



## Working Paper on Intervention Against Domestic Violence in Portugal<sup>1</sup>

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### Part 1: The Intervention Sequence and the Response to Core Questions

#### 1 Empirical Data and case story

This study is part of the project: “Cultural Encounters In Interventions Against Violence” - CEINAV. One of the main goals of this transnational project is to explore the professional intervention practices in three types of violence (child abuse and neglect, domestic violence and sexual trafficking), across four countries: Germany, Slovenia, the United Kingdom and Portugal.

In each country the researchers conducted focus groups with professionals from diverse areas who encounter victims of violence in their daily practices (see [background paper](#)). Participants were given a case story in three sequences to discuss; the same scenario, with a few country adaptations, was presented and six core questions were asked to the participants. The content of the groups was then analysed according to an agreed methodology.

The present paper describes the main themes, ethical dilemmas and contradictions that Portuguese professionals who work closely with domestic violence victims experience in their daily practice. The researchers conducted three workshops using focal group methodology, with two half-day sessions each. The composition of the workshops consisted of 27 professionals: 21 females and 6 males, from 12 cities of the North, Centre and South of the country.<sup>2</sup> The professionals present were: 7 representatives of urban and rural police; 4 magistrates (judges and prosecutors); 2 teachers; 2 medical doctors; 2 nurses; 1

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<sup>2</sup> Amadora, Barcelos, Gondomar, Lisboa, Penafiel, Porto, Póvoa, Santarém, São João da Madeira, Setúbal, Vila Franca de Xira, Vila Nova de Gaia.

representative of a municipality; 1 representative of the Gender Equality Commission; 4 representatives of Non-governmental organizations (NGO), shelters and Women's Centre; and 3 representatives of "Private Institutions for Social Solidarity" (IPSS), specifically, shelters and victims centres (see frame 2.1.5 for more information). In the following sections we will describe: the scenario presented in the workshops; the intervention sequence proposed by the participants; the participants' answers to the core questions; the key frames that emerged; and the ethical issues and dilemmas that were expressed by the professionals. Finally, we finish the paper with a summary of the main conclusions taken from the workshops.

### **1<sup>st</sup> PHASE OF THE STORY**

*Paula, (32, two children) moved three years ago with her husband to a medium-sized town, some 200 km distant from the area where her family lives. There have been loud quarrels in their marriage, increasingly so last year when Paula was pregnant with her 2nd child. The neighbors in the flat above them called the police twice because of this; the police came, but they found no sufficient reason to intervene. Another neighbor has noticed several times that she has bruises, but does not know her well enough to speak to her about it. The older child, who began school last fall, has not yet made any friends and shows an unusual degree of aggressive behavior. Paula has repeatedly asked her family doctor to prescribe her sleeping pills and complains of chronic headaches.*

### **2<sup>nd</sup> PHASE OF THE STORY**

*Six months later, the situation has escalated and Paula is now seeking help. She doesn't have family or friends in that city, and is too much ashamed to talk about this problem with work colleagues. Several of the professionals who have some kind of contact with Paula have begun to worry about the possibility of a domestic violence situation.*

*Her husband brings her to the hospital with bruises and a dislocated finger, he tells the nurse that she fell downstairs and she nods in agreement. But while she is alone and being examined, she admits that her husband caused the injuries. The hospital gives her a card with a hotline number she can call for advice and help. She calls the hotline without telling them her real name or her address and asks what she can do; she tells them that she is very afraid of her husband but doesn't want to leave him because of the children. They tell her that she has the right to live without violence and advise her to contact the police, but they also tell her about a specialized NGO where she can get support.*

### **3<sup>rd</sup> PHASE OF THE STORY**

*The violence has continued, and Paula is now taking further steps to end violence and possibly thinking about divorce. She makes contact with a specialized NGO support worker and confides that she is frightened of what her husband might do to her if she makes a formal complaint. She tells them he once threatened her he would kill her if she ever left him.*

*The support worker explains that there is the obligation to report and assures Paula that an urgent restraining order can be requested to ensure her safety. With the support of the NGO, Paula reports the situation and applies successfully for such an order. A restraining order with the electronic device is issued and her husband is obliged to leave and to stay away from the residence, and also prohibited from making contact with Paula.*

*Later on, the police discovers that the restraining order has been breached by the husband. Paula returns to the NGO saying that her husband has threatened her and their children to death with weapons. Later on she denies having disclosed these threats to the NGO stating that everything is all right now. The NGO professionals decide to inform the police about the weapon threats and the risk to the children as well.*

In the following section, the paper presents the intervention sequence described by the professionals, and their responses to the core questions.

## 2 Intervention pathways from the perspective of professionals

Almost all of the participants emphasized the importance of both ensuring the woman's disclosure of the domestic violence and providing support so she follows through with the complaint and testifies in court. In this sense, the participants believed that all the agencies (health system, social work services, police/security forces and, women's centres) should help women make the decision of presenting and maintaining a complaint against the perpetrator, and to "speak out" in the court.

During the workshops, professionals had divergent perspectives about their own and others' roles, as well as disagreements about which institutions were the most appropriate to help in the situation presented and when. The largest discrepancy was about who should be in the "first line" of the intervention (see 4.1.2.). We identified two sequences that will be described as follows.

### Sequence 1:

On the one hand, the police officers and the magistrates (prosecutor or judges) emphasised a sequence of intervention without referring to women's support centres and shelters:

- The police go to women's home to make an inquiry on the veracity of the facts.
- From this inquiry, a report is made and sent to the prosecutor.
- The prosecutor validates the police action and asks for more inquiry if necessary. This professional also decides if the case should go to prosecution and if there are grounds for the application of measures for the offender and/or for the victim. In this perspective, police is expected to register "exactly what they see, without making any judgements". The participants in the workshops expressed the idea that "everything goes through the police/security forces".
- If there is sufficient evidence to make a conviction or acquittal, the case goes to the court.

### Sequence 2:

On the other hand, the representatives of Women's Support Centres and Shelters mentioned that sometimes the women "escape to a shelter, *directly*", even without any resources (money, clothes, documents, etc.). Professionals explained that a woman doesn't need to file a complaint to be entitled to her rights of protection and safety and she can count with the support of the Women's Centres and Shelters. In Portugal, however, a woman cannot go to a shelter directly; she has to be referred to by state-certified agencies<sup>3</sup>. They can be accepted in shelters if referred by health professionals, social services, IPSS, NGOs, or Women's Centres. To the professionals, the word "directly" meant that the survivors do not need to make a complaint with the police and the criminal justice system.

### **(1) As a professional what might lead you to try and discover whether this might be a domestic violence situation? Or, on the other hand, what would keep you from getting involved?**

Some differences emerged between the workshops about how to conceptualize this situation. In one of the workshops the participants immediately understood this situation as domestic violence, pointing to the indicators presented in the storyline: the isolation of the woman, the police being called twice, the behaviour of the child in school, the visible bruises of Paula and her complains about chronic headaches. Therefore, the debate was around when and how to intervene — but all agreed on the need for an

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<sup>3</sup> The certification is currently conferred by CIG — Commission for Citizenship and Gender Equality. Some of the agencies run women's support centres or victim centre *and* shelters.

intervention, although the word “intervention” had different meanings for professionals (see 3.2, frame 7).

In the other workshop, the general tone was the doubt/uncertainty regarding the situation presented and the need to ask Paula what had happened, because, in their opinion, more information was needed to decide what to do. They considered that it was necessary to consolidate the information from all the different sources referred in the storyline — school, physician, neighbours, and police. Then, as soon as the professionals confirmed that this is indeed a DV situation, they would immediately intervene, especially due to the two children involved.

**(2) How might it come about that your institution or profession is the place to which Paula turns? Or how else might it happen that someone in your position would be involved?**

Concerning these questions, the participants’ perspectives also diverged which enriched the debate and allowed us to expand our analysis. The groups were divided between what we can call the “criminal justice professionals” (police and magistrates) and the “social sector” (NGO representatives, IPSS representatives, physicians, nurses, municipality representative, psychologists, teachers). This division was more evident in one workshop than in the others.

For some participants, the police officers are the crucial professionals to whom the victims usually turn, some of them arguing that the police is the “first line” of the intervention. However, others disagreed about the role of the police, saying that the police intervention comes after everything else has failed, that is, the “ultimate line”/“last resort” (see dilemma 5.1.2.). Some participants referred to the key role that the education and health systems have in flagging and initiating an intervention in cases of domestic violence. In particular, representatives of the Women’s Centres (NGO) advocated that the “port of entry” of the survivors should be the health system, instead of the police. While some physicians agreed that the health centres can be a “port of entry”, other health professionals stated that, in reality, it is unlikely that the health system can act as the “first entry” for a victim because the bureaucracy of the health system and its focus on rapid treatment interventions doesn’t allow time for the physicians to ask about domestic violence.

