
THE COUNCIL OF EUROPE
CONVENTION ON PREVENTING AND
COMBATING VIOLENCE AGAINST
WOMEN AND DOMESTIC VIOLENCE

NGO SHADOW REPORT TO GREVIO

Portugal

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EXECUTIVE SUMMARY

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence is a human rights treaty. Accordingly, violence against women is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.

Preventing and combating violence against women and domestic violence demands that women must be at the core of all policies and measures.

Like all conventions of the Council of Europe, the Istanbul Convention also focus on a 3 P's approach – Prevention, Protection and Prosecution – adding 2 other relevant P's – service Provision and Partnership. Our reflection and recommendations are based on the above mentioned approach.

- **Prevention**

We demand zero tolerance on violence against women!

Violence against women is a relevant problem in Portugal. Over the last 2 decades progress was made mainly in relation to domestic violence (due to the fact that domestic violence is a crime of public nature) and traditional harmful practices, namely FGM/E, early and forced marriage. However, preventing and combating violence against women in all its forms and at all ages is still a work in deep progress.

Furthermore, there is a persistent trend in society to understand domestic violence as a crime that affects men and women, but not as a gender-based violence.

We want awareness raising campaigns on gender-based violence against women, including all forms of violence against women to promote institutional, collective and individual change and support women victims of violence.

We demand that awareness raising campaigns are aimed at ending stigmatization against women.

Violence against women in all its forms remains invisible and therefore underestimated - the collection of data in Portugal is done mainly through the police database. Data is not all disaggregated by sex and data from courts is still scarcely collected.

Systematic and adequate data collection and research is an essential component of effective policies. Relevant indicators should be developed in partnership with official entities, women's rights NGO, academia and self-representative groups of women survivors of violence.

The Istanbul Convention includes commitments for Member States on data collection and research and stipulates measures for the purpose of the implementation of the Convention.

Article 11 calls on Member States to collect sex disaggregated relevant statistical data at regular intervals on cases of all forms of violence covered by the scope of the Convention,

namely intimate partner violence and rape. Article 11 also requires parties to the Convention to collect administrative data, to conduct research and to collect survey data.¹

The characteristics of the data that should be collected to respond to the requirements of Article 11 are explicated in the Explanatory Report of the Istanbul Convention, under the paragraph 76. Collected data should contain the following information:

- Type of violence
- Sex of the victim and the perpetrator
- Relationship between victim and perpetrator
- Age of the victim and the perpetrator
- Geographical location
- Number of victims (and percentage of population that are victims)
- Number of events (crimes or incidents) (and proportionate to the population size)
- Number of perpetrators (and percentage of population that are perpetrators).

Additional information could include: disability; other type of personal characteristics (e.g. migrant or refugee status); time during which the violence happened (e.g., previous year or over the lifetime).

The European Institute for Gender Equality (EIGE) presented to Member States a set of indicators to guide and support the reporting to their European and International commitments in relation to combat violence against women. Portugal should be able to fill those indicators which are not possible right know.

The media must be educated in promoting equality between women and men and in combating violence against women.

Professionals from the health care sector and educational sector must receive mandatory training on gender equality, violence against women / gender-based violence and on general human rights.

Develop training, particularly addressed to men, on gender stereotypes and its relation to violence against women.

- **Protection**

Women in Portugal are not equally protected across the country.

The Portuguese national action plans on preventing and combating domestic violence, on gender equality and on preventing and combating trafficking of human beings, are not applied in the Autonomous Regions of Madeira and Azores.

Service provision is scarcely distributed in Portugal – services are concentrated in the main cities and across district capitals, leaving women living in the rural areas unprotected (and those women are mostly older women). Even so, there are no adequate specialized services in large urban centers and they are far from the recommended rate by the Council of Europe.

¹ Council of Europe, 'Ensuring Data Collection and Research on Violence against Women and Domestic Violence: Article 11 of the Istanbul Convention', March 2016, p.35.

Protection of women against gender-based violence should take into account the diversity of women's needs and identities.

The specific situation and specific vulnerabilities of women survivors of all forms of violence should be taken into account when developing strategies to prevent and combat violence against women.

It must also be guarantee access to and provide information to all women about their rights, and appropriately in their respective language.

Inexistent support to all forms of violence against women.

There are only a few services that provide support to women victims and survivors of sexual violence, sexual exploitation and prostitution. The existent services do not receive adequate funding regarding the provision of services that are needed to the protection of women.

We demand adequate, sustainable and long-term financial and human resources to services to prevent and repair all forms of violence against women, as well as to support women victims of sexual violence, traditional harmful practices, sexual exploitation and prostitution.

Make risk assessment effective and due diligence.

Although law enforcement agencies have developed a standardized risk assessment form and developed common procedures, in reality the risk assessment is not implemented in the same way across the country.

We demand effective training of professionals on risk assessment procedures. We also call for an impact assessment of the risk assessment carried out during the last 3 years to evaluate its accomplishments in the protection of women victims of domestic violence.

- **Prosecution**

Punishment of perpetrators remains inadequate.

Addressing the prosecution of perpetrators must be at the core of the effective implementation of the law. Besides granting women victims of violence their rights to live free from violence and their credibility, this will also lead to the collective condemnation of violence against women.

We demand to put an end to impunity of perpetrators of violence against women in its all forms of violence through the implementation of effective measures to ensure that investigation and judicial proceedings are carried out properly and in due time, based on the human rights of the victims.

We demand the end of the provisional suspension of criminal proceedings in cases of domestic violence (still foreseen in our framework law), as well as mediation between couples (not included in our law but still a common practice among service providers) that may create conditions to reflect the unbalanced power in the couple and the consequent stereotype of the so called "duty" of women to support men's violence.

We demand for effective enforcement of judicial sentences on perpetrators of all forms of violence against women.

We demand stronger penal framework and punishment to perpetrators of all forms of violence against women, including domestic violence, rape, sexual abuse, pimping, sexual harassment on the workplace and on the streets, and trafficking for sexual exploitation, in order to avoid inadequate punishment of perpetrators based on gender stereotypes.

We call for the development and implementation of a model on prevention of sexual exploitation and protection of victims and survivors of the system of prostitution based on human rights, gender equality and on the empowerment of women. We support the existent decriminalization of women in prostitution in Portugal and several NGO that produced the present report demand a stronger penal framework for pimps and other facilitators of prostitution and the criminalization of sex buyers.

We demand that all law enforcement agencies and professionals (namely police, lawyers, psychologists and social workers, the judiciary) are educated on gender equality and trained on violence against women and on gender-based violence.

- **Service provision**

We demand **adequate financial and human resources to women's rights NGO, NGO promoters and advocators of women's human rights and service and service providers. We demand that per year the State spends, at least, 1% of its Annual State Budget on preventing and combating violence against women.**

Services aimed at protecting women victims of violence and empowering survivors within a gender equality or feminist perspective are mostly dependent on funding based on projects. In recent past, this led to the closure of services.

Appropriate financial and human resources for the implementation of integrated policies, measures and services must be arranged.

Effective development and implementation of specialized support services that entitles a model of intervention that put women's needs and competencies at the core of the intervention. This requires the effective implementation of minimum standards and mandatory training of professionals on gender equality, violence against women and gender-based violence.

Development of specialized support services to specific forms of violence against women.

It is essential to develop all types of services (i.e., rape crisis services, sexual violence referral centers, trauma care for victims of sexual violence, prostitution and sexual exploitation) needed to protect and assist women victims and survivors of all forms of gender-based violence, and to grant access to women to those services.

Granting free access to all type of support services to victims of all forms of violence against women.

Continuing ensuring that access to support services for victims of domestic violence is free, particularly in the judicial sector - no judicial costs and free legal aid - and on the social and psychological support.

Ensure the existence of specialized support services to all forms of violence against women – for instance, free trauma recover support for survivors of sexual violence and sexual exploitation.

- **Partnership**

Effective multi-agency cooperation.

Support and develop effective multi-agency cooperation between public authorities and service providers, in particular women’s rights NGO, aiming at: design, implement and monitoring policies on preventing and combating all forms of violence against women; service provision within a women’s empowerment approach; an effective implementation of legal provisions to end violence against women.

This requires sustainable and adequate funding to service providers, particularly women’s rights NGO, and NGO promoters and advocates of women’s human rights.

Foster international cooperation on preventing, combating violence and discrimination against women.

