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Committee on the Elimination of Discrimination
against Women Human Rights Treaties Division
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62ND SESSION: REVIEW OF THE COMBINED EIGHTH AND NINTH PERIODIC REPORT OF PORTUGAL - QUESTION 7 OF THE LIST OF ISSUES CONCERNING HARMFUL PRACTICES¹

Dear Ms Hayashi,

In advance of the Committee on the Elimination of Discrimination against Women's review of Portugal, Amnesty International would like to submit information and recommendations in relation to female genital mutilation (FGM) in Portugal. I would appreciate if you would circulate this letter to the Committee members.

This letter focuses on recommendations to ensure implementation of new legislation on FGM and measures adopted under the second National Programme of Action (2011 to 2013) and the third Programme of Action for the Prevention and for the Elimination of Female Genital Mutilation (2014 to 2017), included in the Fifth National Plan to Prevent and to Combat Domestic Violence and Gender-based Violence (2014-2017).²

PREVALENCE OF FGM IN PORTUGAL

Female genital mutilation (FGM) is a form of gender discrimination and a violation of the human rights of women and girls; it may amount to torture if the state is complicit or if it fails to act with due diligence to prevent or prosecute it. Amnesty International is concerned that hundreds of girls residing in Portugal have been subjected to or are at risk of FGM.

According to data from the European Institute for Gender Equality (EIGE)³, between 269 and 1096 girls under the age of 18 were estimated to be at risk of FGM in Portugal in 2011. The majority of them originate from Guinea-Bissau, Guinea and Senegal.⁴ A more recent report from July 2015⁵, estimates that 1830 girls (aged 15-19) residing in Portugal have been subjected to or are at risk of FGM. The

¹ CEDAW/C/PRT/Q/8-9.

² Official Journal, Nr, 253, 1st series, 31 December 2013, Resolution of the Council of Ministers 102/2013, V National Plan for the Prevention and the Fight against Domestic Violence and Gender Violence 2014 -2017, available in Portuguese at: <https://dre.pt/application/dir/pdf1sdip/2013/12/25300/0701707035.pdf>.

³ European Institute for Gender Equality (EIGE) is an autonomous body of the European Union, which was established to contribute to and strengthen the promotion of gender equality.

⁴ The European Institute for Gender Equality (EIGE) Report, Pp.65-66, available at: http://eige.europa.eu/sites/default/files/documents/MH0215093ENN_Web.pdf.

⁵ New University of Lisbon, "Female Genital Mutilation: Prevalence, Sociocultural Dynamics and Recommendations for its elimination", 2015.

report also identifies Egypt as another country of origin with the highest number of girls subjected to FGM.⁶

In a survey among 52 healthcare professionals from the areas of Lisbon, Amadora and Almada, 27% of those surveyed confirmed having observed “victims” of FGM.⁷

MEASURES TO TACKLE FGM IN PORTUGAL

The National Healthcare Service (NHS) adopted specific guidelines for providing support to women and girls affected by FGM. These guidelines create an obligation for healthcare professionals working in the NHS to record all cases of FGM. However, such an obligation does not extend to healthcare professionals in private practice.

A Protocol for identifying and monitoring FGM cases was issued by the Ministry of Health and the National Commission for the Protection of Children and Youth at Risk.⁸ According to 2015 New University of Lisbon report,⁹ by the end of January 2015, a year after the creation of a Platform of Healthcare Data for FGM Monitoring, 43 cases were registered on the database.¹⁰

The practice of FGM is more widespread within certain communities, though cases vary according to factors such as ethnic groups, geographical location and income.¹¹

CRIMINALIZATION OF FGM

Amnesty International welcomes new legislation on FGM, adopted in 2015, in line with the Council of Europe Convention on preventing and combating violence against women and domestic violence. The new legislation defines FGM as a specific crime through the introduction in the Penal Code of Article 144-A “Female Genital Mutilation”, which specifically establishes the following: “1. Whoever genitally mutilates, totally or partially, a person of the female sex, through clitoridectomy, infibulation, excision or any other harmful practice regarding the female genital organ for non medical purposes is punishable by imprisonment for 2 to 10 years. 2. Preparatory acts are punishable by prison for up to 3 years.”¹²

This legislation came into force on 5 September 2015, therefore it is too early to review its implementation and assess its impact. Amnesty International would like to point to recommendations below to ensure these provisions are indeed implemented in practice.

