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TOOLKIT FOR SOCIAL SERVICES AND POLICIES

Instituto Príncipe Real

unaccompanied minors
international legal framework

Convention on the Rights of the Child

Partners





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to fight the growing phenomenon of MISSING PEOPLE in Europe

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1. Introduction

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Human Rights Watch has found that the thousands of unaccompanied children arriving in foreign lands without parents or care-givers find themselves ‘trapped in their status as migrants, with officials giving little consideration to their vulnerabilities and needs as children. They may be denied access to adequate medical services and education, abused and mistreated by police, guards, and other detainees, and unable to seek asylum. They may languish in jail-like detention facilities, in conditions that are often degrading and inhumane, and many children are held in cells with adults who are strangers. Children held in detention, particularly for long periods with no release in sight, suffer lasting consequences, physically and mentally.’

(LEGAL) FRAMEWORK This paragraph identifies the international legal framework on reception of unaccompanied minors. As such it highlights the rights, responsibilities and minimum standards which must be respected according to UN instruments, EU Law and EU policy.

The vulnerable situation of migrant unaccompanied and separated minors worldwide, and the threats they face, needs to be addressed, particularly considering the significant increase in their number in the current ‘refugee crisis’. Migrant children may be accompanied by their parents or guardians, by other adults (separated children) or alone (unaccompanied children), and children may migrate in regular or irregular ways.



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Irregular migration may involve irregular entry by children into a third country, but also includes those children who enter a country regularly but overstay their visa or end up in an irregular situation in other ways. Migrant children also include those children born in host countries to migrant parents. Children left behind by parents who migrate are likewise affected by migration and may in turn end up as unaccompanied child migrants, seeking to reunite with their families.

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2. UN INSTRUMENTS United Nations Convention on the Rights of the Child (20 November 1989)

The preamble of the Convention on the Rights of the Child (CRC) takes the following stance:

“Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding”.

According to article 20 of the CRC, children who are temporarily or permanently deprived of their family environment are entitled to special protection and assistance provided by the state. Otherwise, alternative care should be ensured through foster care, kafala under Islamic law, adoption or placement in suitable institutions that care for children. The CRC also requires States Parties to pay due regard to continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background. Article 22 of the CRC specifies that children seeking refugee status and child refugees should receive appropriate protection and humanitarian assistance in accessing their due rights. In cases when parents or family members cannot be traced, the child should be accorded the same protection as children who are permanently or temporarily



deprived of their family environment for any reason. The implementation of the CRC is monitored by the UN Committee on the Rights of the Child. Independent experts issue general comments on provisions of the CRC. The most relevant on accommodating unaccompanied minors are as follows: United Nations Committee on the Rights of the Child, general comment No.6 on the treatment of Unaccompanied and Separated children outside their country of origin This comment draws attention to the vulnerable situation of unaccompanied and separated children and provides guidance on the protection, care and treatment of unaccompanied children. It stresses in paragraphs 39-49 that articles 20 and 22 of the CRC are explicitly applicable to unaccompanied minors. It further states in paragraph 40 that when selecting accommodation options, “the particular vulnerabilities of such a child, not only having lost connection with his or her family environment, but further finding him or herself outside of his or her country of origin, as well as the child’s age and gender, should be taken into account”. Reception and living in families Paragraph 40 also sets out parameters for appropriate accommodation and care arrangements as follows:

- **children should not, as a general rule be deprived of liberty.**
- **changes in residence for unaccompanied and separated children should be limited to instances where such change is in the best interest of the child.**
- **siblings should be kept together.**
- **a child who has adult relatives arriving with him or her or already living in the country of asylum should be allowed to stay with them unless such action would be contrary to the best interest of the child. Given the particular vulnerabilities of the child, regular assessments should be conducted by social welfare personnel.**
- **regardless of the care arrangements made for unaccompanied or separated children, regular supervision and assessment ought to be**



maintained by qualified persons to ensure the child's physical and psychosocial health.

■ **States and other organizations must take measures to ensure the effective protection of the rights of separated or unaccompanied children living in child-headed households.**

■ **children must be kept informed of the care arrangements being made for them, and their opinions must be taken into consideration.**

This parameter is stressed again in para. 25 of the General Comment. United Nations Committee on the Rights of the Child, general comment No.14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) The main objective of this general comment is to strengthen the understanding and application of the right of children to have their best interests assessed and taken as a primary consideration or, in some cases, the paramount consideration. Its overall objective is to promote a real change in attitudes leading to the full respect of children as rights holders (paragraph 12).

