

Global Study on Children Deprived of Liberty

Contribution of the Portuguese Ombudsman to the Independent Expert for the United Nations Global Study on Children Deprived of Liberty

The Portuguese Ombudsman institution, in its capacity of national human rights institution fully in line with the Paris Principles and accredited with “A” status since 1999, hereby replies to the call for input received from the Independent Expert for the United Nations Global Study on Children Deprived of Liberty for contributing to the Global Study on Children Deprived of Liberty. The current mandate holder is Maria Lúcia Amaral.

(September 2018)

Global Study on Children Deprived of Liberty

Questionnaire

Background and Introduction to the Global Study

The United Nations General Assembly by Resolution 69/157 of 18 December 2014 invited the Secretary-General to commission an in-depth global study on children deprived of liberty. In October 2016, Manfred Nowak (Austria) was designated to lead the development of the Global Study as Independent Expert.

The Global Study will build upon the experiences from two previous UN Studies on children: The report of **Graça Machel** on the Impact of Armed Conflict on Children as well as the United Nations Study on Violence against Children, led by **Paulo Sérgio Pinheiro**, which provide us with a good blueprint for undertaking the Global Study. The Global Study will be carried out in close cooperation with Governments, UN agencies and actors, including OHCHR, UNICEF, UNODC, UNHCR, the Special Representative of the Secretary-General on violence against children, the Special Representative of the Secretary-General for children and armed conflict, the Committee on the Rights of the Child (CRC), as well as civil society organizations and academia. The process will include thematic, national and regional consultations, which will take into account views from around the world. The input of all stakeholders is essential for the Global Study to provide sound evidence and recommendations to support the Member States in their efforts to prevent children's deprivation of liberty and safeguard the rights of children deprived of liberty. The **main objectives** of the Global Study will be:

1. To assess the magnitude of this phenomenon, including the number of children deprived of liberty (disaggregated by age, gender and nationality), as well as the reasons invoked, the root-causes, type and length of deprivation of liberty and places of detention;
2. To document good practices and experiences and to capture the views and experiences of children to inform the Global Study's recommendations;
3. To raise awareness and promote a change in stigmatizing attitudes and behaviour towards children at risk of arrest or detention as well as children who are deprived of liberty;
4. To provide recommendations for law, policy and practice to safeguard the rights of children concerned, and prevent the detention of children and significantly reduce the number of children deprived of liberty through effective non-custodial alternatives guided by the best interests of the child.

The **key focus areas** of the Global Study will be the deprivation of liberty of

- I. Children deprived of liberty within the administration of justice
- II. Children deprived of liberty for migration-related reasons
- III. Children living in places of detention with their parents

- IV. Children deprived of liberty in institutions
- V. Children deprived of liberty in the context of armed conflict
- VI. Children deprived of liberty on national security grounds.

Purpose of the Questionnaire

In preparing the Global Study, the Independent Expert will draw on a variety of sources and available information, based on quantitative and qualitative research methodologies. Sources will include but not be limited to State reports under the Convention on the Rights of the Child, information generated by United Nations conferences, official statistics available from the United Nations Statistics Division and other statistical information available within the United Nations system, including UNICEF, UNODC, UNHCR, OHCHR and the Special Representatives of the Secretary-General on Violence against Children and for Children and Armed Conflict. One of the most important tools for gathering comprehensive, reliable and most recent quantitative data is the present questionnaire which is being submitted to States, UN agencies, NGOs and other stakeholders, including the UN Committee on the Rights of the Child, the UN Sub-Committee on the Prevention of Torture (SPT), National Human Rights Institutions (NHRIs), National Preventive Mechanisms (NPMs) and academic institutions. The data requested in the questionnaire should be provided by Governments in close cooperation with field offices of relevant UN Agencies and with NGOs, NHRIs and other stakeholders. Governments are asked to take account of the fact that responses to the various forms of deprivation of liberty of children might fall into the competence of various Government departments and statistical offices and, in federal States, also on various levels of the federal structure. Governments are, therefore, requested to identify a **focal point** responsible for coordinating responses to the questionnaire and for liaising with field offices of UN Agencies and with NGOs and other stakeholders involved in compiling the requested data.

The questionnaire is primarily aimed at collecting and providing quantitative **statistical data** about the number of children deprived of liberty in the key focus areas outlined above. In addition, Governments are encouraged to provide examples of **best practices** and innovative **alternative approaches** aimed at reducing the number of children deprived of liberty according to the child rights principles. Governments are also requested to provide copies of relevant laws, studies, policies, reports etc.

The **questionnaire** aims at striking a realistic balance between data that are needed to enable a comprehensive and comparative analysis of children deprived of liberty on the one hand, and data which can realistically be expected from Governments to be collected and made available. For this reason, highly detailed questions and disaggregated data beyond age, gender and nationality have been avoided. Since many relevant data might not be available for the past, the questionnaire requests Governments to take a special effort in collecting such data at a particular date in the near future (26 June 2018) to provide a snapshot of the number of children detained at that specific point in time. If your government collects such “snapshot” data on another day of the year, please provide that

data. If data are usually available for the past, questions have also been raised with respect to the total number of children detained annually in each of the past ten years (2008 to 2017). This will facilitate a limited trend analysis. Other aspects of the Global Study, such as conditions in detention (rights to personal integrity, education, health etc.) or the integration of the principles of the rights of the child will form part of the qualitative information gathering and analysis.

Responses to the questionnaire should be sent in both hard copy and electronic format in one of the six official United Nations languages no later than 1 September 2018 to:

Manfred Nowak
UNOG-OHCHR
CH-1211 Geneva 10
Email: globalstudycdl@ohchr.org.

Definitions of Terms used in the Questionnaire

The term “**child**” is defined in Article 1 of the UN Convention on the Rights of the Child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”. For the purposes of the Global Study on Children Deprived of Liberty, which shall be based on comparable data of all States, such data will be collected on all children and juveniles up to the age of eighteen years, irrespective of how the term “children” is defined under domestic law. This includes both children detained with their family members, as well as unaccompanied or separated children. “**Unaccompanied children**” (also called unaccompanied minors) are children, as defined in article 1 of the Convention on the Rights of the Child, who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. “**Separated children**” are children, as defined in article 1 of the Convention, who have been separated from both parents, or from their previous legal or customary primary care-giver, but not necessarily from other relatives.

Every person, including every child, has the **human right to personal liberty**, as guaranteed in Article 9 of the International Covenant on Civil and Political Rights (ICCPR), Article 37(b) of the UN Convention on the Rights of the Child (CRC) and similar provisions in international and regional human rights treaties. The term “**deprivation of liberty**” is defined in Article 4(2) of the Optional Protocol to the UN Convention against Torture of 2002, which corresponds to the definition in Article 11(b) of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990 (Havana Rules), as “any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority”. This definition, which constitutes the legal basis for visits to places of detention by the UN Sub-Committee for the Prevention of Torture and by National Preventive Mechanisms, will also be applied for the purposes of the Global Study on Children Deprived of Liberty. The requirement that deprivation of liberty has to be ordered by a “judicial, administrative or other authority” leads to the conclusion that children deprived of liberty by non-State actors (e.g. parents, traffickers or armed rebel groups) will not be covered by the present study, irrespective of the obligation of States to prevent such types of deprivation of liberty. But the places of detention go beyond State-organized prisons and institutions and include also private custodial settings, such as private prisons, educational institutions, psychiatric hospitals and similar institutions as long as such private custodial settings are licensed or contracted by the State and/or the deprivation of liberty was ordered by a State authority.

Article 37(b) CRC provides that the “arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”. In addition, the implementation of all rights under the CRC must be guided by the general principles of the Convention, namely non-discrimination, best interests of the child, the right to life, survival and development and the right of the child to express his or her views. Apart from the message that children should only be deprived of liberty in truly exceptional situations, Article 37(b) CRC uses three specific terms for the generic term “deprivation of liberty”. “**Arrest**” usually refers

to the act of deprivation of liberty by the police or other law enforcement officials. “**Detention**”, on the other hand, refers to the situation of deprivation of liberty, which starts with the arrest and ends with the release of the person concerned. While “detention” is used as a generic term for every type of deprivation of liberty, “**imprisonment**” or “**incarceration**” is only used for detention after a conviction by a criminal court and sentence to a specific prison term. Prison terms are usually spent in “**prisons**” or “**correctional institutions**”. Police detention is usually referred to as police “**custody**” in a police lock-up or a police “**jail**” (for longer periods). Detention in camps (e.g. for prisoners of war) is usually called “**internment**” or “**confinement**”. The term “**Institutions**” (or “**centres**”) means all public or private settings outside the justice system or the penitentiary administration, where children can be deprived of liberty. Such institutions may include, but are not limited to, orphanages, reform schools, closed remand rooms or other correctional institutions, institutions for children with disabilities, for children with health problems (e.g. facilities dealing with behavioural disorders, psychiatric facilities), for children with drug, alcohol or other addictions, for the protection of victims of abuse including trafficking, for children without parental care, from where the children are not permitted to leave at will.