On the other hand, one physician shared with the group that she started to ask about domestic violence in routine medical appointments, along with asking about the family health history. She found many DV cases this way that she would not otherwise have found had she not simply asked about it (see also 3.2, frame 1).

Some teachers mentioned that the educational system also has a very important role due to its proximity to children and families. In particular, some teachers talked about the important role of schools in “breaking the women's isolation.”

The participants seemed to be in agreement in regards to the idea that shelters *should be* the “ultimate line”, that is when a life is in danger. The professionals also assumed that when the victims/survivors arrive at the shelter they have already made the decision of breaking up the violent relationship.

Reporting was also considered an example of involvement. Many professionals agreed that everyone should report, not just professionals but any citizen (see 3.2, frames 1 and 2). However, others alerted that one should be careful about reporting and take into consideration the woman's will as well as her safety and the protection of her children (see dilemma 5.1.1.).

**(3) Would you consider asking Paula directly about DV? What reasons might there be not to do so? How important do you think this is?**

Questioning Paula was an obvious procedure and it was discussed after previous core questions before this one was asked (see also 2.2, frame 1). The professionals defended their expectation that everybody could and should ask Paula about what happened. Asking people about their own private lives was

framed in Portuguese culture. According to the participants, even neighbours who do not know Paula closely should ask her about the bruises they observed or the loud quarrels they heard. However, the professionals did not consider that simply asking Paula about what has been going on does not necessarily mean that she will disclose the violence she may have been a victim of and may even raise some defensiveness, especially if the inquirer is not a professional.

**(4) When might you pass on information to relevant authorities or institutions without the consent of the victim? Or, on the other hand, what might keep you from doing it?**

Sharing information among agencies is taken for granted regardless of the woman's consent, which was not considered. Practitioners think that sharing information is a very important procedure to ensure the efficacy of the intervention through multidisciplinary lens and perspectives. While this was a widely held belief among the professionals, they also added that this procedure does not happen very often. The participants referred to the workshops as a way to get the diverse professionals together to debate domestic violence issues and dilemmas and therefore improve their own action. In one of the workshops, the participants focussed the discussion on the existence of weapons. In this case, the need for sharing information was even more obvious. However, the first teacher introduced the idea that agencies should also take into account the right to privacy of the victims when they share information (see dilemma 5.2.1).

**(5) When could it be right/appropriate to initiate measures of protection from further violence, even against Paula's wishes? What concerns might prevent you from doing this or cause you to hesitate?**

The issue of guns led professionals to consider the protection orders with the argument of protecting the children [of the storyline].

It was also discussed that restraining orders with or without electronic devices vary according to the country's region and local courts. Professionals of the NGO's shelters and NGO's women's centres shared worries about the lack of supervision of the restraining orders, and what happens if an offender breaches a restraining order or breaks the electronic device. Framed in Portuguese legal philosophy, prison is the "last resort". Several cases of breaches of protection measures were debated between some professionals who questioned the impunity of convicted offenders when they do not comply with court decisions.

Some professionals were also concerned about the few successful convictions, due to what they called "the problem of the proof" (see section 3.2, frame 5).

**(6) What difference might or should it make if the family belongs to a cultural or ethnic minority? Would your strategies of intervention differ in any way from what you have described in the first part?**

In general, intervention with women from cultural minorities was described as following the same procedures as with other victims. Roma communities were the minority most commonly referred to. Professionals also shared their concern with the lack of social responses for Roma women (see also dilemma 5.1.4). Besides Roma communities, participants also mentioned other minorities<sup>4</sup>: African women, Brazilian women, Eastern European women, other immigrant women, women with disabilities, the elderly (either elderly women, or elderly people in general), and children of the women in shelters.

In general, professionals balanced between the perspective that the intervention should be the same and the view that "every case is a case", in other words, every case is unique. The uniqueness of every case was not only mentioned regarding minorities but in general as well.

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<sup>4</sup> The concept of "minority" is not frequently used in Portugal, in this context, and people have different meanings for it, differing from the one used in sociological literature (see social-cultural country context paper, CEINAV 2014).

Concerning intervention with Roma women, some professionals mentioned rather creative ways to connect with the victims and respect their culture while at the same time assuring their protection and safety. We identified three slightly different views about intervening with survivors from Roma Communities:

1. Acting exactly the same way as with the other victims using the argument that the Portuguese law is the same for everybody;
2. “Adapting” to the “culture”. Five strategies were mentioned: going to the camp of the “Gypsy” disguised as social workers to have permission to go inside the camp; talking with the patriarch or the matriarch and leave the resolution of the DV to the chef of the clan; contacting a Roma women association, for instance the AMUCIP<sup>5</sup>; contacting a “Gypsy” association; and involving the woman’s family;
3. Reflecting upon how the different types of intervention are appropriate for the safety of the Roma women. No specific course of action was presented.

This apparent contradiction between using the same procedures with everyone and considering every case as unique has been observed in previous studies (see also Magalhães et al. 2012b).

## Part 2: Framing of the Problem and the Intervention

### Introduction

In Portugal, domestic violence is a criminal offense that includes violence not only against women, but also against men, children, the elderly and other vulnerable people, in intimate and/or family relations (see also Magalhães and Forte, socio-cultural context paper, CEINAV, 2014). Forms of violence against women outside the family setting are excluded from the definition, except violence in dating, because it is conceptualized an intimate relationship. Despite its limitations, this definition has the merit of including diverse types of intimate/family violence.

In spite of its inclusiveness, the concept of “domestic violence” has left out other forms of violence against women, for example, rape and sexual harassment at work, among others. It also provided a contested and fragile discursive space for violence against women inside “domestic violence”: in public discourses, it is always argued that “domestic violence” *does not mean* “violence against women”. While it is true, the public discursive structures involve concomitant an implicit devaluation of the victimization of women.

Several authors (e.g., Tavares 2010) attribute this to fragile and fragmented feminist and women’s movements in the country. The social policies against domestic violence began in 1999<sup>6</sup>, mostly under the pressure from EU and international political agenda. The first shelter was established in 2001, in Lisbon, and began to accept survivors in 2002.

As many authors have highlighted (see for instance Stoer, 1986), a characteristic of the Portuguese legal system is the transitory nature of the laws not only in regards to domestic violence but in all areas of social life. These authors note that since the first republic (1910s), the lawmakers have been very prolific

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<sup>5</sup> AMUCIP - Association of “Gypsy” Women of Seixal – the women call themselves *ciganas*, as it can be noticed in the acronym.

<sup>6</sup> RCM 55/99, June 15.

in developing new laws. However, many of these laws never come to fruition due to the frequent changes in political governments. Since the practitioners in the field are aware of the transitory nature of the laws, they are reluctant to adapt to the new policies as they expect them to change in the near future (3 to 4 years). This characteristic of the Portuguese legal system may help us understand why, in regards to domestic violence, many contradictory laws have been proposed in the last 30 years. These reflect the frequent changes in political governments and their underlying perspectives on victims and violence.

The crucial legal frames of legislation will be presented in the following sections: public crime, establishment of the status of the victim in the recent Law 112/2009 of September 16, the issue of the flagrant *delictum*, the need of direct testimony, and the network of institutional support for domestic violence victims (as already mentioned, not only for women).

### 3.1 Key frames in legal and institutional documents

#### (1) Public-crime

After several legal changes, domestic violence is, since 2000, a public crime. A crime is considered “public” when the prosecution doesn’t need the victim’s complaint or consent to move forward with the legal proceedings. Quoting our legal paper wrote by Clara Sottomayor:

“It was only in 1982 that a new Penal Code included a crime of marital abuse (only physical) “gross violation of a woman’s integrity” as public crime, which means there is no need of the victim’s complaint. Although the law and case-law specified requisites like the need for cruelty and malevolence/bad faith to be considered crime. However, in the 1995 Amendment of the Penal Code, this crime turned back to a private one, that is, depending on the complaint of the victim. In 1998, turned to be a «semi-public» crime, meaning the prosecutor could evaluate the situation and go forward with the accusation, independently of the victim’s decision. It was only in 2000 that domestic violence became again as public crime.” (Sottomayor, CEINAV Legal Country Context paper, 2014, p. 6)

Domestic violence is a public crime among other crimes that have this characteristic: homicide, infanticide, child maltreatment, kidnapping, among others.

