**Questionnaire for National Human Rights Institutions (NHRIs), by the**

**Office of the United Nations High Commissioner for Human Rights**

**Subject: Rights of the child and inclusive social protection – Human Rights Council Resolution 49/20**

**13.01.2023**

The Portuguese Ombudsman institution, in its capacity as a national human rights institution in line with the Paris Principles and accredited with “A” status since 1999, hereby replies to the questionnaire from the Office of the United Nations High Commissioner for Human Rights.

The current mandate holder, Maria Lúcia Amaral, took office in November 2017 and was reelected by the Portuguese Parliament for a second (and last) mandate in November 2021.

**1.** **What social protection systems are in place for children in your country? Please provide examples of specific laws and regulations, measures, policies, and programmes directed at ensuring children’s access to inclusive social protection and how these respect the rights of the child.**

In Portugal, children's rights are protected by the Constitution and by the main international instruments on children's rights to which Portugal has subscribed.

Article 69 of the Portuguese Constitution[[1]](#footnote-1) states that the protection of children – aiming at their full development – is a duty of both the society and the State. This duty originates individual rights such as the right to food, translated into the access to minimum conditions for subsistence, the right to health (provided by a universal public health service) and the right to education (free compulsory education up to the 12th grade).

The implementation of social policies related to childhood in Portugal is under Social Security responsibility.

The national Social Security has programmes specifically aimed at supporting the burden of children and young people with lower resources, such as the Child Benefit (a benefit, paid monthly, to compensate for family expenses related to the upkeep and education of children and young people); Scholarships (a benefit, paid monthly, to compensate for family expenses related to the upkeep and education of children and young people); and the Guarantee Fund for Food Owed to Minors (which guarantees the payment of child support payments, in substitution of the defaulting parent, in the event of non-compliance with this obligation) [[2]](#footnote-2).

Concerning children at risk, the reform put through by Portuguese authorities came into law as the Protection of Children and Young People in Danger (PCJP)[[3]](#footnote-3), and as the Educational Guardianship (EG)[[4]](#footnote-4), which consolidate the perspective of Community intervention with the recognition of the right to be heard and the right of opposition for children and young people.

The PCJP is based on the principle that children and young people are full social actors, whose protection should mean the promotion of their individual, economic, social and cultural rights. The State and the community undertake to organise themselves in such a way as to provide the models for action which can satisfy the individual developmental needs of each child and young person, with respect for the universality of their rights, seeking to ensure: *i*) the higher interest of the child and of the young person; *ii*) the right to privacy; *iii*) a timely and minimum intervention, proportionate to the situation; *iv*) parental responsibility and the prevalence of the family; *v*) the requirement to inform the child/young person and the family on their rights and about the intervention; *vi*) the mandatory hearing of the child/young person and of the family in the actions and decisions which affect them; and *vii*) the subsidiary intervention, first by community entities or, in its absence or impossibility, by courts.

Intervention for the promotion and protection of the rights of children and young people in danger covered by the PCJP is implemented by the competent public or private entities related with infancy or youth by Children’s and Young Person’s Protection Commissions (CPCJ) and, in the last resort, by the Courts. Technical monitoring related with the protection of children and young people in danger and the Courts is the responsibility of the Social Security implemented through Multi-disciplinary Court Counselling Teams (EMAT).

The EG has the principle that Justice should only intervene in cases where the minor offends, in an intolerable manner, essential legal property, thereby leading to the (non-punitive) accountability of the minor in relation to his/her role in society, based on the education of right.

Examples of general measures/programmes:

«Born Citizen Program» – aims to promote universal child’s right to a name and social protection, providing official record services on health units straight away after the birth, registration in the Social Security and in the National Health Service and, at the same time, to trace risk situations.

«Choices» – promotes social inclusion of children and young people from under privileged and problematic socio-economic territories.

«Early Intervention Program» – strategy to minimise risk/danger situations in close association to the promoting of health and well-being of disabled children or those who run a serious risk of retarded development due to biological or environmental reasons. Its advantages and results arise from the fact that the first years of a child’s life provides the ideal opportunity for improving parental skills and reducing future risks in their development. It is, therefore, a vital component of any integrated approach towards children at risk and promoting social competences.

«Immediate Intervention Plan» – considering de-institutionalization of children one of the major priorities of Child Policy, and the necessity of a major investment in the area of adoption, this diagnosis instrument enables a description and analysis of the evolution of life projects to be made of all children and young people in residential and foster care. Based on its results, strategic guidelines for action are drawn up for the benefit of these children, in order to ensure their right to live, as quickly as possible, on a family environment (in their family of origin or another alternative family).