Under previous legislation, only three FGM related cases reached courts. According to a study carried out by the Portuguese Public Ministry Review, there were no convictions, either due to application of the statute of limitations, lack of evidence, or due to absence of a specific crime to be applied.¹³

⁶ Female Genital Mutilation: Prevalences, Sociocultural Dynamics and Recommendations for its elimination, p.61: http://www.cig.gov.pt/wp-content/uploads/2015/07/Relat_Mut_Genital_Feminina_p.pdf.

⁷ See Bulletin of the Portuguese Bar Association, p.36, available at: <http://www.oa.pt/upl/%7B4c0bd738-fc65-49cc-a7fc-88003bbb9d69%7D.PDF>.

⁸ Statement of the joint-Secretary of State of the Minister of Health: <http://www.portugal.gov.pt/pt/os-ministerios/ministerio-da-saude/mantem-se-atualizado/20130206-seams-mutilacao-genital.aspx>; see also news paper Jornal de Notícias: http://www.jn.pt/PaginalNicial/Nacional/Saude/interior.aspx?content_id=3037861.

⁹ New University of Lisbon, “Female Genital Mutilation: Prevalence, Sociocultural Dynamics and Recommendations for its elimination”, 2015

¹⁰ Female Genital Mutilation: Prevalences, Sociocultural Dynamics and Recommendations for its elimination FGM prevalence study, p.7. See also Público Newspaper online article: 43 cases of FGM in one year: <http://www.publico.pt/sociedade/noticia/43-casos-de-mutilacao-genital-detectados-num-ano-1685198>.

¹¹ Female Genital Mutilation: Prevalences, Sociocultural Dynamics and Recommendations for its elimination, p.54.

¹² Official Journal, p.3, Article 144-A.

¹³ Portuguese Public Ministry Review, Oct-Dec2013, pp.114-117: «V. NATIONAL KNOWN CASES OF FGM : In order to better comprehend the phenomenon which we are dealing with and its problems, we present a small compilation of the three known cases of female genital mutilation in portuguese courts until today. 1. Fatima (...) Due to the long period of time elapsed regarding the facts, that part (the FGM part) of the inquiry was archived, due to the statute of limitations, having proceeded to trial regarding the facts which constituted ill treatment. » (pg. 115); « 2. Safia (...) The inquiry was archived due to the fact that, 'according to the findings of the forensic medical exam', the 'facts would constitute, in abstract, the crime of simple offence to bodily integrity', from Article 143º of the Criminal Code.» (pg. 116). «3. Maria (...) The inquiry was archived on the 8 september 2011, due to the absence of sufficient evidence regarding the perpetrator of that crime» (pg 117).

Notably, girls residing in Portugal are often subjected to FGM after they are taken abroad, mostly to countries of origin during school holidays. It is therefore vital that extraterritorial application of the new legislation is taken in due account by Portuguese authorities.¹⁴ Similarly, they must take all necessary measures to establish jurisdiction over an FGM offence when an alleged perpetrator is present on their territory.¹⁵

RECOMMENDATIONS

In line with Joint general recommendation No. 31 of this Committee and No. 18 of the Committee on the Rights of the Child on harmful practices, Amnesty International recommends that the government of Portugal:

- Effectively investigate and prosecute all cases of FGM and ensure extraterritorial application of the new legislation;
- Amend legislation to ensure that healthcare professionals in private practice are also bound to record FGM cases similarly to healthcare professionals in the National Healthcare Service.
- Introduce comprehensive preventive measures to tackle FGM;
- Ensure that women and girls subjected to or at risk of FGM who decide to report it, are offered health care, psychological support and social services, regardless of whether they are willing to press charges or testify against the perpetrators;
- Enhance the capacity of the healthcare system to meet the specific needs of the women and girls living with FGM, including through provision of specialized services;
- Implement article 144-A of the Penal Code regarding FGM in line with international human rights standards.

I hope that this letter will be of use to the Committee. Please do not hesitate to contact me should you need any further information.

Yours sincerely,

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International Advocacy Program

¹⁴ See Article 44 of the Istanbul Convention, particularly Article 44, nr. 3 and nr. 5, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008481d>; See also Report of the Office of the United Nations High Commissioner for Human Rights "Good practices and major challenges in preventing and eliminating female genital mutilation", A/HRC/29/20, paragraph 14.

¹⁵ Ibid.