Foster cooperation with other countries, in particular with the neighbourhood country (Spain) and with countries of the Community of Portuguese-Speaking Countries. This cooperation must involve public authorities, women’s rights NGO and NGO promoters and advocates of women’s human rights, and this requires sustainable, predicable and adequate funding.

1. INTRODUCTION

We begin by highlighting the importance of this historic moment, which establishes the first set of legally binding norms on preventing and combating violence against women and domestic violence in Europe.

The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, hereinafter referred to as the Istanbul Convention provides a definitive and relevant change of paradigm to Europe's approach on violence against women and domestic violence and all its victims, particularly women; and calls for integrated coordinated policy obligation on States and even establishes a self-monitoring mechanism with a high number of competencies.

This holistic approach is particularly important to ensure that there are no void spaces of response and that the policies implemented are built to promote social change and women's empowerment.

The Portuguese State has ratified numerous International Human Rights binding instruments, namely the two most representative Conventions for the promotion and protection of women's human rights - the Convention on the Elimination of All Forms of Discrimination against Women - CEDAW (UN) and the Istanbul Convention (CoE). Both conventions imply unequivocally the obligation and responsibility of the Portuguese State to guarantee with due diligence the prevention and combating of all forms of discrimination and violence against women, and to investigate, prosecute and punish the violations of women's human rights, whether they occur in the public or private spheres.

The Istanbul Convention preamble explicitly recognizes "the structural nature of violence against women as gender-based violence". In our perspective, the Portuguese legislation on domestic violence (Law 112/2009, 16 of September) is gender neutral, meaning that the historically unequal power relations between women and men are not taken in due consideration, reflected in particular on professional practices that are also gender neutral.²

In Portugal the Constitution foresees as one of the State main tasks the promotion of equality between women and men. Public policies have been implemented for the last 17 years through national action plans on equality, non-discrimination and citizenship, on domestic violence and gender-based violence and against trafficking in human beings. As mentioned in the Portuguese State report, gender mainstreaming has been used as the main strategy to

² Further development on the gender-neutral approach of the Portuguese Law on Domestic Violence can be found on the second chapter.

promote gender equality in central public administration. However, the upper-mentioned Plans for gender equality in all ministries and municipalities were never subject to a gender impact assessment. The transformative strength in the overall strategy of gender mainstreaming is, therefore, yet to be assessed in Portugal.

2. PURPOSES, DEFINITIONS, EQUALITY AND NON-DISCRIMINATION, GENERAL OBLIGATIONS (ARTICLES 1 TO 6)

The purposes of the Istanbul Convention are well defined, being clear that violence against women is a form of gender-based violence. In a country where this conception is not fully incorporated by civil society and official entities, the assumption in question is very relevant to promote social and political awareness and effective change.

The Portuguese Constitution and laws have foreseen the *de jure* principle of equality and non-discrimination. Nevertheless, women and particularly women victims of violence against women are *de facto* still discriminated, in many different ways – to give some examples:

- Women are forced to leave their homes, families, friends and work to escape from their violent partners, that are rarely punished according to their crimes;
- to seek shelter;
- women who were raped or sexually assaulted do not have specialized services on sexual violence across the country (with the exception of the Metropolitan area of Lisbon, where there is a women's rights NGO that recently started to support women survivors of sexual violence);
- women suffering from sexual harassment in their workplace, with few or no consequences to the perpetrator;
- women suffering from the "victim blaming culture";
- among other discriminations due to their vulnerability because of age, sexual orientation, disabilities, ethnicity, etc.

As stated in the Portuguese State report, "Portugal has no general law on violence against women". Instead, Portugal has one framework law on domestic violence and on the Penal Code there is only one article that makes an explicit reference to women – article that criminalises female genital mutilation (Article 144-A). All the other articles mentioned in the Portuguese State report – on stalking, on forced marriage, on rape, on sexual harassment and on racial, religious and sexual discrimination – are gender-neutral.

The framework law on domestic violence (Law 112/2009, 16 of September):

- Defines victim as “the natural person who has suffered damage, namely against its physical or psychological integrity, an emotional or moral damage, or a material loss, directly caused by action or omission within a domestic violence crime”. This definition of victim may appear similar to the one present on article 3 (e) of the Istanbul Convention but the difference is that article 3 (e) refers to violence against women (a) and domestic violence (b) and in the Portuguese law on domestic violence women are absent;
- In fact, within the text of the mentioned law, the word woman (“mulher”) only appears 3 times: to refer to women’s non-governmental organisations as one of the many organisations of victims’ support; on the specific case of provision of shelters for women victims of domestic violence; and naming ‘equality between men and women’ as one of the topics to be developed in the training of teachers - and only on the training of teachers. Training for other professionals (health care, judiciary and law enforcement) do not contemplate, within this law, equality between women and men as a subject).

On another hand, looking at the definition of domestic violence included in the Portuguese Penal Code (Article 152):

“acts of physical or psychological violence including physical punishments, deprivation of liberty and sexual offenses, committed against a partner or a former partner, against a person from the same or other sex with whom the offender maintain or have maintained a dating relationship or a relationship similar to spouse even if without cohabiting, from descendants against ascendants, against a person who is particularly defenceless due to his/her age, disability, illness, pregnancy or economic dependence and with whom the offender cohabits”.

And although domestic violence complaints are mostly presented by women against men (in 2016, 80% of the victims were women and 84% of the perpetrators were men),³ domestic violence as a criminal conduct is still approached by public authorities (in particular by the judiciary) as a gender-neutral crime.

In fact, the Portuguese Penal Code criminalizes a range of acts of violence, from which women are the significant majority of victims, such as domestic violence, rape, (and since 2015) stalking, FGM, forced marriage and preparatory acts, covered by the Istanbul Convention.

³ Source: Sistema de Segurança Interna (2016), *Relatório Anual de Segurança Interna – Ano 2016*. Page 35. Available [here](#).

However, the text of those crimes does not reflect the full scope present on the Istanbul Convention.

In general, there is still a great resistance by the authorities, the judicial system and the public opinion in recognizing that domestic violence and other types of violence that disproportionately affect women are gender-based violence. It is quite frequent to hear, even on seminars debating domestic violence and by professionals of different fields of action, that men are victims too, therefore glossing over “violence that affects women disproportionately”. We should also consider that article 6 – Gender-sensitive policies, clearly points to the development and implementation of gender equality policies and to the implementation of a gender impact assessment of the provisions contemplated in the Istanbul Convention. The Portuguese State report highlights several initiatives in relation to domestic violence – such as raising awareness, seminars and training of professionals. However, the majority of those initiatives tend to have a gender-neutral approach – for instance, the Commission for Citizenship and Gender Equality developed training benchmarks on technical support to victims of domestic violence, which do not have a single-entry point on gender-based violence and on violence against women. There are also some exceptions we should praise such as the 2016 awareness raising campaign promoted by the Portuguese Government on the International Day on the Elimination of Violence against Women.

On another hand, on the V National action plan on domestic violence and gender-based violence 2014-2017, the disproportional violence that women face is only mentioned on the preamble and introduction. Analysing the different set of measures presented in the Plan, it is quite obvious that all measures were design to be gender-neutral - there is only one measure where women are intentionally referred (measure n. 11).

The main challenge ahead is the public and political recognition that domestic violence is basically a form of male violence against women and that violence against women incorporates several forms of male violence such as intimate partner violence, rape, sexual violence, sexual harassment, female genital mutilation, prostitution, pornography and surrogacy.

On another hand, Portugal needs a lot of attention when it comes to tackling violence against women regarding their reproductive life. Obstetric Violence is defined by the appropriation of the body and reproductive processes of women by health personnel, which is expressed as dehumanized treatment, an abuse of medication, and to convert the natural processes into pathological ones, bringing with it loss of autonomy and the ability to decide freely about their bodies and sexuality, negatively impacting the quality of life of women.

The Portuguese Association for Women's Rights in Pregnancy and Birth has monitored the treatment of pregnant women in hospitals, through collecting testimonials and surveys. APDMGP's Survey raises concerns as to whether medical professionals are sometimes failing to adhere to the principle of full and informed consent when treating pregnant women. Many women reported that medical interventions were carried out contrary to their wishes. The data also reveals highly medicalized births, raising questions about the need for interventions practiced, that greatly exceed the World Health Organization's recommendations, some of which are consensually condemned by the scientific community. Our survey and experience working closely with women that come to us for help, reveal that many of them are facing forms of persuasion, manipulation and coercion from health professionals, and a lack of respect for their birth preferences and wishes. Often women report physical and mental trauma and harm because of such practices and their autonomy and decision-making capacity is heavily undermined.

