, and is binding on both public and private bodies.

Article 69 recognises that children are entitled to special protection by society and the State against any form of discrimination. The 1976 Constitution put an end to the unfavourable legal status which had previously affected children born out of wedlock.

Articles 67, 69 and 70 advocate special protection rights, from the State and society, to children and youngsters who are orphans, abandoned or, by any other way, deprived of a normal family environment and of the promotion of the rights consecrated on the Convention on Children's rights.

Resolution of the Council of Ministers 25/2013 of 17 April²⁷ represents the first National Strategy for the Integration of Roma communities, established for the 2013-2020 period. It brings together the efforts of eight ministries, local councils, civil society and Roma communities' representatives. Designed on an intercultural basis, the strategy seeks to ensure the Roma communities' inclusion in society, and to safeguard the respect of their values and traditions. In this strategy, to the education, employment, health and housing axis recommended by the EU, the Portuguese Government has added a transversal one which deals with citizenship, combating discrimination, promoting gender equality, justice and safety. The strategy is mainly directed to Portuguese Roma, given that the number of non-Portuguese Roma is small (coming mostly from Bulgaria and Romania) (GRETA, 2013).

Thus, this strategy aims, on the one hand, to articulate existing but disperse policies and, on the other, to go beyond that and establish specific measures, as well as promoting a national study to unveil the needs of these communities. As the strategy mentions such study must "reconcile the constitutional principle of non-discrimination with information gathering at national and sector level, in order to foster more integrated and tailored intervention with Roma communities" (Portugal, 2012: p.15).

According to text of the strategy, it has looked at the priorities from a national perspective, given its national character, with measures targeting Portuguese Roma. However, it also states the incorporation of the European guidelines, contained in Resolution 2010/2276(INI) of the European Parliament, of 9 March 2011²⁸ and in subsequent recommendations contained in documents issued by the various European bodies (Portugal, 2012).

²⁶ Portuguese Constitution (Constitutional Law No.1/2005, VII Constitutional revision), *Government Gazette*, 1st Series-A, No.155, 12 August 2005.

²⁷ Resolution of the Portuguese Council of Ministers 25/2013, *Government Gazette*, 1st Series, No.75, 17 April 2013.

²⁸ Resolution on the EU strategy in favour of Roma integration, available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:199E:0112:0131:PT:PDF>.

As mentioned above, the principle of non-discrimination is one of the transversal dimensions of the strategy and thus complementary to implementation and/or evaluation procedures. This dimension foresees training and awareness-raising action aimed both to the gypsy and non-gypsy population and focussing on the valuing of gypsy culture, the deconstruction of prejudice, the training regarding citizenship, associativism and project/association management. Children are specifically addressed only regarding axis 'Education'.

The text of the strategy highlights the low schooling levels and high failure and early school leaving rates of gypsy children and young, also highlighting that, in the last years, a "considerable diversity of educational tools and strategies has been implemented, with clear effects in terms of schooling and increasing equal opportunities in terms of education without, however, achieving the desired success regarding gypsy communities" and that "school can and should be an important cultural interface between the different communities, assuming itself as a place to which gypsy children and their families feel they belong to" (Portugal, 2012: p.29).

The fourth National Plan for Equality, Gender, Citizenship and Non-Discrimination 2011-2013²⁹ is in force. This plan has a heavy emphasis on the gender dimension and includes 14 different strategic measures, mainly: gender equality in public administration; harmonising family life and professional life; health; sports and culture; gender violence; social inclusion.

Articles 24 and 25 of the Labour Code³⁰ instate equal access and equal opportunities to accede employment, training, professional promotion and labour conditions, regardless of ascendancy, age, sex, sexual orientation, marital status, family situation, genetic patrimony, disability, chronic illness, reduced labour capability, nationality, ethnic origin, territory of origin, religion, language, race, education, economic status, social status, political or ideological beliefs and trade-union membership.

Article 4 of the Labour Code instates equal treatment for non-national (including stateless) workers. Whenever these are authorised to have a subordinate professional activity in Portugal, they have the same rights and duties as any Portuguese worker.

Law 46/2006 of 28 August³¹ is the law prohibiting and punishing discrimination on the grounds of disability and the existence of pre-existent aggravated health risks.

Law 3/2011 of 15 February³² forbids any kind of discrimination in the access to and exercise of independent work. It overlaps the rulings in 2000/78/CE which partially deal with this sort of work.

Law 134/99 of 28 August³³ forbids any kind of discrimination in the exercise of rights on the grounds of race, colour, nationality or ethnic origin. Article 2 of this law states it binds all natural and legal persons, public and private.

COMPLIANCE, INCLUSION, APPROPRIATENESS AND EFFECTIVENESS OF THE PRACTICE: TO

²⁹ Resolution of the Portuguese Council of Ministers 5/2011, *Government Gazette*, 1st Series No.12, 18 January 2011, available at: <http://dre.pt/pdf1sdip/2011/01/01200/0029600321.pdf>

³⁰ Labour Code (Law no. 7/2009), *Government Gazette*, 1st Series No. 30, 12 February 2009, amended by Law no. 69/2013 of 30 August 2013.

³¹ Law 46/2006, *Government Gazette*, 1st Series, No. 165, 28 August 2006.

³² Law 3/2011, *Government Gazette*, 1st Series, No. 165, 15 February 2011.

³³ Law 134/99, *Government Gazette*, 1st Series-A, No. 201, 28 August 1999.

WHICH DEGREE ARE THE NATIONAL LAWS AND POLICIES APPLIED AND IMPLEMENTED IN A WAY THAT IS INCLUSIVE, APPROPRIATE AND EFFECTIVE

Resolution 63/2009 of the Council of Ministers³⁴ established the fourth generation of the Programme “Escolhas”, created in 2001 by Resolution 4/2001 of the Cabinet Council. The renovation of the Programme aimed at reinforcing the support to the mobilisation of the local communities for the creation of projects of social inclusion of the children and youngsters from vulnerable socio-economic contexts, namely descendants of immigrants and ethnic minorities.

The programme has a commitment towards the mobilization and empowerment of communities and created the figure of “Community facilitator”, i.e. one young boy/girl drawn from a community that is integrated in one of the technical teams of the “Escolhas” projects, who has the profile of a positive leader and constitutes de per se a reference model, and contributes, by its close links with the area involved, for the mobilization of children, youth and community in general.

The fourth generation of the Programme established as priorities educational inclusion (both scholar and informal), professional training and employability, community stimulation and citizenship, digital inclusion, and entrepreneurship. Projects under the fifth generation of the Programme started their implementation in the beginning of 2013.

The Programme “Escolhas” has been internationally acknowledged, receiving recognition as a best practice in several occasions: in 2003, it received the European Union Award on Criminality Prevention; in 2007, it was referred as a good practice in the European Union “Handbook for Integration”; it was equally considered a good practice in the first “International Report on Criminality Prevention and Community Safety”, produced by the Centre for the Prevention of Crime (ICPC), with headquarters in Canada. In 2011 it was selected as good practice by the Ministry of Home Affairs and nominated to represent Portugal at the European Crime Prevention Network (EUCPN) Best Practices Conference on “Sport, Science and Art in Combating Juvenile Crime.

Escolhas was specifically evaluated (Saint-Maurice, 2013). The report highlights the clear impacts of programme ‘Escolhas’. About half of the young beneficiaries aged 11 to 24 evaluated the programme with the maximum grade (scale=0 to 20). The mean was 18.4. Additionally, for 90%, being a beneficiary of the programme was reported as a lucky event or as a prize. More than two out of three considered that their integration in school changed for the best, while 60% referred this positive change regarding their interaction with friends and other persons.

Older respondents and those belonging to the Roma/Gypsy population were those reporting less change what led evaluators to consider that the projects have more difficulties in addressing these sub-groups.

Considering specifically the impacts in each of the different axes in which the programme is divided, the report highlights, within axis 1 ‘Education and training’, the impacts in what regards the role of schools as places for socialization, alongside the family and the neighbourhood, and the high degree of educational success of the young recipients of the programme. Additionally, it stresses the strong internalization, by the young and their families, of the importance of education for professional integration and thus the valuing of education/training and of the investment in qualification. As the report highlights this is a rather recent feature which, until recently and for many years, the access to the labour market was usually more associated to luck, chance and endeavour than to qualification and knowledge.

Within axis 2 ‘Enablement and entrepreneurship’, it highlights the strong impact in terms of soft and

³⁴ Resolution of the Portuguese Council of Ministers 63/2009, *Government Gazette*, 1st Series No.141, 23 July 2009.

entrepreneurial skills, with strong engagement in activities and behavioural improvement and within axis 3 'Employment and employability', the programme is said to have tried to reach both the improvement of employability and labour market integration, though the results for the latter are considered to have fallen far short of expectations.

Within axis 4 'Community and citizenship', it stresses the high degree of participation and the dynamism in activities involving the community, deriving in a more active citizenship and a greater sense of belonging and deconstruction of territorial stigmas. In what the integration of immigrants and ethnic minorities is concerned, the growing involvement and proximity between different communities deriving, to a great extent, from the activities developed by the projects running under the programme is highlighted. Moreover, the role played by the projects as proximity services, helping to promote active citizenship is also focused on.

The second National Action Plan for Immigrant Integration 2010-2013³⁵ entails several measures which are specifically directed to children. As an example, measure 64 – "Combating social, educational and occupational exclusion of the descendants of immigrants" through the consolidation of local projects implemented as part of the "Escolhas" programme by groupings of local, regional and central bodies looking to secure an integrated response to the social, educational and occupational exclusion of vulnerable children and youngsters, promoting a more effective integration. It aims at defending the equality of opportunities for the descendants of immigrants in the access to professional training and employment, combating all forms of racial discrimination as well as at developing intervention strategies aimed at combating school failure of the children of immigrants, projecting a positive image of schools, including higher education colleges, as agents of socialization and the promotion of vertical social mobility, in a perspective of greater proximity to the community.

The Commissioner for Human Rights of the Council of Europe, Nils Muižnieks, visited Portugal from 7 to 9 May 2012. From that visit, a report was elaborated focusing on the impact of fiscal austerity measures on the enjoyment of human rights. This report highlights that the fiscal austerity measures implemented so far in Portugal have disproportionately affected the human rights of the most vulnerable social groups, especially children, the elderly and Roma (Muižnieks, 2012).

As a response to the CRC's concluding observations of 2001, regarding the need to improve and effectively implement existing legislation and policies regarding the protection of the rights of all children of minority groups and, in particular, Roma children, the Portuguese state considers that the project 'Mobile School' fit these purposes.

This was a distance learning project, using a technological platform as a learning aid. It began in 2005/2006 and it was geared to pupils in the 2nd and 3rd. cycle of Basic Education, the children of travelling workers (both Roma and non-Roma, working in fairs, circuses, etc.), and its objective was to respond to the specific needs of this community for basic education. The Curricular Plan of the Mobile School began with the disciplines of the National Curricular for the second and third cycles of Basic Education, with the exception of Physical Education.

Evaluation regarding the programme (Brites et al, 2011) highlights that the first results confirmed that 1) the programme was able to promote success at school and the qualification of itinerant students; 2) the programme was able to contribute to the transformation of organisational practice as well as to the change in the attitudes and behaviours of education professionals towards itinerant students and their families and vice-versa; 3) the programme was able to offer, jointly with the schools involved, an effective vocational

³⁵ Resolution of the Portuguese Council of Ministers 74/2010, *Government Gazette*, 1st Series, No.182, 17 September 2010, available at: <http://dre.pt/pdf1sdip/2010/09/18200/0409704116.pdf>

orientation to itinerant students.

However, through Ordinance 812/2010, of 26 August³⁶, the Ministry of Education decided to terminate the programme, stating that “the optimisation of human resources and the capability to maintain the quality of the pedagogic resources and the innovation of the process will allow for the sustainability of a service of distance learning in public schools” (Ordinance 812/2010: p. 3707). It is important to bear in mind that this period coincided with the Programmes for Stability and Growth – prior to the Troika intervention in Portugal – put into force as ways of tackling the crisis and already aiming at reducing expense.

This decision was considered by the aforementioned evaluation report “a source of several concerns” (Brites et al, 2011: p.277), even if the Ministry continued to make a more generic offer of distance learning. Moreover, the decision was taken in August 2010, only a month before the start of the schooling year, which raises doubts on the feasibility of ensuring a proper transition of students as well as the possibility to integrate the experience and expertise of the teachers of the programme in the structures of the Ministry.

Furthermore, the complete change of teachers has probably implied a loss of confidence from the target-groups, gained throughout the five years of implementation of the project, since the relationship of the student – and his/her family – with the school was reinforced through tutorship.

What are the key determinants that would enhance / reduce the level of risk / protection in this specific area?

- Highlighting good practice resulting from positive and proactive programmes to prevent discrimination (e.g. Escolhas, Escola Móvel)
- Bet on positive and proactive measures to prevent discrimination (e.g. cultural mediators)
- Renewing efforts for tackling the ‘traditional’ lower involvement of and lower effectiveness on Roma communities
- Avoid that social innovation projects are time-bound and not taken to scale, when they have proved to be successful

ACTORS: WHICH ACTORS ARE INVOLVED?

Actors involved include relevant ministries such as: Minister of the Presidency and Parliamentary Affairs, Ministry of Justice; Ministry of Internal Administration; Ministry of Health; Ministry of Foreign Affairs; Ministry of Solidarity, Employment and Social Security; Ministry of Education and Science; Minister in the Cabinet of the Prime Minister and for Regional Development.

It also includes other relevant state bodies such as: ACIDI – High Commissioner for Immigration and Intercultural Dialogue; CIG – Commission for Citizenship and Gender Equality; Ombudsperson’s Office, Portuguese National Human Rights Committee; CITE – Commission for Equality in Labour and Employment; Authority for Labour Conditions, as well as different NGOs.

³⁶ Ordinance 812/2010, *Government Gazette*, 1st Series, No.166, 26 August 2010.

3.2. THE GENERAL PRINCIPLES OF THE CONVENTION: THE BEST INTERESTS OF THE CHILD AND PARTICIPATION IN BEST INTERESTS ASSESSMENTS

COMPLIANCE AND INCLUSION OF THE NATIONAL LAWS AND POLICIES: TO WHICH DEGREE DO THE NATIONAL LAWS AND POLICIES COMPLY WITH INTERNATIONAL STANDARDS?

The general principle of the best interests of the child is not directly reflected in the Portuguese Constitution. However, the latest Portuguese report to the Committee on the Rights of the Child considers that this principle is recognized by article 69 of the Constitution³⁷. This article establishes that, with a view to their integral development, children possess the right to protection by society and by the State, especially from all forms of abandonment, discrimination and oppression and from the abusive exercise of authority within the family or any institution.

The best interests of the child are specifically addressed in article 4(a) of Law 147/99 of 1 September³⁸, the Law of Protection of Children and Youth in Peril, that compromises the Portuguese State and the community to organise themselves in order to guarantee that action models are capable of satisfying the needs of individual development of every child and youngster³⁹. However, this law does not provide a definition of best interests.

Accordingly, the latest Portuguese report to the Committee on the Rights of the Child on the implementation of the CRC considers that the Commissions for the Protection of Children and Young People (CPCJ) also contribute to guaranteeing the best interest of the child, since this is a guiding principle for their intervention.

The best interest of the child is also relevant in what concerns parental responsibilities. The legal content of parental responsibilities is specifically built with regard to the best interest of the child (number 1 of article 1879 of the Civil Code⁴⁰). In cases concerning the exercise of parental responsibilities, the court shall always decide in accordance with the best interest of the child (article 1906 of the Civil Code⁴¹).

The Adoption Legal Regime established by Law 31/2003, of 22 August⁴², integrated for the first time, as a main principle, the best interest of the child in adoption procedures.

As mentioned above, Order 6306/2012 of 14 May⁴³ created a working group with the objective of laying the foundations for a Children Agenda. This working group's mission included the evaluation of the operational, functional and legal mechanisms aiming to guarantee the best interests of the child.

The results of the work developed by this working group were disseminated through the Resolution of the

³⁷ Portuguese Constitution (Constitutional Law no.1/2005, VII Constitutional revision), *Government Gazette*, 1st Series-A, No.155, 12 August 2005.

³⁸ Law 147/99, *Government Gazette*, 1st Series-A, No.204, 1 September 1999.

³⁹ This is the formulation presented in the law that defines children or youngster as the person aged under 18 or the person aged under 21 requesting the continuation of the intervention process before turning 18.

⁴⁰ Decree-Law 47344, *Government Gazette*, 1st Series, No.274, 25 November 1966, last amended by Law 23/2013 of 5 March.

⁴¹ Ibid.

⁴² Law 31/2003, *Government Gazette*, 1st Series-A, No.193, 22 August 2003.

⁴³ Dispatch 6306/2012, *Government Gazette*, 2nd Series, No.93, 14 May 2012.

Council of Ministers 37/2013, of 11 June⁴⁴. One of its core conclusions was that the effectuation of children's rights should assume the family as the core unit of protection and that, as an alternative, inter-sectorial articulation should be prompted, aiming at the decrease of the number of children in long-term institutional care and the dynamization of alternative protection measures (ibid).

**“P1 – [while analyzing card 7 of the GATE Game – Family of origin] Here, he is happy because he has a family and here his family went to hell!
I – Do you think this right is easy to guarantee?
P2 – No, it's not.
I – What are the difficulties?
P1 – It depends from case to case. There are some who do not have much family support and so they have to go to an institution or they have to go, for instance, to go and live with their grandparents because their parents do not have the means. There are a lot of young people that go living to an institution because they are beattened or because they skip school or because they are rapped; for different reasons. Then they go to an institution and, in some cases, it ends up being worse because they grow rage and some of them think that it's their fault.” (CHILDIn, PT17)**

However, the focus on family ties has to be framed within a comprehensive analysis of the situations and must not be considered as always corresponding to the child's best interest:

“There is an excessive focus on biological bonds, even in cases where there is no psychological link and this may jeopardise the child's best interest. (...) Thus a challenge is to clearly consecrate the prevalence of other affective bonds, when these do accompany biological filiation and when parents do not assume their parental responsibilities for a long time.” (ORG, PT12)

Number 1 of article 78 of Law 27/2008, of 30 June (Asylum Law)⁴⁵, establishes that, in its application, the law must take in consideration the child's best interests. Number 2 of the same article, establishes that, within the application of the child's best interests, these are considered to include namely the following: a) placement with the parents if idoneous; b) in the absence of the former, with adult relatives if idoneous; c) in the absence of the former, in foster families, in specialised centres for the accommodation of children or in other places with appropriate conditions; d) the non-separation of siblings; e) life stability, with changes of location of residence limited to the minimum.

Number 1 of article 114 of Law 29/2012 (Immigration Law)⁴⁶, establishes that the application of articles 109 to 112 (regarding residence permits to victims of human trafficking or victims of actions to facilitate undocumented migration), the child's best interests must be taken in consideration and the adopted procedures must be appropriate to his/her age and maturity.

Besides what is mentioned in number 1, number 2 of article the same article states that the reflection period allowing the victim to recover and escape from the influence of the perpetrators of human trafficking or actions to facilitate undocumented migration may be extended if required by the child's interest.

The family justice procedures try to take into account the needs/rights of the child and to assure the respect for his/her personal situation. Therefore, the pursuit of guardianship civil cases and the intervention for

⁴⁴ Resolution of the Portuguese Council of Ministers 37/2013, *Government Gazette*, 1st Series, No.111, 11 June 2013.

⁴⁵ Law 27/2008, *Government Gazette*, 1st Series, No. 124, 30 June 2008.

⁴⁶ Law 29/2012, *Government Gazette*, 1st Series, No. 154, 9 August 2012.

the promotion of the child in danger follows several important principles: the principles of the child's best interests, of privacy, of early intervention, of minimum intervention, of proportionality and timeliness, of parental responsibility, of the family prevalence, of the obligation to inform, of mandatory hearing and participation and of subsidiarity.

COMPLIANCE, INCLUSION, APPROPRIATENESS AND EFFECTIVENESS OF THE PRACTICE: TO WHICH DEGREE ARE THE NATIONAL LAWS AND POLICIES APPLIED AND IMPLEMENTED IN A WAY THAT IS INCLUSIVE, APPROPRIATE AND EFFECTIVE?

Despite all existing legislation, evidence gathered from interviews clearly highlights that this is not enough, per se, for guaranteeing without doubts that implementation is inclusive, appropriate and effective.

“Surely, if they are applied. The best interest of the child is foreseen, absolutely no doubts about it (...) One thing is laws, another thing is practices. Practices are executed by men and women. Often there is a major confusion between the legislative framework and practices but this cannot be confused. (...) I have no doubts that our legal framework cares about the child's best interest. (GOV, PT02)

“We identify flaws in practices. For instance, there is legislation regarding the benefits a child can obtain during a judicial process, such as specific follow-up or specific facilities but we end up realising that sometimes this is not what happens.” (ORG, PT09)

“Maybe [the laws] are not as effective as we would like because practices fail. We have good legal instruments. We lack some articulation between services (...) We lack true networking so that things work out spontaneously. There are some protocols, documents are signed and contacts are established but then, in practice, each of us thinks on what s/he has to do. I think that this is where we stand. Things are not fine and effectiveness becomes hampered due to the lack of articulation for the solving of the problems” (GOV, PT07)

What are the key determinants that would enhance / reduce the level of risk / protection in this specific area?

- Establishing procedures ensuring that implementation follows the grounds set by legislation and policies
- Case by case assessment of best interests
- Ensuring a coherent, continued and long-term strategy centred on the children best interests
- To make sure that any governance mechanisms (e.g. Agenda da Criança) deliver what they were meant to according to their mandate

ACTORS: WHICH ACTORS ARE INVOLVED?

Actors involved include relevant ministries such as: Minister of the Presidency and Parliamentary Affairs, Ministry of Justice; Ministry of Solidarity, Employment and Social Security. It also includes other relevant state bodies such as: ACIDI – High Commissioner for Immigration and Intercultural Dialogue; CIG – Commission for Citizenship and Gender Equality; Ombudsperson's Office, Portuguese National Human Rights Committee;

National and Local Commissions for the Protection of Children and Young People, as well as different NGOs such as the IAC – Child Support Institute and the APAV – Portuguese Association for Victim Support.

3.3. THE GENERAL PRINCIPLES OF THE CONVENTION: THE RIGHT TO BE HEARD, INCLUDING IN LEGAL AND ADMINISTRATIVE PROCEEDINGS

COMPLIANCE AND INCLUSION OF THE NATIONAL LAWS AND POLICIES: TO WHICH DEGREE DO THE NATIONAL LAWS AND POLICIES COMPLY WITH INTERNATIONAL STANDARDS?

Article 37 of the Portuguese Constitution⁴⁷ foresees the right of every individual to freely express and publicise his thoughts in words, images or by any other means. Regarding the freedom of expression of children in particular, the following two provisions must be mentioned.

The right of the child to be heard and to participate, in accordance with his/her age and understanding, takes a special importance in some situations (article 1901 of the Civil Code, as amended by Law 61/2008, article 147(a) of the Child Support Law and articles 4, 10, 84 and 94 of Law 147/99, as well as on the Civil Sponsoring Law (articles 10 and 11 of Act No. 201/2009 of 11 September).

**“There is the basic principle that no decision should be taken without taking into consideration the right of the child to be heard. This hearing is not necessarily limited by the age of the child, i.e. it does not mean that the hearing of a child aged less than 12 cannot happen. The child must be heard. (...) We have to use this hearing right to absorb information so that, according to analysis and according to the proofs, we can provide an answer in line with the objectives of development and, most of all, of emotional and physical rebalance of these children.”
(GOV, PT04)**

In its preamble (indent 15) the Law on Educational Guardianship (Law 166/99, 14 September⁴⁸), mentions the adversarial system in juvenile procedures and the importance of taking into account the child's views. Article 45 of this Law foresees the general right of the child to be heard during every stage of the process. This hearing can be determined by request of court or of the child.

Article 77 of the same diploma establishes that the child must be heard by the public prosecutor as soon as the criminal investigation is started, before the court, and subsequently during the judicial proceedings. Articles 104 and 107 describe the child's audition. Article 137 concerns the revision of the legal measures previously taken and the participation of the child in the proceedings.

Article 4 i) of Law 147/99⁴⁹ foresees a mandatory hearing and participation of the child at risk during the promotion and protection process and in particular regarding the decision on the applicable protection and promotion measures.

Number 1 of article 10 of the same Law establishes that the institutional intervention in case of children at

⁴⁷ Portuguese Constitution (Constitutional Law no.1/2005, VII Constitutional revision), *Government Gazette*, 1st Series-A, No.155, 12 August 2005.

⁴⁸ Law 166/99, *Government Gazette*, 1st Series-A, No.215, 14 September 1999.

⁴⁹ Law 147/99, *Government Gazette*, 1st Series-A, No.204, 1 September 1999.

risk is dependent on the non-opposition of the child aged 12 years or more. Number 2 of the same article establishes that the opposition of a child aged less than 12 years is considered as relevant according to his/her capability to understand the meaning of the intervention.

Article 94 establishes that once the communication from the Commissions for the Protection of Children and Young People (CPCJ) is received, the child should be informed and heard. Moreover, the CPCJ is obliged to inform the child about his/her rights and the following procedures.

According to article 12 of Law 147/99 the CPCJs are non-judiciary official institutions with functional autonomy which aim at promoting the rights of children and youngsters and preventing or ending all situations that may affect their security, health, education and comprehensive development. They must exercise their remits accordingly to the Law and deliberate with impartiality and independence. The CPCJs are declared established by a joint order of the Minister of Justice and the Minister of Labour and Solidarity. Each CPCJ has always two functioning modalities – a Restricted Committee and a Plenary Committee. The former is responsible for the direct intervention in concrete cases, after a situation of danger is signalled to it. The plenary Committee integrates various members of the community, among others representatives of the city council, of social security, of the Ministry of Education, health services, civil society organisations, parents' associations, security forces and other competent members of the community.

The Plenary Committee is specifically in charge of undertaking a more preventive action within the community, namely through information and dissemination of child rights and by promoting actions with the competent authorities for the detection of facts and situations that affect children's rights and interests, that put their health, training or education in danger, or which prove to be unfavourable to their social development and insertion.

The Civil Sponsorship Law (Law 103/2009 of 11 September⁵⁰) also establishes that civil sponsorship can be applied to children over 12. In addition, children are able to start proceedings if they are over 12 and they can choose the person and family. If the choice of the family is made by a third person, the child's opinion shall nevertheless be taken into account – (articles 10 and 11).

The interpretation, in legal cases, available for children who are not Portuguese speakers is assured, as it is for non-nationals in general, provided by an interpreter (article 139 of the Code of Civil Procedure (CPC), also applicable in Criminal Procedure), as well by sign language for the deaf-mute (article 140 of the CPC).

Number 1 of article 271 of the Criminal Procedure Code⁵¹ establishes that victims of human trafficking may be heard during the inquiry so that their testimony, if needed, may be used during trial. Number 2 of the same article establishes mandatory hearing during the inquiry for processes regarding crimes against freedom and sexual self-determination of children, who are still, at that time, under-age.

Number 4 establishes that, in the cases foreseen in number 2, hearing is conducted in an informal and reserved environment, aiming at guaranteeing spontaneous and sincere answers. The child must be assisted by a "specially qualified professional", previously designated by the judge.

Number 5 establishes that the inquiry is conducted by the judge after which the Public Prosecutor's Office, the attorney of the assistant, the attorney of the parties in civil proceedings and the defender, by this order, may pose additional questions.

Article 349 establishes that the inquiry of witnesses aged under 16 is conducted only by the president. After it is finished, other judges, the jurors, the Public Prosecutor's Office, the attorney of the assistant, the attorney of the parties in civil proceedings and the defender may ask the president to pose additional questions to the witness.

Article 352(b) establishes the removal of the defendant from the courtroom during the making of statements if the person making statements is aged under 16 and there are reasons to believe that the presence of the defendant during his/her hearing may severely harm him/her.

Regarding parental responsibilities, the views of the child are also taken in consideration. The court may

⁵⁰ Law 109/2009, *Government Gazette*, 1st Series, No.177, 11 September 2009.

⁵¹ Decree-Law 78/87, *Government Gazette*, 1st Series, No. 40, 17 de Fevereiro last amended by Law 23/2013 of 5 March Law 20/2013.

decide to hear the child and take the child's opinion into account in important issues regarding the exercise of parental responsibilities (article 1901 of the Civil Code). In adoption procedures, children aged more than 12 years must be heard and she/he must give consent for adoption (number 1 of Article 1981 of the Civil Code). Regardless of his or her age, the child is always heard by the judge during this process and the judge must take into consideration the child's age and maturity (number 2 of article 170 of Decree-Law 314/78 of 27 October⁵²).

In 2007, a protocol between the Ministry of Labour and Social Solidarity, the Portuguese Committee for UNICEF and 13 Municipalities was signed, establishing the Child Friendly Cities project. The Protocol put in place a strategy and protection mechanisms of the rights of the child, promoting the active participation of children in Portugal namely by promoting:

- (a) Measures which allow children to be informed and actively involved in matters concerning them, by taking into account their opinions in the decision-making process;
- (b) A municipal action plan based on CRC to identify challenges and allow for the permanent improvement in the child's life conditions;
- (c) Coordination mechanisms for actions developed by the municipalities and related to the promotion of the rights of the child;
- (d) Reorganisation of the adequate and sufficient municipal resources to include the rights of the child in the budget; and
- (e) An annual report on the child situation in the municipal council including statistical data to support new policies, specifically related to children in more vulnerable situations.

Currently, however, and according to the Child Friendly Cities project website (<http://childfriendlycities.org/>) Lisboa is the only Portuguese city involved in this initiative.

COMPLIANCE, INCLUSION, APPROPRIATENESS AND EFFECTIVENESS OF THE PRACTICE: TO WHICH DEGREE ARE THE NATIONAL LAWS AND POLICIES APPLIED AND IMPLEMENTED IN A WAY THAT IS INCLUSIVE, APPROPRIATE AND EFFECTIVE?

However, in practice, the implementation of the right of the child to be heard still reveals flaws. In judicial proceedings, for instance, it is not always possible to guarantee the best way to implement the process.

“It is curious to note that nowadays the tendency is for hearings to articulate and consensualize. (...) This is not always easy because the penal process is interested in the immediate moment, in not wasting time. In terms of promotion and protection, the child may be so frail emotionally that the audition may harm him/her. (...) The times for auditions are not exactly comfortable and synchronic. The ideal and this is our big objective is managing auditions to be coincident even if conducted by different magistrates. A magistrate of the penal process does not know what a magistrate for the family needs to hear for his/her process.” (GOV, PT04)

Even if there is a feeling that improvements have been managed with concrete results in terms of effective implementation.

“Nowadays we privilege swift and unbureaucratic communication channels. (...) We now have situations of great success in the sense that we manage to have a number of timely developed hearings that we were not able to ensure some years ago.” (GOV, PT04)

52 Decree-Law 314/78, *Government Gazette*, 1st Series, No. 248, 27 October.

However, it is also mentioned the need to guarantee that the process is more than a formality and that it is in fact consequent.

“The flaws regard, most of all, a still feeble hearing of the child regarding the matters that concern him/her. According to our acquaintance, the respect of the child’s point of view is most of all a formality because it is not considered for decision. We are told that children were in the prosecutor’s office or in the judge’s office for a long time but that decision was contrary to what children expressed. Many children aged 16 or 17 are heard but disregarded. (...) The challenge is to insist on the importance of giving the child a say, recognising his/her right to it and giving him/her a close listening. (ORG, PT12)

Also regarding the relationship with the organisations providing child support there is the feeling that the right to be heard should be enhanced.

“I think that the politicians should believe in young people. They should be given some credit and be heard. (...) We also need to make them responsible because they can cooperate. Everything is imposed to them. They go to this or that institution, to this or that bed and they aren’t asked anything about how to solve things. It is up to the group of professionals or to the director. (...) They don’t try their [the children’s] solutions. So they will never feel at home if they aren’t listened to, if they aren’t part of the solution. Because they have the things that someone bought them. Their ideas should be implemented because they are positive.” (ChildOut Professionals, PT19)

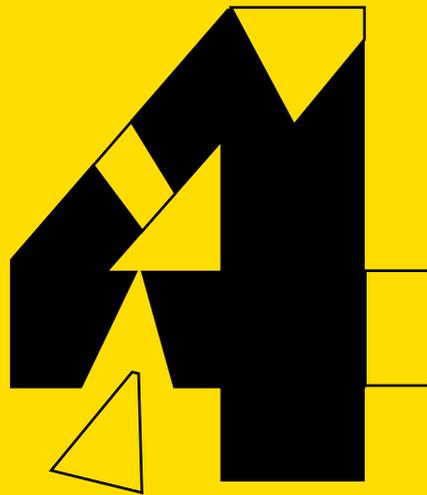
What are the key determinants that would enhance / reduce the level of risk / protection in this specific area?

- to establish concrete mechanisms to respect the right of the child to be heard
- to guarantee that the right is not restricted to children aged over 12
- to assess the extent to which the respect of the right goes beyond the formality
- to create conditions for articulation regarding auditions in judicial procedures, in order to avoiding delays, repetition and/or re-victimisation

ACTORS: WHICH ACTORS ARE INVOLVED?

Actors involved include relevant ministries such as: Minister of the Presidency and Parliamentary Affairs, Ministry of Justice; Ministry of Internal Administration; Ministry of Health; Ministry of Foreign Affairs; Ministry of Solidarity, Employment and Social Security; Ministry of Education and Science; Minister in the Cabinet of the Prime Minister and for Regional Development.

It also includes other relevant state bodies such as: Public Prosecutor’s Office, ACIDI – High Commissioner for Immigration and Intercultural Dialogue; CIG – Commission for Citizenship and Gender Equality; Ombudsperson’s Office, Portuguese National Human Rights Committee; National and Local Commissions for the Protection of Children and Young People, as well as different NGOs such as the IAC – Child Support Institute, the APAV – Portuguese Association for Victim Support; the Portuguese Committee for UNICEF.



ANALYSIS OF NATIONAL STANDARDS AND PRACTICE

Prevention and protection benchmarks:

Any prevention and protection strategy and measure should address the following essentials:

Inclusion: Full and sustainable access to health care, together with qualified responses to primary needs, such as food, accommodation and clothing, as well as to particular needs.

Appropriateness: The relevant and personalised response to primary needs, together with the degree of individual satisfaction.

Effectiveness: High quality and availability of the response to primary needs.

Compliance: National laws, policies and practice ensure the maximum degree of health and well-being without any discrimination in line with international standards.

Source: Standards developed for GATE, 2012.

Who are the main actors with regard to 'survival'?

- Relevant ministries and their mandates at the level of the central government
- Other relevant state bodies
- Regional and local authorities
- Non-state actors (private service providers, NGOs, Foundations, and others)

4.1. SURVIVAL

4.1.1. CHILD CARE, INCLUDING ACCOMMODATION AND FOOD

Compliance and inclusion of the national laws and policies: To which degree do the national laws and policies comply with international standards?

Article 69 of the Portuguese Constitution⁵³ consecrates the protection of children as a duty of society and of the State, aiming to their full development. This duty originates individual rights such as the right to food, translated into the access to minimum conditions for subsistence.

“We feel that Portugal has been ratifying every directive, every orientation coming from the European Union. (...) Portugal has been integrating these indications, both in policy instruments and in legislation, namely in the penal code and in the law of entrance and exit of foreigners. Often, when we go abroad, and we talk about assistance to victims, we see that Portugal is one of countries complying with every key point. The country is seen as a good practice.” (ORG, PT10)

The Immediate Intervention Plan (PII), established in 2004, aims at characterising all children and young people placed in public institutions or in foster families. According to the provision contained in article 10 of Chapter V of Law 31/2003, of 22 August⁵⁴, the Government is bound to submit an annual report on the evolution of children and young people’s life projects.

Therefore, the PII is a diagnostic instrument and its results will be used in the elaboration of strategic actions which will: (i) favour children and young people by guaranteeing their right to live, as quickly as possible, within a family – their own family or in an alternative family; (ii) favour institutions and foster families, providing special care for the well-being and full development of the child and by promoting the definition and implementation of their respective life projects. A life project is defined as “the plan sketched technically, aiming at projecting to the future a given lifestyle which is considered desirable for the child or young person. Conceptually, the life project includes the orientation for achieving the goals and the activities the child must fulfil in order to achieve those goals. Within this scope, the life project must consider schooling and training needs, as well as affective and relational needs, and its definition and implementation becomes the core of the technical work of follow-up institutionalized children and young people.” (IDS, 2000: p.74)

According to the annual report of characterisation of the situation of children and young people in care – CASA 2012⁵⁵ (ISS, 2013), in 2012, 1,085 children/young did not have a defined life project, 181 of which because their previous life project revealed impossible to concretise, 60 who had a life project in 2011 but not in 2012 (no justification provided), 41 for which the intervention plan with the family was interrupted when the life project regarded family reunification, 191 who did not have life project already in 2011 either because of absence of socio-family diagnosis or of intervention plan and 653 who had entered the care system for less than six months.

53 Portuguese Constitution (Constitutional Law no.1/2005, VII Constitutional revision), *Government Gazette*, 1st Series-A, No.155, 12 August 2005.

54 Law 31/2003, *Government Gazette*, 1st Series-A, No.193, 22 August 2003.

55 Available at: <http://www.parlamento.pt/Documents/XIILEG/Abril2013/CASA2012.pdf>

The definition of a six-month period in order for a life project to be defined cannot be considered but potentially disrupting, as it is well pointed by one of the respondents.

“If they stay for more than 6 months, we will fall below the possibilities they are entitled to. We would like them to have full access to everything they are entitled to. In these terms, we started proposing, to court, another life project, different from the shelter. It was accepted, and we are waiting for an answer to know where the young is going to stay. This wait for an answer is sometimes, according to some people, a dragged situation.” (ORG, PT11)

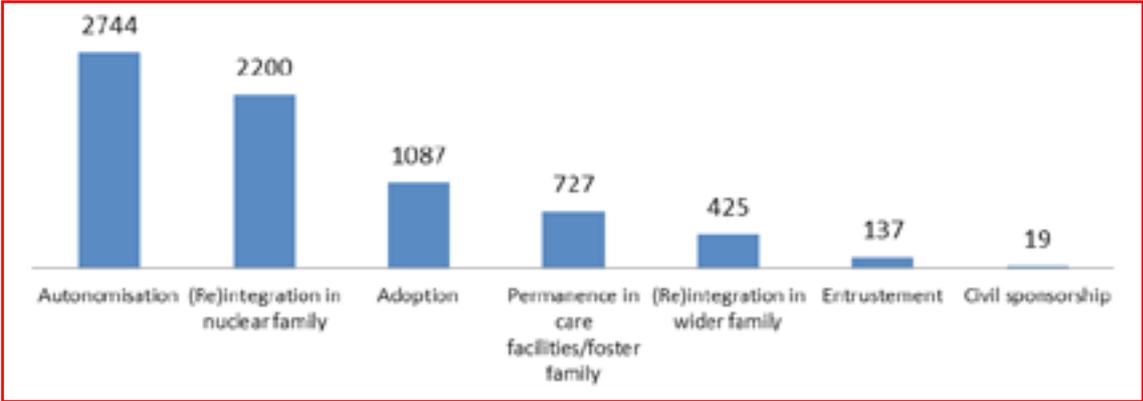
Most life projects regard autonomisation, reintegration in the nuclear family and adoption. However, in many cases, autonomisation is not framed within the most proper context.

“There should be a service of pro-autonomy. There aren’t many. Santa Casa da Misericórdia has some services like that. (...) We know there are six or eight kids who live there, along with a technical team, and they live their normal life, doing what is normal. Going to school, taking a vocational course, going to work, then at night they do their own food and organize their home tasks.” (PROFESSIONALS, PT, ChildOut)

In many cases, life projects express care planning rather than taking into account the overarching aspects of the child’s life, which besides is in line with the established goals.

