

The role of NHRIs in preventing and eliminating of all forms of violence against women and girls – GANHRI Report for the 63rd Session of the Commission on the Status of Women

Questionnaire for National Human Rights Institutions (NHRI)

Overview of the topics of the questionnaire

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<u>Notes</u>

Please note that the questionnaire has been structured around General Recommendation No. 35 on "Gender-based violence against women" of the United Nations Committee on the Elimination of Discrimination against Women and the 2012 Amman Declaration and Programme of Action which states that Violence against women and girls is one of the issues that is particularly relevant to the work of NHRIs in all regions.

The questionnaire is also inspired by the 2030 Agenda for Sustainable Development and, more specifically, Sustainable Development Goal (SDG) #5 "Achieve gender equality and empower all women and girls". One of the targets in relation to SDG5 is the elimination of all forms of violence against women and girls in the public and private spheres, including all types of exploitation and harmful practices.

This approach has been chosen to highlight the various aspects of the topic and to guide you in identifying relevant examples and good practices.

In answering the questions, *please provide as much information as possible about the project, its objectives, implementation, and specific outcomes.* Not all aspects of the questions are applicable to the work of each NHRI and we encourage you to focus on questions that your NHRI has dealt with in more detail. *If a specific question is not applicable to your work, simply leave the space blank.*

The information provided by NHRIs will be used in order to prepare a publication on the role which NHRIs play in achieving SDG 5 "Gender Equality" by eliminating violence against women and girls. This publication will be presented during a side event at the 63rd session of the Commission on the Status of Women in March 2019.



- I. Basic information on your National Human Rights Institution (NHRI)
- 1. Name of your institution: Provedor de Justiça (Ombudsman)
- 2. Country: Portugal____
- 3. Name and position of respondent: Ana Rita Gil, Legal Advisor to the Ombudsman Cabinet

II. Work of your NHRI on women's rights

4. Does your NHRI have: (Please click the ones applicable)

A commissioner or ombudsperson responsible for women's rights

A department, division or unit responsible for women's rights

A focal person for women's rights

All units work on women's rights

None of the above, we do not work on women's rights

Others, please specify

Comments: Issues pertaining to Women's rights may arise in several departments (1) Environment, housing and other public services, 2) tax and consumers, 3) social security, 4) public personnel, 5) law, justice and security and 6) fundamental rights, education, health and constitutional issues), although there is no specific department on Women's Rights.

5. Does your NHRI have the mandate to receive individual complaints?

\boxtimes	Yes
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No No

Comments: _____

6. Does your NHRI have regional offices (i.e. offices in places other than the main seat of the NHRI) and if so, do these regional offices specifically target women and girls?

Yes

🖂 No



Comments: Although the regional offices originally located in Azores and Madeira were closed due to financial restraints, the Ombudsman has staff responsible for receiving and handling complaints from these autonomous regions, traveling and being present, whether for face-to-face assistance or for other types of activities, such as training, awareness raising campaigns and mediation.

III. Collaboration with other organisations and institutions

7. Are there any other institutions or bodies in your country that have the mandate to protect and/or promote the rights of women and girls?

X Yes

🗌 No

If yes, please specify (name, mandate, and legal basis):

1. Comissão para a Cidadania e Igualdade de Género (Commission for Citizenship and Gender Equality) . The Commission is a State's body, which works under the presidency of the Council of Ministers, and is responsible for ensuring the implementation of public policies in the areas of gender equality, domestic and gender-based violence, as well as trafficking in human beings. To this end, it coordinates several national plans is this area. It has also the mandate to receive individual complaints. Its functioning is regulated by Regulatory Decree no. 1/2012, of t January.

2. Comissão para a Igualdade e Trabalho no Emprego (Commission for Equality in Labour and Employment). It was created in 1979 in order to fight against discrimination and to promote equality between women and men in labour, in employment and in vocational training. Its main responsibilities are: to promote equality and non-discrimination between women and men in labour, employment and in vocational training; to guarantee the protection of parentality (maternity, paternity and adoption); and the reconciliation of professional, personal and family life. It has also the mandate to receive individual complaints. The Decree-Law no. 76/2012, of 26th March sets forth the current Legal Framework of the Commission for Equality in Labour and Employment. This is also a State's body, chaired by the Ministry with responsibilities in the area of equality; a representative of the Ministry with responsibilities in the area of equality; a representative of the Ministry with responsibilities in the area of solidarity and social security; two representatives of each of the trade union associations and representatives of the employers' associations.