The Committee expects that this general comment will guide decisions by all those concerned with children, including parents and caregivers (paragraph 10). According to this comment, one of the elements to be taken into account when assessing the child's best interests is the child's identity. Paragraph 55 states that children are not a homogeneous group and therefore diversity must be taken into account when assessing their best interests. The identity of the child includes characteristics such as gender, sexual orientation, national origin, religion and beliefs, cultural identity and personality.

Although children and young people share basic universal needs, the expression of those needs depends on a wide range of personal, physical, social and cultural aspects, including their evolving capacities. The right of the child to preserve his or her identity



is guaranteed by the Convention (art. 8) and must be respected and taken into consideration in the assessment of the child's best interests. Paragraph 56 states that, regarding religious and cultural identity, for example, when considering a foster home or placement for a child, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background (art. 20, para. 3), and the decision-maker must take into consideration this specific context when assessing and determining the child's best interests. The same applies in cases of adoption, separation from or divorce of parents. Due consideration of the child's best interests implies that children have access to the culture (and language, if possible) of their country and family of origin, and the opportunity to access information about their biological family, in accordance with the legal and professional regulations of the given country (see art. 9, para. 4).

Overview of family-based reception for unaccompanied minors in the EU Member States

Another important element is preservation of the family environment and maintaining relations. Paragraph 59 states that the family is the fundamental unit of society and the natural environment for the growth and well-being of its members, particularly children (preamble of the Convention). The right of the child to family life is protected under the Convention (art. 16). The term 'family' must be interpreted in a broad sense to include biological, adoptive or foster parents or, where applicable, the members of the extended family or community as provided for by local custom (art. 5).

3. Guidelines for the Alternative Care of Children

The Guidelines for the Alternative Care of Children were adopted by the General Assembly of the United Nations in 2010. Their purpose follows from the annex that states the following:



1. The present Guidelines are intended to enhance the implementation of the Convention on the Rights of the Child and of relevant provisions of other international instruments regarding the protection and well-being of children who are deprived of parental care or who are at risk of being so.

2. Against the background of these international instruments and taking account of the developing body of knowledge and experience in this sphere, the Guidelines set out desirable orientations for policy and practice. They are designed for wide dissemination among all sectors directly or indirectly concerned with issues relating to alternative care, and seek in particular:

(a) To support efforts to keep children in, or return them to, the care of their family or, failing this, to find another appropriate and permanent solution, including adoption and kafala under Islamic law;

(b) To ensure that, while such permanent solutions are being sought or in cases where they are not possible or are not in the best interests of the child, the most suitable forms of alternative care are identified and provided, under conditions that promote the child's full and harmonious development;

(c) To assist and encourage Governments to better implement their responsibilities and obligations in these respects, bearing in mind the economic, social and cultural conditions prevailing in each State; and

(d) To guide policies, decisions and activities of all concerned with social protection and child welfare in both the public and the private sectors, including civil society. Under their general principles and perspectives on alternative care, they stress in paragraph 21 that the use of residential care should be limited to cases where such a setting is



specifically appropriate, necessary and constructive for the individual child concerned and in his/her best interests.

Paragraph 22 states that, in accordance with the predominant opinion of experts, alternative care for young children, especially those under the age of 3 years, should be provided in family-based settings. Exceptions to this principle may be warranted in order

to prevent the separation of siblings and in cases where the placement is of an emergency nature or is for a predetermined and very limited duration, with planned family reintegration or another appropriate long-term care solution as its outcome. 5 General Assembly A/RES/64/142.

Reception and living in families Finally, according to paragraph 23 – while recognizing that residential care facilities and family-based care complement each other in meeting the needs of children – where large residential care facilities (institutions) remain, alternatives should be developed in the context of an overall deinstitutionalization strategy including precise goals and objectives which will allow for their progressive elimination. To this end, States should establish care standards to ensure the quality and conditions that are conducive to the child's development, such as individualized and small-group care, and should evaluate existing facilities against these standards. Decisions regarding the establishment of, or permission to establish, new residential care facilities, whether public or private, should take full account of this deinstitutionalization objective and strategy. Regarding family-based care, paragraph 18 is worth mention. Overview of family-based reception for unaccompanied minors in the EU Member States EU LAW Both the recast Reception Conditions Directive and the recast Qualification Directive provide rules for accommodating unaccompanied minors.



