**SUBJECT: Human rights council resolution 45/30**

- OHCHR Report

**1.a.** **How are the human rights of children separated from their families upheld in your country?**

In Portugal, the Portuguese National Strategy for the Rights of the Child (2021-2024), approved by Resolution of the Council of Ministers No. 112/2020, of December 18, is based on several principles, including that of equal opportunities for all children, which comes to life namely by ensuring that special attention is paid to children in more vulnerable contexts, to guarantee the protection of their rights and eradicate any kind of discrimination based on any criteria.

Alongside, the Law on the Protection of Children and Young People in Danger[[1]](#footnote-1) sets out the relevant provisions in this regard. This Law follows the United Nations Convention on the Rights of the Child (UNCRC), to which Portugal is a State-Party, and its successive amendments aimed at reinforcing and updating the system for the protection of children and young people. The aim of the intervention or the choice between foster and residential care, are good examples of those changes, since they are designed to favour foster care, the maintenance of the relationship with the foster carers, and the permanence, independently or in parallel, of the relationship with the biological family. Moreover, since 2015, it is possible to adopt directly from foster care, and foster care is preferred to residential care, especially for children up to 6 years old.

These changes have been regulated to become concrete measures and be implemented in practice: Decree-law 139/2019 related to foster care and Decree-law 164/2019 related to Residential Care:

1. Portugal’s **new foster care legal framework** – introduced at the end of 2019 – seeks to give a boost to foster care families. The new decree-law (number 139/2019) establishes community-based care as preferential to the placement of children in residential/institutional settings.  To this end, a National Program for Family Assistance to Children is underway to strengthen and qualify the foster family’s network, responding to the legal purpose of prioritizing the decision of foster care rather than residential care, especially for children up to 6 years of age.
2. **Portugal`s new residential care legal framework** (Decree-Law 164/2019, published on October 25) establishes the regime for implementing residential assistance. Residential care is conceptualized as a form of promotion and protection aiming at providing adequate care and satisfaction of the physical, psychological, emotional, and social wellbeing of children and young people, favoring their integration in a safe social and family environment that promotes their education, well-being, and integral development.

At ***Casa Pia de Lisboa (CPL***)[[2]](#footnote-2) when the children are placed in the residential unit, the family is invited to be with the children on the day of entry. In this way, the family knows all the professionals, visits the house and the rooms, allowing for a good start to a healthy relationship between family and caregivers. This procedure has a positive impact on the children, as they realize that the objective is to work towards returning to the family and not the other way around. CPL is aware of the importance of the participation of all those involved in the development of its intervention and has been implementing different methodologies for listening to the different parties involved in its services, which have become common practices integrated in the processes and activities of the institution.

The ***Residential Care Units of CPL*** have social workers teams responsible for diagnosing the situation of the child/young, which are responsible for the elaboration, implementation, and evaluation of the ***Individual Intervention Plan (PII)***, duly aligned with the promotion and protection process of the child/young. In this sense, it is up to the social workers teams to define and execute the PII of each child/young in close collaboration with him/her, the educators/teachers, the family, technical manager of the promotion and protection process of the child/young, as well as other entities with competence in matters related to childhood and youth. For the elaboration of each PII (either the initial or subsequent ones), and depending on the development conditions, the personal characteristics and the needs of the child/young are considered, as well as the needs of her/His family, the areas of intervention, objectives to achieve, strategies and activities to develop.

At CPL, a ***Personal Project methodology*** is promoted, aiming at guaranteeing and safeguarding the right enshrined in article n. º 12.º of UNCRC, ensuring that all CPL children/young have the capacity to formulate their own judgments and freely express their opinions on all matters related to his/her life, taking into account his/her opinion according to his/her age and maturity. It is a document prepared by the children, aged 12 years and over and young people in Residential Care, but it can be also extended to children under the age of 12 years. This instrument facilitates the promotion of self-knowledge, the adaptation of expectations regarding the future and allows the training of the ability of thinking.

The ***Book of Life*** is built by educators together with the child/young, and may include other children/young people, social workers, family, friends, and teachers, among others that the child/young person wishes to include. It can be built in digital format, paper or other formats as long as it allows its mobility. In addition to photographs, it must contain expressions of feelings or emotions, which do not need to take a written form and can be represented through drawings, images, cut-outs, colors, etc. It is intended that The Book of Life is not only a photo album, but also a repository of memories, which allows the child/young person to integrate the different events of his life, promoting the construction of his/her identity in a positive way and the possibility to, after leaving the residential care, take his story with him/her. The role of Educators in the making of this book is fundamental, as it is in the relationship with the reference adult that the child / young can feel safe to think/reflect on the events of his/her life, integrating them emotionally in a healthy way.