Irrespective of the terminology or how situations of deprivation of liberty are interpreted under domestic law, what is instructive for the purposes of the Global Study is the fact that the child is prevented by whatever means (physical force, physical barriers, threats, sanctions, restraints, medication etc.) from leaving a particular facility, site or institution at will. The Global Study therefore seeks information with regard to both *de facto* and *de jure* deprivation of a child’s liberty.

General instructions for completing the questionnaire:

- Please provide the most data possible in each subject area:
 - If data are not available for the date selected, please provide the most recent data available.
 - If historical data are not available for each of the last 10 years, please provide any data available within that period.
- Please provide information about the collection methodology for data included in this survey, as well as any information about data quality, where available.
- Please note the following abbreviations used throughout the table shells:
 - M: Male
 - F: Female
 - P: Persons
 - Nat.: National/Citizen
 - Non-Nat.: Non-Citizen

Questionnaire

I. Children deprived of liberty within the administration of justice

- 1) What is the minimum age of criminal responsibility in your country?
If the minimum age of criminal responsibility varies within your country, please provide details.

In Portugal, the minimum age of criminal responsibility is 16.

- 2) Are there separate juvenile justice processes and/or facilities for children in conflict with the law?
Please describe juvenile justice arrangements at all levels of the criminal justice system (police, courts, corrections).

Yes. The Educational Guardianship Law (Law no. 166/99, 14th of September) is the legal provision that applies to children whom, between the age of 12 and 16, adopt conducts that are qualified by the Penal Code as a crime. Family and Children Courts have the jurisdiction initiate the procedures, to trial the process and to oversee the execution of the educational measures. These measures are established in the law and are applied bearing in mind the principles of necessity, proportionality and legality. The educational measures can generally be defined as institutional and non-institutional. The most severe measure is the internment in an Educational Centre (institutional), which temporarily removes the child from his/hers natural environment. According with the degree of necessity the educational measure of internment can be executed in an open, semi-open or closed Educational Centre. Alongside other requirements (i.e the seriousness of the offense) a child can only be sentenced to internment in a closed Educational Centre if he or she is, at least, 14 years old. There are further 8 non-institutional measures that will be more developed in questions no. 8 and 13.

- 3) From what age are children subject to detention in the juvenile justice system? From what age are they subject to detention in the adult criminal justice system?

As mentioned above and in regard to the juvenile justice system, the Educational Guardianship Law applies to children that commit offenses between the ages of 12

and 16. The internment in a closed Educational Centre may only occur if the child is, at least, 14 years old – younger aged children (at least 12) can be interned in open or semi-open Educational Centers.

In the adult criminal system children can be subjected to detention from the age of 16 (age of criminal responsibility). It is important to mention that there is also a special legal regime for children and youths aged between 16 and 21. This regime has particular provisions, namely regarding reduced sentencing and specially dedicated detention facilities.

4) Please provide the number of children deprived of liberty on 26 June 2018:

A) in police custody for suspected offenses

There is no available data.

B) in pre-trial (remand) detention

In June 26th 2018 there were 18 children detained in these circumstances. This number amounts the provisional educational measures applied in the court's pre-decision phase when there is the predictability of application of a final educational measure and the existence of a risk of flight or committing other acts qualified in the law as a crime.

C) in prison or other detention facilities after a conviction and sentence (or their equivalent in domestic law).

In June 26th 2018 there were 154 young people in Educational Centers. This internment measure, applied following a judicial decision, aims to provide the young person, by means of temporary removal from their habitual environment and the use of pedagogical programs and methods, internalization of values conform to the law and to the acquisition of resources that will enable them to conduct their life in a socially and legally responsible way in the future.

Please provide data disaggregated by age and nationality (citizens/non-citizens) where possible.

Provisional Educational Measures (Juvenile Justice System)

	Under 10			10-11			12-13			14-15			16-17			total children (0-17)		
	nat	non-nat	total	nat	non-nat	total	nat	non-nat	total	nat	non-nat	total	nat	non-nat	total	nat	non-nat	total
Male							1		1	12	1	13	2		2	15	1	16
Female										2		2				2		2
Total							1		1	14	1	15	2		2	17	1	18

Internment in Educational Center

	Under 10			10-11			12-13			14-15			16-17			total children (0-17)		
	nat	non-nat	total	nat	non-nat	total	nat	non-nat	total	nat	non-nat	total	nat	non-nat	total	nat	non-nat	total
Male										25	8	33	73	6	79	98	14	112
Female										9		9	8	2	10	17	2	19
Total										34	8	42	81	8	89	115	16	131

Table 1: Children deprived of liberty in the criminal justice system on 26 June 2018

	Under 10			10-11			12-13			14-15			16-17			Total (ages 0-17)			
	Nat	Non-nat.	Total	Nat	Non-nat.	Total	Nat	Non-nat.	Total	Nat	Non-nat.	Total	Nat	Non-nat.	Total	Nat	Non-nat.	Total	
A) In police custody																			
Male																			
Female																			
Total police custody																			
B) Pre-trial detention																			
Male														6	5	11	6	5	11
Female														0	1	1	0	1	1
Total pre-trial detention														6	6	12	6	6	12
C) Prison																			
Male														1		1	1		1
Female														0		0	0		0
Total prison														1		1	1		1
Total children in deprived of liberty in the criminal justice system																			
Total males														7	5	12	7	5	12
Total females															1	1		1	1
Total children														7	6	13	7	6	13

- 5) Please provide the total number of children aged 0-17 taken into police detention for suspected offences in each of the last 10 years.

Table 2: Children taken into police detention for suspected offences, 2008-2017

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Male										
Female										
Total										

- 6) Please provide the total number of children aged 0-17 taken into pre-trial detention in each of the last 10 years.

Table 3: Children taken into pre-trial detention, 2008-2017 (Juvenile System)

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Male	NA	NA	78	75	57	55	40	31	27	30
Female	NA	NA	13	9	7	3	8	6	7	5
Total	NA	NA	91	84	64	58	48	37	34	35

Children taken into pre-trial detention, 2008-2017 (Criminal System aged 16-18)

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Male	22	24	27	19	20	20	18	9	10	15
Female	1	0	0	0	0	0	0	0	0	0
Total	23	24	27	19	20	20	18	9	10	15

- 7) Please provide the total number of children aged 0-17 taken into prison or other correctional detention facilities in each of the last 10 years.

Table 4: Children taken into prison or other correctional detention, 2008-2017 (Criminal System aged 16-18)

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Male	2	3	5	3	1	2	3	2	1	2
Female	0	0	0	0	0	0	0	0	0	0
Total	2	3	5	3	1	2	3	2	1	2

Children taken into Educational Centers , 2008-2017 (Juvenile System)

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Male	*	*	191	182	163	152	123	82	96	106
Female	*	*	27	22	19	15	18	10	13	13
Total	*	*	218	204	182	167	141	92	109	119

8) What sentencing options are available for children convicted of a criminal offense?

In addition to the internment measure in an educational center, the Educational Guardianship Law provides the enforcement of the following measures to be executed in the community:

- a) Admonition;
- b) Deprivation of the right to drive mopeds or to obtain permission to drive mopeds;
- c) Compensation to the offended;
- d) Community service;
- e) Imposition of rules of conduct;
- f) Imposition of obligations;
- g) Attendance of training programs;

h) Educational monitoring.

9) What is the longest period of custodial detention (imprisonment or other form of detention) to which a child can be sentenced?

The educational guardianship measures have a 3 years limit.

10) Can children be sentenced to capital punishment?

No. The Portuguese Constitution prohibits it.

11) For each of the last ten years (2008-2017), please provide the total number of children aged 0-17 sentenced to life imprisonment and capital punishment.

None.

Table 5: Children sentenced to life imprisonment and capital punishment, 2008-2017

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Children sentenced to life imprisonment										
Male										
Female										
Total										
Children sentenced to capital punishment										
Male										
Female										
Total										

12) Please provide the rate (per 100 000 population) of criminal offending (all offenses) by age for the most recent calendar year available.

There is no available data concerning the division by age.

Table 6: Rates of criminal offending by age, [PLEASE SPECIFY YEAR]

	Under 10	10-11	12-13	14-15	16-17	Total children (0-17)	18 +	Total
Male								
Female								
Total								

13) Please provide information on all alternatives to the deprivation of liberty of children for juvenile or criminal offenses (such as restorative justice approaches, diversion, non-custodial programmes and services) that are provided for by law, policy or practice, whether in police custody, pre-trial detention, or imprisonment after conviction.

