

**ADDITIONAL SUBMISSIONS ON THE IMPLEMENTATION OF THE CONVENTION ON THE  
RIGHTS OF THE CHILD IN PORTUGAL – STATE 5<sup>TH</sup> AND 6<sup>TH</sup> REPORTS**

**14<sup>th</sup> August 2019**

The Portuguese Platform for Women’s Rights, the Association of Women against Violence and the Association of Women Without Borders, together with 9 NGOs produced an alternative report on the implementation of the Convention on the Rights of the Child (CRC) and presented an oral statement at the 82nd Pre-Session on the CRC (Geneva, 4.02.2019).

The Committee on the Rights of the Child published the list of issues to Portugal on February 15<sup>th</sup> 2019. Until this date we have no knowledge of the written replies given by the Portuguese State to the List of Issues.

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*General comment on the List of Issues:*

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For the above NGOS there are 4 main critical areas: Violence against children in the context of domestic violence; sexualized violence, particularly against girls and young women; Roma children, in particular girls and young women; and sexual education at schools. These critical areas were presented at the 82<sup>nd</sup> Pre-Session – the oral statement stresses these critical issues and presents recommendations (see annex).

The List of Issues posed by the Committee scarcely questions the Portuguese State about these 4 critical areas. However, data from official entities and our experience in working with children in different contexts stresses our deepest concerns.

Domestic violence affecting children is a relevant issue to be taken into consideration. According to the most recent report produced by the law enforcement agencies, from 2010 to 2018, in 84.767 cases of domestic violence children were involved and 13.133 children were victims of domestic violence (RASI, 2018). According to an NGO on the past 15 years, 503 women were killed in the context of intimate partnerships, leaving more than 1.000 children orphans (OMA/UMAR). The GREVIO evaluation report on Portugal, published in January 2019, “recognises that children witnessing abuse by one parent can be as affected as much as if they had experienced it themselves” (GREVIO, 2019: 7).<sup>1</sup>

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<sup>1</sup> GREVIO’s (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and

In 2018, 79% of the children who were sexually abused were girls. 70% of the victims of sexual abuse had between 8 and 13 years old. 98% of the perpetrators were men, mainly from the children's families (47%) or known to the children (23%) (RASI, 2018).

We must bear in mind that all children have equal rights to protection from all forms of violence as declared in Article 19 of the Convention on the Rights of the Child.

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*Responses to some of the questions in the List of Issues:*

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*9. Please provide further information on the impact of the National Roma Communities Integration Strategy 2013-2020 accompanied by the Fund to Support the Activities of the National Roma Communities Integration Strategy, and the results of the National Study on Roma Communities launched in 2015. Please explain the reported recent decrease in the number of Roma children, in particular girls, reaching the secondary level of education despite compulsory schooling until the age of 18.*

In Portugal, Roma girls seldom attend secondary school and often leave school when reaching puberty or around the age of twelve. Schools and social services are aware of this fact but allow the laws to be broken without any consequences and do not act accordingly. No data is available about children, including Roma and other girls, abandoning school before they reach the age of compulsory schooling (18). Some Roma children do not attend school on a regular base (5 days a week, the normal timings) which contributes, among others, to prevent them to progress according to their age group and often children aged 10 or more are still on the first grades of elementary school. Some cases of Roma children aged 7 years or more were reported not being enrolled at school, or being enrolled and never attending. Statistics on all these cases are needed and should be compulsory.

*15. Please provide, if available, updated statistical data disaggregated by age, sex, ethnic origin, national origin, geographic location and socioeconomic status, for the past three years, on: (a) The number of children residing in the State party;*

*(b) The number of married children*

We estimate a high prevalence of married girls among Roma girls and suspect other ethnic minority girls might also be affected by child marriages. Most Roma girls have an unregistered marriage, but it could easily be tracked by all state services - health, social security, ..., as they often move to their husband's family place, often in other cities / villages / boroughs and do not hide that they are married in the community and outside.

Most of these adolescent girls also get pregnant.

A system, similar to the track of survivors of FGM by the health department, could easily be put in place so that we would have accurate data about married girls and boys, their ages and ethnic groups. Some arranged / forced marriages have been reported by Roma Girls.

The Portuguese law that allows children to marry at the age of 16, with their parents' consent, should be changed and respect the CRC, and CEDAW's recommendation to Portugal to raise the minimum age of marriage to 18 years (CEDAW/C/PRT/CO/8-9).

*(c) Racist and xenophobic acts against children;*

Textbooks and other school materials perpetuate racist and Islamophobic stereotyped discourses. African children or children of African descent do not have access to the other side of the history of the so called "glorious discoveries period" and the liberation wars in their school books. The same applies to Muslim children that will learn how their ancestors were expelled from the Portuguese Territories and will probably have no positive examples of Muslim culture and people during the compulsory schooling.

*(h) Girls who are victims of female genital mutilation/cutting or who are at such risk;*

Services are focused on the prevention of FGM, paying attention to pregnant adult women survivors of FGM, in order to prevent their daughters to undergo the practice. However girls who have already been subjected to FGM are not considered a priority and, therefore, are not registered in the online platform that health professionals use for this purpose. The data base on the health services to track survivors of FGM is not articulated with the Commission for the Promotion of Rights and Protection of Children and Young People and social services.

