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CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

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Prepared by the **Portuguese Platform for Women's Rights**

- Alliance for Parity Democracy (ADP)
 - Association ComuniDária
 - Association for the Development of Portuguese Gypsy Women (AMUCIP)
 - Association for Women in Cape Verdean Diaspora in Portugal (AMCDP)
 - Association for Women's Rights in Pregnancy and Child Birth
 - Association Mén Non
 - Association of Women Against Violence (AMCV)
 - Association of Women XXI Century
 - CooLabora
 - EOS – Association of Studies, Cooperation and Development
 - Foundation for the Development and Vocational Training in Miranda do Corvo (ADFP)
 - Graal
 - Portuguese Women's Studies Association (APEM)
 - SERES
 - The Portuguese Network of Young People for Gender Equality (REDE)
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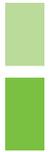
Plataforma Portuguesa para os Direitos das Mulheres

Centro Maria Alzira Lemos | Casa das Associações

Parque Infantil do Alvito, Estrada do Alvito 1300-054 Lisboa

213626049 plataforma@plataformamulheres.org.pt

www.plataformamulheres.org.pt www.facebook.com/plataforma.mulheres



Introduction

Many of the concerns highlighted by the Women's Rights NGOs (WRNGOs) in the last Shadow report in 2008 continue to hold true. The slow improvements reflect the importance and relevance of the *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* and its reporting process for Portugal; the WRNGOs welcome the timely consideration of the reports and the Concluding Observations and Recommendations.

The WRNGOs acknowledge the implementation of some measures; however, the lack of a holistic and real gender mainstreaming strategy shows that in Portugal equality between women and men is not taken serious and still calls for an effective approach in order to produce the transformative outcomes. Gender mainstreaming needs to be fully integrated in the political agenda and assumed by the political agents (through a coordinated and transformative approach); gender impact assessment must be carried out, including in legislation; gender budgeting calls for implementation; auditing of law enforcement must be implemented; the mechanisms in the field of gender equality should hold mandatory capacity and not be limited to recommendations; the concept and the practice of accountability needs to be re-evaluated, among others.

As alerted in the former report, the danger in the change of the former Commission for Equality and Women's Rights to a broader designation and responsibilities – Commission for Citizenship and Gender Equality – continues to have impact on pushing women's rights towards invisibility, addressing them within an inadequate diversity approach. The equality between women and men has been diluted into a concept and objective of equality and diversity (not intersectionality), which leads to the dilution of the object of women's rights and the reduction of human and financial resources for the equality between women and men and women's rights.

The creation of the National Commission for Human Rights in 2010, following the recommendation of the UN Commission on Human Rights, falls short of expectations in mainstreaming equality between women in men, considering that women's rights are human rights and they should be at the core of this Commission's activities. This Commission should develop deeper partnerships with civil society, namely WRNGOs, and adopt mechanisms of effective public consultancies and hearings.

Gender stereotypes persist and can be found in all spheres of society. Stereotypes which from early on mold children's education and socialization, influence decisions, block women from reaching some jobs and decision making positions, force upon women the majority of work in the private sphere – which impact the health of women and girls, legitimize violence and daily sexism, shape messages regarding the role of women in society and hinder women's participation in the public and political spheres. Addressing stereotyping remains the largest challenge for the women's movements.

Women's fundamental rights in Portugal face the greatest backlash yet since the 25th of April of 1974 (Revolution date), in respect to restrictions to civil capacity, free will and safeguarding privacy as consequence of the approval of the legislative changes to the law for Volunteer Interruption of Pregnancy in 2015. The underwritten vision which led to this decision raises serious concerns for the future of women's rights in Portugal.



The financial crises that hit Portugal coupled with the austerity policies in place created an economic crisis that has undermined women's economic and social human rights, perpetuating and exacerbating existing gender inequalities, and creating new ones. The aggravated systematic reductions and budget cuts to support programs threaten the survival of women's organizations.

The different impact of the austerity measures on women and men was never anticipated. The Memorandum of Understanding and the measures in place since 2011 have affected women, due to their emphasis on expenses cuts targeting the welfare state, with consequences at the level of: job destruction, increased labor market deregulation, decreased active labor market policies, decreased social protection and social inclusion policies. Furthermore, the increasing feminization of poverty and unemployment all influence women's willingness and ability to participate in public and political life.

National policies and official data often do not include Azores and Madeira, so Women's and Girls' Rights in these Autonomous Regions seem not to be protected and watched under the same legal and political umbrella as the ones in the mainland. Data cannot be comparable if there is no sex-disaggregated data in these Regions. It is urgent to solve this problem.