#### (2) The status of the victim

The Portuguese legislation for victims of domestic violence establishes the “Status of the Victim”, in the Art. 14<sup>th</sup> of the Law 112/2009, which includes the victim’s rights, and the grant of prompt and effective support. This is applied to all victims including illegal immigrants. As it is specified in the Legal context paper, this Status establishes:

- Information right about the criminal process and about services and organizations to obtain social support.
- Protection right, if the authorities evaluate a risk for the life of the victim.
- The procedural rights of victims: the right to be heard by videoconference with distortion of the face; the right of not meeting the offender when providing statements. In contradictory terms, this law previews a «Restoring encounter» between the offender and the victim (art. 39<sup>th</sup>) to promote the «social peace». This is an indicator of the social belief that society can reconcile victims and offenders and that this is the basis for the social peace, with the implicit acceptance of the victims' silence.
- Specific support rights: housing, mobility in the workplace, legal aid, children's facilities, psychological support and free access to the public health system.

- Compensation for damages and restitution of goods.” (*idem*)

### **(3) Flagrant delictum**

*Flagrant delictum* has been another aspect of the Portuguese legal system that has suffered many changes in recent years. The most recent Law (n. 112/2009) does not require the police to catch an aggressor attacking the victim to open a legal file in cases of domestic violence. However, this is still an area of confusion for professionals. Therefore, an amendment to the Penal code was introduced in 2011 considering that the dubiety of this issue is a major problem for the victims because most of the domestic violence offences are committed out of the public eye. Thus, the issue of the *flagrant delictum* is a strong obstacle for the victims’ protection. As Clara Sottomayor refers in the Legal Country Paper:

“Another problem of Portuguese legislation on domestic and gender violence concerns the definition of the need (or no need) for *flagrant delictum*, meaning that the police officers have had fluctuation in their mandate to act. In spite of domestic violence as a public crime since 2000, in the changes of the Penal Code of 2007 the legislator introduced a need for *flagrant delictum* evidence, for all types of crimes, with no exception for domestic violence. As it is well known, this requirement meant a major difficulty for the police officers to act on site. Fortunately, this changed in the Law n. 112/2009, of 16<sup>th</sup> of September, when was also established the “status of the victim” (Art. 14<sup>th</sup>, updated by the Enactment/Regulation of the Law n. 7108/2011, 11 May). With this instability, it is not surprising that professionals have difficulties to define a coherent orientation in their intervention.” (Sottomayor, Legal country paper, p. 10)

### **(4) Direct testimony**

In the Portuguese judicial system, “direct testimony” is a crucial part of the evidence in any legal proceeding (not just in domestic violence). Also, for women to have the status of victim, mentioned above, “it is essential to denounce the crime to the authorities” (in Sottomayor, Legal country paper, p. 8). Although the requirement that women speak out in court was a dominant frame, one magistrate advocated the possibility of using “indirect testimony” in cases of domestic violence. Despite being allowed by the Law, the “indirect testimony” is rarely applied.

### **(5) Institutional support network to domestic violence victims**

Currently, there is a network of shelters and women’s centres throughout Portugal, which the State financially supports through the so called “cooperation agreements”. There are 35 shelters<sup>7</sup> (Portugal has 10 million of inhabitants) and 72 women’s centres, run by diverse institutions, ranging from governmental agencies (CIG – Citizenship and Gender Equality Mechanism), social solidarity institutions – IPSS - (78%) and Non-Government Organizations (4.8%) (Magalhães et al. 2012a).

The above mentioned institutions — NGO and IPSS are of two different kinds of entities. IPSS means “Private Institutions for Social Solidarity”, and they represent the so-called “third sector”. They have a mixed status — private and public —, that is, they have a statutory obligation to fulfil the social policies determined by the State in exchange for funding and some benefits. In these benefits is included the exemption of paying some taxes or paying reduced Social Security taxes and the VAT. The great majority of these institutions belongs to the Catholic Church and are based in charitable principles.

Distinctively, NGOs receive funding from the State for a certain facility — in DV it can cover a shelter or a women’s centre — and have the obligation to use those funds for that purpose. They may be audited to

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<sup>7</sup> According to Portuguese regulations, “shelter” is a residential unit for six months and the law defines the rules of its uses. One of the rules is that the shelter should have a multidisciplinary technical team.



corroborate the appropriate use of the funds. The NGOs are not exempted to pay all the taxes, but they are free to contest or challenge governmental decisions. Usually they are women's associations or local development associations.

Along with these distinctions, NGOs run "women's support centres, and IPSS run "victims' support centres", serving all kinds of victims of crime, not only domestic violence victims.

As previously mentioned, currently IPSSs and NGOs have to be certified by CIG – Citizenship and Gender Equality Mechanism.

In regard to law enforcement, the participants in the Domestic violence workshops in Portugal belonged to either the rural (GNR) or the urban (PSP) police. Police agencies, either urban or rural, have special offices to serve victims of domestic violence. The special offices of the rural police (GNR) are called NIAVE<sup>8</sup> and are distributed across national territory, in a total of 22 offices, with 120 teams to support victims of diverse forms of violence. The urban police (PSP) also has special offices to receive these victims, called EPAVs<sup>9</sup>. The EPAVs of the PSP are distributed across the national territory, in a total of 22 offices with a total of 621 police officers<sup>10</sup>.

### 3.2 Key frames from the perspective of intervention professionals

#### (1) Reaching out to the victims is the role of the "closest people" and civil society

The tone in all the workshops was that the family and overall community should pay attention to the signs of domestic abuse. The following excerpt from a magistrate is an example:

**Magistrate:** (...) *in regards to domestic violence I think that, unless the person lives stuck on an island, it is impossible that a brother, a brother in law, a nephew, a cousin, the father or the mother (...) are not aware of the situation. And they close their eyes. And someone, when is a victim, cannot speak because it is painful, it's a whole project that failed, of life, of marriage, it's an entire life that is failing. And if the closest people cannot see that that person (...) is going through a hard time (...) [the victims] are not going to come forward because they feel unsafe and think that [the DV] is their fault. Therefore, in this aspect [as personal witnesses of DV] we all have a lot to evolve (...) [as professionals] I think we have all done our job. (...) But, reaching out to the victims is [the role] of the closest people, and the society has a great, great step to take, because we all do still have a lot of prejudice.*

A similar idea that every citizen is responsible for flagging suspected situations of domestic violence was also offered by an IPSS shelter representative:

**IPSS shelter:** *Violence is very easy to notice and I think that these neighbours [in the storyline] were the first to notice. (...) Here, (...) the neighbours and the family continue to not want to assume, not want to intervene. (...) As citizens, all of us, and family in particular, should notice the signs and the symptoms. And unfortunately, I think that we ignore or have prejudice, and all of this is exacerbated by fear.*

Moreover, in statements like the above, professionals affirmed that they are prepared to intervene with everybody and help victims with a "careful intervention", taking into consideration their vulnerable

<sup>8</sup> In Portuguese: "Núcleo de Investigação e Apoio a Vítimas Especiais" – NIAVE.

<sup>9</sup> The acronym means: "proximity units to support victims" – in Portuguese, "Equipas de Proximidade e de Apoio à Vítima.

<sup>10</sup> For the PSP see <http://www.psp.pt/Pages/programasespeciais/violenciadomestica.aspx?menu=2>, retrieved December 12, 2014. For GNR, see <http://gnr.pt/default.asp?do=0z7zr/avn8r> retrieved December 12, 2014.

situation, including the risks to their safety and well-being. To the participants the main vehicle for family, neighbours and the remaining community to find out more about the domestic violence situation, is to directly inquire and ask the victim about it. In Portuguese culture, asking Paula about her personal life is seen as a 'normal' and relevant attitude. Another instance of this idea can be observed in the following sentence:

**NGO Women's Centre:** *The neighbours, everybody... It is not needed to know someone well enough to talk with him or her. As a matter of fact, maybe even before reporting [the DV situation] to the authorities, unless it is, clearly, a life threatening situation,(...) it would be important to talk with her, despite not knowing her well enough.*

The important role of the community and the family is understood in the situation of victimization, where shame, self-blame and societal prejudices are obstacles women face to ask for help. This idea connects with Renate Klein's (2004) research in which she defines *informal third parties*.

## (2) The issue of the "public" crime and the obligation to report

For the majority of the professionals, to report is taken for granted, that is: domestic violence is a "public" crime as a result of the demands made by the women's movement and organizations supporting victims. This means that the burden to report was removed from the survivors and placed in the State or statutory agencies, as evidenced by the following statements:

**Police:** *... in Portugal, domestic violence is a public crime, therefore, when it is known, and a criminal police authority becomes aware of this type of crime, it has the obligation to notify.*

**Police:** *Public crime [means that] everybody can report. In my opinion, when the police officers went to Paula's home, alerted by a neighbour, and didn't inquire the neighbours to support the police report, it was a failure [sotto voce].*

**Police:** *Everybody, here, is a citizen, therefore, we may always be neighbours [of a potential DV victim]. We, the professionals who are in the field, don't need to be the only ones to act in this area. That is, if we are the neighbours and we have called the police twice, I think this is a clear intervention. What really happened we don't know. If I am the neighbour [feminine] and I feel that she really has bruises, it is my duty as a citizen to report, because this is a public crime. If I hear noises and afterwards I see Paula with bruises, I will report this public crime to the police (...)*

In addition to the argument that DV is a public crime, one **nurse** offered another reason to report: the importance of "uncovering" domestic violence. She stated that aside from the duty we all have to report, DV has been a problem of silence, an invisible problem, and it has to be uncovered. This statement did not receive any feedback from the remaining participants.

