

Alternative Report
To the Third and Fourth Periodic Reports of Portugal
Under the Convention of the Rights of the Child

This report was drafted by the Portuguese Committee for UNICEF (PCU), on the basis of research undertaken by the PCU itself but also of submissions made by the following Portuguese NGOs:

Associação de Protecção e Apoio à Víctima (APAV)
Portuguese Association for Victim Support

Associação para a Promoção da Segurança Infantil (APSI)
Association for Child Safety Promotion

Caritas Portuguesa
Portuguese Caritas

Confederação Nacional das Associações de Pais (CONFAP)
National Confederation of Parents Associations

Confederação Nacional de Acção sobre Trabalho Infantil (CNASTI)
National Confederation for Action on Child Labour

Fundação CEBI
CEBI Foundation to Communitarian Development

Instituto de Apoio à Criança (IAC)
Child Support Institute

Rede Europeia Anti-Pobreza (EAPN)
European Anti Poverty Network Portugal

Serviço Jesuíta para os Refugiados (JRS)
Jesuit Refugee Service Portugal

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Introduction and Overview

1. This report provides supplementary information on the state of implementation of the UN Convention on the Rights of the Child in Portugal following the submission by the Portuguese Government of its Third and Fourth Periodic Report in August 2011 (CRC/C/PRT/3-4). It is based on consultations with non-Governmental organizations working with children's rights and on a wide range of studies, reports and statistics covering different areas of relevance to the Convention.

Changes since 2001

Progress on the Concluding Observations

2. The extent of progress made in implementing the Concluding Observations issued by the Committee on the Rights of the Child in 2001 (CRC/C/15/Add.162), following its examination of Portugal's Second Report (CRC/C/65/Add.11), should be viewed in light of the fact that there has been a 10-year interval between Portugal's Second and current Third/Fourth Reports. It must also be viewed in the context of the ongoing financial economic and social crisis since 2008 (which has been aggravated in 2011 since Portugal asked for financial assistance).

3. In relation to the 2001 Concluding Observations, the most significant advances since then include:

- progress to define a national strategy to implement the Convention on the Rights of the Child (CRC) which, since 2007, has taken the form of the Initiative for Childhood and Adolescence (INIA)¹;
- the revision of the Portuguese Penal Code so as to explicitly prohibit all forms of corporal punishment against children;
- in relation to foster care, the regulation of its implementation² and the creation of the DOM Plan³;
- the Integrated Programme of Education and Training (PIEF) - associated with the Programme of Inclusion and Citizenship (PIEC) - used as a tool to prevent child-labour, school drop-outs and social exclusion of young people. Despite the high success rate of this programme, 91.5%, and its positive outcomes, the Government decided to discontinue it in May 2012;
- the Choices Programme⁴ to support the social inclusion of children and young people within vulnerable social and economic contexts, which is currently in its 5th generation (2013-2015).

Financial, Economic and Social Crisis

4. Since joining the Euro in 1999, Portugal has had the lowest economic growth rate in the Eurozone. Between 2001 and 2007 Portugal experienced only 1.1% average annual growth. The Government deficit was -6.5% of GDP in 2005 and -3.1% in 2007⁵. The Government unsuccessfully attempted to reduce the deficit, which reached a high of 10.1% of GDP in 2009. This increase resulted from an 11% drop in tax revenue due to the economic slowdown resulting from the 2008 global financial crisis. In 2010,

¹ This initiative seems to have been discontinued with the change of Government in June 2011. In September 2011 the new Government unveiled a four-year 'Social Emergency Programme' aimed at minimizing the impact of the economic adjustments on the country's most vulnerable families.

² By Decreto-Lei n° 11/2008, 17 January.

³ DOM is the acronym of the Portuguese words: Challenges, Opportunities and Changes. This plan aims to continuously improve the quality of children's and young people's homes through the promotion of institutionalized children's rights, their education, citizenship and deinstitutionalization in time. Following this plan, children's homes have been staffed with multidisciplinary teams for study and support of children's life projects meaning several possibilities: adoption, return to their families, and placement in foster families or independent life on their own for elder children.

⁴ Available at: <http://www.programaescolhas.pt/>

⁵ Eurostat, 2012a.

Portugal's debt was 93% of GDP⁶. At 108.1% in 2011, Portugal had the third highest general Government gross debt-to-GDP ratio in Europe (EU27), behind only Greece and Italy⁷. As debt continued to grow investors were unwilling to lend and in May 2011 Portugal was the third European country to seek a 'bailout' (of €78 billion) from the EU-ECB-IMF *Troika*⁸.

5. The policy response to the 2008 financial crisis included the implementation of a set of austerity measures in 2010 and 2011. These measures have left many Portuguese families struggling, significantly increasing the risk of children being exposed to poverty and affecting the enjoyment of many of the rights consecrated in the Convention on the Rights of the Child especially in terms of health, education and social protection. According to the latest available statistics, in 2011, 28.6% of the children in Portugal were at risk of poverty⁹. According to a recent study by the Portuguese Committee for UNICEF (PCU Study), as a result of the major cuts in child care benefits introduced by the Government in 2010 and 2012, approximately half a million children and young people (546.354) have lost their right to child benefit between 2009 and 2012. In addition to this, the Government has also lowered the amount of child benefit given to those children and young people who qualify for it¹⁰.

6. Other measures included freezing of nearly all insurance benefits and pensions, reducing the pensions tax allowance, reduction in means-tested unemployment assistance, family benefit and social assistance, increase in standard VAT rate (from 21% to 23%) including increasing the VAT on natural gas and electricity to standard rate, increase in income tax rates and reductions of tax credits, public sector pay cuts (up to 10%), reductions in numbers of employees in central Government and across public administration generally¹¹.

7. We strongly believe that the past as well as any austerity measures should be subject to a child rights impact assessment carried out by an independent institution.

8. In Portugal the estimated unemployment rate for the 4th quarter of 2012 was 16.9%¹². Youth unemployment in January 2013 stands at 38.60%, compared to 34.60% in January 2012 and 23.40% in January 2009. This is much higher than the long term average of 17.55%. These reported figures do not include the increasing number of emigrants (nearly 100,000 in 2012, especially skilled young people) and the increasing number of long-term unemployed who have given up actively seeking employment¹³. The percentage of children living in households where no adults are employed increased from 4.7% in 2008 to 7% in 2010¹⁴ and the percentage of children living in households with very low work intensity increased from 5.4% in 2008 to 7.1% in 2011, having reached its highest percentage of 7.9% in 2010 (the reduction

⁶ Part 6-II: the Spread of the European Sovereign Debt Crisis, Lia Menéndez, The University of Iowa, Center for International Finance and Development, April 2012.

<http://ebook.law.uiowa.edu/ebook/uicifd-ebook/part-6-ii-spread-european-sovereign-debt-crisis>

⁷ Eurostat, 2012a.

⁸ The Troika is composed by the European Commission (EC), the International Monetary Fund (IMF) and the European Central Bank (ECB).

⁹ Caritas Europe Report 2011.

¹⁰ Study by the Portuguese Committee for Unicef (*hereinafter*, PCU Study), "Childhood in Portugal, 2012-2013. The impact of the crisis on children and young people", Progress Report.

¹¹ Leahy, et al., 2013.

¹² This value is up 2.9% from the same quarter of 2011 according to a release from the National Statistics Institute.

¹³ Social Watch Report 2013.

¹⁴ National Social report (NSR), 2012.

observed between 2010 and 2011 being due to emigration). In 2011 there were 723 thousand unemployed adults with dependent children¹⁵.

9. Measures proposed by the Government for 2012/13 include: controlling costs in the health sector, reductions in costs in education by €380m, reductions in social transfers (other than pensions) of at least €180m by tightening eligibility criteria and decreasing some benefits, increasing personal income tax, reductions in numbers and in wages of Government employees¹⁶. However, in April this year Portugal's Constitutional Court has ruled several key articles of the 2013 state budget unconstitutional¹⁷. In rejecting four out of nine contested austerity measures from the budget, the Court ruling found against the Government in regard to approximately 1.5bn euros (£1.3bn) in measures necessary to meet the terms of the aforementioned bailout. As a result, further cuts in social security, health, education and public enterprises were announced by the Government.

10. It is imperative that when adopting austerity measures, the Government fulfills its minimum core obligation, under the International Covenant on Economic, Social and Cultural Rights (ICESCR), to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights enshrined in the Covenant¹⁸.

11. As underlined by the Committee on Economic, Social and Cultural Rights (CESCR), in its General Comment 3, even in times of severe resources constraints - caused by a process of adjustment or economic recession - the vulnerable members of society, namely children, can and indeed must be protected by the adoption of relatively low-cost targeted programmes.

12. The austerity measures adopted by the Government since 2010 have led to the denial or infringement of economic, social and cultural rights and as a result constitute retrogressive steps in the enjoyment of these rights by Portuguese children and their families.

13. In 2012, in a letter addressed to States parties on austerity measures, the Chairperson of the Committee on Economic, Social and Cultural Rights (CESCR) has defined four requirements that must be met by austerity programmes, in order to ensure that States parties do not act in breach of their obligations under the Covenant¹⁹.

14. This report draws attention to the Government's obligation to ensure that the austerity measures (past and future) are in line and comply with these requirements. Failure to do so will be contrary to the Government's international legal obligations under the ICESCR.

Overarching concerns

Traditional Perception of Children

15. Irrespective of the current economic and social crisis, which undoubtedly poses overwhelming challenges, major progress can and must be achieved to make children's rights a reality. Some measures can be achieved without increased funding. The reason for the lack of progress may lie in the fact that Portugal has not yet fully embraced the vision of the Convention. Even though some progress has been

¹⁵ Study by the Portuguese Committee for Unicef (PCU), "Childhood in Portugal, 2012-2013. The impact of the crisis on children and young people", Progress Report.

¹⁶ Social Watch Report 2013.

¹⁷ The court rejected a measure to scrap summer holiday bonuses for public sector workers and pensioners, as well as cuts to unemployment and sickness benefits.

¹⁸ General Comment 3 of the Committee on Economic, Social and Cultural Rights (CESCR)

¹⁹ Letter dated 16 May 2012 addressed by the Chairperson of the CESCR to States parties to the ICESCR.

made in this regard, the truth, however, is that twenty three years since the ratification²⁰ of the Convention by Portugal children are still not seen by all policy makers as rights-holders who can play an active role in the enjoyment of their rights. This has led in the last two decades to a lack of focus on pro-child policies and to an incomplete and piecemeal implementation of the Convention.