“The definition and a careful and individualized concretization of the life project of each child and youngster is one of the more fundamental tasks of institutional and family care – within the context of its support, merely instrumental and temporary, it should assure, by all means to its reach, that each child and youngster may grow within a family. This is a duty of each entity even if they are helped by all other entities, public or private, deemed to be relevant to be involved” (ISS, 2013: pp. 41-42).

Life projects of children in the care system (2012)



Source: CASA 2012

Within such a context there seems to be more room for further involvement of children in planning.

“Their intervention in their life planning is essential because I can’t design a plan for them; they have to be involved. If they tell me what they want to do, I can guide them and say if it is possible, if there’s an alternative. They have to propose because if they don’t, things cannot happen. We have to treasure their experience.” (PROFESSIONALS Young, PT20)

This is as important as the sessions with children/young people showed the importance of strong references in this crucial period of life, moreover when living in care facilities.

“I – How would you like your future to be? [showing card 10 of the GATE Game – Life Projects] When you imagine your future you see yourselves here [hole] or here [mirrors]?”

P2 – I will only have to think about the future five years from now, when I’m 18.”

I – You don’t think about it now?

P2 – No.

I – And why will you have to think about the future when you’re 18?

P2 – Because from that moment on, my father will stop giving me his drug money to support me. But till I’m 18 he has to support me!

P1 – I’m already looking for a job.

I – Does anyone talk with you regarding plans for the future?

P1 – My mother but I never listen to her because she got a pastry course and she washes dishes. I rather listen to my uncle.

(...)

I – What do you imagine yourselves doing, five years from now?

P4 – Cleaning bins.

P3 – With the course I will take – bartender – I may wait at the tables or I can be pouring drinks.

P2 – I can be cleaning in the airport like my grandmother. She finds lots of cell phones and laptops!” (CHILDIn, PT17)

“I – At the time, how did you imagine your future?

R – I thought that someday I could end up making a mess ... The last time I was at the police station I was threatened that next time I would be arrested. Because I was always thinking that, being under age I would not be arrested. So, I kept on doing the same things. But then I saw it [attaining majority] coming closer.... (...) And a friend of mine had a child (...), but she didn’t have a job and her son’s father didn’t care. So, I kept on witnessing these things and started thinking that I did not want them for me”. (YOUNG, PT15)

The main barriers to the definition of life projects mentioned by entities are the inexistence or insufficient number of professionals in the entities’ technical teams (52%) and difficulties in the articulation between the entities’ technical teams and the technical teams following-up the execution of the measure of promotion and protection (12%) (ISS, 2013: p. 44).

The DOM Plan (Challenges, Opportunities and Change Plan) aims to implement measures of qualification of the Homes for Children and Youth, which contribute to a continuous improvement of the promotion and protection of the rights of children and youth attended, in the sense of their education towards citizenship and deinstitutionalization in good time.

It also aims at implementing a shared management system for placing children and young people in homes allowing children in need of care to be referred to the more adequate institutions in view of his/her profile.

The regulation of the foster family measure in 2008 introduced a new intervention Framework for foster families and follow up provided by Social Security to children in foster care. A direct implication of this regulation regards the end of the possibility for foster families to have family ties with children in care, a predominant reality in the last years. It also requires a determining factor to the application of a promotion and protection measure for family placement to take place.

In order to qualify and standardise the action of the social security teams responsible for the follow up of the foster families, the ISS, I.P issued two technical guidelines in 2008. The first guideline contributed progressively towards the above-mentioned end of the possibility for foster families to have family ties with children in care. The second one established the procedures to be used by the social security teams when assessing new foster care candidates.

The DOM Plan also aimed to improve the knowledge on the exact number of children in foster care, their legal situation and life projects contributing to a more qualified intervention with institutional contact, in order to make more flexible and adjust the juridical regime of adoption (Law 31/2003, of 22 August⁵⁶) and to monitor the foster care system and children in foster care (Immediate Intervention Plan).

Focused on the child, the DOM Plan aims at defining the necessary conditions so that the elaboration of the child's life projects is assumed as an institutional practice and that the child does not remain longer than necessary in a care facility. In parallel, seeking to create the institutional conditions allowing the child / young person living in a Group Home, to enjoy all rights necessary for his/her well-being and personal development.

This plan is supported on developing 2 measures: Measure 1 provides Homes where there are no Technical Teams with the necessary human resources because of the number of children and young people in care. Measure 2, promotes the development of training courses for Care Institution Management, provides respective Technical and Educational Teams, and implementation of Supervision Plans for Technical and Education Teams as well as the construction/reformulation of technical instruments supporting interventions

The Plan SERE+ was created by the State Secretary of Social Security and Solidarity's Order 9016/2012 of 26 June⁵⁷ as part of the Social Emergency Programme. It is specifically addressed to children under the care of an institution, aiming to the continuous improvement of the services addressed to them in order to their rights' promotion. This improvement should lead to shorter periods of institutionalization. Its basic assumptions are that government action should lead to new forms of childcare for children and youngsters at risk and to new management methods of human and financial resources and that alternative solutions to institutionalization and a continuous intervention with families, children and young people are needed.

According to the reporting procedure to the CRC (Portugal, 2011), the follow-up and assessment of children in institutions is concern of all authorities with responsibility in the matter. Nonetheless, it is also mentioned that situations of children in care without any protective measures still persist⁵⁸.

Data regarding children and young people in care without having their legal situation in order⁵⁹ shows that there has been improvement on this matter over the last few years. In 2007, 449 children were in this

⁵⁶ Law 31/2003, *Government Gazette*, 1st Series-A, No.193, 22 August 2003.

⁵⁷ Order 9016/20, *Government Gazette*, 2nd Series, No.128, 4 July 2012.

⁵⁸ There are cases of children who are taken in an institution e.g. by request of the family. Law 147/99 states that these situations must only be communicated to the Public Prosecutor's Office. Therefore, there is no legal obligation to issue a protective measure. Till recently, this was more common but nowadays most of these situations are, in any case, referred to a CPCJ and subject to the definition of a measure of protection.

⁵⁹ The legal situation is in order when, within the scope of a process of promotion and protection, of the responsibility of a CPCJ or of the Court, a measure of promotion and protection or another tutelary civil legal figure is, by court order, applied.

situation, in other words 4% of the total children placed in care. Nonetheless, in 2012, the number still amounted to 182 or 2% of children placed in care (ISS, 2013).

Another main concern regards the high number of children and young people living in institutions associated to the length of time they stayed. In 2012, 34% of the children living in foster care or in an institution were there for four years or more and an additional 21% for two or three years (ISS, 2013).

“Alternative childcare is still not what it should be. We lack childcare facilities. There is a current debate regarding the need for specialised shelter homes, homes with therapeutic services. (...) Another thing is foster care. (...) There is no foster care in Portugal. Although the law foresees it as a possible measure, in practice this is not concretised because the Social Security system should... There were foster families once but things did not go well and thus this ended almost completely. Then, in 2008 a new law came into force with improvements but it was necessary to implement it. It should be disseminated and families should be recruited. Then the Social Security system should assess and follow-up these families do that the CPCJs could place the children. However, nothing of this has been done and so...there is no foster care. There is one only exception where an organisation managed, I’m not sure exactly how, to be successful.” (MUN, PT16)

“The law states the principle of the prevalence of the family and that the placement in institutional childcare should be the last measure to apply. From my standpoint, this is another flaw. If more means were available, all the intermediate measures could be better explored.” (MUN, PT16)

“I think that we would also need a reinforcement of the measure of placement of the child with a person of good repute, so that we would resort less to institutionalization. We are also trying to create a centre for family counselling and support with resources in terms of psychotherapy”. (MUN, PT08)

A specific and grievous situation regards the situation of children living in the street. In its concluding observations of 2001, the Committee on the Rights of the Child urged Portugal to study the causes of children living on the street and the scope of the problem; develop and implement a comprehensive policy to address the causes of children living on the streets, including through assistance to families and efforts to address concerns with regard to adequate housing and access to education; strengthen its assistance to children currently living on the street, including with regard to health and education services, food and housing, drug abuse treatment and counselling; and ensure that street children are informed of their rights and strengthen children's participation in achieving respect for them.

“I think that if the institutions aren’t prepared to incorporate kids with specific characteristics. They aren’t able to motivate them in the start. And the kids reject them. Sometimes the institutions work in a semi-open system, so it allows them to leave. If they leave they don’t come back. There is an initial stage in the entrance of these centres which hasn’t success. Most of the kids who go to institutions have previous information of what that is and they don’t want to go. They go against their will and the people who receive them can’t keep them because it is semi-open and there is no time to captivate them.” (PROFESSIONALS

ChildOut, PT19)

“I don’t know if there is any kind of support if kids in the street enter into a relationship and get a family, because there are no shelters for a young father and mother and a little baby. There are some shelters accepting the mother and the baby, but not the father, because they don’t bring boys and girls together. I am not aware of any shelter like that but it is necessary because they are a family and should be together. To give them support and prepare them they should be together, otherwise the father can’t help with the baby and can’t establish a real relationship with the baby.” (PROFESSIONALS ChildOut, PT19)

According to information provided by the Child Support Institute, the phenomenon of children living on the streets has been gradually losing its expression in Portugal, having become more seasonal.

“I work here for about 15/20 years, since the beginning of the project. In the beginning there were much more children in the streets, abandoned children of all ages. The younger ones were protected by the older ones. They were used for different situations such as robberies and prostitution”. (PROFESSIONALS ChildOut, PT19)

Street children maintain their family ties and neighbourhood loyalty. But they still run away from home or from childcare facilities and remain on the streets for days or even weeks and then return home and to their neighbourhoods.

“Some of them have families but they don’t want to go into further clashes with their family. Thus, when they do not want to be institutionalized, the street is the only way. Only later we can reach their family and work with them, if they are not satisfied in the institution, to get back to their family. We can get an alternative. They left home or the institution and it was their choice. (...) “The majority of the kids didn’t run away from their home, they ran away from institutions. There was already an attempt by the system to make it work but it didn’t.” (PROFESSIONALS ChildOut, PT19)

Therefore, these young people are considered by the Child Support Institute as “children or young people who run away from home”, terminology adopted according to European directives. This Institute specialised in providing assistance to street children, interpreting the changes in the phenomenon of these last years and focuses its activity on disadvantaged neighbourhoods where most of these young people come from. Street Project (Projecto Rua) was created in 1989. In 2011, most runaway children supported were girls aged 14 to 16.

“We are worried about the basic needs of the ones we find on the streets: nutrition, health and life conditions. Sometimes they occupy empty buildings which sometimes have no conditions. They might get hurt in case of collapse of the building. Nutrition is covered by the night street teams, in Lisbon. Children know already the places and the paths. They go there and feed themselves. Sometimes they even take food for the next day. Sometimes it is not enough and at night they are desperate for our arrival to eat something. There are some kids who do something to get some money, like parking cars. Then they go to the supermarket to buy something or they steal, but sometimes the

money is not enough and the night street cars are always a solution. (...) “There is something which is very important. If they don’t feel able to do things differently and achieve something else, we can’t help them. Only when they feel they can do it and that we hear them they try to contact us. We try to follow them. They don’t do what they want but what it is possible to do. If they don’t believe, there is always the risk of going back to simply surviving. (...) “The idea is to save them but at their rhythm. If there is a child who is in the street for a year, we can’t take him out in one month. Sometimes we arrange things to be with them but they are absent. Because they want to! (...) “I think there are no specific programs for families. They belong to a family who wasn’t protected or who didn’t receive intervention. If there is any help in case of family crisis, the institutions should be alert and could help the family in a way of not getting children under age affected or involved. We have kids who were excellent students and left school, and then we have kids with several retentions at school. It seems there was no one concerned with the family to overcome their problems. When someone goes into the streets, it was not from one day to another. There is a period of time till that happens.” (PROFESSIONALS ChildOut, PT19)

A specific situation regards those children needing urgent medical care that cannot return to their families when they are discharged from the hospital though needing to continue treatment. This situation was dealt with within the scope of the First National Meeting of Post-Hospital Care Services (9-10 October 2012).

From the results of the meeting, these are situations affecting, most of all, children from the Portuguese speaking African Countries, whose embassies, stated in agreements as responsible for the non-health related aspects fail their compromises. Another related problem regards the fact that, in many cases, the child becomes unaccompanied as the person accompanying him/her goes in search for a job and better living conditions. Nonetheless, it is also reported that the situation is now better and that cases such as one of a boy who stayed admitted in the hospital for 11 years no longer take place. Portuguese children are also reported but these are situations easily solved.

The professionals involved transmitted the idea that a main problem is the lack of strategy and connection also pointing out the need for a structure targeted to children without reintegration perspectives since, still according to the conclusions of the meeting, there are situations where children end up lingering in the hospital or being integrated in care facilities not appropriate to this specific situation.

In 2008, the Portuguese authorities set up one specialised shelter - Shelter and Protection Centre for victims of trafficking – and following the signature of a protocol between the main public institutions concerned (Ministry of Justice, Ministry of the Interior, police forces, Social Security Institute, Prime Minister’s office) and the Family Planning Association (APF) which runs the shelter. It provides accommodation and assistance to victims of trafficking. The centre is open only to women victims of trafficking and, where applicable, their under-age children.

The Centre provides victims with basic assistance (accommodation, food, personal hygiene) and more specific assistance (legal, psychological, medical, social, educational, vocational training).

“In what regards the minors we have with us, we do not feel any difficulties, i.e., the team complies with what is defined in terms of rights, in terms of education, medical assistance; in terms of priority needs that need to be assured. We feel that an answer is being provided. But it is true that we do not have a big number of minors with us”. (ORG, PT10)

Because of the centre's limited capacity, some victims of trafficking are accommodated at other centres managed by NGOs, mostly shelters for victims of domestic or other kinds of violence, which are not necessarily appropriate to the specific needs of victims of trafficking and lack the requisite level of security. The Portuguese NGO Women's Union – Alternative and Response (UMAR) and the Immigration and Borders Service (SEF) began an informal partnership two years ago, with a view to providing emergency accommodation for women victims of trafficking.

The Portuguese government, on its turn, reacted to the considerations established by Group of Experts on Action against Trafficking in Human Beings (GRETA) latest report, of February 2013. It expressed that the number of victims of trafficking that were accommodated at other centres managed by NGOs that are not specialized in trafficking was not significant, and when is needed, they are placed in other centres that are not specialized on trafficking, but the specialized team that works with victims of trafficking did all the support needed, concerning legal, social and psychological matters. In June 2013, the NGO 'Saúde em Português' created a welcoming and protection centre for male victims of human trafficking.

In what regards asylum-seeking children, till recently the unaccompanied children referred by the SEF to the Portuguese Refugee Council (CPR) were sent to the Refugee Admission Centre, where they used specific premises inside the Centre. However, in May 2012, the "House for the World", a temporary reception centre for refugee and asylum-seeking children was inaugurated. It can host up to 17 children.

"(...) a centre was created to receive the unaccompanied children, so that they have accompaniment and accommodation differentiated from what is provided to adults or to children who are accompanied by adults. There is this centre with a team prepared for these age-groups and for their specific needs. It was created with specific procedures, to accompany them either in articulation with Court, the CPCJ, or other entities considered appropriate for the execution of the life planning of each child and for the intervention planned for each one." (ORG, PT11)

This project was developed by a partnership involving several enterprises, a bank, the Luís Figo Foundation and public institutions – Ministry of Internal Administration and the Municipality of Lisbon. This is the only temporary reception centre for refugee and asylum seeking children. Even if Portugal does not have the same number of asylum requests by unaccompanied children as other countries, the number of places provided falls considerably below those that would be needed according to official figures. In 2012, 31 asylum requests were made by unaccompanied children. This value was overpassed in the first nine months of 2013, during which 46 requests were made.

Compliance, inclusion, appropriateness and effectiveness of the practice: To which degree are the national laws and policies applied and implemented in a way that is inclusive, appropriate and effective?

Within the scope of the interviewing process with children, respondents did not report outstanding problems regarding food and accommodation provided by childcare services.

I – If you were in charge what would you like to be done here regarding food?

P2 – That they would cook a bit of everything, similarly to what they do:

meat, fish, meat, fish. On the weekends, there could be an exception and there would be meat and fish for us to choose.

P6 – But then everybody would choose the meat and the fish would be left there.

I – But you would provide a choice?

P6 – I wouldn't!

P4 – If I was at my mother's house, I would always be eating meat. Fish is too expensive and my mother cannot afford it. If I ate a stake I would be very fortunate! There is no room for luxuries!" (CHILDIIn, PT18)

"I – Have you ever lived in a place you considered to be particularly good or particularly bad?

P5 – At the Monastery [former monastery, squattered by families coming, most of all, from Guinea-Bissau].

P6 – At the 'Casa da Luz'.

I – Are those examples of good places or bad places?

P1 – Bad.

P4 – Filled with cockroaches and flies.

P2 – It was really bad. We had to bathe in the river, with snakes.

P4 – Sleep in the car.

P5 – You slept in a car?

P6 – The house was ruined.

(...)

I – You slept in the car for how long?

P4 – One month.

(...)

I – Regarding your accommodation here, do you have any suggestions?

(...)

Several – The living room is awful!

I – Why is that?

P4 – Because it's small and we are a lot.

P6 – It should have more light and be more cheerful.

P5 – The computers are old.

P4 – Ah, that has nothing to do with it!

P5 – It's not too bad, right? But...

P2 – If they put some new material it will soon be ruined...

I – So you would only change the living room?

P4 – Bathrooms are very nice. I would like to have a kitchen at home and not having to come downstairs.

P6 – Like in 'Casa do Mar' [structure of the same entity but smaller, for 11 people only, aged 16 or more].

I – You share rooms, right? Do you think you have enough privacy?

P4 – No.

P6 – I think I do.

P4 – With my roommates I feel at ease but there are times when people open the door at the sudden and come in.

P6 – Privacy is achieved with few or with many people. It requires respect." (CHILDIIn, PT18)

"I – Have you already lived in a place you liked better?

P4 – I have.

P1 – Yes, yes.

I – Which place was that?

P1 – It was the house of a relative. Well, I have two [places liked better]: the house of my uncle and the institution where I am now.

(...)

I – Are the facilities good?
P1/P3 – Yes.

I – Are the rooms good?
P3 – Not for me because I don't fit in my bed.
P1 – That makes two of us!

I – The beds are for smaller children?
P1/P3 – Yes.

I – Being in an institution makes you feel here [part of Card 2 of the GATE Game – Housing, representative of the right to accommodation] more or less than if you were elsewhere, with relatives, for instance?
P1 – [With relatives] I would be in a house but I would feel like living in the street. This is the case for me! A house is more than just a ceiling, you also need to have a bit of attention.
 (...)

I – You get to have your privacy?
P1/P3 – Yes.

I – Usually, a room is shared by how many people?
P1 – Three or four.
P3 – Now the minimum is three.
P1 – Some years ago, there were 20 of us and only an educator. For instance, the room that is now for four people, used to be for seven.
I – But meanwhile this changed and now the maximum is four?
P1 – Yes, usually it's three or four.
I – You do notice changes for the better?
P1 – It's better but before there was more union between us. Now there is less. And there are a lot of young people that do not know what respect is and sooner or later there will be conflicts.” (CHILDIn, PT17)

Regarding unaccompanied children victims of trafficking, and following the approach used by the system (see chapter on child protection) they are usually accommodated in childcare facilities⁶⁰ made available for (every) children at risk whose removal from the family has been decided by court. These are open facilities, which is sometimes leading to problems.

For instance, the GRETA states, in its latest report regarding Portugal, that NGOs have informed that they are not always able to provide an appropriate level of assistance and security. One case highlighted was that of two children accommodated at an emergency centre in southern Portugal who were taken away by the traffickers who claimed to be members of their families (GRETA, 2013).

“One of our concerns regards childcare facilities for children victims of trafficking. Currently there is no shelter for unaccompanied children. There is a shelter for women and their under-age children and another is about to open for men but there is no specific facility for unaccompanied children. These children are usually integrated in facilities for children and young people at risk⁶¹. Perhaps this is adequate because the truth is that the number of victims under-age identified in Portugal is not that high and it would not justify specific facilities. However, those facilities do not have specialised teams and thus these children get the same support as a child who was not a victim. Thus this is a concern we have regarding policies.” (ORG, PT09)

“What I have noticed, so far, is that there are specific centres for

60 These are, most of all, run by NGOs and funded by protocols with the Social Security system.

61 These are the childcare institutions used also for national children and functioning in open regime.

trafficking victims. What doesn't happen, if we have strong evidences of established relation to trafficking, is the possibility of a specific hosting/accompaniment, different from what we have. This is an open centre. In spite of having control over the entrances and exits, over the visits, the access to the children is not that difficult. Whoever is a victim of trafficking is in a closed centre, to isolate them from the human trafficking dealers. If there are strong suspicions, there should be specific procedures. If the procedure is the same, they arrive and then they disappear immediately. So that is important to meet with other entities and provide any contribution to the problem.” (ORG, PT11)

However, according to the Portuguese authorities, “the low official figures for trafficked children show that there is no need to set up specific structures for child victims of trafficking” (GRETA, 2013: p.32).

“Organisations use to say that Portugal is crawling with victims and it's not! (...) There is a myth that NGOs have loads of victims but they don't! (...) It is possible that there are more victims than those we are aware of but they are not the top of the iceberg. (...) Undoubtedly there are more victims than those who are reported, especially in terms of sexual exploitation where the number of reports is always low. And there will be more children but data must be handled seriously. We have to deal with the reality reported. We have to be very rigorous regarding the gathering and analysis of the data”. (GOV, PT05)

Accordingly, and based on the diagnosis of the current situation, the Portuguese State considers that the answers the country has for situations involving children are appropriate since they meet the specific needs of the children and that “Portugal has a comprehensive legal framework when confronted with situations of children at risk” (GRETA, 2013: p.54).

The official figures backup these considerations. Data from the Observatory on Trafficking in Human Beings⁶² (OTSH, 2013), 125 cases were reported in 2012 from which 7 were confirmed from the point of view of criminal investigation. 39 cases regarded children, of which 36 were, at the time the report was published (May 2013) still under investigation. The remaining three were not confirmed (classified as facilitation of illegal immigration and theft).

From these, 31 regarded labour exploitation and four regarded sexual exploitation. In terms of labour exploitation, 13 were female and 18 were male. 74% of these children were aged under 10. The four cases of sexual exploitation regarded females, aged between 16 and 17.

Out of the 31 cases for labour exploitation – more specifically coercion for theft – 27 regarded supposedly Bosnian nationals (nationality still not confirmed at the moment of dissemination of the report) and three Croatian nationals. Three out of the four cases for sexual exploitation regarded Nigerian nationals.

Between 2008 and 2011, only 17 children (14 of which girls) have been identified as victims of human trafficking. Most of the cases regarded sexual exploitation, but there were also three cases of trafficking for labour exploitation and three for attempted adoption. Even though most of these children were non-nationals, especially from Romania and Brazil, five Portuguese children were also identified as victims of trafficking during the reference period. The median age was 14 years (GRETA, 2013).

62 Available at: http://www.otsh.mai.gov.pt/cms/files/conteudos/OTSH_Relatorio_Anual_TSH_vII.pdf

According to the SEF's latest Report on Immigration, Borders and Asylum⁶³ (SEF, 2013), in 2012, this entity registered five inquiries and 41 cases of human trafficking, deriving from which 10 people were held defendants.

“Unfortunately, we usually do not have data regarding children and that is a big concern for us. We think there are more children that are not being reported. Only last year there was a big number of reports. We had a couple of cases of babies for illegal adoption, minor girls from Romania and Brazil for sexual exploitation and one or two cases of Portuguese girls for labour exploitation. Only last year we had small children used for begging and petty theft. If we had more data and more information, we could grasp better what is failing. (...) We make separate analysis for minors if we have enough data. Most of the times it is not enough. Last year we had and our report reflects it”. (GOV, PT05)

Yet, according to data collected by some NGOs, the true situation is very much underestimated, there being apparently five times as many child victims of trafficking as the official figures indicate (GRETA, 2013).

“There is still much to be done. There are still many entities that do not know the indicators of human trafficking. In our opinion, statistical data fall well below reality”. (ORG, PT10)

Regarding the specific situation of the victims of trafficking, GRETA urges, in its latest report, the Portuguese authorities to step up the assistance provided to trafficking victims and to ensure that the services available are sufficient and appropriate to their specific needs. The authorities should also improve the assistance system for child victims of trafficking with regard to accommodation and the introduction of medium and long-term support programmes appropriate to children's needs.

The Computer application for the Management of Cooperation Agreements between Social Security and the IPSSs [Private Social Solidarity Institutions], aims for a better and more integrated management intervention to be developed by civil society organisations for children and young people. This computer application contains a detailed characterization of each institution which the Social Security has a Cooperation Agreement with and ensures services for children to (from day-care type of assistance to institutionalization): number of children, amount of the public support, type of activities developed by the institution, opening hours, characteristics of the building, person responsible for the equipment, personnel, suspended or ceased agreements due to detected irregularities.

63 Available at: <http://sefstat.sef.pt/Docs/Rifa%202012.pdf>

What are the key determinants that would enhance / reduce the level of risk / protection in this specific area?

- To assure that measures of promotion and protection are defined for every child in the childcare system
- To assure that life projects are defined for every child in the childcare system, involving them and comprising different dimensions of the child's life and not only the childcare dimension
- To uphold the timings defined for interventions
- To reduce the periods of institutionalisation
- To provide more and more diverse services, targeting specific situations (e.g. children living the street, children victims of trafficking)
- To place a stronger focus in measures and in facilities preparing for autonomization
- To increase the number of places in shelter(s) for asylum-seeking unaccompanied children

Actors: Which actors are involved?

Actors involved include relevant ministries such as: Minister of the Presidency and Parliamentary Affairs, Ministry of Justice; Ministry of Internal Administration; Ministry of Health; Ministry of Foreign Affairs; Ministry of Solidarity, Employment and Social Security; Ministry of Education and Science; Minister in the Cabinet of the Prime Minister and for Regional Development.

It also includes other relevant state bodies such as: Public Prosecutor's Office, ACIDI – High Commissioner for Immigration and Intercultural Dialogue; CIG – Commission for Citizenship and Gender Equality; Ombudsperson's Office, Portuguese National Human Rights Committee; National and Local Commissions for the Protection of Children and Young People, as well as different NGOs such as the IAC – Child Support Institute, the APAV – Portuguese Association for Victim Support; the Portuguese Committee for UNICEF.

4.1.2. HEALTH AND MEDICAL CARE FOR CHILDREN

Compliance and inclusion of the national laws and policies: To which degree do the national laws and policies comply with international standards?

According to article 64 of the Portuguese Constitution⁶⁴, all persons are entitled to health protection. This entitlement is thought to be concretised through the National Health System (NHS), defined as “universal, comprehensive and tending towards being free of charge, considering the economic and social conditions of citizens” (Portugal, 2005: p. 4652)⁶⁵. Exemption from user charges is guaranteed to children aged less than 13.

The Basic Law of Health (BLH) (Law 56/79; Law 48/90) also highlights equity and universal access to healthcare as part of its responsibilities. General principle 1 of the BLH states that health protection is a right of individuals and of the community becoming effective through the joint liability of citizens, of the society

⁶⁴ Portuguese Constitution (Constitutional Law no.1/2005, VII Constitutional revision), *Government Gazette*, 1st Series-A, No.155, 12 August 2005.

⁶⁵ Thus, there is inconsistency between the wording used as ‘all persons’ are mentioned regarding the entitlement to the right but only citizens are mentioned regarding the concretisation of such right.

and of the State, within the freedom of demand and supply of care and within the scope of the Constitution and the law. General principle 2 establishes that it is the State's responsibility to promote and guarantee the access of all citizens to healthcare within the limits of available human, technical and financial resources.

“In what concerns health, the Portuguese law is very advanced. It mentions the right to universal access to health so it is not only related to Portuguese children, it is also related to non-national children inside the Portuguese territory. That is very important to identify cases of exploitation and human trafficking by those who work with them. The fact that they have access to health is another opportunity to identify and take care of those cases.” (ORG, PT13)

Even if the BLH mentions the access of all citizens, Dispatch of the Ministry of Health 25.360/2001 of 12 December⁶⁶ states that undocumented immigrants have access to health services, as long as they are able to present a document, issued by the 'junta de freguesia' (parish council), proving their permanence in Portugal for more than 90 days (article 34 of Law 135/99, of 22 April⁶⁷).

Excepting the situations that jeopardise public health and the cases where the social and economic situation of the person is deemed feeble by social security, the health services provided to these immigrants are charged accordingly with the applicable rates (number 2 of base 33 of the Basic Law of Health).

Moreover, the health services must elaborate reports, regarding these situations, with information on the nationality, professional activity, address, age and sex of the immigrant, to be sent to the Health Regional Administrations (Dispatch of the Ministry of Health 25.360/2001 of 12 December⁶⁸).

For these reasons, it seems clear that some children will be excluded from health services. Moreover, according to research, there is evidence of higher perinatal and infant mortality among children of immigrants (Machado, et al, 2007).

There is also a network of Paediatric services in public hospitals aiming to provide healthcare and foment the wellbeing of the newborns, children, youngsters and their families. Access is granted till the age of 18. The national healthcare service provides primary care, starting before birth and extending through neonatal supervision, childhood and youth.

The Health Action for Children and Youngsters at Risk was created by Dispatch 31292/2008, of 5 December⁶⁹ of the Minister of Health. The Network of Units of Support to Children and Youngsters at Risk aggregates the several units in activity either in Health Centres (primary care) or in Hospitals. Its objectives are the implementation of the mechanisms of prevention of abuse; the early detection of situations of risk and peril; the accompaniment and providing of care; the signalling and/or referral of cases to other services; the mobilisation and articulation of resources of the first level of intervention; and the speeding up of the communication with the Commissions for the Protection of Children and Young People (CPCJ).

In 2011, the Directorate-General of Health produced, "Child and Youngster Abuse: Practical Guide for the Approach, Diagnosis and Intervention"⁷⁰ (Direcção-Geral da Saúde, 2011, Maus tratos em crianças e jovens: guia prático de abordagem, diagnóstico e intervenção).

66 Dispatch 25.360/2001, *Government Gazette*, 2nd Series, No. 286, 12 December 2001.

67 Law 135/99, *Government Gazette*, 1st Series-A, No.94, 22 April 1999.

68 Dispatch 25.360/2001, *Government Gazette*, 2nd Series, No. 286, 12 December 2001.

69 Dispatch 31292/2008, *Government Gazette*, 2nd Series, No. 236, 5 December 2008.

70 Available at: http://www.adcl.org.pt/observatorio/pdf/Guia_Maus_tratos2011.pdf

This guide was elaborated from the technical orientations approved by Dispatch 31292/2008 of 5 December⁷¹, aiming to promote good practice regarding the issue as a health problem. Its aim is to be a useful working tool for all the professionals and teams of professionals working for the promotion of children's and youngsters' health. It intends to contribute to: 1) sensitise and motivate health professionals regarding their role on preventing and intervening in situations of abuse; 2) clarify and standardise the most important basic concepts regarding abuse (definition, typology, signs, symptoms and indicators); 3) facilitate the processes of identification and intervention, indicating when, how and who should intervene in a given situation; promote coordinated action between the entities responsible for intervention in this field.

The National School Health Program, aimed at the entire educational community of kindergartens, primary and secondary schools, institutions involved in the school population, is a normative-technical reference of the health system to the area of school health. The set of strategies is embodied on national priorities and health problems more prevalent in the youth population.

Within the scope of the Action plan for the Integration of People with Disabilities or Incapacities and accordingly to the principles laid down in the Convention for the Rights of the Child, Decree-Law 281/2009 of 6 October⁷² created the National System of Early Intervention in Childhood (SNIPI).

SNIPI results from the joint efforts of the Ministries of Labour and Social Solidarity, of Education and of Health, also counting with the involvement of families and of the community.

SNIPI includes preventative and rehabilitative actions within the scopes of education, health and social action and aims at elaborating an Individual Plan of Early Intervention. The responsibility for its elaboration lies in multidisciplinary Local Intervention Teams, representing the different areas of intervention.

The Plan should be a structuring tool for families and for the professionals, establishing an adequate diagnosis including not only the problems but also the child's development potential and the action to take in order for such potential to develop.

One of the principles of the National Plan for Mental Health 2007-2016⁷³ (NPMH) is to assure equal accessibility to every person to mental health care (particularly to the most vulnerable groups, such as children and adolescents). New specialized mental health care for children and adolescents have been created in central hospitals by the National Coordination for Mental Health (Ministry of Health).

Decree-Law 8/2010, of 28 January⁷⁴ completed the NPMH with the creation of the Mental Health Integrated Continuing Care within the Integrated Continuing Care Network, allowing the latest to extend its services to those suffering of mental health problems.

This Mental Health Integrated Continuing Care possesses a system of teams and units to address the cases of children and adolescents who need a more demanding and continuing psychosocial rehabilitation process.

Article 112 of Law 29/2012, of 9 August⁷⁵ stipulates that medical care, as well as social and psychological assistance, are to be provided to victims of trafficking. This is also stressed by an information document describing the rights of victims of THB and released in October 2012. The document is intended for all health

71 Dispatch 31292/2008, *Government Gazette*, 2nd Series, No. 236, 5 December 2008.

72 Decree-Law 281/2009, *Government Gazette*, 1st Series, No. 19, 28 January.

73 Available at: <http://www.min-saude.pt/NR/rdonlyres/A9DDE9D6-B4B9-409E-8B84-A1705F1A101B/0/RCM482009.pdf>

74 Decree-Law 8/2010, *Government Gazette*, 1st Series, No. 248, 27 October.

75 Law 29/2012, *Government Gazette*, 1st Series, No. 154, 9 August 2012.

professionals and civil society, and makes it clear that victims of trafficking enjoy the same rights of access to health care as Portuguese nationals. Article 114, establishes that the application of article 112 to children must consider the child's best interest and that the procedures must be adequate to the child's age and maturity.

The Health axis of the National Strategy for the Integration of the Gypsy communities (2013-2020)⁷⁶ establishes the priority to contribute for better health of these communities. It places a major focus on prevention, namely through the promotion of the dentist-cheque programme and the awareness raising of the children and young people of these communities using the classes of civic education and in collaboration with school healthcare teams.

Regarding the specific situation of refugee and asylum-seeking children, and according to the latest Portuguese report to the CRC, access to health care is ensured through the National Health System. Access to psychological treatment is also ensured through the National Health System, as well as through the Centre for the Support of Torture Victims (CAVITOP). The Portuguese Refugee Council refers asylum seekers to CAVITOP, in the Framework of a Protocol established between the two bodies. CAVITOP ensures psychological and psychiatric support to all asylum seekers and refugees, including children (Portugal, 2011: §558).

Compliance, inclusion, appropriateness and effectiveness of the practice: To which degree are the national laws and policies applied and implemented in a way that is inclusive, appropriate and effective?

The report of the Commissioner for Human Rights of the Council of Europe shares a concern regarding the way how, in a context of budget cuts, the full functioning of first line entities and of the Commissions for the Protection of Children and Young People will be guaranteed, particularly as the number of cases has peaked in 2012. The report also notes the Commissioner's concern that other factors may have had a particularly negative impact on children's lives, such as the increase in prices of health care (Muižnieks, 2012).

The considerable cuts in child care benefits introduced in 2010 and 2012 impacted significantly on the income of many families with children. Thus, there is clear concern that the present "considerable pricy and weighty" user charges are hindering the access of children aged more than 12, raising equity issues. According to the Paediatrics Department of the Hospital of Santa Maria, this reduced access may have consequences in terms of the children's health. "If user charges assume a considerable weight, people will do what they already do regarding medicines"; that is, carefully selecting the consultations and/or exams to attend⁷⁷.

According to the recent spring report of the Portuguese Observatory of Health Systems "the so-called user charges are not user charges. Rather, they are fees paid against the provision of healthcare" (OPSS, 2013: p. 27). The report also concludes that there are multiple indicators showing that the Portuguese population is experiencing a more difficult access healthcare, along with some signs that situations of implicit rationing in public health services may be occurring.

76 Available at: http://www.portugal.gov.pt/media/409258/20111228_consulta_publica_enicc.pdf

77 «Valor das taxas dificulta acesso das crianças com 12 anos aos cuidados de saúde», in *Alert* 10/01/2013, available at: <http://www.alert-online.com/br/news/health-portal/valor-das-taxas-dificulta-acesso-das-criancas-com-12-anos-aos-cuidados-de-saude>

“The recent batch of new private hospitals that do not have psychologists and social workers for this task [identify signs of abuse/neglect/ exploitation] is a source of concern. The increase in user charges makes that many families decide to use private units and we have been surprised by cases that were not detected earlier and that reach us later on with more grievous characteristics”. (MUN, PT08)

Moreover, it is important to mention that the huge waiting lists for consulting a specialist in a public hospital or health centre has resulted in depriving many children from this type of medical appointments. Within the present crisis context it seems likely that access of a significant part of children to health – particularly to specialized consultations – results diminished.

“Regarding Amadora more specifically, I feel that more answers in terms of mental health are needed, mainly in the area of alcoholism. Last year, in terms of danger typology, the most signaled situation in Amadora was domestic violence either as victims or as witnesses. Around 90% of these situations are associated with the abuse of alcohol. (...) We are also trying to create a centre for family counseling and support with resources in terms of psychotherapy”. (MUN, PT08)

Additionally, there is evidence of a rising number of families who “choose” not to buy all prescribed medicines or to undertake medical tests. This also raises concerns regarding children’s reduced access to health care.

Such concern is shared by Eurochild. According to a recent report (Eurochild, 2012), austerity measures in Portugal are limiting the access of children and families to health, education and other care services, also limiting their full participation in family and social life.

The results of a study on the wellbeing of Portuguese families (SEDES, 2012) indicate that 22.2% have decreased their health related expenses. This figure almost doubles among households where at least one of its elements was unemployed (39.9%).

Similarly, the latest results of a study regarding the satisfaction of the coordinators of the Family Health Units of the Ministry of Health⁷⁸ (Biscaia et al., 2013), report an increase of the dissatisfaction with the active role of the ministry of Health and the entities of central administration in what regards the reformation of primary healthcare. Approximately one out of three coordinators participating in the study reported that, during 2012, reported shortage of basic material for regular activity incidents occurring more than 10 times.

Opposite conclusions were drawn by a recent study commissioned by the Central Administration of Health Services (Pita Barros et al, 2013). According to the authors there is no evidence that the increase in the prices of user charges has significantly prevented patients from resorting to health services. According to the study “results indicate that the increase in the prices of user charges has not been a crucial factor limiting access to healthcare in Portugal.

According to the specific ad-hoc module ‘Housing and habitability’ which was applied along with the Eurostat’s Survey on Income and Living Conditions (SILC) in 2012 (repeating the application of 2007), the proportion of users of primary healthcare increased from 65% to 87.1. In what regards facilitating access to these services, the proportion of favourable opinions increased from 72.1% to 83.9.

The empirical results obtained within the scope of the project seem to highlight no major problems

78 Formerly known as health centres.

regarding the access to health of children living in childcare facilities

“Q – When you are not feeling alright, what do you usually do?

P6 – I go tell the staff.

E – Do you go a doctor or to the hospital?

P6 – No, I go tell the staff but they don’t take me to the hospital.

P1 – Because you don’t need to!

P6 – They only take us when we faint.

(...)

Q - What would you like that the people here should do in relation to health care?

P2 – I think that people who are in shelters should have some priority in hospitals.

E – Is there a doctor you know and to whom you go at least once a year?