8. Do you collaborate with the above institutions or bodies?

If so, please provide examples: Yes. According to our Statute, every time the Ombudsman receives a complaint that may fall upon the mandate of the two mentioned Commissions, the



complainant is reffered to them (Article 32 of the Ombudsman Statute). On the other hand, where a complaint does not concern specifically to an area within the competence of these committees, but may have some relevance, the Ombudsman also gives notice thereof to the effects that may be deemed convenient. Moreover, the Ombudsman maintains a permanent dialogue with these entities, and provides help and support whenever requested (v.g., for attending meetings, conferences and other events).

9. Does your NHRI collaborate or plans to collaborate with women affected by gender-based violence, civil society organisations (CSO), UN agencies and bodies (e.g. CEDAW, CSW), regional and/or sub-regional human rights mechanisms, traditional and religious leaders, trade unions and employer organisations or other bodies in its work on the situation of gender-based violence against women and girls?

If so, please provide examples: The Ombudsman collaborates with civil society organisations and UN agencies and bodies, special rapporteurs and global studies on women and girls' rights, when requested and also by its own initiative, namely drafting alternative reports to the monitoring bodies. It is now planning to develop awareness-raising campaings aimed at promoting tolerance and non-discrimination, with the partnership of FRA and civil society organisations, which may encompass gender equality.

10. Does your country have a specific legal (e.g. specific criminal laws) or policy framework (e.g. national action plan) regarding gender-based violence and women's rights? If so, has your NHRI been involved in its elaboration and/or monitoring?

If so, please explain:

Yes. There are several specific legal norms aimed at protecting victims from domestic violence: e.g., on legal support, housing, shelters, and other social benefits, such as exemption from health fees. The crime of domestic violence is also considered as "violent criminality" and victims benefit from the Special Statute on Protection of Victims and from the legal act on compensation of violent crimes' victims. There is also a special Statute for protection of children form sexual exploitation and sexual abuse.

The Commission for Citizenship and Gender Equality is responsible for developing and promoting actions aimed at executing national plans on gender equality and protection of women and girls from violence, as well as the United Nations Security Council Resolution 1325 (2000) on Women, Peace and Security. It also runs a hotline aimed at providing information and support to victims of domestic violence.

These are the national plans on gender equality and on fighting against gender-based violence:

- 1) The National Strategy for Equality and Non-Discrimination 2018-2030;
- 2) The V National Plan for Fighting and Preventing domestic and gender-based violence;



3) The IV National Plan for Prevention and Fighting against trafficking of Human Beings (2018-2021);

4) The III Programme of Action for the Prevention and Elimination of Female Genital Mutilation

The NHRI has not been directly involved in the elaboration of these plans .

IV. Your work on the overarching aspects of gender-based violence against women and girls

11. Does your NHRI work on any of the following overarching aspects of gender-based violence against women and girls?

Awareness-raising on gender-based violence and discriminatory stereotypes, including but not limited to, "unacceptable female behaviour" as defined by General Recommendation No. 35, gender stereotypes in media and advertising, including gender-based violence occurring in digital and online environments, as well as stereotypes relating to the division of domestic work within families? If so, please provide examples: The Ombudsman is committed to promote awareness raising initiatives aimed at promoting tolerance and non-discrimination, with the partnership of FRA, which may include these topics.

Promoting or carrying out education programs with a human rights approach or awareness raising programs to promote an understanding of gender-based violence and to provide information on legal recourse and encourage the reporting of such violence? If so, please provide examples: The Ombudsman promotes several ativities in the field of promotion and human rights, from conferences, to seminars, training of professionals from different areas, conferring great importance to student's interaction. As promoter and participant, the theme of gender based violance has been a constant concern and action. That was the case, for example, of the recent conference on Trafficking on Human Beings, that took place in the Parliament in 18 October 2018. In addition to these initiatives, the Ombudsman seeks to monitor and mark the national and international days of struggle, helping to enhance the reach of the underlying messages.