Lack of Leadership and Commitment in Relation to Children's Rights

16. Many countries across the world, rich and poor alike have to date introduced constitutional reform as a means to embed children's rights into the foundations of their own legal system. In the Portuguese Constitution the rights of children are still subordinate to the rights of the family, thus perpetuating a protectionist attitude to the detriment of an empowering one. Portugal should move to enshrine the four fundamental children's rights principles in the Constitution in order to underpin a fundamental shift in law, policy and practice regarding children. Building a new culture of respect for children in Portugal will take time and effort. While amending the Constitution alone cannot achieve that goal, it can certainly alter the legal and policy landscape so that the cultural change required can take place.

17. One measure of the lack of leadership and an indicator of the persistence of an outdated attitude in relation to children's rights is the fact that, since the extinction of the National Commission for Children's Rights in 2000, there is no responsible mechanism at the national level for monitoring the implementation of the Convention, collecting information/data specifically about children's lives in the national context, assessing the impact of public policies on children's rights and coordinating the different services that deal with children across ministries. This is a major setback and a clear dereliction.

18. In February 2013, three bills were introduced in Parliament by political parties currently in opposition, proposing the elaboration of an annual report on the state of childhood²¹ (monitoring mechanism), the creation of a national commission on children's and young people's rights²² under the Ministry of Social Affairs (follow-up mechanism) and the creation of an extraordinary programme to eradicate child poverty²³ (intervention mechanism). All three initiatives were rejected by Parliament, having been voted against by the current Government parties.

I. General measures of implementation (Articles 4, 42, 44.6)

National Strategy for the Implementation of the Convention

19. Since 2001 National Action Plans for Inclusion (NAPI) were put in place to eliminate situations of social exclusion which affect children and to give children every opportunity for social integration. Following the recommendation of the Committee to develop a comprehensive national strategy for the implementation of the Convention, in 2007 the then Government initiated the process of developing an Initiative for Childhood and Adolescence (INIA).

20. The conception and implementation of INIA was based on 16 strategic objectives drawing from the Convention's guiding principles; it incorporated a Plan of Action (INIA 2008-2010). In spite of the

²⁰ Portugal ratified the CRC on the 21st of September 1990.

²¹ Projecto de Lei N.º 356 /XII/2.^a

<http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailheIniciativa.aspx?BID=37527>

²² Projecto de Lei N.º 357/XII/2.^a

<http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailheIniciativa.aspx?BID=37527>

²³ Projecto de Lei N.º 355/XII/2.^a

<http://www.parlamento.pt/ActividadeParlamentar/Paginas/DetailheIniciativa.aspx?BID=37527>

efforts developed, this strategy was not rights-based, it did not have an implementation plan and it was not linked to specific budgetary allocations.

21. With the change of Government in June 2011, this Initiative seems to have been discontinued. As a result Portugal currently does not have in place a comprehensive national strategy for the implementation of the Convention.

22. In September 2011, Portugal's new Government unveiled a four-year (2011-2014) 'Social Emergency Programme' aimed at ameliorating, to some extent, the impact of the austerity measures on the country's most vulnerable families.

23. The Commissioner for Human Rights of the Council of Europe, following a visit to the country in May 2012, shared the concern of many NGOs in relation to the fact that the austerity measures implemented in 2010-2011 may weaken the achievements made following the ten-year implementation of NAPI (between 2001 and 2010). Indeed, these plans had among their priorities combating child poverty²⁴. The NAPI for 2008-2010 in particular 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 (i.e through increasing the number of places in crèches) as well as measures to combat inequalities in education (notably through the Choices programme). While some of these measures continue to be implemented, i.e through the Choices Programme which main objective is to promote the social inclusion of disadvantaged young people, the fiscal austerity measures have adversely affected previous policies aimed at supporting the income of families.

Recommendations

24. Develop a human rights-based national strategy for the implementation of the Convention, including a prioritized, time-lined and costed action plan. The Strategy should be linked to specific budgetary allocations.

25. Ensure that the Concluding Observations of the Committee on the Rights of the Child are object of public debate in Parliament.

Coordination

26. In spite of the Committee's recommendations in both its Concluding Observations of 1995 and 2001, for the Government to define a structure for national coordination of the implementation of the Convention, this has not yet materialized. There is no structure at the national level responsible for the coordination and monitoring of children's affairs. There is a noticeable and total omission in the Government's periodic report in relation to this matter.

27. The fragmentation of responsibilities for children's services and policy remains a major weakness. The various departments (health, education, justice, social security) all too often work independently, which results in an inconsistent policy approach and lack of coordination at the level of budgetary allocation and service delivery. This fragmentation also leads to a lack of accountability.

28. Attempts to create an Ombudsman for Children in 1998 were unsuccessful and given the current financial and economic constraints it might be unrealistic to ask for the creation of an Ombudsman for Children. Currently, the general Ombudsman Office deals with children's issues under the same department that deals with the elderly and people with disabilities and its activity mainly consists of a children's phone line available to children and young people at risk who wish to make a complaint²⁵.

²⁴ http://www.coe.int/t/commissioner/default_en.asp

²⁵ <http://www.provedor-jus.pt/?idc=54>

Recommendations

29. Create the Office of an Ombudsman for Children or an autonomous Unit for the rights of the child under the existing General Ombudsman Office with a broader mandate and adequate financial and human resources.

30. To respond to the lack of a national structure for coordination and monitoring of the implementation of the Convention, create a Minister for Children and Youth Affairs to bring a seamless new approach to policy development and integrated service provision for children; with the ultimate objective of ensuring children have the best possible start to life, are cared for and protected and have the opportunity to develop their full potential.

Allocation of resources

31. The state budget still does not disaggregate information to show the proportion allocated to the implementation of the rights of the child at the national and local levels.

32. The Committee has in its 1995 and 2001²⁶ Concluding Observations showed concerns in relation to the full application of art.4^o of the Convention and the eradication of poverty.

33. The policy measures adopted by the then Government in 2008 to combat child poverty have been overtaken by the 'Social Emergency Programme' put in place by the new Government in September 2011 and aimed at mitigating some of the impact of the austerity measures on the most vulnerable families. This, in effect, means a move away from Government policies that combat child poverty, to instead introduce Government measures that attempt to minimize the worst of the negative effects on child poverty brought about by the Governments own policies.

34. The Ombudsman'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 (for instance, unemployment). The maximum income threshold for accessing such benefits was also substantially lowered. Against this background, in December 2011 the Ombudsman called on the authorities as a matter of urgency to simplify 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.

35. According to the Portuguese Committee for UNICEF Study, in 2011 deprivation rates were as high as 20,9%, placing Portugal near the bottom of the 27 European countries assessed. Amongst the most affected age groups were children and young people whose deprivation rates were higher (25,2%) than those for the general population. A child is considered 'deprived' or 'severely deprived' depending on whether he or she lacks 3 items or 4 or more items from a list which includes, meat/fish meal every second day, a heated house, one week holidays, a TV, a washing machine, a phone line connection, a car etc , The scenario of childhood deprivation becomes even more aggravated if we consider that 64,6% of children and young people in Portugal do not have access to, at least, one of the 9 items on the list.

36. Local authorities and schools have indicated that many children eat their first meal of the day in school. Conscious of the deprivation levels many children are experiencing, some local authorities have decided to open the canteens during school holidays to ensure that those children have at least, one complete meal per day.

²⁶ In 2001 the Committee urged the State to find ways of guaranteeing respect for the rights of all children including those from disadvantaged background and from isolated communities, in particular in the sectors of health, education and other social welfare services. (CRC/C/15/Add.162), §11.

37. According to the abovementioned PCU study, the social integration income, a policy measure introduced in 2008 to combat child poverty, has been object of successive cuts in the last three years, not only in terms of the number of its beneficiaries but also in terms of the monthly amount paid. Between 2010 and 2012 46.342 families lost their right to the social integration income, which represents a decrease of 22,4%. Children from poorer backgrounds have been particularly affected. The risk of poverty and social exclusion for a single parent household was 39% in 2011²⁷.

38. The key problem is that child poverty in itself has not been addressed by the Portuguese authorities in a multidimensional way. A national strategy to address child poverty is required, one that adopts a coordinated, integrated approach, bringing together the different departments involved (health, education, social security services, employment, finances, economy), setting specific and time-bound targets²⁸ for the reduction of child poverty and social exclusion. The current approach addresses child poverty as a “social emergency problem” through specific and isolated measures that are included in a broader Social Emergency Plan that cover all vulnerable groups.

39. In relation to target-setting it should be mentioned that as part of the 2020 EU Strategy for jobs and growth, which sets five EU targets²⁹, in 2011 the Portuguese Government in its National Reform Programme (NRP) set the target of reducing by at least 200,000 the number of people living in poverty, by 2020. According to the 2012 National Social Report (NSR), the Government did not foresee any change in 2012. Child poverty and social exclusion were acknowledged as significant challenges in Portugal’s 2012 National Social Report (NSR). Yet, no concrete targets aimed at reducing the number of children living in poverty were included³⁰.

Recommendations

40. The national budget should provide disaggregated information on the proportion of the budget allocated to the implementation of the rights of the child at the national and local levels.

41. Create a National Strategy that addresses child poverty in a multidimensional way through a coordinated, integrated approach that brings together the specific departments involved (health, education, social security services, employment), and sets specific and time-bound targets³¹.

Data Collection

42. In spite of several initiatives, there is still no comprehensive mechanism for generating, collecting, analyzing and coordinating data on the various aspects of children’s lives.

43. There is a significant information gap regarding children below the age of 3, children who have been sexually abused and exploited children, children from ethnic minorities, including Gypsy/Roma children, children subject to torture or other cruel, inhuman or degrading treatment or punishment, family reunification, illicit transfer and non-return, children with disabilities, substance and alcohol abuse, child

²⁷ <http://appsso.eurostat.ec.europa.eu/nui>

²⁸ The National Action Plan for Inclusion (NAPI) in 2001 established a target to eradicate poverty until 2010. The next NAPIs that followed no longer established targets.