Human Rights and Gender Equality should be mandatory in all education levels, especially in Universities' Curricula, namely Women's Human Rights, Children Human Rights and all forms of male violence against Women and their Children.

Articles 1 and 2

Elimination of Legal and Real Discrimination.

In Portugal, despite the existence of laws and political programs - equality "de jure"- equality "de facto" is still unachieved.

Although the current Portuguese legislation covers a greater range of sexual crimes, there are still gaps for some types of sexual crimes against women: Sexual violence in the internet, Sexual Harassment, Prostitution (purchasing sex) and Pornography.

The introduction in the Portuguese Penal Code, Article 152, of the domestic violence crime with a specific characterization and the reformulation of the entire legislative framework for Domestic Violence (Law 112/2009 of 16 September) has given more visibility to sexual violence in the marital relationship, namely marital rape and date rape. Nevertheless, separate judicial prosecution of marital rape from domestic violence crime is not usual.

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.

There continues to be a lack of adequate prosecution of perpetrators. The effective protection of the victims is not ensured, since the prison sentences are usually suspended or given a penalty payment and this transmits a feeling of impunity to the perpetrators, contributing to situations where the victim's life is in jeopardy. It is the only public crime where the process can be suspended midway without going to trial.



There are no specific public structures and support services for victims of sexual violence. Portugal is not in compliance with the Council of Europe's Minimum Standards, which recommends the existence of a support center for every two hundred thousand (200,000) women.

Article 3

Measures, including legislation, in particular in the political, social, economic and cultural fields, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men

Portugal needs a strong and sustainable framework to promote the human rights of women and the equality between women and men. As such, it is necessary to restructure the national mechanism to refocus on women's rights and equality between women and men, and within this framework, and whenever relevant, to tackle multiple and intersectional discriminations. Consequently, restructure the composition and the working methods of its Consultative Council.

For instance, there was a specific measure within the IV National Action Plan for Equality (and in the current Action Plan), which included a measure on sexual orientation and identity with no specific action related to women within this multiple discrimination context. There is a lack of empowering discourses regarding LBT+ women and their human rights. They end up being subsumed in the broader context and even within the mechanism for equality become invisible.

The National Budget remains a gender-blind budget, with scarce or no possibility of assessment or review of what is being invested in gender equality and how the national expenditures will contribute to the advancement of women.

National plans do not render explicit the budget allocated to each step of the process, including to the implementation of goals and measures, and often lack concrete milestones. Therefore, any action in a certain field could be considered as "enough" to bureaucratically fulfill that part of the Plan; although National Plans are evaluated, they do not contemplate an accountability strategy for ensuring their success. The absence of consequences for non-compliance means that implementation is endangered.

All plans being "optional", at national, regional or local level, is a huge obstacle to equal opportunities and access to State's resources, such as for women living in rural or other deprived areas and/or vulnerable groups due to multiple and intersectional forms of discrimination. Local action plans relied on funding grounded in the Structural Funding projects' logic, which translated into scarce political will to implement them after the funding stopped. Also, the autonomy of the local authorities and the lack of specific legislation regarding the obligation to actively promote equality leaves the action in this feel to the good will of local decision-makers.

National plans should have in consideration that gender based violence is a crosscutting issue, affecting women along their life cycle. Thus, the girl child, young and older women should be addressed with more consistency according to their ages' needs. Considering children, a major focus must be given to issues that deprive them from their childhood, such as child work, and Child and Forced Marriage (CFM).



CFM should be addressed in policy instruments, namely the National Strategy for Roma people (2013-2020), which lacks a *de facto* gender mainstreaming approach. Public institutions are not addressing this issue within those communities and it has impact on children and girls' rights, such as early pregnancies, early school dropouts and/or the perpetuation of poverty cycles.

Austerity brought cuts to the State's budget and as such to the amount destined to the Portuguese WRNGOs. These blind cuts did not take into consideration the economic vulnerability of WRNGOs, obliging them to compete for funding with more financially robust organizations. The WRNGOs are funded on a project-based system, which guarantees only part of the funds needed and WRNGOs must financially contribute a high percentage of the overall project's budget. Without an organized civil society, the equality between women and men will not be effective. New challenges are on the way and require all our attention and vigilance.

WRNGOs are still perceived as the opposition rather than useful partners when it comes to public policies. The mechanisms of engaging WRNGOs in public policies are sometimes just formalities without true validation, acceptance and recognition of their expertise and inputs.