P5 – We have a doctor here.” (CHILDIIn, PT)

However, this is not the case regarding those living out of childcare. According to the latest report to the Committee on the Rights of the Child, the incidence of tuberculosis among children up to 14 years is seven times lower than among the total population (4 cases/100 inhabitants). It also stresses that most of the cases within this age group are registered among the immigrant population which is probably connected to a limited usage of healthcare services. At least in some cases, this may be related to an understanding of health services as curative rather than preventative.

“No [never used healthcare]. But, then again, I was never sick. Since I’m in Portugal I only went to the hospital when I was pregnant”. (YOUNG, PT15)

What are the key determinants that would enhance / reduce the level of risk / protection in this specific area?

- To ensure confidentiality to undocumented immigrants acceding the healthcare services.
- To increase specialised health responses (e.g. mental healthcare, alcoholism)
- To ensure children’s health care needs despite the economic constraints, continuing to ensure free access to the public health system
- To address all efforts in order to guarantee that further costs in areas such as prevention, medicines, and complementary exams do not curtail actual access to comprehensive and continued health care for all children.
- To promote awareness of the importance of preventative health services, mainly among the immigrant population.

Actors: Which actors are involved?

Actors involved include relevant ministries such as: Ministry of Health; Ministry of Education and Science; Ministry of Solidarity, Employment and Social Security. Within the specific field of health it also includes the Directorate-General of Health, the Network of Health Units of Support to Children and Youngsters at Risk, the network of health centres and hospitals, the directors of Paediatric Services

It also includes other relevant state bodies such as: Public Prosecutor’s Office, ACIDI – High Commissioner for Immigration and Intercultural Dialogue; Ombudsperson’s Office, Portuguese National Human Rights Committee; National and Local Commissions for the Protection of Children and Young People, as well as different NGOs such as the IAC – Child Support Institute, the CAVITOP; the Portuguese Committee for UNICEF.

4.1.3. SOCIAL SECURITY FOR CHILDREN

Compliance and inclusion of the national laws and policies: To which degree do the national laws and policies comply with international standards?

The Portuguese Social Security System is structured in three subsystems – the providential or general subsystem, the solidarity subsystem and the family protection subsystem. The first one covers every dependent and independent worker and is funded by the contributions of both employees and employers. The solidarity subsystem mainly relates to the non-contributory regime and is funded by the State Budget. The family protection subsystem covers family benefits, disability and dependence and is funded by employees and employers contributions as well as by fiscal revenues.

Protection within the family protection subsystem and namely regarding the protection of children and young people is defined and regulated by Decree-Law 133/2012, of 27 June⁷⁹. This corresponds to the republication of Decree-Law 176/2003, of 2 August⁸⁰ where it is assumed to wish to establish more selective family allowances, privileging lower income families with more children, aiming to reinforce the principle of social differentiation.

Within family allowances, children are protected by the following benefits:

- Antenatal family allowance: granted to pregnant women from the beginning of the month following the 13th week of gestation, on a monthly basis up to the birth
- Family allowance: awarded to descendants until they are 16 years of age – or up to 24 years of age when they are enrolled in education establishments
- Benefit for attending a special education establishment
- Monthly life-long benefit and extraordinary supplementary benefit
- Constant care allowance

Labour legislation regulating the protection of maternity, paternity and adoption are found in the fundamentals of the Labour Code approved by Law 99/2003, of 27 August, regulated by Law 35/2004, of 29 July⁸¹.

The maternity benefit is payable for 120 days, 90 of which have to be taken after childbirth. In the case of twins or multiple births, there is a surplus of 30 extra days per child, since the first one. Under the terms of Law 35/2004, of 29 July⁸², mentioned above, the mother can opt to take 150 days of leave which determined the necessary adjustment of social security - Law 77/2005, of 13 April⁸³ - and established that in this case, the extra 30 days have to be taken after child birth.

79 Decree-Law 133/2012, *Government Gazette*, 1st Series No. 123, 27 June.

80 Decree-Law 176/2003, *Government Gazette*, 1st Series-A No. 177, 2 August.

81 Law 35/2004, *Government Gazette*, 1st Series-A, No. 177, 29 July 2004.

82 *Ibid.*

83 Law 77/2005, *Government Gazette*, 1st Series-A, No. 72, 13 April 2005.

This benefit is equal to 100% of average daily earnings during the 120 days. If the parents opt for a 150-day leave period, the benefit is equal to 80% of average daily earnings. The benefit is awarded in case of physical or mental incapacity of the mother, or in the event of the mother's death or based on a joint decision by both parents.

The paternity benefit is payable for 5 days, consecutive or not, during the first month after the child birth.

The adoption benefit is payable for the first 100 days following the adoption of a child and increased of 30 days per each child or in the case of adopting more than one child.

The parental leave benefit is equal to 100% of average daily earnings and is paid to the father for 15 days but only if preceded by paternity or maternity leave.

The special leave benefit for grand-parents is equal to 100% of average daily earnings. The benefit is payable 30 days following the birth of a grandchild. It is granted to the working grand-father or grand-mother, if the parent of the new-born child is younger than 16 and living in the family home.

Law 105/2008, of 28 June⁸⁴, extended protection to persons residing on the national territory (or in a similar situation) in a vulnerable situation not covered by a mandatory social protection scheme or because they do not meet the conditions giving them access to this benefit when covered. This social protection is awarded through social benefits such as maternity, paternity and adoption as well as for specific risks. The amount corresponds to 80% of IAS⁸⁵ for a maternity leave of 120 days or to 64% in case of opting for 150 days. The right to these benefits is also recognised to immigrants, but just as long as they have a residence permit and comply with the means-tested condition.

The qualifying period is of six calendar months, consecutive or discontinuous, with recorded earnings, on the date of the event giving rise to benefit (first day of being unable to work)

In its concluding observations of 2001, and with a view to achieving full application of article 4 and to eradicate poverty, the Committee on the Rights of the Child urged Portugal to consider ways in which respect can be guaranteed for the rights of all children including children from disadvantaged backgrounds and from isolated communities, in particular in the sectors of health, education and other social welfare services and in conformity with article 2.

In its last periodic report, the Portuguese State addresses this observation listing a number of actions "aimed at eliminating situations negatively affecting children, inter alia by adopting measures to combat child poverty". These measures, which have been launched since 2008, are considered to provide direct financial support to children and their families.

Increase of 20% of the family allowance for single parent families;

- Increase family allowance by double as of the second child. The birth of a third and subsequent children determines the three earning levels for each child between 12 and 36 months;
- Prenatal child benefit for pregnant women after the 13th week of pregnancy and granted according to the household revenues and to the number of children to be born;
- Maternity, paternity and adoption benefits for all national and non-national citizens in vulnerable

⁸⁴ Law 105/2008, *Government Gazette*, 1st Series, No. 121, 25 June 2008.

⁸⁵ The Social Support Indexation (IAS) set by Law 53-B/2006 of 29 December, replaced the Guaranteed Monthly Minimum Allowance (RMMG) while determining the reference fixing, calculating and updating of contributions, pensions and other benefits provided by the social security system.

situation and not covered by any social protection scheme, or covered but not entitled to it because they have not the required contributory period;

- Social Integration Income prioritising adolescent mothers and households with dependent children who may claim these benefits;
- Monetary support for children and young people with promotion and protection measures in a natural environment when integrated in their family households, with relatives, a responsible person or when receiving support to autonomous life.

“Generally speaking, the laws represent a higher and progressive interest for the effective protection of children and have been trying to reduce risks. However, if the bet on policies aimed at disadvantaged families is not continued, then the children born in such adverse contexts will not obtain success e.g. in terms of education and thus, in situations of economic crisis there will be a lower investment in food and in health and higher risks of poverty.” (ORG, PT12)

“There are challenges regarding the fighting against poverty, the biggest cause for social exclusion. According to recent data, poverty tends to be increasing among children, unlike among the elderly, where State policies and measures are succeeding to make it decrease”. (ORG, PT12)

The legal framework of unemployment protection for employees, beneficiaries of the general social security scheme was amended Decree-Law 64/2012 of 15 March⁸⁶, providing contradictory signs in terms of protection. On the one hand it reduced the qualifying period for unemployment benefits from 450 to 360 days, in order to extend the protection to the beneficiaries with shorter insurance careers. On the other, it introduced a 10% reduction in the unemployment benefit amount, to be applied 6 months after the granting of the benefit, presented as a way to encourage the beneficiaries' active search for employment, as well as it reduced the unemployment granting periods up to a maximum of 540 days.

The Programme of Social Emergency⁸⁷ was initiated in October 2011. Families are one of the priority areas of the programme (the others are the elderly, disability, volunteership and institutions). A measure directly connected to children is that families with children in which both parents are unemployed can benefit from a 10% increase in their unemployment benefit.

Family allowance has national scope. However, this is a means-tested benefit and thus many children/households are excluded from it. The elimination of the fourth and fifth income groups, established by Decree-Law 116/2010, of 22 October⁸⁸, increased considerably the number of households not entitled to family allowance. Non-national citizens with a valid residence permit and refugees with a valid permit of temporary protection are entitled to the benefit in the same conditions as Portuguese citizens.

Since 2008, different policy measures have been launched providing direct financial support to children and their families. The new protection scheme for eventual costs with family dependents integrates national and non-national citizens, refugees and stateless residing on the national territory which fulfil the general

⁸⁶ Decree-Law 64/2012, *Government Gazette*, 1st Series, No. 54, 15 Mars 2012.

⁸⁷ Available at: <http://www.mercadosocialarrendamento.msss.pt/docs/programa-de-emergencia-social.pdf>

⁸⁸ Decree-Law 116/2010, *Government Gazette*, 1st Series No. 206, 22 October 2010.

and specific conditions for these allowances and no longer depend on the existence of contributory careers and comprises the following: 1) the increase of 20% of the family allowance for single parent families; 2) the increase in family allowance by double as of the second child; 3) prenatal child benefit for pregnant women after the 13th week of pregnancy and granted according to the household revenues and to the number of children to be born; 4) Social Integration Income prioritising adolescent mothers and households with dependent children who may claim these benefits; 5) monetary support for children and young people with promotion and protection measures in a natural environment when integrated in their family households, with relatives, a responsible person or when receiving support to autonomous life.

The Programme “Ser Criança”⁸⁹ (Being a child) has the objective of both preventing and eliminating the situations of lack of social protection of children/youngsters and their families, through the support to the development of projects focussed on families and communities. It also aims at promoting the experimenting of new methodologies of intervention and research-intervention.

The sketching and development of the projects must obey the following general principles: a) the participation of children and/or youngsters and of their families as agents of their own process of change; b) the involvement of the community through the creation and integration of local networks of solidarity; c) inter-institutional and inter-sectorial partnership, integrating different knowledge and perspectives that are pertinent for the scope of the project. This aims at guaranteeing the development of an integrated, participated and territorially coordinated intervention, as well as the sustainability of the project; d) early intervention, promoting answers that act preventively on the risk factors, avoiding situations of risk and of marginalisation and social exclusion; e) flexibility and innovation, motivating the development of creative skills and differentiating from traditional answers; f) systematic evaluation of the intervention’s processes and results in an open, participated and multidisciplinary process.

Compliance, inclusion, appropriateness and effectiveness of the practice: To which degree are the national laws and policies applied and implemented in a way that is inclusive, appropriate and effective?

The Ombudsperson’s Office received an increasing number of complaints related to social protection issues in 2011 and 2012, with a rise of 47% for the first quarter of 2012 in comparison with the first quarter of 2011. Many of these complaints concern the introduction of stricter accessibility conditions (means-tests) for a number of social benefits, including child benefits, with families having to provide evidence of income over a two year period, irrespective of a change in their situation in the meantime (unemployment for instance). The maximum income threshold for accessing such benefits was also substantially lowered, to a monthly income of 628 euro per person. Against this background, in December 2011 the Ombudsperson called on the authorities to simplify as a matter of urgency the rules for accessing child benefits, as it appears that the new rules have unduly deprived a number of persons of access to the above benefits.

The aforementioned report of the Commissioner for Human Rights of the Council of Europe paid particular attention to children as specific vulnerable social group (the others were the elderly and the Roma).

The report stresses that the packages of austerity measures in Portugal in 2010 and 2011 have significantly increased the risk of children being exposed to poverty, even if the real impact has not yet been fully measured given the delays in data availability. However, it notes that the combination of growing unemployment and cuts in salaries, increased taxes and reduced social and unemployment benefits have resulted in many Portuguese families having less income and being subject to poverty (Muižnieks, 2012).

89 Available at: <http://www4.seg-social.pt/programa-ser-crianca>

Still according to the report, the 24-hour phone line of the NGO “Support for Childhood” reported an increasing number of calls in 2011 related to situations of family poverty and it was possible to assess that children represent approximately a third of the persons using food banks (Muižnieks, 2012).

The report also notes the Commissioner’s concern that other factors may have had a particularly negative impact on children’s lives, such as the increase in prices of health care and of public transportation, as well as the reportedly increasingly frequent evictions of families due to the non-payment of mortgages. It is also noted that since the entry into force of the Programme of Social Emergency, only a limited number of families with children in which both parents are unemployed had requested the above-mentioned 10% increase in their unemployment benefit assistance, due to allegedly cumbersome procedures (Muižnieks, 2012).

It is also mentioned that the Commissioner shared the concern expressed by representatives of civil society that the austerity measures implemented in 2010-2011 may weaken the achievements made following the ten-year implementation of National Inclusion Plans (between 2001 and 2010) (Muižnieks, 2012).

Combating child poverty was a priority within these plans. Notably the Plan for 2008-2010 aimed at consolidating social protection by increasing benefits, implementing positive measures with regard to families with lower incomes, and taking measures to improve direct social support for families (for example through increasing the number of places in crèches) as well as measures to combat inequalities in the field of education (notably through the programme “Escolhas”).

While some of these measures continue to be implemented, for instance through the Programme “Escolhas” whose main objective is to promote the social inclusion of disadvantaged youth, the fiscal austerity measures have adversely affected previous policies aimed at supporting the income of families.

Data issued in July 2013 has provided evidence confirming concerns. It is expected that the lingering of austerity and all the above-mentioned factors will continue to be affecting more people and to deepen the consequences for children and families.

According to the latest data released by the INE regarding the SILC database, poverty rate before social transfers would amount to 45.4% in 2011, significantly higher than the 42.5% registered in 2010. By including pensions, the poverty rate would be 25.2% (25.4% in 2010), while the inclusion of other social transfers decreases the rate to 17.9% (18% in 2010). Thus, the influence of transfers other than pensions contributes to a reduction of the poverty rate by 7.3 p.p. This represents a slight decrease regarding the previous year (7.4 p.p.).

Social benefits have been under considerable pressure since the outburst of the current economic and financial crisis. Two series of major cuts in child care benefits were implemented, in November 2010 and January 2012. Between February 2010 and May 2013, more than half a million beneficiaries lost access to child benefits, i.e. almost one in every three beneficiaries.

In total, the state reduced by 30% its expenses for the support of families with children between 2010 and 2011. Decree-Law 133/2012 of 27 June⁹⁰ reduced the amounts of the sickness and maternity and paternity benefits.

New conditions for the attribution of the family allowance came into force in the end of 2012. Now parents may ask for the revision of the value of the allowance 90 days after a change in the household’s income or composition occurs, instead of being set for a one-year period and based on the revenue of the year prior to

90 Decree-Law 133/2012, *Government Gazette*, 1st Series No. 123, 27 June.

the request. This will allow a swifter adjustment to the families' specific situations.

However, it is important to recall that the previous changes to the allowance led to a decrease of nearly 200 thousand beneficiaries between December 2010 (1.379.076) and May 2013 (1.184.308), approximately 14%.

Thus, many middle class families are no longer entitled to the benefit and the new rules are, most of all, addressing the more grievous situations, especially those people who become unemployed and/or those who saw their income decreasing. Hence, despite the considerations of its potential importance in terms of addressing specific situations, this was considered by entities such as the National Confederation of Family Associations as a 'small palliative', taking into account the scope of the challenges ahead.

It is also worrying to notice the delays registered in the payment of social benefits. In the beginning of 2013 those delays were affecting the above-mentioned majoration of the unemployment benefit but, more than that, the media were reporting cases where beneficiaries were wrongfully informed that they were no longer entitled to the benefit.

As regards the Social Insertion Income, in June 2013, there were 271,264 beneficiaries. This represents the continuity of a steady decrease since the implementation of new rules in July 2012. Comparing to June 2012, almost 68.5 thousand people lost entitlement to the benefit. In any case, the mean figures of the benefit – in June 2013, 82.64 euros per person and 206.38 euros per household – although important for mitigating the intensity and severity of poverty, will hardly have a decisive impact for the reduction of poverty itself. As a matter of comparison, the present figures are approximately 9.5 and 41 euros lower than in June 2012.

According to a recent Eurochild report,

“It is clear that unemployment and the cuts in subsidies have a direct influence on child care and child opportunities. Especially in terms of other activities like sports, arts (music) because families don't have enough money to maintain their children in these extra activities”.
(Eurochild, 2012: p.12)

Furthermore, the report alerts for the long-term consequences of unemployment or poor employment in children's wellbeing, remembering that child poverty may be prevented more effectively, as proven by the fact that some countries perform better than other regarding this matter.

In fact, Portugal is placed within the group of countries where social transfers show small impact for the reduction of child poverty and where children are more vulnerable to poverty even in households with high work intensity.

What are the key determinants that would enhance / reduce the level of risk / protection in this specific area?

- to rigorously evaluate the impact of the crisis on children’s well-being and specifically on their vulnerability to poverty and social exclusion;
- to regularly assess the impact of the successive measures, namely those curtailing access to benefits and services for many children and their families
- to ensure that despite budgetary concerns, children’s needs remain the focus of policies;
- to keep minimum standards regarding the provision of universal benefits

Actors: Which actors are involved?

Actors involved include relevant ministries such as: Ministry of Health; Ministry of Education and Science; Ministry of Solidarity, Employment and Social Security. It also includes other relevant state bodies such as: Ombudsperson’s Office, Institute of Social Security; National and Local Commissions for the Protection of Children and Young People.

4.2. DEVELOPMENT

What the CRC says on ‘development’: Summary excerpts

Article 6 (Survival and development): The right of the child to life, survival and development. (general principle of the CRC)

Article 28 (Right to education): The right of the child to education, including primary education that is compulsory and available free to all. States Parties shall make higher education, including general and vocational education, available and accessible to every child, on the basis of capacity. Educational and vocational information and guidance shall be available and accessible to every child. Children and young people should be encouraged to achieve the highest level of education of which they are capable.

Article 29 (Goals of education): Children’s education shall be directed to the development of the child’s personality, talents and abilities to the fullest, the development of the respect for human rights and fundamental freedoms, respect for the child’s and his or her parents cultural identity, language and values, the national values in the country where the child is living and the country from where he or she may originate. Education should also help children learn to live peacefully, protect the environment and respect other people.

Article 31 (Leisure, play and culture): Children have the right to relax and play, and to join in a wide range of cultural, artistic and other recreational activities.

Prevention and protection benchmarks:

Any prevention and protection strategy and measure should address the following essentials:

Inclusion: Full access to education and vocational training as well as sport, recreational and socio-cultural opportunities.

Appropriateness: Recognition of personal aspirations, abilities, projects, resources and of the need to have links with the community and family of origin, as well as of cultural diversities and specificities, qualify the response to development needs.

Effectiveness: High quality, availability and durability of education and training as well as of social and cultural opportunities.

Compliance: Development opportunities and fundamental needs and rights stated by the international legislation are fully reflected in national laws, policies and practice.

Source: Standards developed for GATE, 2012.

4.2.1. GENERAL AND VOCATIONAL EDUCATION

Compliance and inclusion of the national laws and policies: To which degree do the national laws and policies comply with international standards?

There is a free public network of crèches, for children up to the age of three. This network is clearly insufficient though. As such, the crèches of the private sector run by entities recognised as private entities of social solidarity have State subvention. The costs for families are calculated according to household income.

Kindergartens/pre-school follows the same scheme as crèches. However, regarding pre-school, the State compromises to guarantee its universality from the age of five onwards. The national pre-school education offers the education component to children and the support component to families. The kind of support given goes from lunch offered to children to socio-educational activities assisted by teachers beyond regular workload.

In 2008, the Programme for Support with Extending the Pre-School Education Network was launched and there was an increase of the number of places for children between the ages of three and five, contributing towards the social and educational development of children and towards the adjustments of the personal, family and professional life of young families.

Children go to school at the age of six (exceptionally at the age of five if turning six till the end of that year). Compulsory schooling is universal and free. Law 85/2009, of 27 August⁹¹, established the regime of compulsory schooling for children and youngsters in schooling age in 12 years and consecrated the universal character of pre-schooling education for children aged 5. The regulation of this law was made by Law 176/2012, of 2 August⁹². There are also the "ATL" (Spare time activities), for children from the age of six

⁹¹ Law 85/2009, *Government Gazette*, 1st Series No.166, 27 August 2009.

⁹² Law 176/2012, *Government Gazette*, 1st Series No.149, 2 August 2012.

onwards, for extra-school time.

“There is a cycle and the children’s children go back in the system [of protection]. To break this, the best solution is indeed education and it’s the cheapest solution. Hence, I am super favourable to the extension of compulsory education. That is the main asset a child may have. Thus I think that there must be a big investment in that area”. (GOV, PT06)

The family support component is co-financed by the State, the value of this financial contribution being annually established, in the case of the public network of the Ministry of Education, through Agreements signed with the several City Halls (Câmaras Municipais). Parents are also supposed to co-finance family support activities.

Law 67/2004, of 25 March⁹³, establishes the access of undocumented children to education in similar conditions to the documented children as long as their age is lower than the minimum age established for the celebration of an autonomous labour contract and they are economically dependent of their household.

Dispatch 8683/2011, of 28 June⁹⁴, is the last republication regarding the Activities for Curricular Improvement for the 1st Cycle. All pupils have equal access to these activities, increasing the time spent at school (up to 17.30 hours) and guaranteeing full occupation of school time with replacement classes and other activities monitored by teachers should class teachers be absent. The Full Time School is planned not only as an instrument to improve learning but, above all, as a way of supporting family units in which the mother very often works.

TEIP projects - Educational Territories for Priority Intervention - involve a wide range of measures in the school and in the community geared to reintegrating the pupil in the school with the aim of combating school failure, promoting equal opportunities and promoting the inclusive school by re-launching

Also with the aim of improving equal opportunities in the education system, several guidelines were developed for Non-Mother Tongue Portuguese in the 3rd. cycle of basic education and in guidelines for Portuguese as a Foreign Language in secondary education, aiming both at the new pupils from migratory flows and other specific public schools.

Education and Training Courses were created within the framework of the Curricular Revision of Secondary Education, first applied in the 2004-2005 school year, and designed as initial training providing qualification, preferably for adolescents of 15 years of age or over, at risk of school dropout or who left the education system prior to completing 12 years of schooling. These courses were also for those complete 12 years of schooling but have no vocational qualification and wanted to enter the labour world.

The class ‘Information and Communication Technologies’ (ICT) has moved from secondary education to the seventh and eight years of Basic Education, and IT teachers have been trained with a view to the use of the ICT throughout the whole curriculum.

Education and Training Courses for Young People have several typologies, with different access conditions and responding to different levels of qualification and are available in the school network within the

⁹³ Law 67/2004, *Government Gazette*, 1st Series-A, No.72, 25 March 2004.

⁹⁴ Dispatch 8683/2011, *Government Gazette*, 2nd Series, No.122, 28 June 2011.

Ministry of Education. The more problematic situations include young people with this profile who have not concluded primary education.

Among the training approaches available for young people until 18 years old, Apprenticeship Courses and the Education and Training Courses for Young People may be mentioned more specifically.

Apprenticeship courses provide work-linked training aimed at qualifying first time job seekers by obtaining a school and Professional certificate, preferably at the 12th year level – to facilitate their integration in the workplace, and the target population being young people aged 15-25 years of age.

The Education and Training Courses for Young People promote dual certification for young people aged between 15-25 years, which aims at raising the school and professional levels of young people, in particular of those at risk of dropping out of school or who have already done so before completing their 12th year of education. These courses privilege young people who have not concluded the 9 compulsory school years because of successive failure in schools.

The Socio-professional Integration Programme for Young People 15-22 years old is a programme developed by the Institute of Employment and Vocational Training (IEFP) to discourage the immediate integration in the labour market of unemployed young people registered in Employment Centres and who do not possess 12 years of schooling by ensuring them with a training opportunity providing them with both a school and professional certification.

The Training Clause Measure is promoted by the IEFP since 2002 (Law 58/2002 of 15 March⁹⁵ and Implementing Regulatory Decree 16/2002 of 15 March⁹⁶) and enables young people aged 16 and 17 to access training when they sign a work contract or have already done so but do not possess compulsory education or a professional qualification. This measure establishes that the normal work period should include a part for training corresponding, to a minimum of 40%, maximum limit established in the law, of the applicable collective regulation or of the period practised in the respective category, within the company.

Joint Order 948/2003⁹⁷ of the Ministries of Education and Social Security and Labour, of 26 September revised and reformulated the Integrated Education and Training Programme (PIEF), created by joint Order 882/99, of 28 September⁹⁸. PIEF has the following objectives: 1) to enable children 15 and over exploited as cheap labour, namely under the forms mentioned in ILO Convention 182, to obtain a school leaving certificate and/or professional training; 2) enabling children 16 and over to complete compulsory education associated to professional training leading to work contracts. It is implemented by elaborating an individualised, flexible Education and Training Plan for each child. This programme was recently continued through Ordinance 272/2012 of 4 September⁹⁹ that created the Programme for the Support and Qualification of the PIEF.

The PIEF is integrated in the Programme for Inclusion and Citizenship (PIEC). PIEC was created by Resolution of the Council of Ministers 79/2009, of 2 September¹⁰⁰. This programme replaced the PETI (Programme for the Prevention and Elimination of Child Labour, created by Resolution of the Council of Ministers 37/2004 of 26 February.

95 Law 58/2002, *Government Gazette*, 1st Series-A, No. 63, 15 Mars 2002.

96 Regulatory Decree, *Government Gazette*, 1st Series-A, No. 63, 15 Mars 2002.

97 Joint Order 948/2003, *Government Gazette*, 2nd Series, No.223, 26 September 2003.

98 Joint Order 882/1999, *Government Gazette*, 2nd Series, No.223, 28 September 1999.

99 Ordinance 272/2012, *Government Gazette*, 1st Series, No.171, 4 September 2012.

100 Resolution of the Portuguese Council of Ministers 79/2009, *Government Gazette*, 1st Series, No.170, 2 September 2009.

With the creation of PIEC, the prevention and combat to child labour became the responsibility of the Authority for Labour Conditions (ACT), concretised through Law 229/2009, of 14 September¹⁰¹. Thus, the PIEC concentrates in the area of social inclusion of children and youngsters.

“Entreculturas” has been functioning since 1991 developing activities to sensitize schools and other educational stakeholders regarding the issue of intercultural education, as a means to facilitate the integration of immigrants’ children and ethnic minorities in schools and to ensure better and more equal opportunities for all. Currently this team is composed by 36 trainers. They produce, edit and disseminate tools, teaching and training materials, as well as information materials to the general public.

The Ministry of Education also promotes programmes aimed at raising students’ awareness to civic attitudes and behaviours. One such example is the cross-curriculum module ‘Citizenship and Safety’. Considering the present social complexity of schools and living context of children and youths, it is urgent to deal with citizenship values under a safety point of view, and at an early stage, in an attempt to prevent risk behaviour, uncivil attitudes and violence.

As mentioned above, compulsory schooling is universal and free between the ages of 6 and 18. This includes also the children of undocumented immigrants. Besides, the Immigration and Borders Service (SEF) puts in place the “SEF goes to school” programme which aims at legalizing undocumented children and at spreading information on the legalization process.

“Regarding the regularization of immigrants, of integration so that our immigrants feel welcomed and they are truly integrated in society it is fundamental to guarantee their regularization when they are entitled to it. We have a specific programme, the “SEF vai à escola”. It has already regularised the legal situation of many children who were in schools but in an illegal situation. Some of them were under the custody of institutions but still illegal. This was hampering their path because if it’s true that the law guarantees their access to school being illegal, it is also true that from a certain moment onwards they faced lots of difficulties to continue in school because of being undocumented. For instance, there was a point when not even a certificate or a diploma could be issued. All of that was blocked.” (GOV, PT07)

Unaccompanied children living the aforementioned specific shelter of the Portuguese Refugee Council – refugees and asylum-seekers – are also integrated in the educational/vocational training system.

Number 3 of article 114 of Law 29/2012¹⁰² establishes that the children victim of human trafficking or of facilitation of undocumented immigration are entitled to accede the Portuguese educational system in the same conditions as national citizens.

Law 29/2012, of 9 August¹⁰³ stipulates that victims of trafficking are entitled to training to improve their occupational skills or to prepare for return to their countries of origin, and, in the case of child victims, access to the education system on the same basis as Portuguese nationals

Education is one of the sectorial intervention axes of the National Strategy for the Integration of Gypsy

101 Law 229/2009, *Government Gazette*, 1st Series, No. 178, 14 September 2009.

102 Law 29/2012, *Government Gazette*, 1st Series, No. 154, 9 August 2012.

103 *Ibid.*

Communities 2013-2020¹⁰⁴. One of the set objectives is to guarantee the access of gypsy children to pre-schooling through the valuing of schooling paths by the community. There is also the aim to increase schooling levels and success of gypsy students, as well as to prevent early drop-out.

Specific measures are considered including the presence of mediators in the school premises and resorting to pedagogic strategies that include music and dancing as a means to motivate the students belonging to this community and the promotion of their involvement in extracurricular activities. It also includes the mobilization of schools and the gypsy community and the setting of partnerships with public and private entities (Portugal, 2012).

Also the measures regarding distance learning should be mentioned, such as the 'Mobile School Programme'. For more information, see chapter 1 – the right to non-discrimination.

Compliance, inclusion, appropriateness and effectiveness of the practice: To which degree are the national laws and policies applied and implemented in a way that is inclusive, appropriate and effective?

Fiscal austerity measures have impacted on education. In April 2012 the government announced that the number of pupils per class would increase from 28 to 30. A limitation to family tax exemptions based on education expenses was also introduced.

The report of the Commissioner for Human Rights of the Council of Europe stresses that the cuts in child benefits appear to have had a particularly negative impact on education as many parents have publicly indicated that these subsidies were usually used for buying school books or covering meal costs and transportation to school. In addition, it has been reported to the Commissioner that the tightening of the budgets of local authorities has impacted on education as it results in less funds being available locally to support public schools (Muižnieks, 2012).

Considering the situation of undocumented children more specifically, even though, as mentioned above, their access to education in similar conditions to the documented children has been established, in practice this situation is not always achieved properly, and even if it is recognised that there is a significant number of programmes. As highlighted by a respondent:

“Education is very important (...). The problem is having access to education, having access to training in the absence of documents proving their qualifications. And also when there is discrepancy between their age and the level of education they say they have. For instance, it is difficult to place a 17 year old in the 5th or 6th grade (...) When there is discrepancy and there are no documents to prove something....” (PROFESSIONALSYoung, PT20)

“There are so many specific programs for young people, but they cannot accede them because they can't fulfil all the criteria imposed. They are not certified and they don't speak Portuguese enough well. (...) In general, they are children who didn't have access to school and who had an opportunity to do something better. There are always problems, and sometimes they can't keep on with school rhythm.” (PROFESSIONALSYoung, PT20)

“The “Santa Casa da Misericórdia” through “The multicultural

104 Available at: http://www.portugal.gov.pt/media/409258/20111228_consulta_publica_enicc.pdf

Centre of Training” was the entity to which I appealed to register the children in PIEF, because it had a protocol with the School “Quinta de Marrocos”. While they did it, it was excellent. But the rules changed and they have to stick to them. The Bobadela school is an example of how including these young people, of how good practices should be.” (PROFESSIONALSYoung, PT20)

“If a child does not compulsory education, he has to go to school. But how, if they don’t let him in. If he wants to submit to child benefit, he has to prove he is in school and have his documents. Fortunately, we have helped some kids through the suspended school registration. We have been able to integrate them in schools, till the 9th grade. We have to praise the “Bobadela” and “Olaias” school, because they have been able to integrate them, specially the “Agrupamento de escolas da Bobadela”. They have a historic of good practices, hosting and integration of these young people in their school. For example, to have the 4/18 Social pass, he needs to have the child benefit, he has to prove he is in school; or the lack of Social Pass because of the lack of income. They have a suspended school registration to go to the 7th, 8th or 9th grade. If he wants to submit to child benefit, the school can’t provide any document saying he is in school because the registration is suspended. It simply doesn’t work. Either if he wants the child benefit, the Social Pass or the SASE (it works accordingly to the child benefit scale). It is very hard to get them help. In other cases we can’t find any solutions. This exceeds what we can do as a team of technicians because problems are more extensive. (...)These issues are always discussed but the capacity of solving and creating solutions is very limited. We have to rethink. These young people are in this peculiar situation, but there are others in the same situations who aren’t asylum seekers.” (PROFESSIONALSYoung, PT20)

What are the key determinants that would enhance / reduce the level of risk / protection in this specific area?

- To ensure the quality of the education system even – and particularly – in times of crisis.
- To ensure effectiveness of the mechanisms for granting access to undocumented immigrants.
- To create the conditions in order to guaranteeing the access to education throughout the whole schooling path.

Actors: Which actors are involved?

Actors involved include relevant ministries such as: Ministry of Education and Science; Ministry of Solidarity, Employment and Social Security. It also includes other relevant state bodies such as: Ombudsperson’s Office, the Institute of Employment and Vocational Training (IEFP), the Institute of Social Security; National and Local Commissions for the Protection of Children and Young People, schools and municipalities.

4.2.2. SPORTS AND RECREATION ACTIVITIES FOR CHILDREN

Compliance and inclusion of the national laws and policies: To which degree do the national laws and policies comply with international standards?

In its concluding observations of 2001, the Committee on the Rights of the Child expressed its concern that Sports activities receive insufficient financial support and that the number of children taking part in sports activities was much lower than in other countries in the region, particularly for adolescents. As such, it recommended Portugal to increase its investments in physical activities for students in schools and to take additional steps to promote and support sports and other leisure activities for children, giving particular attention to children living outside the main urban regions (CRC, 2001).

Unfortunately, the first of these recommendations was not addressed in the latest Portuguese report to the Committee on the Rights of the Child on the implementation of the CRC. Regarding the second, the report highlights that the Portuguese Institute for Youth promotes several activities during holiday period, enabling youngsters to get to know the country and, simultaneously, to practice sports like mountain climbing, football or BTT (all-road cycling). In 2009 these activities targeted 8.218 young people (Portugal, 2011).

The Youth Institute has a programme for the occupation of free time of youngsters aged 15 to 25 which aims at promoting healthy occupation of free time by Young People, also fomenting volunteer work. The activities offered fit into the following categories: Environment and/or Civil Protection; Support to Old People and/ or Children; Culture; Combating Social Exclusion; Health; Sports, Science/ Technology, Creativity and Innovation. Participation is free of charge and it includes those residing in Portugal and integrated in the educational or vocational training systems.

The Programme 'Sports at school' 2009-2013¹⁰⁵ aims at providing all pupils from the 2nd and 3rd cycle of basic education and from secondary education the opportunity to engage in physical and sports activity. The programme is faced as essential for the comprehensive formation of the youngsters, as well as for the development of sports in the country. It is applicable to every educational institutional, public or private. Participation is of free choice and free of charge and open to every pupil as long as he/she is also registered at the respective School Sports Coordination (Ministry of Education, 2009).

Law 95/91, of 26 February¹⁰⁶, established the juridical regime of Physical Education and Sports at School. While Physical Education runs in the scope of the curricular activities, sports at school requires its own framework since it regards an activity of curricular complement. In any case, it should be developed with reference to the framework provided by Law 46/86 of 14 October – Framework Law of the Education System. Within this framework, access to education, physical wellbeing and health, through oriented sports activity is a right of all citizens, mainly of the youngsters in schooling age.

As access to education is granted also to undocumented children, they will also have access to the Sports at School Programme. As for leisure time, they will not be able to accede the programmes of the Youth Institute, as documentation is required for registering. Leisure time activities provided by NGOs would be

105 Available at: http://www.drec.min-edu.pt/repositorio/Programa_Desporto_Escolar_2009_2013.pdf

106 Decree-Law 95/91, *Government Gazette*, 1st Series-A, No. 47, 26 February 1991.

the only available alternative.

Compliance, inclusion, appropriateness and effectiveness of the practice: To which degree are the national laws and policies applied and implemented in a way that is inclusive, appropriate and effective?

In 2007/2008 the Ombudsperson received a complaint on a child victim of discrimination on the basis of nationality. In this complaint, a child of a non-national was treated in a discriminatory way because she was required to pay a higher fee than a Portuguese child when she was transferred from a foreign football club to a Portuguese one.

The Ombudsperson recommended an urgent revision of the regulations applied and the application, in the meantime, of the same regime in force for Portuguese children to all children players, regardless of their nationality.

What are the key determinants that would enhance / reduce the level of risk / protection in this specific area?

- To increase the investment in physical activities for students in schools and take additional steps to promote and support sports and other leisure activities for children, giving particular attention to children living outside the main urban regions.
- To change procedures regarding the access to the programmes of the Youth Institute harmonising them with the procedures regarding access to education.

Actors: Which actors are involved?

Actors involved include relevant ministries such as: Ministry of Education and Science; Minister Assistant and of Parliamentary Affairs. It also includes other relevant state bodies such as: Directorate-General of Education, Ombudsperson's Office, Institute of Social Security; National and Local Commissions for the Protection of Children and Young People, schools and the Portuguese Institute of Sports and Youth, besides different NGOs operating in this field.

4.2.3. WORKING CONDITIONS OF CHILDREN

Compliance and inclusion of the national laws and policies: To which degree do the national laws and policies comply with international standards?

Through Presidential Decree 28/2000¹⁰⁷ and Resolution of the Parliament 47/2000¹⁰⁸, Portugal ratified ILO's Convention 182 on the worst forms of child labour.

¹⁰⁷ Decree of the President of the Republic 28/2000, *Government Gazette*, 1st Series-A, No.127, 1 June 2000.

¹⁰⁸ Resolution of the Parliament 47/2000, *Government Gazette*, 1st Series-A, No.127, 1 June 2000.

**“In 1999, Convention 182 was adopted and Portugal was one of the first states to ratify it. That was demonstrative of the degree of commitment in order to guaranteeing the compliance with international standards and that the practice was adequate to such international standards.”
(ORG, PT14)**

Law 99/2003, of 27 August¹⁰⁹ approved the Labour Code that came into force as of 1 December of 2003. The Labour Code was revised by Law 7/2009, of 9 February¹¹⁰. Law 47/2012, of 29 August¹¹¹, changed the Labour Code in order to adapt it to Law 85/2009, of 27 August¹¹², that established the regime of compulsory schooling for children and youngsters in schooling age and consecrated the universal character of pre-schooling education for children aged 5. Under the Labour Code, the work of children is ruled by articles 66 to 83. The main aspects are the following:

The employer must provide children with working conditions appropriate to their respective age in order to protect their safety, health, physical, mental and moral development, education and training, and to prevent any risks which might arise owing to inexperience, unawareness of existing or potential risks or the child’s level of development.

In particular, the employer must assess work-related risks before the child starts work and always after any substantial changes to working conditions; children also have to undergo medical examinations to ensure safety and health.

A child can only be recruited if having completed the age of 16 and possessing physical and mental abilities adjusted to the job, as well as having completed compulsory schooling or if he/she is enrolled and attending secondary schooling. Additionally, it states that children aged less than 16 can only be recruited if compulsory schooling has been concluded or the child is enrolled and attending secondary schooling but only for performing simple tasks that, by their nature, physical or mental effort or specific conditions under which they are performed are not susceptible of jeopardizing their a) physical integrity, b) health and safety, c) school attendance, d) participation in vocational guidance or training, e) capability to benefit from education, f) physical, mental, moral, intellectual or cultural development.