²⁹ Five EU targets for 2020: 1) Employment: at least 75% of 20-64 year-olds employed; 2) R&D/innovation: 3% of the EU’s GDP invested in R&D/innovation; 3) Climate change/energy: greenhouse gas emissions 20% lower than in 1990 (or 30% if conditions are right); 20% of energy from renewable sources; 20% increase in energy efficiency; 4) Education: reduce school drop-out rates to below 10%; at least 40% of 30-34-year-olds completing third level education; 5) Poverty/social exclusion: at least 20 million fewer people in or at risk of poverty and social exclusion. Information available at: http://ec.europa.eu/europe2020/pdf/targets_en.pdf

³⁰ ec.europa.eu/europe2020/

³¹ The NAPI could be redesigned to meet these criteria.

trafficking. Also, in many areas the data collected does not cover all ages of children. Where data related to children exists, it is rarely disaggregated and often not easily accessible.

44. There is no reference made in the Government's report to the situation of children up to 3/5 years of age who live with their convicted mothers in prison. It is urgent to document these situations, to verify the conditions in which these children live and ultimately to ensure that these children's rights are safeguarded throughout such a traumatic process.

Recommendation

45. Create a comprehensive and integrated data collection system, based on an accurate assessment of the reality, responsible for collecting, analyzing and publicizing disaggregated information on all aspects of children's lives, guided by the best interests of the child and covering the entire and specific period of childhood up to age 18 (as recommended by the Committee in 2001).

International Cooperation

46. No information was given by the Government, in the periodic report, about its contribution to international cooperation.

ODA

47. An average of 0.28% of GNI has been allocated to ODA since 2002. However, if we dismiss the 561 million Euros effect of debt relief to Angola, made in 2004, the average goes down to 0.24% of GNI to ODA. In 2011 the percentage of GNP to ODA was 0.29%³². Thus, Portugal is below the average European ratio GNI/ODA which is 0.34% after the enlargement of the European Union to the Eastern countries. Before that, the average was 0.52%, almost the double of the Portuguese average³³.

48. This report welcomes the fact that the Millennium Development Goals (MDGs) were integrated in 2005 in the five year strategy for Portuguese cooperation³⁴ and set as one of the top priorities for the Official Development Aid (ODA). In 2006, operational plans were discussed and approved on a national level to deliver the strategy and those goals. According to the official assessment³⁵ that took place in 2009, the plans were successfully implemented and the MDGs were mainstreamed in all Portuguese Development Cooperation;

49. However, both the strategies (national and sectorial ones subsequently adopted), and its implementation, monitoring and evaluation, lack a perspective of the impact of cooperation efforts and ODA expenditure on children, specially the most vulnerable and marginalized.

50. The new development cooperation strategy, yet to be adopted, intends to focus on three priority sectors: education, health and security; and on three new themes for Portuguese aid: private sector, innovation and climate change. Children and the safeguard of children's rights, have either been absent or poorly addressed in discussions about these new strategic options, (particularly about specific concerns that may arise regarding their safeguard under the private sector and corporate practices), and most probably will again not be reflected in the Portuguese Development Cooperation Strategy and operational plans.

³² AidWatch Report of the Portuguese NGDO Platform 2012.

³³ Social Watch Report 2013.

³⁴ "A Strategic Vision for Portuguese Development Cooperation",
http://icsite.cloudapp.netdna-cdn.com/images/cooperacao/visao_estrategica_cp_ing.pdf

³⁵ *Idem.*

Recommendations

51. Place children's rights at the centre of Portuguese Development Cooperation which should become a State Policy and be guided by human rights. As it currently stands it is a Government policy, thus subjected to all electoral and economic cycles irrespective of the commitments made with partner countries, civil society and the people in need.

52. It is highly recommended that Portugal aligns its ODA policy with Busan principles, namely with transparency and predictability, to allow fostering both accountability of its practices and strategic programming to its partners.

53. Reverse the decline in ODA as a percentage of GNP and, in line with international commitments and recognized norms, opt for a staged series of increases towards the 0.7% UN target and more immediately towards common EU commitments.

Cooperation with civil society

54. A substantial part of the Programme of Social Emergency is to be implemented by civil society organizations co-financed by the State, which include the Private Institutions of Social Solidarity (IPSS) and the Union of Misericórdias. This programme, however, was elaborated without a broader involvement of other non-Governmental organizations.

55. Given the unprecedented increase in demands for support and assistance faced by civil society organizations, this report is concerned that the resources allocated by the state to some of these organisations are not sufficient to adequately provide the services foreseen in the Programme of Social Emergency and to respond to other challenges resulting from the financial crisis³⁶.

Recommendations

56. Co-operation and dialogue should be extended by the Government to civil society organisations, other than the IPSS and the Union of Misericórdias, in the conception, implementation and monitoring of policies and programmes to prevent or alleviate poverty and social exclusion.

57. Increase the resources allocated to the civil society organizations responsible for the implementation of the Social Emergency Programme.

Measures taken to make the principles and provisions of the Convention widely known

58. Awareness of the Convention on the Rights of the Child among children and the public in general is still low. There continues to be also a lack of awareness of the Convention among professionals working with children due to the absence of both formal education in relation to its provisions and in-service training programmes.

Recommendation

59. Develop a comprehensive programme to ensure that all children learn about and understand their rights as enshrined in the Convention and ensure that education on child's rights is integrated into all training curricula and is made available to all those working with children, particularly health service professionals, teachers, early childhood workers, legal professionals, the judiciary and the police.

III. General Principles (Articles 2, 3, 6, 12)

Non-Discrimination

³⁶ CARITAS, Portugal, 2011.

60. This report welcomes the creation of the Choices Programme in 2001 and its contribution towards social inclusion of children and young people coming from vulnerable socio-economic backgrounds, particularly children of immigrants and ethnic minorities. This programme is currently in its 5th generation (2013-2015).

61. In its 2001 Concluding Observations, the Committee recommended that particular attention be given to Gypsy/Roma children. The number of Gypsies/Roma in Portugal is estimated to be between 40 000 and 60 000. It has been widely reported that they face various forms of discrimination³⁷ in all spheres of life. They are confronted with particularly serious difficulties in the areas of housing³⁸, education and access to employment³⁹, resulting in the persistence of their social exclusion and poverty⁴⁰.

62. This report welcomes the formal approval by the Government, in March of this year, of the National Strategy for the Integration of the Gypsy/Roma Communities for the period 2012-2020, as part of the EU Framework for National Roma Integration Strategies up to 2020.

63. The Government acknowledges in the strategy the lack of data on the situation of Gypsies/Roma as a main obstacle to effective policy-making. This is an important gap to be bridged. We encourage the authorities to promptly carry out the study on the socio-economic situation of Gypsies/Roma which is foreseen in the strategy.

64. The Commissioner for Human Rights of the Council of Europe notes that the High Commission for Immigration and Intercultural Dialogue (ACIDI), the institution in charge of following up policies and programmes for the Gypsies/Roma, comprises, since 2007, an Office for the support of the Gypsy/Roma communities (known as GACI). It finds it regrettable, however, that this Office does not to date include any member of the Gypsy/Roma community⁴¹.

³⁷ On 1 July 2011, the European Committee of Social Rights (ECSR) found that Portugal was in breach of Article E (non-discrimination) of the European Social Charter (revised) in combination with Articles 31, paragraph 1 (right to access to adequate housing), 16 (right of families to social, legal and economic protection) and 30 (right to protection against poverty and social exclusion). This decision relates to a collective complaint against Portugal lodged in 2010 by the European Roma Rights Centre (ERRC).

³⁸ Two particularly difficult types of situations regarding housing were highlighted in a letter of the Council of Europe's Commissioner for Human Rights to the Portuguese authorities in 2009: Gypsy/Roma settlements which had been fenced and in one case (in Beja, south of Portugal) walled, with only one entrance and exit route; and the refusal to provide access to water in certain Gypsy/Roma settlements. Also see Amnesty International Annual Report 2012.

³⁹ Due to high levels of unemployment, have been particularly affected by the cuts in child and unemployment benefits, as well as the social integration benefit (RSI).

⁴⁰ According to the 2009 RAXEN Thematic Study on the housing conditions of Roma and Travellers, 16 to 30% of Gypsies/Roma in Portugal live in substandard conditions. This applies both to social housing and informal settlements. A 2009 study on the situation of Portuguese Gypsies/Roma in the field of education revealed that 52,3% of the Gypsy/Roma population in Portugal had no education at all, 36,9% of them were functionally illiterate and 9% illiterate.

⁴¹ In its last Concluding Observations, the UN Committee on the Elimination of all Forms of Racial Discrimination (CERD)⁴¹ urged the Government to promote the economic, social and cultural rights of Gypsies/Roma, while respecting their culture in accordance with the principle of equality and ensuring that all actions and policies affecting them are designed, implemented, monitored and evaluated with the full participation of Gypsies/Roma and their organizations, bearing in mind the Committee's general recommendation No. 27 (2000) on discrimination against Gypsies/Roma. Concluding Observations of the CERD to 12th to 14th periodic reports, CERD/C/PRT/CO/12-14.

65. Measures to provide additional support to Gypsy/Roma pupils in the education system have been taken through the ongoing Choices Programme. Gypsy/Roma children were also one of the groups targeted by the Programme of Education and Training (PIEF) now extinct.

66. Another group that is particularly vulnerable to poverty and social exclusion are immigrants. Many of the immigrant women in a particularly vulnerable situation constitute single-parent families. Many of these families do not have a support network or relatives to whom they can revert. They face difficulties in relation to access to health, education, childcare services and other social security services and benefits⁴². The processes of legalization of their situation are complex and lengthy particularly when it comes to family reunification when there are children involved.

67. This report welcomes the Second Plan for Immigrant Integration⁴³, approved in August 2011, which set out 90 measures, a number of which focused on providing support to immigrant citizens who, for different reasons, find themselves in more vulnerable socioeconomic situations. Specific measures include: making immigrants eligible for the basic literacy training offered to beneficiaries of Social Insertion Income; development of an Immigrant Entrepreneur Program and Mentor Program to encourage immigrants to start new businesses; ensuring social assistance for immigrants living in situations of extreme poverty, regardless of residence status.

68. Other immigration measures undertaken include a simplification of the family reunification process, and allowing immigrants to request an extension of stay in Portugal if unemployed or in a situation of unstable temporary employment.

Recommendations

69. The Government should work towards replacing the Social Emergency Programme – which merely responds to the worst effects of austerity by ameliorating some effects – and instead introduce a multidimensional, integrated strategy to eradicate child poverty.