**2. What are the main gaps and challenges to children’s enjoyment of social protection in law, policy, and practice in your country and the impacts on children’s rights? Please provide any relevant statistical or disaggregated data based on age, gender, disability, ethnicity, religion, sexual orientation and gender identity, migration status, or other categories. Please consider the specific situation of marginalized children and those in vulnerable situations in your response.**

Although child protection policies in Portugal are in line with international standards, it seems that a comprehensive strategy capable of protecting and promoting children with regard to poverty and social exclusion has not been consolidated.

Providing children with adequate resources means, by definition, and in most cases, providing their households with access to such resources.

Despite being lower than the European Union average (EU 24.4%), around one in four Portuguese children under the age of 18 (22.9%) lived in poverty or social exclusion in 2021 (according to data released by Eurostat[[5]](#footnote-5), with the warning that children growing up «in poverty or social exclusion encounter difficulties in doing well in school, enjoying good health and realising their full potential later in life. They also face a higher risk of becoming unemployed, poor and socially excluded as adults»).

State financial support to families with dependent children depends on a very strict means test (“fallback condition”), targeting only the most disadvantaged families. The requirements for access to these social benefits are difficult to fulfil, the model is not up-to-date in the face of new family realities (such as alternating residence of children) and the information provided by the Social Security Services is not sufficiently clear. Social Security's responses are slow. These difficulties lead citizens to submit many complaints to the Ombudsman.

In early childhood and care, there are difficulties of access to affordable quality services and we can also point out the inadequacy of the promotion/protection measures enacted regarding institutionalised children (delays, inadequate time, etc.). Thus, the rise in poverty among families with dependent children, as well as their particular vulnerability to deprivation, are considered a problem. These results are even more worrying as policies issued do not seem to be addressing the problem properly. Although laid out in law, social responses are still slow and often insufficient.

**3. What are the good practices initiated by the Government to ensure that social protection benefits the rights of children in your country?**

Development Agreements – on a local basis, these agreements aim to promote the social inclusion of citizens in a multi-sectorial and integrated manner, by means of actions to be carried out through partnerships in the areas of employment, training and qualification, family and parental intervention, empowerment of the community and institutions, information and accessibility, with particular emphasis on territories identified as being the most vulnerable.

«Social Integration Income»[[6]](#footnote-6) – special monetary benefit designed to meet the household’s basic needs and promote social integration given to people or families who need support for better social and professional integration and who are in extreme poverty. It is associated to an insertion program, which aims to create conditions to facilitate access to social and economic autonomy. Priority is given to family units with children, with pregnant minors or where children are at risk, establishing immediate articulation with the competent entity in the matter. In order to provide a local approach and a closer intervention with beneficiaries State Protocols have been established with Private Institutions of Social Solidarity.

In addition to the universal, free and compulsory education system up to the 12th grade - which is to be noted -, recently some measures were taken in terms of Early Childhood Education and Care, such as the intention to guarantee the universality of pre-school education from the age of 3 and the free attendance of crèches (with a cooperation agreement with Social Security) for children under 3 years of age.

It is also worth mentioning the national distribution of free school manuals (although only in public schools) and the free transport passes for children and students (in the metropolitan areas of Lisbon and Oporto).

**4. Are there examples of how measures and responses to alleviate poverty through social protection systems in emergency situations or, for example, in response to the COVID-19 pandemic, have positively affected children’s rights, particularly to social security?**

In general, the child care allowance is a cash benefit paid to parents who have to take time off work to provide urgent and necessary care for their children in the event of illness or accident. Child care allowance applies to both minor children and children of legal age. It also applies to children who, regardless of age, are disabled or chronically ill.

During COVID-19 pandemic, the exceptional family support measure, granted by national Social Security, was available to employees who were absent from work to care for children or other dependents under the age of 12, or regardless of age if they are chronically ill or disabled. Also, the prophylactic isolation assistance for child or grandchild measure, was aimed at employees who are unable to work due to the need to care for their children or other dependents, under 12 years of age, or with a chronic handicap/illness regardless of age, in a situation of prophylactic isolation certified by the Health Delegate or of COVID-19 illness. These measures, in general and in particular, contribute to effectively ensure the right to health of children.

Municipalities have social emergency and recovery funds, an exceptional and temporary support to be granted to needy households in a situation of serious housing emergency and/or emerging economic need. Eligible expenses are, in general, exceptional and transitional food support (meals or cooked food); acquisition/repair of goods or services that are essential and indispensable for the subsistence and maintenance of a decent life for the household; goods or services made available to the household by the parish council; expenses with education; basic foodstuffs; medicines, complementary diagnostic means or other health expenses; transportation tickets; house rent in private housing, instalments for house purchase, water, electricity or gas; telecommunications in the voice and internet services component.

These problems are also accompanied and minimized through private social solidarity institutions, whose role is very relevant in the overall national context.

This emergency social support contributes to the immediate and urgent rebalancing of the family unit, guaranteeing everyone, especially children, their right to a more dignified life, in different areas, namely food and education.