Normal working hours, including under working time adaptation arrangements, must not exceed 8 hours a day and 40 hours a week. Children may not be given night work or overtime. The daily work period must be interrupted by a rest break of between one and two hours, so that the child works no more than four consecutive hours if under 16 years of age, or no more than four and a half hours if aged 16 and above. Children aged 16 years and above must be given a minimum daily rest period of 12 consecutive hours between work periods on two successive days. Children are entitled to a rest period of two consecutive days, where possible, in each seven-day period, unless, in the case of children aged 16 years or above, a weekly rest period of 36 consecutive hours is justified for technical or work organisation reasons specified in the collective employment regulations.

Employers must provide the child with a medical check-up in order to verify the child’s physical and mental suitability for work. This should be run before starting to work or in the 15 days following admittance if this is considered urgent and only with the consent of the child’s legal representatives. Employers must also provide annual medical check-ups so that no harm from work is resulting to the child’s health and physical

109 Law 99/2003, *Government Gazette*, 1st Series-A, No. 197, 27 August 2003.

110 Law 7/2009, *Government Gazette*, 1st Series, No. 30, 12 February 2009.

111 Law 47/2012, *Government Gazette*, 1st Series, No. 167, 29 August 2012.

112 Law 85/2009, *Government Gazette*, 1st Series, No. 166, 27 August 2009.

and mental development.

The participation of children in cultural, artistic or advertising activities was regulated, for the first time, by Law 35/2004 of 29 July¹¹³.

In what regards the combat to child labour, one important instrument is the aforementioned Integrated Education and Training Programme (PIEF), now integrated within the Programme for Inclusion and Citizenship (PIEC) that replaced the PETI (Programme for the Prevention and Elimination of Child Labour).

“I would also like to mention the measure PIEF that was also highlighted by its success for the intervention with socially excluded children and highlighted as a positive experience by ILO’s reports. It was, in fact, placed in a highlighted position in a box, in the last global report on the situation of child labour in the world, published by ILO in 2010, being the only European country to be highlighted.” (ORG, PT14)

With the creation of PIEC, the prevention and combat to child labour became the responsibility of the Authority for Labour Conditions (ACT). Thus, the PIEC concentrates in the area of social inclusion of children and youngsters, representing a clear downgrading of the relative importance attributed to the specific phenomena of child labour.

Since 2002, the PETI had been the National Focal Point for the Protection of Children Against Sexual Exploitation within the scope of the Council of Europe. The PETI had established three main strategic lines in relation to child labour: 1) sensitization/information/training – including the realisation of International Conferences, meetings for specific target groups, the PETI Editions; the Page on the internet and Media Campaigns; 2) prevention – seeking to deepen the knowledge on child labour; also carried out within the scope of PIEF and the School Holiday Projects; 3) integration and repair – also including the School Holiday Projects within PIEF measures and actions covering the worst forms of child labour.

For these three interventions, PETI has defined certain objectives and priorities emphasizing: 1) the promotion and coordination of the dissemination on the information about the rights of children in general and on the situation of child labour in Portugal with parents, legal guardians, education establishments, employers and public opinion in general; 2) the promotion of institutional cooperation with other entities to elaborate a mapping of the needs of children and young people at risk and promote local partnerships which progressively assumes responsibility by coordinating and executing responses considered necessary to protect children; 3) the promotion of the integration of children exploited for labour in “traditional” or worst forms of labour considered by ILO Convention; 4) the promotion of a greater knowledge of the changing multi-factorial nature of child labour, by establishing partnerships with universities and edition of case studies or statistical data.

PETI saw its preventive component reinforced on the policy to combat child labour by adopting mechanisms to refer children exploited for labour to educational and training measures enabling them to complete compulsory education and if possible acquire vocational training, thus, obtaining the adequate work conditions in a near future.

“Conversely, through PETI – that had several names like PEETI, PETI – work was developed throughout ten years in order to combat child labour and this was made in close articulation with the ILO. In fact, in ten years, Portugal stopped being a country that was internationally

113 Law 35/2004, *Government Gazette*, 1st Series-A, No. 177, 29 July 2004.

accused for having child labour and for not acting against it and became an example of good practice and that was able, in fact, to solve this issue. Throughout those ten years, there was a partnership between the PETI and ILO Lisbon. These were specific relevant results.” (ORG, PT14)

According to a study developed by the Ministry of Labour and Social Solidarity with the support of ILO and the National Institute of Statistics, in 2001, 48,914 children were performing an economic activity which corresponded to a rate of 4.1% of the total number of children aged 6 to 15 (SIETI, 2003).

However, it is important to refer that the concept of economic activity is more encompassing than the child labour one (in a strict sense), which includes activities contributing to the production of goods and services (for more than one hour per week), performed by children, either as unpaid family members or paid workers, also including children performing light and “acceptable” work not harmful to school attendance. As such, exploited children would represent a subset of the children performing an economic activity (Ibid.).

Thus, the number of exploited children for child labour, calculated and based on the 2001 data, was approximately 28,228, corresponding to a rate of 2.4% of children aged 6 to 15. From these, 14,008 performed dangerous work, corresponding to a rate of 1.2% of children aged 6 to 15 (Ibid.).

“We evolved a lot, even in terms of legislation. Labour legislation adapted to the need of fighting the phenomenon. (...) The situations where working is forbidden are clear and the situations where it is allowed even have a specific follow-up. Employers must assess specific labour conditions, must distinguish what they can or cannot do, everything in written. And an assessment of the risks for health must also be accomplished. (GOV, PT01)

The involvement of children in begging (article 296 of the Penal Code) was widened within the 2007 review of the Code¹¹⁴, in order to allow the punishment of the situation in which the child accompanies the perpetrator. Therefore, it is punished under article 296 the one who sends a child to beg as well as the one who begs accompanied by a child.

Compliance, inclusion, appropriateness and effectiveness of the practice: To which degree are the national laws and policies applied and implemented in a way that is inclusive, appropriate and effective?

As regards child labour, the already mentioned report of the Commissioner for Human Rights of the Council of Europe notes that since 1999 and the collective complaint brought against Portugal before the European Committee of Social Rights, the authorities have taken substantial measures to combat this problem (Muižnieks, 2012). As a result of the measures put in place, reported cases of child labour have drastically decreased, even though the European Committee of Social Rights reported, in its Conclusions for 2011, a few remaining problems concerning child labour in Portugal (European Committee of Social Rights, 2012).

“At a certain point I got a job cleaning stairways with her [woman exploiting her]. I got up at 5 a.m. to go to work and stopped at 4 p.m.

114 Penal Code (Law No. 59/2007), *Government Gazette*, 1st Series, No. 170, 4 September 2007, amended by Law No. 60/2013 of 23 August 2013.

Then we went for a couple of beers before going home. But she didn't give me the money, she took it for herself. They paid her because I was under-age at the time and I was there illegally. I didn't have a contract or anything like it.” (YOUNG, PT15)

At the same time, experts, civil society organisations and trade unions have expressed their concern at the fact that the financial crisis, growing unemployment and the shrinking sources of family incomes due to the austerity measures may have led families to make use of child labour once again, notably in the informal economic sector and agriculture. There are indications that, since the beginning of the crisis, there have been cases of children migrating for work purposes to other EU member states. In a context already marked by high rates of early drop-out from school, particular vigilance is therefore required from the authorities to monitor possible developments in this field and that programmes aiming at preventing child labour should not be discontinued.

“Labour legislation has always a serious problem of effectiveness. (...) To uphold the law because it is mandatory is one thing; to uphold the law because that is advantageous is another thing. That gap between these two things marks a big difference and it is a cultural difference. As such, it is more difficult to act.” (GOV, PT01)

“What I want to know is what is being done by the entities, for instance, in a case of begging. I'm not interested in what it could be done. What I want to know is what is being done or what they should already be doing! Because all these processes were developed years ago and systems and legislation were created years ago. The issue is that things never got to be implemented or that, due to the normal turnover of people in positions, they end up being relegated to oblivion.” (GOV, PT05)

A specific difficulty in this area regards the way the system can effectively check all the possible situations of child labour exploitation.

“There is a difficulty regarding work at home. How are we going to do that? We cannot just break in into people's homes. These things exist in the footwear industry, in traditional painting of clay. There is home work. Even in the textile industry there is a part of the work, most of all the final checkings that is made at home. They take them home. Who is going to guarantee that children are not doing that? Who is going to guarantee that they are doing it excessively? (GOV, PT01)

Another difficulty regards the difficulties of some sectors to open to other perspectives. This is deemed as conditioning the possibilities for higher success.

“There are flaws. In my opinion, some of them have to do with an autocratic culture prevailing in the relationships in Portuguese society. Our levels of participation of workers in companies day-to-day are amongst the lowest in Europe.” (GOV, PT01)

“A challenge we have been trying to address is raising awareness of judicial actors. I think that not always... Sometimes, when we are experts in a specific field, we are used to talk about it according to our own perspective. I think it is very important to have different

perspectives and to see that there are connections with labour. It is very important that magistrates are open to multi-sectorial work.” (ORG, PT14)

As regards the inclusion of immigrant population, the Labour Code clearly includes all documented immigrants. Thus, undocumented immigrants are outside its scope which may of course be a problem even if there is the consideration that:

“Laws do not discriminate either foreigners or ethnic groups. Besides, it is forbidden to discriminate. Thus legislation is correct. My fears regard the operational plan.” (GOV, PT01)

Despite the existence of different programmes to prevent the risk of school dropout and child labour, respondents stressed that the actual access of children is sometimes hampered by conditionalities that are inherent to these programmes.

“R2-Programs in school are not adequate for these kids, as well. Their schooling is low.

R1 - There are the CEF [Courses of education/training] and the PIEF, as well as Vocational courses.

R2 - But they [the children] have to be a certain age in order to accede to these programmes.

R1 - And there are some criteria. They have to fail in school for three consecutive years.

E - Are the criteria too rigid?

R1 - I think they are out of context. We shouldn't have to wait till the student fails three times to help.

R2-... or wait till the student is 15 years old.

R1- Instead of solving their problems, the programmes leave these kids out. We have a young boy who is 18 years old with the 6th grade. There was no solution.

R2 - He was always expecting the system to integrate him in a specific program. He even entered the PIEF but he was there for two years and didn't finish.

R1 - But there are a lot of youngsters who can't be part of this programme.

R2-There should be an intermediate programme, between the regular system and PIEF.

R1- It is not extensive enough for kids who have problems in their school curriculum.

E - Are there situations excluded?

R1 - Yes. There is a lack of a programme for the ages between 12 and 15. (PROFESSIONALS, PT, ChildOut)

“There was a program, but with a difficult access, the PIEF. For years it was the only answer for this kind of cases, because it was the only one which allowed for an alternative school curriculum. It was a great solution. (...) This was the only opportunity to have access to education/training. As it is going to be extinguished, if PIEF doesn't allow someone with problems with the Portuguese language, it will be complicated. They can take more than a year to learn the Portuguese language. That is one criterion. They won't be able to do it. The other one is submitting their qualifications certificate (which they haven't), unfailingly. (...) When PIEF was created its aim was to fight against

child labour, but now there other things to fight about, like the lack of schooling of a specific group of children. If we don't look at them in a different way we can't integrate them. We have to adjust our interventions. That's the importance of these specialized programs, at least, in an initial phase, because they will capacitate them. Then, s/he can go into other paths because s/he already feels s/he is capable of. In the initial phase, if there's nothing for them it means restricting their future. (...) If it was a specialized program for young people who had problems in accessing the "normal" school curriculum, it was adequate to this group. Now it has much more restrictive requirements, in a short/medium term. That is very discouraging for the kids who arrive, because they are unoccupied and they lose their will to do something and learn." (PROFESSIONALSYoung, PT)

Regarding the specific situation of trafficking, the aforementioned report of GRETA highlights that:

"There seem to be few proactive inspections making it possible for labour inspectors to report victims of trafficking, and only a limited number of labour inspectors have been specifically trained to deal with trafficking. In the light of information indicating that the number of cases of trafficking for the purpose of labour exploitation is increasing, involving both non-national and Portuguese victims, mainly in agriculture". (GRETA, 2013: p.30, §119)

Still according to the same report, Portuguese temporary recruitment agencies are allegedly involved in cases of trafficking for the purpose of labour exploitation. Thus, **"Portuguese authorities should carry out more proactive investigations into trafficking for the purpose of labour exploitation and improve labour inspectors' awareness of and training on this subject" (GRETA, 2013: p.30, §119)**

The OTSH, in partnership with NGOs, labour inspectors and other public institutions, has established a working group in order to produce two 'reporting/flagging cards' for victims of THB, one of which is intended for labour inspectors.

These cards contain a set of specific questions and indicators to assess whether a person is a potential victim of human trafficking, as well as relevant contact details of victim referral support centres and hotlines. GRETA's report suggests reviewing the indicators used for the purposes of reporting and identification of victims, so that they cover every possible situation ensuring that in practice the formal identification of victims is dissociated from their participation in the investigation and court proceedings (Ibid.).

In response, the Portuguese authorities stress that the identification of a victim of trafficking and all the rights are given when personal circumstances of the victim with regard to his/her situations of vulnerability of his/her family members or people with whom he/she has close relationships justify it. They also refer that the list of indicators already in existence is very complete and covers almost every possible situation, stressing the importance of spreading that list as much as possible. The new database encompasses a wide variety of indicators both from victims and traffickers, since the moment of detection until after sentencing. If, for the purpose of protection of victims there is a feel that new indicators are needed, they can be added (GRETA, 2013).

However, despite the problems, also some good practice may be identified.

“Combat against child labour in Portugal is seen as good practice within the context of ILO. First of all because it derived from the recognition, from an industrialized country, that there was a problem regarding child labour. I think it was the only industrialized country recognizing the existence of the county and having adopted measures to act upon it. And Portugal knew how to develop methodologies in order to know the true dimension of the problem so that it could provide an answer to it. Finally because all that work was developed in a tripartite way, i.e. with the strong involvement of the ILOs tripartite partners, employers and workers. The whole structure, the whole logic of the fight included this tripartite involvement and the recognition that it was necessary also to involve the whole society.” (ORG, PT14)

What are the key determinants that would enhance / reduce the level of risk / protection in this specific area?

- To increase and improve proactive inspective mechanisms.
- To guarantee effectiveness of labour inspections.
- To improve labour inspectors’ awareness of and training on the subject of trafficking.
- To develop all endeavour in order to assuring that the financial crisis, growing unemployment and the shrinking sources of family incomes due to the crisis and to the austerity measures do not lead families to make use of child labour.
- To dedicate vigilance to the field of education, still marked by high rates of early drop-out from school.
- To ensure that programmes aiming at preventing child labour are not discontinued.

Actors: Which actors are involved?

Actors involved include relevant ministries such as: Ministry of Education and Science; Ministry of Solidarity, Employment and Social Security. It also includes other relevant state bodies such as: Directorate-General of Education, Authority for Working Conditions, Ombudsperson’s Office, Institute of Social Security; and schools. Also the Portuguese office of the ILO is highly relevant for this matter.

4.3. PARTICIPATION

What the CRC says on 'participation': Summary excerpts

Article 1 (Definition of the child): The Convention defines a 'child' as a person below the age of 18.

Article 7 (Registration, name, nationality, care): All children have the right to a legally registered name, officially recognised by the government. Children have the right to a nationality. Children also have the right to know and, as far as possible, to be cared for by their parents.

Article 8 (Preservation of identity): The right of the child to preserve his or her identity, including nationality, name and family relations.

Article 10 (Family reunification): Families whose members live in different countries should be allowed to move between those countries so that parents and children can stay in contact, or get back together as a family.

Article 13 (Freedom of expression): Children have the right to freedom of expression. This includes the right to seek, receive and impart information.

Article 14 (Freedom of thought, conscience and religion): Children have the right to think and believe what they want and to practise their religion.

Article 16 (Right to privacy): Children have a right to privacy. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence.

Article 17 (Access to information; mass media): Children have the right to get information that is important to their health and well-being. They shall be able to access information in a language that they can understand from a diversity of national and international sources, including information from the mass media.

Article 22 (Refugee children): Children who seek asylum and child refugees, whether they are accompanied or unaccompanied, have the right to receive special protection and humanitarian assistance and to enjoy all the rights afforded under the Convention.

Prevention and protection benchmarks:

Any prevention and protection strategy and measure should address the following essentials:

Inclusion: Access to a setting which fully recognises the legitimacy of the child's status by keeping in consideration the pre-eminence of his/her best interest over any other administrative or migratory policies as well as of his/her capacities for active participation.

Appropriateness: The active listening, the appreciation of individual and cultural characteristics of the child, as well as of the possibility to reach and express his/her full potential.

Effectiveness: The recognition and the enhancement of self-determination and the empowerment of the child's self-protection capacities.

Compliance: The right to participation as stated by international legislation's principles and provisions is fully reflected in national laws, policies and practice.

Source: Standards developed for GATE, 2012.

Who are the main actors with regard to 'participation'?

- Relevant ministries and their mandates at the level of the central government
- Other relevant state bodies
- Regional and local authorities
- Non-state actors (private service providers, NGOs, Foundations, and others)

4.3.1. MIGRATION, ASYLUM AND RESIDENCE

Compliance and inclusion of the national laws and policies: To which degree do the national laws and policies comply with international standards?

**“I think that the Portuguese laws related to the protection of children and asylum is more advanced than what the European Union practices.”
(ORG, PT11)**

Legislation concerning attribution, acquisition and loss of nationality has been enacted through Law 2/2006, of 17 April¹¹⁵ and Decree-Law 237-A/2006, of 14 December¹¹⁶, as well as, where relevant, through some alterations to the Civil Registry Code.

There has been a widening of the criteria for attribution and acquisition of nationality, with the strengthening of the principle of “*ius soli*”, through the recognition of citizenship to individuals who hold a strong connection to Portugal: i) attribution of Portuguese nationality by origin to those born in national territory, having non-national parents, if at least one of those parents was also born in Portugal and had his/her residence here when the child was born; ii) attribution of Portuguese nationality by origin to those born in national territory, having non-national parents who are not serving their countries, if the child declares wanting to be Portuguese, and if at least one of the parents has had his/her residence here for, at least,

¹¹⁵ Organic Law 2//2006, *Government Gazette*, 1st Series-A, No.75, 17 April 2006.

¹¹⁶ Decree-Law 237-A/2006, *Government Gazette*, 1st Series, No. 239, 14 December 2006.

5 years; iii) establishment of a general right to naturalization for children who were born on Portuguese territory, having non-national parents, if, at the time of the request, one of the child's parents has had his/her residence here for, at least, 5 years, or if the child has concluded in Portugal the first level of basic education.

Portuguese law determines that every individual born in national territory who does not possess any other nationality, is Portuguese by origin – paragraph 1 of article 1 of Law 2/2006, and paragraph c) of article 3 of Decree-Law 237-A/2006. Thus, the new Nationality Law, approved on the 16th of February 2006, reinforces the principle of “ius soli”, as a criterion for the acquisition of Portuguese nationality.

Therefore, original nationality is granted to immigrants born in Portugal; children of non-nationals that were also born in Portugal or children of non-nationals, as long as one of the parents has legal residence in Portugal for 5 years. Nationality by naturalisation is granted to children born in Portugal whose parents have become documented in the past 5 years or have completed the first cycle of compulsory education and to those immigrants born in Portugal when they reach adulthood if they have lived in Portugal for the last ten years.

However, the law does not automatically grant nationality to all born in Portugal: “ius sanguinis” is still privileged; there are no further requisites for original acquisition by filiation, whereas “ius soli” must consider the legal status of the parents. As mentioned before, the Immigration and Borders Service (SEF) puts in place the “SEF goes to school” programme which aims at legalizing undocumented children and at spreading information on the legalization process.

**“R – I was without an identity for four years. My father went to Boston and took my documents. (...). He took my passport, my residence [permit] and everything I had. If I was caught in a raid I could be deported.
I – So when did you renew your documents?
R – That was when I went to school. Because by then I was a student and I did not have to pay a fine. Well, I had to pay but not a lot.” (YOUNG, PT15)**

Birth registration is mandatory for all people born in Portugal, even non-national people, under Article 1, paragraph 1, point a), and paragraph 2 of the Civil Registration Code¹¹⁷. Birth declaration is mandatory, not only for parents and relatives, but also for the people working in the health unit where the child was born, where such declaration is possible. Birth registration is drawn up immediately after the declaration (article 102 of the Civil Registry Code). If, within 20 days after birth, or until the mother is released from the health unit, the birth is not declared, the administrative and police authorities, as well as any other person, even if deprived of any particular interest, will participate the fact to the Public Prosecutor who must act to overcome that failure.

The failure to declare the birth of the child is punished with a fine from 50€ to 400€ (article 295 of the Civil Registry Code), and any registry worker that fails to comply with the Registry Code, which includes not registering any false facts, is liable for the damages caused – civil responsibility clause (article 194).

The programme “Nascer Cidadão”¹¹⁸ (To be born as a citizen) was established in 2002, in view of fulfilling one of the fundamental rights of the child, namely the right to have a name. It aims at promoting the registration of children immediately after birth in three dimensions: registry office, health services and social security services. This allows the parents a less bureaucratic registration of their children and, at the same time, it allows for an early identification of situations of lack of social protection of the parents and of situations of risk to the children. It is up to the CNPCJR to accompany and evaluate the development of the project,

¹¹⁷ Decree-Law 131/95, *Government Gazette*, 1st Series-A, No. 131, 6 June 1995.

¹¹⁸ Available at: <http://www.portaldasauade.pt/portal/conteudos/a+saude+em+portugal/noticias/arquivo/2007/3/nascer+cidadao.htm>

following a protocol between the Ministries of Social Security and Labour, Health, and Justice.

Apart from providing the possibility of registering children immediately after birth in Health Centres, (hospital or maternity clinic) and at the Social Security, the programme allowed screening specific situations such as adolescent pregnancy, drug addicted parents, and women without prenatal follow-up.

Law 29/2012, of 9 August¹¹⁹, that came into force in 8 October 2012 is the law regulating the entrance, permanence, exit and removal of non-national citizens. Number 3 of article 107 of this Law determines that, two years after the first residence permit has been issued by virtue of family reunion and as long as family ties still persist or regardless of any time-span, whenever the person entitled to family reunion has child children living in Portugal, the members of the family are entitled to an autonomous residence permit.

Article 31 states that, without prejudice of tourism or youth exchange activities, entrance should be denied to non-national citizens aged less than 18, unaccompanied by those exerting parental responsibilities or when no one in Portuguese territory, duly authorized by the legal representative, is responsible for their staying. It also states that, unaccompanied children waiting for a decision regarding admission in Portuguese territory must be provided with the necessary material support and assistance for the satisfaction of their basic needs in terms of nourishment, hygiene, accommodation and medical assistance.

Article 109 expresses that, under certain conditions, a residence permit is granted to the non-national citizen who is victim or has been victim of penal infractions connected to human trafficking or to the facilitation of undocumented immigration, even if entrance has not been legal or the conditions for granting of such permit are not gathered.

Regarding the specific case of victims of human trafficking, this same article provides for a residence permit to be issued before the expiry of the reflection period subject to three conditions which must all be met: if it is necessary to extend the residence of the person concerned on the national territory, account being taken of the potential benefit of that presence for the purposes of the investigation and criminal proceedings; if the person clearly expresses his/her intention to co-operate with the authorities to facilitate the investigation; if the person has ceased all relations with the persons suspected of having committed the offences concerned (GRETA, 2013: §139).

It may be withdrawn at any time in the following circumstances: if the holder has actively, voluntarily and on his/her own initiative re-entered into relations with the persons suspected of involvement in trafficking or of facilitating undocumented immigration; if the authority responsible considers that the victim's co-operation is fraudulent or that his/her complaint is false or fraudulent; or if the victim stops co-operating (ivi: §140).

Furthermore, a residence permit may be issued to a victim failing to meet the criteria of Article 109 if this is justified by the personal situation of the victim or of members of his/her family, particularly with regard to the security, health, family situation or vulnerability of those persons. The conditions that the victim's presence on Portuguese territory must be of benefit for the purposes of the investigation or for judicial purposes and that he/she must co-operate with the authorities do not apply in such cases. The victim must nevertheless have broken off all relations with the alleged traffickers. Such permits are issued by the Ministry of the Interior, at its own initiative or at the request of a police force or the National Rapporteur. They are valid for the same period and subject to the same renewal conditions as residence permits issued on grounds of co-operation with the police (ivi: §141).

Number 2 of article 113 establishes that those having obtained a residence permit in the conditions predicted by article 109 who do not have sufficient resources and have specific needs such as children,

119 Law 29/2012, *Government Gazette*, 1st Series, No. 154, 9 August 2012.

pregnant women, disabled people and victims of violence are entitled to medical and social assistance.

As mentioned before, number 1 of article 114 establishes that the application of articles 109 to 112 (regarding residence permits to victims of human trafficking or victims of actions to facilitate undocumented migration), the child's best interests must be taken in consideration and the adopted procedures must be appropriate to his/her age and maturity. Besides what is mentioned in number 1, number 2 of article 114 of Law 29/2012¹²⁰ states that the reflection period allowing the victim to recover and escape from the influence of the perpetrators of human trafficking or actions to facilitate undocumented migration may be extended if required by the child's interest.

Number 4 of article 114 establishes that all actions must be taken in order to establish the identity and nationality of the unaccompanied child, as defined in number 5 of article 99, as well as to rapidly locate his/her family and to guarantee his/her legal representation including, if necessary, representation in relation with criminal proceedings.

Article 122 establishes that no residence visa is needed for obtaining a residence permit the children who are third country nationals who: a) were born in Portugal and offspring of non-national citizens with a residence permit; b) were born and living in Portugal and attending pre-school or basic, secondary or professional schooling; c) are subject to guardianship under the terms of the Civil Code.

Law 29/2012¹²¹ also makes it possible to grant the long-term resident status to third-country nationals benefiting from international protection. In order for this status to be granted, the beneficiaries of international protection must have had legal and uninterrupted residence in Portugal for a period of five years as from the date of submission of the application which resulted in the granting of international protection. Where revocation, removal or refusal to renew the international protection occurs, the long-term resident status on the basis of international protection should be refused.

Through article 113, persons holding a residence permit are entitled to the same rights as persons benefiting from a reflection period. They are also entitled to general medical care, legal assistance and translation and interpretation services, as well as programmes intended to make possible a return to normal social life, including vocational training or preparation for an assisted return to their country of origin.

Through Law 29/2012¹²², the rules on re-admission of third-country citizens in Portugal have been altered. The previous rules had already provided for the immediate re-admission, without formalities, of third-country nationals who had acquired long-term resident status in Portugal and members of their families, whenever they had been subject to a coercive expulsion measure by the Member State where they had exercised their right of residence. This possibility is now extended to third-country nationals who are EU Blue Card holders, as well as to their families, even if it has expired or has been withdrawn during the analysis of the application. It may also be extended to those subject to a request for acceptance made by another EU Member State, under the terms of agreements or conventions.

The Portuguese authorities have informed GRETA that when a Portuguese victim of trafficking is detected and the Shelter and Protection Centre (CAP) is contacted, all the necessary assistance and protection measures are provided by the CAP, including social inclusion and support that are available to every national citizen (ivi: §157).

Unaccompanied children are referred by the SEF to the Children and Family Court and sent to the temporary reception centre for refugee children by the Portuguese Refugee Council. After this action the promotion

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

¹²² *Ibid.*

and protection measures are determined by the Court, their implementation being followed-up by the Portuguese Refugee Council and Social Security experts. According to the latest Portuguese report on the implementation of the CRC, “all children receive training in Portuguese and are integrated in the school system, according with their skills and interests” (Portugal, 2011: p.97).

In its concluding observations of 2001, the CRC expressed its concern with the fact of Portugal providing no specific refugee status determination procedure for child asylum-seekers and that children did not always have access to psychological care when needed. Thus the Committee recommended Portugal to develop a refugee status determination procedure for child asylum-seekers; to introduce mechanisms providing children with access to psychological care; and to ensure full implementation of all the provisions of the Asylum Law (CRC, 2001).

In 2012, and according to data from the CPR, Portugal received 299 applications for asylum, 54 of which regarding children. 31 applications regarded unaccompanied children. Applications mainly regarded children from Guinea-Conakry (18, all unaccompanied), Nigeria (7, all unaccompanied), Democratic Republic of Congo (7, two of which unaccompanied), and Syria (5, none unaccompanied). As mentioned before, the overall numbers were overpassed in the first nine months of 2013. During this time, 320 applications were made, 81 of which regarding children. 46 applications regarded unaccompanied children.

“These young people [asylum seekers] arrive in Portugal, unaccompanied by an adult. Some of them say they are orphans, but others have no knowledge of where their family members are. Besides guaranteeing their basic needs when they arrive, the most important, for them and for me, is to trace their family. So we articulate with other entities which provide the same service, so that, in the future, if the child wants it, family reunification may happen. The family environment, if the child wants (and sometimes they don’t), has to be preserved and guaranteed. That is important for their future, either in Portugal or in another country.” (PROFESSIONALS Young, PT20)

In its latest periodic report, Portugal states that Law 27/2008, of 30 June¹²³, establishing the conditions and procedures for granting asylum or subsidiary protection or refugee status contain norms which are closely connected with the protection of child rights, namely numbers 1 and 2f of article 5 (acts of persecution against children); number 1 of article 53 (access to school); number 1b of article 59 (additional guarantees in the area of housing); article 70 (access to education); article 73 (access to health); articles 77, 78 and 79 (norms related to specially vulnerable persons – children) (Portugal, 2011: §528).

Still according to the same report, children who are asylum seekers stay with their respective families throughout the whole process. In the case of unaccompanied children and in those instances where there is information confirming the existence of members of their family, the support of the Red Cross is sought, in order to determine their whereabouts (ivi: §529).

Within the scope of the Dublin Regulation, in 2012, Portugal made 44 requests to other member-states, accomplished 22 transfers and received 155 requests (SEF, 2013). The report does not provide disaggregated data by age.

Article 15 of Law 29/2012¹²⁴ establishes the conditions regarding the Accommodation Form. This form aims at controlling non-national citizens in Portuguese territory. Number 3 of article 15 states that the filing in and signing of such form is not compulsory for both spouses and children accompanying them. This task

¹²³ Law 27/2008, *Government Gazette*, 1st Series, No. 124, 30 June 2008.

¹²⁴ Law 29/2012, *Government Gazette*, 1st Series, No. 154, 9 August 2012.

may be fulfilled by only one of the partners.

Articles 181 to 186 of Law 29/2012¹²⁵ define criminal law provisions regarding illegal immigration. However, undocumented presence per se is not included in these provisions but rather in chapter regarding administrative offences (article 192). This article foresees fines ranging from 80 to 700 euro in cases where a non-national stays in Portuguese territory beyond the authorised time-frame.

Return Directive (2008/115/EC) has been transposed into national law, by Law 29/2012 of 9 August¹²⁶ that came into force in the 8 October 2012. Number 2 of article 40 of this law grants the third-country national, whose entrance in Portuguese territory has been refused, in useful time and at his/her request, juridical assistance by a lawyer at the third-country national's own cost or, at request, the right to juridical protection. The regime used is the juridical regime regarding the access to law and to courts, established by Law 34/2004 of 29 July¹²⁷ within the regime of nomination of the defendant's counsellor for urgent diligences.

Number 2 of article 149 and article 150 of Law 29/2012¹²⁸ grant the same protection to the third-country nationals wishing to resort to judicial review proceedings of the decision of removal. As such, juridical protection comprises not only juridical counselling by lawyer but also judiciary support. Additionally, services of translation and interpretation may also be made available.

Comparative analysis with Directive 2008/115/EC reveals no flaws regarding the legal assistance to provide to persons in return procedures. However, legal assistance may not be free, as, according to Law 34/2004¹²⁹ drawn up in number 1 of article 7 of Law 47/2007 of 28 August¹³⁰, it depends of means-tests proceedings.

Law 29/2012 harmonises the rules and procedures to be applied to the returning of undocumented third-country nationals by implementing Directive 2008/115/EC, of the European Parliament and of the Council of 16 December 2008.

The Immigration and Borders Service (SEF) and the Portuguese office of the International Organisation for Migration (IOM) have concluded a protocol on the assisted voluntary return to their country of origin of regular or undocumented immigrants in a situation of financial vulnerability.

“The programme of voluntary return support has a direct public attendance. It is a programme in which people can ask for help to go back to their home country if they have no income in Portugal. Most requests are made by individuals, women or men, or by family groups, and within these families we have children. There are very few cases in which children are alone.” (ORG, PT13)

In this context, assistance in all the procedures relating to departure and payment of the cost of transport are provided. Once back in their countries of origin, the persons concerned are dealt with by the national office of the IOM and may benefit from reintegration assistance, for example with the starting of a business.

“There is a close cooperation with those entities, and between us and the offices and authorities in their home countries. In those cases there was always a close contact with the children's family for them to be able to go back. The family has to sign a document in the airport in which it confirms they are responsible and accept the child. An

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*

¹²⁷ Law 34/2004, *Government Gazette*, 1st Series-A, No. 177, 29 July 2004, amended by Law No. 47/2007 of 28 August 2007.

¹²⁸ Law 29/2012, *Government Gazette*, 1st Series, No. 154, 9 August 2012.

¹²⁹ Law 34/2004, *Government Gazette*, 1st Series-A, No. 177, 29 July 2004, amended by Law No. 47/2007 of 28 August 2007.

¹³⁰ Law 47/2007, *Government Gazette*, 1st Series, No. 165, 28 August 2007.

evaluation has to be done before, to assure the interest of the child. There is a close relation between all entities to assure the child's best interest. If there is no close relation between the child and his mother or father, we try to find someone in the family. We have to clear up the situation before acting. (ORG, PT13)

In its latest report, GRETA notes that the assisted voluntary return programme is not specific for victims of human trafficking. Furthermore, nationals of EU member States do not have access to it and GRETA was informed that victims of Romanian nationality referred by the APF had not been able to be dealt with. The IOM office in Portugal stated that no victims of human trafficking had requested the benefit of the assisted voluntary return programme in the past two years, and that the programme was very seldom used for victims of trafficking (twice in the past five years). The IOM office is aware of 112 cases of men of Ukrainian nationality who contacted the IOM office in Ukraine, stating that they had been victims of trafficking for the purpose of labour exploitation in Portugal, without having gone to the Portuguese office of the IOM to organise their return (GRETA, 2013).

As such, the GRETA considers that the Portuguese authorities should determine whether the existing assisted voluntary return provisions are appropriate for victims of trafficking, who constitute a specific group of candidates for return, and should take additional measures to ensure that victims of trafficking effectively have access to return and repatriation procedures which take due account of the individual's rights, security and dignity and make it possible to prevent re-trafficking; and to develop co-operation with countries to which trafficking victims return, in order to conduct an appropriate assessment of the risks, ensure victims' safety on their return and improve their reintegration.

Number 4 of article 107 of Law 29/2012¹³¹ considers a set of exceptional cases under which the granting of an autonomous residence permit to the members of the family may be anticipated. Law 23/2007 of 4 July¹³² considered as an exceptional case the conviction of the holder of the residence permit for the crime of domestic violence. Under the new law, the key moment is no longer conviction but the moment the charge is drawn up by the public prosecutor. This change was considered one of the key points of the proposal in its discussion in the Parliament, being considered the correction of a situation of injustice of Law 23/2007¹³³.

On the contrary, the changes to article 64 have caused more discussion. For some they represent a drawback in fundamental rights given the greater difficulties for family reunion, while for others, including the Government, the changes would in fact facilitate family reunion.

The changes were the following: Law 23/2007¹³⁴ states that whenever a request for family reunion is deferred, a residence visa allowing the entrance in Portugal is immediately issued. Law 29/2012¹³⁵ states that whenever that, in the scope the examination of a request of a residence visa for the purpose of family reunion, the SEF issues a favourable opinion, a residence visa allowing the entrance in Portugal should be facilitated to the applicant.

Thus, the former law consecrated the obligation of issuing the residence visa, something that is lost in the new law. On the other hand, under the new law, deferral of request becomes no longer needed being replaced by the issuing of favourable opinion by the SEF.

Changes in article 36 also raised considerations, from some sectors of society, of reinforcing discretion

131 *Ibid.*

132 Law 23/2007, *Government Gazette*, 1st Series, No.127, 4 July 2007.

133 *Ibid.*

134 *Ibid.*

135 Law 29/2012, *Government Gazette*, 1st Series, No. 154, 9 August 2012.

regarding the refusal of entry. Under the new law entry can be refused to: 1) those who have been object of a decision of forced return or judicial expulsion; 2) regarding whom there are serious grounds for believing that he/she has committed serious criminal offences, or in respect of whom there is clear evidence of an intention to commit such offences in the territory where the Implementing Convention is in force; 3) those who have been condemned by a judicial sentence to imprisonment for at least one year, even if this has not yet been served or who have been sentenced to more than one such condemnations even if its execution has been suspended. This was not stated in Law 23/2007¹³⁶.

Regardless of the above-mentioned problems in what regards the fact of Portugal providing no specific refugee status determination procedure for child asylum-seekers and the fact that children did not always have access to psychological care when needed, the latest Portuguese report to the Committee on the Rights of the Child on the implementation of the CRC considers that the Portuguese Asylum Law (Law 27/2008, 30 June¹³⁷):

“complies and is being effectively implemented in line with international obligations in this area, namely the Geneva Convention and other international legal instruments ratified by Portugal. The Asylum Law provides the status of applicants for international protection (asylum and subsidiary protection) and is in accordance with European Union legislation, in particular Council Directive 2004/83/EC, 29 April 2004, on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted and Directive 2005/85/EC on minimum standards on procedures for granting and withdrawing refugee status in the Member States” (Portugal, 2011).

At least in what regards compliance, this statement finds echo in an NGO dealing with the matter.

“The law for asylum is considered to be very human, supportive, generous and fair in the way it is structured, in the rights, duties and guarantees of the asylum seekers and refugees.” (ORG, PT11)

Compliance, inclusion, appropriateness and effectiveness of the practice: To which degree are the national laws and policies applied and implemented in a way that is inclusive, appropriate and effective?

Even if, as mentioned above, the legislation guarantees all children training in the Portuguese language and integration in the school system, according with their skills and interests, in practice the situation cannot be described so optimistically.

“Laws say that children have the right to education. Asylum seekers are undocumented so they cannot prove their academic qualifications. I may have a 17 year old boy with the 4th grade; (...) I have a problem because I cannot put him in the 5th grade along with kids who are 10/11 years old. So what do we do? There is nothing, according to new legislative changes regarding the access to Education and Training, even for vocational training or double certification (...). He has to have a qualifications' certificate. This is difficult to solve. There are

¹³⁶ Law 23/2007, *Government Gazette*, 1st Series, No.127, 4July 2007.

¹³⁷ Law 27/2008, *Government Gazette*, 1st Series, No. 124, 30 June 2008.

equivalence procedures, a self proposed knowledge exam to prove his qualification, but only in the Portuguese language. This means that a foreigner person, who has just arrived, cannot do the exam, neither can be registered in a vocational course. (...) It is not something related to lack of protection, because the law says he has access, but there are some stipulated conditions which inhibit the person to have it. So there are practical difficulties which weren't solved yet, but I'm optimistic." (ORG, PT11)

In any case, generally speaking, respondents consider laws to be adequate rather identifying problems in the way they are put into practice.