Until 2012, Portugal had not widened the National Plans to address other forms of violence against women, namely sexual violence. Subsequently, Portugal keeps on depriving survivors of sexual violence of a supportive and comprehensive response and specialized services. Our hope is that the "Convention on preventing and combating violence against women and domestic violence" (Istanbul Convention) of the Council of Europe, ratified by Portugal in 2013, makes the political pressure to finally develop specialized services such as the Rape Crisis Centers and Sexual Assault Centers. This is a demand long lobbied by WRNGOs.

The justice system and service providers professionals must have common tools and references at the national level and systematic specialized training, particularly in regards 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 doesn't 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 decide that the father has the right to visitation or even to joint custody.

In the Divorce Law 61/2008, domestic violence is not listed as a specific cause for divorce. It can be included as "any other facts that regardless the fault of the spouses, demonstrate the definite dissolution of the marriage", however it leaves women unprotected as victims of domestic violence, by failing to provide expressly that this crime is a cause for divorce.

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

Data by the Portuguese Police Forces shows that more than one person is raped per day in



Portugal. Nevertheless, there is no national policy on sexual violence and there is a resistance to widen the definition of VAW, namely to include sexual violence. Consequently, when there is data on “sex crimes” such as in the “Internal Security Report for 2010” from the Ministry of Home Affairs, the data is not desegregated by sex and/or age.

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.

Inhibition of parental responsibility in cases of fathers condemned of sexual abusing their children isn't compulsory. It's considered an additional penalty that must be ordered by the court.

Article 5

Elimination of gender stereotypes.

Recognition of maternity as a social function and of the common responsibility of men and women in the upbringing and development of their children.

Gender stereotypes in Portugal prevail in all areas including media, education - formal and non-formal - with consequences. The absence of formal discrimination does not guarantee that the educational system be the vehicle for a substantive equality. Equality between women and men requires to ensure not only the equality in education but also equality through education. This calls for systematic and comprehensive education for women's human rights and equality between women and men across all levels, in particular in the education system.

Although the number of women in University surpasses significantly the number of men this does not translate into the labor market. Women are overwhelming represented in precarious work conditions – more women with short-term labor contracts, in less paid jobs, etc.

In the field of media for example, property, control and cultural organization continues to be mainly male. Women continue to be significantly under-represented in the power structures and decision making bodies of communication. The media has a central role in shaping and influencing society. A media monitoring group is in need to pay special attention to fighting gender stereotypes and detrimental information about women, including VAW, the representation of women in politics, etc. The representation of women's issues are secondary topics in media coverage, when not invisible.

Although much work has been done in raising awareness on the stereotypes affecting women and girls there is still evidence of victims of harmful practices in Portugal.

A study was conducted on Female Genital Mutilation (FGM) in Portugal resulting from the Action Plan for the end of FGM (2011-2013). The findings point to the existence of 5.246 women of fertile age living with FGM in Portugal. The external evaluation of the plan of action points out the need of an integrated approach by the several Programs and with the representation of nationals from practicing countries, and other relevant organizations, in all stages of the plans. In the design, monitoring and evaluation, something that didn't happened in



the plan under evaluation.

The establishment of the Penal Code Art.144 - Severe assault against the physical integrity - being applicable in cases of FMG, gives the State the possibility of collecting data on FMG. However, the FGM practice is difficult to prosecute because people (community and other local actors) don't make formal complaints. The 10 years prescription period has been an obstacle so far. Recently (2015), a law was passed making FGM an autonomous crime.

Article 6

Measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

In light of Issue 11 raised by the Committee, the WRNGOs would like to express their concern regarding the recent international debate launched by the position of Amnesty International. This position defends the legalization of the entire system of prostitution and it has resulted in political echoes at the national level. The system of prostitution is a fundamental violation of women's human rights and perpetuates the domination of men over women.

Since 2008, the risk of poverty and social exclusion has increase more rapidly for women and girls than for men and boys. Moreover, women are confronted with specific violations of human rights resulting from poverty and social exclusion, danger of trafficking and exploitation in the system of prostitution.

Trafficking of Human Beings Observatory was established in 2011 with the main objective of data collection and the study of human trafficking in Portugal; their statistics are not disaggregated by sex. The cases of trafficking 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.

