**Questionnaire: The right to sexual and reproductive health rights of**

**girls with disabilities**

**I. Introductory comment**

The Ombudsman is an independent State Body, elected by the Parliament.

The existence of this State Body in Portugal dates back from the 70’s and was inspired by the Ombudsman institutions functioning in the North of Europe.

Since the 70’s, the Ombudsman traditional activity has been the informal and flexible investigation of complaints against Public Administration[[1]](#footnote-1).

Although the Ombudsman was created to defend citizens’ rights and promote human dignity regarding cases brought to his attention, over time the Ombudsman has taken on new competences.

In this context, the Portuguese Ombudsman is, since 1999, the National Human Rights Institution accredited with status A, in full compliance with the Paris Principles.

In addition, the Portuguese Ombudsman is, since 2013, the National Preventive Mechanism for the effects of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), with the special responsibility of creating an effective system of prevention of torture and other cruel treatments or punishments.

As the National Preventive Mechanism, the Ombudsman visits e.g, detention centers, psychiatric hospitals, temporary shelters, and military and police prisons.

At the office of the Portuguese Ombudsman functions the Department on Children, Elderly Persons and Persons with Disabilities (N-CID) that takes into account the specific needs of these three particularly vulnerable groups of citizens.

Since 2011, the Portuguese Ombudsman maintains a toll-free telephone hotline to receive complaints and assist Persons with Disabilities with information.

**II. Questionnaire**

**1. Please provide any information and statistics (including surveys, censuses, administrative data, literature, legal and policy documents, reports, and studies) related to the exercise of sexual and reproductive health and rights of girls with disabilities, with particular focus in the following areas:**

**• Harmful stereotypes, norms, values, taboos, attitudes and behaviours related to the sexual and reproductive health and rights of girls with disabilities;**

Non Applicable.

• **Sex education (in formal and non-formal settings) and access to sexual and reproductive health information;**

Sex education is vital for ensuring a healthy sexual and reproductive life as well as to enable informed choices.

In Portugal, sexual education comprises a wide range of measures applicable to all persons and does not discriminate on the grounds of disability.

As the State is bond to provide for a comprehensive health education of children and youths, information on sexuality is considered a crucial element.

Sexual education in school environment is mandatory[[2]](#footnote-2) and destined to all students in public elementary and high school (from the first grade to the twelfth grade) as well as to private and cooperative education entities benefiting from public funding.

Sexual education includes sexual anatomy, psychologic and behavior aspects regarding human reproduction, emotions and responsibilities, safe sex, birth control and sexually transmitted infections.

Sexual education approach is defined to be suitable for each school level according to their age group.

Formal programs involve partnerships with local public health services and access to consultations with physicians and nurses on a regular basis.

• **Access to child and youth friendly quality sexual and reproductive health services;**

Access to sexual and reproductive health services is essential to ensure gender equity as well as to prevent abuse and to foster respect for human rights.

According to the Constitution of the Portuguese Republic, everyone has the right to the protection of health[[3]](#footnote-3).

This right is fulfilled, among others, by means of a universal and general national health service which tends to be free of charge.

Throughout the Portuguese territory there are public hospitals and local public health facilities that provide citizens with medical and nurse services.

Family planning appointments and contraception are, without discrimination, free of charge.

Portugal has approved a National Health Plan[[4]](#footnote-4) which includes issues of reproductive health such as family planning, contraception, pre-birth assistance, abortion/termination of pregnancy and assisted procreation.

**• Prevention, care and treatment of sexually transmitted infections;**

The National Health Plan includes the identification of sensitive areas where prevention shall be improved and guidelines regarding sexually transmitted infections.

**• Violence against girls with disabilities impacting their enjoyment of sexual and reproductive health rights; and**

Female genital mutilation represents a serious threat to the physical and psychological health and integrity of women and female children.

Female genital mutilation is a human right’s issue as its practice violates the rights to health, security and physical integrity of the person, the right to be free from torture and cruel, inhuman or degrading treatment.

In addition, being usually performed between the ages of 0 and 15 years old, female genital mutilation constitutes a violation of the rights of the child.

