

**Universal Periodic Review of Portugal**

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**Joint submission by:**

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**&**

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**Key Words: Sexual Rights; Right to non-discrimination; Women Living with HIV; Female Genital Mutilation/Cutting; Human Trafficking; Sex Work; Comprehensive Sexuality Education.**

### **Executive Summary:**

1. This report is submitted by Isabel Nunes (SERES association)<sup>1</sup> and the Sexual Rights Initiative.<sup>2</sup> The report provides a background of sexual and reproductive health laws in Portugal and an analysis of key areas requiring further focus during this upcoming session of the Universal Periodic Review (UPR). This analysis emphasizes four areas of sexual rights, which are an integral part of human rights: the right to non-discrimination, specifically protection from discrimination based on HIV status, with a focus on women living with HIV; the right to live free from all forms of stigma, discrimination and violence, including gender based violence with a focus on female genital cutting and human trafficking; the rights of Sex Workers; and the right to access to comprehensive sexuality education.

### **Background**

2. The Portuguese Republic was instituted by the Constitution of Portuguese Republic (CPR) and establishes that all citizens have the same social dignity and are equal before law and that none can be privileged, benefited, prejudiced, deprived of any right or exempted from any duty of reason of ancestry, sex, race, language, territory of origin, religion, political or ideological beliefs, education, economic situation, social condition or sexual orientation<sup>3</sup>. The 6<sup>th</sup> Constitutional Revision (2004) reinforces the principle of non-discrimination namely in function of sexual orientation.
3. Portugal has ratified international human rights instruments<sup>4</sup> and is currently considering for adoption, by public and private entities, the universal expression of 'Human Rights,' rather than of 'Man Rights' in all documents and oral expressions.

### **Right to Non-Discrimination for People living with HIV, with a focus on guaranteeing the right to free from all forms of discrimination, particularly for women living with HIV:**

4. Under Portuguese Law<sup>5</sup>, direct discrimination is deemed to exist whenever, by reason of social origin, age, sex, sexual orientation, civil status, family situation, genetic heritage, reduced capacity for work, disability, chronic disease, nationality, ethnic origin, religion, political or ideological convictions or trade union membership, a person is subject to less favourable treatment than that given to another person who was or is in a comparable situation. Indirect discrimination<sup>6</sup> is deemed to exist whenever a provision, criterion or practice, which is apparently neutral, may place people in a disadvantageous

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<sup>1</sup> SERES is an association for and with women living with and affected by HIV constituted in 2005 in Portugal. Available at: [www.seres.org.pt](http://www.seres.org.pt)

<sup>2</sup> The Sexual Rights Initiative (SRI) is a coalition of organizations that advocates for the advancement of human rights in relation to gender and sexuality within international law and policy. The SRI focuses its efforts particularly on the work of the United Nations Human Rights Council, including its resolutions and debates as well as the work of the Universal Periodic Review mechanism and the system of Special Procedures. The SRI combines feminist and queer analyses with a social justice perspective and a focus on the human rights of all marginalized communities and of young people. It seeks to bring a global perspective to the Human Rights Council, and collaborates in its work with local and national organizations and networks of sexual and reproductive rights advocates, particularly from the Global South and Eastern Europe. The SRI partners are: Action Canada for Population and Development, Akahatá - Equipo de Trabajo en Sexualidades y Generos, Coalition of African Lesbians, Creating Resources for Empowerment in Action (India), Egyptian Initiative for Personal Rights, and Federation for Women and Family Planning (Poland).

<sup>3</sup> Article n° 13 of CPR available at: <http://www.parlamento.pt/RevisoesConstitucionais/Paginas/Revisao2005.aspx>

<sup>4</sup> International Covenant on Economic, Social and Cultural Rights (approved for ratification through Law n° 45/78), the International Covenant on Civil and Political Rights (approved for ratification through Law n° 29/78), the International Convention on the Elimination of All Forms of Racial Discrimination (approved through Law n° 7/82), the Convention on the Elimination of All Forms of Discrimination against Women (approved for ratification through Law n° 23/80), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (approved for ratification through Law n° 11/88), the Optional Protocol to the International Covenant on Civil and Political Rights (approved through Law n° 13/82), the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (approved for ratification through Parliament's Resolution n° 25/90), the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (approved for ratification through Parliament's Resolution n° 17/2002), the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (signed by Portugal on 24 September 2009), the Convention of Council of Europe for the Protection of Children against Sexual Exploitation and Sexual Abuse (approved by Assembly of Republic Resolution n° 75/2012), the Protocol Facultative to Convention against Torture and Other cruel, inhuman or degraded treatment (approved by Assembly of Republic Resolution n° 143/2012), the Convention of Council of Europe for the Prevention and Combat to Violence against Women and Domestic Violence (approved by Assembly Republic Resolution n° 4/2013), and The Protocol Facultative to the International Pact about Economic, Social and Cultural Rights (approved by Assembly of Republic Resolution n° 3/2013).

<sup>5</sup> Article 23, n° 1, of the Labour Code, and Article 32, paragraph a) of n.° 2, of the Act 35/2004.