**5. Can you provide information on any programs or activities your organization has implemented regarding inclusive social protection and the rights of the child?**

In 1993, the Portuguese Ombudsman implemented the “Children’s Line”, a toll-free telephone number specially aimed to deal with the problems of children and youth at risk or in danger. This telephone line provides help and information in various situations such as ill-treatment or abuse, negligence, family deprivation (economic but not only), abandonment and learning difficulties. Issues regarding lawsuits of paternal responsibilities and visiting arrangements are also answered through this channel.

In 2022, regarding issues directly related to the social protection of children in Portugal, there were several complaints related to the performance of entities with competencies in the field of childhood and youth, due to delays or disagreements regarding the responses and decisions taken by the services of the Commissions for the Protection of Children and Young People (CPCJ), Social Security and the Multidisciplinary Advisory Teams to Courts (EMAT). There were also complaints from parents about the institutions hosting institutionalized children regarding visiting rights and internal procedures. As regards social benefits, questions were raised in relation to rejections and delays in responses from Social Security in respect of disability allowances, orphan's pension, special education allowance and family allowance. As regards social responses, the most relevant complaints were about the lack of response from social security subsidised crèches, a request for support in finding housing to accommodate refugees (one mother and minor daughter) and complaints in relation to the intervention of municipal councils in support to social housing.

The Ombudsman’s staff provides personalized information, in an informal and prompt way. If the case justifies it, they can refer the situation to the competent entities (for example, to the local Commission for the Protection of Children and Young People) and contact with other institutions (such as schools if, in particular, there is a problem concerning the right to education).

The Portuguese Ombudsman recently had to intervene in two relevant questions, concerning:

1. Foreign citizens - the lack of articulation between the Social Security Institute and the Foreigners and Borders Service compromises access to social benefits (including for their children);
2. Alteration to the rules for subsidizing the family allowance for children and youths due to disability, the delay in implementation of which has impacted above all on single-parent family aggregates.

In both cases it was possible to change the administrative procedures and correct the problems that were brought to the Ombudsman's attention. This was not a problem of a lack of legislation protecting the interests of children, but of administrative malpractice resulting in delayed or poor application of the law.

**6. How can States deliver more effectively to ensure the effective implementation of universal social protection for children, including through international cooperation?**

To avoid the occurrence of these problems, States should be concerned with creating clear laws and effective enforcement mechanisms, with a view to the effective and immediate protection of the children targeted by the protection enshrined in the law.

At the basis of all policies should be an effective fight against poverty, as a guarantee for the exercise of children's rights. This should be done not only on a national basis, but also at the level of cooperation between countries, namely due to the current rise in the cost-of-living, that will affect most the poorest families.

Another important dimension has to do with family life and its conciliation with professional life.

According to the OECD, in 2017 Portugal was, after Greece, Poland and Lithuania, the fourth country in the European Union with the highest number of daily and weekly working hours. For obvious reasons, this fact was indicative of the daily difficulties faced by families and children.

However there has been a positive development. According to the average annual hours actually worked[[7]](#footnote-7), in 2021 the annual hours worked in Portugal amount to 1649[[8]](#footnote-8), which represents a decrease from the annual hours worked in 2017 (1727), being the eighth EU country. And, recently, a four-day week programme has begun to be piloted in Portugal.

So, it is essential to make the protection of children and young people a priority in public policies, within an integrated perspective of support for families and access to quality services (health, education, culture, sport), in addition to the specific protection due to the most vulnerable (migrants, members of minorities, victims of conflict, neglected or abused children, etc.).

1. An English version of the Portuguese Constitution (1976) is available at the Parliament’s website: <https://www.parlamento.pt/sites/EN/Parliament/Documents/Constitution7th.pdf> [↑](#footnote-ref-1)
2. Decree-Law No. 176/2003 of 2 August; Decree-Law No. 64/2012 of 15 March; Law No. 164/99 of 13 May. [↑](#footnote-ref-2)
3. Law No.147/99 of 1 September. [↑](#footnote-ref-3)
4. Law No. 166/99 of 14 September. [↑](#footnote-ref-4)
5. <https://ec.europa.eu/eurostat/en/web/products-eurostat-news/-/ddn-20221027-2> [↑](#footnote-ref-5)
6. «Rendimento Social de Inserção» (Law No.13/2003 of 21 May). Previous: «Rendimento Mínimo Garantido» - «Minimum Guaranteed Income» (Law No. 19-A/96 of 29 June). [↑](#footnote-ref-6)
7. OECD (2023), "Hours Worked: Average annual hours actually worked", OECD Employment and Labour Market Statistics (database), https://doi.org/10.1787/data-00303-en (accessed on 12 January 2023). [↑](#footnote-ref-7)
8. Lower than the average of OECD countries (1716). [↑](#footnote-ref-8)