Child Rights References in the Universal Periodic Review

Summary:
A compilation of extracts featuring child-rights issues from the reports submitted to the first Universal Periodic Review. There are extracts from the 'National Report', the 'Compilation of UN Information' and the 'Summary of Stakeholder's Information'. Also included is the 'Final Report' and 'Conclusions and Recommendations' from the Review.

Portugal - 6th Session - 2009
4th December 2009, 9am - 12pm

National Report
35. The National Commission for the Protection of Children and Youngsters at Risk aims to co-ordinate, follow-up and assess the activities of public bodies and community agencies involved in the protection of children and young people at risk. It was created under the aegis of the Ministry of Justice and the Ministry of Labour and Social Solidarity and is responsible, i.e. for the identification of children who are especially vulnerable. The dissemination of the Commissions’ Functional Model at the local level has already achieved a national coverage rate which will soon exceed 90 per cent. Presently, there are 276 Commissions in a universe of 308 local municipalities, and 10 more are being setup.

38. This commitment has been translated into the signature and ratification or adherence to a large number of international human rights instruments, including six core UN Human Rights instruments – the two International Covenants on Civil and Political (ICCPR) and Economic, Social and Cultural Rights (ICESCR), the Conventions for the Elimination of Racial Discrimination and Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the Convention against Torture (CAT) – without any reservations.

39. In each case, and having ratified the relevant Optional Protocols, Portugal recognises the full range of the Committees’ competences to monitor the implementation of these core international human rights treaties, including the powers to examine individual and inter-State communications, and to undertake inquiry procedures. Portugal is also a State party to the Second Optional Protocol to ICCPR, concerning the abolition of the death penalty and to both Optional Protocols to the CRC.

47. Portugal also fully supports the Special procedures system and is committed to work in cooperation with them, having extended a permanent invitation to all Special procedures to examine its national human rights situation. Portugal was the main sponsor of an initiative that successfully established the Special Rapporteur on the Right to Education in 1998.

79. The teaching of the Portuguese Language as a non-mother tongue in the national Curricula has been a concern of the Ministry of Education, which led to the issuing of guidelines to guarantee the school success of children of immigrant families. Another tool to achieve this objective has been the appointment by local authorities or special employment programmes of socio-cultural mediators to work in schools with a high level of ethnic diversity. These mediators have played an important role in the furthering of family participation in school dynamics and of intercultural dialogue.

81. Regarding education and health for non Portuguese citizens who are in the national territory, the benefits of public schooling may not be refused to any children on accounts of the irregularity situation of her/his parents. The registry of irregular minors is confidential. Irregular immigrants who are in Portugal for a time period over 90 days cannot be discriminated in acceding to public health care, although, in general terms, they might have to bear its real costs while regular immigrants have the same rights as national citizens on this matter.

98. In 2007, Portugal began implementing the National Plan against Trafficking in Human Beings 2007-2010. This Plan is based on a vision that integrates the human dimension of the problem, enforcing preventive measures and concrete responses regarding the support and integration of the victims of trafficking, especially victims of sexual exploitation and forced labour. The Plan relies on four strategic areas of intervention each with its own implementation measures: (1) Recognition and dissemination of information; (2) Prevention, awareness-raising and training; (3) Protection, support and integration; (4) Criminal Investigation and Punishment of trafficking. This Plan’s key structuring element is the symbiosis between the repressive approach to human trafficking and the promotion of human rights.
through the adoption of strategies to prevent, support, raise awareness, empower and include the victims. The implementation of this Plan is being done by a National Coordinator and a technical commission that integrates several Ministries.

105. In 2007, the Portuguese Government initiated a process towards the elaboration of the Initiative for Childhood and Adolescence (INIA), a strategic approach to facilitate and improve national implementation of the Convention on the Rights of the Child.

106. The INIA 2008 – 2010 aims at defining an Action plan to promote and protect the universality of the rights of the child by developing common guidelines for intervention of all agents and entities converging towards the development and socialization process of the child, from birth until adulthood.

107. One of the main achievements in the area of the promotion and protection of the Rights of the Child has been the adoption, in September 2007, of legislation confirming explicit prohibition of corporal punishment of children through the inscription of this total ban in article 152-A of the Penal Code. This article stipulates that whoever takes care, is responsible for the upbringing, has under the responsibility of his direction or education or working at his service a minor or a particularly defenceless person, and inflicts, in a reiterated manner or not, physical or psychological abuse, including corporal punishment, deprivation of freedom and sexual offences, or gives cruel treatment, shall be punished with a prison sentence of one to five years.

108. Portugal has set up mandatory reporting systems for professionals working with children who detect the use of corporal punishment in the family since 1999. Furthermore, any citizen who is aware of situations of abuse can report them to the competent institutions within the field of infancy and youth, police authorities, Commissions for the Protection of Children and Youngsters at Risk or judicial authorities. Reporting is mandatory in cases where the physical or psychological integrity of the child or juvenile is endangered.