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The Directives are both part of EU asylum legislation that has been adopted and has been, or shortly will be, transposed by all Member States, except for the United Kingdom (UK), Ireland and Denmark.

4. Recast Reception Conditions Directive

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The recast Reception Conditions Directive lays down minimum standards for the reception of applicants for international protection. Deadline of transposition is 20 July 2015. It does not apply to the UK, Ireland and Denmark.

The Reception Conditions Directive will continue to apply in the UK (but not in Ireland or Denmark). The Directive aims to provide better and more harmonized standards of living to applicants for international protection throughout the EU, irrespective of in which Member State the application has been made. It replaces the Reception Conditions Directive of 2003 that lays down minimum standards for the reception of asylum seekers and will be repealed on 21 July 2015, the latest date of transposition.

There are new rules concerning detention and better standards for vulnerable persons including (unaccompanied) minors. Member States that wish to do so can implement more favourable rules. The new EU rules aim to take better account of the different national legal systems, avoid unnecessary administrative and financial burdens and enable Member States to tackle abuse of their asylum systems more effectively. The personal scope of the Directive comprises not only asylum seekers but also every person who has lodged an application for international protection, including asylum and subsidiary protection. It has an extensive set of rules governing detention of applicants for international protection; for instance, that unaccompanied minors can be detained only in exceptional circumstances and never in prison accommodation.



The Directive also consists of a more specific regime concerning the assessment of special reception needs of vulnerable persons such as minors and victims of torture. The preamble states that, in applying this Directive, Member States should seek to ensure full compliance with the principles of the best interests of the child and of family unity, in accordance with the Charter of Fundamental Rights of the European Union, the 1989 United Nations Convention on the Rights of the Child, and the European Convention for the Protection of Human Rights and Fundamental Freedoms respectively (9).

It also states that that the reception of persons with special reception needs should be a primary concern for national authorities in order to ensure that such reception is specifically designed to meet their special reception needs (14). Article 23 states that,

regarding minors:

1. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors. Member States shall ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development.

2. In assessing the best interests of the child, Member States shall in particular take due account of the following factors:

- (a) family reunification possibilities; Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013. Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011. Directive 2003/9/EC of 27 January 2003.



5. Reception and living in families

(b) the minor's well-being and social development, taking into particular consideration the minor's background. (c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking;

(d) the views of the minor in accordance with his or her age and maturity. Article 24(2) states that:

Unaccompanied minors who make an application for international protection shall, from the moment they are admitted to the territory until the moment when they are obliged to leave the Member State in which the application for international protection was made or is being examined, be placed:

(a) with adult relatives;

(b) with a foster family;

(c) in accommodation centres with special provisions for minors;

(d) in other accommodation suitable for minors. Member States may place unaccompanied minors aged 16 or over in accommodation centres for adult applicants if it is in their best interests, as prescribed in article 23(2).

As far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be kept to a minimum.



6. Recast Qualification Directive

The recast Qualification Directive sets out standards as to who qualifies as a beneficiary of international protection and the content of protection granted. Just like the recast Reception Conditions Directive mentioned above, it is a central legislative instrument in the establishment of a Common European Asylum System. It was adopted in 2011 and applies to all EU Member States with the exception of Denmark, Ireland and the United Kingdom.

Ireland and the United Kingdom will continue to be bound by the Qualification Directive. The Member States bound by it were required to bring into force domestic legislation necessary to comply with the Directive by 21 December 2013. The preamble states in (18) that 'the best interests of the child' should be a primary consideration of Member States when implementing this Directive, in line with the 1989 United Nations Convention on the Rights of the Child. In assessing the best interests of the child, Member States should in particular take due account of the principle of family unity, the minor's well-being and social development, safety and security considerations and the views of the minor in accordance with his or her age and maturity.

Article 31(3) states that:

Member States shall ensure that unaccompanied minors are placed either:

(a) with adult relatives; or

(b) with a foster family; or

(c) in centres specialized in accommodation for minors; or



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(d) in other accommodation suitable for minors.

In this context, the views of the child shall be taken into account in accordance with his or her age and degree of maturity. 9 Directive 2004/83/EC. Overview of family-based reception for unaccompanied minors in the EU Member States 21 Article 31(4):

as far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum.

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7. EU POLICY

The EU Action plan on unaccompanied minors (2010) sets out a common approach based on the respect of the rights of the child, in particular 'the best interests of the child' which must be the primary consideration in all action related to children taken by public authorities.