As mentioned in question no.8 the majority of measures established in the Educational Guardianship Law and applied by the courts are educational measures that are executed in the community fulfilling the concepts of restorative diversion and non-custodial. The internment in an Educational Centre is viewed by the Law as a last resort measure that can only be applied when the others are inadequate.

14) Have there been any major legislative or policy changes related to children in conflict with the law during the last ten years (2008-2017)? If so, which impact have these changes had on the number of children deprived of liberty?

The first amendment to the Educational Tutelary Law (Law No. 4/2015 of January 15), introduces the possibility that, by judicial decision, the implementation of the internment measure may include an intensive supervision period, which aims at assessing the

level of competences of an integrative nature acquired by the child in the institutional environment, as well as the impact of their social and personal behavior. The length of this period of intensive supervision may not be less than three months and not more than one year, and social services must assess and propose the duration of the intensive supervision period in each case. This amendment allows the child to comply with part of the internment measure in the community, thus tending to reduce the length of stay in an educational center and, consequently, the number of children in an educational center.

- 15) Please provide examples of good practices aimed at preventing the detention of children, reducing the number of children deprived of liberty within the administration of justice or shortening the period of detention.

Some of the good practices associated with the reduction of the number of interned children in Educational Centers and the reduction of their permanence in consist, on the one hand, of preventive actions carried out by different NGO's and governmental organizations and, on the other hand, by the Educational Tutelary Law that provides alternatives to internment, namely the Suspension of the Process - an extra procedural measure that seeks to suspend the process, by presenting and complying with a plan of conduct that shows that the child is willing to avoid in the future disruptive behaviors. Another example is the Educational Monitoring measure which, as a more serious educational measure to be carried out in the community, allows a child with a higher risk to train their skills and to be supported in the community, avoiding his/hers internment.

II. Children deprived of liberty for migration-related reasons

16) Please detail the legislation under which children are deprived of liberty on migration-related grounds. (*Attach copies of the legislation if possible*)

Detention of the context of Migration is expressly allowed by Article 27, 3, c) of the Portuguese Constitution, which sets forth an exception to the right of personal freedom to all those who have illegally entered or remained in Portuguese territory, or who are currently under extradition or deportation proceedings.

The Portuguese Immigration Law (Law n. 27/2008 of 30th June, as last amended by Law n. 26/2018, of 5 July), sets forth the conditions for entry, stay and removal of foreign persons from the Portuguese territory.

According to Article 146, a foreigner that is found in the national territory without valid permit or visa, is detained and shall be present to the criminal judge in 48 hours. The judge will decide which measure shall then be applicable.

Detention is applicable in cases of coercive removal from the national territory (article 146). Thus, one may interpret the law as precluding the application of a detention measure where there is no possibility to remove the person considered.

Coercive removal procedures are not applicable to those who, having illegally entered in the national territory, have nonetheless sought asylum in 48h. In these cases, the asylum seeker must wait for their decision in freedom (Article 146, n.6 of the Immigration Law). Thus, families with children who have entered in the national territory illegally but have then asked for asylum, cannot be detained. As explained below, an exception to this rule is foreseen in the Asylum Law for applications made at the airports.

The Immigration Law foresees another case of detention: in context of entry refusals. In these cases, the foreigner presents him or herself to the border, being his or her entry in the national territory denied. If the removal is not possible within 48 hours, the person whose entry was refused must be placed in the temporary reception center (Article 38, n. 4).

According to Article 31, children who arrive at the border without being dully accompanied by their legal guardian or dully authorized by them, cannot enter into the Portuguese territory, except where there any adult authorized by their legal guardian to receive the

child in the territory. According to this Article, read together with Article 146-A, unaccompanied child shall wait for a decision on her / his entry in detention. One must highlight that the child can only be removed for his / her country of origin where there are sufficient proofs that he or she will be received by their responsible persons (Article 31, n.6). That not being the case, the child must be released and subjected to a protection and promotion measure.

The Asylum and International Protection Law (Law n. 27/2008, of 30th June, as amended by Law n. 26/2014, of 5 May also sets forth some cases where asylum seekers, including children, may be detained. According to its general rule, established in Article 35-A, asylum seekers cannot be detained on the mere grounds of having requested asylum. However, several exceptions are foreseen: applicants may be placed or kept in a temporary facility for reasons of national security, public policy, public health or where there is a risk of absconding, on the basis of an individual assessment and if other alternative and less serious measures cannot be effectively implemented.

However, according to paragraph 3, applicants may also be placed or kept in a temporary reception center if other alternative measures cannot be effectively implemented:

- (a) in the context of asylum applications made at border posts;
- (b) in the context of applications submitted following a removal decision;
- (c) during the special procedure for determining the responsible State for examining the application for international protection provided for in Article 28 of Regulation (EU) n. 604/2013 of the European Parliament and of the Council of 26 June (Dublin Regulation).

In practice, though, asylum seekers who apply for asylum at border posts are placed in the airports temporary reception centers (Article 26). Although the Aliens and Borders Service usually avoids to qualify such centers as “detention facilities”, they have such characteristics, being characterized by deprivation of freedom of movements.

Unaccompanied asylum-seeking children, however, are accommodated in the Shelter for Refugee Children, coordinated by the Portuguese Refugee Council. That is because the Asylum Law expressly demands that these children must be accommodated in specific facilities which respect the international standards recommended by UNICEF, Red Cross and UNHCR (Article 26, n. 2 and 35-B, n. 6).

17) What is the maximum time period, provided for by law, for which children can be deprived of liberty for migration-related reasons? *(Please provide the time period and the name of the relevant legislation).*

According to Article 146 of the Immigration Law, detention of migrants – adults and children alike – must only be used during the enforcement of a removal decision. However, the maximum detention period cannot exceed 60 days. No prorogation is allowed under any terms.

Article 24, n.4 of the Asylum Law sets forth that all asylum applications made in the airport border must be decided in seven days. This could imply that all detentions of asylum seekers in the temporary reception centers in the airport could only last for seven days. However, in practice, decisions are rarely taken in seven days. Moreover, Article 35-B sets forth that reception in temporary centers cannot be longer than 60 days. Thus, in practice, detention of asylum-seekers may last as long as detention of other migrants.

18) Which authorities make decisions to deprive children of liberty for reasons relating to migration status?

According to Article 146, n. 7 of the Immigration Law, the Aliens and Borders Service and other police entities (National Republican Guard, Public Security Police, Judiciary Police and Maritime Police) are competent for detaining any illegally staying foreigner in the national territory, including children. Detention must be validated by a judge (holding office of a criminal court or, in municipalities

where no specific jurisdiction court exists, a generic competence court). Judicial control of any detention measure is a guarantee expressly foreseen in Article 28, n.1 of the Portuguese Constitution.

For the Asylum Law, since reception of asylum seekers in temporary detention centers is made following an asylum request, it is usually the Aliens and Borders Service who proceeds to the application of such measure. According to Article 35-A, n. 6 of the Asylum Law, detention of asylum seekers in temporary reception centers must also be validated by a judge, which must be done within 48 hours.

19) Which criteria are taken into account in such decisions?

The Immigration Law does not expressly foresee which criteria must be taken into account for the purpose of applying a detention decision. It only mentions that coercion measures, such as detention, shall be applicable where there is a risk of absconding (Article 142). However, it must be interpreted according to the Return Directive (Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals). Thus, detention is only justified where there is a risk of absconding or where the person is being an obstacle to the removal procedure. Also, according to Article 17 of the Directive, families with children and unaccompanied children may only be detained as a last resort and for the shortest period possible.

The Supreme Court has already stated however, that the application of a detention measure does not need to be necessarily preceded by a removal decision. However, the case law shows that detention must meet the proportionality requirements. Courts must analyze whether the detention shall be considered as necessary and adequate. It has been also stressing that the mere illegal entry in the national territory cannot justify, per se, the application of such measure.

Case-law of the Portuguese Superior Courts have highlighted that detention can only be applicable and maintained where necessary for the enforcement of a removal decision. However, detention is not illegal in cases where a removal decision has not yet been formally taken, despite being planned.

As regards Asylum Law, Article 35-A sets forth the cases where “accommodation” in temporary centers may be applicable. In all these situations, the measure can only be applicable when no other efficient and less serious measures can be used.

20) What is the review process for such decisions?

First and foremost, the constitutional guarantee of habeas corpus (Article 31 of the Portuguese Constitution) is applicable to all detention measures, including, as several times confirmed by the Portuguese Supreme Court, detention on migration contexts. In these cases, any migrant (illegally staying, under removal procedure or asylum seeker) who considers that his or her detention is illegal may ask the Portuguese Supreme Court to be immediately released.