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*Information on new developments and events:*

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In April 2019 a working group on legislative changes on the crimes of stalking and domestic violence was created at the Parliament. Two legislative changes proposed had a focus on children as victims of domestic violence. They would imply the recognition of children as victims of domestic violence, granting them the Status of Victim with all its entitlements, namely regarding their immediate protection, and the children's collection of statements for future memories in judicial processes.

Both proposals were rejected by a majority in the Parliament (on the 16<sup>th</sup> July 2019), regardless of a written letter endorsed by 27 NGOs encouraging the change in the legislation as a step forward on the protection of the children.

The fact that children are not recognized as victims or are not recipients of the status of victim of domestic violence puts them in a situation of greater risk and unprotected. Furthermore, as courts do not perceive children as victims of domestic violence, there's a tendency for Family Courts to determine conciliatory measures such as family mediation, joint custody, alternated residence and others, placing children and often mothers in a dangerous situation. There are cases where women and their children were killed without the judicial system being held responsible.

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*Any other relevant information useful for the session:*

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1. Inexistence of a National Strategy on the Promotion of the Rights of the Child

The announced National Strategy by the Government, although foreseen in the Annual State Budget for the year 2019, to date has not yet been published, neither was submitted to a public hearing. This is something that raises some doubts given the fact that more than 8 months have passed and that in October there are legislative elections in Portugal.

2. Art. 12 of the Convention on the Rights of the Child - The Right of the Child to be Heard.

Worried by what is observed on a daily basis in the context of their specialized intervention with victims/ survivors of domestic violence regarding the protection of the rights of children involved in cases of domestic violence, a group of 4 NGOs from various regions of Portugal<sup>2</sup> created in

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<sup>2</sup> Namely Association of Women against Violence, Association Dignity; Association Project To Raise and UMAR.

2018 an independent Observatory to monitor the protection of the Rights of the Child by the Justice System in Portugal.

The first report of the Observatory will be publicly available on the 3<sup>rd</sup> of September 2019, but we consider that it is of major importance to present its main conclusions to the Committee on the Rights of the Child.

A case study was developed based on seven penal and custody court lawsuits concerning children survivors/victims of domestic violence perpetrated by their fathers.

For the case study a checklist was applied<sup>3</sup> and concluded that only 2 indicators from a total of 42 could be identified as minimally assured during the hearing of the children at courts.

These two indicators were “low number of people present at the hearing” and “the absence of the defendant or other parties”. In most cases this happened by request of the prosecuting attorney and not of the public prosecutors.

Although the sample analysed is small the results of the application of the adapted FRA checklist corroborates the professional experience of the NGOs legal experts and reinforce the concerns of lack of adequate training of the judicial system professionals and the urgent need to create mechanisms to ensure an effective protection “*de jure*” and “*de facto*” of the rights of children and a child friendly justice.

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The additional information was prepared by the Association of Women’s against Violence (AMCV), the Portuguese Platform for Women’s Rights (PpDM), the Association Women without Borders (Associação Mulheres sem Fronteiras) and EOS – Association for Studies, Cooperation and Development.

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<sup>3</sup> The checklist was adapted from the Fundamental Rights Agency of the European Union (FRA) Child friendly justice for professionals’ checklist, focused on the Right of the Child to be Heard.

## **ANNEX**

### **NGO Oral Statement | Portugal**

#### **Presented at the 82nd Pre-Session on the CRC, Geneva 4.02.2019**

*The NGO delegation from Portugal is representing the Portuguese Platform for Women's Rights – PpDM, an umbrella organization of 26 NGOs that work in the field of women's human rights and gender equality and some in the area of children's human rights. What follows is a brief summary of the main points of the shadow report prepared by the Portuguese Platform for Women's Rights, the Association of Women Against Violence and the Association of Women Without Borders for the 82nd CRC Pre-Session.*

We are presenting this statement to highlight the issues set forth in our shadow report in four critical areas:

- I. Violence against children in the context of domestic violence;
- II. Sexualized violence, particularly against girls and young women;
- III. Roma children, in particular girls and young women;
- IV. Sexual education.

#### **I. Violence against children in the context of domestic violence**

1. Within the context of domestic violence, children are far from being rightfully considered as direct victims. A recent report produced by the GREVIO Committee (21.01.2019) on the evaluation of Portugal regarding the Istanbul Convention<sup>4</sup> found that family courts' decisions on custody and visitation rights fail to give sufficient consideration to the rights of victims and the impact of violence against women on child witnesses when seeking to determine the best interest of the child. Our report on the implementation of the Convention on the Rights of the Child stresses the same conclusion.
2. The National Commission for the Promotion of Rights and Protection of Children and Youth and its local branches are fuelled with social workers that lack sufficient consideration of the

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<sup>4</sup> The Convention of the Council of Europe on Preventing and Combating Violence Against Women and Domestic Violence entered into force in 2014 (Portugal ratified the Istanbul Convention in 2011). The evaluation of the implementation of the IC in Portugal happened between the end of 2017 and during 2018. The Portuguese Platform for Women's Rights and the Association of Women Against Violence together with 26 NGO produced the shadow report.

underlying power dynamics and gender discrimination inherent in domestic violence, and the impact that witnessing such violence may have on children.