<sup>6</sup> According to n° 1 of Article 23 of the Labour Code and paragraph b) of n.° 2 of Article 32 of the Act 35/2004.

position in relation to others, on the grounds of social origin, age, sex, sexual orientation, civil status, family situation, genetic heritage, reduced capacity for work, disability, chronic disease, nationality, ethnic origin, religion, political or ideological convictions or trade union membership, unless the provision, criterion or practice in question is objectively justified for a legitimate purpose and the means to attain that purpose are necessary and appropriate.

5. In Portugal approximately 42.580 people currently live with HIV. The vast majority, 63.1% belong to the category 'heterosexual' (in 2012), and women account for 29.3% (2012)<sup>7</sup>. The rate of infections has been increasing since 2004 between the category 'heterosexual' and subsequently among women and in the category 'homosexual/bisexual'. HIV diagnosis among females in Portugal is the third country in Europe after Estonia and Latvia (2011)<sup>8</sup>. Nevertheless legislation is mute to women living with HIV, their needs and rights. Additionally the lack of a directed prevention, stigma prevention (in health places) and studies related to women living with HIV in order to better understand the HIV infection paradigm in a gender perspective in the recommendation directed to Government<sup>9</sup> make women living with HIV more invisible and more vulnerable. Further to the national legislation gaps, the international hiatus on the reference of protective policies regarding HIV<sup>10</sup> makes more individuals increasingly vulnerable and more specifically women living with HIV.
6. Despite the many legal provisions<sup>11</sup> aimed at respecting and protecting the rights of HIV positive individuals, HIV prevention and control, and the rights of affected individuals, heightened levels of stigma and discrimination continue to discriminate against individuals living with HIV and key affected populations. Women living with HIV, among other specific groups are exposed to discrimination because they are not explicitly protected in Portuguese law and do not have the specific and directed legal instruments to claim their rights. The absence of an efficient and effective mechanism to guarantee the exemption in terms of discrimination, in decision making organisms and health structures make people living with HIV more vulnerable to discrimination.
7. The human rights and needs of women living with HIV are not adequately considered in regional provisions, therefore it is important to include women living with HIV in the subsequent documentation, as called upon in the 2009 Commission Communication on "Combating HIV/AIDS in the European Union and neighbouring countries, 2009-2013" which incites Member States to The Communication proposes "strengthened solidarity" as the means to tackle and fight discrimination and stigma across Europe contributing to more evidence-based interventions, better infrastructures and improved access to information, testing, treatment, care and support. European Commission: Combating HIV/AIDS in the European Union and neighbouring countries, 2009 -2013".
8. Discrimination is difficult to prove as labour and health entities refuse work with or provide treatment based on legal excuses. SERES acknowledges that 53% of women have lived some sort of discrimination since their HIV diagnosis being 33% health related (mainly dentists and gynaecologists) and 17% labour related, despite the existence of a Labour Platform against AIDS, a Code of Conduct for enterprises and HIV12 and the existence of laws that prohibits and punishes discrimination based on existence of aggravated risk of health<sup>13</sup>.

<sup>7</sup> Available at: <http://repositorio.insa.pt/handle/10400.18/1622/>. Accessed August 2013.

<sup>8</sup> Available at: [http://www.ecdc.europa.eu/en/publications/Publications/Forms/ECDC\\_DispForm.aspx?ID=1009](http://www.ecdc.europa.eu/en/publications/Publications/Forms/ECDC_DispForm.aspx?ID=1009). Accessed August 2013.

<sup>8</sup> Despite the inclusion of HIV in post MDGs 2015, HIV is an issue that affects other targets, ther

<sup>9</sup> Assembly of Republic Resolution n<sup>o</sup> 161/2011.

<sup>10</sup> Despite the inclusion of HIV in post MDGs 2015, HIV is an issue that affects other targets, therefore the necessary and clear interconnectedness of addressing the structural drivers of HIV vulnerability, ensuring the linkages between HIV and SRHR, gender inequality and gender based violence in the five transformational shifts (leave no-one behind, end extreme poverty; put sustainable development at the core, including tackling climate change; transform economies for jobs and inclusive growth, reforming business, taxation and education; build peace and effective, open and accountable institutions for all, encourage good governance; and forge a new global partnership, ambitious and innovative ways of working together). Available at: <http://www.un.org/en/ecosoc/about/mdg.shtml>. Accessed September 2013.

<sup>11</sup> HIV being integrated into the List of Diseases of Obligatory Declaration (Ordinance n<sup>o</sup> 103/2005 and n<sup>o</sup> 258/2005), the adoption of Measures to Fight the Infection of HIV/AIDS in Portugal (Resolution of Republic Assembly n<sup>o</sup> 161/2011), the regulation for the funding of projects and actions for prevention and control of HIV infection – ADIS programme (Ordinance n<sup>o</sup> 1584/2007), the Decree-Law n<sup>o</sup> 237/93 establishing the regimen for the celebration of Conventions of Arbitration for patient infected by HIV, the Ordinance n<sup>o</sup> 26/2002 establishing a Regulation for Social support to contaminated haemophiliac, among others

<sup>12</sup> Available at: <http://sida.dgs.pt/>. Accessed August 2013. Accessed August 2013.

<sup>13</sup> Law n<sup>o</sup> 46/2006 and Decree-Law n<sup>o</sup> 34/2007 that regulates the Law n<sup>o</sup> 46/2006.