One of the main barriers that we face is not just the policy makers or hospital protocols. It is the deep cultural belief that is still predominant in Portuguese society that "doctor knows best". Most women expect that and put themselves in a passive position. We really need to work towards the empowerment of women, sharing information, and supporting the NGOs that work closely with the victims and support them both emotionally and in legal matters. Most women don't know they can refuse procedures. They just accept it. And that is to us the most perverse thing of all. Obstetric Violence is so ingrained that women expect it, and endure it.

Recommendations

Violence against women is a complex phenomenon and there have been many misunderstandings over the years in which concerns namely the concepts. In order to contribute for the advancement of women's human rights in the world, the Committee on the Elimination of Discrimination against Women (CEDAW) adopted the [General Recommendation No. 35 \(GR35\) on gender-based violence against women](#). This new instrument brings not only a holistic approach on gender-based violence against women, but clarifies as well the concept of the Recommendation N^o 19 stating that "violence against women" must be seen as "gender-based violence against women". This clarification and reinforcement is absolutely crucial for the understanding of the Istanbul Convention and the responsibility of the States polices or strategies in the combat of gender-based violence against women. Being so, and taking into account that Portugal is designing the new National Action Plans new progresses must be seen in this context, as for example:

- Adoption in laws and official documents of the concept of gender-based violence against women and violence against women;

- Integration of this concept on the new Action Plans.

Portugal must develop and implement comprehensive and coordinated policies encompassing all relevant measures to prevent and combat all forms of violence against women in order to outreach all women (in particular, women survivor of sexual violence, women in rural areas, women in prostitution, women trafficked for the purpose of sexual exploitation, migrant women, refugee women).

All policy and legislative bids on prevention and support to victims of domestic and gender-based violence should make a clear link between violence against women and inequalities between women and men, as referred in the aims of the Istanbul Convention (Article 1(b)).

Next year, Portugal will adopt a new set of national action plans on preventing and combating violence and on gender equality. This is a tremendous opportunity to make women visible as the main beneficiaries of those public policies.

We call for a national action plan on preventing and combating violence against women and domestic violence, based on the key definitions (article 3) and pursuing the purposes (article 1) of the Istanbul Convention.

We envisage a national action plan that puts women at the core of its policies.

In relation to the legislation, the framework law 112/2009 must be revised in order to integrate the structural nature of violence against women persisting in domestic violence and as gender-based violence.

A gender impact assessment must be carried out regarding the crime of domestic violence (article 152 of the Penal Code).

Special protective measures must be implemented in order to guarantee the victims safety.

The security forces must respond to request immediately.

Finally, an Independent Group involving women's rights NGO must be created for monitoring the Convention and an explicit mechanism must be designed and implemented.

3. INTEGRATED POLICIES AND DATA COLLECTION (ARTICLES 7 TO 11)

We recognize the path Portugal has made on preventing and combating domestic violence particularly over the past 17 years. But despite the significant improvement on public policies

and on the implementation of support services for victims, Portuguese policies are basically focusing on preventing and combating domestic violence based on a gender-neutral approach. The Portuguese State has a specific public administration body (CIG – Commission for Citizenship and Gender Equality), the national machinery for gender equality, which is the official entity responsible for the implementation of the public policies on gender equality and prevention and combat against gender-based violence and domestic violence, namely coordinating the National Action Plans (NAP currently on force: for the period of 2014 to 2017 the V National Plan for gender equality, citizenship and non-discrimination, the V National Plan for preventing and combating domestic and gender-based violence, including the III action program for the prevention and elimination of FGM and the III National Plan against trafficking in human beings; for the period of 2014-2018 the National Action Plan for the implementation of UNSCR 1325).

However, the measures foreseen in those National Plans lack an effective commitment from all quarters of the public administration, specially the local authorities, but also the judicial authorities (judges) and are not considered as binding, depending on the “good will” of the decision-makers for their implementation.

In addition, the National Action Plans are limited in scope and in the geographical outreach, i.e., though called national, they are not applicable in the islands of Azores and Madeira, although these autonomous regions have their own regional plans. Nevertheless, this political organization does not guarantee a national coherent framework on women’s human rights concerning access to equal opportunities.

This leads to a violation of the principle of equality and of the right to be protected and supported across the whole country. It is, in a way, institutional violence against women as it is a form of random discrimination based on the place women live. There are women survivors that do not have the “luck” of having local specialized services available in their cities or region.

In addition, perversely the legal achievement on protecting women victims/survivors of domestic violence, as a public crime of an urgent nature, as well the rights inherent from the domestic violence victim’s status, is provoking a reaction from the part of some stakeholders, namely the judicial system and other movements, such as father’s movements, argue that women alienate their children and make false accusations of domestic violence and/or sexual abuse of children.

Disrespecting the spirit and directions of the Istanbul Convention, the judicial system is applying the shared custody in cases of domestic violence and forcing children to visit their

abusive fathers. Underlining the idea that women lie about sexual violence, the Judiciary Police has been quoted as the source in news that sustain that almost half of the complaints of sexual crimes are false.⁴ Despite the lack of veracity of the news, the Judiciary Police has not denied the claims, contributing to the general and pervasive idea that women lie about male violence and about sexual violence. These press articles sustaining that women falsely accuse men are recurrent and frequently quote the criminal police, which is responsible for the investigation of the sexual crimes.

Again, it is, in a way, institutional violence against women as it is a form of random discrimination based on having the “bad luck” of having their court lawsuits being judge by judges that do not recognize the binding nature of international laws and the specificities of gender-based violence against women.

On another hand, nowadays, it is increasing the general opinion that men victims of psychological and physical violence of women are neglected by the system. A shelter for men victims of domestic violence opened in 2016 in the south of Portugal.

The V National Plan for preventing and combating domestic violence and gender-based violence, recognizes in its preamble the principles of the Istanbul Convention and that women and girls are at major risk of gender-based violence than men and that domestic violence affects them disproportionately, but most of its measures are focused on domestic violence without a clear gender perspective.

In fact, the V National Plan - the document that expresses the governmental commitment and the public policies on preventing and combating domestic and gender violence - does not assume the main achievement of the Istanbul Convention that is the adoption of Violence against Women as the core issue of its application.

We should also refer that although all national action plans carry out an annual monitoring and a final evaluation, its methodology is merely quantitative – as present in the Portuguese State report; the aim is to quantify the achievement of all previewed measures (translated into the so-called “implementation rates”), without any assessment on the accomplishment of the main aims of each national action plans. A gender impact assessment is also absent from this monitoring and evaluation exercise.

⁴ <http://www.cmjornal.pt/sociedade/detalhe/falsas-denuncias-de-abuso-sexual-ficam-sem-castigo>; <https://www.publico.pt/2017/07/30/sociedade/noticia/cerca-de-40-das-denuncias-de-crimes-sexuais-sao-falsas-1780790>; <https://www.noticiasaminuto.com/pais/63902/pj-recebe-queixas-inventadas-de-abusos-sexuais>; <https://portal.oa.pt/comunicacao/imprensa/2017/07/30/falsas-denuncias-em-quase-metade-dos-crimes-sexuais/>; <http://sicnoticias.sapo.pt/pais/2017-04-17-Falsas-denuncias-de-abuso-sexual-disparam>

Lastly, although the Commission for Citizenship and Gender Equality is the coordinating body of all policies on preventing and combating violence against women and domestic violence, since 2015 there is in place a working group composed of representatives from the relevant ministries and law enforcement agencies, academia, NGO and other civil society groups. The group meetings are led by the Secretary of State for Citizenship and Equality and its main tasks are related to monitoring the implementation of the national action plan, to contribute to the design and implementation of policies and of legislation.

Financial resources (article 8) and NGO recognition (article 9)

Looking at the Portuguese State report as regards financial resources allocated to the implementation of the policies, it is easily recognized that violence against women and domestic violence are not central in the Annual State Budget. That means there is not a specific amount of financial resources directly allocated to the National Plans on Domestic and Gender Violence. Additionally, taking into account the expenses on the Annual State Budget for 2016,⁵ and the value mentioned in the Portuguese State report (€ 13 885 274), seven out of 17 ministries in Portugal allocated overall 0.017% on preventing and combating domestic violence.