"I think that laws are appropriate. (...) Evidently we always need to do more and especially paying attention to the need to know better and to be able to go the field and check situations that need to be referred in order to be intervened because I believe there may be many situations involving children at risk that the authorities are unaware of. Many times it is missing because it is not common that authorities go and search for information and it is not common that people address the authorities – including the CPCJs and the courts – saying that they are aware of a risk situation. Often this does not happen." (GOV, PT07)

"I do think that laws are inclusive but often people interpret laws in a non-inclusive way and entities are made out of people. I believe it would be important to provide a better support to undocumented children and to children that, despite having been born in Portugal, are nonetheless non-nationals because, for instance, the father is not residing in Portugal and no birth certificate is found. A set of constraints still exist, mainly involving families from the Portuguese speaking African countries. In many cases, children are already third generation migrants and they still do not have the proper documents. There should be more support available. The SEF could perhaps invest in centres in schools because my perception is that the 'SEF goes to school' Programme is not being able to reach every situation. These situations end up compromising other rights because these children and families are not entitled e.g. to family allowance". (MUN, PT08)

In order to enhance the systems, the plea for joint coordinated work comes, once again, to front. Sometimes, it should even be taken internationally.

"Right now, what I feel is that the entities which are related to asylum are awakening for different procedures to protect the children requiring asylum, in the airport, which is very good. It means that when they arrive there is a lack of specific possibilities, so that there aren't groups taking advantage of them. There are also new procedures in the SEF, which is also very good. We have reviewed some of our procedures. I think we need a different approach to prevent more. We need to involve more entities and we need to make a concerted intervention, which didn't happen before." (PROFESSIONALSYoung, PT20)

"We are trying to implement them [measures to prevent trafficking in children]. We are having some meetings with several entities like the SEF. We want to meet with the Public Prosecutor's Office and some

other entities, which have already some experience related to human trafficking to try and define some mechanisms, to prevent as well as to protect, when we have a suspicious of someone who is coming related to trafficking. (...) We need to do something different. (...) So we have to determine some procedures with the authorities and with other entities which have the know-how, to provide some benefits and to create a concerted action.” (ORG, PT11)

“The problem is coordination in order to reach prevention. It would be important the coordination with their home countries. If we want to reduce risks or prevent them, necessarily there has to be a formal work. (...) There is something which needs to be reconsidered. The procedures used for unaccompanied children. There should also be an exchange of information between countries, in the moment of arrival. (...) There is this grey zone, where unaccompanied non-national children are. What kind of support do they receive? What are the entities which are involved in the process? What kind of coordination is there between the different entities? The fact of having too many entities involved may cause problems in the process, in the shared responsibility. It would be better to have one entity/authority with the prime responsibility, which would articulate with others. (...) There should be created a special emphasis, related to this group, because of their vulnerability. There might be some overlapping and then this specific group is not paid attention to, and it might need specific support as non national children. I think that it would be important to have some information about unaccompanied children, in what concerns human trafficking. It should be created a specific approach regarding this group.” (ORG, PT13)

The need for training is also, once again, highlighted in order for obtaining better results.

“Training is also important, to teach people how to detect these situations. There has to be a trained eye. If there are laws, we have to put them in practice. If there are cases of social exclusion there should be a follow up. And there should be a preventive attitude towards possible situations. Training should be for professionals who work in this area, so to detect possible risk situations.” (ORG, PT13)

The SEF, which is responsible for overseeing the entry, residence, exit and removal of non-nationals, participates in a FRONTEX project aimed at providing border guards with the necessary tools to detect human trafficking cases. Border guards are provided with training on profiling in THB cases. The training is continuous and includes refresher courses. The information obtained is analysed and passed on to the SEF’s investigators. According to the SEF, this project has led to an increase in reports of potential human trafficking cases at border crossings and a better knowledge of this phenomenon among the parties concerned. Furthermore, immigration liaison officers have been appointed in the main countries of origin and a specific unit was created for dealing specifically with THB.

“Another measure we took was creating a unit for the subject of human trafficking, paying more attention to this issue, to exploitation through begging. This always involves children. This unit is very recent. It will gather information and is already developing permanent contacts with other entities, so that we can keep a permanent focus on the phenomena involving human trafficking, and including the specificity

of children (...). This was a fortunate idea and it gave us the capacity to be attentive and to provide an answer to the situations and even to go looking for situations we were unaware of, but of which we became aware through the activity of this unit.” (GOV, PT7)

What are the key determinants that would enhance / reduce the level of risk / protection in this specific area?

- To create the conditions so that the right of undocumented children asylum-seekers to education may be concretised in full.
- To create the possibility to do equivalence exams in the child’s mother tongue.
- To consider the specific situation of the victims of human trafficking on the assisted voluntary return programme.
- To take additional measures to ensure that victims of trafficking effectively have access to return and repatriation procedures which take due account of the individual’s rights, security and dignity and make it possible to prevent re-trafficking.
- To develop co-operation with countries to which trafficking victims return, in order to conduct an appropriate assessment of the risks, ensure victims’ safety on their return and improve their reintegration.
- To provide a better support for children that, despite having been born in Portugal, are nonetheless non-nationals.
- To develop a refugee status determination procedure for child asylum-seekers.
- To introduce mechanisms providing child asylum-seekers with access to psychological care.
- To ensure full implementation of all the provisions of the Asylum Law.

Actors: Which actors are involved?

Actors involved include relevant ministries such as: Ministry of Education and Science; Ministry of Internal Administration and Ministry of Foreign Affairs. It also includes other relevant state bodies such as: Directorate-General of Education, the Immigration and Borders Service (SEF), High Commissioner’s Office for Immigration and Intercultural Dialogue (ACIDI), the Commission for Citizenship and Gender Equality, as well as NGOs such as the Portuguese Council for the Refugees, the Portuguese office of OIM and JRS Portugal.

4.3.2. SOCIAL LIFE AND RELATIONS WITH PEERS AND ADULTS

Compliance and inclusion of the national laws and policies: To which degree do the national laws and policies comply with international standards?

With regard to youth associations, the right of students to form associations or join those of the teaching establishments which they attend, and to participate in association life, including the right to elect and to be elected to positions in the association, is expressly recognized (Law 33/87 of 11 July¹³⁸). These associations

138 Law 37/87, *Government Gazette*, 1st Series, No. 157, 11 July 1987.

are independent of the State, political parties and religious and other organizations, and are autonomous. They have the right to have their own facilities within the teaching establishment, and to manage them in order to pursue their activities; they may also have the material and technical support of the State which, inter alia, may take the form of: (a) legal support in respect of formation and operation; (b) documentation, bibliography and legislative information on matters of interest to students; (c) cooperation in social and cultural activities; (d) supply of equipment and facilities to develop their activity. Other rights enjoyed by students' associations include special support for their media associations, air time on radio and television, tax exemptions of various kinds, and reduced postal and telephone rates. Individuals and legal entities financing cultural or sports projects for these associations may benefit from tax allowances or exemptions.

In addition to these rights, which apply to all students' associations, there are specific rights for associations in higher and other types of education. We shall refer only to the latter as they alone can involve children. These may participate in school life, especially in the following areas: (a) definition of educational policy; (b) regular information on legislation relating to their educational level; (c) support for school management and social activities; (d) participation in the organization of school-related activities and school sports. They also have the right to State financial support to enable them to develop their teaching, cultural, social and sports activities, and to receive annually 75 per cent of students' contributions to school-related activities.

Decree-Law 152/91 of 23 April¹³⁹, taking into account the importance of the work of students' associations, and especially of their leaders, and the time needed to achieve results, permits them to be absent from classes to attend meetings of the groups to which they belong or to take part in activities of obvious importance to the association.

The Youth Institute has been established under the Council of Ministers by Decree-Law 483/88 of 26 December¹⁴⁰, its main function being to support the youth association movement. The Youth Institute was responsible in particular for creating a national register of youth associations which lists the composition and functions of all associations, at least two thirds of whose members are under 30 years of age, and at least 60 per cent of whose executive body is composed of young people under 30 years of age (Order 140A/89 of 25 February¹⁴¹). The associations included in this register may apply for State support (Order 841A/90 of 15 September¹⁴²). This can cover training, information and documentation, legal support, management, organization and evaluation of activities, including the provision of equipment and facilities. Organizations connected with youth groups and associations may receive support for international exchange visits.

Mention should also be made of the Youth Advisory Council (Decree-Law 381/87 of 18 December¹⁴³), a consultative body within the government department responsible for youth affairs, which advises on policy matters. Representatives of students' associations, both from the universities and the secondary schools, and organizations of youth groups and associations participate in this Council.

At the local level, mention should be made of the increasing support given by the local authorities to the youth associations in their areas. An increasing number of authorities have a youth department, and more and more support young people directly through their representative associations. Lisbon, the country's biggest urban authority, is a good example in this respect. It supports recreational, scientific or cultural projects submitted to it by the city's youth and students' associations. This support may take the form of subsidies, the provision of facilities for certain activities, assistance in carrying out work, supply of equipment, etc.

¹³⁹ Decree-Law 152/91, *Government Gazette*, 1st Series-A, No. 94, 23 April 1991.

¹⁴⁰ Decree-Law 483/88, *Government Gazette*, 1st Series, No. 297, 26 December 1988.

¹⁴¹ Order 140A/89, *Government Gazette*, 1st Series, No.47, 25 February 1989.

¹⁴² Order 841A/90, *Government Gazette*, 1st Series, No.214, 15 September1990.

¹⁴³ Decree-Law 381/87, *Government Gazette*, 1st Series, No. 290, 18 December 1987.

It is also important to mention the establishment of a Municipal Youth Council, to enable young people to play a greater role in defining municipal policy. This Council is composed of all the youth associations in the city of Lisbon and operates as a consultative body of the city, meeting once a year. When it is not in session, there is a permanent council, consisting of a smaller number of associations, which is responsible for preparing the meetings of the full Municipal Council and a series of debates, held periodically, which are intended to enable young people to express their views on municipal activities in their particular areas of interest, the problems and needs of young people and the support they consider desirable.

The views and suggestions of young people are appreciated by the members of the city authorities and are frequently taken up, one example being the opening of libraries on Saturdays. With the active participation of young people from the various associations, the city authorities are developing a series of activities marking important dates or occasions for young people, such as students' day, youth day and youth week, the opening and closure of the academic year, etc.

Compliance, inclusion, appropriateness and effectiveness of the practice: To which degree are the national laws and policies applied and implemented in a way that is inclusive, appropriate and effective?

Children who participated in the narrative sessions did not mention problems regarding their social life even if having to comply with specific rules of the institution where they live.

I – Can you receive your friends here?

P2 – Yes. Upstairs, at home, only if they used to live here. If it's friends from school, they have to stay downstairs [common rooms].

I – What do you usually do when you are with your friends?

P2 – I use to go out or to throw parties. I sleep at their homes.

P4 – Dinner, dancing.

P6 – Laughs and laughs.” (CHILDIIn, PT18)

I – Do you have good friends?

Several – Yes.

I – Do you have the opportunity to be with them?

Several – Yes.

I – What do you usually do when you are with your friends?

P4 – Stuff.

P3 – Enjoying life. We go to the beach by night. Walking around.

I – Do you usually stay in a place or do you walk around?

P2 – I'm always walking around.

P1/P3/P4 – Walking around.” (CHILDIIn, PT17)

The situation reported by the young adult is rather different, reflecting the difficult situation of exploitation she was subject to.

I – Do you have good friends?

R – Real friends I had two but I lost them.

E – How is that?

R – One was after I left the house. He was the one who helped me to leave the house [where she lived while she was exploited] and who gave me shelter till I was able to move. And the other one was deported. (...) We used to spend the days the three of us together listening to music, drinking and smoking.” (YOUNG, PT15)

“I – During that period [exploitation] was there any adult who has had a particularly important role for you?

R - ... During that time, I preferred to be alone. I thought that I was better of that way.

I – Would you have liked to have an adult you could rely on?

R – I don’t think so because it was good for me to learn many things.

I – Such as what? Do you want to talk about it? How was that beneficial to you?

R – For instance, if I have to face a bad situation, I know I can get along by my own, I don’t have to think that someone is there for me, that someone is going to help me and then find out that it is not so. Thus I always rely on me and on nobody else.

I – This is still today your way of thinking?

R – Yes.

I – By that time you never felt the need to have someone, to have an adult nearby..?

R – Only my mother, sometimes.” (YOUNG, PT15)

4.4. PROTECTION

What the CRC says on 'protection': Summary excerpts

Article 19 (Protection from all forms of violence): Children have the right to be protected from all forms of violence, exploitation, abuse and neglect.

Article 32 (Child labour): Governments should protect children from work that is dangerous and that might harm their health and development. Children's work should not jeopardize any of their other rights, including the right to education, or the right to relaxation and play.

Article 33 (Drug abuse): Governments should use all means possible to protect children from the use of harmful drugs and from being used in the drug trade.

Article 34 (Sexual exploitation): Governments should protect children from all forms of sexual exploitation and abuse. This provision is elaborated and augmented by the Optional Protocol on the sale of children, child prostitution and child pornography.

Article 35 (Abduction, sale and trafficking): The government should take all measures possible to make sure that children are not abducted, sold or trafficked. This provision is also augmented by the Optional Protocol on the sale of children, child prostitution and child pornography.

Article 36 (Other forms of exploitation): Children have a right to be protected from exploitation in any context and any form.

Article 37 (Detention and punishment): Children have a right to be protected from torture or other cruel, inhuman or degrading treatment or punishment. No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time. Every child who is deprived of his or her liberty shall be separated from adults unless it is considered to be in the child's best interests not to do so and shall have the right to maintain contacts with his or her family. Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance and to challenge the legality of the deprivation of liberty.

Article 39 (Rehabilitation of child victims): Children who have been exposed to violence, exploitation, abuse or neglect have a right to receive special help for their physical and psychological recovery and reintegration into society. Particular attention should be paid to restoring the health, self-respect and dignity of the child.

Article 40 (Juvenile justice): Children who are accused of having infringed the penal law have the right to legal assistance and fair treatment in a justice system that respects their rights, dignity and privacy. Governments are required to set a minimum age below which children cannot be held criminally responsible and to provide minimum guarantees for the fairness and quick resolution of judicial or alternative proceedings.

Article 42 (Knowledge of rights): Governments should make the Convention known to adults and children. Adults should help and support children in learning about their rights.

Prevention and protection benchmarks:

Any prevention and protection strategy and measure should address the following essentials:

Inclusion: The same degree of protection without any discrimination and the consideration of all dimensions related to the particular situation of each child should be guaranteed.

Appropriateness: The maximum degree of survival, development and participation has to be considered, integrated and translated into action in any prevention and protection strategy and/or measure. All initiatives aimed at countering and prosecuting trafficking and exploitation phenomena should be conceived and implemented by keeping in consideration this comprehensive perspective.

Effectiveness: The guarantee of the best interests of the child through a holistic and durable perspective considering his/her present and future situation, even after the completion of the 18th year of life.

Compliance: Any measure addressing criminal phenomena such as trafficking and exploitation of children, has to be conceived, integrated and implemented in line with relevant children's rights principles and provisions and other human rights international legislation by ensuring the non-discrimination, the best interests and the participation of the child.

Source: Standards developed for GATE, 2012.

Who are the main actors with regard to 'protection'?

- Relevant ministries and their mandates at the level of the central government
- Other relevant state bodies
- Regional and local authorities
- Non-state actors (private service providers, NGOs, Foundations, and others)

4.4.1. CHILD PROTECTION: PROTECTING CHILDREN FROM ALL FORMS OF VIOLENCE, EXPLOITATION, ABUSE AND NEGLECT

Compliance and inclusion of the national laws and policies: To which degree do the national laws and policies comply with international standards?

“Yes, I think so, at least theoretically. If we analyse it closely, I think that the law of protection of children and young people in peril is complying with the essence of the Convention of the Rights of the Child. (...) What is failing is the applicability. Even today, a decade after it came into force, some things are still inexistent.” (MUN, PT16)

“I believe so [laws and policies are compliant with international standards]. Well, I believe that the legislation in terms of promotion and protection is indeed very strong, very complete, and very thorough”. (MUN, PT08)

The Portuguese Constitution specifically foresees the right to personal integrity (article 25) stating that every person's moral and physical integrity shall be inviolable and that no one shall be subjected to torture or to cruel, degrading or inhuman treatment or punishment. The crime of torture and other cruel, inhuman or degrading treatment is foreseen in article 243 of the Portuguese Penal Code. Moreover regular training on human rights in general, but also on child rights is given to police forces, health professionals, among other professional groups.

There is a set of national juridical instruments constituting the structuring basis of Law regarding children and youngsters. Within ordinary legislation, the Law of Protection of Children and Youth in Risk – Law 147/99 of 1 September¹⁴⁴ – is the central/orienting instrument regarding the protection of children and youngsters in peril. As expressed in its article 2, the law is applicable to any child residing or present in Portuguese territory.

“In what concerns the protection of children it is a universal law, so it is not important their nationality, if they are illegal or without documents, they are children and need to be protected. This is not so transversal to the European Union, and that makes the difference for everything.” (ORG, PT11)

According to this Law, the intervention aiming at the promotion of the rights and protection of the child and the youngster in risk takes place when the parents, the legal representative or the legal guardian puts in risk the child's/youngster's safety, health, education, training or development, or when such threat results from the action or omission of a third party or of the child/youngster him/herself to which the former do not oppose in an adequate way in order to remove it.

This Law compromises the Portuguese State and the community to organise themselves in order to guarantee that action models are capable of satisfying the needs of individual development of every children and youngster. This must be framed by the respect for the universality of their rights and oriented by the following principles (article 4): a) the superior interest of the child/youngster; b) the right to privacy; c) timely intervention, minimal and proportional to the situation; d) parental responsibility and prevalence of the family; e) mandatory information to the child/youngster and his/her family about the intervention and his/her rights; f) mandatory audition of the child/youngster and his/her participation and of his/her family in all actions and decisions with him/her concerned; g) subsidiarity – intervention is the responsibility, successively, of the entities with competence regarding childhood and youth, the Commissions for the Protection of Children and Young People (CPCJ) and, lastly, of the courts.

“A recommendation would be the enforcement of subsidiarity, with more investment in first line entities. The sooner the work is developed the better the results”. (MUN, PT08)

According to article 34 of Law 147/99¹⁴⁵, the measures of promotion of the rights and of protection are of the exclusive competence of the CPCJs and of the courts and aim at: a) withdrawing the risk the child/youngster is at; b) providing the conditions to protect and promote the safety, health, education, training, wellbeing and overall development of the child/youngster; c) guaranteeing the physical and psychological recovery of the children and youngsters victims of any form of exploitation or abuse.

Article 35 establishes the following as measures of promotion of the rights and of protection: a)

¹⁴⁴ Law 147/99, *Government Gazette*, 1st Series-A No.204, 1 September 1999.

¹⁴⁵ Law 147/99, *Government Gazette*, 1st Series-A No.204, 1 September 1999.

support before the parents; b) support before other relatives; c) entrustment to a reliable person; d) support to live independently; e) placement in a foster family; f) placement in an institution.

“Our intervention is individual. Each child or youngster corresponds to a file and intervention is always led by that file.” (MUN, PT16)

In what the law of promotion and protection is concerned, respondents clearly consider that the law is including all children in national territory, in conformity with article 2 in Law 147/99 of 1 September, stating that any child who is at temporary risk (and resides in Portugal or is found¹⁴⁶ on Portuguese soil even if only sporadically), is subject to the same protection laws, regardless of his/her nationality.

“Nationality does not matter in terms of intervention. Intervention is exactly the same as for any other child. The only thing is the respect for characteristics such as nationality, culture, etc., but that is part of the respect for the child’s individuality”. (GOV, PT03)

“The law includes all children in national territory. I think that it is not excluding anyone. “(MUN, PT16)

“Laws are important and they mention they aim for inclusion.” (ORG, PT12)

“Laws are not exclusion factors but rather inclusion factors. Laws are not made for a specific group but rather for the whole population, whatever its composition is. (...) We do not have specific policies or policies designed specifically for certain social groups as that would indeed be a factor of exclusion or discrimination. (...) I think that our legislation is inclusive exactly because it does not differentiate.” (GOV, PT02)

Still according to number 2 of article 3 of the above-mentioned Law, the child/youngster is considered to be in risk when s/he a) is abandoned or living on his/her own; b) is suffering physical, mental or sexual abuse; c) is not receiving the adequate care or affection to his/her age and personal situation; d) is subjected to work or any activity that is excessive or inadequate to his/her age, dignity and personal situation or that, in any case, are harmful to his/her upbringing or development; e) is subjected, directly or indirectly, to behaviours seriously affecting his/her safety or emotional balance; f) is assuming behaviours, activities or consumptions seriously affecting his/her health, safety, upbringing, education or development, and the parents, the legal representative or the legal guardian are not opposing him/her in an adequate way in order to remove such situation.

Thus, it is a definition that comes in line with the commonly used definitions used by the World Health Organisation (WHO-ISPCAN, 2006). Thus, child abuse is defined as “all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child’s health, survival, development or dignity in the context of a relationship of responsibility, trust or power” (Magalhães et al, 2011; Magalhães et al, 2010; DGS, 2008).

Additionally, articles 5 and 91 convey the notion of present or imminent danger to the life or physical

¹⁴⁶ The term: “*se encontra*” (“is found”) is the wording used in the Law.

integrity of the child/youngster, for situations of urgency and/or extreme seriousness. The “Script of Orientation for Social Workers in the Approach to Situations of Peril”¹⁴⁷, of 2010, presents some of such situations, e.g.: a) inexistence of an adult willing to take care of the child/youngster (abandonment); b) child/youngsters refusing to stay at home, claiming to have been abused and asking for protection; c) child/youngster abandoned at an institution by the parents/carers/legal guardians and not being possible to locate relatives with the possibility and wish to take care of him/her; d) the parents/carers show to be seriously incapable to fulfil the child/youngster’s basic needs, due to serious lack of resources in terms of nourishment, healthcare and hygiene, housing, social backup, etc.; e) clearly inadequate behaviour of parents/carers/legal guardians putting the life or physical integrity of the child/youngster in jeopardy (e.g. psychotic crisis, physical violence, etc.).

The 2007 revision of the Penal Code also included an explicit prohibition of all forms of corporal punishment against children and an article punishing all kinds of mutilation affecting sexual fruition, thus including female genital mutilation.

The Second Programme of Action for the Elimination of Female Genital Mutilation¹⁴⁸, under the Fourth National Plan for Equality – Citizenship and Gender Equality (2011-2013), is structured in 4 areas: i) Sensitizing, prevention, support and integration; ii) Training; iii) Knowledge and academical research; iv) Advocacy. The intervention fields are: Community, Health, Education, Training and academic research, Cooperation (with the Portuguese speaking African countries, especially Guinea Bissau).

“Challenges regard the perfecting of the Penal Code according to the new international conventions such as the Lanzarote and Istambul Conventions. The Convention of Lanzarote, as Directive 2011 of the EU, foresees programmes, including therapeutical programmes for those convicted by sexual abuse and the periodical assessment of the danger they pose, as a complement to their sentence. And the Convention of Istambul foresees the specific inclusion of the crime of female genital mutilation in the Penal Code. This must be made with maximum urgency”. (ORG, PT12)

Law 12/2008, of 17 January¹⁴⁹, establishes the enforcement regime of the measures for the promotion and protection of children and youth at risk in a natural life¹⁵⁰, provided in Articles 39, 40, 43 and 45 of the annex to Law 147/99 of 1 September¹⁵¹.

In all situations where corporal punishments occur, the law determines that a proportional intervention should be promoted. i.e., the intervention should be the necessary and adequate to the risk or danger situation in which the child finds him/herself at the moment the decision is taken. There exist various mechanisms and civil society organisations available to act, while enabling the child to stay with his/her family or, as a last resort measure, in more acute danger situations, in the context of institutionalization, with the (more or less temporary) withdrawal of the child from the family.

Hence, it is always possible to apply different protection measures, which might translate in support with the parents, support with another family member, trusting the child to another person, support to becoming autonomous, placement with a foster family or institutionalization. These measures, as applied by the Commissions for the Protection of Children and Young People (CPCJ) or by the

¹⁴⁷ Available at: http://www.cnpjcr.pt/%5Cdownloads%5CGuia_acciao_social.pdf

¹⁴⁸ Available at: http://195.23.38.178/cjg/portal/cjg/bo/documentos/II_Programa_Accao_Mutilacao_Genital_Feminina.pdf

¹⁴⁹ Law 12/2008, *Government Gazette*, 1st Series, No.12, 17 January 2008.

¹⁵⁰ The measures considered within this scope are: the support with the parents, the support with another family member, trusting the child to another person, and the support to becoming autonomous.

¹⁵¹ Law 147/99, *Government Gazette*, 1st Series-A No.204, 1 September 1999.

Courts, are followed up by qualified technical teams, an evaluation of the effects of the intervention being regularly made. This evaluation might lead to possible changes and revisions of the measures (Portugal, 2011).

The intervention mechanisms are developed by the Institute of Social Security and by private non-profit organizations some of which are financially backed by the Institute of Social Security.

All the professionals working with children have the obligation of reporting the cases of violence to the CPCJ or to Courts. The same obligation exists for all citizens because violence against children is considered a public crime. Law 59/2007, of 7 September¹⁵², that revised the Portuguese Penal Code, transformed the crime of sexual abuse into a public crime meaning that anyone knowing of a dangerous situation can report it to the competent authorities, police forces, CPCJ or judiciary authorities. Submitting this report is compulsory for any person knowing of any situation putting at risk the physical or psychological integrity or freedom of the child or young person (article 65).

When a danger situation is identified by professionals, a referral is made and a Protection Process is open on the CPCJ or on a Court (when the child's family does not give the necessary authorization for the intervention). The situation is then analysed and evaluated by specialised professional experts on situations of risk, in order to define the most appropriated intervention, developed and supervised on family context or on foster care (Portugal, 2011). For emergency situations, there is a national social emergency service that depends on the Institute of Social Security and has a dedicated emergency helpline.

“I believe that, currently, people tend to think that the protection system is the CPCJs. The focus is on CPCJs, thinking about altering them, improving them, providing them with more resources. However, the protection system has three levels and thus the investment, the change, the improvements have to include all three levels. At the first level, including schools, health units, the social security system and the NGOs; at the level of the CPCJs and at the level of courts. All this should be working better. (...) There are many challenges and at all three levels.” (MUN, PT16)

“There are relevant results connected to the effort of covering national territory with inter-disciplinary teams responsible for child protection [CPCJs]” (ORG, PT12)

In 2008, a new legal figure was created – Civil Sponsorship – which consists in placing a child or young person in a family environment, or with a person with parental responsibility to establish close affective ties for their well-being and development. The Law on Civil Sponsorship was approved on 11 September 2009 (Law 103/2009¹⁵³).

According to the said law, it becomes possible for an individual or for a family to receive a child, who has not been entrusted for adoption. The family will then exercise the powers and duties of parents and will establish emotional ties with the child that contribute to his/her well-being and development. The Sponsorship is defined by that law as a legal relationship, usually of a permanent character, between a child or young person and one person or one family exercising the powers and duties of parents and with the aim to establish affective bonds, allowing the well-being and development of the child.

¹⁵² Penal Code (Law No. 59/2007), *Government Gazette*, 1st Series No. 170, 4 September 2007, amended by Law No. 60/2013 of 23 August 2013.

¹⁵³ Law 103/2009, *Government Gazette*, 1st Series, No. 177, 11 September 2009.

The Civil Sponsorship is created through a judicial decision and is subject to the registrar. This new institution does not, however, create a link similar to the affiliation, nor does it aim at cutting the ties with the biological family.

Paragraph 6 of article 36 of the Portuguese Constitution¹⁵⁴ states that children may not be separated from their parents unless the latter fail to perform their fundamental duties towards the former, and then only by judicial decision.

Portuguese legislation establishes the circumstances where a child may be separated from their parents. Following a judicial decision, exercise of paternal authority, can be limited or prohibited to the extent that the children are entrusted to a third person (guardian) or an assistance establishment (article 1913 of the Civil Code¹⁵⁵). Prohibition occurs in the following cases:

- (a) Confirmed conviction for a crime to which the law assigns this effect;
- (b) Declaration of incapacity due to a mental disorder;
- (c) Absence, from the time of appointment of a provisional guardian (temporary representative who administers the property of the person who has disappeared without giving any indication of his or her whereabouts).

Children may also be placed in the care of a third person or an assistance establishment in cases where the parents are at fault for infringing their duties towards their children, resulting in serious harm to the latter, or where, on account of inexperience, illness, absence or other reasons, they do not appear to be able to fulfil the duty of care to their children.

It is compulsory to appoint a guardian in the following cases:

- (a) If the parents have died;
- (b) If they have been prohibited from exercising paternal authority over the child;
- (c) If they have been prevented de facto for more than six months from exercising paternal authority;
- (d) If they are not known.

The principle that establishes that children may not be separated from their parents is also present in the Law of Protection of Children and Youth in Risk.

Only in cases where the child is considered to be in danger, such as abandonment, prolonged ill-treatment, sexual abuse, among others, steps will be taken to protect the child and find a replacement for the natural family, to which the child should, where possible, be returned.

In addition, one of the fundamental principles of intervention with children at risk is the principle of the prevalence of family, which means that all steps taken must be oriented by the return to the family of origin or to a new family (adoption).

Foster Care is a system promoting rights and protecting children and young people at risk by placing them in care established in the Law 147/99 of 1 September¹⁵⁶. Considering the logic of the principles

¹⁵⁴ Portuguese Constitution (Constitutional Law no.1/2005, VII Constitutional revision), *Government Gazette*, 1st Series-A No.155, 12 August 2005.

¹⁵⁵ Decree-Law 47344, *Government Gazette*, 1st Series No.274, 25 November 1966, last amended by Law 23/2013 of 5 March.

¹⁵⁶ Law 147/99, *Government Gazette*, 1st Series-A No.204, 1 September 1999.

established in this Law on the support to parents and support to relatives which constitute promotion and protection measures prevailing on placement measures, foster care regulated by Decree-Law 11/2008 of 17 January¹⁵⁷, only considers foster families those with no family ties with the child or young person and are not adopting candidates.

In line with the harmony of this new approach, foster care consists in the child or young person's trust in a family or person, technically competent, and follows the application of the promotion and protection measures to integrate him/her in a family environment.

The legal regime related to foster families (defined in Decree law 190/92, of 3 September¹⁵⁸) established the fact that these families were entitled to receiving sums of money from the competent authorities to pay for their services and for the living expenses of children and young people. The amount of the allowance is fixed by decree order and subject to annual updating.

At the local level there are two networks which ensure the application of prevention strategies. Firstly, there is the local Consultative Board of CPCJ which was set up according to the Law of Protection of Children and Youth in Risk (Law 147/99 of 1 September); apart from this commission there is also the Social Network available to the communities and created by the Resolution of the Council of Ministers 197/97 of 18 November 1997¹⁵⁹. The Social Network operates with Municipal Councils (CLAS - Local Council for Social Action) and with districts (CSF - Social District Commissions). Local authorities and civil society representatives take part in these networks and among their goals are the combat of exclusion and the promotion of social development.

This methodology requires Social Diagnoses, the establishment of Local Information Systems, and the accomplishment of Social Development Plans. The main communication strategies rely on leaflets and brochures distributed by the CPCJ and by the local social networks.

The programme against domestic violence consists of a nationwide information campaign using media, outdoors and television, and a similar campaign on child maltreatment and corporal punishments is now being prepared by the Portuguese Government.

SOS help lines are also valuable for prevention:

- (a) SOS Children Helpline of the Child Care Institute;
- (b) "Messages from Children" Helpline of the Ombudsman;
- (c) Information Line for Victims of Domestic Violence of the Commission for Citizenship and Gender Equality;
- (d) National Social Emergency Line of the Institute of Social Security. This is the official emergency hotline. A specific hotline for prevention of violence against children will be run by the Portuguese Red Cross beginning in October 2008, by appointment of the Institute of Social Security (Ministry of Labour and Social Solidarity).
- (e) Children and Young People Bullying Helpline of the National Teachers Association was created in May 2008, but it is not functioning yet.

The 1996 Hague Convention on Parental Responsibility and Protection of Children which has been laid

¹⁵⁷ Decree-Law 11/2008, *Government Gazette*, 1st Series, No. 12, 17 January 2008.

¹⁵⁸ Decree-Law 190/92, *Government Gazette*, 1st Series-A, No. 203, 3 September 1992.

¹⁵⁹ Resolution of the Portuguese Council of Ministers 197/97, *Government Gazette*, 1st Series-B, No.267, 18 November 1997.

down in Portuguese law by Decree of Ministry of Foreign Affairs 52/2008, of 13 November¹⁶⁰, regulates on the power to intervene and take measures to protect children who have been illegally transited.

By taking in account all the situations mentioned in law 147/99 of 1 September¹⁶¹, and especially its article 2, already mentioned above, a child who is trafficked or illegally transited out of the country where he/she normally lives and who is found to be at risk whereby any action that is taken to remove this risk by finally applying promotion and protection measures, will be done so by observing and referring to Law 147/99¹⁶². As such, a victim of trafficking aged under 18 is entitled to assistance in the same way as any child in danger. The same reasoning is applicable to refugee children and asylum-seeking children.

[Refugee and asylum-seeking children] “have the same human rights as any other child and they must also have the same support and the same protection, a protection that is adequate to their reality and problematic. This is always the orientation and an orientation that is followed. There can be no prejudice not discrimination in terms of ethnicity or culture. And when the intention is that culture is considered, then it has to be put in a context, so that intervention is harmonious with such a context”. (GOV, PT03)

There is an IT Programme, which is of exclusive use by the professionals of the Child Protection Committees, which registers, manages and follows-up all cases of promotion and protection of children in danger.

Following the provision contained in article 10 of Chapter V of Law 31/2003, of 22 August¹⁶³, the Social Security Institute, in cooperation with the Social Action Institute from the Azores, Madeira's Regional Centre, Lisbon's Santa Casa da Misericórdia and Casa Pia, undertakes, annually, a study which characterises and evaluates the conditions of placement of children in foster families and institutions (Immediate Intervention Plan - PII).

Hence, annually an analysis of each child's evolution was undertaken, as well as of the family's economic and social situation. The analysis also comprises a study about the way in which the child's most fundamental rights are being guaranteed – like the rights to school and to health care, as well as their relations with the family.

Compliance, inclusion, appropriateness and effectiveness of the practice: To which degree are the national laws and policies applied and implemented in a way that is inclusive, appropriate and effective?

The respondents quite clearly identify the legislation on promotion and protection of children at risk as adequate. However, they also make clear that this is not enough and that the way legislation is implemented is still revealing significant gaps.

“We have really beautiful laws! We even have an article in our Constitution stating that children must be protected! Which country has an article in the Constitution specifically for children? I don't

¹⁶⁰ Decree 52/2008, *Government Gazette*, 1st Series No.221, 13 November 2008.

¹⁶¹ Law 147/99, *Government Gazette*, 1st Series-A No.204, 1 September 1999.

¹⁶² *Ibid.*

¹⁶³ Law 31/2003, *Government Gazette*, 1st Series-A No.193, 22 August 2003.

think we lack legislation. I think we lack implementation (...) There is a huge, huge gap between the theoretical plan and the practical plan.” (GOV, PT05)

“Legislation is adequate. What is failing is the application of laws, for instance in what regards the accompaniment to the family the law speaks about. Law states that support to the parents must be privileged and indeed this is the most applied measure. But this is still not easy because there are basic flaws. There are still flaws in terms of education, of social security, even in terms of health. And if we think about the structures that accompany closely the families, there are also flaws. Thus, sometimes when a process goes to court after the failure of the process of support to parents I feel that perhaps not everything that was possible to do was indeed done”. (MUN, PT16)

“I believe there is a gap between legislation and practice. There are differences between law and policies and the practice that can be considerable. There is still a lack of prioritization of children issues and children rights in the political agenda so that we can invest deeply in these matters. Thus, the law is very good, very complete, it foresees the participation of several entities assuming that this is a matter that must be analysed by the community and hence the way the Commissions are constituted: multidisciplinary, inter-institutional. Now, regarding policies, I have some doubts. I believe there is still a big gap”. (MUN, PT08)

Regarding child abuse and neglect and considering that prevention aims at intervention before the danger, the numbers of cases, both registered and suspected, must be interpreted, to a certain extent, as indicative of problems in prevention. Although the principle of early intervention is assumed by Law, some authors consider that its application remains fairly in deficit: “one of the big limitations regarding the operability of the measures of protection of children and youngsters concerns early intervention. Although we find the principle of early intervention in the Law of Protection of Children and Youngsters as one of the orientating principles of intervention, this does not assume a preventive nature.” (Varela, 2009: p.102).

“There are conceptual flaws since the situations regarding violent crimes such as sexual abuse should be of the exclusive competence of courts. CPCJs have the merit of involving the community in the protection of children but they act with parents’ consent and they aim at establishing consensus through an agreement of promotion and protection. In our opinion, they should not be competent regarding matters where, by their own nature, consensus should not be aimed for. The violation of fundamental rights must always be under the competence of the courts. It has to do with the ideas underlying the law of protection that aimed at the lessening of the jurisdiction of courts in matters where this cannot happen” (ORG, PT12)

“Yes, there are flaws, mainly in what regards the investment in the first line. If we dedicate more human resources and more information and more investment on first line entities, i.e. health centres, hospitals, schools, social security, perhaps we would have

far less children being neglected, maltreated and abused. This is where I think there is still a long way to run” (...) It would perhaps be important that this law 147/99 would be better foreseeing and previewing the competences of the first line entities. The law defines the different principles of intervention, one of which is the principle of subsidiarity and of minimal intervention. However, the thing is that first line entities often do not have the means to act, do not have the professionals to intervene with families in order to remove the situation of risk so that it does not become a situation of danger. Thus, Commissions end up receiving the situations in a phase where it is still difficult to act. Thus, I think that the law could define better not only the duties of the first line entities but also to provide these entities with more capability to intervene (...) “I think that this law is focusing more on remediation than on prevention. Thus the importance for the duties of first line entities to be better defined. And it is essential that the first line knows the law – this is something we are also doing – and that there are human resources specialized in the field of prevention and intervention in the field of children and young people in risk and in danger. These are two important things and one is that if we are thinking about remediation we will hardly be addressing the essence of the matter.” (MUN, PT08)

Additionally, there are areas deemed as needing improvement, such as is the case of parenting skills and the need to guarantee a better capacity of the system in providing answers.

“I think that there should be more investment in the reinforcement of parenting skills. I also think that there should be more teams on site to accompany families and assess the way measures are being enforced. Each ‘freguesia’ is different and has its own network of resources but, generally speaking, we would need more teams”. (MUN, PT08)

“The law of protection of children is well organized but in practice there is no response capacity. The procedures are well established, but there aren’t enough centers, there aren’t enough solutions. There aren’t enough foster families. The structures which might host a child – either it is a person, a foster family or an institution – are very few bearing in mind the necessities. In practice, the implementation is not as organized as what is defined by law.” (ORG, PT11)

Despite the fact that the system is encompassing all children in national territory, some respondents clearly consider that difficulties are greater when it regards the protection of children with differentiated characteristics.

“I think there are limitations. We detect that it is harder to act when the child is foreigner than when the child is national; when the child lives in a lone parent household than when the child is from a so-called traditional household. But I don’t think that’s an idiosyncrasy that only we share (...) It is obviously very difficult to deal with each case per se. But it has to be this way. I think that some of the delays [in the system] derive from that. I think that the CPCJs genuinely deal with each case as an autonomous case. There may be exceptions but I don’t think so.” (GOV, PT06)

“There are no specific interventions for specific groups of children. However, naturally, the cultural context of the child and his/her family must be considered for the diagnosis of each case and the solution for each case. There must be respect by this culture and a will to take the best out of this culture but it must be clear that no cultural aspect may jeopardise the child’s fundamental rights. This is the orientation.” (GOV, PT03)

“There should be some other support for these families [of children that live in the street]. I am not talking about financial support but rather of other services because people sometimes don’t know how to deal with these kids. They aren’t easy kids and there were a lot of badly resolved problems during their lifetime. These are, most of the times, de-structured families, with losses and stepparents.” (PROFESSIONALS, PT, ChildOut)

The narrative sessions with children and young people explored the issue of safety. It is very interesting as well as worrying to notice that, besides mentioning of relatives and/or friends as top providers of safety, there is also a strong reference to weapons.