Article 7

Measures to eliminate discrimination against women in the political and public life

The gap between women and men in Portugal is higher than in the EU28. The gender gap has been decreasing more significantly in Azores than in Madeira. Portugal is below the EU28 with respect to women as senior and junior ministers. The gap as leaders of major political parties in Portugal is overwhelmingly clear: all men. There are several challenges to increase the political participation of women in Portugal: the *de facto* political will within political parties shows that political parties still function as 'old boys' networks – following a dominant male pattern of organization related to the unwritten, traditional rules of political parties.

There is a greater participation of women in politics; which is partly due to the existent Law, erroneously named Parity Law. There are several critiques to the Parity Law:

- its threshold of parity is only 33.3%;
- the quota is only for the composition of the lists and not to the outcomes of electoral acts;
- the non-compliance of the law is only subject to a reduction in the state financial aid to the electoral campaign itself;



- the implementation of the Parity Law contributed erroneously to a perception that parity is only about inclusion of 33.3% of women in political party lists;
- its reduced impact at municipal/local levels, where women have been dropping out after having been elected, and replaced by men (only 8% in the presidencies of municipal councils);
- and this Law does not apply to the composition of lists for the bodies of communities with 750 or fewer voters or for municipalities with 7,500 or fewer voters.

Among other factors, the lack of investment in the creation of conditions for the conciliation of private and professional life results in women continuing to be too overloaded to dedicate themselves to the public sphere.

Article 8

Measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Portuguese WRNGOs are having great difficulty in participating in the work of relevant international organizations due to financial constraints. No measures have been taken by the national government to structurally include WRNGOs in the delegations to UN and other relevant women's conferences/activities/processes. Measures have not been taken to ensure women's equal opportunities to represent the Portuguese Government at the international level and to participate in the work of international organizations.

The presence of women in such representations is mainly due to two factors: increasing presence in applying to diplomatic service and better results in appliance procedures (higher evaluation in university graduation and diplomatic applying tests), and acknowledgement of reputation obtained at international levels in activities not dependent upon Governmental appointment.

Article 10

Elimination of discrimination to ensure equal rights in the field of education.

Public school must be (re)elected as the State's priority, be given and recognized its fundamental role in education for human rights, including gender equality and women's human rights.

There have been no generalized practices in Portugal for including inclusive language in educational programs.

In higher education, the distribution of graduated people by sex reveals that in 2011/2012, 60% were women, a situation that has been stable for the last three years. There is no quantification of higher education dropout rates discriminated by sex, thus allowing for a better understanding of the situation of women and their dropout rate, especially considering that due to the financial crises there has been an increase in these numbers.

Sexual education is compulsory since 2009, however, its teaching is centered on the prevention of infections and pregnancy, being included in health education among topics such as narcotics, mental health, nutrition and sports. In the majority 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 a random awareness-raising sessions, not promoting cultural change.

Article 11

*Measures to eliminate discrimination against women in the field of employment.
Measures to prevent discrimination against women on the grounds of marriage or maternity
and to ensure their effective right to work.*

In spite of women's high and full time participation in the labor market, the full economic independence of women is still not a reality in Portugal. Gender disparities in the labor market persist. Poverty, low pensions and unpaid work, show that the economic independence of women is far from being reached and that a great majority of women still maintain a dependency status.

The limited access to work with dignity, the gender segregation in the labor market, the over representation of women in unpaid and care work, involuntary work interruptions during the life cycle and the social protection systems designed around a male provider family model, are the principal obstacles to the advancement of women and hinder their capacity of benefiting from their rights in full.

The employment rate among Roma women continues to be worrisomely low, due to the so-called cultural traditions and representations of women's role which minimize the value of school for them and mark the importance of women as the structure behind family life and due to the discrimination Roma population faces in regards to the non-Roman population. The deficient support to the Roma WRNGOs, considering they are the experts in the field, is also a hindering aspect of working at the grassroots level, jeopardizing the possible influence in changing the situation.

Precarity and unemployment rates among youth are high. In the case of young women, unemployment has a tendency to cause a step back in terms of gender equality, pushing young women into non paid care work with children, elderly and other dependents, and of domestic tasks in the family and home in substitution to paid work.

Women are at higher risk of exclusion and poverty. In 2011, the risk of poverty after social transfer in women over the age of 65 is 21.4%, 3 pp more than in men. In mono-parental families, mostly headed by women, the risk of poverty is of 30.5%.

There continues to be great difficulty for women in regards to conciliation of professional and family life, with unbalanced attribution of responsibilities for domestic tasks.