One of the three main issues concerning unaccompanied minors that need action according to the plan is reception. One of the priorities mentioned is evaluating whether it is necessary to introduce a specific instrument setting down common standards on reception.

The European Commission is currently developing guidance on the EU's role in supporting child protection systems. The annual EU Forum on the Rights of the Child in both 2012 and 2013 played a part in the growing recognition of the EU's role in



contributing to national child protection that responds to children in vulnerable situations, including workshops on children on the move

8. RECOMMENDATIONS IN REPORTS

Reports that mention access to appropriate accommodation, especially reception in families. Access to appropriate accommodation has been mentioned in many reports on unaccompanied minors in the EU, and they mention reception in families as one of the preferable options if appropriate. In 2008-2009 the European Migration Network (EMN) undertook the comparative study titled 'Policies on reception, return and integration arrangements for, and numbers of, unaccompanied minors', which provided a comprehensive overview of the Member States' policies regarding reception of unaccompanied minors. A new study produced by EMN is expected to be issued in 2015. In 2009, the statement of good practice of the Separated Children in Europe Programme (SCEP) stressed that

“every separated child should have the opportunity to be placed within a family if it is in their best interests to do so...”. It also stated that “

whether they are placed in foster care or in residential settings, separated children must be cared for by suitably trained professionals and foster carers who understand their cultural, linguistic and religious needs and who have an understanding of those issues that affect separated asylum-seeking, trafficked and migrant children”.

In 2010, one of the concluding remarks in the comparative Reception and living in families. The final paper of the European Network of Guardianship Institutions (ENGI) project titled 'Care for unaccompanied minors' (October 2011) stated in the recommendations on housing that “not all countries yet have a foster parents program



in place. It would, however, be a preferred situation if UAMs and their guardians were in the position to make a choice between large-scale residential facilities and a number of foster parents.

Those countries that have a foster parents program, sometimes face capacity problems, especially to host adolescents. It is recommended that information sessions are organized to attract (more) foster parents or community care workers. When children stay in a family context with relatives their situation should be regularly monitored by an independent and specialized organization or guardian”.

Also in 2011, the report titled ‘Unaccompanied Minor Asylum-seekers: Overview of Protection, Assistance and Promising Practices’, written by IOM Hungary, mentioned that concerning experiences with accommodation, both experts and children that were interviewed preferred living with a foster family the most. However, although living with foster families was in theory possible for UAMs in most of the researched Member States, according to the research this practice was followed only by a few of them: among the children interviewed only the ones in France, the Netherlands and the UK had experienced living with one. The report by the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament on the situation of unaccompanied minors in the EU (August 2013) calls in recommendation on the Member States to provide unaccompanied minors with access to appropriate accommodation.

According to the Committee, accommodation with host families and in ‘living units’ and the sharing of accommodation with related or close minors should be encouraged when it is appropriate and accords with the minor’s wishes. Finally, according to the joint UNHCR UNICEF publication on ensuring respect for the best interests of unaccompanied and separated children in Europe, published in October 2014, one of the elements to take into account when assessing and determining a child’s best interests is preservation of the family environment, maintaining or restoring relationships, amongst other things



by preference for care within a family environment in order to ensure the full and harmonious development of a child's personality.

9. Scientific research on foster care for unaccompanied minors

The recommendation to make living within a family one of the options for unaccompanied minors, as highlighted in the reports mentioned above, is supported by various scientific publications that will be discussed below. In 2012, the results of a study on fostering unaccompanied asylum-seeking young people were published in the UK.

The research consisted of surveys in four local authorities and of 133 foster carers who were providing a placement to an unaccompanied child in 2009. The researchers also conducted semi-structured interviews with 23 foster carers and 21 young people as well as a policy and practice study. The research aimed to evaluate the evidence gathered about their perspectives on the placement. The overall findings were positive,

concluding that “there is no doubt that good foster care can make a positive difference to the lives of many unaccompanied young people. At its best, it provides for warm family-like ‘Care for Unaccompanied Minors’, European Network of Guardianship Institutions (ENGI), October 2011, p. 23. ‘Unaccompanied Minor Asylum-seekers: Overview of Protection, Assistance and Promising Practice’, IOM Hungary, December 2011, p. 47. Austria, Belgium, Czech Republic, France, Hungary, Italy, the Netherlands, Slovakia, Slovenia, the United Kingdom. Report on the situation of unaccompanied minors in the EU (2012/2263(INI)), Committee on Civil Liberties, Justice and Home Affairs, Rapporteur Nathalie Griesbeck, p. 11. Safe and Sound, what states can do to ensure respect for the best interests of unaccompanied and separated children in Europe’, UNHCR UNICEF, October 2014, p. 42,

<http://www.refworld.org/pdfid/5423da264.pdf>.