“I – Is there anyone who makes you feel safe?

P4 – My mother.

P6 – My mother and my friends.

P5 – Not all friends.

P2 – There are those who you know are for real, those who, if you really need them, will help you. Who protects you is your family, in this case the monitors, our friends.

(...)

E – what do you think that the people here should do to make you aware of the risks in life, how to avoid them and be safe?

P6 – An activity.

P2 – Exchange programmes regarding those subjects.” (CHILDIIn, PT18)

“I – Where do you feel safer?

P4 – At home.

P2 – At Fábio’s home. He has a big ark filled with guns!

P3 – If that’s the spirit, then I feel safe at the home of a cop I know.

I – Guns provide safety?

P2/P3 – Yeah!

P3 – At the home of a cop I know – he was also an educator, gee, I felt safe at his home. He had a storage filled with guns. He had everything, grenades, 9mm and everything! He showed me and allowed me to hold some in my hands.

I – And that made you feel safe?

P3 – I felt safe at his home! Gosh!

I – On a day-to-day basis, where do you feel safer?

P3 – At my sister’s home.

P1 – At my uncle’s home.

P4 – Home is where I feel safer. I have other people, I’m not alone.” (CHILDOut, PT17)

“I – When you had to do the robberies, did you feel that you were putting yourself in a dangerous situation?

R – I felt nothing like that. For me it was natural.

I – Did you feel protected because of the knives?

R – I guess so. I think I wouldn’t have the guts. It was just to push us thru. At least for me.

I – Would you know what to do if you saw yourself in a dangerous situation?

R - No.

I- Was there anyone you could ask for help?

R – Even if I had I would not ask...” (YOUNG, PT15)

In its report, the Commissioner for Human Rights of the Council of Europe notes that the number of complaints to the Ombudsman has not increased in 2011 and 2012. However, he shows concern with the possibility that increasingly difficult socio-economic situations for families and high levels of stress and pressure can result in serious risks of domestic violence towards children. The Commissioner also notes that the national and local Commissions for the Protection of Children and Young People are requested, as part of the programme of social emergency, to monitor with particular attention situations that can present risks for children as a consequence of the financial crisis. However, he is concerned that the financial difficulties encountered by a number of local authorities and institutions and organisations providing social support at their level may adversely affect its efficiency and effectiveness, given that local commissions consist of partnerships between local authorities and various other public and private stakeholders (Muižnieks, 2012).

According to the latest Portuguese report to the Committee on the Rights of the Child on the implementation of the CRC, three kinds of difficulties can be found among the problems with the existing system concretized through the CNPCJR and the CPCJs:

(i) Planning, coordination and assessment

Coordination and assessment is foreseen by law and it is the responsibility of the National Commission, constituted by Government and Civil Society representatives. It is interesting to note that despite the existing close cooperation with the two police forces (PSP – Public Security Police and GNR – Republican National Guard) the ministry responsible for those police forces is not officially represented in the National Commission.

This problem could be solved by a re-definition of the elements of the National Commission. The main difficulty lies in the fact that policies for violence control and prevention are conceived and established by various Government departments, such as Justice, Internal Administration, Education, Youth and Social Security. This makes it difficult for the National Commission to perform its functions of “planning Government intervention, observation, assessment and coordination between public services and the communities for child and youth protection” (Decree-Law 98/98 of 18 April, p. 1712¹⁶⁴).

The model adopted for prevention and protection against violence values community child protection, working together with Government departments so that new solutions can be found. However, this has not proven to be successful mainly due to two kinds of factors.

(ii) Cultural and social factors

Culturally, people are used to the idea that Government departments are the only existing solutions

164 Decree-Law 98/1998, *Government Gazette*, 1st Series-A, No. 91, 18 April 1998.

to solve all matters, as communities are accustomed to hierarchical government structures.

This panorama is changing due to a society slowly moving towards a type based on dialogue and less dependent on government. Still, the CPCJs are far from achieving better results in preventing violence.

(iii) Training and organizational factors

Training the various agents that have multiple roles in protection and prevention is one of the main difficulties at present time. The National Commission for the Protection of Children and Young People at Risk has developed a huge effort to tackle this problem but it is still unsatisfactory.

“A major flaw is that the professionals of the CPCJs are professionals from other areas that go to the commissions for a period of time and that do not have specific training in order to dealing with some matters.” (ORG, PT09)

“There is the need for more training. First-line professionals themselves need training, need to know how to identify the signs”. (MUN, PT08)

“Training regarding the law and the protection system is needed for everybody, for the CPCJs but also to NGOs and for the professionals of the Social Security system. For everybody, so that each entity knows both its role and the other entities’ roles. An NGO must know how the CPCJ works and how and when to refer, as well as what is needed to do so.” (MUN, PT16)

“Initial and on-going training is essential. Technical training, ethical training, even cultural training.” (GOV, PT03)

Assessment is another key aspect. Stakeholders questioned mentioned two factors. Firstly, there is not an integrated data collection and research system for child protection and violence prevention. For systematic data collection, it should be created a centralized methodology of collection and analysis of statistical data from the eleven different organizations : local child protection commission that hold statistical data processed by the National Commission, three police forces (territorial forces - PSP and GNR - under the Ministry of Internal Administration, and criminal police - PJ - under the Ministry of Justice); the Ministry of Justice’s Directorate General for Social Reintegration, responsible for centres of educational guardianship; Social Security services under de Ministry of Labour and Social Solidarity, health services directed by the Ministry of Health; the network of schools directed by the Ministry of Education; and the Office of the Ombudsman.

Integrating health departments is also a key problem with a focus on mental health. Alcohol and drug consumption are significant problems in Portugal, not to mention other mental health issues affecting children and young people.

Child poverty and the corresponding economic structure are also major setbacks for an efficient violence prevention and protection systems.

“Flaws are, most of all, at the economic and social levels, when disadvantages seriously hamper an effective and long-lasting

inclusion and the breaking the vicious cycle of exclusion for good, preventing the risk of inter-generational transfer.” (ORG, PT12)

What are the key determinants that would enhance / reduce the level of risk / protection in this specific area?

- To prioritise children issues and children rights in the political agenda.
- To enforce the principles of subsidiarity and early intervention, investing more in first line entities – better definition of duties and providing these entities with more capability to intervene (e.g. technical means, training, etc.).
- To invest in the reinforcement of parenting skills.
- To create more teams on site to accompany families and assess the way measures are being enforced.
- To step up measures aiming at guaranteeing that the financial difficulties encountered by a number of local authorities and institutions and organisations providing social support at their level does not adversely affect its efficiency and effectiveness.
- To ensure that the Ministry of Internal Administration (responsible for both the police forces PSP and GNR) is officially represented in the National Commission for the Protection of Children and Young People.
- To guarantee the articulation between policies for violence control and prevention, conceived and established by various Government departments.
- To develop training of the various agents involved in protection and prevention.
- To establish an integrated data collection and research system for child protection and violence prevention.

Actors: Which actors are involved?

Actors involved include relevant ministries such as: Minister of the Presidency and Parliamentary Affairs, Ministry of Justice; Ministry of Internal Administration; Ministry of Health; Ministry of Foreign Affairs; Ministry of Solidarity, Employment and Social Security; Ministry of Education and Science; Minister in the Cabinet of the Prime Minister and for Regional Development.

It also includes other relevant state bodies such as: Public Prosecutor’s Office, ACIDI – High Commissioner for Immigration and Intercultural Dialogue; CIG – Commission for Citizenship and Gender Equality; Ombudsperson’s Office, Portuguese National Human Rights Committee; National and Local Commissions for the Protection of Children and Young People.

Additionally, it involves first line entities such as schools, kindergartens, health units and NGOs such as the IAC – Child Support Institute, the APAV – Portuguese Association for Victim Support, etc.

4.4.2. GUARDIANSHIP

According to the Portuguese State, the ratification of the Convention for the Rights of the Child is considered to be the trigger for turning the Portuguese legislation adequate to the principles of the Convention. This led to the approval of Law 133/99, of 28 August¹⁶⁵, that altered Law 314/78, of 27

¹⁶⁵ Law 133/99, *Government Gazette*, 1st Series-A, No. 201, 28 August 1999.

October in what regards civil guardianship proceedings and of Law 166/99, of 14 September¹⁶⁶ which approved the Law on Education Guardianship (Portugal, 2011).

At the moment, there is no provision anywhere in Portuguese law that rules on appointing a specific 'guardian' in cases where children are victims of trafficking. Portuguese law stipulates that children at risk should, as far as possible, be represented by their parents or other members of their families. When this is not possible, the Public Prosecutor acts as their legal representative. Once a child victim of THB has been identified by the police, court, Commission for Protection of Children and Youth or another entity, the case must be reported to the Public Prosecutor. The latter must immediately request the court to enact an interim measure of protection. If there is no known suitable adult person connected with the child, the court usually puts the child under the custody of an institution, which has legal powers to act in the best interest of the child.

The institutional fostering will be, most likely, the promotion and protection measure that will be enforced to suppress the emergency situation in which the child is. A promotion and protection measure is a transitory measure that is applied in a situation of emergency. This measure will remain in place until a situation that allows the implementation of a life project is established, besides the institutionalization. The naming of a "tutor" is not provided for by the Law 147/99 of 1 September.

The host institution, usually through its director, assumes most of the duties that comprise the attributions of a "tutor", as provided for in the Civil Code, albeit with limitations. It will be responsible for the child's wellbeing and representation in acts of ordinary life for which it does not require the authorization of the court.

Actors: Which actors are involved?

The most relevant actors involved are: Public Prosecutor's Office; Local Commissions for the Protection of Children and Young People; Courts; NGOs.

4.4.3. CRIMINAL LAW

Compliance and inclusion of the national laws and policies: To which degree do the national laws and policies comply with international standards?

At international level, in addition to the Council of Europe Convention on Action against Trafficking in Human Beings, Portugal has ratified the United Nations Convention on Transnational Organised Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons in April 2004. Portugal has also acceded to several international instruments relevant to action against trafficking in human beings, such as the Convention on the Elimination of All Forms of Discrimination against Women (ratified in 1980), the Convention on Children's Rights (ratified in 1990) and the ILO Convention on child labour (ratified in 2000). Furthermore, Portugal is party to a number of Council of Europe conventions on co-operation in criminal matters and has recently ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (decision of 8 March 2012, published on 28 May 2012).

¹⁶⁶ Law 166/99, *Government Gazette*, 1st Series-A No.215, 14 September 1999.

Portugal is bound by the European Union (EU) instruments on action against trafficking in human beings, in particular Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate Undocumented immigration , who co-operate with the competent authorities, Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, and Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings.

The national legal framework in the field of action against human trafficking has evolved over the years and especially since 2007, in line with Portugal's international commitments. There is no single piece of legislation covering all aspects of the fight against human trafficking. The main legal provisions relating to THB are contained in the Penal Code, which was revised in 2007¹⁶⁷ to include a general definition of trafficking in human beings (Article 160, Chapter IV "Crimes against personal freedom"). This article makes trafficking in human beings a criminal offence punishable by a prison sentence of between three and 10 years (Article 160, paragraph 1-e) when the characteristics of the offence of trafficking as defined in Article 4 of the Convention are present. An identical prison sentence is imposed on any person who traffics children (Article 160, paragraph 2), but the use of means is immaterial when the victim is a child. When one of the means set out in Article 160, paragraph 1, of the Penal Code is used against a child, or when the offence is committed for professional purposes or with a view to profit making, the penalty is increased to between three and 12 years' imprisonment (Article 160, paragraph 3). The latest revision of the Penal Code was made through Law 60/2013, of 23 August.

Law 113/2009, of September 17¹⁶⁸, establishes an additional mechanism of protection against sexual abuse of children in compliance with article 5. of the Convention of the Council of Europe against Sexual Exploitation and Sexual Abuse of Children. According to these new standards, professionals wishing to apply to jobs which involve working with children, must compulsorily present a criminal record sheet regarding possible prior convictions for crimes related to sexual abuse or maltreatment of children.

Both the Council Framework Decision of 19 July 2002 on combating trafficking in human beings (202/629/JHA) and the Council Framework decision of 22 December 2003 on combating the sexual exploitation of children and child pornography (2004/68/JHA) have been implemented by the recent amendments to the Penal Code¹⁶⁹.

“Pursuant to Article 4(b) of the Convention, the consent of the victim of THB is irrelevant where any of the means set forth in the definition of THB have been used. There is no specific reference in Article 160 of the Penal Code to the issue of consent of a victim of trafficking to the intended exploitation. Article 38(2) of the Penal Code does contain a general provision on consent, but its implementation seems to pose problems to the judicial authorities. The Portuguese authorities have indicated to GRETA's experts that there is no case law on the issue of consent of a victim of THB and that invoking the victim's consent where any means have been used to obtain this consent would be incompatible with the general principles of Portuguese law and in particular Article 38(2) of the Penal Code. Nevertheless, GRETA considers, in its report, that stating explicitly the irrelevance of the

¹⁶⁷ Penal Code (Law no. 59/2007), *Government Gazette*, 1st Series No. 170, 4 September 2007, amended by Law no. 60/2013 of 23 August 2013.

¹⁶⁸ Law 113/2009, *Government Gazette*, 1st Series, No. 181, 17 September 2009.

¹⁶⁹ Penal Code (Law no. 59/2007), *Government Gazette*, 1st Series No. 170, 4 September 2007, amended by Law no. 60/2013 of 23 August 2013.

consent of a victim of trafficking to the intended exploitation could improve the implementation of the anti-trafficking provisions.” (GRETA, 2013: 17, §45)

Law 147/99 of 1 September¹⁷⁰ does not make an exhaustive description of the situations of peril. The Penal Code is more specific stating that physical abuse regards situations such as corporal punishment and deprivation of freedom, as well as cruel treatment by overburdening the child with excessive work or by compelling the child to engage in dangerous, inhuman or forbidden activities. The Penal Code states that sexual abuse includes vaginal, anal and oral coitus, as well as introduction of body parts or objects in the vagina or anus. Additionally, the exposure to pornography (verbal, written, objects or shows) is also condemnable. The Penal Code¹⁷¹ also condemns the idea of repeatedly exposing the child to situations of violence, including domestic violence, being more explicit than Law 147/99 of 1 September¹⁷² where this situation is included in paragraph e).

The Convention of Istanbul also proposes that the law takes into account the issue of domestic violence when granting custody. This is highly relevant and thus the Civil Code should be altered and a safeguarding clause in the legal regime regarding parenting responsibilities must be included, as it has been demanded by us and by the women’s rights’ associations”. (ORG, PT12)

As mentioned above, the latest amendments to the Penal Code were made in 2007 by Law 59/2007, of 4 September and in 2013, by Law 60/2013, of 23 August. Changes were introduced on the provisions regarding sexual exploitation and sexual abuse of children, as well as on the provisions criminalizing trafficking in human beings. The Penal Code also foresees now the criminal liability of legal persons, namely for crimes against sexual self-determination and for trafficking in human beings (article 11). On the other hand, in the crimes against sexual liberty and self-determination of children, the criminal procedure is not ceased, as a result of forfeiture, before the offended party completes 23 years of age (article 118 paragraph 5).

Article 160(1) of the Portuguese Penal Code defines trafficking in human beings as “offering, delivering, recruiting, enticing, accepting, transporting, harbouring or housing any person for the purpose of exploitation, including sexual exploitation, labour exploitation, begging, slavery, the removal of organs or exploitation of criminal activities, by means of violence, abduction or serious threat, by deception or fraud, with abuse of authority resulting from a relationship of hierarchical, financial, work or family dependence, by taking advantage of the victim’s mental incapacity or situation of special vulnerability, or by obtaining consent from the person who has control over the victim” (Penal Code: p. 6226). This crime is punished with a penalty of three to ten years of imprisonment.

“Regarding legislation, Portugal is a country that usually has good legal instruments complying with international standards. There was a Directive on the trafficking in human beings stating that the exploitation of begging should be classified as a crime and it has just been transposed and the Penal Code was altered. The article on human trafficking was altered in order to include exactly this. (...) This was an obligation we had deriving from a EU Directive and we transposed it as we transposed everything else. The conventions and everything I find essential from international standards regarding

¹⁷⁰ Law 147/99, *Government Gazette*, 1st Series-A No.204, 1 September 1999.

¹⁷¹ Penal Code (Law no. 59/2007), *Government Gazette*, 1st Series No. 170, 4 September 2007, amended by Law no. 60/2013 of 23 August 2013.

¹⁷² Law 147/99, *Government Gazette*, 1st Series-A No.204, 1 September 1999.

this matter are included in our own law. Regarding legal instruments, I think we have the appropriate ones within international standards.” (GOV, PT07)

As regards children, Article 160(2) of the Penal Code defines trafficking in children as “by any means recruiting, enticing, transporting, harbouring or housing a child or transferring, offering or accepting him/her for the purpose of exploitation, including sexual exploitation, labour exploitation, begging, slavery, the removal of organs, adoption or exploitation of other criminal activities.” (ibid). This crime is also punished with a penalty of three to ten years of imprisonment but it is increased to three to twelve years of imprisonment if the agent uses any of the means stated in the previous paragraph or acts professionally or with profitable intention.

“Thinking specifically about trafficking, what we grasp is that the framework regarding the crime does not differentiate when the victims are under-age. The sentence is the same, there is no higher sentence imposed when victims are under-age.” (ORG, PT09)

Whoever, against payment or other compensation, offers, delivers requests or accepts a child, or attains or grants consent for his adoption, is punished with a penalty of one to five years of imprisonment.

Sexual abuse of a child under 14 is punishable with a prison term of one to eight years or with 3 to 10 years if the sexual abuse consists of intercourse. The Penal Code specifies other sexual crimes against children such as having sex with adolescents aged 14 to 16, Sexual exploitation of children in prostitution or attempt of sexual exploitation of children aged 14 to 18 in prostitution and sexual exploitation of children in pornography.

Apart of the foreseen punishments article 177 of the Penal Code provides for a significant increase in both the minimum and maximum penalties when certain aggravating factors are present.

All crimes against sexual liberty and self-determination of children, except for the crime of sexual intercourse with adolescents, are now public. The person convicted for the practice of any of these crimes might, moreover, be subject to an accessory penalty consisting in the prohibition of performing a certain profession, duty or activity which implies having children under his/her responsibility, education, treatment or surveillance.

Article 174 of the Penal Code foresees the crime of resorting to sexual exploitation of children in prostitution. Procuring of children for prostitution and pornography was widened regarding the previous version of the Penal Code and report now to all children and not just to ones under 16 or 14 years old.

The definition of trafficking in human beings incorporates the three constituent elements specified in Article 4(a) of the Convention: i) an action; ii) the use of certain means; iii) the purpose of exploitation.

The Penal Code provides for the criminalization of crimes against sexual self-determination, particularly in the case of children: child sexual abuse (article 171), sexual abuse of children dependents (article 172), sexual acts with children (article 173), sexual exploitation of children in prostitution (article 174), pimping of children (article 175), sexual exploitation of children in pornography (article 176), begging (article 296) and abuse (article 152-A).

The Law of Protection of Children and Youth in Risk (147/99 of 1 September¹⁷³) defines child or young person under 18 years or a person under 21 who requests the continued intervention started before reaching the age of 18. This definition applies to any offense committed against children.

Law 147/99 lays out the foundations for the protection of children in different situations they may be victims, including sexual abuse or child labour. In these cases, parents, the legal representative or the person with the guard of the child may require the assistance of an attorney, either for themselves or for the child. The assistance of an attorney is compulsory when the child's interests and the interests of the parents, the legal representative or the person with the guard of the child are in conflict or when the child considered being "mature enough" requires it to the Court. In these cases the terms of the law on judiciary support is applicable. The assistance of an attorney is also compulsory during judicial debate.

Victims of trafficking in Portugal are entitled to legal assistance, and particularly to legal aid. Legal aid is financed by the social security system and applications for legal aid must be submitted to local social security offices. Subject to a means test, court costs and fees incurred for the services of a lawyer may be waived. An officially appointed lawyer may also be provided.

When victims of human trafficking are children, the child's best interest must be taken into account. Every effort should be made to establish their identity, nationality and the whereabouts of their family as quickly as possible. In accordance with Article 79 (5) of Law 27/2008¹⁷⁴ concerning unaccompanied children, it is the competence of the Aliens and Borders Service, together with other entities involved and the Ministry of Foreign Affairs, to perform the necessary research in this context. Furthermore, child victims of human trafficking should have access to the education system under the same conditions as nationals and benefit from legal assistance if necessary. As part of the criminal investigation, the prosecution and the police assist in the international investigation to identify the origin of the child, using mechanisms of police or judicial co-operation. Protection mechanisms applicable to children at risk are simultaneously triggered, placing them in a foster institution adequate for their age. The institution must make provision for the food, health, welfare, safety and education of the child in the same manner that such care would be provided to a Portuguese child. Article 58 of Law 147/99¹⁷⁵ establishes these rights, and in particular the right of children accepted into the institution to "receive education that ensures the full development of the child's personality and potentials and being assured the provision of health care, education and vocational training and participation in cultural, sporting and recreational facilities." (Law 147/99: p. 6124)

According to the report of the European Commission to the European Parliament and the Council on the application of Directive 2004/81/EC of the Council¹⁷⁶, Portugal has adopted explicit provisions on the safety and protection needs of victims of trafficking. Portuguese law makes no provision for possible withdrawal of residence permits for reasons relating to public policy or to the protection of national security, or when the competent authorities decide to discontinue the proceedings.

There is no specific provision in Portuguese legislation on compensation for victims of trafficking. Generally speaking, criminal courts may order the offender to pay the victim damages and interest, even if the victim has not so requested. According to GRETA's report, the Portuguese authorities have indicated that there have not been any cases of victims of human trafficking receiving compensation

173 Law 147/99, *Government Gazette*, 1st Series-A No.204, 1 September 1999.

174 Law 27/2008, *Government Gazette*, 1st Series, No. 124, 30 June 2008.

175 Law 147/99, *Government Gazette*, 1st Series-A No.204, 1 September 1999.

176 European Commission, COM (2010) 493 final, Brussels, 15 October 2010.

by the perpetrators which suggests that there is a lack of information in Portugal for victims and those who assist them about the existence and operation of the State compensation system.

However, the Court of Bragança recently imposed a sentence for the crime of slavery, which involved four years of imprisonment, to be suspended on condition of payment of compensation to the victim.

The GRETA reports also refers that “the compensation of victims of trafficking, despite the existence of legal possibilities, is an aspect that remains largely unexplored. GRETA experts urges the Portuguese authorities to ensure that victims of trafficking are made aware of the right to compensation and of the procedures to follow, and can effectively enjoy this right, particularly through access to legal assistance in this respect.” (GRETA, 2013: p.8)

What are the key determinants that would enhance / reduce the level of risk / protection in this specific area?

- To adopt a specific provision in Portuguese legislation regarding the compensation to victims of trafficking.
- To guarantee that criminal courts order the offender to pay the victim damages and interest, even if the victim has not so requested.
- To ensure that victims of trafficking - and those who assist them – are made aware of the right to compensation and of the procedures to follow.
- To ensure access to legal assistance in what regards the right to compensation.
- To state explicitly in law the irrelevance of the consent of a victim of trafficking to the intended exploitation.

Actors: Which actors are involved?

Actors involved include the Ministry of Justice, as well as other relevant state bodies such as the Public Prosecutor’s Office, the Immigration and Borders Service (SEF) and the Courts. It also includes NGOs working in the field.

4.4.4. SPECIAL PROGRAMMES FOR CHILD VICTIMS OF TRAFFICKING

Compliance and inclusion of the national laws, policies and programmes: To which degree do the national laws, policies and programmes comply with international standards?

The anti-trafficking legal framework has evolved over the years in line with Portugal’s international commitments. Two national action plans against Trafficking of Human Beings¹⁷⁷ have been adopted since 2007, the current one approved by the Resolution of the Council of Ministers 94/2010 and covering the period 2010-2013.

¹⁷⁷ Resolution of the Portuguese Council of Ministers 94/2010, *Government Gazette*, 1st Series No.231, 29 November 2010, available at: http://www.otsh.mai.gov.pt/cms/files/conteudos/RES_CONS_MIN%282%29.pdf

“Yes. Considering the area of trafficking, we, on our part, also developed efforts so that legislation became compatible, most of all, with European legislation.” (ORG, PT09)

It aims at addressing all aspects of action against human trafficking. The co-ordination of anti-trafficking activities has been entrusted to the Citizenship and Gender Equality Commission, within which a National Rapporteur for Human Trafficking was appointed in 2012.

“Furthermore, the Portuguese authorities have stated that the second National Action Plan was inspired by the Convention, as well as by the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons and other international initiatives. The Action Plan and a number of documents relating to action against THB stress that trafficking in human rights is a violation of human rights.” (GRETA, 2013: p.16, §40).

The Plan highlights that children are one of the main victims of traffic.

“The framework for action against human trafficking in Portugal is designed to cover all victims of THB subjected to different types of exploitation. The second National Action Plan against THB (2010-2013)¹⁷⁸ aims to involve all relevant actors and cover all aspects of action against THB. However, in practice, anti-trafficking action seems more restricted because it stems directly from the system in place for combating violence against women and sexual violence. The project CAIM (“Co-operation, Action, Investigation and Global Vision”) in particular, which ran from 2004 to 2007, focused on ways of combating prostitution and trafficking in women for the purpose of sexual exploitation and shaped the Portuguese framework for action against THB accordingly. This is why the shelter for victims of human trafficking, founded in 2008, admits women only.” (GRETA, 2013: p.18, §53)

GRETA refers that, in response to this initial one-sidedness that the second Action Plan sought to lay greater emphasis on other forms of trafficking, in particular labour exploitation and the exploitation of children through forced begging. In practice, however, there is still a gap regarding action to address forms of trafficking such as trafficking for the purpose of labour exploitation, which is increasingly widespread, and to provide assistance to male and child victims of THB. The Portuguese authorities have pointed out that the second Action Plan contains measures specifically related to labour exploitation, such as training of labour inspectors, distribution of the ILO handbook on forced labour, and conducting a study on THB for labour exploitation. As regards male victims of trafficking, according to the Portuguese authorities, the majority of those identified have been Portuguese nationals trafficked abroad, who reintegrated their families or communities after returning to Portugal (GRETA, 2013).

Law 229/2008 created the Observatory on Trafficking of Human Beings. It operates within the Ministry of the Interior and aims at collecting and analysing data as well as monitoring trafficking trends. Further, a Technical Committee comprising representatives of relevant public authorities was set up in 2010, with a view to monitoring the implementation of the national action plan. This observatory aims at: 1) producing, gathering, analysing and disseminating information and knowledge regarding human trafficking; 2) promoting the development of IT tools for the gathering and analysis of information; 3) supporting political decision.

In March 2011, the National Director of the Portuguese Judiciary Police has determined the creation

¹⁷⁸ *Ibid.*

of a working group responsible for a manual of procedures, including models and ways of articulation with other polices and branches of the administration and the setting up of a database to harmonize procedures at national level in cases of missing persons, and especially children.

Another tool aiming at the prevention and investigation of trafficking in children is the Child Abduction Alert System created in 2009, which allows for the quick dissemination of information within the community, in order to trace missing children more effectively.

“In order to improve the identification of victims of human trafficking, the Portuguese authorities have introduced a “Reporting - Identification - Integration” system and encourage non-governmental organisations to signal suspected cases of human trafficking to the Observatory of Trafficking in Human Beings. A multi-disciplinary team based in Porto is supposed to receive reports on potential victims of human trafficking and assist the police in the victim identification procedure. However, this team has limited capacity to intervene. Identification is thus the exclusive responsibility of the police forces.” (GRETA, 2013: p.7)

GRETA experts are concerned by the low number of convictions for human trafficking and urged the Portuguese authorities to take steps to identify gaps in the investigation procedure and the presentation of cases in courts, with a view to ensuring that human trafficking offences are effectively investigated and prosecuted, leading to proportionate and dissuasive sanctions. Furthermore, GRETA experts consider that the Portuguese authorities should take steps to guarantee the effective application of the legal provisions concerning the confiscation of traffickers’ assets. They also consider that the Portuguese authorities should adapt their anti-trafficking policy to the current trends in THB, in particular by focusing more attention on trafficking for the purpose of labour exploitation and taking greater account of male and child victims who are not appropriately catered for under the current system (GRETA, 2013).

However, according to the Portuguese government, the “National Plan against Trafficking in Human Beings has established larger targets concerning labour trafficking. It should be noted that in November 2012 two training initiatives to labour inspectors were held, involving 95 inspectors. During the year of 2013, it is intended that this training will cover all the 400 labour inspectors. The launch of the UNODC campaigns in April and October 2012 were also milestones that clearly underlined the increased focus that Portugal has given to the issue of trafficking for labour purposes. Indeed, this campaign reinforced the need for people to be alert to announcements and promises of work that can hide exploitative labour situations. Unlike other years in which the issue of sexual exploitation was more visible, this year’s campaign focused exclusively on the labour side. It’s still an on-going exploratory study on Trafficking for Labour Exploitation at CES (Centre for Social Studies) at the University of Coimbra.” (GRETA, 2013: p.55)

NGOs have drawn GRETA’s attention to the lack of awareness-raising measures aimed in particular at children and young people, as well as measures conducted at local level, and have pointed out that the campaigns were not targeted and their impact has not been assessed. Hereupon, GRETA experts encourage the Portuguese authorities to continue their awareness-raising efforts and to launch new campaigns and/or support those organised by civil society. They consider that future awareness-raising actions should be designed on the basis of an assessment of previous measures and should target identified needs. Be noted, however, that in 2012, three gender awareness actions were developed by CIG with the issue of THB for the equality counsellors of cities hall. During the year of 2013 these gender awareness are intended to be reinforce (GRETA, 2013).

In June 2013, the Protocol on the Creation of a National Trafficking Victims Support and Protection

Network (RAPVT)¹⁷⁹ was signed. This network was created within the scope of Measure 30 of Strategic Area 3 of the II National Plan Against Human Trafficking (2011-2013)¹⁸⁰. This Network is a broad partnership coordinated by the Commission for Gender Equality. Among the entities of the network only the NGO Child Support Institute (IAC) is specifically focused on children.

It intends to be a platform towards setting up new intervention paradigms through reinforcing agents' competences and to promote full social reintegration of trafficking victims. Its main purpose is being a network for cooperation and sharing of information, aiming at the prevention, protection and reintegration of victims of human trafficking.

Its specific aims are: a) to adopt joint strategies for awareness-raising campaigns and training; b) to adopt and regularly contribute for the revision and improvement of common instruments for signalling, data collection and referral of victims of human trafficking; c) to make available network intervention integrating the components of prevention and support to victims of human trafficking; d) to refer identified victims to the most adequate support services within the network, considering its geographical location and the specific needs of the victim; e) to create a multi-disciplinary and specialized methodology for intervention in juridical, psychological and social terms; f) to prevent situations of revictimisation, by promoting the victims' social inclusion mainly through psycho-social support, educational and/or professional qualification, integration in the labour market inter alia; g) to provide non-national victims information regarding the possibilities of assisted return, articulating with support entities in the countries of origin; h) to widen the geographical scope of intervention through the creation of local teams in areas covered by the network members or through training of other professionals; i) to contribute for the reinforcement of prevention, awareness-raising and victims' protection, through the sharing of good practice; j) to adopt common methodologies for intervention.

The Network aims at responding to the recommendations issued by the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, by the Council of Europe Convention on Action Against Trafficking in Human Beings, by the report of GRETA regarding the implementation of the latter Convention, by Directive 2011/36/UE and by the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016.

Amendments to the Penal Code in 2007 by Law 59/2007¹⁸¹, of 4h September aimed at introducing provisions criminalizing trafficking in human beings. These amendments reflect the concerns stressed in international legal binding instruments and particularly in the Council Framework Decision 2002/629/JHA, of 19 July 2002, on combating trafficking in human beings and in the Council of Europe Convention on Action against Trafficking in Human Beings, signed on 16 May 2005, ratified by Portugal via Presidential Decree 9/2008¹⁸² and Resolution of Parliament 1/2008¹⁸³.

“It is totally consonant with international standards, I have no doubts about it. It couldn't be any other way. (...) When a state signs a convention, it is still not committed, (...) but when it ratifies it, it becomes a juridical instrument with the same validity as any other national juridical instrument.” (GOV, PT02)

179 Available at: http://www.iacrianca.pt/images/stories/noticias_claudia/protocolorapvt.pdf

180 Resolution of the Portuguese Council of Ministers 94/2010, *Government Gazette*, 1st Series No.231, 29 November 2010, available at: http://www.otsh.mai.gov.pt/cms/files/conteudos/RES_CONS_MIN%282%29.pdf

181 Penal Code (Law no. 59/2007), *Government Gazette*, 1st Series No. 170, 4 September 2007, amended by Law no. 60/2013 of 23 August 2013.

182 Decree of the President of the Republic 9/2008, *Government Gazette*, 1st Series, No.9, 14 January 2008.

183 Resolution of the Parliament 1/2008, *Government Gazette*, 1st Series, No.9, 1 June 2008.

GRETA experts refer in their report that “non-governmental organisations have not been sufficiently involved in the planning and implementation of anti-trafficking measures. Furthermore, GRETA considers that the Portuguese authorities should adapt anti-trafficking policy by focusing more attention on trafficking for the purpose of labour exploitation and taking greater account of male and child victims of trafficking.” (GRETA, 2013: p. 7)

Measures to prevent human trafficking have involved several awareness-raising campaigns organised by the authorities, in collaboration with international organisations, or by civil society. However, GRETA notes that these campaigns have not been targeted and their impact has not been assessed. The experts welcome the criminalisation of the use of services or organs of victims of human trafficking, with the knowledge that the person concerned is a victim of trafficking, and invites the Portuguese authorities to continue their efforts to address demand as a root cause for human trafficking. The authorities have also taken measures concerning groups experiencing socio-economic difficulties which increase their vulnerability to human trafficking, such as women, immigrants and Roma/Gypsy communities. That said, the experts consider that it is necessary to step up measures addressing the root causes of human trafficking (GRETA, 2013).

“I also think that some of the flaws that can be found in laws and policies could be targeted through the awareness-raising of managers with e.g. campaigns, through media, corresponding to a higher State investment in child support policies. This cannot be bottom-up. If this prevention culture is not on the minds of who coordinates, of who manages, of who governs, the services will be severely compromised. Thus, those in charge should raise their awareness regarding the duties that all of us, as citizens, have regarding these issues. (...) I think that the National Commission [for the Protection of Children and Young People] plays an important role here. It could promote awareness-raising within ministries, within the managers of the entities present in the Commissions. This is something we have also been doing in this Commission but the impact would be different if it was the National Commission doing it”. (MUN, PT08)

The report highlights a degree of reluctance among some civil society actors to report trafficking cases for fear that the police investigation might expose victims to their traffickers or result in their removal from the country as undocumented migrants. GRETA's report “urges the Portuguese authorities to ensure that in practice the identification of victims is dissociated from their participation in the investigation and court proceedings, and that all stakeholders involved in the identification of victims adopt a more proactive approach and step up their outreach work.” (GRETA, 2013: 7) It also considers that the Portuguese authorities should strengthen the multi-disciplinary approach to victim identification.

It is important to make an accurate identification of people sent to be assisted as victims of trafficking, in order to determine whether they are actually victims of trafficking, and distinguish them in relation to other individuals who may have been smuggled or molested, be undocumented migrants, or merely vulnerable, but that present themselves because they need assistance and / or protection. Furthermore, care should be taken to verify that the alleged victim is just someone trying to sneak into the process, with other reasons.

“In order to improve the identification of victims of trafficking, the Portuguese authorities have set up a “Reporting - Identification - Integration” system. At the first stage - reporting - any police force, NGO, potential victim or member of the public may report possible cases of trafficking.” (GRETA, 2013: p.28, §109)

The NGOs which have concluded a memorandum of understanding with the Observatory of Trafficking in Human Beings are required to fill in a form called the “reporting/flagging guide” when detecting a potential victim of THB and to send it to the monitoring system managed by the Observatory. The form contains a brief list of indicators and questions intended to facilitate the identification of victims. NGOs are free to decide whether to report the case to law enforcement agencies in order to initiate a criminal investigation. Sometimes the victim is reported simultaneously to a law enforcement agency and the Observatory’s monitoring system. Some NGOs send the “reporting guide” to the multi-disciplinary team based in Porto in order for it to be forwarded to the Observatory, while others send it directly to the Observatory. This multi-disciplinary team within the Family Planning Association (APF), **“comprising a lawyer from CIG, a psychologist, a welfare assistant and a teacher, is supposed to receive reports on potential victims of trafficking and assist the police in the victim identification procedure. In order to cover the whole country, a network of partnerships has been set up with other institutions (police forces, NGOs, reception centres). However, this team seems to lack the financial and human capacity to intervene in the identification procedure systematically. It also seems to receive few reports from NGOs or the police.” (GRETA, 2013: p.29, §114)**

“Law enforcement officials have to complete a ‘unified registration form’ and forward it to the anti-trafficking unit set up within each police force. Like the form used by NGOs, it contains a brief list of indicators and questions intended to facilitate the identification of victims of trafficking. Once filled, the “unified registration form’ is sent directly to the monitoring system operated by the Observatory. It is the responsibility of the law enforcement agency to update the data and information, in co-operation with the Observatory.” (GRETA, 2013: p.29, §113)

As regards the second stage of the procedure - identification - it does not seem to follow a multi-disciplinary approach, despite the existence of the above-mentioned multi-disciplinary team. Identification of victims of human trafficking is the exclusive responsibility of the police forces, cases being distributed between the SEF where non-nationals are concerned and the judicial police in the case of Portuguese nationals. If the police investigation is inconclusive or the necessary evidence for an identification of a victim does not exist, the National Rapporteur may, when justified by the situation of the victim and especially in cases of high vulnerability, ask the Ministry of the Interior to grant victim status and the assistance that goes with it. According to GRETA’s report, this procedure has never been implemented. (GRETA, 2013)

According to information at GRETA’s disposal, victims’ co-operation with the police and the judicial authorities, although theoretically not compulsory, seems to be a major factor in the smooth conduct of the “Reporting – Identification - Integration” procedure. Some NGOs have suggested that victims have to co-operate with the police and the judicial authorities in order to be recognised as victims of trafficking and to benefit from the assistance which, in principle, goes with that status. The Portuguese authorities have affirmed that the possibility of identification of victims is dissociated from their

participation in the investigation and court proceedings. (GRETA, 2013)

“As regards more specifically the identification of victims of trafficking for the purpose of labour exploitation, the Working Conditions Authority (ACT) has the power to monitor any company, on its own initiative or when a suspicion exists. The ILO handbook on forced labour and human trafficking, which has been translated into Portuguese and supplemented by indicators specific to the Portuguese situation, is available to labour inspectors. When labour inspectors consider that they have detected a case of human trafficking, they contact the SEF which is responsible for carrying out an investigation. Joint operations may also be carried out.” (GRETA, 2013: p.30, §118)

Child victims of trafficking are considered as children at risk, whereby any action that is taken to remove this risk by finally applying promotion and protection measures, will be done so by observing and referring to Law 147/99 (see above). Thus, they are referred to assistance and support through the mainstream child protection.

Nonetheless, according to the new asylum rules, unaccompanied children who are asylum seekers are temporarily housed under special conditions according to international standards defined by UNICEF, the Red Cross International Committee, and the UNHCR (article 26).