70. Seize the opportunity provided by the recently approved Strategy for the Integration of the Gypsy/Roma Communities to make progress in areas covered by the Strategy. Special attention should be given to the collection of data on the situation of Gypsy/Roma children and a close cooperation should be kept between different Governmental departments dealing with the implementation of the Strategy as to evaluate its progress.

71. Monitor the implementation of the measures foreseen in the Second Plan for Immigrant Integration especially those which have an impact on immigrant children's rights. In coordination with the services that put in practice these measures, develop a process of evaluating its weaknesses and strengths so that lessons can be learnt for future initiatives.

72. As well as simplifying the process of family reunification, simplify the process of legalization of illegal immigrants.

⁴² The Human Rights Committee in its last Concluding Observations⁴² recommended that the Government should intensify measures to ensure that immigrants do not suffer from discrimination in access to housing, employment, education, equal wages, health care and public services as well as participation in public life. The State party should also take steps to ensure that law enforcement personnel refrain from racist and discriminatory conduct, including through intensified awareness-raising efforts. Concluding Observations of the Human Rights Committee to 4th periodic report, CCPR/C/PRT/CO/4.

⁴³ <http://www.migrationpolicy.org/pubs/tcm-integration.pdf>

Survival and development

73. Despite some progress made over the past years, accidents/injuries remain the main cause of mortality in the age group of 1 to 18 years old in Portugal⁴⁴. Traffic accidents are the first cause of children's and adolescents' death, followed by drowning and falls⁴⁵.

74. There is the need to establish an operational structure responsible for: supporting strategic planning; implementing child safety measures; developing and implementing a national strategy for the prevention of children's and adolescents' accidents; ensuring coordination of all the initiatives in this area; guaranteeing the financing of good practices proven to be effective and also of professional training and research in this area; guaranteeing that child safety cross-cuts all national policies.

75. The need to develop plans of action for the prevention of accidents at the national level was stressed by the WHO and the EU⁴⁶. Portugal already has a Plan of Action for Child Safety (PASI)⁴⁷ whose drafting was coordinated by the former High Commissioner for Health but is yet to be adopted and implemented by the Portuguese Government.

76. In relation to road safety, efforts must be developed to ensure the safeguard of children. In spite of the existing legislation, many children are still transported in vehicles without safety belts or without a child restraint system adapted to their size and weight.

77. In relation to collective transportation of children (in buses and coaches), in spite of the specific legislation in force⁴⁸, in practice there have been different interpretations and practical application of some of its provisions which affect children's safety. This legislation also allows unjustified exceptions.

Recommendation

78. Adopt and implement the Plan of Action for Child Safety (PASI).

79. Create an effective mechanism that can respond promptly to denounced situations of children being transported without a safety belt or a child restraint system, putting their safety in danger.

80. Review Law N° 13/2006 of 17 April on collective transportation of children as to make clear the obligation of using child restraint systems, not allowing any unjustified exceptions.

81. Drowning (up to 18 years of age) is the second cause of children's accidental death in Portugal. Between 2002 and 2010, 180 drowning took place resulting in children and young people's deaths. According to recent studies, for each child who died, 2 or 3 were hospitalized as a result of drowning⁴⁹. Drowning happens at no particular time of the year and usually in a family environment/setting⁵⁰. More than half of the drowning of children up to the age of 4, and a significant percentage between 5 and 9 years of age, happened in swimming pools, tanks and wells. No prevention measures have been taken by the Government in this respect.

⁴⁴ National Programme for the Prevention of Accidents, www.dgs.pt

⁴⁵ More information available at: <http://www.apsi.org.pt/conteudo.php?mid=24101112,2410111211,1952.2032>

⁴⁶ Resolution EUR/RC55/R9, Recommendation 2007/C 164/01.

⁴⁷ PASI was designed in the framework of the European project *Child Safety Action Plan* (CSAP), coordinated by the European Child Safety Alliance (ECSA) under the supervision of a Commission of Experts composed by representatives of the WHO, UNICEF and Universities of Keele and West of England and with the support of the European Commission.

⁴⁸ Law N° 13/2006 of 17 April.

⁴⁹ Information available at www.apsi.org.pt/

⁵⁰ http://medicosdeportugal.saude.sapo.pt/utentes/crianca/criancas_seguras_na_agua

Recommendations

82. Bearing in mind the European Standards in this regard, create a legal framework for swimming pools⁵¹ which should include all safety requirements and the obligation to have a protective fence in pools of family use, condominiums and holiday tourist sites (*aldeamentos turísticos*).

83. Promote the practical application and monitoring of the existing legislation in relation to protection and covering of wells. Review the legal framework for tanks and wells so as to include public washing tanks and watering tanks and update the safety technical requirements in relation to their coverage.

84. Falls are the most frequent accident and the third cause of children's accidental death in Portugal. According to a recent study, between 2000 and 2009, 104 children died and 40.000 were hospitalized as a result of falls. 31% of these deaths and 16% of these hospitalizations resulted from a fall from building and construction sites⁵². The falls with most serious consequences to the child occur in houses and schools from balconies and windows.

Recommendations

85. Publish the new General Framework for Building sites, which include in its final version of January 2007 the change of building regulations so as to reduce the risk of children's falls.

86. Make available data on hospitalizations and visits to emergency services as a result of children's and young people's accidents, as death rates only show part of the problem. In order to assess the magnitude of the problem and the impact it has on children's and adolescents' quality of life, information must be provided on the morbidity of accidents namely temporary and lifelong incapacities.

IV. Civil rights and freedoms (Articles 7, 8, 13, 14, 15, 16, 17, 19, 37 (a))

Protection of children victims of violence and abuse

Corporal punishment

87. This report welcomes the amendments made to the Portuguese Penal Code in 2007 aiming at prohibiting all forms of corporal punishment against children.

88. It is crucial, however, to bring the reasons behind this legislative change into people's everyday lives. The average Portuguese person is not aware of the legislative change and of those aware, many, especially in the family context, would still believe that it is acceptable for parents to smack their children.

89. In addition, there is a general concern, also expressed by The Special Representative of the Secretary-General on Violence against Children⁵³ and by the Council of Europe Commissioner for Human Rights that the increasingly difficult socio-economic situations for families and high levels of stress and pressure can result in serious risks of domestic violence towards children and that this need to be carefully monitored.

⁵¹ Currently the legislation enacted only applies to swimming pools of water recreational parks.

⁵² Information available at www.apsi.org.pt/

⁵³ For the Special Representative's Annual Report please see:

http://srsg.violenceagainstchildren.org/sites/default/files/documents/docs/A-HRC-22-55_EN.PDF

90. The national and local Commissions for the Protection of Children and Young People at Risk (CPCJ)⁵⁴, have been 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, given the workload and the lack of resources that these Commissions are currently experiencing, it is unrealistic to expect this to be achieved.

91. The Government has adopted a series of plans against domestic violence since 1999⁵⁵, currently running Plan IV (2011-2013). However, these plans target mostly women and not children.

92. In the framework of the Council of Europe, a campaign entitled “Raise your hand against smacking” was launched in June 2008 challenging corporal punishment and advocating for a total abolition of this practice by promoting positive, non-violent parenting in its 47 member states, including Portugal. A media pack and an information pack were produced but the Government has not used this opportunity to its full potential to bring the message to Portuguese homes.

93. To this date the measures taken by the Government to raise awareness of the unlawfulness of this practice, particularly in the family context, have been ineffective and need to be strategically targeted in order to achieve change.

94. An awareness campaign should be promoted by the Portuguese Government targeted to the general public through the media, especially the TV, broadcast prime time using well-known celebrities to support the abolition of corporal punishment of children.

95. More emphasis must be put on prevention mechanisms at the national and local levels in relation to the practice of corporal punishment. At the local level, the CPCJ referred to in the periodic report as prevention mechanisms lack full time human resources in order to carry out their work as most are run by part-time members with temporary contracts. Following the trend of the last few years, most members of the restricted Commissions work part-time, 92.7 % (2240). Not unlike previous years we note that 78,2% (229) of the CPCJ referred having lack of experts in their restricted modality (direct intervention in concrete cases). The expertise mostly needed is the legal one, 26,7% (107 CPCJ) followed by Psychology 17% (68%), Sociology 17%(68%), Pedagogy 11,0% (44), Health 9,5%(38) and social service 7,2%(29). Annual Activity Report of the CPCJ, Ed. May 2012.

96. The Council of Europe Commissioner for Human Rights commended the important work carried out by this institution since its inception, and the multiplication of commissions at local level (308 in 2012). However, he showed concern about the financial difficulties encountered by a number of local authorities and institutions and organisations providing social support at their level which may adversely affect its efficiency and effectiveness, given that local commissions consist of partnerships between local authorities and various other public and private stakeholders.

97. The lack of data and coordination between the various Government departments (Justice, Internal Administration, Education and Social Security) dealing with policies for violence control and prevention, constitute a major setback.

⁵⁴ Hereinafter CPCJ.

⁵⁵ I National Plan Against Domestic Violence - 1999-2002 (RCM n°55/1999, 15 June)

II National Plan Against Domestic Violence - 2003-2006 (RCM n°88/2003, 7 July)

III National Plan Against Domestic Violence - 2007-2010 (RCM n°83/2007, 22 June)

IV National Plan Against Domestic Violence - 2011-2013 (RCM n°100/2010, 17 December)

Recommendations

98. Undertake a national campaign targeting the general public involving the participation of Portuguese celebrities from the arts, sports and politics to raise awareness of the unlawfulness of corporal punishment of children.

99. Invest on prevention mechanisms already in place as the CPCJ to maximize their work by providing them with the necessary resources and expertise.

100. Create an effective system of coordination led by the National Commission for the Protection of Children and Young People where the focal points in the various Government departments dealing with policies for violence control and prevention would be brought together (for example in the form of an inter-ministerial task force) to effectively coordinate efforts.

101. An integrated system of data collection and research on child protection and violence prevention needs to be put in place. There should be a central structure responsible for gathering the information provided by the different services/departments and subsequently analyze, treat and publish it.

V. Family environment and alternative care (Articles 5, 9, 10, 11, 18, 20, 21, 25, 27.4))

Family environment

102. We are concerned that the austerity measures implemented by the Government have been contrary to, or worsened, the support to families in their child-rearing responsibilities as recommended by the Committee in 2001. These measures have also compromised the protection of the rights of the child in the context of the family environment.