Dissemination of information on services (medical, social, legal or other) that are available for women victims/survivors of gender-based violence? If so, please provide examples: The Ombudsman runs three hotlines, aimed at providing support to Children, Older Persons and Persons wih Disabilities. Sometimes, complaints on gender-based violence and discrimination arise. The Ombudsman informs the complainant of their rights and reffers them to the competent authorities and support services.

Intersectionality that may be defined by the linkage between women's discrimination and other factors that affect their lives, such as ethnicity/race, indigenous or minority status, colour, socioeconomic status and/or caste, language, religion or belief, political opinion, national origin, marital status, maternity, parental status, age, urban or rural location, health status, disability,



property ownership, being lesbian, bisexual, transgender or intersex, illiteracy, seeking asylum, being a refugee, internally displaced or stateless, widowhood, migration status, heading households, living with HIV/AIDS, being deprived of liberty, or being in prostitution? If so, please provide examples: As explained in the previous question, the Ombudsman runs three hotlines. Sometimes, complaints on gender-based discrimination and violence arise, and, quite often, it may be a case of intersectionality discrimination. The Ombudsman informs the complainant of their rights and reffers them to the competent authorities and victim's support services. Regarding detention facilities, the Ombudsman, in its quality of NPM pays special attention to the treatment of women, with special focus on especially vulnerable women, such as asylum seekers, pregnant women, older women, women who may suffer from mental illness, amongst others. Treatment of transgender women is also considered by the NPM in visits to detention facilities.

V. Your work on specific dimensions of gender-based violation against women and girls

12. Does your NHRI work on combating domestic and community violence against women, including women in rural areas, and/or does your NHRI provide resources for women victims/survivors of such forms of violence?

Domestic and community violence may include, but is not limited to, intrafamilial or intimate partner battering, intimidation, beating, rape, marital rape, other form of sexual assault, mental and other forms of violence, sexual abuse of female children in the household, dowry-related violence, female genital mutilation, non-spousal violence and violence related to exploitation, crimes committed in the name of honour, bride abduction, dowry death, incest, female infanticide and sex selective abortion, corporal punishment, chastisement, polygamy, physical, psychological, gang rape and sexual assault. If so, please provide examples:

The Ombudsman does not have competence to intervene in criminal matters. When such a complaint is received, the Ombudsman has the duty to reffer it to the Pubic Prosecutor. In its quality of NHRI, it also monitors how laws and policies are being implemented in Portugal in this regard. Moreover, the Ombudsman may monitor how non-judicial public entities (v.g., police forces) apply the law, namely on what regards registering complaints as domestic violence. In some cases, it may conduct inquiries into possible discriminatory acts in relation to domestic violence, victimization of shelters or treatment of complaints, e.g. conditions of presentation, respect for the principle of confidentiality, victim status and deadlines.

The NHRI may also help victims or survivors through guaranteeing that their legal rights are respected, and that they may have access to the special satuses foreseen by the law (v.g., access to social housing, free health care, shelters, etc.).



13. Does your NHRI work on eliminating harmful practices that compromise the equal rights of women and girls?

Such practices may include, but are not limited to, child and/or forced marriage, female genital mutilation (including operations of intersex children), polygamy or the inheritance of ancestral debt. If so, please provide examples: As explained in question 12., the Ombudsman does not have competence to intervene in criminal matters. When such a complaint is received the Ombudsman has the duty to reffer the complainant to the Pubic Prosecutor. However, in its quality of NHRI, it monitors how laws and policies are being implemented in Portugal in this regard. For example, regarding forced marriages, the NHRI has recently responded to a questionnaire on Child, early and forced marriage in humanitarian settings to the Office of the United Nations High Commissioner for Human Rights' Report, pursuant to the resolution 35/16 of the Human Rights Council.

14. Does your NHRI work on addressing the issue of gender-based violence against internally displaced, refugee and migrant women and girls?

This may include, but is not limited to sexual abuse, sexual harassment, physical violence, food and sleep deprivation, severe forms of labour exploitation, including through prostitution, pornography and femicide (kidnapping, disappearance, rape, mutilation and murders). If so, please provide examples: Yes, through NPM visits to detention facilities of migrants and asylum-seekers. For example, the NHRI has been monitoring how separation between male and female detainees is implemented, also focusing on the need to maintain family unity.