Not all the participants endorsed this almost consensual idea that everyone should always report (see also dilemma 5.1.1.). The representative of an IPSS stated that people should be cautious about reporting:

**IPSS victims' centre:** *Here, before anything, we are professionals but we are also citizens; in Portugal, it is a public crime and so, as a public crime, anyone who becomes aware of a situation, has the obligation [to report] but it is not like that. This obligation to report often can put the victim at a higher-risk... Sometimes, people move forward without caution.*

Also one **magistrate** questioned this assumption that everybody should make a complaint whenever a person becomes aware of a domestic violence situation. She called the attention for the civil rights of the women and reminded the group that in some countries domestic violence does not imply mandatory reporting because of the autonomy of the woman.

The **NGO's representatives** raised a similar concern related to Paula's will: if it is not taken into account, this attitude will break the relation of trust with the professionals and the women will feel diminished by the institutions, in a similar way as they have been by the offender.

**Judges and prosecutors** raised another question: if she is not aware that she has a "problem", she might deny the situation in court, jeopardizing the entire juridical process.

Although many professionals agreed that everybody has the obligation to report, the term "reporting" had several different meanings and implied various degrees of intervention: from signaling, to flagging [*senalizar*], making a referral [*referenciar*], communicating [*comunicar*], notifying [*notificar*], denouncing [*denunciar*], informing [*dar conhecimento*], registering.

### **(3) Fear, insecurity and the heritage of the fascist regime**

Fear as well as insecurity, either of the victims or the professionals, were mentioned in the debates, sometimes articulated with reference to the heritage of the fascist regime.

During the fascist regime, the education and literacy of the people were seen as dangerous by the politicians in power positions. They believed that education and literacy would lead to the development of interests and ambitions that could be contrary to the regime<sup>11</sup>: "Knowing how to read and write raises their ambition: they want to go to the cities (...) they want to go to Brazil (...) What do they read? (...) wrong notions of politics, bad books, flyers of subversive propaganda." (Virginia de Castro e Almeida cit. in Mónica, 1977). On the other hand, the elementary school could serve as a "the most diligent and disciplined police of State Security" (Joaquim Tomás cit. in Mónica, 1977) During the fascist regime, the mandatory school years were reduced first to four and later to three years and the curricula had "massive doses of religion" that transmitted the values of obedience and fear (Monica, 1977). Hence, the culture of fear and lack of trust in the police (connected with the brutal treatment of those against the regime) are heritages of the fascist regime.

A **police officer** shared that she has to constantly combat the "fear" of the courts and judicial system in Portugal and tell people that the "court doesn't bite". Other **police officers** referred also to the heritage of the fascist regime and highlighted that this heritage has been an obstacle for citizens to report domestic violence crime because they do not trust the police. In addition to the fear related to the previous/old political regime, there is also the fear of the repercussions of reporting, in particular a potential negative reaction from the perpetrator. One **teacher**, for example, shared with the group that her colleagues' fear to report because of possible negative reactions of the students' fathers.

The participants also mentioned the fear that the victims experience when support institutions, such as Child and Youth Protection Commissions, threaten the victims with the removal of their children if they don't agree to leave the relationship with the perpetrator. The **representative of a NGO shelter** brought to the debate the methodology of her organisation which focuses on raising the women's awareness about their children's situation and the negative consequences of violence, while allowing them to decide on their own what to do about their relationship with the perpetrator.

### **(4) Portraits of victims: the "ambivalent woman" and the "courageous woman"**

Language is a useful tool to represent reality but it also helps to crystallize images. Professionals seemed to have stable mental representations of the victims according to their own philosophies and beliefs about domestic violence. In Portuguese debates, women who experience(d) domestic violence tended to be portrayed in two ways: the "ambivalent woman" and the "courageous woman". The "courageous

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<sup>11</sup> Some authors as Mónica 1977 refer this as "the obscurantist thesis".

woman” is associated with a person with dilemmas while an “ambivalent woman” is presented as someone unable to decide or deciding in opposite directions in different times.

Ambivalence was a frequent theme in the focus groups. Participants discussed many situations in which women decide to go back to the offender or deny what is happening in their homes.

Sometimes, this ambivalence was mentioned as one of the biggest obstacles to the professionals’ intervention, interfering with what could otherwise be a linear course of action from the first appeal to the conviction of the perpetrator and a new life project for the victim.

**Magistrate:** (...) *it is important that all professionals become aware that victims' feelings are very ambivalent. They are very ambivalent: it's the husband, it's their children, there may be an economic vulnerability (...) And, therefore, this ambivalence is the reason why, throughout the judicial process, the victim, often times, swings in her testimony: she speaks up, she shuts down. And it is very common that a victim gets to the trial and shuts down.*

In an opposite direction, the professionals of NGOs had different discourses, for instance, the opinion of a technical director of a shelter:

**NGO shelter:** (...) *[when victims arrive at the shelter] they come at a stage in which they don't have that many dilemmas anymore (...) because when victims arrive at the shelter they have already made the decision of leaving the aggressive situation. There's a breaking point, right? There's the point at which they run away from home, with nothing, sometimes only with the clothes they are wearing, and taking this step, I think, is the bravest step of all and that's what [the victims] usually say.*

It is worth noting that this professional refers to the woman’s dilemmas and not to her ambivalent feelings. Another NGO representative talked about respecting the women's will and seeing them as experts of their own risk:

**NGO women’s centre:** (...) *any intervention plan has to be done according to the woman's will. Because, in the end, we realize that women are the experts of their own risk, of the risk they are living. One woman who is beaten for 20 years and lives 20 years in permanent violence and comes to us, she considers that she can live and survive to that situation even if she made a complaint. She doesn't want to leave immediately and if there is not a restraining order for the offender, if they<sup>12</sup> [the husbands] are still there in the family home, we have to be very cautious and do the risk assessment, and a safety plan (...) We wait that the victim does the complaint herself.*

Finally, some professionals (**magistrates, physicians** and **NGO representatives**) explained that another reason why some victims decide to stay silent about violence is that “the women don't want their husbands in prison, [treated] as criminals. Some because he is the father of their children, others because they fear retaliation after he leaves prison.”

## **(5) The problem of the “proof”**

During the workshops the professionals used the expression “problem of the proof” to express four different ideas. First, this expression referred to the issue of who is responsible for collecting the evidence for a domestic violence claim. Second, the expression was used to refer to the lack of evidence that many of the claims have. Third, the problem of getting enough evidence in court was also raised because often times victims step back and don't speak out in court. When the victims don't testify, it is almost impossible for the court to determine if it was a DV situation, because “Portuguese jurisprudence

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<sup>12</sup> In Portuguese, the pronoun “they” has two gendered forms: male — *eles*; and female — *elas*.

relies on speech” (see also 3.1, frame 4). Finally, the professionals talked about the problems that emerge for the victims given that the burden of the proof is on them. This idea was mentioned by one of the magistrates:

**Magistrate:** *Then, [the way criminal justice perceives DV – still as family conflict] raises the problem of the proof, because this emerges much more focussed on the victim, than on the offender. Therefore, it is the victim who has to prove that it was a violence perpetrated against her, or the prosecution who has to prove that it happened violence against the victim. This is the opposite of what usually happens in other kind of crimes, where the proof is focussed on the offender, (...) who has to prove he didn't commit those facts. This is a kind of reversal of the burden [onus] of the proof, reversal that is an informal one, but that happens.*

Some professionals, mainly **judges**, referred to the manipulation of the system by the victims. This was contested by many professionals, who denied encountering those situations. These representatives used many theoretical reasons to argue against the representatives of the courts. They also quoted international documents (including the Istanbul Convention).

In addition to these problems, some of the participants mentioned that there is still a lot of prejudice in regards to how victims of domestic violence present in court (crying, looking very distressed, etc.). When victims are apparently less distressed in court, they run the risk that their situation will be seen as “family conflict”. Thus, there is a lot of pressure put on victims to present in a certain way in court so that their situation is treated as a domestic violence situation. However, this is a double-edged sword to the victims because if they present the way it is implicitly expected, they are then stigmatized as being weak, unable to make their own decisions, needing to be rescued, or being manipulative.