103. As stated before, the increased number of families with children with both parents unemployed that depend on social support, the series of major cuts in child care benefits, implemented in November 2010 and January 2012, the successive cuts in the number of families beneficiaries of the social integration income, the unprecedented raise in taxes and the cuts in social security, health and education services had a massive impact on the protection of children's rights with a most significant increase on child poverty.

104. There is a danger that the increasingly difficult socioeconomic situation of families and the high levels of stress and pressure can result in serious risks of domestic violence towards children, as expressed by The Special Representative of the Secretary-General on Violence against Children and by the Council of Europe Commissioner for Human Rights. According to the latest CPCJ annual report, released in May 2013, in 2012 there was an increase (23,5%) of situations where children and young people were exposed, in their everyday lives, to behaviors that compromise their health, safety and wellbeing namely, domestic violence, alcohol consumption or drug/substance abuse. In 2012 more than 16,000 children and young people in this situation were followed by the CPCJ.

105. Although pre-school childcare enrolment has increased significantly in the last decade, capacity constraints in subsidized childcare remain, and differences between the take-up of formal childcare services, by income group, are amongst the biggest in the OECD in 2009 (an enrolment gap between high and low income families of around 40%). The Government should strengthen its childcare support for low-income families⁵⁶.

106. According to an OECD survey from 2007, Portugal was already spending less than the OECD average at each stage of childhood. Reported spending in early childhood was less than half of the OECD

⁵⁶ Doing better for Families, Portugal, OECD. Available at: <http://www.oecd.org/social/family/47704295.pdf>

average (EUR 11500 per child compared to EUR 24900) and mid-and late childhood spending lagged behind OECD levels by around one-third and one-quarter respectively.

Recommendations

107. Invest more of the public family budget towards early year's supports, even in times when pressures on fiscal consolidation are at their highest.

108. Strengthen childcare support for low-income families.

109. Assess the impact of the social spending cuts on children's lives.

Alternative care

110. There has been a gradual reduction in the number of children and young people institutionalized. This significant reduction was in large part due to the regulation of the foster family measure. This report welcomes the regulation of the practical implementation of this measure in 2008 by Decree n. ° 11/2008, de 17 January.

111. However, compared to the last 6 years, 2012 was the year where more children and young people (2.289 – 27%) were separated from their families and entered the system of alternative care (177 more than in 2011, which represents an increase in entries of 7,7% and 105 (5%) more than in 2006).

112. The number of young people in alternative care aged between 12 and 17 continues to be significant (4.692 - 54.9%), against 34% (2.921) of children between 0 and 11 years of age.

113. The institutionalization of children of less than 3 years of age continues to be a reality. This should only be acceptable in exceptional, emergency situations and even then for a short, pre-determined period of time.

114. According to the recommendations of the Council of Europe on the criteria for foster and institutional care of children from 0 to 3 years of age it is crucial to reinforce measures that preserve family support in a natural environment and in those cases where the child has to be separated from the family, the choice for foster care should prevail over institutional care. However, of the children in alternative care, only 419 (4,9%) are in foster care. In the case of children between 0 and 3 years of age, that percentage decreases to 1,1% (9 children).

115. While the Law on the Protection of Children and Young People at Risk (Law 147/99, 1st September) stipulates that the placement of children in alternative care should be temporary and that the decision to institutionalize a child should be reviewed every 6 months, this does not happen in practice.

116. It is extremely important to define life projects and develop interventions for the child placed in care to prevent him/her from spending a long time in institutions as the return to their natural environment may be delayed. According to the 2012 Annual Report on the Institutionalization of Children and Young People⁵⁷, 1.085 children and young people had no “care plan”⁵⁸ defined in 2012 (1.271 in 2011) and of these children, 549 are between the age of 0 and 3 and 536 are young people between the ages of 12 and 20.

117. This is of extreme relevance, even more so if we take into account the results found in the 4 categories of children and young people according to their concrete situation:

- 181 children and young people (60 in 2011), who having had a life project defined in 2012, ceased to have it in the same year given the impossibility of its realization;

⁵⁷ Available at: <http://www.parlamento.pt/Documents/XIILEG/Abri2013/CASA2012.pdf>

⁵⁸ Referred to in the periodic report, and hereinafter, as a “life project”.

- 60 children and young people (166 in 2011) who had a life project defined in 2011, but ceased to have it in 2012, in the majority of cases because the intervention plan with the family was interrupted;
- 191 children and young people (285 in 2011) who are in care since 2011 without a life project, the reason for such a situation being the lack of or insufficient technical teams;
- 653 children and young people whose care was initiated during the year and still did not have a life project defined.

118. In the last years, the life project of family reunification was the second more relevant (25,3% in 2010, 30,7% in 2011 and 30% in 2012). The lack of success in the implementation of the intervention plans for family reunification involves 318 children and young people who have seen their family reunification project being changed into institutionalization for an undetermined period of time (323 in 2011 and 261 in 2010). On the other hand, delays in implementing the intervention plan for family reunification are confirmed for 939 children and young people who remain in care for 2 or more years (42,8%), of which 22,5% remain in care for 2 and 3 years, 13,3% from 4 to 6 years and 7% for more than 6 years.

119. In addition to this grim reality, there has been an increase in the number of children and young people who “circulate” in the alternative care system, from one care option to another or from a care option to a natural environment with subsequent re-admission in new alternative care options⁵⁹. One contributory factor to this may be the fact that institutional care has not yet been object of regulation⁶⁰, unlike foster care⁶¹ and natural environment⁶² measures. Also the lack of monitoring, follow-up and assessment of children in institutions can perpetuate this situation.

120. This information reflects the reality of the lives of children who are let down by a system which is supposed to protect them. One of the main objectives of alternative care is to provide children and young people with the conditions necessary for their protection and for the promotion of their safety, health, education, well-being, development and psychological and physical recovery. There is an urgent need to guarantee coherence in the Portuguese alternative care system.

121. Many Children’s Homes lack multidisciplinary teams to support children’s life projects. It is absolutely necessary to adopt an educational and technical approach to the individual needs of these children through modalities of intervention that include therapeutic and rehabilitative components.

122. Regrettably, the definition of life projects through support by other relatives or trust in a reliable person, as well as through *Apadrinhamento Civil* (Civil Sponsorship) in force since December 2010⁶³, is very limited (5,8%; 1,9%, 0,25%, respectively), which reflects the insufficient use of these opportunities for the integration of children in a natural environment. The option of integration in foster families has also not been used to the full extent of its potential.

⁵⁹ Children and young people are transferred from Temporary Residential Care (CAT) which should be no longer than 6 months to Children’s Homes (LIJ) which provide shelter for children and young people for more than 6 months. Transfers from LIJ to LIJ are also common.

⁶⁰ Idem, page 74 (footnote 24).

⁶¹ Foster care is regulated by Decree-Law n°11/2008, 17 January.

⁶² Decree-law n°12/2008, 17 January – establishes the enforcement regime of the measures for the promotion and protection of children and youth at risk in natural life.

⁶³ Created by Law 103/2009.

123. According to Law n° 147/99 of 1st September, intervention is carried out by the CPCJ⁶⁴ and by the Courts. In 2011, the CPCJs followed 67,941 children and young people, of which 62,979 were characterized in terms of gender and age⁶⁵. In 2012 the number of children followed by CPCJ increased to 69,007 and the age group most affected was from 15-21 years of age (unlike 2011 where 11-14 and up to 5 years of age were the two most affected group).

124. The CPCJ are currently facing many difficulties which include lack of basic administrative support⁶⁶ such as computers⁶⁷, phones, faxes; no logistical support in some cases (as in offices) and poor technical support especially in the fields of Law, Psychology and Sociology; but the most felt difficulties are the scarcity of social responses and the absence of prioritization of work by the different services represented in the CPCJ⁶⁸.

125. The prevention dimension that should be covered by the Plenary Commissions has been underestimated and understaffed.

Recommendations

126. Make institutional care the object of coherent regulation to avoid the “circulation” of children in the system. The system as it is designed promotes this phenomenon, obliterating the respect for the principle of the best interest of the child that it claims to uphold.

127. Raise awareness of the promotion and protection measures in a natural environment as well as of foster care so as to reduce the number of institutionalized children and young people. Put more emphasis and invest in the quality of interventions, and services responsible for the implementation of measures in a natural environment with a view to strengthen parental competencies and responsibilities (in order to preserve the family environment and avoid unnecessary separations).

128. Provide Children’s Homes with staff with multidisciplinary skills for the study and support of children’s lives projects. Promote an educational and technical approach to the individual needs of these children through modalities of intervention that include therapeutic and rehabilitative components.

129. It is essential to create a mechanism responsible for the assessment and monitoring of the individual situation of children institutionalized. Put in place a coordinated intervention to promote the well-being and full development of children institutionalized.

130. Provide the CPCJ with the necessary administrative and technical support (legal advisers, psychologists and sociologists) to carry out their work effectively.

131. Provide training for CPCJ staff, Prosecutor’s Office and judges with a view to reinforce a coordinated and integrated approach to the situation of these children and young people at risk.

132. Move the focus from crisis intervention to preventive and supportive services by strengthening the prevention dimension of the Plenary Commissions providing them with staff and working conditions.

⁶⁴ These Commissions have 2 functioning modalities: a restricted Commission and a Plenary Commission. The first is responsible for direct intervention in concrete cases, after a situation of danger is signaled to it and the Plenary Commission is specifically in charge of undertaking a more preventive action within the community. The Plenary Committee integrates various members of the community including representatives of the city council, of social security, of the Ministry of Education, health services, civil society, parent’s associations, security forces, etc.

⁶⁵ Annual Activity Report of the CPCJs, Ed. May 2012.

⁶⁶ During 2011 there was a clear decrease in the number of CPCJ that were provided with administrative support, 69,3% (208) in relation to 2010 (72,0 %; 216). In most cases it is the local city council that provides this support (97,6%; 203).

⁶⁷ Some computers are shared which compromises the confidentiality of the process.

⁶⁸ Annual Activity Report of the CPCJs, Ed. May 2012.

Adoption

133. This report welcomes the creation of the Permanent Adoption Observatory⁶⁹ (2006), an independent structure designed to follow and assess the work of the Portuguese institutions responsible for the process of adoption at national level⁷⁰.