The Portuguese State report also presents figures related to other sources of income that have been partially channelled to preventing and combating violence against women and domestic violence. We must mention that some projects funded by the European Structural Investment Funds and the EEA Grants were implemented by the State bodies and not all projects were related to combating violence against women.

And although recognizing the effort and the commitment to channel a percentage of the revenue from social gambling to the prevention and combat of domestic violence, it is evident that the financial resource is funding mainly support services for victims of domestic violence – as referred in the Portuguese State report, the revenue of social gambling has been funding “victims transportation, emergency accommodations and shelters, victim-support services, tele-assistance for domestic violence victims, victims’ empowerment, training/information and NGO support”.

⁵ Source: Ministério das Finanças (2016), *Orçamento de Estado para 2016 – Relatório*. Page 179. Available [here](#).

NGO and civil society (article 9)

Concerning the recognition, encouragement and support of women's NGO we can see from questions B and C of the Portuguese State report and from NGO's experience that the majority of the financial support is done along the years through projects regardless of the source of funding, thus not contributing to the sustainability and consistency of the work developed by the NGO's.

And the requirements for long-term financial support for NGO's by the State, Social Security Ministry, funding opportunities, namely focusing on support service and shelters for victims of domestic violence, are very narrow and thus difficult to comply with by the large majority of the organizations and service providers.

Despite all the work women's NGO have been done for the last three decades Portugal did not recognize, until now, the role of women's rights NGO as guardians of women's human rights. On the contrary, as is stated in the Portuguese State report there is a trend to reduce the women's rights NGO and service providers as to "executors of public policies".

However, the most pertinent work of women's rights NGO is not the execution of public policies but rather their role as advocates on the protection and promotion of women's human rights according with the UN Assembly Resolution nº 53/144, 9 December 1998 "*Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*", as well as within several international instruments, that Portugal ratified.

Along the last decades some debate has been happening around the status of Women's Rights NGO and their funding. Proposals were discussed but it is still a work in progress.

On another hand, it is paramount that the data presented in the Portuguese State report concerning funding of support services and NGO's should be disaggregated by type of service provider and NGO's status. This would be a great opportunity to demonstrate that the vast majority of services providers of support to women victims of domestic violence are NOT run by women's rights NGO's, but by other organizations, such as charity institutions and others.

This means that the intervention services are not aligned with CoE – Combating Violence against women: minimum standards for support services (2008).

Further development on service providers can be found on chapter 5.

Nevertheless, it was possible to observe some investment and recognition of the work done by NGO's that support lesbian, bisexual and transsexual women survivors of domestic violence.

Data collection and research (article 11)

Despite the extension of the phenomena and the legal advances made in the last decades, Portugal does not have a specific national legal and regulatory framework concerning data collection on violence against women according to the Istanbul Convention definitions. Thus, an integrated model for gathering such data in the country is inexistent, making only available information fragmented and, in some cases, not coincident. Moreover, diverging definitions on violence against women and a gender-blind methodology in collecting and analysing data constrain the process accuracy.

The currently in force Data Protection Law is very restrictive on the type of data that can be collected, thus impairing statistical information. For instance, sexual orientation and gender identity is considered sensitive data and therefore impossible to be collected. This in turn means that there are no surveys being conducted, on the national level, that include personal characteristics of the respondents. In addition, there is very little knowledge (either collected by surveys or studies) developed by the State on the reality of specific groups of women (such as lesbians, bisexual, transgender, migrant, women in prostitution) and their experiences of discrimination and violence.

Recommendations

Considering the recent [General Recommendation No. 35 \(GR35\) on gender-based violence against women](#) from the Committee on the Elimination of Discrimination against Women (CEDAW) is not anymore acceptable the neutrality of laws and in consequence a review must be done putting the national legal frame in accordance with this recently instrument from the United Nations. Furthermore laws should integrate the compromises with which Portugal are committed namely in the area of equality and non-discrimination.

Numerous studies have been carried out since 1995 (IV World Conference on Women, Beijing, UN) when the World Bank alerted Governments for the impact of violence in the economies. In Europe the first country to present data in this area was Netherlands in 1997 - European Parliament. Despite all the controversial discussion on methodologies, coherence of indicators, prevalence there is not anymore any doubt that the costs of violence against women are huge. In relation to financial resources allocated to the prevention and combating violence against women, Portugal must increase significantly the financial resources allocated to preventing and combating violence against women and domestic violence – at least, reaching 1% of the annual State budget.

Fundamental services cannot be funded on irregular sources of funding such as social gambling; the annual State budget must be the primary source of funding for services that

support women victims of gender-based violence and for women's rights NGO (those whose work is focusing on the promotion of gender equality *de facto* and on combating all forms of discrimination and violence against women).

Several research pieces must be carried out namely regarding: stalking; rape, marital rape and rape in intimate partner relationships; forced marriage; forced sterilisation; sexual harassment on the streets; crimes committed in the name of so-called honour; existence of cases where the perpetrator of domestic violence has been removed from home and its respective success rate.

Data collection on violence against women must cover all forms of violence (beyond domestic violence) and data must be systematically collected by sex crosscutting all other characteristics (place of residence, age, educational background, etc.) of the victims and perpetrators.

Perpetrators must be visible in the eyes of public opinion. Data collection on perpetrators of all forms of violence against women should be translated into awareness raising campaigns and prevention programs (perpetrators are the ordinary man).

4. PREVENTION (ARTICLES 12 TO 17)

The Portuguese State has been implementing along the last decades various awareness raising campaigns, mainly on domestic violence targeting specific groups of victims, such as women, older women, children, and dating violence amongst young people. The State has already conducted two awareness raising campaigns on LGBT issues, namely homophobic and transphobic bullying and violence within the family environment against LGBT youngsters.

A special attention is made on the International day for the Elimination of Violence against Women (25th November) and a lot of initiatives in collaboration with NGO take place during the 16 days of activism against gender-based violence against women. This is also happening on the 6th February - FGM Zero Tolerance International Day.

Nowadays the majority of the population of Portugal recognizes that Domestic Violence is a common issue, but a lot of work is still needed to overcome old myths and beliefs, based on the patriarchal culture.

General obligations (Article 12)

This article assumes that countries will *"take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a view to eradicating*

prejudices, customs, traditions and all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men.” This is particular evident for specific groups of women such as, for instance, women in prostitution. Poverty has a feminist face and it is deep-rooted in gender inequality that is a cause and consequence of violence against women. As stated in the paper of the Council of Europe ‘*Preventing violence against women: article 12 of the Istanbul Convention*’, “*the gendered nature of violence against women*” is “*rooted in power imbalances and inequality between women and men. This also means working to prevent a continuum of forms of violence against women, including physical violence, sexual and psychological violence, stalking, sexual harassment, female genital mutilation, forced marriage, forced abortion and forced sterilization*” and the several NGO that have produced this report would also add pimping.

Education (Article 14)

In general, Portugal has no tradition of integrating in the Curricula at all levels of the National Education System the issues of Human Rights, Gender Equality and Citizenship.

Only recently there has been an increasing investment in the construction of Educational Materials focusing on gender issues and citizenship disseminated at national level (the Education guides referred in the Portuguese State report).

Despite this effort to endow schools with these educational materials, the main goal of article 14 of the Istanbul Convention will not be achieved because the application of these materials and contents are optional and depends on the individual choice of the schools’ boards, teachers and educational professionals.

There is no clear assessment of how the Law on Sexual Education in schools is being applied in articles corresponding to the objectives of the Convention.

Both the external and internal report on the law published in the last 8 years do not present data that allow us to know how this law has been applied and its results.

There is a legal void when it comes to the recognition of the gender identity of trans and intersex children in education. This means that they are more vulnerable to bullying in schools.

The sexual education law mentions sexual orientation and gender identity contents but leaves the decision to have such classes and its contents to the arbitrary decision of the school's board. This in turn means that there are very few schools having sex education classes, and barely none inclusive of sexual orientation and gender identity issues.