15. Does your NHRI work on, provide, or advise the government/police on training for public officers in order to adequately prevent and address gender-based violence against women and girls?

Such persons may include, but are not limited to members of the judiciary, lawyers and law enforcement officers, including forensic medical personnel, legislators and health-care professionals, including in the area of sexual and reproductive health, and all education, social and welfare personnel, including those working with women in institutions, such as residential care homes, asylum centres and prisons. If so, please provide examples: Yes. The NPM provides training of law enforcement officers in prevention of torture, degrading and inhuman treatments, including gender violence and non discrimination.

16. Does your NHRI carry out work aimed at improving the protection of women and girls who defend human rights?

The United Nations Declaration on Human Rights Defenders (8 March 1999, UN Doc AG/RES/53/144) defines the defence of human rights defender as the Promotion and Protection of Universally Recognized Human Rights and Fundamental Freedoms by Individuals, Groups or Organs



of Society. If so, please provide examples: Bearing in mind the recent Marrakesh Declaration on the Human Rights of Human Rights Denfenders, the Ombudsman is committed to observe how these fundamental freedoms are being respected in Portugal. Moreover, any Human Right Defender, independently of being a natural or legal person, may address a complaint to the Ombudsman.

17. Does your NHRI carry out work aimed at improving the accessibility, the affordability and the acceptability of health care services, sexual/reproductive health and emergency medical help for women victims/survivors of gender-based violence?

This may include, but is not limited to, the following services: access to mental health care, psychological assistance, contraception, including emergency contraception methods, access to safe abortion and high-quality post-abortion care, perinatal, postnatal and obstetric services, HIV prevention and treatment services, mammography and other gynaecological examination services and as forced sterilisation, forced abortion, forced pregnancy, criminalisation of abortion, denial or delay of safe abortion and/or post-abortion care, forced continuation of pregnancy, and abuse and mistreatment of women and girls seeking sexual and reproductive health information, goods and services. If so, please provide examples: Yes. The Ombudsman receives complaints on access to health care, whereby women may address their concerns regarding malfunctioning of the health care system. The Ombudsman helps to overcome difficulties and may also issue reccomendations in cases where systematic problems arise. Moreover, it has the power of carrying out investigations by its own initiative. For example, the Ombudsman dealt successfully with refusals by doctors to certify a breastfeeding situation, when the certification needed for enforcing the right to breastfeeding accorded by the Labour Code to working mothers.

18. Does your NHRI carry out work aimed at improving access to justice for women victims/survivors of gender-based violence, combating impunity and providing reparations relating to gender-based violence?

a. Regarding access to justice in a domestic context, this may include, but is not limited to, the following activities: free legal counselling, accompanying victims to court/through the justice system, use of transitional justice mechanisms (TRC, special court, indigenous methods, healing circles), work towards the adoption or modification of laws condemning and criminalizing all forms of gender-based violence against women (physical, sexual or psychological), work towards the development of a system providing reparation for victims of gender-based violence (allocations, funding). If so, please provide examples: The NHRI has the power to work towards the adoption or modification of laws aimed at criminalizing all forms of gender-based violence and at protecting victims. For example, considering that Portugal is a State Parties to the Convention on preventing and combating violence against women and domestic violence, the Portuguese Ombudsman, following a complaint, in 2015, suggested to the Ministry of Justice the criminalization of stalking and cyberstalking. The Criminal Code was amended after that. More recently, it issued a reccomendation to the Parliament, in 2018, for amending some parts of the law that sets forth the identification



register of convicts for sexual crimes against children. In specific and individual cases, although not having competence on criminal matters, the Ombudsman always reffers the complainant to the Public Prosecutor, and provides information on the legal scheme regulating legal aid, on existing entities aimed at providing support to victims and also on available shelters.

b. Regarding access to justice in the international context, this may include, but is not limited to the CEDAW Committee Individual Complaints procedure, regional human rights courts, submissions of information to the Special Procedures of the Human Rights Council, and other Complaint Procedures. If so, please provide examples: The NHRI will soon make available , through its website, information to the public on all international obligations and recommendations made to Portugal, including on women's rights and on international mechanisms aimed at monitoring and analysing complaints on those obligations.