At CPL, all the children/young people in residential care have a ***Reference Educator***, who is a member of the caregivers’ staff that, together with the child/young, is responsible for the conduct and execution of the different areas of the PII, in their operational and emotional dimensions, through a secure and close relationship.

**1.b. What are the priorities to strengthen global and national frameworks for the prevention of family separation?**

Of the various measures already in place in Portugal, special reference should be made to strengthening the SNIPI-National System of Early Intervention, the expansion of the number of Commissions for the Protection of Children and Youth (CPCJ), and the Positive parental responsibility measures.

In Portugal the early intervention with children at risk or facing developmental problems is a practice defined by three fundamental characteristics: being family-centered, being based on the community and on the child's life context and being conducted by a team with transdisciplinary practice.

The SNIPI-National System of Early Intervention, implemented in Portugal over recent years, contributes to promote the maximum development and the full inclusion of children up to 6 years of age and works to prevent school failure. The SNIPI covers the entire territory and intends to respond to the needs of children with developmental disorders or those in risk situations. This community-based early intervention model is linked to the health, education, and social care systems, involving the three responsible Ministries. The SNIPI has a central national structure, which articulates the general policies of operations, involving representatives of the three Ministries involved: Solidarity, Employment and Social Security, Education and Health. There are intermediate structures (regional level) that ensure the implementation of these policies on the ground and provide coordination and supervision of local team’s operations. The local teams and the system itself, have as guiding objectives for the interventions, to promote the maximum development and the maximum inclusion of children up to the age of 6 years old. When, at this age, children enter in Basic schooling (which is always done in mainstream schools) it is expected that those whose development is altered or threatened will have better success because of the work already developed by early intervention.

Moreover, the Portuguese system of protection of children and young people, established by the aforementioned Law on the Protection of Children and Young People in Danger, also created local Commissions for the Protection of Children and Young People to specifically deal with situations of children/young at risk. The current 311 local Commissions exist nationwide, and their activity is supported and monitored by the National Commission for the Protection of the Rights and the Protection of Children and Young People (CNPDPCJ).[[3]](#footnote-3)

These local Commissions are autonomous entities of non-judicial and multidisciplinary nature that intervene upon the report of situations of children/young at risk or in danger. After an initial diagnosis, and in case danger is ascertained, a Promotion and Protection Process is open for each specific child and a non-judicial intervention takes place contributing to guaranteeing the best interests of the child, and, whenever possible, preventing the separation of the child from the respective family - unless being with the family constitutes a risk to the child. An individual plan for the protection of the child/young is produced by the local Commission's professionals, with the purpose of eradicating any risk that may compromise their rights and of helping the family to cope and solve the problems that have been diagnosed as roots of the risks impending over the child. The implementation of this individual plan depends on the parents’ prior agreement and on the non-opposition of the child, in case the child is aged twelve or above, or is aged below twelve but has a recognised adequate degree of maturity. The consent of the parents and the non-opposition of the child may be withdrawn at any moment. In case parents do not consent on the intervention upon a diagnosis of a child at risk, the local Commission immediately articulates with the competent entities that shall intervene to protect the child, usually judicial and/or criminal authorities, depending on the outlines of each case.

**2. a. How can the right to family life be upheld for children in a cross-border situations, particularly migrant children who are separated from their families (taking into consideration Article 10 of the Convention on the Rights of the Child)?**

N/A

**2.b. How can the best interests of children separated from their families in cross-border situations, in particular migrant children, be more effectively upheld without discrimination?**

State parties should accomplish children rights enshrined in the UNCRC. It doesn't matter where they come from or what their migratory status is. Those who were left with no options and fled their homes have the right to be protected and to enjoy all essential services. It is the realization of these rights that gives every child the best opportunity for a wellbeing, happy and safe future.

Detention and family separation are traumatic experiences that can leave children more vulnerable to exploitation and abuse and, consequently, affect their long-term development. Such practices should not be of interest to anyone, least of all the children who suffer most from its effects.

Portugal has made efforts to support and integrate refugee children, asylum seekers and migrants affected by crises around the world.

In September 2020, the European Commission presented a new Pact for Migration and Asylum with faster and more effective procedures, which aims to replace the “*ad-hoc* solutions” seen in recent years, demanding a better sharing of responsibilities between EU member countries.

Currently, the arrival of an unaccompanied or separated child from his/her parents at an EU border post is a complex process, involving the identification, registration, monitoring, and care of unaccompanied or separated children, with a waiting time of months or even years. Formally, this is where the authorities responsible for controlling the border posts have the first opportunity to identify possible risks, vulnerabilities, and special needs. This screening will dictate the future of those children, who can include a request for international protection, family reunification in an EU Member State or in the first country of asylum, assisted return to the country of origin, or even signaling them as a victim of traffic.