#### **(6) “Family harmony shall prevail” [in Court decisions]**

Some participants mentioned that the Law allows the victims to require the suspension of the criminal proceedings in order to preserve the family unit (This frame will be further expanded in section 5.). This idea is expressed in the citation below. Interestingly, the expression used was “family harmony”:

**Judge:** *It is important to mention that because the lawmakers understood that, at times, the punitive intent of the State should not prevail, but rather the harmony in the family should prevail, precisely because the woman still likes the offender, because she has children, and in those cases that are less severe, there is the Provisional Suspension Measure<sup>13</sup> of criminal proceedings, that [allows] the victim to require its suspension. It can be up to 2 years, maximum.*

#### **(7) When to act? What is the best moment to intervene?**

The debates around the sequence of intervention revealed disparities in the underlying philosophies concerning this issue and the role of the different agencies. In this frame, we highlight five different approaches to intervention: i) acting immediately, even without previous assertion of DV, because of the children involved and especially in the presence of weapons (also as mentioned above, in section 2.); ii) pushing the woman to make the decision of leaving the violent relationship, either by raising her awareness or by threatening to remove the children; iii) always acting promptly, especially police and prosecution; iv) going smoothly, waiting for the right moment for the woman; and v) ensuring the protection of the victims before going to the court.

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<sup>13</sup> According to Isabel Fernandes Branco (2013) the possibility of provisional suspension in the public crimes — in Portuguese: Instituto da Suspensão Provisória do Processo — was introduced in the Criminal Procedure Code in 1987, “which constitutes an exception to duty of the Public Prosecutor's Office to prosecute whenever there is enough evidence of a crime and that a certain person is responsible for it.” (idem: 9)

**- The legitimacy of intervention was clearer when children were present**

Children were invoked many times to legitimise the intervention, even without Paula's consent. The issue of the guns at home evoked a consensus among professionals, and the argument was focussed on the safety of the children:

**IPSS victims' centre:** *I think I would try, first, to reach out to the children. Here, there are children at risk and, whether there are the parents who are duelling each other, whether there are a victim and a perpetrator, there are children at risk and we do cannot ignore it; therefore, we have to move forward.*

Cases with children were shared by professionals, especially by the **physicians**.

Some professionals shared situations in which victims of domestic violence are confronted with the possibility of a removal of the children if they do not comply and make a decision to leave the violent relationship. Nevertheless, a representative of an NGO articulates this with the need to work together with the women, to raise their awareness:

**NGO representative:** *We act very much in [giving] information, technical and practical knowledge, telling about other situations, about advantages and disadvantages, talking about their rights, and if there are children, essentially to raise awareness also to the children's situation. Because if she decides to stay, this could mean a penalty for the children, because they may be removed (...). But the woman has to agree. Because, if not, it doesn't work well.*

**- Promptness**

At the time of the focus groups, there were news reports about women murdered by husbands and ex-husbands, as well as a lawyer who was also murdered at her office, in a small town in the Centre of the country. These news highlighted the need for immediate action to prevent such femicides. Related to the storyline, some professionals argued that the police had failed to act to protect the victims:

**Police:** *For me, when the police officer goes to the house, called by the neighbour, and doesn't inquire with the neighbours to gather evidence to the police report, to sustain the police record, it was a failure.*

In this prompt intervention, police action was the most mentioned.

**- Avoiding the "rescuing instinct", giving the power to decide to the woman and - "going slowly, smoothly" [de pantufinhas – with slippers]**

In a divergent direction of the idea of a prompt intervention, some professionals stated the need to wait for the right moment for woman to make her own decision and take action.

**NGO Shelter:** *The perception that she is a victim [está a ser vítima], giving her the power to decide what to do. Sometimes, when there is a risk to life, an imminent danger, they [victims] acknowledged and have to go a long way, before we come to her with our, often times, "rescue instinct".*

Other **representatives of NGO** — Women's Centres or Shelters of the Women's NGO — defended this line of argument, adding that the need for the woman's consent is crucial, because is the only way to empower her. They advocated that the intervention should raise the women's awareness so that that the report is made by her or with her complete consent.

**- "before being presented to the judge, victims' protection should be ensured"**

One of the concerns presented in the workshops was the definition of the professionals' territories of intervention, which at times implied seeing each other's' lines of action as entirely separate from one's

own. In the following excerpt it can be observed how some professionals perceived their function as being out of the problem:

**Judge:** *I decide on a conviction according to the proof that is delivered to me. As I usually say, victims, when they come to me, they have to be protected, their protection has to be ensured, because it is not my role as a judge; I am in the final point of the “food chain”, it is not my task to ensure the protection of anybody! That is the role of other parts of the system. When she arrives to me, her protection has to be ensured; if not how will she be at ease to testify? If she has to return to the same house where she is beaten, and to live with the offender, how can she testify? And this has to be a previous work. I understand that this work has to be done. But it has to be done before it comes to me.*

Concerning safety and protection of the victims, the **representatives of the NGO** brought to the debate the issue of the security of the professionals in this field; one of them added that her organization has “safety procedures”, with “codes in phones”, “codes in emails”, “escaping plan”. They also stated that their role (of the NGOs) is “to rub salt into the wound”. One of the **nurses** stated that sometimes women are the ones who asked to be hospitalized to avoid going back home.

### **(8) Social class**

The issue of social class was not debated as such. However, some of the professionals had the assumption that Paula was from an underprivileged social class:

**IPSS shelter:** – *being beneficiary of Social Security, there is always someone keeping an eye on this situation...*

In fact, some professionals seemed to assume that the vast majority of the victims that resort to the shelters are from an underprivileged social class. The assumption is also that the main requirement to enter a shelter is the lack of economic resources. For example, one of the professionals from a shelter explained in great detail why an economically advantaged woman was admitted in the shelter even though “she did not have a need.” It was later clear that despite being economically affluent, this woman and her child were under a great deal of danger, which is the number one requisite to be admitted to a shelter, as it is explained in legal documents.

Some professionals highlighted however, that the services they work at are traditionally tailored to socially disadvantaged people. Hence, naturally, their assumptions about the victims are that they will be disadvantaged.

Class was also mentioned to explain how victims from a high economic status are more entrapped by the system because their offenders have more power, have alliances with judges and other prominent people, who can interfere negatively in their lives (**IPSS shelter**).

Social class in Roma communities was also mentioned: for instance, a physician used the term “affluent Gypsy family” to refer to more privileged Roma families.

## **4 Framing culture and difference**

In terms of minorities, the participants' discussions concentrated mainly on Roma Communities. A few other minorities were named but the participants did not dwell on them. As previously mentioned, in Portugal, the minorities are not accounted for in the various *census* and thus tend to remain invisible in society. The word “minority” is also a source of confusion. If we list a number of studies on minorities, we can observe that, in this context, “minorities” equates to “immigrants”, i.e. the word “minority” is seen as a word indicating foreign status. In an effort to overcome this, some concepts have been

introduced in Portugal by sociologists (e.g. “Luso-African”, Machado, 1994). In a more popular sense, the word “minority” is interpreted in a quantitative way, that is, a group with few members is considered a minority.

In the next few sections the frames that emerged from the discussions regarding the Roma Communities will be described.

### **(1) Framing Romani culture(s)**

Roma communities were described as homogeneous, with the exception of a police officer who mentioned the diversity in Romani people and the changes that this community has been going through in recent years. Usually, in previous decades, Roma people were referred to as “Gypsy” in opposition to “Portuguese”. This issue has been discussed in Portuguese society, as many of these communities are Portuguese citizens. In the workshops, surprisingly, some professionals used the term ‘white’ referring to the non-gypsy people. This change to a skin colour categorization should be further researched.

We will use the term “Gypsy” because it is the equivalent to what was used by the participants — *ciganos*. Rarely, in Portugal, people use the term Roma or Romani<sup>14</sup>.

Nomadism was a feature often related to their way of living. In social representations, “Gypsy” communities are associated with selling counterfeit products in fairs, and more recently with drug trafficking. In many families, several members have been imprisoned due to drug related charges.

#### **- “Gypsy” women — body presentation and daily “domestic” habits**

The Gypsy women were characterized by their daily (domestic) habits and body presentation, for instance: The gypsy women’s cleaning habits and their pride in the family/domestic tasks were highlighted: (“they have shiny kitchens”, “they even wash pots with bleach”);

Their long hair and the cultural prohibition of cutting the hair or wearing it down (except for washing) was also mentioned. The way(s) of dressing, usually in long skirts, and widows dressing in black<sup>15</sup> were also noted.