9. Austerity measures based on the prevailing macro-economic model which perpetuates unsustainable supremacy of banks and financial systems, of consumption and production relations, the privatization of public services, instead of a humanitarian approach, exacerbates exploitation and unequal gender and social relations, particularly for poor and marginalized women. Women living with HIV are particularly disadvantaged by the impacts of austerity measures as their access to essential health services has decreased, they are less able to afford essential services, including transportation and housing, among other impacts which are detrimental to their health and livelihoods and are in violation of their human rights.

#### **Recommendations to the Government of Portugal:**

10. Encourage the Council of Europe to prioritize Combating discrimination on the grounds of HIV and other health conditions among all State parties;
11. Work with the Ministry of Education, with support from the National Coordination for HIV/AIDS infection to encourage public institutions, private entities and schools to adopt inclusive and comprehensive conduct codes in order to eradicate HIV stigma and discrimination;
12. Introduce legislation that obliges decision makers and health workers to engage into regular courses regarding anti-discrimination (as a Resolution of General Assembly);
13. Approve the anti-discriminatory Law for the prohibition of discrimination of people with HIV presented by opposition Party, which would explicitly protect people living HIV against discrimination based on their status namely when they encounter: a discriminatory procedure/measure; the denial to provide goods or services based on HIV status; the denial or limitation of use of public spaces; denial or limitation to access of health care; the denial or limitation to access education establishments; the adoption of any discriminatory measure in schools; the adoption of a discriminatory practice that limits the practice or any right; refusal or restriction of acquisition or lease of real estate as well as the refusal of insurance contracts or application of unfavourable conditions based on HIV status;
14. Exclusion, by decree-law, of anti-discriminatory banking and insurance legislation, norms and rules that should adapt to actual situation of people living with HIV by Ministry of Finance conjointly with National Coordination for HIV/AIDS infection;
15. Insertion of mechanisms to guarantee the exemption in terms of discrimination, in decision making organisms and health structures provided by the Ministry of Health and National Coordination for HIV/AIDS infection;
16. Legislate, through Crimination and Procedural law, the inversion of onus of proof in HIV related trials;
17. Recognize and inclusion of Women living with HIV in Health priorities and develop and implement plans to promote specific action targeted to women living with HIV considering the development of a National Plan directed to Women living with HIV and the inclusion of empowerment of Women living with HIV in the V National Plan for Equality, Gender, Citizenship and Non-Discrimination (2014–16)<sup>14</sup>;
18. Incorporate a gender perspective in the scope of prevention, detection and investigation of HIV (Ministry of Health and National Coordination for HIV/AIDS infection);
19. Include Amendments to the Draft Report on Sexual and Reproductive Health and Rights of the Committee on Women's Rights and Gender Equality of the European Parliament<sup>15</sup> so as to integrate women living with HIV in the document;

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<sup>14</sup> The response to feminization of HIV, included in the IV National Plan for Equality, Gender, Citizenship and Non-Discrimination, was based on actions of dissemination of female condom.

<sup>15</sup> Available at:

<http://www.europarl.europa.eu/committees/en/femm/amendments.html?linkedDocument=true&ufolderComCode=FEMM&ufolderLegId=7&ufolderId=12126&urefProcYear=&urefProcNum=&urefProcCode=#menuzone>. Accessed August 2013.

20. Tailor existing resources and programmes, and create new programmes where necessary that are integrated and dedicated to the visions and needs of women living with HIV to complement current EU and global initiatives already in place<sup>16</sup>;
21. Ensure the meaningful and effective involvement and inclusion of women living with HIV in all levels of the HIV response with incorporation of seat in all positions of decision making related to HIV and gender namely as part of the Advisory Council of the Commission for Citizenship and Gender Equality (where there is not current participation of women living with HIV);
22. Collaborate with the European Community and International Monetary Fund to end the austerity that only aggravates poverty and social asymmetries, highlights the demographic crisis, weakens the education system, accentuates individuals' vulnerability to HIV and other diseases, increases the vulnerability to women and concomitantly discrimination and gender violence, by adopting an inclusive and humanist approach to economic development.

**Protection against gender based violence with a focus on female genital cutting and human trafficking:**

23. Despite the many legal provisions<sup>17</sup> aimed at respecting and protecting the rights of gender based and trafficking survivors, gender violence and trafficking prevention and control, and the rights of affected

<sup>16</sup> Integration of programmes specific for women living with HIV, e.g. SHE programme, into current European and global initiatives: Executive Agency for Health and Consumers (EAHC), .European Network on policies and interventions to tackle gender based inequities in health – ENGENDER, HIV/AIDS Think Tank, The European Parliament's Women's Rights and Gender Equality Committee (FEMM). While a number of EU initiatives on HIV already exist, these programs do not provide to the specific needs of women living with HIV in the most optimal way.