109. Other set of measures to enhance protection of vulnerable children has been implemented through a Protocol between the Ministry of Internal Affairs and the Institute of Child Support (a national NGO) aiming at obtaining better responses to enable the recovery of missing children or children victims of sexual abuse, and to combat these phenomena. Under this protocol, the following activities are foreseen: the creation of an SOS-Child hotline, a green number to be used in case of missing or sexually explored children; information, support and follow up to the child victim and his/her familiaries or legal representatives; collaboration with the Security Forces and Services, to disseminate messages of search relating to missing children and to effectively search for children on the run in the city of Lisbon.

110. A very important step was also taken this year, with the implementation of the National Child Alert System, an initiative of the Ministry of Justice, involving also the Attorney-General’s Department and several public and private institutions. Its main aim is to establish a global mechanism allowing for information gathering, with the involvement of civil society, in the hours following a child abduction, so as to lead to her expeditious location and liberation.

111. Regarding the increasingly worrying phenomena of sexual crimes against minors committed in the context of new information technologies and telecommunications, a Protocol was celebrated between the Portuguese Criminal Police and the Ministry of Education in the area of prevention of these crimes. Through this Protocol, investigation agents from the Judiciary Police with expertise in the area of sexual criminality against minors and information technologies help in the training and increasing awareness of teachers and parent’s associations to the dangers associated with the use of modern information technologies in their relation with sexual crimes. These preventive actions will help to minimize the exposure of children to these crimes.

112. Additionally, the Criminal Police participates in conferences, actions and other initiatives organized under the aegis of both public entities and NGOs directed to minors, parents and professionals, where these themes are discussed.

113. Through these preventive efforts, minors are alerted to the risks and are encouraged to report crimes of sexual nature directly to competent authorities or through the hotline created for this purpose in the context of the European programme Internet Safer Plus. This line intends to provide for a safe and confidential environment where the general public can report illegal contents accessible through the Internet (namely child pornography) aiming at blocking illegal sites and criminal prosecution of offenders who make them available.

114. The Code of Criminal Procedure recognizes the special needs of children victims of crimes, setting forth a number of provisions that allow for the protection of children’s rights and interests in criminal proceedings. Child Victims/Witnesses in Criminal Proceedings have a special standing and all the guarantees are enshrined in the national legislation in accordance with the principle of the best interest of the child and the Convention on the Rights of the Child. One example of a provision especially designed to protect children who are victims of crimes is to allow for their temporary placement in a child-care institution when the child witness has to be temporarily withdrawn from his/her family or social closed group. As far as court facilities are concerned, there are already some court rooms especially adequate to ensure that children are heard in the best possible environment, creating the conditions for an informal atmosphere, the respect for their privacy, and for the physical and psychological safety of the child. Work is under way to equip other courts with similar facilities.

115. Only the Commission for the Protection of Children and Youngsters and Juvenile Court may determine the placement of a child under foster or institutional care. The decision of placement, regardless of being taken by a court or a commission, must be reviewed at least every six months, and may be reviewed earlier by choice of the Commission or court or request of the parents, the legal representative or guardian, or even the child. The law foresees a mandatory hearing and participation of the minor at risk during the process and in particular regarding the decision on the applicable protection and promotion measures.

116. Regarding the prevention and elimination of child labour, there is a programme of action in place since 2004 – the Plan for the Elimination of the Exploitation of Child Labour – established by the Ministry of Labour and Social Solidarity. This Plan has a national structure connecting the intervention of 18 multidisciplinary teams composed by professionals of different areas to assess the situation of
12. Noting the existence of the National Commission for the Protection of Children and Youth at Risk and the District-Level Commissions, the Committee on the Rights of the Child (CRC) in 2001 reiterated its earlier call for a structure for national coordination of the implementation of the Convention with regard to all children. It recommended paying particular attention to coordination at the ministerial level and to continue to ensure the participation of civil society, including NGOs, in the implementation of the Convention.

15. CRC was concerned at the lack of a comprehensive national strategy on the implementation of the Convention and recommended that Portugal develop one, set priorities and define a time frame for implementation.

16. CRC welcomed Portugal's decision to develop a global plan on family policy, including changes to social welfare and social security and means-tested coverage with particular provisions for families and children, including those persons not paying contributions to the social security system. It also welcomed the definition, in the National Plan of Action against Poverty and Social Exclusion, of child protection priorities including the provision of support measures for families to enable them to fulfil their parental responsibilities.

21. In 2001, CRC expressed concern about de facto discrimination against children and families living in poverty in less developed rural and urban areas and against the Roma and their children in particular. It recommended that Portugal continue and strengthen efforts to ensure equal respect for the right to non-discrimination of all children, giving particular attention to all the above-mentioned.