Moreover, all decisions made by the courts where detention was decided are subjected to judicial review to the superior courts, however, according to the Criminal Procedures Code, with no suspensive effects (Article 408 a *contrario sensu*).

In cases where the migrant wants the judicial review of the decisions of removal / entry refusal / asylum denial, he or she must address their petition to the administrative courts. In these cases, the court reviews the final decision. In cases of an asylum procedure, the review has suspensive effects (Articles 22, 25, 30, 33, 33-A of the Asylum Law). However, in other cases, such effects will only be granted

All migrants have the right to be represented by a lawyer, and, when needed, free legal support is granted on the terms of the Law on Legal Aid (Law n. 34/2004 of 29 July, as last amended by Law 47/2007 of 28 August). Finally, migrants also have the right to be heard and to be assisted by an interpreter, where necessary.

21) Please list all facilities (such as dedicated immigration detention centers, police stations, border facilities, reception centers, shelters, airport detention facilities, transit areas, emergency or temporary facilities, removal centers, prisons, etc.) where children can be deprived of liberty for migration-related reasons.

Detention Centers for migrants are designated, in the Portuguese Law, as “temporary reception centers” (Law n. 34/94 of 14 September, as last amended by Law n. 23/2007 of 4 July). Children detained in the context of Immigration Law can be placed in one of the Temporary Reception Centers, located in the airports of Faro, Porto and Lisbon (Decree-Law n. 85/2000 of 12 May) or in the only detention center located outside the airports (Unidade Habitacional de Santo António in Porto).

Asylum-seeker children who are accompanied with their parents can also be detained in the airports reception centers. However, only the center located in the Lisbon Airport separates the asylum seekers from all the other migrants who can be detained. The Portuguese Ombudsman - National Preventive Mechanism, has been affirming that these centers do not gather the minimum conditions for an adequate reception of children or families (see 2017 NPM annual report). Moreover, none of these facilities (including the detention center located in Porto) have autonomous accommodation places for families, despite that being required by Article 146-A of the Immigration Law.

Nevertheless, following some recommendations of the Portuguese Ombudsman, the Government has announced, in July 2017, that a new detention center would be constructed in Sintra, which would encompass new 50 places with separate accommodation facilities for families.

As already mentioned, unaccompanied asylum-seekers children are accommodated in the Center for the Refugee Child, coordinated by the Portuguese Refugee Council.

- 22) Please provide the number of children deprived of liberty on 26 June 2018 for the following migration-related reasons:
- A) Irregular entry
 - B) During processing (such as: identification, health or security screening; undocumented status; disputed age; or exceeding authorised stay; unauthorised employment; determination of asylum, refugee or other international protection status; as a victim of trafficking)
 - C) Forced return/removal

Please note:

Despite the Ombudsman's efforts, SEF did not provide the number of children deprived of liberty on 26 June 2018, but only the total number of children detained from 2017 to 26 June 2018.

Also, no data was provided on detention during forced removal / return procedures, although parents who are under these procedures and are in charge of children are detained in Unidade Habitacional de Santo António (Porto).

However, these data may be included in data regarding detention during processing, because SEF answered as these data would encompass a wide range of detention purposes, such as: identification, health or security screening; disputed age; determination of asylum, refugee or other international protection status; potential victims of trafficking, but also for exceeding authorised stay; unauthorised employment and for having undocumented status.

	0-3			4-9			10-11			12-13			14-15			16-17			Total	
	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F
A) Irregular entry																				
Detained with family/caregiver	15	10	15	14	11	25	4	1	5	4	8	12	8	8	16	18	10	28	63	48
Detained without family/caregiver											2	2	2	3	5	8	3	11	10	8
Total irregular entry			15			25			5			14			21			39	73	56
B) During Processing																				
Detained with family/caregiver		1	1																	
Detained without family/caregiver		2	2	5	1	6	2	3	5	3	1	4	3	5	8	4	11	15	17	23
Total during processing			3			6			5			4			8			15	17	23
C) Forced return/removal																				
Detained with family/caregiver																				
Detained without family/caregiver																				

	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	
Detained with family/caregiver																												
Detained without family/caregiver																												
Total forced return/removal																												

26) Please describe all alternatives to the deprivation of liberty of children provided for by law or policy, or administered in practice. If different measures are applicable for children detained with and without family/caregivers (unaccompanied or separated children), please provide details.

According to Article 146 of the Immigration Law, a foreigner that is found in the national territory without valid permit or visa is detained and shall be present to the criminal judge in 48 hours. The judge will decide which measure shall then be applicable. Several coercive measures can be applicable (Article 142), such as:

- a) Periodic presentation to the Aliens and Borders Service (SEF);
- b) Use of electronic surveillance means;
- c) Detention in a temporary installation center or in a similar space, according to the law.

As already mentioned, the Return Directive and the case-law of the superior courts have been highlighting that detention should be applicable to children and to families with children only as a last resort measure. However, in practice, numbers show that detention is being systematically applied in the context of immigration law.

As already mentioned as well, the sole exception regards unaccompanied children seeking asylum. Even in cases where detention would be applicable in the asylum context, unaccompanied children will be accommodated in a specific accommodation center ran by the NGO who represents the UNHCR in Portugal (the Portuguese Refugee Council).

27) Have there been any major legislative or policy changes related to the deprivation of liberty of children for migration-related reasons during the last ten years (2008-2017)? Please provide details. If known, please detail any impact (measured or expected) these changes have had on the number of children deprived of liberty.

The Portuguese Immigration Law, entered in force in 2008, was amended several times. Article 146, which sets forth the situations where a coercive removal procedure shall be applicable, was amended in 2012 (Law n. 29/2012 of 9 August). These legal changes have introduced some exceptions to coercive removal cases, and thus, to the use of detention. For example, nor removal nor detention shall be applicable in cases

where the foreigner holds a resident permit issued by another Member-State of the European Union, and undertakes to go immediately to that country.

However this may be, cases for refusal on public order and national security grounds were enlarged in 2012. As a consequence, detention cases due to entry refusals were naturally extended.

As for the Asylum and International Protection Law, it was enacted in 2008 and was amended by Law n. 26/2014, of 5 May. This amendment inserted a new Article (Article 35-A) which created several cases where detention of asylum seekers could be applied. Until 2014, detention of asylum seekers could not take place. Although the 2014 law maintained the principle of the non detention by the mere fact of an asylum request, it has nonetheless created several cases (“exceptions”) where asylum seekers could be “accommodated” in temporary reception centers, being the “airport exception” the most impressive, as already mentioned. In this context, Article 26, on the context of asylum requests presented on the border points was also amended, in order to encompass the “accommodation” on the temporary accommodation centers in the airports.

Finally, Immigration Law was recently amended by Law n. 26/2018 of 5 July. According to the new law, unaccompanied children who arrive to Portugal and are subjected to protection measures, through their accommodation on a shelter home, must have their administrative status regularized. They are formally considered “children in danger”, for the purposes of the applicable Law. The Public Prosecutor is competent to officially promote the respective procedure. This amendment has reinforced that unaccompanied children must be regarded as persons in need for protection, being legal status an important measure for such purpose.

28) Please provide examples of good practices aimed at preventing the detention of children and reducing the number of children deprived of liberty for migration-related reasons.

After the references to Immigration and Asylum laws, as well as to administrative practice, one may consider that unaccompanied migrant children are treated with care.

In principle, they are not detained, and are accommodated through the national system of Protection of Children and in Danger or, being asylum seekers, in the accommodation center especially designed for refugee children, where they have access to psychological, educational and social support. Also, in both cases, they have support to obtain a legal status.

However, the same cannot be said regarding children who arrive to Portuguese borders with their family members or legal guardians. In these cases, detention, especially in the airports, is systematically being applied. The Aliens and Borders Service claims that, in many of these situations, family ties are not fully demonstrated, and detention may be justified with trafficking of children prevention. However, even that being the case, there must be special measures aimed at protecting potential victims. Detention in airport temporary installations, as already mentioned by the NPM reports, are not adequate places for receiving children.

Having cooperated with the present questionnaire by providing data, the Aliens and Borders Service expressed the following good practice: “in case of an application for international protection at the air border involving households with minors, when the decision on the said application is negative, applicants remain installed until appeal. After the appeal and bearing in mind the fact that the competent administrative court will not decide within 60 days, the national authority promotes entry into national territory”.

III. Children living in places of detention with their parents

- 29) Are persons (adults or children) detained in the context of the criminal justice system allowed to have their children stay with them in their place of detention? What is the legal basis? Does this apply to all places of detention in the country? Does this apply to fathers as well as mothers? Are there any age limits for children to be allowed to stay with detained parents? Can children enter prison with a parent or are only those children born in prison allowed to stay?