As the procedure often results in death or is linked to neonatal death its practice can violate the very right to life.

Female genital mutilation is considered a criminal offense, foreseen in article 144-A of the Portuguese Criminal Code and punished with the penalty of imprisonment from 2 up to 10 years.

The crime of female genital mutilation covers any operation or intervention on the external female reproductive organs for no medical reason and includes clitoridectomy, infibulation, excision or any other act capable of producing damages to the female genital organs.

As the crime of female genital mutilation is considered a serious offense, both the preparatory acts and the attempt to commit the crime are punished with imprisonment[[5]](#footnote-5).

In addition, whenever the victim of female genital mutilation is under 18 years old, criminal proceedings will not end by effect of the limitation period prior to the 23rd anniversary of the victim.

According to the Portuguese Criminal Code[[6]](#footnote-6), whenever female genital mutilation is committed in circumstances that reveal its agent’s special censurability or perversity, the crime is considered to be an aggravated offense and thus punished with imprisonment from 3 up to 12 years.

The fact that the crime was committed against a person with disability[[7]](#footnote-7) is, pursuant to the law, one of the listed circumstances that reveal its agent’s special censurability or perversity.

• **Harmful practices, such as forced sterilization and child, early and forced marriage.**

This subject calls for a few words on diversity and human rights:

Humankind richness resides in its diversity and thus cultural diversity should be nurtured and respected.

In today’s world it is not redundant to recall that tolerance and diversity are common grounds for cultural understanding and global justice as different uses and traditions provide communities with a sense of belonging and constitute strong and secure foundations for peaceful coexistence.

However, there are some practices that cannot be tolerated as they constitute a major disrespect for fundamental rights.

Forced sterilization and forced marriage are considered serious violations of human rights and therefore qualified as criminal offenses and punished with imprisonment.

Early marriage is considered legally void, thus incapable of producing any legal effect, the reasoning being that, prior to a certain age, young people lack the capacity to enter most contracts, including marriage.

According to the Portuguese law, after completing 18 years old a person acquires marriage capacity although 16 year old young persons can marry.

In fact, young persons between 16 and 17 can acquire full capacity to exercise their rights if their marriage was dully authorized by their parents or their legal representatives.

If the above mentioned persons marry without prior authorization from their legal representatives, the marriage, although valid, will not produce its full effects and, as a consequence, the young person is unable to administer his/her assets and be responsible for his or their spouse’s debts.

Depending on the case *sub judice,* the lack of capacity of minors to consent can be an element of the crime of forced marriage as consent is impossible given the minor’s lack of maturity.

According to article 154- B, whoever forces another person to marry or to enter into a *de facto* union shall be punished with the penalty of imprisonment up to 5 years.

When the crime of forced marriage is committed against a person with disability, the penalty of imprisonment is of 1 up to 8 years.

Preparatory acts[[8]](#footnote-8) of the above mentioned crime, including the luring of the victim to a different territory from the one of its residency, with the intention of forcing him/her to marry or enter an equivalent *de facto* union, are punished with the penalty of imprisonment up to 1 year or with a fine up to 120 days.

When committed against a person with disability, the above mentioned acts are punished with imprisonment up to 2 years or with a fine up to 240 days.

According to the law, irreversible methods of sterilization such as tubal ligation can only be performed at the patient’s request and with her full consent, following a detailed clarification on its irreversible nature and risk.

Portuguese law expressly prohibits irreversible sterilization at the request of the State or at the request of third parties.

Thus, physicians can only perform irreversible sterilization procedures in incapacitated persons with prior authorization from their legal representative and following a well-founded report stating its necessity.

Tubal ligation on female children with deep mental disabilities requires prior authorization from the court.

Medical interventions, when performed against *legis artis*[[9]](#footnote-9) can be considered a physical injury offense.

Regarding abortion or termination of pregnancy, article 140, paragraph 1 of the Criminal Code punishes with imprisonment from 2 up to 8 years the performing of an abortion in the absence of a pregnant woman’s consent.