Sexual education is compulsory since 2009, however, its teaching is centred on the prevention of infections and pregnancy, being included in health education among topics such as narcotics, mental health, nutrition, and sports. In most of cases sexual health is limited to the

use of condoms and does not focus on the prevention of violence in intimate relationships. Prevention normally consists in random awareness-raising sessions, not promoting cultural change. Some raising awareness campaigns were implemented regarding FGM (Right to live without FGM).

Training of professionals (Article 15)

The Istanbul Convention determines that States must provide appropriate training to all professionals intervening with victims or perpetrators (article 15th) and to ensure that they adopt an understanding of violence in a gender perspective (article 49th (2)).

From the analysis of the Portuguese State report it is not possible to conclude the dimension of the investment of training of professional from the different areas of intervention neither the content of the training that where referred. It is of most importance to explicitly indicate the relation between the courses done and the professionals involved and the global universe to be achieved.

In fact, the Commission for Citizenship and Gender Equality has 13 training benchmarks certificated – 7 on domestic violence and gender-based violence - but in most of the cases (in particular on training for victims' support professionals), the training is given by NGO or other type of organisations (after applying for funding) and no evaluation of the quality of the training is carried out by CIG.

One of the problems that result from the lack of a mandatory national strategy is that the frontline professionals are not the ones who usually participate in the training courses (and this specifically applies to law enforcement agents). Furthermore, the fact that the entities do not adopt the international or national references in these areas initial training, in-training and on-going specialized training is not recognized as essential for the adequate and quality victim centered gender-based approach intervention of the services delivered to victims.

Moreover, in the last years there was a reinforcement of the training on sexual and reproductive health in relation to FGM among professionals of the health care system.

Prevention intervention and treatment programs - Perpetrators and sex offender programs (Article 16)

There is no coherent and articulated national strategy on perpetrators programmes. Besides the official PAVD programme there are some other initiatives from the academia and psychiatric hospitals with no links between them. The intervention models are all different and the medium and long-term outcomes are not known neither the impact on the safety and security of victims and the re-incidence of the crime.

Moreover, most offender programmes and in particular the official PAVD don't have a coherent and articulated work with the support services for victims/survivors of domestic violence and specifically with the women's rights NGO support and advocacy services for women survivors of gender-based violence and domestic violence.

In which concerns sexual offender's programs the information is not known at all, especially for the NGO supporting victims/survivor of sexual violence.

Besides that, from the information given by the Portuguese State report, is a matter of concern that the rehabilitation programmes of sex offenders are not approaching the addiction dimension of sexual violence.

Nevertheless, support programmes for perpetrators of domestic violence are usually mandatory within the provisional suspension of the criminal proceedings (happening when the case is being investigated and this is a way to suspend temporarily the investigation and not to condemn perpetrators due to the nature of the domestic violence crime, mainly occurring within intimate partnership) and when perpetrators have been convicted to prison but the sentence has been suspended.

This practice does not contribute to the victim's empowerment or their safety. In our perspective, it is a clear sign that the crime of domestic violence is not taken seriously by the judiciary and by the all society. And it worries us that the funding for this program is coming directly from the annual State budget as mentioned in the Portuguese State report, particularly when several components of the support to victims of domestic violence (for instance, victim's transportation, emergency accommodations and shelters, victim-support services, tele-assistance for domestic violence victims and victims empowerment) are being funded through the social gambling available amount (that, for instance, varies monthly).

We can also mention the lack of information about the progress of the Program and scientific information and evaluation on the impact of it.

Participation of the private sector and the media - Self-regulatory standards of the private sector - (Article 17)

From the analysis of the Portuguese State report is not possible to have an idea of the initiatives done by ACT in reference to the universe of private sector.

Besides that, is not also possible to conclude the role and the outcomes of the work developed by the Regulatory Authority for the Social Communication in the area of protection of children and prevention of violence against women and from the exposure to inadequate and violent contents.

One of the areas that need to be challenged is media and social communication. This sector is a privileged vehicle on the promotion of sexist stereotypes (for example in advertisement); but is also relevant the way they treat information and data about violence against women and domestic violence. The media could have a role on the eradication of prejudices, practices and traditions based on the inferiority of women, or on stereotypical roles of women and men.

With very few court cases regarding any kind of prosecution, as an example, in Portugal it is imperative to conduct a deep analysis on advertisements and then prevent and condemn advertisements such as the ones in the following links: <https://youtu.be/l8-Xb8992T8>; <https://youtu.be/7SjIGL5q5UA>.

Recommendations

Numerous studies around the world have been done in the last twenty years in order to evaluate the impact of violence against women on the economies. It is not anymore possible to deny this reality. We have for example The Economic Costs of Violence Against Women: An Evaluation of the Literature from the United Nations as well as the European Added Value Assessment that estimates that the annual cost to the EU of gender-based violence against women in 2011 was about EUR 228 billion in 2011 (1.8% of EU GDP) (European Parliament 2013) or even the FRA Survey (European Union Agency for Fundamental Rights, 2014) on prevalence of violence against women which undoubtable concludes for the enormous dimension of the phenomena in EU 28 countries.

In another continent, Australian the Study “The cost of violence against women and their children, March 2009” brings information useful for this reflection:

The cost of inaction

Violence against women and their children will cost the Australian economy an estimated \$13.6 billion this year¹. Without appropriate action to address violence against women and their children², an estimated three-quarters of a million Australian women will experience and report violence in the period of 2021-22, costing the Australian economy an estimated \$15.6 billion³. This is more than last year’s \$10.4 billion plan by the Australian Government to stimulate the economy in the face of the global financial crisis; more than the Government’s \$5.9 billion Education Revolution; and more than three-quarters of the initial budget allocation in 2008-09 of \$20 billion to its Building Australia Fund.

Implementation of Time for Action: The National Council’s Plan for Australia to Reduce Violence against Women and their Children (the Plan of Action) aims to reduce the levels of violence against women and their children by 2021. For every woman whose experience of

violence can be prevented by the Plan of Action, \$20,766 in costs across all affected groups in society are avoided.

To place this in perspective, if the Plan of Action resulted in an average reduction in violence against women and their children of just 10 per cent by 2021-22, some \$1.6 billion in costs to victims/survivors, their friends and families, perpetrators, children, employers, governments and the community could be avoided.”

In conclusion **prevention** must be considering **the priority** of any national strategy if governments really want to save costs and guarantee and protect women and girls from violence. There is no prevention if children are not integrated in the holistic approach on violence against women and a national binding strategy on the Children Human Rights must put in place, urgently.

On another hand, several NGO that produced the present report propose to GREVIO to consider pimping as a form of violence against women, and the criminalization of pimping as *“necessary legislative and other measures to prevent all forms of violence”* (article 12),

5. PROTECTION AND SUPPORT (ARTICLES 18 TO 28)

The Istanbul Convention in chapter V establishes clearly and detailed in a coherent and integrated manner the principles of intervention (article 18 (3)), the required general and immediate, short and long term specialist services for protection and support for women and girls survivors/victims of all forms of violence against women covered by the scope of the Convention (articles 19 to 25) in an “effective co-operation between all relevant state agencies, including the judiciary, public prosecutors, law enforcement agencies, local and regional authorities, as well as NGO and other entities”(article 18 (2)).

Article 18 (General obligations) calls upon States to “ensure that measures taken shall (...) aim at avoiding secondary victimization”. Secondary victimization happens when victim’s discourses are not taken in due consideration by professionals that should be protecting victims of domestic violence. Instead, victims’ discourses are taken out of the contexts, discredited and emerge in the sphere of the “victim blaming culture”.

Portuguese law makes available the “statement for future memory” of the victim’s perspective on the crime of domestic violence, which is a statement recorded within courts and conducted by judges. This measure would prevent secondary victimization. However, when there is an accusation of the offender made by the Public Prosecutor and the file goes to court, the vast

majority of judges prefer to inquire the victim directly instead of considering the previously statement recorded. This leads to the victim to be inquired several times along the course of the process. This attitude leads frequently to secondary victimization and could be easily avoided.

Children witness of all forms of violence covered by the Convention and their needs of protection and specialized age-appropriated support are also taken into account, as the Istanbul Convention recognize, without any doubt, in its preamble that “children are victims of domestic violence, including as witness of violence in the family”.

The Istanbul Convention reinforce that it is the State obligation to guarantee the provision of those protection and support services, namely by the attribution of sufficient and adequate financing support to NGO and other public or private entities.