Certain NGOs have referred, in GRETA's report, **“to a degree of reluctance on their own and the victims' part to make a report to the law enforcement agencies, raising the question of victims' safety and well-being. The NGOs fear in particular that the police investigation prior to identification might jeopardise the victim by exposing her/him to the traffickers as a witness, and might prevent NGOs from providing the victim with the necessary assistance. Another issue which was highlighted concerns persons who are undocumented and therefore reporting them as victims of human trafficking might expose them to the risk of being sent back to their countries. Furthermore, according to some NGO representatives, the form for reporting potential victims has been designed primarily for statistical purposes. Concerns have been expressed about the confidentiality of the information included in the form, which apparently resulted in some NGOs refusing to complete it.” (GRETA, 2013: p.28, §112)**

Article 111 (1), of Law 23/2007 of 4 July 2007¹⁸⁴ (amended through Law 29/2012¹⁸⁵) governing the entry, stay, exit and removal of non-nationals provides for a reflection period as follows: “Prior to the issue of a residence permit [...], the SEF shall allow the person concerned a reflection period in order to enable him or her to recover and to escape from the influence of the perpetrators of the offences concerned” (Law 29/2012: p.4231). The reflection period lasts a minimum of 30 days and a maximum of 60 days and begins when the responsible authorities request the victim's co-operation, or when the victim offers to co-operate with the authorities in charge of the investigation, or when the person is identified as a victim of trafficking. When the trafficking victim is a child, this maximum period may be extended if this is in the child's best interest. During this period, no expulsion order may be enforced. Furthermore, a victim must benefit from access to emergency medical treatment, psychological assistance, adequate protection, interpretation and legal assistance, if necessary.

¹⁸⁴ Law 23/2007, *Government Gazette*, 1st Series, No.127, 4July 2007.

¹⁸⁵ Law 29/2012, *Government Gazette*, 1st Series, No. 154, 9 August 2012.

Compliance, inclusion, appropriateness and effectiveness of the practice: To which degree are the national laws and policies applied and implemented in a way that is inclusive, appropriate and effective?

According to the Portuguese authorities, the Commission for Citizenship and Gender Equality (CIG) has funded a number of NGO projects in the field of THB. Some 20 projects in the prevention, awareness-raising, training and assistance fields, amounting to some 1.3 million euro, have been funded since 2008. Nevertheless, NGOs have reported that state funding in this field has decreased in the last few years. In GRETA's report, the Portuguese authorities are invited to continue strengthening links with NGOs, to involve them as fully as possible in the design, implementation, co-ordination and evaluation of national action plans and policies, and to allocate an appropriate level of funding to them. Portugal, however, stresses that Several Memorandums of Understanding were signed in 2011 and 2012 with the government and NGOs to strengthen collaboration with the Observatory on Trafficking in Human Beings (OTSH). In drafting the first and second national THB plans, NGOs were heard in either phase of public debate and in meetings of the Advisory Council – NGO Section - of the CIG (GRETA, 2013).

The experts of GRETA also considered that NGOs' involvement in the implementation of measures in the Plan II is properly addressed. "Usually the evaluations of the national plans are delivered to external entities, coming from academia. During these evaluation processes, NGO are involved. A closer link will be made from now on with NGOs regularly presented in the meetings of the technical committee for the National Plan, as observers. During the year of 2013, there will be a strengthening of multidisciplinary teams (total of 3) to promote a decentralized intervention – in the North, Centre and Alentejo, coordinated by the Association for Family Planning (APF)" (GRETA, 2013: p.56). However, for some respondents, the role of evaluation should be further considerably developed.

"We must evaluate if measures have an impact. Without it, it is useless. And evaluation is always left aside, always!" (GOV, PT05)

With the implementation of the RAPVT, the strengthening of the participation and involvement of NGOs and the adoption of a proactive approach in signalling and identification of victims of trafficking is expected. The joint action of/co-ordination between all these entities is expected to allow for the reinforcement of a multidisciplinary approach.

Any member of the public or the victim him/herself may use the "SOS Immigrant" helpline which, although not specific to trafficking in human beings, has a section dedicated to it. According to data provided by the ACIDI, which manages this helpline, it was used to report potential victims of trafficking on three occasions in 2007, two in 2008 and six in 2009. The ACIDI phone line has been criticised by some NGOs, which have highlighted deficiencies linked to the fact that it is not specific to victims of trafficking, calls are not free-of-charge and the service is open during limited hours. There is also a hotline run by the multi-disciplinary team set up by the Family Planning Association, which is accessible around the clock. The Portuguese authorities have indicated that it is not considered a priority to set up a specific helpline for victims of human trafficking as the two existing hotlines reportedly cover the needs. The numbers of the two hotlines have been publicised on the materials used in the "Blue Heart" campaign (GRETA, 2013).

The GRETA considers that the co-ordinating body for the National Action Plan against THB (CIG) being

attached to the Presidency of the Council of Ministers, rather than to a particular ministry, indicates a political will to ensure that this body operates on an inter-institutional basis. As such:

“GRETA encourages the Portuguese authorities to continue this good practice, in keeping with the spirit of the Convention, which entails that co-ordinating bodies should be given the necessary authority to ensure effective co-ordination between public agencies”. (GRETA, 2013: §56)

GRETA highlights that, in principle, a potential victim is entitled to assistance even before the formal identification, although this seems rarely to be the case in practice in Portugal. In fact, in accordance with the procedures, only after identification a third stage – integration – follows, during which co-ordinated and comprehensive support is to be provided to victims, based on an offer of accommodation to ensure victims’ safety and facilitate their reintegration into society and the labour market.

“NGOs have indicated to GRETA that the lack of state funding prevents them from providing all the necessary assistance to victims of trafficking. Apart from the APF, which receives specific funding for the management of the CAP, other NGOs designated as “special social solidarity institutions” (IPSS) receive funding from the social security system for each victim taken into one of their centres, without any distinction being made between victims of trafficking and other victims. Any health expenditure incurred by victims accommodated in centres is also paid by the social security system, as is any legal aid.” (GRETA, 2013: p. 32, §131)

“This present situation in our country, in which the government says «You can do it but we won’t give you money for it», is difficult. According to the Social Security Institute, for about five years that no new protocols with other entities are established. This means that these new centres, which are opening, don’t have a cooperation agreement with the Social Security Institute in order to subsist. This brings unsustainability to the centres and of the support given to young people. As there are not many infrastructures, not helping is to confine even more and means decreasing the response capacity. This is a real and daily problem, not having an agreement with the Social Security Institute to save this centre. This makes us pull out of our imagination to get some solutions, and that is needed, because we shouldn’t depend on the State. In this case, if it is the State that assumes that it is necessary to protect, if the State provides protection to the asylum seekers, then the State should do something.” (ORG, PT11)

GRETA’s report stresses **“the need for improving the knowledge and sensitivity of judges, prosecutors, investigators and lawyers about trafficking in human beings and victims’ rights. Future training programmes should be designed with a view to improving the knowledge and skills of relevant professionals which enable them to identify victims of trafficking, to assist and protect them, and to secure convictions of traffickers” (GRETA, 2013: p.8).**

“I think that the forces involved in community policing could still do much more, could refer much more cases. They refer very little compared to other law enforcement entities. They have the will but

they cannot give up. They have been having training but information must also reach the smaller posts and staff on the ground must start registering and referring". (...) Sometimes people like to elaborate theories but what really matters is who does what, how and when. We must try and answer these questions. Who contacts whom? And then, what happens? Who takes care of the child? And who continues to investigate the process? And what does Social Security do?" (GOV, PT05)

"There is still much to be done. There are still many entities that do not know the indicators of human trafficking. Many victims even have some type of support granted because they were victims of a different crime or because they requested some kind of support, without people realizing they were victims of trafficking. In some cases they may even be repatriated or detained on the grounds of some illegal action because there is a general lack of knowledge regarding the indicators of human trafficking and people do not understand the specific life story, the potential situation of exploitation persons may have experienced. Many entities just don't report. In our opinion, statistical data fall well below reality". (...) Undoubtedly that trafficking should be part of academic curricula, especially of some professionals. We are preparing people for criminal police bodies, for the fields of law and health, for the social field. There is the need that they are alert and truly aware of the trafficking phenomena so that they know how to intervene. This is still not true. It is crucial that entities on the ground, entities that may get in touch with potential victims of trafficking, are properly informed and trained regarding trafficking and regarding its indicators so that they can identify those victims and report adequately. Otherwise, victims will continue to go unnoticed." (ORG, PT10)

As regards funding of the National Action Plan, co-ordination measures are funded from the CIG's budget, while measures related to the implementation of activities for which ministries are responsible are supported by the ministries' respective budgets. In addition, funding is set aside for projects conducted by civil society.

GRETA "considers that the Portuguese authorities should step up the implementation of economic and social measures which address the underlying causes of THB (economic and social situation, lack of education, unemployment, etc.) and, as much as possible, make the necessary human and financial resources available to them." (GRETA, 2013: p.26, §98).

Thus, the GRETA invites the authorities to continue conducting and supporting research on THB issues, including when such studies are carried out by Portuguese civil society, as an important source of information for future policy measures. Areas where research is needed in order to shed more light on the extent of the problem of THB include trafficking within Portugal, trafficking for the purpose of labour exploitation and trafficking in children.

What are the key determinants that would enhance / reduce the level of risk / protection in this specific area?

- To create a shelter for child victims of trafficking or, at least, a specific unit within existing facilities with a technical team prepared for dealing with child victims of trafficking.
- To continue the efforts of awareness-raising and to launch new campaigns and/or support those organised by civil society, designed on the basis of an assessment of previous measures, including also ministries and entities represented in the CPCJs.
- To step up measures addressing the underlying causes of human trafficking and, as much as possible, make the necessary human and financial resources available to them.
- To involve further the non-governmental organisations in the planning and implementation of anti-trafficking measures
- To ensure that, in practice, the identification of victims is dissociated from their participation in the investigation and court proceedings, and that all stakeholders involved in the identification of victims adopt a more proactive approach and step up their outreach work.
- To strengthen the multi-disciplinary approach to victim identification, ensuring that the potential victim is entitled to assistance even before the formal identification.
- To identify gaps in the investigation procedure and the presentation of cases in courts, with a view to ensuring that human trafficking offences are effectively investigated and prosecuted, leading to proportionate and dissuasive sanctions
- To guarantee the effective application of the legal provisions concerning the confiscation of traffickers' assets
- To step up education and training regarding the phenomenon of human trafficking, providing professionals of the different sectors (justice, social area, health, education, law enforcement, etc.) knowledge e.g. on the indicators of human trafficking so that they are fully alert and truly aware of the trafficking phenomena and improving their capacity to intervene.
- To conduct and support research on issues such as trafficking in children, as well as evaluation studies, as sources of information for future policy measures.

Actors: Which actors are involved?

Actors involved include the Ministry of Justice, the Ministry of Solidarity, Employment and Social Security. It also includes other relevant state bodies such as: the Public Prosecutor's Office, the Immigration and Borders Service (SEF), the High Commission for Immigration and Intercultural Dialogue (ACIDI), the Commission for Citizenship and Gender Equality (CIG), the Observatory on Trafficking of Human Beings, the Institute of Social Security and the Courts, as well as NGOs working in the field.

4.4.5. JUVENILE JUSTICE

Compliance and inclusion of the national laws, policies and programmes: To which degree do the national laws, policies and programmes comply with international standards?

Children between 12 and 16 years old, having committed an act qualified as a crime, are covered by Law 166/99¹⁸⁶, establishing punitive-educational measures. Criminal liability only concerns people above 16 years old, although children and young people between 16 and 21 years old are subjected to a special regime (Law 401/82, of 23 September, close to the one established by the Law on Education Guardianship). These benefit from full protection of their rights in the context of juvenile justice proceedings. Law 401/82, of 23 September¹⁸⁷ foresees full protection of their interests and is structured based on the need of their future reintegration.

Fully implement the juvenile justice reform and ensure its compliance with international standards (paragraph 53 (a) and (b) of CRC/C/15/Add.162, of 6 November 2001).

The following information is also relevant regarding the implementation of the reform:

- (a) Decree-Law 323-D/2000, 20th December¹⁸⁸, that approves the general and disciplinary regulation of the education centres;
- (b) Decree-Law 323-E/2000, 20th December¹⁸⁹, that regulates the application of the Law 166/99, 14th September;
- (c) Normative Rule 1200-B/2000, 20th December¹⁹⁰, that creates educational centres and determines its classification;
- (d) Decree-Law 5-B/2001, 12th January¹⁹¹ that adopts rules of transition for the development of the system established in the Law on Education Guardianship.

It is also important to inform that for young perpetrators between 12 and 16 the Social Reintegration Services (DGRS – Directorate-General of Social Reintegration) have an action plan aiming to create technical and logistical conditions that allow the resort to mediation (Mediation and Reparation Programme) – mediation for young perpetrators is foreseen in Law 166/99, 14th September (Law on Education Guardianship). This programs aims to support and encourage them to find solutions (restoring or others), increasing their sense of responsibility, their engagement in the assumed commitments and their predisposition not to practice, in the future, acts qualified as crimes. This programme has its bases on international instruments such as the Council of Europe recommendation R(99) 19 on mediation in penal matters.

The latest Portuguese report to the Committee on the Rights of the Child on the implementation of the CRC considers that the adopted reform complies fully with the principles and provisions of the Convention on the Rights of the Child. It also considers it complies with the other international

¹⁸⁶ Law 166/99, *Government Gazette*, 1st Series-A No.215, 14 September 1999.

¹⁸⁷ Law 401/82, *Government Gazette*, 1st Series, No. 221, 23 September 1982.

¹⁸⁸ Decree-Law 323-D/2000, *Government Gazette*, 1st Series-A, No. 292, 20 December 2000.

¹⁸⁹ Decree-Law 323-E/2000, *Government Gazette*, 1st Series-A, No. 292, 20 December 2000.

¹⁹⁰ Decree 1200-B, *Government Gazette*, 1st Series-B, No. 292, 20 December 2000.

¹⁹¹ Decree-Law 5-B/2001, *Government Gazette*, 1st Series-A, No. 10, 12 January 2001.

instruments on juvenile justice which are binding for Portugal (Beijing Rules, Riyadh Guidelines, United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Council of Europe resolution R (87) 20).

From the age of 16 individuals are held criminally liable for their actions. Up to 16 years they are considered not liable.

The Children and Family Court is the competent body for the practice of court decisions concerning to the inquiry; for the assessment of facts qualified by law as a crime committed by a child aged between 12 and 16 years, with the implementation of tutelary measure; for the implementation and review of guardianship measures; to declare the cessation or termination of guardianship measures.

The constitutional legislator expressly conferred jurisdiction to the prosecutor to "(...) represent the state and defend the interests determined by law, as well as, (...) to participate in the implementation of criminal policy defined by the organs of sovereignty, perform the action criminal guided by the principle of legality and defending democratic legality" (Portuguese Constitution, article 219, p.4675). Further, the Statute of the Public Prosecution gives him special powers to represent the incapable.

Citizens under 18 years are, as a rule, unable in reason of age, in the sense that, given the civil law, cannot, personal and free, exercise its rights or fulfil its obligations. The exception is the emancipation, at age 16, by marriage.

Until the age of majority or emancipation, the children are subject to parental responsibilities. The parents have, as a rule, the exercise of all rights and the fulfilment of all obligations of the children. The parents have the responsibility to promote physical intellectual and moral development of children. Despite reaching the age of majority at 18, it should be noted that young people are criminally responsible from the age of 16.

Nevertheless, as children constitute a vulnerable group, prosecutors have varied skills to safeguard and defend their interests. The intervention of the prosecutor is the protection of children, is not "against adults", so in many cases their own parents, or in their absence, third parties who are interested in the child or have the least the child in charge, can / should request the intervention of the Public Prosecutor. There is neither need to pay to apply for and obtain the intervention of the Public Prosecutor, nor it needs a lawyer. The prosecution is represented in all Courts.

It is possible to ask the Public Prosecutor a civil providence of regulation of the exercise of parental responsibilities, or aspects of it, its alteration, or providence by breach of duty of one of the parents. Here is included the sustenance due to child.

If the child has no affiliation determined (e.g., the civil registration did not include the mention of who the father is), the prosecutor asks the appropriate action in order to establish the membership, by affiliation or by the subsequent legal action.

The Public Prosecutor intervenes under Decree-Law 272/2001¹⁹² on the authorization to practice actions relating to children, pronounced as the agreement on parental responsibilities in divorces by mutual consent.

If the child is in danger - and without prejudice to the civil providence that should be introduced soon - the prosecutor monitors and oversees the intervention of the Commissions for the Protection of

192 Decree-Law 272/2001, *Government Gazette*, 1st Series-A, No. 238, 13 October 2001.

Children and Young People, requires the intervention of the Court whenever the Commissions cannot proceed with its activity (because, for example, parents opposed this intervention), and when the life or integrity of the child is in danger, the prosecutor requires urgent response directly to the Court to remove this danger. It is the intervention made under the Law of Protection of Children and Youth in Risk.

If the child with more than 12 years and less than 16 years commits some action that the criminal law qualifies as a crime, the prosecutor, under the Law on Education Guardianship, directs the investigation and requires the measures.

The Law on Education Guardianship approved by Law 166/99 of 14 of September¹⁹³, applies to young people aged more than 12 years and less than 16 years. The detention of child aged between 12 and 16 years can take place in flagrant transgression, by a fact considered as crime punishable by imprisonment, but only remains, if there is a fact qualified as a crime against persons punishable by imprisonment above three years. Or before two or more acts qualify as crime punishable by imprisonment for more than three years, whose procedure is not dependent on reporting or particular accusation - cf. article 52 (1) and (2) of the Law on Education Guardianship. Crimes such as rape or robbery clearly admit the arrest of the young.

The arrest in flagrant transgression is mandatory for any police entity or judicial authority. If there is no judicial authority or law enforcement present, nor can be called in time, anyone can make the arrest, immediately delivering then the child to those entities. The child cannot remain in the police station for the purpose of identification, for more than three hours.

Once detained, when it is not possible to submit the child immediately to the judge, (as provided in the article 51, (1) (a) it is entrusted to the parents, legal representative, who has the custody or the institution where you are internee - cf. art.54 (1) of the Law on Education Guardianship. But if that is not enough to ensure their presence before the court or to ensure the purpose of the detention, the child is collected in the educational centre nearest or in appropriate facilities of the police entity - cf. article 54 (2) of the Law on Education Guardianship.

In any case, the child should be present to the judge as soon as possible, not exceeding 48 hours, for the purposes of interrogation or for exposure to precautionary measure - cf. article 51 (1) (a) of the Law on Education Guardianship.

Concerning to acts qualified by law as crime committed by children that have not completed 12 years, their situation cannot be assessed in the light of the Law on Education Guardianship. Such children may only be the target of intervention for the promotion and protection under the Law on the Promotion and Protection for the Children and Youngsters at Risk, as long the dangerous situation is verified, as determined in paragraphs 1 and 2 of the article 3, may take place his/her referral to a host institution.

The Law on Education Guardianship (Law 166/99 of 14 of September¹⁹⁴) provides for the application of various guardianship measures taking into account the seriousness of the act and the need for education for the child.

In the choice of the tutelary measure applicable the court gives preference, from among those that are deemed appropriate and sufficient, to the measure that represent less intervention in the autonomy of decision and conduct of life of the child and that is less likely to get his/her greater involvement and

¹⁹³ Law 166/99, *Government Gazette*, 1st Series-A No.215, 14 September 1999.

¹⁹⁴ Law 166/99, *Government Gazette*, 1st Series-A No.215, 14 September 1999.

the involvement of their parents, legal representative or person that have the custody.

The choice of the tutelary measure is guided by the interests of the child. When the child is considered author of the practice of a several offenses qualified as crime, the court applies one or more tutelary measures, according to the specific educational needs of the child.

The confinement measure, particularly in closed regime is more the most onerous measure and is applicable only when there are all of the following assumptions:

a) the child had committed an act qualified as a crime punishable with the maximum sentence of imprisonment exceeding five years or have committed two or more acts against persons qualified as crimes that correspond a maximum sentence of imprisonment exceeding three years, and

b) the child be less than 14 years at the time of application of the measure.

It is up to the judge to decide on the revision of guardianship measures applied, being, however, provided its cessation or extinction if the court decides. The Law on Education Guardianship also states that the causes that exclude or decrease the unlawfulness or the guilt are considered for the evaluation of the need and type of measure. In addition, the law guarantees the rights of the child at any stage of the proceedings, including be heard when he/her want, on its own motion or when he/her request, by the judicial authority, and provide evidence and make applications.

The Programme “Escolhas” has many projects some of them located in territories where most of the descendants of immigrants and ethnic minorities. Based on the experience and learning however obtained, the program opens up new challenges and redirects its share of crime prevention for the promotion of social inclusion. The performance model as it was based is reconfigured, and time from a centralized logic, becomes a program based on planned projects locally, based on local institutions (schools, training centres, associations, IPSS, among other) who launched the challenge for the design, implementation and evaluation of projects.

The Programme “Escolhas” was selected as a Portuguese Good Practice under the Prevention of Juvenile Delinquency, awarded by the Ministry of Internal Affairs under the European Crime Prevention Award in 2011.

Compliance, inclusion, appropriateness and effectiveness of the practice: To which degree are the national laws and policies applied and implemented in a way that is inclusive, appropriate and effective?

“There is no specific provision in Portuguese law on the non-punishment of victims of trafficking. According to the judicial authorities, heard by the experts of GRETA, a victim of trafficking who has taken part in unlawful activities must be prosecuted in accordance with the principle of legality (Article 219 of Constitution). The Portuguese authorities have, nevertheless, indicated that, generally speaking, the application of a criminal penalty presupposes that the offender acted in complete freedom and conscience in order to achieve a known and desired result. There is therefore no penalty in the absence of free will. Furthermore, there are general clauses providing for exemption from responsibility,

such as a state of necessity (Articles 34 and 35 of the Penal Code¹⁹⁵), which could apply to victims of trafficking.” (GRETA, 2013: p.40, §167)

Reference should also be made to the “discontinuance for discharge” procedure whereby the public prosecution service may in certain circumstances decide at the end of the investigation to discontinue a case with the agreement of the examining judge if the conditions are met (Article 280 of the CCP). The GRETA report refers that the Portuguese authorities have indicated that Article 280 of the CCP may be applied to victims of trafficking who have taken part in unlawful activities under duress, if the proceedings are for a crime in relation to which the law expressly establishes the possibility of “discontinuance for discharge”. The requirements of discharge are provided for in Article 74(1) of the Penal Code. (GRETA, 2013)

“GRETA is concerned that the absence of a specific provision on the non-punishment of victims of trafficking entails a risk of treating them differently depending on the prosecutor in charge of the case.” (GRETA, 2013: p.41, §170) In the report, GRETA “invites the Portuguese authorities to clarify the situation through the adoption of a provision on non-punishment of victims of trafficking for their involvement in unlawful activities to the extent that they were compelled to do so or, at the very least, by issuing guidance to public prosecutors advising them on the steps to be taken when prosecuting suspects who might be victims of trafficking.” (ibid)

What are the key determinants that would enhance / reduce the level of risk / protection in this specific area?

- To adopt of a provision on non-punishment of victims of trafficking for their involvement in unlawful activities to the extent that they were compelled to do so or, at the very least, by issuing guidance to public prosecutors advising them on the steps to be taken when prosecuting suspects who might be victims of trafficking.

Actors: Which actors are involved?

Actors involved include the Ministry of Justice, the Ministry of Solidarity, Employment and Social Security. It also includes other relevant state bodies such as: the Public Prosecutor’s Office, the Immigration and Borders Service (SEF), the High Commission for Immigration and Intercultural Dialogue (ACIDI), the Commission for Citizenship and Gender Equality (CIG), the Observatory on Trafficking of Human Beings, the Institute of Social Security and the Courts, as well as NGOs working in the field.

195 Article 34 of the Penal Code:

An act is not unlawful if it is committed as an appropriate means of preventing a danger which jeopardises the legally protected interests of the person concerned or of a third party in the following conditions:

- (a) the danger was not deliberately created by the person committing the act other than to protect the third party’s interests;
- (b) the protected interest is appreciably higher than the interest sacrificed;
- (c) it is reasonable to impose on the victim the sacrifice of his or her interest, taking into account the nature or value of the interest jeopardised.

Article 35 of the Penal Code:

1. Anyone who commits an unlawful act in order to prevent a danger which cannot otherwise be prevented and which jeopardises the life, physical integrity, honour or freedom of the person concerned or of a third party, when it is not reasonable to expect, given the circumstances of the case, different conduct not entailing an offence
2. If the danger jeopardises legal interests other than those mentioned in paragraph (1), and if the other conditions mentioned are met, the penalty may be reduced or, by way of an exception, the person concerned may be discharged without penalty.



INSTITUTIONAL MANDATES, MONITORING AND COORDINATION MECHANISMS

5.1. INSTITUTIONAL RESPONSIBILITY IN RELATION TO DIFFERENT GROUPS OF CHILDREN AT THE CENTRAL AND LOCAL LEVELS OF THE PUBLIC ADMINISTRATION

Over the last decades, the overall approach regarding childhood has been very much characterized by a feeling of back and forth. Different initiatives regarding childhood were created and there is wide understanding that all the right words are in the right places. However, sequential and continued work is lacking, rather replaced by sequential plans and commissions. As mentioned earlier in this report, the latest Portuguese report to the Committee on the Rights of the Child on the implementation of the CRC mentions the Initiative for Childhood and Adolescence (INIA) as “a specific response to the CRC’s recommendation to develop a comprehensive child rights strategy to implement the Convention (...)” (Portugal, 2011: p.6).

However, also as mentioned before, INIA was discontinued and the creation, in May 2012, of a working group with the objective of laying the foundations for a Child Agenda (Agenda da Criança) is now the latest development regarding this matter. This working group was created through a Dispatch of the then Ministry of Solidarity and Social Security¹⁹⁶.

“I think that, in Portugal, in the area of children, things are still too scattered. (GOV, PT05)

“I think that policies are still very scattered. It seems that each and every ministry wants to do something regarding the child”. (ORG, PT12)

“What is lacking is a constant practice of coordination on a daily basis so that we are ready to act at all times because we only coordinate in face of a concrete case. Then you have to do it and we all run and everybody helps solving but, on a daily basis, on the search for other cases, on the preparation for the next case, we are all occupied on their own things and nothing else. (...) The cases do exist but while they are not formally flagged, we let things flow. This is what happens in the case of those children. They walk around the streets and we let it be (...) but this would deserve a closer intervention. But then again, who is going to intervene? The police on the streets? Is it up to us? Why not an association on the

¹⁹⁶ Dispatch 6306/2012, *Government Gazette*, 2nd Series No.93, 14 May 2012.

ground? Do you see what I mean? I think that this area is where we lack coordination leading us to a constant attention.” (GOV, PT07)

There are several ministries which have been assigned roles for policy planning regarding their specific areas. The main ministries responsible for issuing policies and measures regarding children in general are the Ministry of Education and Science, the Ministry of Health and the Ministry of Solidarity, Employment and Social Security.

Child welfare and child protection are under the specific responsibility of the Ministry of Solidarity, Employment and Social Security. However, it must be mentioned that the National Commission for the Protection of Children and Young People at Risk depends not only on the Ministry of Solidarity, Employment and Social Security but also on the Ministry of Justice. The Ministry of Justice has specific responsibilities regarding children who are perpetrators or victims of crime. Migrations, asylum and trafficking are under the responsibility of the Ministry of Internal Administration.

There are local services of the ministries in municipalities. At the municipal level, the CPCJs have primary specific responsibility regarding child protection.

5.2. WHO ARE THE OTHER MAIN ACTORS WITHIN THE PUBLIC ADMINISTRATION AND WHAT ARE THEIR MANDATES?

- SPECIALISED BODIES AND INSTITUTIONS

- National authority on child protection

The main role of the National Commission for the Protection of Children and Young People at Risk (CNPCJR) is to plan State intervention including the coordination, follow-up and assessment of the activities of government and community agencies involved in the protection of children and young people at risk (Decree-Law 98/98, of 18 April¹⁹⁷)

It should: i) participate in the legislative changes that fall within the scope of its mandate; ii) encourage, namely within the Pact of Cooperation for Social Solidarity, protocols among CPCJs; with state departments intervening in this area and with private social solidarity and other institutions; iii) encourage the creation of interdisciplinary teams in the minor and adoption areas, as well as their training; iv) encourage the creation of emergency foster centres in geographic areas that require them, and for those problematic situations that justify their existence; v) prepare and coordinate the transition of minors as well as of physical and economic human means, that are in the justice system and are moving to the social solidarity system; vi) request and coordinate audits, diagnosis and evaluation studies of deficiencies, measures and social responses; vii) develop, coordinate and accompany the elaboration of diagnosis of institutionalized children and/or in/away from family framework; viii)

¹⁹⁷ Decree-Law 98/1998, *Government Gazette*, 1st Series-A, No. 91, 18 April 1998.

adjust all public and private institution actions, structures and programmes in the children and youth at risk field, in order to reinforce cooperation strategies and resource rationalization; ix) accompany and support the Commissions CPCJs, allowing them to improve their performance quality (Decree-Law 98/98, article 1 (2))

The National Commission depends on the Ministry of Justice and Ministry of Labour and Social Solidarity and it is formed by the main state departments' representatives involved in children and youth issues. Besides these representatives, the Commission is also formed by local government and autonomous regions officials as well as NGO members and a person to be appointed by the Ombudsperson Office.

- National Rapporteur on trafficking in human beings

According to Dispatch 1003/2012, of 25 January¹⁹⁸, of the State Secretary of Parliamentary Affairs and Equality, the National Rapporteur on trafficking in human beings must assist the entity coordinating the II National Plan Against the Trafficking in Human Beings, namely regarding: a) the relationship with analogous national and international bodies in what regards the trafficking in human beings, and b) the promotion and participation on the development of information structures and networks at the national and international levels.

- National Observatory on trafficking in human beings

The mission of the Observatory on trafficking in human beings is to produce, collect, analyse and disseminate information and knowledge about the trafficking in human beings phenomenon and other forms of gender violence. Its vision is to become a national and international reference centre that will contribute to the analysis, knowledge and intervention on trafficking in human beings and other forms of gender violence. Its structure is based on a relational model with:

- The Directorate-General of Internal Administration (DGAI) in order to ensure the procedures and coordination assumed under the National Plan Against Trafficking in Human Beings;
- The Commission for Citizenship and Gender Equality (CIG) in order to establish the priorities among the OTHB activities and to disseminate research papers, studies and information;
- The Coordinator of the National Plan Against Trafficking in Human Beings (PNTSH) for the same purposes as mentioned in the previous item;
- The General Secretary of the Internal Security System (SGSI) in order to coordinate efforts with the Security Forces and Services;
- The General Secretariat of MAI (SGMAI) for administrative and logistic support.

- ACIDI - High Commissioner for Immigration and Intercultural Dialogue

ACIDI, I.P. is a public institute under the indirect administration of the Portuguese State, possessing

¹⁹⁸ Dispatch 1003/2012, *Government Gazette*, 2nd Series, No. 18, 25 January 2012.

administrative autonomy. It is under the Presidency of the Council of Ministers and the Prime Minister. Its mission is to collaborate in the conception, implementation and evaluation of public policies, both cross-cutting and sector-specific, relevant for the integration of immigrants and ethnic minorities, as well as promoting dialogue between various cultures, ethnicities and religions.

Its activities are based on seven key principles: Equality, Dialogue, Citizenship, Hospitality, Interculturalism, Proximity and Initiative. The organisation provides information in order to promote immigrants' rights and fulfilment of duties, including information leaflets, local immigrant support centres and an information phone line.

It also runs two National Immigrant Support Centres (CNAIs) in Lisbon and Porto, together with a branch in Faro, providing a number of State immigration services under one roof, as well as other support services for immigrants. Services are provided by socio-cultural mediators employed by Immigrant Associations through a partnership with the ACIDI, I.P. It also engages in outreach activities with immigrants. Within ACIDI, I.P. is also the Immigration Observatory, which promotes and funds research into immigration and integration, including publications and conferences.

- SEF – Immigration and Borders Service

SEF is a security service organised vertically under the Ministry of Internal Administration. It has administrative autonomy and its fundamental objectives within the internal security policy include border control of persons, leave to stay and the activities of foreigners in Portugal, as well as the study, promotion, coordination and execution of measures and actions related to these activities and migratory flows.

As a criminal police body, in the terms of criminal procedural law, SEF acts in the process under the direction and operational dependence of the competent legal authority, implementing the measures determined by that authority and the acts delegated by the same authority.

Its mission is to implement the Portuguese policy for immigration and asylum in agreement with the provisions of the Constitution and the Law, and the Government's guidelines.

5.3. NATIONAL HUMAN RIGHTS STRUCTURES

The Portuguese National Human Rights National Committee (PNHRC) was established in by Resolution of the Council of Ministers 27/2010, of 8 April¹⁹⁹. The establishment of this Committee stemmed from a commitment expressed during the Portuguese Universal Periodic Review examination in Geneva, on the 4th of December 2009, in reply to several recommendations that Portugal improve its coordination mechanisms and present its reports to Treaty bodies on a timely basis.

The PNHRC is responsible for intergovernmental coordination with the aim of promoting an integrated approach to human rights policies. The Committee aims to define Portugal's position in international fora and to implement Portugal's obligations under International Human Rights Conventions. Given the broad scope of international instruments on Human Rights Portugal is a party to, the PNHRC coordinates all governmental action on Human Rights.

¹⁹⁹ Resolution of the Portuguese Council of Ministers 27/2010, *Government Gazette*, 1st Series No.68, 8 April 2010.

The Committee is chaired by the Ministry of Foreign Affairs, namely by the Secretary of State for European Affairs. The MFA's Multilateral Department, backed by the Office for Documentation and Comparative Law of the Attorney General's Office, is the PNHRC's Executive Secretariat.

The PNHRC has representatives from the following Ministries and State Departments: National Defence; Home Affairs; Justice; Economy and Employment; Agriculture, Sea, Environment and Territorial Planning; Health; Education and Science; Solidarity and Social Security; Culture; Media; Immigration; Gender Equality; Youth. The Portuguese Ombudsman, who is the Portuguese National Human Rights Institution (NHRI) according to the UN Paris Principles, has a standing invitation to attend all PNHRC meetings and to participate in the Committee's work.

The PNHRC meets at least three times a year at Plenary level and, whenever needed, at Working Group level. The Committee also meets regularly with civil society representatives, at least once a year at Plenary level and, whenever needed, at Working Group level.

Under the terms of the Constitution, the Ombudsperson is an independent organ of the State elected by 2/3 of the members of the Parliament, whose main functions is to defend and promote the rights, freedoms, safeguards and legitimate interests of the citizens, undertakes actions for the protection of human rights, inter alia child rights. Hence, the intervention of the Ombudsperson is reflected in the application of the rights recognized by the international instruments, including the Convention on the Rights of the Child and its principles.

Citizens may submit to the Ombudsperson oral or written complaints about actions or omissions of the public authorities that are deemed to be illegal or unfair. The Ombudsperson may also intervene in relation to private entities, if a special relationship of power exists between them and the aim is to protect rights, freedoms and safeguards. Furthermore, the Ombudsperson may also act on his/her own initiative (e.g. based on media or NGO reports).

Where the Ombudsperson finds illegality or unfairness to exist, he/she may address administrative or legislative recommendations to the competent bodies. He/she may also request the Constitutional Court to review constitutionality or legality of norms, as well as constitutionality of omissions. In his/her activity, the Ombudsperson may make visits of inspection to any sector of the administration, conduct any inquiries and seek, in cooperation with the competent organs and departments, the most appropriate solutions to the defence of the legitimate interests of citizens and the best means of improving administrative services.

In more recent developments, following the work carried out by a Project Unit since 2004, at the end of 2009 a new Department on Children, Elderly Persons and Persons with Disabilities was created. This Department is placed under the direct supervision of a Deputy Ombudsperson responsible for the areas of the rights of the child, of elderly persons and of persons with disabilities.

5.4. REPORTING AND COMPLAINT MECHANISMS FOR CHILDREN

Within the Ombudsperson's office, a toll-free telephone hotline aimed at receiving and handling complaints for cases of alleged violations of child rights continues to operate. The hotline, called *Linha da Criança* makes the communication with the Ombudsperson direct and accessible for children who

want to use their right of complaint Between January 2002 and 30th of September 2008, the “Free Line Messages from Children” received 12.038 calls - around 5 calls per day. Between 1st of October 2008 and 30th of May 2011, it received 1924 calls.

5.5. WHAT IS REPORTED ABOUT HOW THESE ACTORS COOPERATE AND COORDINATE?

As mentioned before, there is the feeling that a coordinated comprehensive intervention of services is still to be fully achieved. Policies are deemed to be still very scattered with different ministries being assigned roles for policy planning regarding children in their specific areas. Despite the identified difficulties of coordinated work on a daily basis, the situation is reported as an on-going process of improvement and there are examples of collaborative platforms translated, for instance, in the National and local commissions for the Protection of Children and Youth in Peril.

“The CPCJs share that concern [prevention of exploitation and protection of child victims] and have that role [coordinated work]. They must be aware, check and analyse every possible way of child exploitation.” (GOV, PT02)

“Yes. The law on protection is fairly recent and thus, it included this concern. I think it is clear that there was the intention of solving a set of problems and the intention of creating a set of entities. The National Commission, for instance, gathers several entities that used to act separately. Thus there is this entity aggregating the concerns of several governmental and non-governmental entities. (...) It results from the law of protection that entities have to act in a concerted way in order to remove the child from the situation of peril s/he is faced with. I think there is concerted action and that the law is not only facilitating it but also obliging to it. (GOV, PT06)

“My evaluation is positive. It is an on-going process. We have to build a relationship with the organisations of the municipality, also demystifying things. (...) It is a relationship that has to be nourished and that requires effort because it is one more thing to do. However, it is useful because it translates into better knowledge and more involvement from entities. When entities know us they see us differently and a relationship is created and nourished, becoming a major added-value. When a school knows how the CPCJ works, then they probably know that they have to exhaust their intervention before referring; they know what to do when they refer, they know what to expect from our intervention and thus things work better.” (MUN, PT16)

“In Portugal, the system of protection is based in inter-institutional cooperation. CPCJs have a composition that is not only interdisciplinary but also multi-institutional. The aim is to guarantee the representation of civil society along with the representation of the several State services with responsibility regarding this matter – Education, Health, Social Security. Besides, there have been

significant efforts for the creation of partnerships, translated into networks even if these are, in most cases, informal with the main aim of sharing relevant information, especially in what regards good practices.” (ORG, PT12)

“There is a good coordination. When it has to work, it works. Facing concrete cases the entities find a way to coordinate their work. Not always in a perfect way, sometimes better, sometimes worse, but when it involves children I think that the degree of worrying... My experience from concrete situations is that the commitment from entities and from people is indeed big.” (GOV, PT07)

However, the experience of the CPCJs is not exempted of criticism.

“We have a positive experience. We have established good communication with the entities. But one thing is cooperation, i.e. when I am here with a child and I ask for a meeting or an informative report, another thing is to have that entity represented at the Commission. Cooperation exists but my feeling is that it can be better. No Commission by itself is enough. There is the need for a culture of community, of social solidarity and social responsibility in order to change things. Cooperation exists but its profoundness needs to be enhanced. (...)”We’re on track but there is a level of maturity that we have not yet been able to achieve. We are all pulling in the same direction but the degree of responsibility is not the same. Sometimes entities feel that, once they refer the case, their responsibility ceases. This cannot be so because the Commission does not have a magic wand. The Commission is formed by the forces of the community and the results will be much better if we work together. (...) Ideally, the Commission would have representatives of all the entities or at least of all the most relevant first line entities and this is not the case. This is not the case because, many times, the entities express their own difficulties to be represented at the Commission as this is not paid”. (MUN, PT08)

“For some time, the CPCJs were seen as entities that would call for the removal of the child. Even today some organisations are afraid of referring because they think we will immediately decide for the removal of the child. (...) Schools, for instance, often refer a case and forget that once we open a file we will count with them as partners and that they will also have to follow the case. And another thing that the first-line entities are unaware of is the functioning of courts. They refer a case to the CPCJ and if the CPCJ refers it to the court, they do not understand this circuit and it is very confusing for them”. (MUN, PT16)

“I would say that the entities involved have different levels of cooperation. In general, they have worked well. Sometimes there are some entities which have little response capacity, and that can create some friction. It has been positive.” (ORG, PT11)

The Observatory on trafficking in human beings and the establishment of formal partnerships such as

the Protocol on the Creation of a National Trafficking Victims Support and Protection Network (RAPVT) are identified as positive developments.