134. However, this report is concerned with some weaknesses in the Portuguese adoption system and legislation⁷¹. As it currently stands, the Portuguese adoption system allows for the “return” of children by their adoptive parents, within a 6 month period, if the situation of pre-adoption does not occur as planned. This has serious consequences for the psychological and socio-affective development of the child.

135. The President of the Permanent Adoption Observatory has expressed concern over the fact that under the current system, it might be possible for the biological parents to trace the residence of the adopted children⁷². He also referred that the current system does not provide for any post adoption support unlike most of our European counterparts.

136. Despite these weaknesses, the President of the Observatory stated that the process of adoption, in terms of time-frame, improved considerably in the last few years. However, adoptive parents consider the process still too lengthy and the information provided by the social services involved in the adoption process insufficient.

137. In addition, many children stay for long periods of time in institutions having a life project and measure of adoptability defined but not enforced given the delays in the adoption process. This situation is particularly frequent in children between 10 and 14 years of age.

138. Recently the Parliamentary Assembly⁷³ of the Council of Europe has called on member States, including Portugal⁷⁴ to ensure: that the domestic procedures concerning the adoption and placing into care of children are established in line with the principles stemming from the European Convention on Human Rights; that the competent domestic authorities, when deciding on the adoption and/or placing into care of children: take into account the requirements stemming from the European Convention on Human Rights and the United Nations Convention on the Rights of the Child; give priority to the best interests of the child; provide practical assistance to families in trouble so as to minimise the number of cases in which a child must be separated from his or her parents; and act speedily so as to avoid irreversible damage to the parties’ family life;

Recommendations

139. Review the current legislation on adoption with a view to improve some of its provisions bearing in mind that the best interests of the child should be the paramount consideration.

140. Coordinate efforts between social services, family courts and other actors involved in the adoption process with a view to make this process less lengthy and more respectful of the rights of the child institutionalized while waiting to be adopted.

⁶⁹ Information available at: <http://www.centrodedireitodafamilia.org/>

⁷⁰ More information available at: <http://www.centrodedireitodafamilia.org/system/files/ProtocoloOPA.PDF>

⁷¹ The legal framework for adoption is Law n°31/2003, of 22 August.

⁷² http://www.dn.pt/inicio/portugal/interior.aspx?content_id=1271066

⁷³ Resolution 1908 (2012) of the Parliamentary Assembly of the Council of Europe (adopted unanimously by the committee on 27 June 2012)

⁷⁴ The report of the Committee on Legal Affairs and Human Rights (Doc. 13060, 12 November 2012), on the basis of which this resolution was adopted, referred certain cases in which children have been withdrawn from their family against the wishes of their biological parents and given for adoption.

VI. Basic health and welfare (Articles 18, 23, 24, 26, 27)

141. According to the OECD, in September 2011, the Portuguese Government announced an 11% reduction in the National Health Service (NHS) budget for 2012, twice the budget cut required under the EU/IMF bailout agreement. OECD figures indicate that spending on health for the year 2011 fell by 5.2% when compared to 2010; this at a time when the average of all OECD countries rose by 0.7%. The objective for Portuguese public spending on health, in 2013, is to achieve just up to 5.1% of gross domestic product (GDP), while the average in the Euro zone area is estimated to be approximately 7%⁷⁵.

142. In April 2013, the Portuguese Government approved around 800 million Euros of new spending cuts to put its EU/IMF bailout back on track after some of its austerity measures were considered unconstitutional by the Constitutional Court. In order to meet this year's budget deficit target of 5.5 percent of gross domestic product and secure the next 2 billion euro tranche of its bailout, the Portuguese Government will implement spending cuts worth 200 million Euros (25% of the total spending cuts) in the health sector⁷⁶.

143. The specific areas in the health sector which will be targeted are not yet defined but they will put even more pressure on Portuguese families and will undoubtedly have a negative impact on children's right to health⁷⁷.

144. After a period of significant investment in primary health care, public health, preventive medicine, road safety and prevention of accidents the investment of the government in these areas has stagnated in the last 2 years (2011 and 2012). The call for proposals for the provision of financial support by the Ministry of Health to non-profit private organizations⁷⁸ that work in the health area did not take place. This lack of investment can negatively affect the right to health and undermine the progress achieved in other areas.

145. In 2012 the number of cases brought to the attention of the CPCJ of children and young people whose behavior negatively affected their health and wellbeing increased. This was, in fact, the situation of danger reported which saw the highest increase: 65% (6252 situations of danger reported against 3785 in 2011). These behaviors include serious anti-social conduct, lack of discipline or bullying, alcohol and drug abuse.

Recommendations

146. Minimize the impact of financial restrictions/constraints in the social security, health and education support services which are crucial for the day-to-day lives of children.

147. Austerity measures, particularly in the health area, should be object of a child rights impact assessment to ensure that they do not increase child poverty or decrease child health and well-being.

Children with disabilities

148. This report welcomes the adoption of Decree-Law n°3/2008, of 7 January 2008, which creates a new regime supporting students with special education needs (SEN).

⁷⁵ (Morgan, et al., 2013).

⁷⁶ <http://www.publico.pt/sociedade/noticia/ministro-diz-que-cortes-na-saude-ficam-abaixo-dos-200-milhoes-1591836>

⁷⁷ Patients have long had to pay a small fee for check-ups and tests in the NHS, unless they fall into one of several categories of exemption. In 2012 these fees were raised sharply. <http://anticap.wordpress.com/2013/04/08/if-at-first-you-dont-succeed-in-imposing-austerity/>

⁷⁸ Foreseen by Decree-Law n.º 186/2006, of 12 September 2006.

149. While the report also welcomes the National Strategy for Disability (ENDEF, 2011 – 2013)⁷⁹, we regret the fact that the Government has delayed or postponed its implementation.

150. The recently published official monitoring report⁸⁰ of the ENDEF found that nothing has actually been done in relation to the majority of the planned measures in the Strategy. The report is compiled by the National Institute for Rehabilitation based on data gathered from different public departments involved in the implementation of the Strategy⁸¹.

151. In relation to education, a well-intentioned closure of special schools and a subsequent mainstreaming of children with disabilities⁸², was followed by budget cuts introduced by the Government which directly affected the support services required for successful mainstreaming. As a result many of the children and mainstream schools are without adequate support and drop-out rates are increasing⁸³.

152. Providers of early intervention services for children with disabilities saw their monthly allocation of funding reduced from 240 EUR to 160 EUR per child, resulting in staff cuts, reduction of the average duration of the intervention services and compromising the quality of the services⁸⁴.

153. Serious cuts of 31.7% were imposed between 2011 and 2012 in the public budget for assistive devices, including hearing aids and wheelchairs. In addition application procedures are very burdensome and time-consuming resulting in long waiting periods. The budget for transportation costs for medical non-urgent care of people with disabilities has also been curtailed.

154. It is clear that the austerity measures introduced by the Government are having a serious impact on the equal opportunities and in the lives of children and young adults with disabilities. They also led to growing inequalities in access to social security services.

155. Given these circumstances there is a trend of re-allocating or reconsidering family responsibilities in the provision of (social) care. However, there is a growing incapacity of families to bear the costs for the care concerned. Increasingly, families, as well as the dependent people are facing exclusion from access to adequate social and health care as a result.

156. Organizations dealing with persons with disabilities were also affected by a 30% decrease in public funding introduced by the Government in 2011 and 2012. The closure of non-Governmental social services⁸⁵ (often in rural areas of the country) must be viewed in conjunction with decreasing volumes of social services provided by the public sector.

⁷⁹ Approved by Council of Ministers Resolution n°97/2010, this Strategy was created in the sequence of the Action Plan for the Integration of Persons with disability or Incapacity approved by the Resolution of the Council of Ministers no. 120/2006, of 21 September. The National Strategy contains a series of measures at inter-ministerial level that focus on 5 main axes: disability and multi-discrimination; justice and realization of rights; autonomy and quality of life; accessibilities and *design* for all; administrative modernization and information systems.

<http://www.inr.pt/content/1/1471/estrategia-nacional-para-deficiencia-edef-publicacao-em-diario-da-republica>

⁸⁰ (INR, 2012).

⁸¹ Assessing the impact of European Governments' austerity plans on the rights of people with disabilities, EFC European Consortium of Foundations on Human Rights and Disability, 2012 (*hereinafter* EFC Study, 2012).

http://www.efc.be/programmes_services/resources/Documents/Austerity2012.PDF

⁸² Inspired by the UNCRPD.

⁸³ EFC Study, 2012.

⁸⁴ EFC Study, 2012.

⁸⁵ Services include day care centres, home care services, vocational training, rehabilitation, specialised nurseries and schools, some of which were established with support from the European Social Fund (ESF).

157. There is a lack of current disaggregated data on the status of people/children with disabilities in Portugal. The last national disability survey was carried out in 1995.

158. People with disabilities and their families have been affected by the increase of medical costs due to restrictions in the co-payment system and the increase of user charges for medicines and health services⁸⁶.

159. In 2010, the Government introduced new conditions for entitlements to social security payments that compensate for the loss of income due to illness (except disability payments) and for the means-tested disability supplement to family allowance. The new approach is driven by a means test based on the concept of 'household income' which includes income of the extended family members living in the same house. Between 2010 and 2012, the number of recipients of such payments decreased by 37%.⁸⁷

160. The National Disability Council was extinguished in 2011 and diluted under a National Council for Policies of Solidarity, Charity, Family, Rehabilitation and Social Security which has yet to be established⁸⁸.

161. To compensate for the fact that the National Council hasn't been established yet, in February 2013 a Commission for Disability was created aiming to promote the participation of the associative movement working in the areas of prevention, habilitation, rehabilitation, and integration of people with disabilities, in the implementation, development of legislation and policies concerning people with disabilities.

162. However, this Commission is not a permanent body, meeting only 4 times a year. It will be composed of a representative of the Government, the President of the National Institute for Rehabilitation and 3 NGO representatives. A Plenary will meet twice a year and it will include representatives of each Ministry. It is not specifically targeting children with disabilities.

Recommendations

163. Continue the process of integrating children with disabilities into mainstream schools thus, promoting social inclusion, while allocating sufficient resources for the necessary support services.

164. Develop a coordinated and integrated approach to all actions that affect children with disabilities. Allow for, at least, a representative of the education and health ministries to be part of the recently created Commission for Disability, in its restricted modality, as to gather an overall picture of the reality these children are living in. Place a special emphasis on the situation of the children with disabilities.