These dispositions of the Istanbul Convention are reinforced by the European Directive 2012/29/EU (in force since October 2012) that established the minimum standards on the rights, support and protection of victims of crime. This Directive is also a legal binding instrument, despite focusing on victims of crime in general, it refers to gender-based violence as a form of violence that requires the provision of specialist support for survivors.

Concerning domestic violence, Portugal has a so called National Network for the support of victims of domestic violence which includes the public administration body responsible for citizenship and gender equality and the Social Solidarity Institute, shelters, emergency accommodation and “attendance structures” (providing counselling and/or social and psychological support, and/or legal information) according to article 53 of the Law 129/2015, 3 of September. These services are provided without any charge.

The article 53 (A) of the same law establish the articulation with other stakeholders such as social services and facilities for older people, child protection services, police and other entities that cooperate within the National Network. Local authorities and municipalities may also integrate the National Network.

Public funding for the National Network namely on building equipment for services for victims of domestic violence falls within specific investment programs for social equipment; it may also be assured by EU funds. The funding for the daily functioning and human resources of support services is foreseen by the system of social services.

Despite being called a Network, it is, in fact, a set of public entities with political and executive responsibilities on domestic violence and civil society organizations, not necessarily having the characteristics and dynamic of a cooperation network.

Furthermore, shelters, emergency accommodation and “attendance structures” are generally run by civil society organizations, receiving public funding that may differ from case to case. Consequently, when the financial crises hit Portugal, the Governments, namely the Ministries of Social Solidarity, blocked all new long-term funding agreements for victims’ support services and not updating the existing ones.

Since then, all new victims’ support services are funded in logic of a project or short-term agreements protocols.

According to the Portuguese State report the national network is fully funded by the State, but does not specified which ones are short term projects and which ones that, despite receiving long-term funds, are surviving with “outdated amounts” since many years.

Furthermore, shelters are funded based on the occupation ratio and, as it is mentioned by the Portuguese State report, the occupancy rate of shelters is around 78% and of emergency accommodations even lower, meaning that organizations are receiving less than the previewed in the annual budget.

This may constitute a big financial constrain, as regular expenses - such as electricity, gas and water supply, communications, rents etc., as well as staff - remain the same, independently of the ratio occupation.

One another hand this occupation ratio has a mere statistical purpose and do not specify that shelters are not “depositories” where women and children are stuck; in fact, shelters are supposed to be housing facilities where families are entitled to private accommodations. That said, vacant places do not necessarily mean that there are free bedrooms, but rather that families are not sharing rooms - a right they have as to be treated with dignity and respect for their privacy and intimacy.

Another fact that is not perceived in Portuguese State report is that despite the majority of support services for domestic violence victims are being run by civil society organizations, they are mostly run by organizations with a gender-neutral and assistance-based approach, intervening in other social areas (i.e., care for older people and children). Only a few support services are run by NGO with a human rights and women’s empowerment approach, and from those a minority are women’s human rights NGO, as stipulate in the Istanbul Convention.

The support services for victims of domestic violence are integrated in the social solidarity area and in Portugal there is a centenary tradition of church-related and charities institutions being the main stakeholders in the social field, i.e., care for older people and children, mental illness, care for people with disabilities, etc.

Another problem is that many services, mainly those that are located in the rural areas and including shelters, have few specialized and trained human resources – for instance, some counselling centres have one or two professionals.

In some cases, the funding body approved, without any reserve, projects for support centres for victims of domestic violence and for perpetrators programs that are being managed and taking place in the same facilities and carried out by the same professionals.

Nevertheless, women's rights NGO have advocate for years for a minimum standard framework on protection and for victims support services focusing on the respect for the survivors/victim's decision-making and their needs, within a human rights and empowerment's approach. This could prevent the persistent culture of "blaming the victim" and of "family over everything at any cost" frequently reflected on the individual support to victims of domestic violence.

In 2016, the Commission for Citizenship and Gender Equality, in collaboration with women's rights NGO, victims support services and NGO, other entities with support services for victims of domestic violence and researchers, have agreed upon the design of minimum standard on the protection of victims of domestic violence and gender-based violence, comprehending also mandatory guidelines. Entities and organizations have now a period (not yet determinate) to take all appropriate measures for the fully adoption of those standards.

On another hand, domestic violence victims, independently of their nationality, residential status, age, religion, sex orientation, ethnicity, disabilities, etc., have the right to specialised support and protection services for free and without discrimination of any ground.

However, in reality, there are still many barriers in accessing shelters and support services, namely for women and children with disabilities, as most shelters do not have adapted, for instance, infrastructures for wheelchairs, or do not have the needed human resources to attend specific needs; or the nearby community where the shelter is located does not have no immediate response to their specific needs.

Concerning the free access to other services and benefits, the attribution of the Victim's Status and the guarantee of its explicit and implicit rights is mainly depending on the criminal complaint. This can also became a barrier to women victims of domestic violence who do not want or who are afraid of pressing charges – this is particularly the case of migrant women, Roma women and other women from other ethnical-cultural background.

The domestic violence framework law 112/2009, 16 of September, contemplates the possibility of the attribution of the Victim's Status by the Commission for Citizenship and Gender Equality (CIG) and not only by law enforcement agencies. However, this can only

happen in exceptional situations and, by now, there is no available data regarding this exceptional situation. This measure could ensure victim's rights without the need for them to press criminal charges, as foreseen in the Istanbul Convention (article 18 (4)).

Undocumented women and children have access to specialist services, shelters, emergency accommodations and counselling centres for free. However, this is not necessarily the same in relation to other general support services, like health services, social services and social benefits (i.e., the social integration income), judicial support, compensation in advance, etc.

The Explanatory Report of the Istanbul Convention defines specialist support services as: "dedicated services for victims of the different forms of violence against women" made up of "specialised and experienced staff with in-depth knowledge of gender-based violence", including, among others, "counselling centres, shelters, rape crisis centres and sexual violence referral centres." (Council of Europe: 2011).

In Portugal there is still a big void, with very few support services for women victims of other forms of violence against women as defined in the Istanbul Convention and beyond domestic violence; and those support services only exist within the framework of a concrete project.

There are no 24/7 telephone helplines free of charge to provide advice on gender-based violence against women, as the existing helplines are "Information Service for Domestic Violence Victims – 800 202 144" and Social Emergency Line 144, both having a gender-neutral approach.

In our perspective, the ratification of the Istanbul Convention was paramount to strength our demand. However, in our opinion, the translation made of the Istanbul Convention, specifically regarding article 25, is not correct.

IC - English version – article 25

Parties shall take the necessary legislative or other measures to provide for the setting up of appropriate, easily accessible rape crisis or sexual violence referral centres for victims in sufficient numbers to provide for medical and forensic examination, trauma support and counselling for victims.

Portuguese translation – article 25

Parties shall adopt legislative measures or others identified as necessary to establish adequate crisis centers, easily accessible and adequate in number, for the referral of victims of rape or sexual violence where they are subject to medical examination and forensic examination and receive trauma support as well as counseling.

In fact, the two types of services contemplated in the IC - rape crises center and sexual violence referral center – were, in the Portuguese version, merged in only one type of service - crisis center however with the functions of a sexual violence referral center.

Being so we consider that the translation is not according with the IC and the Explanatory Report of the Convention clearly states de difference between these two types of services, namely:

- *Rape crisis centres may take on many different forms. Typically, these centres offer long-term help that centres on counselling and therapy by offering face-to-face counselling, support groups and contact with other services. They also support victims during court proceedings by providing woman-to-woman advocacy and other practical help. (§ 140);*
- *Sexual violence referral centres, on the other hand, may specialise in immediate medical care, high-quality forensic practice and crisis intervention. They can for instance be set up in a hospital setting to respond to recent sexual assault by carrying out medical checks and referring the victim to specialised community based organisations for further services”. (§ 141)*

And we demand that the correction will be made in order to allow the implementation of the specialized services that the survivors of sexual violence deserve.

The Council of Europe recommendation for minimum standards for support services on combating violence against women state that should be 1 rape crises centre (run by women NGO) per 200 000 women and 1 sexual assault (medical and forensic approach) per 400 000 women (CoE 2008).

In December 2016, the Minister of Justice and the Minister of the Presidency of the Council of Ministers have signed a protocol with the Association of Women against Violence (AMCV) funding a 3 year project that comprehends services for women and girls survivors of sexual violence, including rape, covering the region of Lisbon. This is the actual *state of art* on the existent services for victims of sexual violence in Portugal.