“We work, most of all, as a collaborative platform. We have representatives of several organisations, our focal points, who share their data with us. (...) We signed memorandums of understanding with all of them, to institutionalise the sharing of data and information. (...) We have the advantage of having an excellent collaboration with the law enforcement bodies. They refer the majority of victims”. (GOV, PT05)

“We have just signed the protocol regarding the Network of Support and Protection to Victims of Trafficking. (...) What we aim for is for coordination and effective action between all organisations. That is what we objectively pursue.” (...) We had an amazing evolution in the last decades, in what children are concerned. They were granted a set of rights that before were perhaps unimaginable. Structures were created, mechanisms were created. A set of actions leading to that were taken. For me, that is very evident.” (GOV, PT02)

Besides formal settlements also informal partnerships are identified as providing positive inputs to this respect.

“Our organisation had partnerships previous to the opening of the shelter and so the shelter ended up using these existing partnerships in order to provide a wider scope to the work being developed. (...) For the shelter, a protocol of collaboration was signed with several entities among which the Institute of Social Security, the Ministry of Interior, the Ministry of Justice and the Commission for Citizenship and Gender Equality. These had to be created from the beginning. We also have more specific partnerships that we create during our daily action, according to the felt needs.” (ORG, PT10)

However, there are still flaws that need to be addressed so that cooperation and coordination have actual effective results.

“A problem in the system regards the ‘after the danger’. From my standpoint this has to do, most of all, with the Social Security. I find a lot of virtues in the action of the different entities and the weakest link is the Social Security. This is a matter of budget but also of organisation. Social Security has already taken some steps such as the creation of the EMATs (Municipal Teams of Support to Court). This is an internal service of Social Security to deal with the courts because these issues end up, very often, involving the courts. They try to provide answers but the big problem is the ‘afterwards’. (...) We manage to provide support to a family that has no money for something but five years later the situation of this family has not changed. It is a matter of intervention and follow-up of these families. Another thing is children who are removed and institutionalised. We work with the child but there is no one working with the family. (...) I would say we have a system working very well in the first part [of the process of protection] but that has big difficulties regarding the second part. But I think that this is normal. I guess that this is also

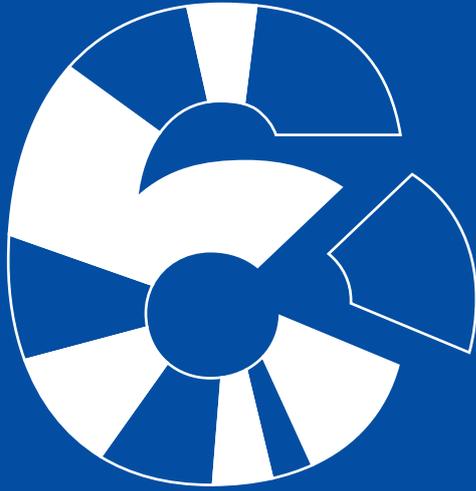
happening elsewhere. However, I do think that the system works regardless all the limitations. It has to be perfected and the worse part regards the follow-up, when there is no longer a situation of danger, when the problem is not so acute. This is a situation where we relax a bit even so because we have other acute problems to deal with. This is not because of the system but perhaps because of the world we live in". (GOV, PT06)

As identified regarding other aspects of the system, training is considered an essential aspect for tackling some of the difficulties mentioned and achieving better cooperation and coordination.

"Cooperation is improving. There is more and more spirit of cooperation. This involves development at different levels. First of all, training. Initial and on-going training is essential. Technical training, ethical training, even cultural training. (GOV, PT03)

"Training regarding the law and the protection system is needed for everybody, for the CPCJs but also to NGOs and for the professionals of the Social Security system. For everybody, so that each entity knows both its role and the other entities' roles. An NGO must know how the CPCJ works and how and when to refer, as well as what is needed to do so". (MUN, PT16)

"We have been developing training. This is work that we also have to do, as Commission, to promote meetings, to explain and provide training but this implies a lot of time and energy and we have a huge number of cases. We have the will to do these things but it is not always possible to reach the goals. Bottom-line, this is something that should be agreed between the different parties because there are things that cannot be left to the Commissions alone. That is what is still failing." (MUN, PT08)



CONCLUSIONS AND RECOMMENDATIONS

Norms and principles of general or common international law are an integral part of Portuguese law. Norms contained in regularly ratified or approved international conventions are in force at the domestic level provided that they have been published in the Official Gazette and while they are binding upon Portugal at the international level.

Within this scope, the Convention on the Rights of the Child (CRC) has the force of law in Portugal, and may be directly invoked before the courts and applied by national authorities. Moreover, should the Convention conflict with national law, it takes precedence unless national law is more favourable to the rights of the child.

Despite this, the Committee on the Rights of the Child expressed its concern with the lack of a comprehensive national strategy on the implementation of the Convention and thus recommended Portugal to develop a comprehensive national strategy for the implementation of the Convention, as well as to set priorities and define a time frame for implementation and to define and allocate the human, financial and technical resources that would be necessary for the strategy's implementation which, notwithstanding different initiatives and measures still remains largely to be accomplished.

As a response, in 2008, the former government created the INIA – National Initiative for Childhood and Adolescence 2009-2010, an initiative defining the national strategies for the promotion of rights and the protection of children and young people in Portugal. INIA was stated to be based on the CRC and its respective guiding principles and should guarantee the respect for the universality of children's rights, based on a participatory method involving all areas and public sectors, civil society, citizens in general, children, adolescents, parents and other caregivers.

However, the INIA 2009-2010 had no continuity. As such, the overall approach and governance in this area seems to be characterised by an ambiguous evolution where different initiatives regarding childhood have been created with wide understanding that all the right words are in the right places. Conversely, strategic continuity in addressing children's issues has been missing, rather replaced by the production of sequential plans and establishment of commissions from which the creation, in May 2012, of a working group with the objective of laying the foundations for a Child Agenda (Agenda da Criança) is the latest development.

The working group's mission was to evaluate the operational, functional and legal mechanisms aiming to guarantee the best interests of the child and to suggest initiatives to remove obstacles to the child's integral development and wellbeing.

In June 2013, the results of the work developed were summarised, assuming that "in spite of the efforts, there are still serious difficulties in the concretisation of several segments of the above-mentioned system [system of protection of children and young people in peril], which is still weakening child protection" (Resolution of the Council of Ministers 37/2013: p.3239). Unfortunately, the text of the resolution does not provide any clarification regarding which are the segments lacking concretisation.

Despite the overarching objectives of the Child Agenda working group, the suggestions issued focus

exclusively on changes regarding the child protection system and the adoption regime. Suggestions included the gradual evolution of the current framework to “a more integrated system, with improvements regarding its services (...) and integrating the existing means that may better enhance the answers and distribute them, in a more balanced way, to the most urgent needs.”

In any case, three basic principles of the Convention are, to a higher or lesser degree, reflected, per se, in Portuguese law. The Portuguese Constitution proclaims the principle of equality and the right of every individual to freely express and publicise his thoughts. The right of the child to be heard and to participate, in accordance with his/her age and understanding, takes a special importance in the Civil Code, in the Civil Sponsoring Law and in the Law of Protection of Children and Youth in Peril, which is also specifically addressing the principle of the best interests of the child.

Additionally, specific measures and programmes are also contributing to upholding these principles such as the second National Action Plan for Immigrant Integration 2010-2013, entailing several measures which are specifically directed to children and the “Mobile School” programme which, despite positive evaluations regarding its potential regarding the protection of the rights of children and, in particular, of Roma children has been discontinued.

Another example is the Programme “Escolhas”, which is very positively evaluated and has been internationally acknowledged, receiving recognition as a best practice in several occasions though still not reaching full potential in what regards the involvement of older children and those belonging to the Roma/Gypsy population.

Another concrete element of concern regards the fact that despite all existing legislation, programmes and measures, there is evidence that this is not enough, per se, for guaranteeing without doubts that implementation is inclusive, appropriate and effective. There is a widespread feeling that ‘one thing is laws, another thing is practices’ and that a gap between the two remains largely to be bridged.

This leads, for instance that, in practice, the implementation of the right of the child to be heard is still revealing flaws. Even if there is the feeling that improvements have been managed, leading to concrete results in terms of effective implementation, there is also the opinion that, in some cases, the process is primarily a formality.

Another aspect that needs to be considered is the framing of one of the guiding principles of intervention in terms of promotion and protection – the prevalence of the family – within a comprehensive analysis of the situations as it is not always corresponding to the child’s best interest.

There is also the feeling that a coordinated comprehensive intervention of services is still to be fully achieved. Policies are deemed to be still very scattered. Different ministries have been assigned roles for policy planning regarding children in their specific areas. For instance, child welfare and child protection are under the specific responsibility of the Ministry of Solidarity, Employment and Social Security. The Ministry of Justice has specific responsibilities regarding children who are perpetrators or victims of crime while migrations, asylum and trafficking are under the responsibility of the Ministry of Internal Administration.

Another example is that the Observatory on trafficking in human beings runs under the Ministry of Internal Administration while the National Rapporteur on trafficking in human beings and the entity coordinating the II National Plan Against the Trafficking in Human Beings operate under the Presidency of the Council of Ministers.

Despite the identified difficulties of coordinated work on a daily basis, the situation is reported as

an on-going process of improvement. There are examples of collaborative platforms translated, for instance, in the National and local commissions for the Protection of Children and Youth in Peril and in the Observatory on trafficking in human beings. Also other formal – such as e.g. the Protocol on the Creation of a National Trafficking Victims Support and Protection Network (RAPVT) – or informal partnerships are identified as providing positive inputs to this respect.

Finally, also the current financial and economic crisis is impacting on the rights of children. The Commissioner for Human Rights of the Council of Europe concluded for the negative impact of fiscal austerity measures on the enjoyment of human rights, considering that these have disproportionately affected the most vulnerable social groups, especially children, the elderly and Roma (Muižnieks, 2012).

Thus, in what regards the implementation of the CRC and of its general principles of non-discrimination, safeguarding of best interests and respect for the views of the child, it seems clear that the compliance of the systems would be enhanced through:

- Establishing procedures ensuring that implementation follows the grounds set by legislation and policies;
- Making sure that any governance mechanisms (e.g. Agenda da Criança) deliver what they were meant to according to their mandate;
- Establishing concrete mechanisms to respect the right of the child to be heard, assessing the extent to which this goes beyond the mere formality.

Inclusiveness and appropriateness would be reinforced by:

- Renewing efforts for tackling the ‘traditional’ lower involvement of Roma communities;
- Betting on positive and proactive measures to prevent discrimination (e.g. cultural mediators);
- Guaranteeing that the right to be heard is not restricted to children aged over 12;
- Guaranteeing case by case assessment of best interests.

Creating conditions for articulation regarding auditions in judicial procedures, in order to avoiding delays, repetition and/or re-victimisation would be increasing effectiveness, while coherence would benefit, inter alia, from:

- Ensuring a coherent, continued and long-term strategy centred on the children best interests;
- Highlighting good practice resulting from positive and proactive programmes to prevent discrimination (e.g. Escolhas, Escola Móvel);
- Avoid that social innovation projects are time-bound and not taken to scale, when they have proved to be successful.

The Portuguese Constitution is consecrating the protection of children as a duty of society and of the State, aiming to their full development. This has direct and immediate implications, first of all in terms of the IMPACT dimension of Survival.

Childcare, healthcare and social security for children are addressed by different plans and measures. The Immediate Intervention Plan, the DOM Plan and the Plan SERE+, for instance, are important contributions for the definition of compliant, inclusive, appropriate and effective childcare.

In the field of healthcare, article 64 of the Portuguese Constitution is specifically entitling all individuals to health protection, to be concretised through the National Health System. Additionally, the access of undocumented immigrants is specifically mentioned by law which is also making clear that victims of trafficking enjoy the same rights of access to healthcare as Portuguese nationals. Regarding children in particular, the Health Action for Children and Youngsters at Risk and the National School Health Programme are examples of further care to be provided to children, especially to those most vulnerable.

The Programme of Social Emergency and the Programme “Ser Criança” are also examples of measures where children are specifically addressed within the context of social security protection.

However, despite positive and specific elements of protection of the Portuguese framework, signs of flaws and frailties in implementation can be detected. In spite of encouraging improvements in the last few years, situations of children in childcare without any protective measures and/or without having their legal situation in order still persist. Additionally, many children in care do have a defined life project and these are most of the times, expressing care planning options rather than taking into account the overarching aspects of the child’s life.

Other aspects of concern regard the prolonged length of stay in institutions of a high number of children and young people and the specific situation of children that despite their specific needs, remains out of the childcare system. This is particularly the case of those living in the street.

Regarding the specific situations of unaccompanied child asylum-seekers/refugees and child victims of trafficking, the last few years have also witnessed important improvements. In 2012, a temporary reception centre for refugee and asylum-seeking children was settled, avoiding the lingering of the previous situation when they were referred to the Refugee Admission Centre, where they used specific premises.

A specialised centre providing accommodation and assistance to women victims of trafficking and, where applicable, their under-age children, was set-up in 2008 and, in 2013, a similar centre for male victims was also established.

However, because of the centres’ limited capacity, some adult victims of trafficking are accommodated at other centres managed by NGOs, mostly shelters for victims of domestic or other kinds of violence, which are not necessarily appropriate to the specific needs of victims of trafficking and lack the requisite level of security.

This is also the case regarding unaccompanied children victims of trafficking who, following the approach used by the system that a trafficked child equals a child in peril, are usually accommodated in childcare facilities.

The present situation of economic and financial crisis experienced by Portugal is having concrete repercussions in what the IMPACT dimension of survival is concerned. The report of the Commissioner for Human Rights of the Council of Europe (Muižnieks, 2012) shares a concern regarding the way how, in a context of budget cuts, the full functioning of first line entities and of the Commissions for the Protection of Children and Young People will be guaranteed, particularly as the number of cases has peaked in 2012.

The report also notes the Commissioner's concern that other factors may have had a particularly negative impact on children's lives, among which the increase in prices of health care, stressing that the packages of austerity measures and the considerable cuts in childcare benefits have impacted significantly on the income of many families with children, increasing the risk of children being exposed to poverty.

This concern is shared by Eurochild for whom austerity measures in Portugal are limiting the access of children and families to health, education and other care services, also limiting their full participation in family and social life.

The apprehension of international entities is backed-up by figures of the Ombudsperson's Office that reported to have received an increasing number of complaints related to social protection issues in 2011 and 2012, many of which regarding the introduction of stricter accessibility conditions for child benefits.

As such, in what regards the IMPACT dimension of survival and the guarantee of compliance of the child protection and welfare systems and the way they operate in practice with national and international standards on children's rights, it seems essential:

- To ensure that despite budgetary concerns, children's needs remain the focus of policies;
- To keep minimum standards regarding the provision of universal benefits
- To uphold the timings defined for interventions;
- To reduce the periods of institutionalisation;
- To ensure children's health care needs despite the economic constraints, continuing to ensure free access to the public health system;
- To address all efforts in order to guarantee that further costs in areas such as prevention, medicines, and complementary exams do not curtail actual access to comprehensive and continued health care for all children.

The capability of the child protection and welfare systems to include all children would be enhanced through;

- The provision of more and more diverse childcare services, targeting specific situations (e.g. children living the street, children victims of trafficking, asylum-seeking unaccompanied children);
- More and specialised health responses (e.g. in the sphere of mental healthcare);
- Awareness-raising regarding the importance of preventative health services, mainly among the immigrant population;
- Ensuring confidentiality to undocumented immigrants acceding the healthcare services.

The appropriateness of the child protection and welfare systems, measured through their suitability to respond to each child's needs and rights would benefit from the assurance that measures of promotion and protection and life projects are defined for every child in the childcare system, involving them to the possible extent and comprising different dimensions of the child's life and not only the childcare

dimension, placing a stronger focus in measures and in facilities preparing for autonomization.

The coherence of the systems would be enhanced if the impact of the crisis on the children's well-being and the impact of the successive measures to tackle the crisis, namely those curtailing access to benefits and services for many children and their families were regularly and rigorously assessed.

Within the framework of the IMPACT dimension of Development, the last few years witnessed relevant changes in terms of general and vocational education. From 2008, with the launch of the Programme for Support with Extending the Pre-School Education Network there was an increase of the number of places for children between the ages of three and five. However, the State only compromises to guarantee universality from the age of five onwards. Overall, this network is insufficient. As such, the facilities of the private sector run by entities recognised as private entities of social solidarity have State subvention and the costs for families are calculated according to household income.

Compulsory schooling is universal and free from the age of 6. Since 2012, it was extended, now covering the entire childhood, i.e. up till the age of 18. Additionally, the Programme 'Sports at school' provides pupils from the 5th to the 12th grade the opportunity to engage in physical and sports activities. In addition, the Youth Institute has a programme for the occupation of free time of youngsters aged 15 to 25.

However, education felt the impacts of the crisis and of fiscal austerity measures. The report of the Commissioner for Human Rights of the Council of Europe stresses that the cuts in child benefits appear to have had a particularly negative impact on education. In addition, the tightening of the budgets both of central and local authorities has impacted on education as it results in less funds being available to support public schools. Sports activities also receive insufficient financial support and the number of children taking part in sports activities is low in comparison to other European countries.

Child victims of human trafficking or of facilitation of undocumented immigration are entitled to accede the Portuguese educational system in the same conditions as national citizens. Also undocumented children and unaccompanied refugee and asylum-seeking children have similar access to education/training as national children and documented immigrant children. Moreover, a specific programme such as the "SEF goes to school" is an important way of enforcing the access to education and training.

As access to education is granted also to undocumented children, they also have access to the "Sports at school" Programme though not to the programmes of the Youth Institute, as documentation is required for registering.

Also the access to education/training is not always achieved properly in practice, despite all the provisions in law, and even if it is recognised that there is a significant number of educational programmes to which it is possible to resort, such as the educational territories of priority intervention (TEIP), the apprenticeship courses or the education and training courses. Another important programme is the Integrated Education and Training Programme (PIEF), now included within the Programme for Inclusion and Citizenship (PIEC) and condensing an already consolidated experience initiated with the Programme for the Prevention and Elimination of Child Labour (PETI). However, in many cases, the criteria and conditionalities inherent to the programmes of education and training end up preventing its take-up by the most vulnerable children.

PIEC is directly connected to the fight against child labour, to which the country is bound, namely through the ratification of ILO's Convention 182 on the worst forms of child labour and the Labour

Code. The situations where working is forbidden are clear and the situations where it is allowed even have a specific follow-up. Employers must assess specific labour conditions and must distinguish, in written, what children can or cannot do, as well as an assessment of the risks for health.

In approximately a decade, since 1999 and the collective complaint brought against Portugal before the European Committee of Social Rights, Portugal stopped being a country that was internationally accused for having child labour and for not acting against it, to become an example of good practice and of a country that was, in fact, able to solve this issue. A specific positive sign was the establishment of a working group aiming to produce two 'reporting/flagging cards' for victims of THB, one of which intended for labour inspectors.

However, in 2011, the European Committee of Social Rights reported a few remaining problems concerning child labour in Portugal. Additionally, there seem to be few proactive inspections making it possible for labour inspectors to report victims of trafficking, and only a limited number of labour inspectors have been specifically trained to deal with trafficking.

At the same time, there is concern that the economic and financial crisis, growing unemployment and the shrinking sources of family incomes due to the austerity measures may have led families to make use of child labour once again. In a context already marked by high rates of early drop-out from school, particular vigilance is therefore required from the authorities to monitor possible developments in this field.

Thus, in order to guarantee compliance of the child protection and welfare systems and the way they operate in practice with national and international standards on children's rights, it seems essential:

- To ensure the quality of the education system even – and particularly – in times of crisis, and to increase the investment in physical activities for students in schools;
- To take additional steps to promote and support sports and other leisure activities for children;
- To develop all endeavour in order to guarantee that the current harsh economic situation does not lead families to make use of child labour;
- To ensure that programmes aiming at preventing child labour are not discontinued.

Examples of ways how the inclusiveness of the systems in what regards the IMPACT dimension of Development could be enhanced are:

- The creation the conditions in order to guaranteeing the access of all children to education throughout the whole schooling path;
- The changing of procedures regarding the access to the programmes of the Youth Institute, harmonising them with the procedures regarding access to education.

Effectiveness of the systems would be boosted through:

- The attentive vigilance of the field of education, still marked by high rates of early drop-out from school;
- The improvement of the mechanisms for granting access to education and training to undocumented immigrants;

- The improvement of the performance of labour inspections;
- The enhancement of the labour inspectors' awareness of and training on the subject of trafficking.

Within the legislative framework regulating the IMPACT dimension of Participation, the set of laws orienting the fields of migration, asylum and residence are deemed to be compliant with international standards and considered, by relevant entities, to be addressing properly their respective scopes.

The new law regulating the entrance, permanence, exit and removal of non-national citizens came into force in the end of 2012 harmonised the rules and procedures to be applied to the returning of undocumented third-country nationals by implementing Directive 2008/115/EC and includes specific provisions regarding the situation of unaccompanied children and the situation of victims of human trafficking.

The latest Nationality Law reinforced the principle of "ius soli", as a criterion for the acquisition of Portuguese nationality, though "ius sanguinis" is still privileged. Namely, the law does not automatically grant nationality to all those who are born in Portugal, even if birth registration is mandatory for all people born in Portugal, even non-nationals.

Birth registration operates within the context of the project "Nascer Cidadão", established namely in view of fulfilling the fundamental right of the child to have a name and aiming at promoting the registration of children immediately after birth in three dimensions: registry office, health services and social security services.

Portugal is not amongst the countries with the highest figures regarding asylum request and, more specifically, asylum request by (unaccompanied) children. In 2012, Portugal received 299 applications, 54 of which regarding children (31 unaccompanied children). However, in the first nine months of 2013, these figures were already overpassed.

The Asylum Law, establishing the conditions and procedures for granting asylum or subsidiary protection or refugee status contain norms which are closely connected with the protection of child rights and is considered by governmental and non-governmental as complying and being effectively implemented, in line with international obligations.

Despite these positive notes, there is concern e.g. with the reports that no specific refugee status determination procedure for child asylum-seekers is provided and that children do not always have access to psychological care when needed.

Another issue regards the fact that, even if legislation guarantees all children, including undocumented children and asylum-seeking children, training in the Portuguese language and integration in the school system, in practice the situation reveals some flaws in implementation.

The need to prove academic qualifications and the need of proficiency in the Portuguese language are examples of conditionalities hampering the actual access to systems that is formally guaranteed by law. Also the procedures regarding unaccompanied children, from the moment of their arrival, is deemed to be subject of improvement and of a more comprehensive and coordinated support.

Other matters of concern regard the fact that the assisted voluntary return programme is not specific for victims of human trafficking and that EU nationals do not have access to it, as well as the situation of children that though having been born in Portugal are nonetheless non-nationals and lacking

proper documentation.

The compliance of the systems in what regards the Impact dimension of Participation would be enforced through full implementation of all the provisions of the Asylum Law, while the creation of conditions so that the right of undocumented children asylum-seekers to education may be concretised in full would be enhancing effectiveness. As for the reinforcement of inclusiveness this could include:

- Creating the possibility to do equivalence exams in the child's mother tongue;
- Considering the specific situation of the victims of human trafficking on the assisted voluntary return programme;
- Taking additional measures to ensure that victims of trafficking effectively have access to return and repatriation procedures which take due account of the individual's rights, security and dignity and make it possible to prevent re-trafficking;
- Developing co-operation with countries to which trafficking victims return, in order to conduct an appropriate assessment of the risks, ensure victims' safety on their return and improve their reintegration;
- Providing a better support for children that, despite having been born in Portugal, are nonetheless non-nationals;
- Developing a refugee status determination procedure for child asylum-seekers ;
- Introducing mechanisms providing child asylum-seekers with access to psychological care

Within the scope of the IMPACT dimension Protection, the Law of Protection of Children and Youth in Risk is the central, orienting instrument regarding the protection of children in peril being applicable to any child residing or present in Portuguese territory. This law is widely considered to be compliant with the essence of the Convention of the Rights of the Child, very appropriate, thorough and complete. The definition of children at risk used comes in line with the commonly used definitions used by the World Health Organisation.

Additionally, other instruments contribute to the protection of children from all forms of violence, exploitation, abuse and neglect. The latest revisions of the Penal Code included provisions regarding the sexual exploitation and sexual abuse of children, an explicit prohibition of all forms of corporal punishment against children and an article punishing all kinds of mutilation affecting sexual fruition. Besides, this matter is specifically addressed by the Second Programme of Action for the Elimination of Female Genital Mutilation, operating under the Fourth National Plan for Equality, Gender, Citizenship and Non-Discrimination.

Moreover, all the professionals working with children have the obligation of reporting the cases of violence to the Commissions for the Protection of Children and Young People (CPCJ) or to Courts. The same obligation exists for all citizens as violence against children is considered a public crime.

The measures of protection and promotion are guided by fundamental principles such as early intervention and subsidiarity in intervention. Also the prevalence of family is a guiding principle, giving echo to provisions in the Portuguese Constitution that state that children may not be separated from their parents unless the latter fail to perform their fundamental duties towards the former, and

then only by judicial decision.

The measures of protection and promotion are applied by the CPCJ or by the Courts and followed up by qualified technical teams. An assessment of the effects of the intervention is made which may lead to possible changes and revisions of the measures.

An overarching weakness of the promotion and protection system regards the identified gap between legislation and practice. Some of the provisions predicted in the Law on Protection are still not fully implemented and the response capacity is deemed to be insufficient regarding the needs.

The enforcement of the guiding principle of subsidiarity, in articulation with the reinforcement of the preventive nature of the principle of early intervention is pointed out as beneficial. This would include defining better the duties of the first line entities such as schools, kindergartens, hospitals, NGOs, etc. as well as providing them with more capability to intervene.

This could include more human and/or financial means though a major aspect regards the need for training in order to better tackle the phenomena being dealt with. Training is also regarded as beneficial for the other levels of the protection system, thus the CPCJs and the courts and it is identified, even by the Portuguese State in its latest report to the Committee on the Rights of the Child as one of major difficulties regarding the system of promotion and protection, the others being planning, coordination, assessment and cultural factors.

Also the Commissioner for Human Rights of the Council of Europe showed concern in its report with the possibility that increasingly difficult socio-economic situations for families and high levels of stress and pressure can result in serious risks of domestic violence towards children. The report also stresses the concern that the financial difficulties encountered by a number of local authorities and institutions and organisations providing social support at their level may adversely affect its efficiency and effectiveness (Muižnieks, 2012).

By taking in account all the situations mentioned in law, a child who is trafficked or illegally transited out of the country where he/she normally lives, is considered to be at risk whereby falling under the scope of the Law on Protection and being subject to the same protection laws and assistance as national children, regardless of his/her nationality.

In any case, the national legal framework in the field of action against human trafficking has evolved over the years, in line with Portugal's international commitments. The country has ratified different Conventions and protocols and is bound by the EU instruments on action against trafficking in human beings (THB).

Nationally, there is no single piece of legislation covering all aspects of the fight against human trafficking. The main legal provisions are contained in the Penal Code, which was revised and now defines THB as "by any means recruiting, enticing, transporting, harbouring or housing a child or transferring, offering or accepting him/her for the purpose of exploitation, including sexual exploitation, labour exploitation, begging, slavery, the removal of organs, adoption or exploitation of other criminal activities", thus incorporating the three constituent elements specified in the CRC: i) an action; ii) the use of certain means; iii) the purpose of exploitation.

Thus, the framework for action against human trafficking in Portugal is designed to cover all victims of THB subjected to different types of exploitation. The second National Action Plan against THB currently in force aims at involving all relevant actors and cover all aspects of action against THB.

The co-ordination of anti-trafficking activities has been entrusted to the Citizenship and Gender Equality Commission, within which a National Rapporteur for Human Trafficking was recently appointed.

The functioning of the co-ordinating body for the National Action Plan against THB under the Presidency of the Council of Ministers, rather than under a particular ministry, is considered as a positive sign regarding the political will to ensure that it operates on an inter-institutional basis. Another positive sign is the recent creation of a specific unit on human trafficking within the Immigration and Borders Service (SEF).

The creation of the Observatory on Trafficking of Human Beings (OTSH), in late 2008, is also deemed to be providing an important contribution. In order to improve the identification of victims of human trafficking, a "Reporting - Identification - Integration" system has been implemented, encouraging organisations to signal suspected cases of human trafficking to the OTSH.

The aforementioned Protocol on the Creation of a National Trafficking Victims Support and Protection Network (RAPVT), signed in mid-2013 is one of the latest developments regarding the matter of THB but other initiatives are also worth mentioning as, for instance, the Child Abduction Alert System, which allows for a quicker dissemination of information within the community, in order to trace missing children more effectively.

These aspects require the relevant involvement of different stakeholders, so far and overall, considered to be functioning in the right way. In any case, with the implementation of the RAPVT, the strengthening of the participation and involvement of NGOs and the adoption of a proactive approach in signalling and identification of victims of trafficking is expected.

All of these features should contribute for tackling the still identified reluctance of some civil society actors to report trafficking cases for fearing that the police investigation might expose victims to their traffickers or result in their removal from the country as undocumented migrants. There is the consideration that there is still much to be done in what regards the knowledge of indicators of human trafficking and the processes of case referral.

For the aforementioned situation it may also be contributing the fact that even if, in principle, a potential victim is entitled to assistance before the formal identification, this seems rarely to be the case in practice in Portugal, since in accordance with the procedures, the stage of integration only follows after identification.

Awareness-raising actions on the issue of THB have been developed and are scheduled to continue. However, awareness-raising measures aimed in particular at children and young people, as well as measures conducted at local level are considered to still be lacking.

Likewise, it has been pointed out that the impact of such campaigns has not been assessed and that future awareness-raising actions should be designed on the basis of an assessment of previous measures and should target identified needs. Evaluation of measures and interventions is besides identified as a common flaw that needs to be addressed.

In legal terms, the Penal Code foresees the criminal liability of legal persons, namely for crimes against sexual self-determination and for trafficking in human beings. Victims of trafficking in Portugal are entitled to legal assistance, and particularly to legal aid and every effort should be made to establish their identity, nationality and the whereabouts of their family, within a context of safeguarding the child's best interest.

However, the number of convictions for human trafficking is low and there is concern regarding possible gaps in the investigation procedures and the presentation of cases in courts. Furthermore, the compensation of victims of trafficking, despite the existence of legal possibilities, is an aspect that remains largely unexplored suggesting that there is a lack of information in Portugal for victims and for those who assist them about the existence and operation of the State compensation system.

Another specific flaw regards the fact that, at the moment, there is no provision anywhere in Portuguese law that rules on appointing a specific guardian in cases where children are victims of trafficking.

There is also no specific provision in Portuguese law and, more specifically, in juvenile justice on the non-punishment of victims of trafficking, even if generally speaking, the application of a criminal penalty presupposes that the offender acted in complete freedom and conscience in order to achieve a known and desired result. There is therefore no penalty in the absence of free will.

This connects to another identified need: improving the awareness and knowledge of the professionals of the justice system (judges, prosecutors, investigators, lawyers, etc.) but also of professionals of all relevant areas about trafficking in human beings and victims' rights.

In terms of protection, the compliance of the systems would be further enhanced e.g. through:

- The enforcement of the principles of subsidiarity and early intervention translated into a better definition of duties of first line entities and through providing these entities with more capability to intervene (e.g. technical means, training, etc.);
- The training to the various agents involved in protection and prevention;
- The guarantee of articulation between policies for violence control and prevention, conceived and established by various Government departments;
- The official representation of the Ministry of Internal Administration in the National Commission for the Protection of Children and Young People;
- The inclusion of specific provisions in Portuguese legislation namely regarding the compensation to victims of trafficking, the irrelevance of the consent of a victim of trafficking to the intended exploitation, and the non-punishment of victims of trafficking for their involvement in unlawful activities to the extent that they were compelled to do so.
- The issuing of guidance should be issued to public prosecutors advising them on the steps to be taken when prosecuting suspects who might be victims of trafficking;
- The strengthening of multi-disciplinary approaches to victim identification, ensuring that the potential victim is entitled to assistance even before the formal identification;
- Ensuring the actual access of victims to legal assistance in what regards the right to compensation;
- Ensuring that, in practice, the identification of victims is dissociated from their participation in the investigation and court proceedings;
- Ensuring the effective application of the legal provisions concerning the confiscation of the traffickers' assets.

The inclusiveness of the systems would benefit, for instance from:

- Guaranteeing that criminal courts order the offender to pay the victim damages and interest, even if the victim has not so requested;
- Ensuring that victims of trafficking - and those who assist them – are made aware of the right to compensation and of the procedures to follow;
- The creation of a shelter for child victims of trafficking or, at least, a specific unit within existing facilities with a technical team prepared for dealing with child victims of trafficking.

For boosting effectiveness of the dimension of protection it would be crucial, inter alia:

- To step up measures aiming at guaranteeing that the financial difficulties encountered by a number of local authorities and institutions and organisations providing social support at their level does not adversely affect its efficiency and effectiveness;
- To create more teams on site to accompany families and assess the way measures are being enforced;
- To invest in the reinforcement of parenting skills;
- To establish an integrated data collection and research system for child protection and violence prevention;
- To continue the efforts of awareness-raising and to launch new campaigns and/or support those organised by civil society, designed on the basis of an assessment of previous measures, including also ministries and entities represented in the CPCJs;
- To step up measures addressing the underlying causes of human trafficking and, as much as possible, make the necessary human and financial resources available to them;
- To involve further the non-governmental organisations in the planning and implementation of anti-trafficking measures;
- To ensure that all stakeholders involved in the identification of victims adopt a more proactive approach and step up their outreach work;
- To identify gaps in the investigation procedure and the presentation of cases in courts, with a view to ensuring that human trafficking offences are effectively investigated and prosecuted, leading to proportionate and dissuasive sanctions;
- To step up education and training regarding the phenomenon of human trafficking, providing professionals of the different sectors (justice, social area, health, education, law enforcement, etc.) knowledge e.g. on the indicators of human trafficking so that they are fully alert and truly aware of the trafficking phenomena and improving their capacity to intervene;
- To conduct and support research on issues such as trafficking in children, as well as evaluation studies, as sources of information for future policy measures.

ANNEXES

LIST OF ACRONYMS

ACIDI – High Commissioner for Immigration and Intercultural Dialogue (Alto Comissariado para a Imigração e o Diálogo Intercultural)

ACT - Authority for Labour Conditions (Autoridade para as Condições de Trabalho)

APAV – Portuguese Association for Victim Support (Associação Portuguesa de Apoio à Vítima)

APF - Family Planning Association (Associação para o Planeamento da Família)

BLH - Basic Law of Health (Lei de Bases da Saúde)

CAP - Shelter and Protection Centre (Centro de Acolhimento e Proteção)

CAVITOP - Centre for the Support of Torture Victims (Centro de Apoio a Vítimas de Tortura)

CCP – Code of Criminal Procedure (Código do Processo Penal)

CIG – Commission for Citizenship and Gender Equality (Comissão para a Cidadania e Igualdade de Género)

CITE – Commission for Equality in Labour and Employment (Comissão para a Igualdade no Trabalho e no Emprego)

CNPCJR - National Commission for the Protection of Children and Young People at Risk (Comissão Nacional de Protecção das Crianças e Jovens em Risco)

CPC - Code of Civil Procedure (Código do Processo Civil)

CPCJ - Commission for the Protection of Children and Young People (Comissão de Protecção de Crianças e Jovens)

CPR - Portuguese Refugee Council (Conselho Português para os Refugiados)

CRC - Convention on the Rights of the Child (Convenção sobre os Direitos da Criança)

CSF - Social District Commissions (Comissões Sociais de Freguesia)

DGAI - Directorate-General of Internal Administration

DOM Plan - Challenges, Opportunities and Change Plan (Plano DOM - Desafios, Oportunidades e Mudanças)

EMATs (Municipal Teams of Support to Court)

EU - European Union (União Europeia)

EUCPN - European Crime Prevention Network (Rede Europeia de Prevenção da Criminalidade)

GNR – Republican National Guard (Guarda Nacional Republicana)

GRETA - Group of Experts on Action against Trafficking in Human Beings (Grupo de Peritos em Ações contra o Tráfico de Seres Humanos)

IAC – Child Support (Instituto de Apoio à Criança)

IAS - Social Support Indexation (Indexante de Apoios Sociais)

ICPC - Centre for the Prevention of Crime

IEFP - Institute of Employment and Vocational Training (Instituto de Emprego e Formação Profissional)

ILO - International Labour Organization (Organização Internacional do trabalho)

INE – Statistics Portugal (Instituto Nacional de Estatística)

INIA - National Initiative for Childhood and Adolescence (Iniciativa Nacional para a Infância e Adolescência)

IOM- International Organisation for Migration (Organização Internacional para as Migrações)

IPSS - Private Social Solidarity Institution (Instituição Particular de Solidariedade Social)

ISS, I.P – Social Security Institute (Instituto de Segurança Social)

Municipal Councils - CLAS - Local Council for Social Action (CLAS –Conselho Local de Acção Social)

NAPIncl - National Action Plan for Inclusion (Plano Nacional de Acção para a Inclusão)

NGOs - Non-governmental organizations (Organizações Não-Governamentais)

NHS – National Health System (Sistema Nacional de Saúde)

NPMH - National Plan for Mental Health (Plano Nacional para a Saúde Mental)

NRP - National Reform Programme (Plano Nacional de Reformas)

NSR - National Social Report (Relatório Social Nacional)

OIM – International Organisation for Migrations (Organização Internacional para as Migrações)

OIT – International Labour Organisation (Organização Internacional do Trabalho)

OTSH - Observatory on Trafficking in Human Beings (Observatório do Tráfico de Seres Humanos)

PETI - Programme for the Prevention and Elimination of Child Labour (Programa para Prevenção e Eliminação da Exploração do Trabalho Infantil)

PIEC - Programme for Inclusion and Citizenship (Programa para a Inclusão e Cidadania)

PIEF - Integrated Education and Training Programme (Programa Integrado de Educação e Formação)

PII - Immediate Intervention Plan (Plano de Intervenção Imediata)

PJ - Criminal Police (Polícia Judiciária)

PNHRC Portuguese National Human Rights National Committee

PNTSH - National Plan Against Trafficking in Human Beings

PSP – Public Security Police (Polícia de Segurança Pública)

RAPVT - National Trafficking Victims Support and Protection Network (Rede de Apoio e Proteção às Vítimas de Tráfico)

SEF - Immigration and Borders Service (Serviço de Estrangeiros e Fronteiras)

SILC – Survey on Income and Living Conditions (Inquérito às Condições de Vida e Rendimento)

SNIPI - National System of Early Intervention in Childhood (Sistema Nacional de Intervenção Precoce na Infância)

TEIP - Educational Territories for Priority Intervention (Territórios Educativos de Intervenção Prioritária)

THB – Trafficking of Human Beings (Tráfico de Seres-Humanos)

UMAR - Women’s Union – Alternative and Response (União de Mulheres Alternativa e Resposta)

UNHCR - United Nations High Commissioner for Refugees (Alto Comissariado das Nações Unidas para os Refugiados)

UNICEF - United Nations Children’s Fund (Fundo das Nações Unidas para a Infância)

UNODC - United Nations Office on Drugs and Crime (Agência das Nações Unidas contra a Droga e o Crime)

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