27. CRC was concerned that corporal punishment continued to be practiced within the family. It recommended, inter alia, that Portugal adopt legislation prohibiting corporal punishment in the family and in any other contexts not covered by existing legislation and develop mechanisms to end the practice, including through information campaigns targeting parents, teachers and children.

32. CRC remained concerned at the number of street children in Portugal’s main cities and recommended, inter alia, studying the causes of children living on the street and the scope of the problem, and developing a comprehensive policy to address the causes. It noted, nonetheless, that the problem still exists and that children are engaged in begging or are exposed to other risks. The Committee pointed out that street children are particularly exposed to the worst forms of child labour, and encouraged Portugal to pursue its efforts to protect them from such labour.

49. In 2008 the ILO Committee of Experts noted that according to UNESCO statistics for the year 2005, 98 per cent of girls and boys attended primary school. However, the secondary school figures indicate that 13 per cent of girls and 21 per cent of boys left school early. It noted in this connection that according to the Government, measures are being taken under the Integrated Education and Training Programme to encourage children to complete compulsory schooling or, in the case of children of 15 and over, to get them into education or training suited to their abilities and needs.

50. In 2001, CRC remained concerned about the low levels of investment in education, including pre-school education; low enrolment in pre-school education, the relatively high drop-out and repetition rates in primary and secondary schools and the relatively low numbers of children going on to tertiary education from secondary school.

51. CEDAW called on Portugal to continue efforts to strengthen rural women’s and girls’ access to education and formal vocational training and to encourage them to pursue their education after primary school. It recommended taking targeted measures to ensure that women working on family farms have real possibilities to acquire formal training in farming to enhance their economic empowerment.

14. La contribution conjointe a estimé que la situation des enfants handicapés pris en charge dans des centres spécialisés s’est révélée particulièrement préoccupante, surtout suite à la décision de la Cour Suprême du 5 avril 2006, qui affirmait dans un cas impliquant des maltraitances d’enfants handicapés placés en institution, que des punitions modérées administrées à des mineurs par des personnes autorisées à le faire étaient acceptables si le but des ces punitions était exclusivement éducationnel et approprié à la situation. La contribution conjointe a informé que cette jurisprudence a été condamnée par le Comité européen des droits sociaux et que le Portugal a depuis lors amendé son code pénal le 15 septembre 2007 (art. 152) de manière à interdire les châtiments corporels à l’égard des enfants.

24. La contribution conjointe a mentionné les mesures de protection accordées aux victimes de la traite, et notamment le fait que les victimes se voient accorder une période de réflexion allant de un à deux mois pour leur laisser le temps de décider si elles souhaitent ou non déposer plainte contre les trafiquants et le fait que quelque soit leur décision, un permis de résidence d’un an leur est accordé. Cette contribution a salué l’adoption par le Portugal de son premier et ambitieux Plan d’Action National contre la Traite des Personnes 2007-2010 et a estimé que davantage d’efforts doivent être mis en œuvre pour identifier les victimes de la traite et leur assurer les mesures de protections prévues, ce qui va de pair avec la nécessité d’accroître les capacités et le nombre de structures d’accueil pour les victimes de la traite.

32. ECRI/CoE noted with interest the legislation providing for the introduction in schools of compulsory classes in Portuguese as a
second language for children whose mother tongue is not Portuguese. It welcomed the adoption of Decree-Law No. 67/2004 which guarantees the right of children whose foreign parents have no legal status in Portugal to enroll in schools under the same conditions as children of non-nationals who do have legal status. It added that the same rule applies to access to health care. 73 ECRI/CoE recommended that the authorities continue and intensify efforts to ensure equal access to education for children from minority groups, particularly immigrant children. 74 It also recommended closely monitoring their situation to ensure that they do not suffer any disadvantage in access to education, particularly because of a failure to cater for multiculturalism in schools. 75

Final Report

11. Portugal informed that since the 2007 amendment of the Criminal Code, domestic violence had become a specific crime, punishable with 1 to 5 years of imprisonment. The prohibition of corporal punishment of children was explicitly confirmed. Two laws setting the priorities and orientations of criminal policy for the period 2007–2009 and 2009–2011 had both placed domestic violence among the priorities of criminal investigation and prevention.

15. Portugal informed that the prison system, as a whole, was not in an overcrowding situation. The current rate of occupation was 92.6 per cent. However, isolated situations of overcrowding existed, namely in the Autonomous Region of Azores. The building of two new prisons was planned to address this. The protection of the rights of children of prisoners was ensured in accordance with the principle of the best interest of the child which, in the Portuguese legislation, governs all measures and actions affecting children. Measures to provide education, training and work to prisoners have been widened in the last years with good results. In 2008 35 per cent of the prisoners attended educational programmes.