Recommendations

National Strategies or Plans are not instruments of good will; they must be recognized as real instruments of work with quality standards to be achieved at a national level.

We identify 5 main principles that must be taken into account by service providers either public or private entities. All services must have:

- a human rights approach;
- a gender-based violence approach;
- a non-discriminatory attitude;
- an inclusive strategy;
- and an equal treatment for everyone.

In Portugal, according to the Observatory of Murdered Women from the União de Mulheres Alternativa e Resposta (UMAR), this year until middle of July, 12 women were murdered. What we can observe, considering the present year, and when comparing femicides in Portugal with femicides in Spain, in Portugal the number of murdered women is disproportional in relation to the Portuguese population. Something is not working properly and the State must be considered responsible.

A culture of accountability must be developed and integrated in this area of work as well as ethical codes of conduct as referred in the **Minimum Standards Guide for the Intervention in Domestic and Gender Violence**, 2016, the instrument recently developed and yet to be fully implemented.

It is fundamental to achieve a high quality level of specialization of professionals.

The redefinition of the core of the support services for victims of domestic violence is paramount in Portugal. Service providers must focus their approach on women's and children's human rights and must be implemented by experts on the field of preventing and combating violence against women.

Starting from this, Portugal has to ensure that victims support services are available and accessible all over the country without excluding anyone.

We also expect that the future national action plans on preventing and combating violence against women and on promoting women's human rights and gender equality are adopted also by all parliamentary groups. We assume that the above mentioned action plans will have a binding nature and not an optional one.

6. SUBSTANTIVE LAW (ARTICLE 29 TO 48) AND INVESTIGATION, PROSECUTION, PROCEDURAL LAW AND PROTECTIVE MEASURES (ARTICLES 49 TO 58)

The justice system and support service providers' professionals must have common tools and references at the national level and systematic specialized training, particularly in regard to risk assessment and management. The existing networks on VAW and domestic violence do not often offer a comprehensive approach, and can be found randomly across the country based on the willingness of main local stakeholders.

The justice system does not have a comprehensive approach on domestic violence and related-court cases. There is a lack of articulation between the Penal Court and the Family

court, i.e., the Penal Court may decree a prohibition of contacts and the Family Court decides that the father has the right to visitation or even to joint custody. Even with the addition of Article 1906-A of the Civil Code introduced by the Law 24/2017, 24 of May, the joint custody within the context of domestic violence is still a possibility and a frequent reality (even when there is a restricted order or a condemnation on domestic violence). The mentioned law makes a reference to the possibility of not implement joint custody when domestic violence is present but does not hinder joint custody when the judge considers joint custody within the best interests of the child.

Despite all the protection orders and coercive measures, victims are still the ones that must leave home, although their safety is not guaranteed - in 2012, 40 women were killed by their partners or former partner. Femicide should be recognized as an autonomous crime.

The cases of trafficking of women and girls for sexual exploitation are not judged as human trafficking cases. Most traffickers in the majority of these cases are judged by the crime of pimping. Pimping is not included in the realm of public crimes in Portugal.

Since 2015, the Portuguese Parliament approved legislative amendments to the Criminal Code, the Civil Code and to the legal framework on the prevention of domestic violence and on the protection and assistance of the victims, aiming at adapting internal legislation with the legal imperatives established by the Istanbul Convention.

Having women's rights NGO and other NGO demanded at Parliamentary hearings that the legislative changes should meet the provisions of the Istanbul Convention – namely considering a comprehensive and integrated framework focusing on violence against women - the legal amendments that were made are more likely a kind of “law’s patchwork”.

Concerning the definition of article 3(b) - “domestic violence” shall mean all acts of physical, sexual, psychological or economic violence - the crime of domestic violence contemplated in article 152 of the Portuguese Penal Code is not yet in accordance with the Istanbul Convention, as it does not foreseen the dimension of economic violence.

Thus, the typical conduct indicated by that rule refers to the infliction of “physical or psychological ill treatment”, and even though it is consensual today, both in Doctrine and Jurisprudence, that several different behaviours are included in this concept, it is important to take into account that the Istanbul Convention provides, in article 3(b), the scope of comprehension extending the concept of domestic violence to all acts of “physical, sexual, psychological or economic violence”.

Despite marital rape being legally punishable since 1982, courts only condemn marital rape under the umbrella of domestic violence or during judicial processes of great physical violence.

The only research conducted in Portugal on the attrition rate in sex crimes have found that of 100 perpetrators, 75 were identified, half prosecuted and only eight were convicted.

Furthermore, the laws concerning domestic violence do not take into account the concept of domestic violence as a gender-based violence against women.

This fact does not contribute to adequate collection of statistics as referred in article 11 of the Istanbul Convention, neither for a more correct definition of the necessary public policies for the eradication of violence against women, the promotion of gender equality and the empowerment of women.

Concerning sexual crimes, namely crimes on sexual coercion and rape - articles 163 and 164 of the Portuguese Penal Code, we consider that those legal definitions are still not in accordance with article 36 (2) that assume that the consent of the victim “must be given voluntarily as the result of the person’s free will assessed in the context of the surrounding circumstances”.

The actual definition keeps the paradigm of requirement of “constraining the victim” and has not abolished the requirements of violence, severe threats, making the victim unconscious or incapable of resisting.

Concerning sexual harassment, the conducts foreseen in article 40 of the Istanbul Convention, are also not adequately included in the legal provision and punishment of the crime of sexual harassment in article 170 of the Portuguese Penal Code, neither in any other normative rule of a criminal nature. Sexual harassment in the workplace is only considered as a serious misdemeanour within the Labour Code.

Furthermore, it should also be highlight that the Portuguese Penal Code amendment (dated of 2015) did not introduce the aggravating circumstances that are set out in this article 46 of the Istanbul Convention.

Concerning the children, their protection and support as witness, according to article 26, the custody, visitation rights and safety according to article 31, and the prohibition of mandatory alternative dispute resolution processes or sentencing according to article 48 of the Istanbul Convention, the legal frame regarding the custody and visitation rights of children does not take into consideration the incidents of violence covered by the scope of the Convention, and even may contribute to the continuity or intensification of violence.

The Portuguese legal framework does not recognize children who witnessing or being exposed to domestic violence as direct victims and consequently there is no legal mechanism for protection and safety of the children.

The justice system does not have a comprehensive approach on domestic violence and related-court cases.

Until recently (Law 24/2017, of 24 May - promoting the urgent regulation of parental responsibilities in situation of domestic violence) there was no legal obligation for an articulation between the Penal Court and the Family Court.

Furthermore, the prevalent model of approaching custody and visiting rights issues in Portugal is that both parents have the right of having regular contacts with their children, based on the so called “superior child interest” in detriment of fundamental rights as the right to live in safety and free of violence.

These court decisions not only place children in situations of great vulnerability and conflict, as consequently also the mother victim of domestic violence.

All this happens without any evaluation of the impact of of these decisions.

Therefore, in the legal proceedings of the regulation of Parental Responsibilities (custody) in situations of domestic violence, including child sexual abuse and when there is a refusal of contact with the parent having the right of visiting by the child, is frequently observed that the judicial system uses parental alienation and the syndrome of parental alienation theory (which has raised profound controversy regarding its nature, causes and consequences, and which scientific validity is largely questioned) to based legal decisions against mothers .

Inhibition of parental responsibility in cases of father’s condemnation of sexual abusing their children is not compulsory. It is considered an additional penalty that must be ordered by the court.

Furthermore, the legal imposition of the joint exercise of parental responsibilities as a rule and the absence of an express legal provision regarding domestic violence as a cause of divorce without consent of the other spouse has led to an aggravation of family violence and the lack of protection of its victims.

The fact that the phenomenon of domestic violence is being reduced to a mere conflict susceptible of being overcome by consensus or mediation, is a deeply contradiction to the awareness and recognition given by the nature of the law as a public crime. This means a public responsibility of a crime committed on the private sphere and the state responsibility to prevent, protect and support the victims as well as to punish perpetrators, with due diligence - this is not in accordance with article 48 of the Istanbul Convention.

Being the investigation a responsibility of the Public Prosecution, assisted by the police, the way in which the investigation is carried out depends on several factors, including the availability of human and material resources and the training of those judicial agents. It also depends on the judicial agents’ conceptions and approaches to violence against women and domestic violence.