The Code on Penalties Execution (Law n. 115/2009 of 12 October, as last amended by Law 94/2017 of 23 August) expressly allows detainees to have their children in detention facilities (Article 7, paragraph *g*).

This does not apply to all places of detention in the country, but only to the Prison of Tires (Lisbon District) and of Santa Cruz do Bispo (Porto District). These are the only two prison centers with conditions to accommodate children.

Notwithstanding the Law does not discriminate between men and women, at this moment only these two female prisons have the adequate facilities to admit children.

The law sets forth as an age limit for children to stay with mothers in detention facilities until the age of 3 years. Exceptionally, children until 5 years old may be authorized to stay with imprisoned mothers. The other legal guardian must authorize such possibility and this must correspond to the best interest of the child. Moreover, detention facilities must provide adequate conditions for receiving these older children.

The Code on Penalties Execution does not make any distinction between children born inside or outside the detention context. Thus, both children who are born during the mother's detention and other children of detained women may reside in the prison. In this latter situation, children enter the prison with the mother.

- 30) Which authorities decide whether a child can stay with a parent in a place of detention?

Detained woman who hold of legal guardianship and parental responsibilities of their children are authorized to keep the children with them. Assignment of this responsibility / guardianship may take place in two ways:

The other parent expressly allows that the child will be subjected to the mother's care;

The Family and Children Court decides that the child shall be subjected to the mother's care.

In both cases, whenever there is the possibility of a child to enter or to live in a detention facility with their mother, the Children Protection Commission and the Family and Children court, both working on the territorial area of the detention facility, shall be immediately informed.

31) What is the review process for these decisions?

These decisions can be reviewed by request of the other parent or by intervention of the Children Protection Commission and the Family and Children Court. For example, the prison may inform the Protection Commission that the child's interests do not recommend their permanence in the detention environment. The Commission shall then intervene in order to understand the risks that the child is facing. Where necessary, the Law on Protection of Children in Danger can be applicable and the Commission may suggest another solution for the child (*n.g.* care with another family member). In these cases, such as with other cases of intervention conducted by these commissions, the mother's consent is necessary.

On other cases, the other parent or even other family members may ask for a change of the parental responsibilities and guardianship. The Family and Children Court may then decide whether is better for the child's superior interest to continue at their mother's care or to designate another guardian, even if temporarily.

32) Which authority is responsible for the child's protection while the child is living in prison facilities?

While the child is living in prison facilities, he or she stay at their mother's care. That means that the mother is directly responsible for the child's well-being. Parental care will be supervised by the prison's personnel, especially by the social assistant responsible for accompanying the mother's punishment execution. Also, the personnel working on the prison's kindergarten will supervise the child's well-being and the quality of the mother's care. Where risks or negligence arise, the prison informs the Protection Commission and the Family and Children Court.

33) Which criteria are taken into account in the decision to allow children to stay with parents detained in the context of the criminal justice system?

The child's best interest is always considered as the paramount criterion. Thus, his or her residence in a prison facility are only applicable where the child's well-being and social and psychological development will not be compromised.

Moreover, the mother's capacities and abilities are considered, as well as the quality of her relationship with the child. The child's age is also a factor to always be considered. Thus, for example, the solution may be different depending on the age of the child at the date of the mother's detention.

34) Please describe the facilities children stay in when they live with their parents in prison.

In the two prisons centers where mothers can live with their children in Portugal, there are several facilities aimed at children. First and foremost, both of them have a kindergarten, where trained professionals develop several activities especially aimed at occupying children and of promoting their development. Several visits are organized, allowing children to the beach, to gardens, to the zoos and theatres, cinema and even shopping centers. The National Preventive Mechanism has already visited and interviewed some of these kindergarten's personnel and confirmed their willingness to promote a close connection between the children and the world outside the prison.

Different sectors for mothers living with their children exist in these two prisons. For example, in Tires, mothers reside with their children in a private room with private toilette and shower. In this sector, children have access to a leisure room with toys and to backyard, where they may play together and with their mothers. This sector is called "Casa das Mães" ("Mothers' House").

Moreover, there is food adapted to children and access to the necessary supplies, such as diapers, bottles, etc.

Some grandmothers also live in the prison, thus providing help to their daughters and grandchildren.

As a general rule, children who live with their mothers in prisons have the right to be visited by the other parent and by other relatives, even when these relatives are also imprisoned. That being the case, there is a program for inter-prisons visits. Children may also be visited and visit their siblings who reside outside, the prison, even where they are in residential care.

35) Please provide details about the following aspects of children's care while living in detention with their parent/s:

Education:

After completing 6 months old, children are enrolled in the prison's kindergarten, which works from 9 to 17h30. As already mentioned, children will benefit from educational activities, sports and cultural visits. Kindergarten is also important for promoting these children to play with other children.

In Tires there are two educational professionals that make an annual plan for the education of these children, according to the governmental educational orientations. These plans encompass a component for promoting mothers' capacities.

Health care:

Access to children healthcare is granted.

Children who are detained with their mothers are vaccinated according to the national mandatory vaccination program. In Tires, all children are supervised by the local health centers and have access to pediatric consultations on every two weeks. Moreover, this prison has a permanent team of doctors and nurses working in general and family clinic. In Santa Cruz do Bispo, there is a special pediatric unit, which follows the national child and youth health plan. Where necessary, children may be directed to special health consultations or hospital procedures.

Protection:

The prison's director and social assistant, the kindergarten and health professionals work closely with the mothers in order to guarantee that the child's well-being is being promoted. In cases of risk or neglect, the Family and Children Court (or the Commissions for Children Protection) will be informed.

Rest:

In both prisons, mothers with children stay in a different and separated sector, where also pregnant women may be accommodated. In these sectors, cells are prepared with adequate furniture and beds for children. Kindergartens have rooms for naps.

Leisure:

In both prisons, sectors for mothers with children have leisure rooms equipped with toys, books and other children materials. In the “Mothers’ House” of Tires, there are two leisure rooms and an outside courtyard. In Santa Cruz do Bispo there is also a courtyard and a gym.

Play and recreational activities:

In both prisons, several recreational activities are developed by the kindergartens. As already mentioned, several activities are developed by the education personnel, such as music, lessons, painting classes and drama. In Santa Cruz do Bispo, there are also weekly swimming classes for children. Kindergartens also organize, as mentioned, several visits to the community. In Santa Cruz do Bispo, a volunteering service is organized to promote leisure activities during the weekends.

Nutrition:

Children’s nutrition is especially planned by the food providers. Both prisons have adjudicated the catering contracts to companies that supply special food to children, adapted to their age and their health needs.

Developmental and other needs:

A special education plan is developed for every children, taking into account their specific needs and also the mother’s situation.

Specific responses may be organized for children with special needs, namely through psychological and physical development consultations and permanent support. In both prisons, all services are concerned in providing a personalized care to children.

36) Please provide the total number of children (aged 0-17) living with parents detained in the context of the criminal justice system on 26 June 2018.

Please provide data disaggregated by age and nationality (citizens/non-citizens) where possible.

Table 11: Children living with parents detained in the context of the criminal justice system, 26 June 2018

	Infant (<12 months)			1-2			3-4			4-5			5-6			6-17			Total 0-17		
	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P
National	5	3	8	11	9	20	2	4	6	0	4	4	0	0	0	0	0	0	18	20	38
Non-national	0	0	0	0	0	0	0	1	1	1	0	1	0	0	0	0	0	0	1	1	2
Total	5	3	8	11	9	2	2	5	7	1	4	5	0	0	0	0	0	0	19	21	40

37) For each of the last ten years (2008-2017), please provide the total number of children aged 0-17 who entered correctional custody (prison) with parents detained in the context of the criminal justice system¹.

Table 12: Children entering justice sector detention with their parents, 2008-2017

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Male	18	27	29	31	28	20	27	21	24	28
Female	20	21	28	24	26	28	28	21	20	25
Total	38	48	57	55	54	48	55	42	44	53

38) Are there any specific sentencing guidelines for parents who are caregivers? For example, are parents eligible for suspended sentence, home detention, electronic monitoring, or other measures aimed at avoiding the accommodation of children in places of detention with their detained parents?

There are no specific sentencing guidelines for parents who are caregivers. However, according to the Portuguese Criminal Code, while deciding the specific sentence and whether an alternative measure shall be applicable, the criminal judge must consider several factors, such as the personal situation of the sentenced individual. In this context, consideration to her family life can be given. That is the case of Article 43 (home detention), Article 45 (substitution of imprisonment by payment of monetary penalty), Article 50 (suspension of prison execution) and Article 58 (community service).

39) Which authority decides that children who have been living with detained parents shall move out of the place of detention, for instance when they reach the maximum age to remain with their parents? What preparation or support is provided to children and their parents when children are required to move out of the place of detention?