165. Carry out a national disability survey. Eighteen years have passed since the last survey was done.

166. Bearing in mind the Government's international obligations under the UN Convention on the Rights of Persons with Disabilities, take steps to implement its provisions namely articles 7, 23, 24, 25 and 26, which relate to or particularly affect children, providing for the necessary changes in the Portuguese legal framework to comply with it.

⁸⁶ A compulsory payment for obtaining a certificate of incapacity that may exempt persons with severe disabilities from paying the users charges has also been introduced recently. The amount for obtaining the certificate is prohibitive for many families and people with disabilities, barring them from access to medical rehabilitation services. EFC Study, 2012.

⁸⁷ When launching this new means-tested household-income concept, the Government expected savings of €199m in 2011. EFC Study, 2012.

⁸⁸ By Despacho n°2178/2013 (Diário da República, 2.ª série — N.º 26 — 6 of February 2013), a Commission for Disability was created to replace the National Council until the latter is established.

VII. Education, leisure and cultural activities (Articles 28, 29, 31)

167. The current financial crisis is severely affecting Portuguese education, with a significant impact on the resources available to education. While public spending on education reached 5% of GDP in 2010, it is estimated that such proportion decreased to 4.7% in 2011, and the 2012 State budget planned a further reduction to 3.8% of GDP⁸⁹.

168. Austerity measures included: salary cuts for all personnel working in public education; the freezing of career progression in the public service (including for teachers); posts in school management reduced; school hours have diminished; regional administration for education downsized; a major rationalisation of Ministry services which led to a restructuring of its organization; specific programmes, such as a laptop for every child, have been cut; the number of pupils per class increased; the amounts of scholarships for higher education students were decreased and the conditions for accessing scholarships were tightened; a limitation to family tax exemptions based on education expenses was also introduced. Additionally, the cuts in child benefits appear to have 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, the tightening of the budgets of local authorities has impacted on education as it results in less funds being available locally to support public schools⁹⁰.

169. Further cuts in education amounting to 703 million Euros (11%) were announced in April 2013, following the rejection by the Constitutional Court of four out of nine contested austerity measures worth 1.5bn Euros. Almost half (47.4%) of this reduction will be achieved through cuts on the investment made on *Parque Escolar*⁹¹. Other measures include reducing the number of teachers by using “demanding criteria of management and rationalization” and closing schools⁹².

170. This report regrets that, for economic reasons, the subject of Civic Education was recently removed from the school curricula which represents a retrogressive step in terms of human rights education.

⁸⁹ OECD Reviews of Evaluation and Assessment in Education: Portugal, 2012.

⁹⁰ http://www.coe.int/t/commissioner/default_en.asp

⁹¹ **Parque Escolar, EPE**, established by [Decree-Law no. 41/2007](#), of 21 February, is a corporation governed by public law with administrative and financial independence and its own assets. It is subject to the supervision of the Portuguese Government ministers responsible for the areas of finance and education.

Parque Escolar's corporate object is the planning, management, development and execution of the modernisation programme for the public network of secondary and other schools under the responsibility of the Ministry of Education, as approved by [Resolution of the Council of Ministers no. 1/2007](#) of 6 December 2006.

The Secondary School Network Modernization Program essentially aims to achieve three objectives:

- to rehabilitate and modernise the secondary schools buildings, restoring their physical and functional efficiency, with a view to creating the ideal conditions for a modern education adapted to the programmatic contents, didactic methods and the new information and communication;
- to open the schools to the communities, creating the conditions for closer cooperative links with the surrounding neighbourhood, encouraging correct appreciation of the buildings and ensuring full exploitation of the potential of the school infrastructures;
- to establish a new management model for school premises, ensuring optimization of resources and correct management of the conservation and upkeep of the buildings after the interventions.

⁹² http://economico.sapo.pt/noticias/educacao-e-afinal-a-area-com-maior-corte-orcamental_154155.html

Early Childhood Education

171. This report welcomes the fact that the number of “crèches” (child day care centres) for children aged 0-3 has increased as a result of the PARES Programme⁹³ between 2006 and 2011. In 2011 the Government provided childcare to 37,2% of children under 3 years of age, which is higher than the target set in the Barcelona Commitment (33% national coverage). However, in 2011 this Programme was extinguished and the strategy adopted by the Government has been since then to maximize the capacity of the existing equipments.

172. The Social Emergency Plan provides for an increase in the number of users of current childcare. It is estimated that up to 20,000 additional childcare places will be created. In order to achieve that, the Government changed the legislation on “crèches” to increase the legal number of children per room. This approach is questionable as it overlooks the quality of the services provided, the safety and the well-being of children. On the other hand, there is still demand for early childcare services, at accessible prices, for low-income families.

173. In terms of pre-school education, the pre-school network for 3-5/6 year old children has been increasing significantly as a result of the PARES Programme. The percentage of 5 year old children currently frequenting the pre-school network (95%) has nearly achieved the universal coverage. In 2010/2011 the pre-schooling rate for 3-5 year old children was 85,7%. This rate increased to 87,4% if we included 6 year old children. The pre-schooling rate for 4-5 year old children was 90,7% (the national target for 2020 is 95%). However, regional disparities persist, with Lisbon and Oporto lacking more coverage. Since the PARES Programme was discontinued in 2011, there has been no investment made by the Government in this area.

174. It is important to build on the progress made and bring it further. The European Commission Recommendation (20/2/2013), *Investing in children: breaking the cycle of disadvantage*⁹⁴, gives the Government an opportunity to put these issues back in its political agenda. The Recommendation calls on member states to: reduce inequality at a young age by investing in early childhood education and care; further develop the social inclusion and development potential of early childhood education and care (ECEC), using it as a social investment to address inequality and challenges faced by disadvantaged children through early intervention.

Challenges with Educational Attainment Remain

175. Student learning outcomes in Portugal are around or slightly below the OECD average, depending on the skills assessed, and have shown some encouraging improvement in the last decade. Efforts which followed the 1974 Revolution to ensure access to education for all Portuguese resulted in a rapid expansion of enrolment. However, educational attainment remains a challenge. The high share of students leaving the education system too early with low skills remains a major problem.

⁹³ Launched by the Government in 2006, PARES sought the expansion and upgrading of the proximity services network, through ensuring quality as well as equitable responses throughout the national territory. It was created and regulated by Decree Order no. 426/2006 of 2 May.

⁹⁴ Member States are called on to provide access to high-quality, inclusive early childhood education and care; ensure its affordability and adapt provision to the needs of families; incentivise the participation of children from a disadvantaged background (especially those below the age of three years), regardless of their parents’ labour market situation, whilst avoiding stigmatisation and segregation.
(ec.europa.eu/social/BlobServlet?docId=9762&langId=en)

176. Upper secondary graduation rates reached 63% in 2009 (when only individuals below 25 were considered), well below the OECD average (OECD, 2011)⁹⁵. The high proportion of early school leavers is associated to the relatively low appreciation of schooling by large groups of the population, most likely due to parents' low educational attainment. In fact, the impact of the family background on the probability of dropping out is higher in Portugal than in other European countries: according to 2005 household data, 98.9% of men aged between 25 and 34 who dropped out before the end of upper secondary school has a low-educated father, more than ten percentage points higher than it is on average across European OECD countries⁹⁶.

177. The third main cause of intervention of the CPCJ are cases involving school drop-outs, school absenteeism and school failure of children in the age group of 15 and up⁹⁷. According to the recently released CPCJ annual report (May 2013), there has been an increase of these cases from 1708 in 2011 to 2537 in 2012.

178. This report welcomes the fact that, in the context of its commitments with the European Union's Strategic Framework for European Co-operation in Education and Training ("ET 2020")⁹⁸ and with the Organisation of Ibero-American States for Education, Science and Culture's 2021 Educational Goals Project, Portugal established targets for school education through the Education Programme 2015, as of the 2010/11 school year.

179. Those targets focus on two main areas, deemed as the most challenging ones in school education: improving the basic competencies/skills of students and ensuring that all young people aged 18 and below remain in the education system.

180. The following targets, to be attained by 2015, were set: reduce the early school leaving rate at the ages of 14, 15 and 16 to levels below 1%, 2% and 4 % respectively; reduce the proportion of students who repeat grades in the first, second and third cycles of basic education and in secondary education to 2%, 5%, 10% and 12% respectively; increase the proportion of students with a mark above the passing level in each national Portuguese language and mathematics tests in both basic and secondary education by four percentage points, relative to the figures for 2009/10. Indicators have been devised to monitor progress towards these targets.

181. However, in 2010, in the framework of the 2020 EU Strategy⁹⁹ for jobs and growth, the Government has not been ambitious enough, setting the target of reducing the rates of early school leaving below 10%.

⁹⁵ OECD Reviews of Evaluation and Assessment in Education: Portugal, 2012.

⁹⁶ OECD Reviews of Evaluation and Assessment in Education: Portugal, 2012.

⁹⁷ Annual Activity Report of the CPCJ, Ed. May 2012.

⁹⁸ EU Member States and the European Commission strengthened co-operation in 2009 with the [strategic framework for European cooperation in education and training \("ET 2020"\)](#), a follow-up to the earlier Education and Training 2010 work programme launched in 2001.

http://ec.europa.eu/education/lifelong-learning-policy/framework_en.htm

⁹⁹ Five EU targets for 2020: **Employment:** at least 75% of 20-64 year-olds employed; **R&D/innovation:** 3% of the EU's GDP invested in R&D/innovation; **Climate change/energy:** greenhouse gas emissions 20% lower than in 1990 (or 30% if conditions are right); 20% of energy from renewable sources; 20% increase in energy efficiency; **Education:** reduce school drop-out rates to below 10%; at least 40% of 30-34-year-olds completing third level education; **Poverty/social exclusion:** at least 20 million fewer people in or at risk of poverty and social exclusion. http://ec.europa.eu/europe2020/pdf/targets_en.pdf

182. While this report considers that target-setting by the Government in this context, is positive, it firmly believes that such an exercise will prove to be obsolete if the causes behind the high drop-out and repetition rates aren't object of a coherent study. The undertaking of such a study was recommended by the Committee in 2001.