<sup>16</sup> The Criminal Code of 1982 predicted and punished for the first time the crime of violence among couples (a crime of public nature). The Law Nº 61/1991 assures the adequate protection to the victims of violence and creates a system of guaranties to interrupt domestic violence and repair occurred damage, with specialized personnel to attend violence survivors and the order to withdraw the aggressor from conjugal dwelling. The reform of Criminal System in 2007 includes the protection and punishment for couples and ex-couples with a strong limitation as the aggressor has to be caught in the act. The Law No. 112/2009 establishes the legal regime applicable to the prevention of **domestic violence**, the protection and assistance of their victims. Law No. 26/2010 amending the Code of Criminal Procedure (especially the concept of violent crime, which includes the crime of domestic violence). Gender based violence as domestic violence is typified as an autonomous and public crime in Portuguese Criminal Code (Law nº 59/2007). The Law nº 19/2013 confers the 29.ª alteration to Criminal Code, approved by Decree-Law nº 400/82, and first alteration to Law nº 112/2009 that establishes the legal regimen applied to domestic violence, specifically as it relates to providing protection and assistance to its victims. The Ordinances nº 220-A/2010 and nº 63/2011 establish two important instruments in the protection of the victims of this kind of crime namely the technical means of tele-assistance and distance control, and social mechanisms such as support to rent, absence regimen, etc. The Law nº 104/2009 approves the regimen of concession of compensations to the victims. The Law nº 34/2009 republished by the Law nº 47/2007 establishes the regimen of access to law and courts. The Council of Ministers Resolution nº 74/2010 approves the IV National Plan against Domestic Violence (2011-2013). By the Decree-Law nº 113/2011 which regulates the access to contributions to Health System, exempt the victims of domestic violence for the payment of user fees. The national network of support to the victims of domestic violence was established by the Law nº 112/2009. Victims of domestic violence shelters are regulated by the Regulatory Decree nº 1/2006. The Law nº 29/2012 and Regulatory Decree nº 2/2013 establishes alteration to Law nº 23/2007, which approved the legal entry, stay, exit and removal of foreigners from national territory. This law confers an autonomous residency visa according to a Public Ministry accusation of domestic violence crime. To highlight the launch of pilot experience that includes a network of multidisciplinary services of detection, referral and adequate intervention to domestic violence. The National Health Service provides direct assistance to victims of domestic violence free of user fee (Resolution of Ministers Council nº 5/2011: IV National Plan for Equality, Gender, Citizenship and Non-Discrimination 2011–13). The Decree of Republic President approves the Convention of Europe Council for the Prevention and Fight of Violence against Women and Domestic Violence (also known as Istanbul Convention), approved by Portuguese General Assembly in 2012. International conventions, resolutions and recommendations regarding Gender based Violence ([Council of Europe Convention on preventing and combating violence against women and domestic violence](#) (2011).

<sup>17</sup> Law Nº 61/1991 assures the adequate protection to the victims of violence and creates a system of guaranties to interrupt domestic violence and repair occurred damage, with specialized personnel to attend violence survivors and the order to withdraw the aggressor from conjugal dwelling. The Law No. 112/2009 establishes the legal regime applicable to the prevention of **domestic violence**, the protection and assistance of victims. Law No. 26/2010 amending the Code of Criminal Procedure (especially the concept of violent crime, which includes the crime of domestic violence). Gender based violence as domestic violence is typified as an autonomous and public crime in Portuguese Criminal Code (Law nº 59/2007). The Law nº 19/2013 confers the 29.ª alteration to Criminal Code, approved by Decree-Law nº 400/82, and first alteration to Law nº 112/2009 that establishes the legal regimen applied to domestic violence, specifically as it relates to providing protection and assistance to its victims. The Ordinances nº 220-A/2010 and nº 63/2011 establish two important instruments in the protection of the victims of this kind of crime namely the technical means of tele-assistance and distance control, and social mechanisms such as support to rent, absence regimen, etc. The Law nº 104/2009 approves the regimen of concession of compensations to the victims. The Law nº 34/2009 republished by the Law nº 47/2007 establishes the regimen of access to law and courts. The Council of Ministers Resolution nº 74/2010 approves the IV National Plan against Domestic Violence (2011-2013). By the Decree-Law nº 113/2011 which regulates the access to contributions to Health System, exempt the victims of domestic violence for the payment of user fees. The national network of support to the victims of domestic violence was established by the Law nº 112/2009. Victims of domestic violence shelters are regulated by the Regulatory Decree nº 1/2006. The Law nº 29/2012 and Regulatory Decree nº 2/2013 establishes alteration to Law nº 23/2007, which approved the legal entry, stay, exit and removal of foreigners from national territory. This law confers an autonomous residency visa according to a Public Ministry accusation of domestic violence crime. To highlight the launch of pilot experience that includes a network of multidisciplinary services of detection, referral and adequate intervention to domestic violence. The National Health Service provides direct assistance to victims of domestic violence free of user fee (Resolution of Ministers Council nº 5/2011: IV National Plan for Equality, Gender, Citizenship and Non-Discrimination 2011–13).

individuals, heightened levels of violence and stigma continue to proliferate against gender based and trafficking survivors. Women are exposed to violence because in a patriarchal society there is no conscience of gender inequalities, as Portuguese male imperatives prevail (as commonly expressed primarily in verbal harassment towards women and ultimately femicides) and therefore the importance to include men with an integrated, efficient and effective programme in order to prevent gender violence and trafficking. According to UMAR study<sup>18</sup> to evaluate the juridical constraints faced by professionals of shelters, it was identified the following constraints: ineffective juridical follow-up to the victims; lack of training of juridical instances in this area (in the juridical follow-up and decision making); inefficacy in the measures of co-action and withdraw; the law does not protect the right of victims to their home address and goods, even as landlady; not complying with law (most of time women are forced to go to shelters). Therefore the need of change and legal improvement. Also according to UMAR<sup>19</sup> the slowness of response it isn't compatible to the gravity of most situations; there is a lack of support to rent and social housing for victims; the application of co-action measures seems not to obey to a specific criteria and are inappropriate to the gravity of most of the situations; and there are difficulties in communication and articulation amongst health institutions and victim support organizations.