These habits and bodily presentation were particularly salient in Roma women admitted in shelters:

**IPSS shelter:** *While [the mother and both daughters] were at the shelter, the Gypsy habits in terms of outfits, hair and hygiene... It was a bit hard. The clothes stayed the same, the girls could wear pants until they menstruated, not after they had menstruated. (...) The hair had to be long. They couldn’t cut it, only the mother could trim the ends of the hair once in a while (...) They never cut their hair, they had to wear it in braids or pulled into a ponytail. It couldn’t be loose, only when they took a shower. [...] But she fulfilled everything, absolutely, every rule of the shelter, she fulfilled it.*

The Gypsy women’s lifestyle preferences and attitudes towards children — “they are loving mothers” — were also referred by the participants.

The nomad lifestyle of this community, including their frequent traveling and living in caravans (or more recently, in an adapted truck) are used to show the exoticism associated to Gypsies.

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<sup>14</sup> According to Moonen (2008), there are three groups of “Gypsy” around the world: 1. The Rom or Romani, from the Balkans; 2. The Sinti, also named Manouch, mainly found in Germany, Italy and France; and 3. The Calon or Kalé, the Iberian Gypsy, usually living in Spain and Portugal (see also, Martins 2011).

<sup>15</sup> This is common with most Portuguese women.



**- The “cultural myth” of the fear of gypsies**

Some professionals mentioned: “We here are more afraid of the gypsies than of the police”. In addition, anecdotes about how “they invade” hospitals, or how police cannot go inside their camps, were very present in the discussions about Roma communities.

The fear of the “Gypsy” is of the men, not of the women. Because when there is a fight, “Gypsy” men are known to use knives and to take the law into their own hands.

It is also worth mentioning that traditionally, families used the expression “the Gypsy is coming to take you” to scare the children, in order to make them behave.

The distinction between “their laws” and “our” law was always on the table when participants were debating DV in Roma communities. However, some participants argued in another direction.

**Police:** *But it [the fear] is because we don't know very well the reality and culture... we fear, many times, what we don't know...*

In Portuguese imagery, Gypsies are also portrayed as fearless people, living under the sky and sleeping under the stars.

**- “Gypsy women accept very well the violence”**

Roma women are portrayed as perceiving violence as normative, as a feature of their culture. In the discourse of some professionals was implicit that violence is very present in Roma culture, for men and for women, as it can be observed in the following statement of a police officer:

**Police:** *There is a problem with the laws: they do not respect nor understand very well our intrusion... They have many prejudices culturally; they do not... They are socialized differently from us; so, they accept very well, and women accept very well the violence... We face many difficulties in intervention in this community because of the silence, and because, afterwards, they [the women] close down and try to solve the situation inside the community.*

**- Roma women are devalued in their (Romani) communities:**

Women of Roma communities are portrayed as more submissive and undervalued than women in Portuguese mainstream culture.

**Teacher:** *Women are very devalued [in the gypsy community] from an educational point of view, everything: they get married very early (...) There is a total devaluation of the role of the women, a total negation of their sexuality, of their protection in regards to pregnancy, sexuality, whatever, even the education of minors and their own role.*

**Magistrate:** *The vulnerability of the Gypsy community has to do with the total absence of the role of the woman as a person...*

**- the “Gypsy women’s high self-esteem”**

In (apparent) contradiction with the previous excerpt, other professionals also stated that “Gypsy” women have high self-esteem. “But they have such a high self-esteem!” was an exclamation of a **physician**, a sentence introduced with the adversative *but* can be interpreted as something that it is not expected when articulated with the idea that Gypsy women are very much oppressed.

**- “their culture is above the law” – written law vs culture**

Some professionals raised the issue that “Gypsies” are “above the law”, in the sense they don’t respect the Portuguese laws and norms, “their culture overrules our laws”. Despite an oral, non-written culture

and language, Gypsy people in Iberian countries have been successful in preserving their cultural heritage in their community laws, their language and their diverse dialects.

Until recently, children of the “Gypsy” communities didn’t attend school or dropped out very early. One of the justifications of State policies (in Ministry of Education documents) was the nomadism<sup>16</sup>. Maybe the orality of the culture contributed for its preservation: the maintenance of oral transmission of gender roles and the collective intergenerational social organization.

**- “neglect” is a reason to remove “Gypsy” children from home**

Concerning children from Roma communities, participants raised the conflict between children’s rights and cultural rights, describing situations of women victims of violence and neglect of their children.

Poor living conditions have recently been a motive to remove Gypsy children from their parents’ home, and from the community. In the words of some professionals this removal had a positive effect in the “integration” of children meaning a change of “Gypsy habits” to the mainstream ones:

**Physician:** *I was thinking about minorities [...] we have many “Gypsy” kids and very few Romanians. Concerning “Gypsy” kids, we have a lot of minors' neglect; and some have been removed from their family. It is rare, but [has happened] (...) But those who have been removed from the family are from extremely poor families, whom is easier to work with, because the poor are discriminated even in the “Gypsy” community. We never had a removal situation in an “affluent” “Gypsy” family, so to speak.*

**Magistrate:** *I am sorry, Dr., and how did the kids adapt to the institutional care?*

**Physician:** *We had a girl who had been temporarily removed, because she was going to have surgery and there were no conditions for her to recover at home, since the house had no conditions. And she was removed, temporarily. The mother came with the technician of the institution and with her to the appointment. And it was so curious! [The girl] no longer looked “Gypsy”. It was so curious, she changed, changed, she looked like another person [almost in tears]. She was very satisfied with the Institutional care. She was very happy. We could notice an impressive jump in her development!*

**Magistrate:** *And she returned home?*

**Physician:** *This girl returned. But parents went there to visit her. She was very well integrated.*

**- the right of the father to his children**

One representative of the **Women’s NGO Shelter** told us a case of a Gypsy woman who went to the shelter and had to leave her children with the father:

**Women’s ONG Shelter:** *She had the notion that if she took her children with her she will be stalked until death. [...] Because children are the property of the father, more exactly of the father’s family.*

Professionals shared other cases like this one, in which the predominance of the fathers' family dominates in the communities.

It were also described other situations that show that boys in Roma communities have more authority than their mothers. For instance, one of the **physicians** described a boy giving commands to his mother.

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<sup>16</sup>There is some sociological literature from research studies on this topic.

Besides Roma communities, the minorities mentioned were from immigrant groups. The next frame will present the essential information about those brief debates.

## **(2) Immigrants have to comply with Portuguese law**

Concerning immigrants, some professionals mentioned that immigrants show difficulties in accepting “our laws”. For instance, a policewoman stated:

**Police:** *If the illicit act happens in Portugal, we act in the same way [...] We had a woman from Moldavia [...] first, she wanted [to present the complaint], then she didn't. [...] An Ukrainian man was also punished. [...] We act in the same way, the only thing is that the acceptance of Portuguese methods and Laws is lower, because in their countries is different.*

In general, all the professionals agreed that it is difficult to work with immigrants, “because the intervention with people who are outsiders in the community is seen with a lot of mistrust” (**police officer**).

As with Roma communities, women of *Other* cultures are portrayed as being more oppressed by the men of the same culture. One of the **teachers** expressed the idea that “Muslim women are restricted to their little corner at home”, being isolated from social life.

In the following sections, the paper will present the analysis around crucial ethical dilemmas, practical dilemmas and tensions and contradictions that have implications for intervention.

## **Part 3: ETHICAL ISSUES AND DILEMMAS from the perspective of practitioners**

### **5 Ethical issues in the workshops**

#### **5.1 Practical and professional dilemmas**

##### **5.1.1 Not only reporting but also assuring protection and security of the victim**

In spite of the agreement about the need to report DV situations, many professionals mentioned a wide variety of situations in which reporting does not promote the protection and safety of the victim. The IPSS representatives raised this practical dilemma and possible adverse consequences of reporting, such as putting victims or other people at an increased risk. This was corroborated by NGO representatives, who added that at times, the court measures are not taken quickly enough and this is the reason why some women do not want to leave their homes.

Moreover, even when judicial measures (restraining or protection measures) are applied, the experience is that they are not sufficiently monitored. This was, in fact, a topic of discussion, but the law, again in this matter, puts the burden in the victim: the Law 19/2013, February 21, explicitly says that *monitoring* will be performed “if it is indispensable for the victim” (Art. 5<sup>th</sup>).

In the sequence of this debate, some professionals made clear that reporting should be left for “specialized technicians” (representative of the municipality) and should be made with the collaboration of the woman and her input about her risk situation (see also 3.2 above, frame (4)).

In the discussions the representatives of law enforcement agencies and judicial system did not seem to face this dilemma in their everyday practice and were somehow surprised by the other professionals’ dilemma.