28. Brazil recognized efforts regarding non-discrimination and integration of immigrants particularly legal provisions for all children, regardless of the irregular situation of his/her parents, to have access to education. Brazil expressed concern about allegations regarding police misconduct towards ethnic minorities or persons of non-Portuguese origin. Brazil asked whether Portugal was considering recommendations of the Committee on the Elimination of Racial Discrimination to introduce a provision in the criminal law that committing an offense with racist motivation or aim shall constitute an aggravating circumstance. Brazil made recommendations.

30. Canada welcomed improvements made regarding the rights of children with disabilities and their integration into mainstream education. Canada noted reports of ill-treatment of detainees and in some cases excessive use of force by the police. Canada appreciated the Government’s recognition that domestic violence remained a problem, and that it had implemented the National Plan against Domestic Violence of 2007–2010. Canada made recommendations.

41. The Islamic Republic of Iran raised concerns about racism and racial discrimination against immigrants and ethnic minorities, poor conditions in prisons and detention centres, and human trafficking, asking about the concrete measures taken to effectively address these issues. It noted concerns regarding the lack of a national human rights plan and of a comprehensive national strategy for the implementation of the Convention on the Rights of the Child (CRC). It made recommendations.

48. Chile valued the important progress made regarding the protection of the rights of women and children, highlighting the third National Plan for Equality Citizenship and Gender, the third Plan against Domestic Violence, the Initiative for Infant Care and Adolescence, and the first National Plan against Human Trafficking. Chile welcomed the legislation to prohibit corporal punishment of children. Chile made recommendations.

51. Spain welcomed Portugal’s decision to ratify CED. Spain invited Portugal to continue raising awareness about all forms of domestic violence against women and children. Spain enquired about the work of the Observatory of Trafficking of Persons and about measures in place to report cases of violence against children. Noting that Portugal had been at the forefront of linking human rights and poverty, Spain enquired about measures undertaken in this area. Spain made recommendations.

52. In its response, Portugal noted the 2009 report of the Organization for Economic Cooperation and Development confirming the enrolment of more students in school and improvements in education outcomes in 2006–2007. Portugal adopted significant measures to support families in the education of their children, including the extension of the compulsory schooling to ages from 5–18 along with reinforcing the public pre-school network and developing the upper-secondary vocational path.

54. Portugal highlighted that the phenomenon of children living on the streets had been gradually losing its expression. A non-governmental organization with public funding had specialized in providing assistance to street children focusing its activities on disadvantaged neighbourhoods. In 2008 it identified 17 children living in poverty, 10 engaged in child prostitution and supported 34 children on the run.

63. Referring to the programme of action to eliminate female genital mutilation, the Russian Federation asked about the seriousness of the problem. It asked why most of Portugal’s periodic reports to treaty bodies were late and why Portugal had only replied to 4 out of 15 questionnaires sent by the Special Procedures. It noted the persistence of human trafficking, despite significant efforts to prevent it. It made a recommendation.

72. The United States of America raised questions concerning the overcrowding conditions in prisons and detention centres, and the completion of investigations of deaths in custody. It asked how Portugal addressed the physical abuse of inmates by prison guards in the implementation of the 2004 guidelines and law to reform prisons. It acknowledged the establishment of a Plan for the Elimination of Exploitation of Child Labour in 2004, enquiring about measures taken to reduce the number of working children in urban informal sectors. It made recommendations.

89. Portugal informed that in 2007 the Government launched the Initiative for Childhood and Adolescence, a comprehensive approach to the rights of the child set out in CRC. The initiative of 2009–2010 is a comprehensive action plan to defend the universality of the rights
of the child aimed at reinforcing cooperation and articulation between institutions and civil society organizations responsible for and concerned with the protection of the rights of the child.

Conclusions and Recommendations

14. Continue strengthening efforts to ensure respect for the right to non-discrimination of children in the country, in particular children and families living in poverty and children of minority groups, including the Roma (Malaysia);

16. Consider strengthening efforts to combat violence against women, including domestic violence and trafficking in women and children, by, inter alia, ensuring the full implementation of related laws and legislation (Malaysia);

17. Strengthen its efforts to ensure that the laws prohibiting violence against women and children are enforced (Sweden);

27. Strengthen efforts to prevent and punish the crimes of child prostitution, paedophilia and child pornography (Argentina);

29. Adopt further measures to provide police, prison and judicial staff with human rights training with specific focus on protection of human rights of women, children, ethnic or national minorities as well as of persons of minority sexual orientation or gender identity and strengthen the accountability of such personnel for their proper conduct, particularly when dealing with cases of hate crimes (Czech Republic);

35. Improve effective access to education for children with disabilities (Czech Republic);