183. A recent OECD review¹⁰⁰ highlighted a number of challenges facing the Portuguese education system that can be taken as a reference when carrying out such a study. They include:

- While there is a focus on evaluation and assessment, this is fragmented, with no coherent continuum;
- While there is an emphasis on results, there is little coherence between assessment of student outcomes, and teacher, school and system-wide evaluation. There is a need to build coherence across these efforts and to promote a culture of evaluation for improvement;
- There is a lack of focus on teaching and learning¹⁰¹ and little opportunity for student engagement¹⁰²;
- Furthermore, there is little evidence that the student is at the heart of reform and improvement. An obvious case in point, of not placing the student at the centre of the learning, is evident in the high levels of grade repetition in the country, considerably above the OECD average;
- While an Education Indicators Framework is in place to assist the Government analysis of the education system, one significant gap is the lack of information on the student socio-economic background, including parental level of education, occupation and income level, immigrant or minority status, and special needs. An analysis of student performance across regions also needs to be strengthened.
- There is a need to strengthen school self-evaluation;
- The lack of an annual report with an assessment of whether or not the education system is achieving its objectives;

184. Concern has been expressed by the National Confederation of Parents Associations in relation to the fact that the recent School Ethics and Student Statute¹⁰³ adopted by the Government has a strong punitive component and lacks a user-friendly language. While the trend in other European countries has been to move from codes of discipline towards codes of behavior in an attempt to reinforce positive behavior, this new Statute focuses on discipline and its language is strikingly legal. The process did not involve the participation of children and young people and many of them don't know about its content. Its implementation can also have a negative impact on the family income for it may result in the cut of the Social Integration Income.

¹⁰⁰ OECD Reviews of Evaluation and Assessment in Education: Portugal, 2012.

¹⁰¹ There is instead, an obsessive attention to results, the drive for results skewing the education system, media hype around examination results, classroom practice dominated by examination and test preparation, non-compulsory tests gaining the status of compulsory tests, and the quality of teaching being equated to the quality of results.

¹⁰² Teaching, learning and assessment still take place in a somewhat "traditional" setting with the teacher leading his/her classroom, the students typically not involved in the planning and organisation of lessons and assessment concentrating on summative scores.

¹⁰³ Law n.º 51/2012 of 5 of September, Diário da República, 1.ª série — N.º 172 — 5 de setembro de 2012.

http://www.portugal.gov.pt/media/703343/20120905_mec_estatuto_aluno.pdf

Recommendations

185. Build on the progress achieved in regard to early childhood education. Use the opportunity given by the 2013 European Commission recommendation to keep early childhood education, particularly below the age of 3, in the political agenda.

186. Undertake a study on the causes of high drop-out and repetition rates.

187. Develop a strategic plan or framework document that conceptualizes a complete evaluation and assessment framework of the education system and articulates ways to achieve the coherence between its different components. The plan should essentially constitute a common framework of reference for educational evaluation across the country with the ultimate objective of embedding evaluation as an ongoing and essential part of the professionalism of the actors in the education system.

188. Place the students at the centre of the evaluation and assessment framework. This translates into teaching, learning and assessment approaches which focus on students' authentic learning¹⁰⁴.

189. Maintain progress towards the achievement of the commitments made to targets for school education within the European Union's Strategic Framework for European Co-operation in Education and Training ("ET 2020") and with the Organisation of Ibero-American States for Education, Science and Culture's 2021 Educational Goals Project, established through the Education Programme 2015.

190. Given the extinction of the subject Civic Education, but also given the development of Portugal's National Strategy on Education for Development (ENED), which includes the commitment of all relevant Ministries and Agencies, this strategy could be used as a vehicle for a strong engagement in Children's Rights Education, to ensure that it is embedded, inter alia, within the formal education system.

191. Review the new School Ethics and Student Statute with a view to move towards a code of behavior rather than a code of discipline. The language of the Statute should also be reviewed with the involvement of students and school staff, as well as representatives from parents in order to make it understood by all actors and facilitate its implementation.

VIII. Special protection measures (Articles 22, 30, 32, 33, 34, 35, 37, 38, 39, 40)

Economic exploitation of children, including child labour

192. This report welcomes the adoption in 2004 of the Programme for the Prevention and Elimination of Child Labour (PETI)¹⁰⁵. Since 2009, a new body was set up under the Ministry of Labour and Social Solidarity - the Inspectorate for Labour Conditions, ACT - with a view to preventing, monitoring and combating child labour.

193. This report recognizes the fact that since the late 1980s Portugal has made notable progress in relation to the elimination of child labour, however, the most recent surveys date back to 1998 and 2001. Recent estimates seem to indicate that child labour is a residual reality in Portugal¹⁰⁶.

194. A positive measure was the increase of the number of compulsory school years from eight to nine years, as an additional means of reducing early entry in the labour market. However, in a context already

¹⁰⁴ There has been considerable progress in the last few years in the Portuguese education system in focusing attention in student learning with better provisions for individualised support, growing opportunities for differentiated learning, and greater say of students in their learning. However, these approaches need to become more systematic across schools and classrooms. OECD Reviews of Evaluation and Assessment in Education: Portugal, 2012.

¹⁰⁵ By Resolution n°37/2004 of 26 February.

¹⁰⁶ Information available at: <http://cics.uminho.pt/wp-content/uploads/2011/06/Trabalho-Infantil-Manuel-Sarmiento.pdf>

marked by high rates of early drop-out from school, we believe that particular vigilance is required from the Government to monitor potential developments in this field. Programmes aiming at preventing child labour, such as the PIEF, should not be discontinued.

195. This report shares the concern of the Council of Europe's Commissioner for Human Rights¹⁰⁷ in relation to the potential impact of the austerity measures, and the attendant increase in poverty, on child labour¹⁰⁸. According to the Ombudsman, there has been an increasing number of complaints in relation to school drop-outs and cases of child labour. Experts alert to the fact that a lack of recent studies and the absence of public policies to fight child labour might compromise the progress achieved in this area. Since the beginning of the crisis, there have also been cases of children migrating for work purposes to other EU member states.

196. Some concerns have been raised in relation to the legislation on the participation of children in performances or other activities of a cultural, artistic or advertising-related nature¹⁰⁹, which could potentially lead to situations of child labour. In this respect, the European Committee of Social Rights, in its 2011 Conclusions, considered that the daily and weekly working time for children subject to compulsory education is excessive¹¹⁰.

197. The ILO C138 Minimum Age Convention (1973), ratified by Portugal in 1998, foresees in its article 8°, exceptions to the minimum age specified in article 2°, for such purposes as participation in artistic performances but does not regulate the limitation of the number of work hours or the conditions in which employment or work is allowed.

198. This report believes that in the request for authorization of the participation of the child in these activities (article 6°), submitted by the entity promoting the activities, two elements should be added to the list: the reasons which justify the employment of a child of the age concerned; the sums to be earned by the child. The law should also be clear about the fact that the sums earned by the child should be lodged in a post office/bank account in the child's name.

Recommendations

199. Conduct a national survey in order to adequately assess the situation of child labour in Portugal. Do not discontinue, rather invest in programmes that had positive results in the prevention of social exclusion and child labour.

200. Review the legislation on the participation of children in performances or other activities of a cultural, artistic or advertising-related nature with a view to ensure that it doesn't lead to potential situations of child labour.

Sexual exploitation and sexual abuse

201. The Government needs to transpose into the Portuguese Penal legislation the obligations imposed under Directive 2011/92/EU¹¹¹ of 13 of December 2011. This Directive on combating the sexual abuse and sexual exploitation of children and child pornography demands the criminalization of the solicitation

¹⁰⁷ The European Committee of Social Rights reported, in its Conclusions for 2011, a few remaining problems concerning child labour in Portugal. Please see page 4 and 5 of the 2011 Conclusions at:

http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Portugal2011_en.pdf

¹⁰⁸ See Público, Trabalho infantil volta a ser um problema com a pressão da crise sobre as famílias, 14 January 2012, available at: <http://cics.uminho.pt/wp-content/uploads/2011/06/Trabalho-Infantil-Manuel-Sarmiento.pdf>

¹⁰⁹ Currently regulated by Sections 2 to 11 of Law No. 105/2009 of 14 September 2009.

¹¹⁰ http://www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/State/Portugal2011_en.pdf, page 6 and 7.

¹¹¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:335:0001:0014:EN:PDF>

of children for sexual purposes; the knowingly obtaining access, by means of information and communication technology, to child pornography. These two practices are not yet regulated by Portuguese penal law.

Recommendation

202. Bring Portuguese penal legislation in line with Directive 2011/92/EU¹¹² of 13 of December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography.

Children belonging to a minority

203. Please see information provided on the Gypsies/Roma and immigrants in Chapter III.

Children involved in the system of administration of juvenile justice

204. This report is concerned with the lack of a child-friendly approach to judicial proceedings in which children are involved. This is even more problematic in relation to the conditions in which children make statements and provide testimonials.

205. It is of paramount importance, as referred to in the Committee's General Comment N° 10 (2007) on Children's rights in juvenile justice, to ensure *"the quality of the persons involved in the administration of juvenile justice. The training of professionals, such as police officers, prosecutors, legal and other representatives of the child, judges, probation officers, social workers and others is crucial and should take place in a systematic and ongoing manner"*.

206. Also Article 14 of the Beijing Rules provides that the proceedings should be conducted in an atmosphere of understanding to allow the child to participate and to express himself/herself freely. Taking into account the child's age and maturity may also require modified courtroom procedures and practices.

207. Portuguese judges should, in the proceedings where children are involved, apply the legal provisions of the law on the protection of witnesses¹¹³, regarding especially vulnerable witnesses.

208. The Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice are very clear about the organization of the proceedings in which children participate. According to these Guidelines, for example, before proceedings begin, children should be familiarised with the layout of the court or other facilities and the roles and identities of the officials involved; interview methods, such as video or audio-recording or pre-trial hearings in camera, should be used and considered as admissible evidence; court sessions involving children should be adapted to the child's pace and attention span: regular breaks should be planned and hearings should not last too long; as far as appropriate and possible, interviewing and waiting rooms should be arranged for children in a child-friendly environment.

Recommendation

209. Ensure the quality of the actors involved in the administration of juvenile justice. Provide training for professionals, such as police officers, prosecutors, legal and other representatives of the child, judges, probation officers, social workers and others.

210. Promote the integration, in the national juvenile justice policy, of other international standards, such as the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.

¹¹² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:335:0001:0014:EN:PDF>

¹¹³ Law 93/99, of 14 of July.