‘Fostering Unaccompanied Asylum-Seeking Young People, A research project’, Jim Wade, Ala Sirriyeh, Ravi Kohli and John Simmonds, Social Policy Research Unit, The University of York, University of Bedfordshire and BAAF, 2012. Overview of family-based reception for unaccompanied minors in the EU Member States 23 relationships that can be transformative for young people and foster families alike”. It was also concluded that “by being adaptive, flexible and willing to share, many foster carers and young people had managed to create a network of family-like relationships that helped young people to settle, thrive and explore life within and beyond the placement”.

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Also worth mentioning is the following: “The foster carers were broadly satisfied with their experience of fostering and felt it had enriched their lives. Most were satisfied with the support and training they had received to help them with their role. This was more likely where they had personal experience of migration or of contact and involvement with refugee communities. Other foster carers had felt less well prepared and frequently lacked confidence in their ability to meet young people’s cultural and immigration needs, and these areas of training and support need to be strengthened. There is a risk that the needs of experienced foster carers coming new to fostering unaccompanied young people may be overlooked and their skill set too often taken for granted”.

Another study from 2012 concerning the mental health of unaccompanied asylum-seeking children from Afghanistan presents an estimate of probable post-traumatic stress disorder (PTSD) within this group and describes its associations with the cumulative effect of traumatic pre-migration events, immigration/ asylum status, and social care/living arrangements.

Children living in semi-independent care arrangements were more likely to report increased PTSD symptoms when compared to their peers in foster care. It was stated that:



“Living arrangements are a central feature in their lives and it seems that foster care may be a preferable option. UK foster placements may provide increased support, feelings of safety and security though individual care, stability and decreased isolation, and help to facilitate the building of new attachments for these children”.

The study also mentions two previous studies from 2005 in which the positive effects of foster care are described: a study of Sudanese refugee youths in foster care and a study published by the British Association for Adoption and Fostering (BAAF). The latter was done for a sample of 212 children and young people referred to three local authorities in the UK over a period of 18 months. It traces how these young people fared during the time they had been supported by social services and devotes attention to key areas of young people’s lives and social work practice, including placements.

One of the messages arising from the work was that foster care was the preferred option for younger looked-after children requiring placement. Where the placements worked well, they provided a feeling of safety, security and an opportunity to build new attachments. It was stated that further expansion of foster placements, especially within refugee communities, was needed. Another message was that kinship placements often provided young people with stable and familiar attachments, opportunities for cultural integration and support for education.

Furthermore “it was evident that further improvements in the delivery of care to separated young people can certainly be made. In particular, there is a need for more foster carers and supported lodgings carers to be recruited so that there is a ‘pool’ of carers available, hence resulting in more placement choices, better matching and a greater ability to meet the diverse range of needs that separated young people have, including their cultural needs”, and that “indeed, all carers need to attend intensive and ongoing training”.



10. Return and Integration of Unaccompanied Minors in Portugal

Provided by Conselho Portugues para os Refugiados (CPR), an NGO with signed protocols with the Portuguese government (Ministry of Internal Affairs - MAI and Ministry of Solidarity, Employment and Social Security - MSESS).

The organization develops projects in the areas of hosting asylum seekers and integration of refugees. Reception and living in families concern the measures for hosting and integrating these asylum seekers. In contrast, the limited number of cases in Portugal allows these minors to be accompanied very closely, thus facilitating efficient management and upholding the rights stipulated by the law. The legislation that regulates the situation of unaccompanied minors who reside or are in Portuguese national territory is the law to protect children and youths in danger. The law considers 'children or youths in danger' to be minors who have been abandoned or who have been left to their own devices, justifying institutional intervention to promote their rights and protection (art. 3). This means that when a minor is admitted into Portugal, the Family and Minors Court will be informed about the situation and will apply a measure to ensure rights and protection for the minor in question.

The protection of unaccompanied and separated minors in Portugal involves several and different actors, as follows:

- The Ministério Público ('Public Defenders Office') promotes and defends the rights of children at risk, supervises the local Comissão de Proteção de Crianças e Jovens ('Commissions for the Protection of Children and Juveniles', CPCJ) and represents the child. By recommendation of the Public Defender the process is referred to the Family and Juvenile Court to provide protection measures when necessary. A child can also contact this entity directly to express their needs or/and wishes.