24. The Portuguese Association to the Support of the Victims (APAV), in its 2012 report refers an increase of 10% in processes of support. This represents an increase of three cases a day in relation to 2011 and one of concerns about Portugal in International Amnesty. The Annual Report of Internal Security indicates 26.084 participations of domestic violence, by the Security Forces, a decrease of 10% comparatively to 2011, 82% of the victims were women. 417 suspects were detained. To highlight the record of 37 marital homicide.<sup>20</sup> The Observatory of Murdered Women (UMAR association) accounted for 20 homicide/femicide and 21 attempts of homicide/femicide (January until June 2013) and 30% occurred in the context of domestic violence.
25. In 2012, 125 potential victims of human traffic were signaled according to national Report on Human Trafficking 2012<sup>21</sup>. The majority of situations occurred in Portugal. The main type of signalised exploitation was Labour Exploitation, mainly male sex (mostly children). The situations abroad occurred mainly in Germany and Spain.
26. The II National Plan against Human Trafficking 2010-2013<sup>22</sup> includes four strategic areas of intervention: knowledge, awareness, prevention; education and training; protection and assistance; criminal investigation and cooperation. To achieve these aims diverse initiatives were performed<sup>23</sup>. In the overall, and considering their execution report (2012) the area that needs more work is 'protection and assistance' due mainly to the still in development network of support and protection of human

<sup>18</sup> Available at: <http://www.umarfeminismos.org/>. Accessed September 2013.

<sup>19</sup> Available at: <http://www.esquerda.net/artigo/umar-reivindica-maior-efic%C3%A1cia-no-apoio-mulheres-v%C3%ADtimas-de-viol%C3%A2ncia-dom%C3%A9stica/25872>. Accessed September 2013.

<sup>20</sup> Available at: <http://onvg.fcsh.unl.pt/>. Accessed August 2013.

<sup>21</sup> Available at: <http://www.otsh.mai.gov.pt/?area=102>. Accessed August 2013.

<sup>22</sup> Available at: <http://dre.pt/sug/1s/diplomas-lista.asp>. Accessed August 2013.

<sup>23</sup> According to Execution Report (2012), under 'awareness and prevention' the development of the following activities: capacitating of 36 trainers of trainers regarding the response to human trafficking (to promote the identification and support of victims); an international conference regarding the "Domestic Servitude and mendacity: Invisible Forms of Labour Exploitation" regarding mostly the minors; signalization card of human trafficking victim (to support the signalization and referral of human trafficking); 11 itinerant exhibit regarding the human trafficking. Legislation pertaining to the issue includes: The Resolution of the Council of Ministers Nº 94/2010 approved the II National Plan against Trafficking in Human 2011-2013. Council resolution of Ministers Nº 5/2011 approves the IV National Plan for Equality - Gender, Citizenship and Non-Discrimination 2011-2013. The Observatory of Human Trafficking was created by the Decree-law nº 229/200823. Coordination of the European project "Towards a Pan-European Monitoring System of Trafficking in Human Beings" (2013-2014) in order to create and implement a monitorisation system of human trafficking and counting with representatives of Europol, Frontex, EUROSTAT, OSCE, UNODC, etc. To respond to sexual traffic a revision of Criminal Code was held in 2007 and it was consecrated as global crime. The Decree-Law nº 368/2007 establishes that residency authorizations can be conceded to human trafficking victims. Trafficking is considered in Criminal Code Artº 16023. The Law nº 29/2012 and Regulatory Decree nº 2/2013 establishes alteration to Law nº 23/2007, which approved the legal entry, stay, exit and removal of foreigners from national territory. In June 2013 a Protocol of Compromising for the Network of Support to Trafficking Victims23 was signed by several public entities and civil society. Also in June 2013 was presented the Bill 427/XII - Amends the Criminal Code, Law nº 5/2002, of January 11, and Law nº 101/2001 of August 25, transposing into national law Directive nº 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA Council.

trafficking victims. Also due to the constant changes in educational system it was not possible to include human trafficking in 'project area' (as the project area no long exists).