Children who have reached the maximum age to remain with their mothers in the prison facilities shall in principle reside with the other parent. In cases where no other parent exist or is available /adequate to receive the child, the Family and Children Court will decide which measures shall be applied. For example, the child may stay at the grandparents' or at other close relatives' care. Where also such solution is not

¹ Include children born to incarcerated women.

possible, then the child may be subjected to protection measures, including residential care.

When the child has family support outside the prison, there may be a gradual preparation for leaving the mother's care. For example, the child may start by spending some days with the other family members, in order to develop affective ties with them and to get used to other environments.

Also, the mother will receive psychological support in order to minimize the negative effects of the separation.

IV. Children deprived of liberty in institutions

For the purposes of this survey, 'institutions'² are defined as facilities in which children are deprived of liberty:

- by action of the state (either directly or through licensing or contracting of non-state actors)
- where the state has assumed or accepted responsibility for the care of the child.

This excludes facilities in which parents may voluntarily place their children into the care of a private institution (not licensed or contracted by the state). Justice sector institutions should also be excluded in this section (as they are considered elsewhere in this survey).

- 40) Which residential and institutional facilities, whether private (state-licensed) or public, exist in your country where children are placed and thereby can be deprived of liberty for their own protection, for reasons of their education, health or disability, drug or alcohol abuse, poverty, for being separated from their parents, for being orphans, for living in street situations, for having been trafficked or abused, or for similar reasons?

The intervention to promote the rights and protection of children and young people in danger occurs when parents, legal guardians or de facto guardians endanger their safety, health, education or development, or when this danger results from the acts or omissions of a third person or from the child himself/herself and those whom are responsible do not adequately act in order to remove it.

Residential Care is one of the 7 possible protection measures established in the Children's Rights Protection Law (Law no. 147/99, September 1st). This law establishes that in the promotion of rights and the protection of children and should be given priority to measures that maintain them in their family or other form of stable family integration. Residential Care is therefore, under the principles of the law, a last resort that should only be considered when the other protection measures are inapplicable.

² Institutions may include, but are not limited to, orphanages, reform schools, closed remand rooms or other correctional institutions, institutions for children with disabilities, for children with health problems (e.g. facilities dealing with behavioural disorders, psychiatric facilities), for children with drug, alcohol or other addictions, for the protection of victims of abuse including trafficking, for children without parental care, from which the children are not permitted to leave at will.

The residential care measure is executed in residential care units, mostly managed by licensed NGO's. Under the Children's Right's Protection Law, the child that lives in a residential care unit has the following specific rights:

- To keep regularly, and in privacy conditions, personal contacts with the family and with people with whom they have a special affective relation, without prejudice of the limitations imposed by judicial decision or by the protection commission;
- To receive an education that guarantees the full development of their personality and potential, being provided of health care, school and professional training and participation in cultural, sports and recreational activities;
- To enjoy a space of privacy and a degree of autonomy in the conduct of their personal life appropriate to their age and situation;
- Be actively heard and participate, according to their degree of discernment, in all matters of their interest, including those regarding the definition and execution of their promotion and protection project and the functioning of the institution
- To receive pocket money;
- To be respected the inviolability their mail;
- Not be transferred from the residential care unit, unless this decision corresponds to his or her best interest;
- To contact, with guarantee of confidentiality, the protection commission, the Public Prosecutor's Office, the judge and his lawyer;
- To be welcomed, whenever possible, in a residential unit family close to their family and social context of origin, unless their best interest advises against it;
- Not be separated from other brothers and sisters, unless their best interest advises against it.

41) What procedures are available to either children or their families to appeal or challenge their placement in such institutions?

Since all children that live in a residential care unit must have a promotion and protection process in the family court or in their local protection commission, they all have the possibility to challenge, at every time, the decision before the court (the court that applied the protection measure or the appeals court). If the process is pending in

a local protection commission, the child (or his/hers parents, legal guardian or lawyer) can request the intervention from the public prosecutor and from the family court. It is important to mention that every protection measure has to be periodically reviewed, at least, every six months.

42) Please provide the total number of children (aged 0-17) deprived of liberty in each of the following types of institutions on 26 June 2018:

The data presented derive from the last available annual report made by the Portuguese Social Security Services in 2016 (Instituto da Segurança Social, I.P), which only covers children with a protective measure, either decided by the child protection commissions or courts.

Portugal does not have orphanages. The orphans are placed in residential homes along with all the children victim of negligence or abuse, which we have placed under the category G) other institutions for children without parental care.

- A) Orphanages
- B) Reform schools or other correctional institutions outside the justice system
- C) Institutions for children with disabilities
- D) Institutions for children with health problems (e.g. facilities dealing with behavioral disorders, psychiatric facilities)
- E) Institutions for children with drug, alcohol or other addictions
- F) Institutions for the protection of victims of abuse including trafficking
- G) Other institutions for children without parental care

Please provide data disaggregated by age and nationality (citizens/non-citizens) where possible.

Table 13: Children deprived of liberty in institutions (as defined), 26 June 2018

	Less than 3 years old			3-5			6-9			10-13			14-17			Total (ages 0-17)		
	Nat	Non-nat.	Total	Nat	Non-nat.	Total	Nat	Non-nat.	Total	Nat	Non-nat.	Total	Nat	Non-nat.	Total	Nat	Non-nat.	Total
A) Orphanages																		
Male																		

Female																			
Total (A)																			
B) Reform schools or other correctional institutions outside the justice system																			
Male																			
Female																			
Total (B)																			
C) Institutions for children with disabilities																			
Male					1	1	4		4	25	5	30	44	6	50	73	12	85	
Female							3		3	11		11	16	3	19	30	3	33	
Total (C)					1	1	7		7	36	5	41	60	9	69	103	15	118	
D) Institutions for children with health problems (e.g. facilities dealing with behavioral disorders, psychiatric facilities)																			
Male										2		2	33	2	35	35	2	37	
Female										1		1	28	3	31	29	3	32	
Total (D)										3		3	61	5	66	64	5	69	
E) Institutions for children with drug, alcohol or other addictions																			
Male										6	1	7	100	6	106	106	7	113	
Female										2		2	35	2	37	37	2	39	
Total (E)										8	1	9	135	8	143	143	9	152	
F) Institutions for the protection of victims of abuse including trafficking																			
Male																			
Female																			
Total (F)																			
G) Other institutions for children without parental care																			
Male	237	25	262	246	25	241	395	69	464	646	97	743	1646	211	1857	3170	427	3597	
Female	202	19	221	185	30	215	279	38	317	586	70	656	1611	194	1805	2863	351	3214	

Total (G)	439	44	483	431	55	486	674	107	781	1232	167	1399	3257	405	3662	6033	778	6811	
Total children deprived of liberty in institutions (as defined)																			
Male																			
Female																			
Total (G)																			

43) Please provide the total number of children aged 0-17 placed into institutional detention, in each of the following institution types, in each of the last 10 years.

- A) Orphanages
- B) Reform schools or other correctional institutions outside the justice system
- C) Institutions for children with disabilities
- D) Institutions for children with health problems (e.g. facilities dealing with behavioral disorders, psychiatric facilities)
- E) Institutions for children with drug, alcohol or other addictions
- F) Institutions for the protection of victims of abuse including trafficking
- G) Other institutions for children without parental care

Table 14: Children deprived of liberty in institutions (as defined), 2008-2017

	2008			2009			2010			2011			2012			2013			2014			2015			2016			2017	
	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F
A) Orphanages																													
B) Reform schools, etc.																													
C) Institutions for children with disabilities																					93	61	154	85	33	118			

- Foster family care;
- Adoption.

45) Have there been any major legislative or policy changes related to the (de-) institutionalization of children during the last ten years (2008-2017)? If so, which impact have these changes had on the number of children deprived of liberty?

In the last ten years there have been two significant legal changes in order to promote the de-institutionalization of children.

The first was introduced by Law no. 103/2009, September 11th, which established the regime of Civil Sponsorship (*Apadrinhamento Civil*). Civil Sponsorship is legal relationship, usually of a permanent nature, between a child and a natural person or a family that exercises the parental responsibilities and establish with him /her affective bonds that promote their well-being and development. This measure was particularly designed for children in residential care or benefiting from other protection measures. Without calling into question the relevance and importance of this measure for some children, the fact is that the results from a de-institutionalization point of view are non-significant, since from 2010 until 2015 only 320 measures were applied. This does not imply a negative judgement regarding this measure, only states its limited effects as an alternative to residential care.

More recently, in 2015, an amendment (Law no. 142/2015, September 8th) to the Child's Rights Law established that if it is necessary to apply a placement measure, the placement in a foster family must be privileged for children under the age of 6, instead of residential care.