3. We all know the impact on children of witnessing one parent violent behaviour on the other. However, most statutory agencies involved in cases of DV involving children are still giving priority to the presumed best interest of the child to maintain regular contact with both parents at all costs regardless of the violence children have witnessed.
4. Children placed in shelters for women victims of Domestic violence outnumber women. However, due to lack of adequate financial support, the standard staffing levels in shelters not always include specialised staff to help children.
5. Children are still treated by the courts as simply witnesses and are forced to testify in front of the perpetrator and others in the courtrooms, and in some cases repeatedly.

#### **RECOMMENDATIONS:**

- We emphasize the urgent need to ensure that all statutory agencies involved in domestic violence cases, including family judges, follow a unified approach which prioritises the need for protection and safety of the victims and which recognises that children witnessing abuse by one parent can be as affected as much as if they had experienced it themselves.
- Family courts must liaise with law-enforcement, prosecuting agencies and victim's support services, and must verify whether there are issues of violence which would warrant restricting custody and visitation rights.
- All professionals must have mandatory initial and on-going specialised training namely on the gendered nature of violence and its impact on children affected by domestic violence.
- To further support specialized services for victims of domestic violence and to develop specialist support services for children.
- To allocate specifically resources to support children of femicide cases (this year solely on January, 8 women were killed), who often lose both parents at once: the victim-parent is deceased, and the offender-parent is detained. In each situation an automatically support mechanism must be activated. Children must also be provided with pre-court preparation and post-court support.

## **II. Sexualized violence particularly against girls and young women**

6. Sexual violence is an issue that the State has been failing to address – Portugal has only

recently 2 specialised services for victims and survivors and one rape crisis center - both financed as projects. Furthermore, frequently law enforcement practices on gathering evidences on sexual violence cases are causing secondary victimization.

7. Crimes against sexual freedom and self-determination are not defined in the Portuguese legislation based on consent but based on the existence of physical violence.
8. There is a lack of training in the identification and assessment of child abuse by the relevant agencies, frequently downplaying the gravity of those crimes and denying the suspicion regarding accusations of abuse.
9. The consumption of online pornography has an impact on how children live their sexuality. Pornography has also a clear link with prostitution and with trafficking of human beings (specially girls and women) for sexual exploitation.
10. Although the current Portuguese legislation covers a greater range of sexual crimes, there are still gaps for some types of sexual crimes – for instance, sexualized violence in the internet, prostitution (purchasing sex) and pornography.
11. There is a lack of supervision over the contents available on the internet, social media, online platforms, that are easily accessed by children (including at schools).
12. The Female Genital Mutilation and broader harmful practice still exist in Portugal. Girls' survivors of FGM have no specialized medical services to provide re-constructive surgeries and no psychological support.

#### **RECOMMENDATIONS:**

- Report massively on what is sexualized violence; teaching teachers and families on how to prevent abuse, how to approach sexuality and how to educate for affection, mutual pleasure and consent.
- Implement and financially support specialized services in the area of sexualized violence in the community, promoted by women's NGOs.

#### **III. Roma children, in particular girls and young women**

13. In Portugal, children are obliged to be in schools until the age of 18, but the vast majority of Roma girls are taken out of school at the age of 12-14 (when they reach puberty). The State has also an alternative measure in place - the distance learning system or online schooling;<sup>5</sup>

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<sup>5</sup> This is foreseen by law for children who are chronically ill or who are children of parents with travelling professions

this requires to have a parent or relative as their tutor. As in Roma families the educational levels are generally low, professionals from different backgrounds become their tutors and children are taken out of schools and are somehow segregated from the majority society.

14. Most of Roma children do not reach the secondary level of education.
15. Roma girls are affected by forced, arranged and early age marriages, often ignored by all authorities.

**RECOMENDATIONS:**

- Combat school segregation and ensure access of Roma children to quality education. Also invest in the prevention of early school leaving by Roma girls and young women with committed policies and following its implementation.
- Develop research on school dropout by sex and ethnicity and forced, arranged and early age marriages.

**IV. Sexual Education**

16. Sexual education is compulsory since 2009; however, it is centred on the prevention of sexually transmitted diseases and pregnancy. In most of the 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 behaviour change.
17. Early motherhood is still a reality in Portugal. In 2015, 2.295 girls gave birth.

**RECOMMENDATIONS:**

- Take effective measures to ensure implementation of comprehensive sexual and reproductive health education that includes the prevention of violence in intimate relationships and of the consumption of pornography as core elements.
- Pornography, in particular online pornography, should be prioritised as an issue to be included in Sexual Education at schools in Portugal. Sexual Education benchmarks should be revised and should include the prevention and combating of sexual exploitation, such as prostitution, pornography, revenge porn, abuse sexting, creepshots or digital voyeurism, etc.