27. Female Genital Cutting (FGC) or Female Genital Mutilation (FGM) started to be tackled at the policy level in 2003<sup>24</sup>, when it was included in a national plan against domestic violence. Portugal developed its 'First Program of Action for the Elimination of FGM' in 2009, included in the 'Third National Plan for Equality – Citizenship and Gender (2007-2010)'. The 'Second Program of Action for the Elimination of FGM' runs from 2011 to 2013, and both have been issued by the Council of Ministers. Portugal is the only country in the EU that has developed a second action plan dealing exclusively with FGC.
28. As no prevalence studies on FGM have been undertaken yet in Portugal is difficult to realize a comparative analysis and to tackle the problem, although the existence of this practice and women affected by FGM in Portugal activated several measures for its prevention and control. Guinea-Bissau is the principal country of origin of population affected by FGC. According to Portuguese Immigration and Borders Service (SEF), in 2011, 7,813 migrant women originated from Guinea-Bissau were living in Portugal (a decrease comparatively to the 8,181 migrant women from Guinea Bissau in 2010). There are records of three asylum requests based on FGC in 2010. A survey among 52 health professionals in three regions around capital city (Lisbon, Amadora and Almada) referred that 13.5% of the professionals stated that FGM is performed in the territory and nearly 27% had seen patients with FGM. The first and second Program of Action for the Elimination of FGM integrates an Inter-sectorial Working Group constituted by public bodies from different sectors and civil society organizations dealing with FGC. The 'Clinical Guidelines for Health Professionals about FGM' was published on 6 February 2012 by the Directorate-General for Health (Reproductive Health Division), providing clinical recommendations for women with FGM but also preventive measures to protect newborns, children and youngsters at risk of FGC. Those at risk of FGC should be referred to the National Commission for the Protection of Children and Young People at Risk (CPCJ). Health professionals who encounter women who have been submitted to FGC should register it in a clinical record.
29. Even if good efforts are/were made towards the response of gender violence, a significant number of actions are needed to protect women as the number of femicides is quite high and also of concern the other typologies of violence against women (domestic, FGM, human trafficking). According to European Parliament survey, violence against women, women trafficking and prostitution are the gender inequalities worsen in consequence of crises (in the view of Portuguese interviewed)<sup>25</sup>. The deficit in a comprehensive long term raise awareness including the use of discriminatory language, that emphasis the male substantive in overall non legal documentation and media and the social accepted 'piropo' ('flattering' comments)<sup>26</sup>, deepens the sex stereotypes and social discrimination.

#### **Recommendations to the Government of Portugal:**

30. Ensure and apply actions to protect and empower women and children migrants for immediate and longer-term needs and safety (Justice Ministry in partnership with gender entities like Commission for Citizenship and Gender Equality (CIG));
31. Make available support programmes aimed to perpetrators of violence against women with a view of preventing further violence (Justice Ministry in partnership with gender entities like the CIG);
32. Develop and implement long-term awareness-raising activities to respond to discriminatory cultural and social norms, including challenging the universal use of discriminatory language, and tackle

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<sup>24</sup> Portugal has ratified diverse international conventions condemning FGM, including the UDHR, CEDAW, CAT, CRC, ECHR and the Charter of Fundamental Rights of the European Union (2010/C 83/02). Portugal has signed the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS n° 210). Article n° 144 of the Criminal Code refers to the crime of bodily injury. Law 147/99 Protection of Children and Young People at Risk Act. Law n° 27/2008 addresses in the grounds for asylum. Article n° 242 of the Code of Criminal Procedures regards to professional secrecy and disclosure and reporting. Law n° 147/99 foresees specific reporting mechanisms in regard to crimes committed against children.

<sup>25</sup> European Parliament, Women and gender inequalities in the context of crisis. Available at: [http://www.europarl.europa.eu/aboutparliament/pt/00191b53ff/Eurobar%C3%B3metro-.html?tab=2013\\_2](http://www.europarl.europa.eu/aboutparliament/pt/00191b53ff/Eurobar%C3%B3metro-.html?tab=2013_2). Accessed August 2013.

<sup>26</sup> 'piropo' is a verbal harassment pronounced in a public space by an anonymous man/men to normally a woman, in order to emphasize the supremacy of men vs women. This kind of verbal harassment leads to a perceived unbalance of gender power and ultimately to gender violence.

prevalent sexist stereotypes and social stigmatization which legitimize and perpetuate violence against women at all levels of society (for instance education) (CIG);

33. Make more visible the rights of victims, namely subsidies they are entitled to by Public Ministry;
34. Improve the judicial system to increase the celerity of processes, to a better control in the execution of sentences and articulation in judicial decisions in order to promote victims safety by Public Ministry and Justice Ministry conjointly with support to victims (violence and trafficking) associations;
35. Implementation of mechanisms of surveillance of FGM by CIG;
36. Development of prevalence studies regarding FGM (one of the measures proposed in the Second Programme of Action for the Elimination of FGM and according to II Programme of Action for the Elimination of Female Genital Mutilation that intends to reinforce the knowledge about FGM nationally and increase the development of intervention politics a project of study is going to be held and should identify the female population victim or in risk of excision);
37. Develop and implement a comprehensive strategy for the protection of victims of human trafficking by the Observatory of Human Trafficking;
38. Provide regular training for police, justice and migration authorities to improve the identification of victims of trafficking and support them in their rights provided by Justice Ministry in conjunction with Observatory of Human Trafficking.