46) Please provide examples of good practices aimed at preventing the detention of children and reducing the number of children deprived of liberty in institutions.

In 2011 the Calouste Gulbenkian Foundation - one of the most significant non-governmental institutions in Portugal – developed a project in order to support initiatives from residential care units, identifying good practices that not only had a positive impact in children's life's, but also contributed to prevent abuse and neglect, promote autonomy and de-institutionalization. This pilot-project

involved 4 institutions and lasted until 2016. It also envisaged to strengthen personal, social and emotional skills of children and young people, preparing them for autonomy; training the technical and educational staff of residential care units; thus contributing to the production of scientific knowledge and innovation that can sustain changes in the national system through better and more effective intervention practices.

In 2018 a report was launched with a full description of the project and with 28 recommendations supporting the adoption of policy changes focused in the full compliance with children's rights. More information can be found at <https://gulbenkian.pt/noticias/pensar-o-acolhimento-residencial-de-criancas-e-jovens/>

V. Children deprived of liberty in the context of armed conflict

47) Is your country interning children as Prisoners of War (POWs) or civilians for security reasons in the context of an international armed conflict?

No.

48) If yes, please provide the total number of children (aged 0-17) who have been interned as POWs or civilians on 26 June 2018 for security reasons in the context of an international armed conflict.

Please provide data disaggregated by age and nationality (citizens/non-citizens) where possible.

	Less than 10 years old			10-11			12-13			14-15			15-16			16-17			Total (ages 0-17)		
	Na	No	Tot	Na	No	To	Na	No	To	Na	No	To	Na	No	To	Na	No	To	Na	No	To
	t	n-	al	t	n-	tal	t	n-	tal	t	n-	tal	t	n-	tal	t	n-	tal	t	n-	tal
		nat			nat			nat			nat			nat			nat			nat	
Prisoners of war (POW)																					
Male																					
Female																					
Total POW																					
Civilians																					
Male																					
Female																					
Total Civilians																					
Total																					
Male																					
Female																					
Total																					

Table 15: Children deprived of liberty in the context of armed conflict, 26 June 2018

49) For each of the last 10 years (2008-2017), please provide the total number of children aged 0-17 taken into internment as POWs or civilians for security reasons in the context of an international armed conflict.

No children have been taken into internment as POWs or civilians for security reasons in the context of an international armed conflict in the last 10 years.

Table 16: Children deprived of liberty in the context of armed conflict, 2008-2017

	2008			2009			2010			2011			2012			2013			2014			2015			2016			2017		
	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P
Prisoners of War																														
Civilians																														

50) Is your country currently detaining children for actual or suspected involvement with non-state armed groups? If so, please specify the legal basis.

No.

51) May children be detained solely for affiliation with a non-state armed group, or only for an additional offense committed as part of a non-state armed group?

N/A

52) Under whose authority are children detained for involvement with non-state armed groups?

N/A

53) What type of facilities are used to detain children for involvement with non-state armed groups?

N/A

54) Please provide the total number of children (aged 0-17) deprived of liberty on 26 June 2018 for involvement with non-state armed groups,

N/A

A) having been charged with a criminal offense

B) in administrative/security detention (i.e. to prevent their return to the armed group and/or participation in hostilities)

Please provide data disaggregated by age and nationality (citizens/non-citizens) where possible.

Table 17: Children deprived of liberty for involvement with non-state armed groups, 26 June 2018

	Less than 10 years old			10-11			12-13			14-15			15-16			16-17			Total (ages 0-17)		
	Na t	No n- nat	Tot al	Na t	No n- nat	To tal	Na t	No n- nat	To tal	Na t	No n- nat	To tal	Na t	No n- nat	To tal	Na t	No n- nat	To tal	Na t	No n- nat	To tal
A) Charged with a criminal offense related to involvement with armed groups																					
Male																					
Female																					
Total charged																					
B) Administrative/security detention related to involvement with armed groups																					
Male																					
Female																					
Total administrative																					
Total																					
Male																					
Female																					
Total																					

55) For each of the last ten years (2008-2017), please provide the total number of children taken into detention for involvement with non-state armed groups,

A) having been formally charged with a criminal offense

B) in administrative/security detention (i.e. to prevent their return to the armed group and/or participation in hostilities)

Table 18: Children deprived of liberty for involvement with non-state armed groups, 2008-2017

	2008			2009			2010			2011			2012			2013			2014			2015			2016			2017					
	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P			
Charged with a criminal offense																																	
Administrative/security detention																																	

56) If children affiliated with non-state armed groups are charged with a specific offense, are they subject to military or civilian courts?

N/A

57) What sentencing options are available for children convicted of offenses related to their involvement with non-state armed groups?

N/A

58) For each of the last ten years (2008-2017), please provide the number of children deprived of liberty in relation to their involvement with non-state armed groups and sentenced to the following:

N/A

- A) Prison sentence (except life imprisonment)
- B) Life sentence
- C) Capital punishment

Table 19: Children sentenced to prison, life sentence or capital punishment in relation to involvement with non-state armed groups, 26 June 2018.

	2008			2009			2010			2011			2012			2013			2014			2015			2016			2017		
	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P
Prison																														
Life sentence																														
Capital punishment																														

59) What processes are available to either children or their families to appeal or challenge their detention due to involvement with armed groups?

N/A

60) Please provide information on all alternatives to the deprivation of liberty of children involved with armed groups that are provided for by law, policy or practice.

N/A

61) Please provide examples of good practices aimed at preventing the detention of children and reducing the number of children deprived of liberty for involvement with armed groups.

N/A

VI. Children deprived of liberty on national security grounds

N/A

	Less than 10 years old			10-11			12-13			14-15			15-16			16-17			Total (ages 0-17)		
	Nat	Non-nat.	Total	Nat	Non-nat.	Total	Nat	Non-nat.	Total	Nat	Non-nat.	Total	Nat	Non-nat.	Total	Nat	Non-nat.	Total	Nat	Non-nat.	Total
A) administrative/security detention																					
Male																					
Female																					
Total charged																					
B) pre-trial detention (police custody and remand detention)																					
Male																					
Female																					
Total administrative																					
C) Imprisonment after conviction and sentence																					
Male																					
Female																					
Total																					

Total																					
Male																					
Female																					
Total																					

62) Please describe the legal framework related to the deprivation of liberty of children on national security grounds, including any special provisions related to children.

N/A

63) Under your penal law, is association with a terrorist organization or other criminal group considered a criminal offense? If so, please provide details.

Yes. Law n. 52/2003 of 22 August, punishes the membership of terrorist organizations. Terrorist organizations are those that were constituted in order to menace the national integrity and independence, to prevent, to alter or to subvert the functioning of the State and other institutions provided for in the Constitution, to force public authority to practice an act, to refrain from practicing it or to tolerate it being practiced, or to intimidate certain persons, groups of persons or the general population, by committing: a) a crime against the life, the physical integrity or the freedom of the people; (b) a crime against the security of transport and communications, including computer, telegraphic, telephone, radio or television; (c) a crime of deliberate production of a common hazard by means of fire, explosion, release of radioactive substances or toxic or asphyxiating gases, flood or avalanche, construction collapse, contamination of food and water intended for human consumption or dissemination of disease, pest, plant or animal; d) acts that destroy or render impossible the operation of means of communication or public service facilities or deprive them of pursuing their activities, definitively or temporarily and totally or partially; (e) are dedicated to research and development of biological or chemical weapons; (f) crimes involving the use of nuclear energy, firearms, biological or chemical weapons, explosive substances or devices, incendiary devices of any kind, consigned orders or traps. If these activities are likely to seriously affect the State or population to be intimidated, they are considered terrorist activities.

Anyone who promotes or establishes a terrorist group, organization or association to support or support them, in particular through the provision of information or material means, shall be punished with imprisonment of 8 to 15 years. Any person who heads or directs a terrorist group, organization or association shall be punished by imprisonment for 15 to 20 years.

Activities aimed at financing terrorism are also punished.

- 64) Please provide the total number of children (aged 0-17) deprived of liberty on 26 June 2018 on national security grounds in:
- A) administrative/security detention?
 - B) pre-trial detention (police custody and remand detention)?
 - C) imprisonment after conviction and sentence?

Please provide data disaggregated by age and nationality (citizens/non-citizens) where possible.

N/A.

Table 20: Children deprived of liberty on national security grounds, 26 June 2018

- 65) For each of the last ten years (2008-2017), please provide the total number of children aged 0-17 taken into detention on national security grounds in:

- A) administrative/security detention
- B) pre-trial detention (police custody and remand detention)
- C) imprisonment after a conviction and sentence

N/A.

	2008			2009			2010			2011			2012			2013			2014			2015			2016			2017		
	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P

71) How many children have been sentenced to life imprisonment or capital punishment in each of the last ten years (2008-2017), either by a civilian or a military court?