The UNCRC frames the international regime for the protection of migrant or refugee children, highlighting the following provisions for this purpose: it should not be discriminated against in relation to the others (article 2); its survival and development must be safeguarded (Article 6); and to be guaranteed the right to participate and to be heard (Article 12). Of particular interest is Article 22, which refers to the right to benefit from adequate protection and humanitarian assistance.

The best interests of the child, as referred to in Article 3 of the UNCRC, should be a primary consideration in all decisions concerning migrant children, along with their right to be heard. This principle should, therefore, be incorporated in all the phases that the child goes through, starting with its identification at a border post or in national territory, passing through its reception, the process of determining its age, or the asylum procedure itself. The realization of this principle ensures that children have effective access to their rights.

**4. What are the main gaps and strategic priorities to strengthen international cooperation on upholding the rights of children in cross-border situations who are separated from their families?**

It should be stressed that a child is a child, regardless of their ethnic origin, gender, nationality, social and economic background, abilities, migrant, or resident status, and that the best interests of the child must be considered in all policies, actions and procedures that concern them.

Inclusive and quality education from early childhood through adolescence must be ensured, covering stateless and migrant children and those living in humanitarian emergency contexts.

Eliminating all forms of violence and discrimination against children should be a priority, including physical, sexual, economic, and psychological violence, injuries, abuse, neglect, ill-treatment, and exploitation perpetrated both online and offline, forced marriage, human trafficking, abuse and exploitation of migrant children, torture, honor killing, female genital mutilation, incest, forced school leaving and the use of children as soldiers.

It is important to ensure a child-friendly justice system with appropriate and inclusive processes that take into account the needs of all children, and where is ensured the child's right to be heard, to be assisted by a legal representative and to be fully informed in a child-friendly manner at all stages of the process in the judicial system, in accordance with Articles 4 and 16 of Directive (EU) 2016/800 and with Articles 22 and 24 of Directive 2012/29/EU, including for migrant children, with special emphasis on unaccompanied minors.

The importance of the best interests of the child in cross-border family disputes urges EU Member States to ensure compliance with their obligations as provided for in the Brussels II A Regulation and calls on national authorities to recognize and enforce judgments given in another Member State in child-related cases, such as decisions relating to the custody of children, access rights and maintenance obligations.

Measures to improve the situation of migrant children and protect their interests, both inside and outside of the EU, and at all stages of asylum procedures must be included. All EU Member States should ensure the application of safeguards and procedural rights for children in the Common European Asylum System, with special emphasis on the speed of family reunification processes, in accordance with Council Directive 2003/86/EC, access to conditions adequate care, social and medical assistance, timely appointment of qualified legal representatives and guardians for unaccompanied minors, and access to child-friendly information.

An inclusive approach to protect the most vulnerable children is needed in line with the EU Charter of Fundamental Rights, the UN Convention on the Rights of the Child, as well as the Sustainable Development Goals (SDGs) and their child-related goals, leaving no one behind.

For example: Casa Pia de Lisboa collaborate with the National Commission for the Promotion of the Rights and Protection of Children and Young People, in a Council of Europe project related to the participation in the "*Child Consultations on Age Assessment of Children in Migration*" with a view to implementing child-friendly procedures in all aspects relating to immigration and asylum laws, including assessing the age of children in the context of asylum and immigration procedures. Children/youth participation in workshops creates the opportunity for them to exercise their rights and to make their voices heard by all members of the Council of Europe on matters that directly concern them, in which they were involved and that they can influence with their opinions and artistic expressions the decision on how Member States should adjust their practices in this very concrete matter - of procedures for assessing the age of children in the context of asylum and immigration procedures -, as well as other relevant ones.

1. Approved by Law No. 147/99, of September 1, amended by Law No. 31/2003, of August 22, Law No. 142/2015, of September 8, Law No. 23/2017, of May 23 and Law No. 26/2018, of July 5. [↑](#footnote-ref-1)
2. Casa Pia de Lisboa (CPL) is a Public Institute under the tutelage of Ministry of Labour, Solidarity and Social Solidarity. The mission of CPL is to promote the rights and protection of children and young people, especially those who are in danger or at risk of exclusion, to ensure their full development, through acceptance, education, training, and social and professional integration.  [↑](#footnote-ref-2)
3. By Decree-Law No. 159/2015, of August 10, amended by Decree-Law No. 139/2017, of November 10. [↑](#footnote-ref-3)