19. Does your NHRI work on promoting and strengthening the establishment of women's shelters, counselling services, and other support services?

If so, please provide examples: In 2019, the department that deals with justice and security is planning to visit the current existent six domestic violence shelters and other accommodation and protection facilities, as human trafficking victims housing. The objective will be to understand the operating conditions of all structures that integrate the national network of support to the victims of domestic violence (following recently published legal framework), and to ascertain if the existing number (specifically for male victims) is appropriate.

20. Does your NHRI maintain or develop an evidence-based data collection on the nature, extent, causes and effects of all forms of gender-based violence, and on the effectiveness of measures to prevent and address gender-based violence against women and girls?

If so, please explain: The Ministry of Justice mantains a website where it presents data on criminal convictions, including for domestic violence against Spouse /Similar, Domestic Violence against Minors and "others Domestic Violence". Moreover, in the Commission's for Citizenship and Gender Equality website there are several available reports, namely on Homicides occurred in the context of domestic violence. Thus, the Ombudsman does not systematically or periodically need to proceed to such data collection. However, in contexts of reporting to the international bodies and entities, namely through alternative reports or questionnaires, the Ombudsman frequently asks for more detailed information. In this regard, it had already the opportunity to propose to the Committee on the Rights of the Child to recommend to Portugal to improve data on domestic violence .

Women's Economic and Social Rights



21. Does your NHRI work on helping or assisting women to overcome social, economic, political or environmental factors that can affect or exacerbate gender-based violence?

Social factors may include, but are not limited to, poverty, precarious employment and unemployment.

Economic factors may include, but are not limited to, the increased globalization of economic activities, repercussions of austerity policies, the extractive and offshoring industry and the implementation of multinational companies.

Political factors may include, but are not limited to, militarization, foreign occupation, violent extremism and terrorism.

Environmental factors may include, but are not limited to, pollution and climate change.

If so, please provide examples explaining how this issue(s) impact(s) violence against women and girls: Through its department 1, which deals with environment, housing and essential services, the Ombudsman may deal with complaints that may affect factors that enhance the risk of gender-based violence. This is especially important where informal settlements or inadequate housing are concerned. The Ombudsman receives numerous complaints related to the allocation of the families into the social housing. When a certain family household encompasses children or other vulnerable persons, the Ombudsman reinforces its efforts in order to find an adequate accommodation in cooperation with municipalities, social services and the central administration. It also monitors, through complaints, whether victims of domestic violence are being granted access to social housing. Moreoever, in its recent Alternative Report to the Convention on the Rights of the Child, the Ombusdman suggested to the Committee to recommend to the Government to carry-out a study on the persistent effects of austerity measures on child poverty and to increase its efforts to combat the persistent effects that austerity measures may still have on child poverty.

22. Does your NHRI carry out work aimed at preventing the sexual exploitation of women and girls?

If so, please provide examples: Yes. First, in its capacity of NPM, namely in cases of detention of migrant and asylum-seeker women and girls, the Ombudsman pays special attention to reception conditions of migrant women and children, namely unnacompanied children, who are more vulnerable to sexual exploitation. Secondly, in its capacity of Ombudsman, through its promotion and protections activities. Some complaints may also have an impact on the treatment of potential victims. For example, in a case where a Stateless girl had an enhanced risk of being subjected to trafficking due to vulnerability linked to lack of a specific nationality, the Ombudsman intervened in order to support the accomplishment of all the necessary administrative burocracies for the acquisition of nationality.



23. Does your NHRI address sexual harassment in the workplace, particularly as regards women in domestic work, women migrant workers and women with disabilities in the workplace or in sheltered workshops?

This may include, but is not limited to unwelcome sexually determined behaviour such as physical contact and advances, sexually connoted remarks related to skin colour/origins, showing pornography or sexual demands, whether by word or actions. If so, please provide examples: Although there are several complaints on mobbing in the workplace place, the Ombudsman has not been receiving complaints on sexual harassment. When complaints on mobbing concern public entities, the Ombudsman may intervene. In cases where allegations of sexual harrament may occur, the Ombudsman shall reffer the complaint to the General Labour Inspection, or to the Public Prosecutor, if the case has criminal nature. In both cases, though, the Ombudsman only takes the decision after analysing the case and always provides adequate information to the complainant.