### 5.1.2 Who is the “first line”?

As already mentioned in Part 1, there is no intervention sequence defined for domestic violence in Portugal. In this sense, who is the first line was a matter of disagreement among professionals. Some of them stated that, in the first moment, “all goes through the police”, although others contended that police and courts should be the *ultimate* line, as it was previously mentioned. Some professionals argue that the health system should be the point of entry, as the following statement:

**NGO Women’s Centre:** (...) *We consider health services as the main entrance for women to get support. Afterwards, they can, effectively, feel empowered with the situation and they can decide either to go to justice, or do something else to change their situation.*

Nevertheless, some health professionals also shared the difficulties in the health settings, hospitals or health centres (bureaucracy and focus on treatment) which makes it unlikely for the health system to perform the “first line” effectively:

**Nurse 2:** (...) *However, in the clinical context, the objective is always medical treatment [emphasis]. So, everything else ends up being secondary, dispensable, and it is turned down.*

Magistrates agreed among themselves that Courts should be the last resort:

**Judge1:** *Our role, my role and of my colleague is a little bit tricky, so to speak, because, as I mentioned in the beginning, we are in a phase that is the ultima ratio, and therefore my role is to condemn. (...) Period.*

This was not a matter of consensus: some professionals were proponents of the “Austrian model”, in which Courts apply a removal order to the perpetrator as soon as there is sufficient evidence of DV, in order to avoid the need for the woman and her children to go a shelter. In this model, courts, at least the prosecutor, would have to give the order to a police officer in the field.

### 5.1.3 Hearing the woman only once, and “while it is still “hot”

As stated above, “ambivalence” was a very frequent frame in the portrayal of victims. This confronts professionals with a practical dilemma: in their view, they have to assure the gathering of enough evidence to guarantee the conviction. This issue was mentioned about all survivors, but one of the professionals made a proposal to solve the problem, when talking about Roma women:

**Police:** *If we record<sup>17</sup> in the moment when the situation is still “hot”, and if she says what really happened, perhaps, we could rest. In this case, you, the magistrate, could exempt the woman’s testimony in your presence, in the next phase. This would be very good; we would have evidence. Understanding the issue of ambivalence, and in a community that will exclude her, it is very complicated.*

The possibility of recording testimonies is foreseen in law, but it is not yet implemented, in part due to the law philosophy of the “direct testimony”, and to preserve the right to silence (see also dilemma 5.3.1.).

### 5.1.4 What to do in cases of Roma women leaving family and community?

As previously mentioned, the lack of social responses for Roma women was an example of professionals’ shared difficulties.

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<sup>17</sup> Recording testimonies for future memory is established in Law 112/2009, of 16<sup>th</sup> September, but it is not yet ruled, that is, the rules of its application are not yet specified.

When it is not possible to negotiate with the community and family of the victim, the pathway to build a new life project is very complicated. The professionals' statements about the cases of Roma women all mention that these victims face racism in Portuguese society in a very high degree: it has not been possible to find a house /flat to rent, nor a job for a “Gypsy” woman, unless she changes her body appearance, leaving behind the elements of her culture (mostly, the way of dressing and hair style).

Staying in a shelter was sometimes characterized, by the professionals, as a way to submit Roma women to an “acculturation” process (see also section 4 above, frame 1).

### 5.1.5 What to do with perpetrators?

Professionals tend to characterize perpetrators with a dichotomic view. On the one hand, they are either seen as “poor fools” [*pobres diabos*] at the mercy of alcohol and other dependencies, with uncontrollable, irrational impulses, and in the verge of homelessness. On the other hand, they are viewed as psychopathic, manipulative monsters.

In Portugal, prison is not viewed as a good solution for any kind of crime, and should be used only in extreme cases. The maximum penalty is 25 years. In respect to domestic violence, some professionals, mainly judges, raised the question of what to do with the perpetrator. The risk of falling in poverty and homelessness, and the presumption of innocence during the judicial proceedings, were some of the points in debate. Judges also raised the question that penalty for DV is from two to five years, and they ask what happens when perpetrator leaves prison, as in the following excerpt:

**Judge1:** *We never discuss, in juridical terms or social terms, what to do with the offender. We have the assumption that he is an offender and we forget, many times, that, in face of a crime notice, there is a fundamental principle of the presumption of innocence, and this is a fundamental principle of a Democratic Law [...]. In this rush to remove the offender, we forget that he is suspect of being offender, an alleged offender. We forget — maybe — in social terms, we should also think about what to do with the offender. I don't know to what extent, with the situations of the shelter, it should exist a space to where this alleged offender could be sent to, to be away from everything that surrounds him. We cannot forget that there are many that are acquitted.*

**Judge2:** *It should exist, because I, in those extreme [more severe] cases in which I remove the offender from his home (...) from the family home, some of them, I know they don't have a place to go. Some have no income. Therefore, if we go deeper, I am removing this person from home, and making him an indigent, a homeless. This is also a weight for us, whether he is or is not an offender, and this is not right.*

One of the representatives of NGO also argued for the need of programs for perpetrator, but stated that her main concern is the victims' protection:

**NGO Shelter:** *In regards to the aggressor, what are we going to do with him... (...) this is me speaking, not as a professional in this organization but my personal [opinion] (...) I am not at all worried about him not having a place to live, if he in fact is the aggressor. (...) Many women, and in some countries the [DV] organizations work together with organizations that serve the homeless (...) because there are many homeless women who are victims of DV (...) Now here [as a] professional, obviously there is something we need to do with the aggressors, at least the programs for aggressors should be fully implemented. In regards to shelters for aggressors, which we don't know where to put, there is evidence from other countries that those shelters are empty. The aggressors don't want to go there because they don't acknowledge that they have a problem and therefore they don't go, period.*

## 5.2 Ethical dilemmas

### 5.2.1 Rights of the victims versus State / statutory agency responsibilities

The debate about the woman's consent showed there is no consensus among professionals: to bypass Paula's consent was invoked because of State's responsibilities.

On the one hand, some professionals raised the need to be cautious; otherwise the risk for the victim can be increased. The ONG representatives stated that only the consent of the survivor could mean an empowering process, a way to avoid the control dynamics they have been subject to by the perpetrator. They favoured a "smooth intervention/going slowly, in slippers" (see 3.2 above, frame 7). Interestingly the Portuguese legislation allows the victims (and anybody else) six months to report a DV situation.

The police representatives who argued that not reporting would be a way to collude with the crime did not agree with this last position:

**Police:** *But, about what [the psychologist] said, the question is that I cannot avoid doing what I have to do. I understand the idea of "going smoothly, in slippers", "going slowly", but I cannot be in complicity [with a crime]. And I am not. For me, when there is a criminal practice, I have to be relentless, with that woman<sup>18</sup>. I will not give her a second chance/opportunity; I cannot give her a second chance/opportunity. I have to know when police arrive at her home, police has arrived, do you see?*

**NGO Women's Centre:** *But the woman...*

**Police:** *Yes, the woman will have all my unconditional support. She will never be alone. Nevertheless, I cannot stay and do nothing [I have to do something]; police has been there twice [in the storyline]. From the moment when the police become aware of this, the Public Prosecutor will be also aware of this...*

Judicial and medical professionals had different views about the dilemma between the rights of the woman and the duty to report. The doctors' duty to respect the confidentiality of the patient was one of the obstacles identified by the physicians, and also a point of tension. Some argued that, in case of DV, physicians are freed to break the duty of confidentiality, but other professionals did not agree with it:

**Magistrate:** *the registration is part of a medical record. [...] I presume that it was a confidence made by Paula to her doctor, in the frame of a professional relationship that is covered by confidentiality ...*

**Physician:** *... but that can be broken in this situation ...*

**Magistrate:** *It can be broken but has to be requested [by the court]. Immediately, there are these procedures. [...] This is a documental proof [piece], this will turn to be a documental piece. This always raises questions. This is a documental proof, but the Court cannot bypass the woman's will who doesn't want that to be used as a proof. That is something that belongs to her. It is a clinical record that belongs to that woman. In juridical terms, it raises the following issue: that woman is an autonomous being, with her own will, and the judicial system cannot skip over her, and ignore her will, if she doesn't want to speak, if she doesn't want to tell.*

The right to privacy of the woman and the children was also mentioned by one of the **teachers**.

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<sup>18</sup> This is difficult to translate because professional do not say "woman", but the more formal word to refer to females: "senhora". It is a respectful way to refer to women, but not so formal as *lady* in English.

Only one participant mentioned explicitly the “Status of the Victim” — a **police officer**, also referring that it is often not applied. This is one of the areas in which the existence of the law does not necessarily mean its application in real cases.

### 5.2.2 The legitimacy of police intervention

Police decisions about intervening are a big issue in Portuguese society. Since the democratic revolution (1974), it has been established that the police only intervenes after the authorization of — at least — a magistrate (Public Prosecutor), unless it can be proven, in court, that there is an imminent danger for life or State security. In domestic violence this has been linked with the issue of *flagrant delictum*, as the evaluation of the danger or risk for the life of the victim is never easy due to the fact that it is usually practiced inside private walls. However, waiting for a magistrate’s decision can place the victim in a worse and more dangerous situation.