N/A.

Table 22: Children sentenced to life sentence or capital punishment by a civilian or a military court on national security grounds, 2008-2017

	2008			2009			2010			2011			2012			2013			2014			2015			2016			2017		
	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P
Life sentence																														
Civilian court																														
Military court																														
Total Prison																														
Capital punishment																														
Civilian court																														
Military court																														
Total Capital Punishment																														

72) Please provide information on all alternatives to the deprivation of liberty for children considered to pose threats to national security that are provided for by law, policy or practice (whether in police custody, pre-trial detention, or imprisonment after conviction).

N/A.

73) Have there been any major legislative or policy changes related to children suspected of terrorism/national security offenses during the last ten years (2008-2017)? If so, which impact have these changes had on the number of children deprived of liberty?

No.

N/A.

74) Please provide examples of good practices aimed at preventing the detention of children and reducing the number of children considered to pose threats to national security who are deprived of liberty.

N/A.

VII. General

75) Please provide the estimated resident population for your country for each of the last 10 years (population as at the midpoint), disaggregated by age, sex and nationality (citizens/non-citizens). *(If data is not available for the each of the last 10 years, please provide the 3 most recent population estimates).*

Data collection type (e.g. Census, administrative records, etc.):

Organisation responsible for producing population estimates:

Data Collection Type: Census and administrative records.

Organisation responsible for producing population estimates: National Statistics Institute (INE)

Table 23: Estimated resident population by age and nationality, 2008-2017

	Less than 10 years old			10-14			15-19			Total children (0-17)			18+			Total population (all ages)			
	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	
2008	554485	526940	1081425	282101	267459	549560	295167	283674	578841							9980202	5066239	5496775	10563014
National	539463	512848	1052311	271396	257144	528540	281333	270798	552131								4835674	5287063	10122737
Non-national	6600	14092	29150	10705	10315	21020	13834	12876	26710								230565	209712	440277
2009	543940	518676	1062616	284370	271007	555377	292970	281288	574258							8381228	5063745	5509734	10573479
National	529530	505440	538799	273426	260506	533932	278801	268175	546976								4829333	5289955	10119288
Non-national	14410	13236	27646	10944	10501	21445	14169	13113	27282								234412	219779	454191
2010	528470	503095	1031565	288214	275394	563608	289407	277737	567144							8410404	5053543	5519178	10572721
National	514709	490517	1005226	278037	265538	543575	275772	265034	540806								4827979	5299480	10127459
Non-national	13761	12578	26339	10177	9856	20033	13635	12703	26338								225564	219698	445262
2011	518656	494820	1013476	286008	273416	559424	285437	273453	558890							8410608	5030437	5511961	10542398
National	504456	481750	986206	276511	264245	540756	272118	261015	533133								4811300	5294276	10105576
Non-national	14200	13070	27270	9497	9171	18668	13319	12438	25757								219137	217685	436822

2012	50893	48589	994835	28463	27073	55536	28133	26987	55120					838588	499569	549159	104872
	7	8		6	0	6	2	4	6					2	7	2	89
National	495167	473279	968446	275880	262463	538343	268488	257860	526348						4789184	5281063	10070247
Non-national	13770	12619	26389	8756	8267	17023	12844	12014	24858						206513	210529	417042
2013	49662	47429	970916	28268	26825	55093	27981	26765	54747					835797	495802	546928	104273
	3	3		0	8	8	5	5	0					7	0	1	01
National	483294	462219	945513	274374	260722	535096	267573	255876	523449						4762476	5263505	10025981
Non-national	13329	12074	25403	8306	7536	15842	12242	11779	24021						195544	205776	401320
2014	48601	46355	949267	27747	26320	54067	28206	27030	55237					833250	492366	545115	103748
	6	1		0	4	4	8	5	3					8	6	6	22
National	473158	451734	942892	269717	256178	525895	270144	259025	529169						4732101	5247526	9979627
Non-national	12858	11817	24675	7753	7026	14779	11924	11280	23204						191565	203630	395195
2015	24905	45491	931070	27186	25790	52976	28605	27431	56036					832013	490150	543982	103413
	7	3		0	2	2	0	3	3					5	9	1	30
National	463962	443699	907661	264519	251382	515901	274659	263701	538360						4712864	5239735	9952599
Non-national	12195	11214	23409	7341	6520	13861	11391	10612	22003						188645	200086	388731
2016	47003	44821	918248	26835	25581	52416	28502	27313	55816					830899	488245	542711	103095
	5	3		7	1	8	8	7	5					2	6	7	73
National	458288	437294	895582	261033	249301	510334	274150	262999	537149						4689655	5222187	9911842
Non-national	11747	10919	22666	7324	6510	13834	10878	10138	21016						192801	204930	397731
2017	46458	44359	908174	26356	25215	51572	28430	27160	55591					831122	486769	542333	102910
	1	3		9	3	2	2	9	1					0	2	5	27

National																		
Non-national																		

76) Please provide any recent reports or recommendations from relevant monitoring bodies with authority to monitor children’s deprivation of liberty (all kinds) in your country.

The more recent concluding observations of the Committee on the Rights of the Child, on the third and fourth periodic reports of Portugal, dated 31st January 2014, highlighted several recommendations regarding children’s deprivation of liberty.

Regarding Alternative Care of Children, it drew attention to the United Nations General Assembly resolution 64/142 of 20 December 2009, and claimed for:

- (a) Further strengthen the support provided to biological families to prevent out of home placements, strengthen family-based care provisions, like extended family and foster care and residential care systems, and take all necessary measures to ensure that alternative care for young children, especially those under the age of 3 years, should be provided in family-based settings;
- (b) Continue to develop and implement an overall deinstitutionalization strategy of residential care facilities with precise goals and objectives with a view towards their progressive elimination;
- (c) Ensure adequate support and resources to ensure that children deprived of a family environment are treated with dignity and respect and benefit from effective protection in all care settings;

(d) Ensure the implementation of coordinated policies regarding alternative care with special attention paid to the quality of care, both in residential and family based-care, in particular with regard to professional skills, selection, training and supervision of care-givers;

(e) Strengthen its mechanisms for collecting and systematically analyzing information and disaggregated data on children in all alternative care settings.

Regarding Children detained for migratory reasons, it applauded the provisions that, at the time, exempted asylum seekers who are minors and their family members from detention at border crossing points during the admissibility stage of the proceedings. However, as stated above, the Asylum Law was then amended, allowing for broader cases of asylum detention.

The Committee also recommended that Portugal should:

Ensure the timely processing of claims to reduce waiting time of asylum seekers;

b) Improve asylum procedures regarding unaccompanied and separated children, in line with general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, and in particular, by communicating the case to the competent Commission for the Protection of Children and Young People;

c) Increase the accommodation capacity of the reception system to respond to the higher number of asylum-seekers arriving in Portugal, and ensure that reception centers are child-friendly and conform to applicable UN standards.

The Ombudsman, in its quality as National Preventive Mechanism, has issued several recommendations for children in educational guardianship centers and also for migrant children detained in the airport's temporary detention centers. Regarding this latter situation, the Ombudsman clearly stated that airports' centers did not provide adequate reception conditions for children.

These reports can be found in:

<http://www.provedor-jus.pt/?idc=108&idi=17554>

http://www.provedor-jus.pt/site/public/archive/doc/Cidadaos_estrangerios_e_o_direito_a_um_tratamento_digno.pdf

In 2015 a special report was enacted on educational guardianship centers, where several recommendations were made.

http://www.provedor-jus.pt/site/public/archive/doc/ce_mnp_05012017.pdf

77) Have there been any studies or research on the impact of deprivation of liberty (all kinds) on children? If so, what are the results?

There are not many studies or research on the impact of deprivation of liberty on children.

However, some official monitoring entities have reported some important conclusions.

The Commission for the Monitoring and Supervision of Educational Centers stated in 2016 that of the 186 young people who, in February 2015, met educational guardianship measures, 144 were also indicated for promotion and protection procedures.

The Directorate of Juvenile Justice Services has recently enacted a study (January 2018), where it has accompanied the route of 191 youngsters who have been subjected to educational guardianship measures and has concluded that 31% of these youngsters returned to crime two years after the end of the measures. The study conclusions are available in:

<https://portal.oa.pt/comunicacao/imprensa/2018/03/06/dois-anos-apos-saida-de-centros-educativos-31-dos-jovens-reincidem/>

	2008			2009			2010			2011			2012			2013			2014			2015			2016			2017		
	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P	M	F	P			
A) Justice sector									1																					
B) Migration-related																														
C) In detention with parents							1		1												1		1							
D) Institutions																														
E) Armed conflict																														
F) National security grounds																														