#### **Protection to Sex Work**

39. Since 1982 that sex work is not considered a crime in Portugal. Nonetheless, Portuguese law is discriminatory towards sex workers namely as a result of Article 280 from the Civil Code that declares the nullity of contracts based on an activity 'offensive to good morality' and the Article 169 from Criminal Code which defines the crime of incitement to prostitution and impedes the validity and contracts with the objective of prostitution or commerce of 'sexual favours'. The practice of prostitution incitement is regulated by the Law nº 65/98 and Law nº 99/2001. Therefore, while it is illegal for a third party to engage or profit from industry, the individual sale and soliciting of sex is not illegal.<sup>27</sup> The legal framework is therefore grey and often left open for the interpretation of law enforcement, who have been known to inaccurately apply the law mainly to migrants sex workers. This context places sex workers in a position of limbo as they are often vulnerable to violence and discrimination (migrants sex workers normally don't present aggression complaints with fear of repatriation). Sex workers often have decreased access to health and protection from contracting HIV and other STIs. Many sex workers are illegal migrants who experience challenges when attempting to access the health system. Many sex workers, regardless of their status, experience stigma.
40. Portugal is one of five countries in Europe with high numbers of sex workers infected by HIV, despite presenting the highest rates of condom use. With 9% of sex workers infected by HIV (in Europe the prevalence is around 1%). Sex workers constitute the most at risk population presented in 2012 a prevalence of infection much higher than general population: 12,5% among street sex workers (working exclusively in street); 3,9% among sex workers of interior (working in private apartments (85,5%), massage parlours, night clubs/bars and hotels). According to research 19% of sex workers of interior are victims of some kind of violence to 80-90% of street sex workers<sup>28</sup>. Sex workers in private apartments work with more than one person (53,1%) for security reasons, to minimise costs, etc. These apartments are usually managed by a receptionist with rules<sup>29</sup>. Overall interior sex workers even if still vulnerable are more protected than street sex workers.

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<sup>27</sup> Till 1962 (year of legislation modification by Salazar), the Portuguese law had a reference to women sex workers ('toleradas') and it was mandatory to hold an updated health card. Thus, women sex workers were regulated and were subjected to periodic health inspections.

<sup>28</sup> APDES (2012). Available at: <http://www Indoors-project.eu/>. Accessed August 2013. Teixeira JA (2010) in *Ideação suicida em prostitutas de rua*. (tese de mestrado). Porto: Instituto Biomédicas Abel Salazar.

<sup>29</sup> Available at: <http://www Indoors-project.eu/>. Accessed August 2013.

### **Recommendations to the Government of Portugal:**

41. Adopt recommendation submitted by the Global Alliance Against Traffic in Women that urges States to 'consider the potential of decriminalising sex work and practices around it, as a strategy to reduce the opportunities for exploitative labour practices in the sex sector'<sup>30</sup>;
42. Establish a Sexual Work Reform Act in order to legalize and professionalize sex work, similar to the measures adopted by the Laws pertaining to Drug Users (in 2000)<sup>31</sup> that reduced to more than half the HIV transmission and crimes;
43. Integrate specific regulations pertaining to sex workers' labour rights into the Labour Code by the Ministry of Solidarity, Employment and Social Security;
44. Implement measures to reduce the risks associated with sex work by government conjointly with National AIDS Commission and migrants organisations;
45. Adopt guidelines laid out by the WHO in partnership with UNFPA, UNAIDS, NSWP<sup>32</sup> that aim to protect sex workers from STIs and increase their access to health services by recommending the empower of sex workers to negotiate the correct and consistent use of condom;
46. Establish marketing social and prevention campaigns directed to sexual workers by government and the CIG;
47. Increase the detection of HIV programmes available for sex workers including the rapid testing and community based voluntary counselling and testing by the National Coordination for HIV/AIDS infection;
48. Meaningful and effective inclusion of sex workers in the politics and measures of their concern.

### **Access to comprehensive sexuality education (CSE): development and implementation of a national strategy to reach all children**

49. Law nº 3/84 establishes the guarantee to right to sexual education and family planning. The Law nº 60/2009 established the application of sexual education regimen in basic and secondary education, applied to all. The Ordinance nº 196-A/2010 defines the respective curricular orientations adapted to the different levels of education. Sexuality education, and its curricular organization in an interdisciplinary perspective, was established in Decree-Law nº 259/2000. The Order nº 15987/2006 establishes new orientations and clarifies the contextualization of sexual education in schools, one of four components of Education for Health Project. But only with the Law nº 60/2009<sup>33</sup> is the sexual education in schools established and general bases of application regimen of sexual education is consecrated with an obligatory status. Resolution nº 46/2010 enhances the right to the information and access to sexual and reproductive rights to women through their life cycle. The minimum hourly load for 1st and 2nd Cycles is 6 hours and of 12 hours for the 3rd Cycle and Secondary Education.

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<sup>30</sup> Human Rights Council. Written statement submitted by the Global Alliance Against Traffic in Women, a non-governmental organisation in special consultative status. A/HRC/23/NGO/29. 10 May 2013.

<sup>31</sup> Portugal is an example in many areas of human and women rights: social protection of **drug users** is established by the Law nº 30/2000; **Emergency contraception** was regulated by the Law nº 12/2001; the Law 16/2007 permits the **voluntary interruption of pregnancy**; utilization of techniques of **procreation medically assisted** (PMA) is regulated by the Law nº 32/2006; the **civil marriage between same sex** is allowed by the Law No. 9/2010; the procedure for change of sex and name in the civil register is established by the Law No. 7/2011; the Project of Law 31 n.º 278/XII that consecrates the possibility of **co-adoption by the spouse or fact union of same sex** and proceeds to the 23.ª alteration of Civil Registration Code was accepted in May, 2013. The same advancements in other areas of human rights should be applied to sex work.