The Portuguese Ombudsman is one of the two representatives for Europe in the GANHRI Working Group on Business and Human Rights , and thus, is particularly committed to develop activities aimed at fighting against sexual harrassment in the workplace.

Gender-based violence against women in the context of armed conflict

24. Does your NHRI carry out work aimed at preventing or combating gender-based violence against women and girls before, during or after armed conflict (including situations of war or occupation of territories)?

Such work may include, but is not limited to training of judicial and law officers, medical professionals and public officials on appropriate methods to respond to violence against women, meetings for women victims/survivors of gender-based violence guided by specialists, helping the State in the development and the adoption of a National Action Plan to address violence against women. If so, please provide examples: No.

25. Does your NHRI carry out work aimed at ensuring the involvement of women victims/survivors of gender-based violence that happened in the context of armed conflict, in all stages of the political peace process, including the determination of appropriate reparations?

If so, please provide examples: No.

CSW 63 priority theme

26. Does your NHRI carry out work aimed at ensuring gender equality and the empowerment of women and girls in relation to social protection systems, access to public services and sustainable infrastructure?



In answering this question, please note that CSW defines social protection, or social security, as "the set of policies and programmes designed to reduce and prevent poverty, vulnerability and social exclusion throughout the life cycle" (CSW63 Concept note¹). Access to public services includes providing clean water, sanitation and energy, ensuring social sustainability as well as considerations regarding the link between environmental sustainability (with the ongoing transitions to renewable energy) and gender equality. A sustainable infrastructure requires service quality both in physical infrastructure and in the interaction with service providers (eliminating discriminatory practices, denial of services, lack of training of health personnel regarding domestic violence issues).

Any such work may concern the availability, accessibility, affordability and quality as well as the adequacy of the related systems, services and infrastructure.

If so, please provide examples: As answered to in question 21., the Ombudsman, through its department 1, deals with complaints related to environment, housing and essential services, including access to water and energy, where issues concerning gender equality may arise. However, the major part of complaints are related to shortness, insufficiency or lack of quality of the services provided, and petitions related to gender equality are very rare. The same can be said regarding department 3, which deals with social security. In this context, the majority of the complaints are related to delays in the procedure or other systemic problems, and not with discrimination.

27. Please provide any additional information about projects, studies or challenges related to the specific situation of gender-based violence against women in your country: The Commission for Citizenship and Gender Equality has been developing several campaigns aimed at fighting against gender violence (campaign #VamosGanharALutaContraAViolência) an APP aimed at providing support and awareness raising on domestic violence (App VD – APPoio Contra a Violência Doméstica (2018), a Campaign for promoting the rights of Trans and Intersex Persons (#DireitoaSer), a Campaign aimed on fighting against trafficking of human beings and a Campaign aimed at promoting effective gender equality ("Minuto de Igualdade"). This latter focus on several aspects, such as division of domestic work, parental responsibilities, equal salaries and sexual harrassment in the workplace. The Commission webpage also makes available several studies on issues pertaining to its competence areas. The Observatory on Trafficking of Human Beings, on its turn, gathers and collects data on trafficking of human beings and other forms of gender violence for each year, and publishes the correspondent statistical annual report on its webpage (https://www.otsh.mai.gov.pt/recursos/). It also publishes handbooks for professionals and leaflets aimed at informing the victims on their rights. A victim's signaling card is also available in the website. As for the challenges, in Portugal there is an extremely high number of domestic violence cases reported in the last years. According to the Annual Security Report, 22.773 and 22.599 crimes of domestic violence were reported in 2016 and 2017, respectively . As for convictions, although there is no data for 2017, in 2016 alone there were 1.981 convictions.

¹ <u>http://www.unwomen.org/-</u>

[/]media/headquarters/attachments/sections/csw/63/egm/csw%2063%20egm%20concept%20note.pdf?la=en& vs=4211



Taking in consideration the Portuguese population and the criminality numbers in Portugal, this corresponds to a very serious and concerning phenomenon.

Thank you very much for filling in the questionnaire!

Please send the completed questionnaire by 16 November 2018 to the following address <u>survey@ganhri.org</u> with a copy to <u>chairsoffice@ganhri.org</u>.