■ The Tribunal de Família e de Menores (‘Family and Juvenile Courts’) judicially promote and ensure rights protecting at-risk children and juveniles. CPCJs promote and ensure these rights at a municipal level. They are non-judicial entities with functional autonomy, monitored by the Public Defenders Office. A National Commission for the Protection of Children and Juveniles supervises and provides training to all the local CPCJs.

■ The Social Security Institute under the Ministry of Solidarity and Social Security can advise the Family and Juvenile Court through local representatives (social workers/psychologists) or even provide social support to unaccompanied minors by decision of the Family and Juvenile Court. The institute also has a team to centrally manage all the vacancies at reception centres in Portugal. For cases not involving asylum-seeking and separated refugee children, this team establishes contact with the care facilities on behalf of the CPCJ or the Family and Juvenile Courts to accommodate a child at risk. The adoption list is also nationally centralized by the team.

■ Two other relevant actors related to unaccompanied minors who are seeking asylum are the Ministry of the Interior (thru Overview of family-based reception for unaccompanied minors in the EU Member States able accommodation. These measures are normally restricted to support for an autonomous life or hosting in an institution, with ‘hosting’ meaning integration into residential centres for youths at risk, along with Portuguese minors.

In November 2014 it was reported that there were 219 undocumented children placed in the national homes for children and youth under the child protection law, according to the national database of institutionalized children. However, it was not clear whether they were all unaccompanied minors. For this reason, steps are currently being taken by the national authorities to clarify each child’s situation.

Foster care in general The Portuguese foster care system relies on the Child Protection Law, under which a child cannot be placed into care unless there is a proper judicial



decision or, for national children, a decision from the local child protection commission closer to the child's residence. A placement measure is always considered as a last resort, and is only considered if there is no family support or family members available to take the child in. It is envisaged as a promotion and protection measure for the child to be removed from the endangering situation. These measures are regulated by law and can be divided into 2 groups:

- measures in the living environment

- placement measures: placement in an institution or a foster family. Deinstitutionalization of children is the national trend, especially for children aged from 0 to 3. Consequently, foster care is the preferred alternative for this age group.

Foster care for unaccompanied minors

The Portuguese Asylum Act¹⁵⁷ states in article 78, paragraph 2, that “the best interests of the minors are namely considered to be:

a) Their placement together with their suitable parents or, in their absence, successively, together with adult family members, in foster care, at centres specialized in accommodation for minors or at places that have conditions for that purpose....”. Nevertheless, it was reported that foster care for unaccompanied minors is only available in some cases. Detailed information on this practice has not been found during the research. In practice, reception in an institution is the measure most frequently applied to unaccompanied minors who ask for asylum in Portugal due to a lack of effective alternatives, such as foster care or family care.

‘Reception, Return and Integration of Unaccompanied Minors in Portugal’, Information provided by the Social Security Institute of the Ministry of Solidarity, Employment and Social Security. The national asylum law was update.



Convention on the Rights of the Child

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989
entry into force 2 September 1990, in accordance with article 49

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,



Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.



2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.



2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11



1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.
2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others; or
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.
2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of



national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
- (b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
- (c) Encourage the production and dissemination of children's books;
- (d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
- (e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.
3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19



1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.
2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

- (a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;
- (b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;
- (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.



Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States



Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.



Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.
3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.
4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
 - (a) Make primary education compulsory and available free to all;
 - (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
 - (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
 - (d) Make educational and vocational information and guidance available and accessible to all children;
 - (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.
2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.
3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.



Article 29

1. States Parties agree that the education of the child shall be directed to:
 - (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
 - (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
 - (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
 - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
 - (e) The development of respect for the natural environment.
2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.
2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.



2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. 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;



(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:



(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:



- (a) The law of a State party; or
- (b) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of eighteen experts of high moral standing and recognized competence in the field covered by this Convention.^{1/} The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the



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member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:



(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50



1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.



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1/ The General Assembly, in its resolution 50/155 of 21 December 1995 , approved the amendment to article 43, paragraph 2, of the Convention on the Rights of the Child, replacing the word “ten” with the word “eighteen”. The amendment entered into force on 18 November 2002 when it had been accepted by a two-thirds majority of the States parties (128 out of 191).