<sup>32</sup> WHO. (2012). Prevention and treatment of HIV and other sexually transmitted infections for sex workers in low and middle-income countries, recommendations for a public health approach. Available at: [www.who.int](http://www.who.int). Accessed August 2013.

<sup>33</sup> The law finalities comprises the valorization of sexuality and affectivity among people in individual development, in respect for the pluralism of existent conceptions in Portuguese society; improvement of affective-sexual relationships among youngsters; the reduction of negative consequences of sexual risk behavior; capacity of protection against exploitation and sexual abuse; respect for the difference among people and different sexual orientations; valorizations of a responsible and informed sexuality; promotion of gender equality; recognition of the importance in education participation by guardians, students, teachers and health professionals; scientific comprehension of biologic and reproductive function mechanisms; elimination of behaviors based on sexual discrimination or violence based on sex or sexual orientation.

50. There is a lack of responsible teachers for the Education for Health and Sexual Education curriculum. Ordinance nº 196-A/2010 defines the minimum objectives of Sexual Education area and stipules the training actions realized by the teachers under Health Education and Sexual Education. With the implementation of reduction of teachers at national level, Decree-Law nº18/2011 establishes that the teaching of Visual and Technologic Education competes to only one teacher and reinforces its orientation to the development of Education to Citizenship, health and sexuality. Most of the teachers are not habilitated and are insecure to provide this class as Sexual Education is not part of the curriculum of Teaching training University degree.
51. Despite the affirmation of legislative guidelines to mandatory CSE in all institutions of elementary and secondary public school, CSE is not mandatory nor is there a requirement to maintain exclusive teams of teachers responsible for delivering the curriculum with proper training in sex education. The current situation is that everything is very dependent on teachers available to work in this area. These circumstances leave young people vulnerable to coercion, abuse, exploitation, unintended pregnancy and sexually transmitted infections, including HIV. Portugal presents a high rate of unintended pregnancy in adolescence – 9 adolescents (between the ages of 13 and 19) give birth every day, for a total of 3301 girls<sup>34</sup>.

**Recommendations to the Government of Portugal, in collaboration with the Ministry of Education and Science and Ministry of Scientific and Pedagogical Councils;**

52. Create a long term clear vision for the education system, ensuring that teachers are prepared to effectively implement mandatory CSE to reach all children, accompanied with close monitoring to evaluate the implemented changes;
53. Increase the number of permanent teaching positions, particularly for teachers with expertise in delivering comprehensive sexuality education<sup>35</sup>;
54. Align the CSE curriculum with a nationwide strategy to reach all children, with evaluation standards provided by the Education Ministry and its work groups;
55. Ensure that CSE is part of the compulsory curriculum for the training of teachers;
56. Implement interdisciplinary of CSE in order to incorporate the synergetic relation between gender, sexuality, sexual rights, HIV and gender based violence correlated to a model of risk reduction in the curriculum as per the guidelines of 'One Curriculum'<sup>36</sup> that refers that gender norms profoundly affect young people's ability to make and implement decisions regarding their own sexual lives which correlates to sexual health.<sup>37</sup> Interdisciplinary is already consecrated in Law but not always implemented in schools with transversally and complementarily with other disciplines. (Monitoring by Education and Science Ministry);
57. Increase the existent minimum time for the development of CSE with space for debate and reflection, as the actual minimum hourly load for 1st and 2nd Cycles is 6 hours and of 12 hours for the 3rd Cycle and Secondary Education is not sufficient to cover this thematic with quality. (Monitoring by Ministry of Education and Science).

<sup>34</sup> Available at: [http://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine\\_indicadores&indOcorrCod=0001541&contexto=bd&selTab=tab2](http://www.ine.pt/xportal/xmain?xpid=INE&xpgid=ine_indicadores&indOcorrCod=0001541&contexto=bd&selTab=tab2). Accessed August 2013.

<sup>35</sup> 18.000 teachers at risk of internal mobility and the fear of dismissal of 15.000 teachers in 2013/14. 11.526 teachers under precarious contract for more than a decade and 37.565 in same conditions for more than four years (in 2012). The geographical mobility that teachers are subjected to causing the travel of long distances. Teaching is also the profession with more growing unemployment (an increase of 225% from 2009 to 2012). Available at <http://anvpc.org/> and <http://www.fenprof.pt/>. Accessed August 2013.

<sup>36</sup> One Curriculum (2009) International Sexuality and HIV Curriculum Working Group. Available at: [http://www.popcouncil.org/publications/books/2010\\_ItsAllOne\\_Why.asp](http://www.popcouncil.org/publications/books/2010_ItsAllOne_Why.asp). Accessed August 2013

<sup>37</sup> According to these guidelines and other international guidelines<sup>37</sup>, gender equality and human rights are fundamental to 'preventing the spread of HIV and to enabling young people to grow up to enjoy good health, as well as responsible and satisfying sexual lives'.