**2. Please provide information in relation to any innovative initiatives that have been taken at the local, regional or national level to promote and ensure the exercise of sexual and reproductive health and rights of girls with disabilities, and identify lessons learned from these.**

The General Health Directorate and the Gender Equality Commission develop extensive campaigns regarding, not only the exercise of sexual and reproductive health, but also genital mutilation.

There is a National Plan for Reproductive and Sexual Health put in practice by the General Health Directorate with a specific focus on young people[[10]](#footnote-10). The main areas of intervention are education, prevention and an extensive offering of medical support.

**The Ombudsman commentary**

Notwithstanding the fact that the Ombudsman has no record of any complaint regarding the limitation of the exercise of sexual and reproductive health and rights of girls with disabilities, this State Body remains attentive to any violation of human rights, especially towards more vulnerable persons such as children, people with disabilities or people in the penitentiary system or mental health institution.

Regarding the practice of medical procedures able to limit the exercise of reproductive rights by girls and women with disabilities the Ombudsman considers any intervention in this matter without ensuring that prior consent is legally and properly obtained to be absolutely intolerable.

The Ombudsman, in its intransigent defense of human rights and fully convinced that the promotion of human rights knows no borders, languages or nationalities, develops an intense and dedicated international activity in several *fora* such as the Ibero-American Federation of Ombudsmen’s Theme Network for the Defense of the Rights of Women.

1. Since the approval of the 1976 Constitution of the Portuguese Republic, the Ombudsman may request the Constitutional Court to declare the unconstitutionality or illegality of any legal provisions with generally binding force. [↑](#footnote-ref-1)
2. Law 60/2009, Regulation 196-A/2010. [↑](#footnote-ref-2)
3. According to the English version of the Portuguese Constitution available in the Parliament website <http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf>:

   “Article 64

   (Health)

   1. Everyone has the right to the protection of health and the duty to defend and promote health.

   2. The right to the protection of health shall be fulfilled:

   a) By means of a universal and general national health service which, with particular regard to the

   economic and social conditions of the citizens who use it, shall tend to be free of charge;

   b) By creating economic, social, cultural and environmental conditions that particularly guarantee the

   protection of childhood, youth and old age; by systematically improving living and working conditions,

   and promoting physical fitness and sport at school and among the people; and also by developing the

   people’s health and hygiene education and healthy living practices.

   3. In order to ensure the right to the protection of health, the state is charged, as a priority, with:

   a) Guaranteeing access by every citizen, regardless of his economic situation, to preventive, curative and

   rehabilitative medical care;

   b) Guaranteeing a rational and efficient nationwide coverage in terms of human resources and healthcare

   units;

   c) Working towards the socialisation of the costs of medical care and medicines;

   d) Disciplining and inspecting entrepreneurial and private forms of medicine and articulating them with

   the national health service, in such a way as to ensure adequate standards of efficiency and quality in both

   public and private healthcare institutions;

   e) Disciplining and controlling the production, distribution, marketing, sale and use of chemical,

   biological and pharmaceutical products and other means of treatment and diagnosis;

   f) Establishing policies for the prevention and treatment of drug abuse.

   4. Management of the national health service shall be decentralised and participatory.” [↑](#footnote-ref-3)
4. The National Health Plan for 2012-2016, extended to 2020. [↑](#footnote-ref-4)
5. Article 144.-A, paragraph 2 of the Criminal Code. [↑](#footnote-ref-5)
6. Article 145, paragraph 1 (c) of the Criminal Code. [↑](#footnote-ref-6)
7. Article 132, paragraph 2 (d) of the Criminal Code. [↑](#footnote-ref-7)
8. Article 154, paragraph c) of the Criminal Code. [↑](#footnote-ref-8)
9. Article 150 of the Criminal Code lists the requirements that medical acts must meet in order not to be considered physical injuries. [↑](#footnote-ref-9)
10. There is an individual website for this group: http://www.saudereprodutiva.dgs.pt/espaco-jovem.aspx?v=ffd739f8-c6c8-4326-91bd-7e0c32720839 [↑](#footnote-ref-10)