Affordable care services were shut down or reduced, impacting on the increase of the gender-based asymmetry of unpaid work related to children and/or older people care and domestic tasks - the latest data available for Portugal (2012) pointed to 25h24m for women and 9h24m for men per week. The gender pay gap was 256,51€ on average, increasing to 791,63€ in high qualified occupations (CITE). Taxes on work were increased without a corresponding measure regarding capital – the richest among the rich are men. Unemployment rates increased significantly particularly among young people, and sharply among young women.



Article 12

Measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

The field of health care continues to hold a patriarchal vision and approach by continuing to assume men and men's bodies as the reference for all procedures, from research and training to practice. This results in undermining women's decision-making capacity in situations dealing specifically with their bodies and health.

Recent alterations voted at the Portuguese Parliament regarding Voluntary Interruption of Pregnancy (VIP) were imposed in an unexpected legislative process at the speedy rate of one month, on the very last day of function of the Parliament and are a huge setback in the reproductive rights of women, because:

- Four compulsory consultations for the woman within ten weeks were introduced with a psychologist, social worker, family planning professional, in addition to the already foreseen obstetrics consultation; these are an assault to women's autonomy and their right to an informed choice. Previously, these were available on request and not as an obligation. The consequences are possible dangerous and illegal abortions, for exceeding the timeframe, in a non-professional health environment;
- Conscious objectors in the process of VIP: having conscious objectors not obliged to openly state their position goes against international and national law;
- Payment of consultation fees (moderation fees): is incompatible with the Basic Health Law which foresees exemption from medical fees for all pregnant women. This is an act of exposure resulting in a violation of women's private life.
- Inclusion of private institutions of social solidarity (IPSS) in the process of VIP (four compulsory consultations): The problem lies in that the majority of these institutions in Portugal are of a religious nature and against VIP.

Since 2009 Portugal has moved towards centralizing pregnancy, birth and postpartum care only in the main maternity hospitals throughout the country, raising concerns on the quality and the accessibility of health care by all women.

Portugal's maternal health policy is still very reliant on hospital protocols and procedures (the institutional weight and hierarchy), and as a result births are highly medicalized, raising questions about the need for interventions practiced and contrary to the WHO's recommendations. There are also reports that women were not provided with sufficient information to meet informed consent requirements calling into question compliance with the Convention on Human Rights and Biomedicine of the Council of Europe articles 5 and 9.

In spite of the low percentage of perinatal and maternal mortality rates, when measuring quality of health care during pregnancy and birth the equal and respectful treatment of women and their families' needs to be addressed and assessed beyond the objective of a live mother and baby.



In Portugal, according to a recent study, caesarean delivery is up to 33% (APDMGP, 2015), close to the value predicted by the National Commission for the Reduction of Caesarean Rate (CNRTC) 2014 while the WHO estimates this should ideally be between 10 and 15% (WHO, 2010). On the other hand, regarding vaginal births, the episiotomy rate is 72.73%, while the WHO stated it should not exceed 10 to 15%.

Many women reported having insufficient information on delivery options and interventions (induction, caesarean section, epidurals, artificial rupture of the membranes (bag of waters), the sweep (manually separating the membranes of the amniotic sac surrounding the baby from the cervix in a vaginal examination), and others), and their advantages and/or consequences. Although most women felt heard, safe, cared for and supported during their delivery, they also faced forms of persuasion, manipulation and coercion from health professionals and a lack of respect for their birth preferences and wishes. In Portugal, there is no water birth facility (a method that promotes the WHO's recommendations of normal, physiological birth); the only ever functioning one in a public hospital was closed down, in spite of civil society mobilization. The experiences described above raise serious concerns regarding respect for women's human rights during childbirth in Portugal.

As for specific groups of women, women and girls from migrant populations and ethnic minorities lack information and have difficulties in accessing healthcare, namely in pregnancy, maternity and family planning.

The access to artificial insemination is only available to women in heterosexual relationships, denying the reproductive rights of single women who wish to have a child outside a relationship and to lesbian/bisexual women who wish to have a child with their same-sex partner.

Article 13

Measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights.

Discrimination in sports still is a critical issue although many of the Portuguese international best results in the sports area are due to women. We have no knowledge regarding action taken by the Portuguese State as a follow up to Council of Europe's Recommendation on Women and Sports adopted in January 2015.

Article 16

Measures to eliminate discrimination against women in all matters relating to marriage and family relations.

The period required for women to remarry (300 days) is not equivalent to the required for men (180 days). Single women in Portugal do not have legal access to assisted medical procreation.

Lesbian and bisexual women don't have access to the right to adopt and/or co-adopt.