Despite the recognition that there has been an investment in this area, a culture promoting the dignity and women's human rights is yet to be achieved. Importantly, there is also a need for a standardization of common judicial procedures. A real change within the judicial arena persists as the judicial system frequently has not a friendly approach to victims, continuing promoting secondary victimisation.

Despite the increasing number of criminal complains on domestic violence, there is no equivalent correspondence in the application of the law, in terms of the positive effects for victims, neither for their feeling of safety nor for the clear perception of their criminal responsibility by the perpetrators. Therefore, frequently victims feel that pressing charges on domestic violence is a risk of being victimised again, not promoting their protection, neither ensuring that the criminal conduct of the perpetrator is stopped.

Available data show that in 2016 there were a total of 27,005 complaints on domestic violence (PSP and GNR data), an increase of 1.5% compared to 2015; approximately 80% of the victims are women and most cases are if intimate partner relationship.

Concerning the information on the completion of the investigations initiated, the available data indicate that in 2016 27,935 investigations were completed resulting in: 20,119 were closed; 3,653 were archived for other reasons; in 2,796 was applied the provisional suspension of the proceedings and in 4,163 the accusation was deduced.⁶

Concerning the conclusion of the accused cases, the insufficient administrative data does not allow us to make a direct correlation. Nevertheless, from the existing information in a total of 4140 final judgements, 2012-2015, approximately 59% resulted in conviction and 41% in absolution.⁷

The same report refers that in 2015, 91% of the convictions to prison sentences were suspended in their execution and only in 18 cases the imprisonment was effective.

Existing official data only confirms the empirical knowledge achieved by the NGO working on the support of women victims of domestic violence that is:

- the weakness of the protection given by the justice system;
- not having effective measures for the protection of women;
- and the system incapacity to end victimization by imposing coercive measures to the perpetrators or even appropriated conviction sentences serving the real purposes of the legal norms.

⁶ Source: Sistema de Segurança Interna (2016), *Relatório Anual de Segurança Interna – Ano 2016*. Page 62. Available [here](#).

⁷ Source: SGMAI (2016), *Monitoring Report on Domestic Violence*. Page p.45. Available [here](#).

Comparing this information with the information about the number of women and children housed in shelters (669 places) during the same period and the number of tele-assistance measures applied (2,241 between 2011 and 2016, according to the Portuguese State report) it is easy to see that the protection of women victims of domestic violence is mainly done at the expenses of victims self-protection measures. The system is more willing to consider women responsible for their own safety rather than promoting effective enforcement of repressive and condemnatory measures against the perpetrator.

Recommendations

From the analysis of the Portuguese State report and the outcomes of the field work comprehensive legal framework on violence against women and gender-based domestic violence must be adopted by Portugal to really guarantee the promotion and protection of women's human rights.

Mandatory training (initial and on-going) and specialization of the professionals of the justice system including judges must be a priority and implemented at a national level.

According with article 5(1), of the Istanbul Convention, the State has the obligations to ensure that State authorities, officials, agents, institutions and other actors acting on behalf of the State act in conformity with this mandatory instrument. For that reason evaluation must take place in order to identify its application, violations and accountability of responsible for actions and inactions.

The provision of free legal assistance to victims of domestic violence should be an immediate right for all victims of domestic violence regardless their economical capacity. Moreover, victims should have equal rights to legal assistance as the one provided in article 16(1) of the Law on Access to Courts (Law 34/2004) – this rule gives perpetrators in criminal proceedings the right to have a legal assistance during the initial phase of the proceedings and across all proceedings. Victims must have legal assistance as perpetrators, without any delay or pending on their economical capacity, and therefore in compliance with the Portuguese Constitution and the international legal instruments on Human Rights ratified by the Portuguese State.

7. MIGRATION AND ASYLUM (ARTICLES 59 TO 61)

There is no available data on migrant women and gender-based violence.

In Portugal, according to the report on trafficking in Human Beings for 2016, 228 victims (men and women) were reported, 67% for exploitation purposes and only 15% for sexual

exploitation - among victims of trafficking for sexual exploitation, all of them were women. The average age of women is lower than men (28 and 34 years, respectively). Among the residence permits awarded in 2016, none went to women.⁸

There is no available data on asylum requests based on gender from women.

Recently, in July 2017, a new Law on Nationality / Citizenship was adopted. Monitoring the implementation of this law based on a gender perspective is paramount.

For the last years, Government funded the work among migrant NGO working on preventing and combating FGM. Nevertheless, there are just a few number of NGO of migrant women and the majority of those NGO do not have the human and financial resources to carry out their work on preventing and combating discrimination and violence against women within their own communities.

Recommendations

To develop research among migrant women on violence against women on all its forms and their access to support services.

To carry out a comprehensive research on the new asylum status for migrant and refugee women and children and their vulnerability of smuggling and human tracking particularly for the purpose of sexual exploitation.

Ensure effective implementation of the Istanbul Convention provisions when deciding on the asylum status.

Increase funding for NGO of migrant women and empower them through their capacity building as service providers for women victims of all forms of gender-based violence against women.

8. INTERNATIONAL COOPERATION (ARTICLES 62 TO 65)

Portugal has close relations with countries that are part of the Community of Portuguese-Speaking Countries. In its policies and programmes for cooperation and development, Portugal should turn the Istanbul Convention, the CEDAW and the Sustainable Development Goals (in particular SDG 5 – Achieve gender equality and empower all women and girls, specifically the objectives 5.1 Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation; 5.3 Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation)

⁸ MAI (2017), *Tráfico de seres humanos – Relatório sobre 2016*. Available [here](#).

into a roadmap on the promotion of gender equality and on the prevention and combating of all forms of discrimination and violence against women.

On another hand, Portugal should also strengthen its cooperation with Spain. There are women coming from Spain to look for protection and support from domestic violence in Portugal as well as women from Portugal who go to Spain with the same goal. Public authorities, women's right NGO and support services for victims of domestic violence from both countries should develop common tools and practices to support women from both sides of the boarder and prevent revictimization.

Recommendations

Portugal should foster cooperation with Spain and with countries of the Community of Portuguese-Speaking Countries. This cooperation must involve public authorities, women's rights NGO and NGO promoters and advocators of women's human rights, and this requires sustainable, predicable and adequate funding.

Policies on the field of foreign affairs and cooperation for development must consider the inclusion of preventing and combating violence and discrimination against women and girls in all educational and cooperation for development programmes and initiatives.

Government should focus on supporting the development of women's rights NGO and NGO promoters and advocators of women's human rights projects and initiatives on preventing and combating all forms of discrimination and violence against women and should properly funded, and with a multiannual prediction, these projects and initiatives within the Portuguese cooperation for the development sector.

REPORT'S AUTHORSHIP AND WORKING METHODS

The present report is a result of the work carried out by an NGO task force coordinated by the Association of Women's against Violence (AMCV), the Portuguese Platform for Women's Rights (PpDM) and the National branch of the European Women's Lobby Observatory on Violence against Women.

The NGO task force included the following NGO:

Associação Fernão Mendes Pinto
Associação Mulher Século XXI
Associação Mulheres sem Fronteira
Associação Plano I
Associação Portuguesa de Apoio à Vítima, APAV
Associação Portuguesa de Mulheres Juristas, APMJ
Associação Portuguesa pelos Direitos das Mulheres na Gravidez e Parto
Associação Projecto Criar
Associação Ser Mulher
Casa Qui
CooLabora
Cooperativa SEIES
EOS – Associação de Estudos, Cooperação e Desenvolvimento
GRAAL
ILGA
MEN NON – Associação de Mulheres de São Tomé e Príncipe em Portugal
Movimento Democrático de Mulheres, MDM
P&D Factor – Associação para a Cooperação sobre População e Desenvolvimento
Sorooptimist, Clube do Porto
UMAR – União de Mulheres Alternativa e Resposta

The coordinators of the task force developed an online form in order to collect contributions from all the referred NGO, members of the task force; some NGO also sent their positions papers as well as their individual contributions to GREVIO. A first draft of the report gathered all contributions, integrating also an analysis of the Portuguese State report, and circulated among all members of the task force. A second round of contributions were collected and a second draft report was sent to all members of the task force as well as to all member of the Portuguese Platform for Women's Rights (25 NGO, 9 of them already included in the task force).

The present report is the result of the above work.