In this sense, the timing of a police intervention as well as the requirements to enter inside the home of a victim were also points of discrepant opinions:

**Police1:** *In this specific type of crime, we [police] have jurisdiction to pursue immediate investigation.*

**Police2:** *Afterwards, we need to do an inquiry saying what was already done, communicate [to the magistrate] and decide. But we [police] never work alone. There is always a senior inquirer officer or a prosecutor leading the process.*

**Magistrate:** *What is described here [in the story line] would be grounds for an inquiry but not immediately an investigation. I [magistrate] would have to give an order saying what to do. [I would] ask the family’s doctor for a copy of the clinical records. This would be enough for an inquiry, but not an intervention in residence, or a search in the home, that would be illegal.*

Prosecutors affirmed their 24h availability to decide a court measure and allow police intervention if necessary. Nevertheless, and unfortunately, this procedure is not present in all the national territory.

## 5.3 Tensions and contradictions in the intervention system that can have ethical implications

### 5.3.1 Tensions and contradictions around definitions

Some doubts around what constitutes domestic violence and the blurry boundaries between family conflict, reciprocal violence and arguments between the two persons in a couple seem to be a matter of divergence among professionals and to make difficult the task of deciding when and how to intervene.

#### - **the need to distinguish between DV and ‘normal’ domestic noise**

The argument about how to define DV was handled as an issue of specialization. Specialized professionals would have the knowledge to make clear distinctions between DV and other situations:

**Police:** *... it is different when we are faced with a situation of a noise, which everyone may have at home, because a birthday party or other situation, when moods can become more heated, they can drink a little bit more, and we [police] go there to fulfill a specific objective. Inevitably, who is not aware of these facts, has another perception; this is why the specialization is so important to perceive the facts that are narrated [when we go to that home]. And it is different when we can observe that the facts go beyond the ‘normal’ noise that anyone may have at home.*

The need for specialization on this subject matter to provide a more effective intervention on domestic violence was also advocated by the **representative of the municipality**.

### - reciprocal violence / squabbles / “mau viver”

One of the judges raised the question of reciprocal / mutual violence between spouses:

**Magistrate:** *Indeed, the clues are there, as has been stated by my colleague, but to make the leap to DV it has to imply many more [procedures]. Because fights can be reciprocal. And it can be a situation of a “bad living” [“mau viver”] which is different from DV [sotto voce]. [8:48] Here, [the storyline] doesn’t say whether the husband also presents with bruises, scratches of other things. And the circumstance of the child with an unusual aggressive behaviour can also be the reflex of that [reciprocal] violence.*

From this excerpt, it seems that mutual violence and reciprocal violence between the two persons in a couple is not perceived as domestic violence.

### - “DV or family conflict?”

Some **magistrates** equated domestic violence to family conflict. However, this was contested by another **magistrate**, saying that this equivalence has been an obstacle to guarantee justice for women, which she links with the problem of the proof (see 3.2 above, frame 5):

**Magistrate:** *First, for me, in this matter, a problem is raised when DV is not perceived as a crime committed against women but as a conflict. In the Courts, DV is still perceived as a family conflict. In my interpretation, Court decisions show that is a crime committed against a woman because she is a woman, but this violence perpetrated against her is very much overshadowed and it is not acknowledged. The substance of the crime was changed into a crime in the family context, in a family relationship, violence inside home that happens in family context. The fact that it is violence by a man [emphasis] the assertion of power, violently against a woman is not usually taken into account.*

This divergence reflects the tensions among magistrates in Portuguese courts. Although these tensions have been verbalized by magistrates, they are surely present in Portuguese society and shared by many other professionals.

### 5.3.1 At the interstices of the structural contradictions: a limited space for the woman’s self-determination?

Finally, there was a structural contradiction in the judicial intervention: on the one hand DV is considered a public crime, which does not require the direct input of the victim to be initiated. On the other hand, for the case to move forward there is still the need for the direct testimony of the victim. Finally, there is the possibility of “provisory suspension” of the criminal proceedings if the victim decides to be silent.

This last possibility (referred in 3.2 above, frame 6) implies the relevance in the Portuguese judicial system of preserving the family unit, thus allowing the victim to ask for a “suspension” of criminal proceedings, being silent, or denying the violence. In the words of a judge:

**Judge:** *What happens, often times, for example, is that alcohol emerges as an exacerbating [factor], and [in this case] the offender goes through a treatment of this dependency... Sometimes, he suffers from a psychiatric disorder and stops taking his medication, and [we get him] treatment... So, this way the Law avoids this types of cases to go to trial, the victim uses her right to silence and does not produce evidence (...) while it is certain that if there is a violation [of this measure], it will always go to trial if...*

In summary, to initiate a criminal proceeding, the input of the victim is irrelevant whereas in subsequent phases it becomes crucial for the case to move forward. Hence, after the case is initiated all the “heat” is placed in the victims’ hands. It is up to the victim to either pursue the case (speaking up) or suspend it



(remain silent). It is understandable thus, why without adequate support, some of the victims might be overwhelmed and hesitant about the judicial system.

In this sense, in spite of the public nature of the crime of domestic violence, the practice of the law depends partially on the victim. That is, there are the structural contradictions that leave limited “space”<sup>19</sup> for the woman.

## 6 Summary

The involvement of the professionals, at least the great majority, to improve the responses to domestic violence victims were present in all the focus groups, where the participants were proud of the work they have been doing, expressing the great changes happening in Portuguese society in recent years. In this respect it is worth noting that many of these professionals have been working in this field for several years. This can explain the repeated idea about ambivalence, fear and denial, in the professionals’ discourses, as if the implicit message was that the women themselves are preventing them from taking effective action against DV.

In short, the intervention sequence can be divided in two pathways, according to the debates in the workshops: the “criminal justice pathway” and “escaping to a shelter”.

In general, the intervention sequence is unclear, with the exception of the articulation between police and public prosecutor. Some professional areas, namely the health and education systems, have not yet defined a protocol of intervention in DV situations. In the health system, it was interesting to identify differences in the procedures that professionals from Porto and Lisbon practiced. The former shared with us the ways in which they are attempting to solve the problem in the absence of a protocol by the Medical Board. The latter emphasized the difficulties of the system, such as the lack of professionals and lack of time.

In regards to Education, there isn't a protocol for domestic violence intervention — it is defined only for maltreatment against children. However, some of the professionals who did not connect DV with child maltreatment had no idea how to intervene. The teachers raised the issue of children’s privacy and, mentioned their hesitation about “signalling”.

The articulation between Women’s Centre and Shelters, on the one hand, and Criminal Police Bodies and magistrates, on the other hand, was not apparent. The representatives of the Criminal and judicial systems never referred either to Women’s Centres or to Shelters. Only a judge mentioned that protection has to be ensured before the victim “comes to her”, but she did not refer to NGO’s nor IPSS. Some questions can be raised: why this separation? Why the criminal and judicial boards do not recognize NGO’s and IPSS’s role? Or was this connection obvious and taken for granted and therefore not mentioned?

Professionals do not speak about an “intervention sequence”, but about a “chain of intervention”<sup>20</sup>, which can be interpreted that victims have to go on “institutional pilgrimage”<sup>21</sup>. Some professionals used

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<sup>19</sup> We are not sure if we can use the concept of Liz Kelly of “space for action”, because this “space” in the interstices of the structural contradictions seems to allow only to “be quiet”, to stop the ongoing of the judicial process(es).

<sup>20</sup> Carol Hagemann-White (2009) uses the concept of “chain of intervention” as multi-agency cooperation, and Portuguese professionals in the workshops also referred to this cooperation, but using the word “networking” [*trabalho em rede*]. When using the term “cadeia” - ‘chain’ – usually it relates more directly with the iron chain (key chain).

the expression: “when the victim comes to me”. The exception was the police officers who used active verbs: “let’s go to the field”, “knocking on the door of the victims”, and so on. We also noticed two philosophies of intervention: one that emphasized the need for an immediate and prompt intervention and other that attempted a more reflected course of action following the victims’ lead. Children at risk and access to weapons were the reasons that more clearly motivated all professionals to act immediately. We also hypothesize that because DV has been a recent theme of news reports and awareness raising in the overall society, there seems to be pull for the professionals in the security forces to do something to stop the violence, hence their urgency to have all the citizens to take responsibility in flagging the situations and uncovering the DV.

Professionals assigned to the “civil society” — including family and neighbours — the weight of the responsibility of reporting. However, they acknowledged that civil society does not denounce — because of fear of retaliation or because the negative connotation that the word “denounce” has that is reminiscent of the oppression of the fascist regime.

The close connection between the “victims’ ambivalence” and the “problem of the proof” was surprising. There were so many professionals raising this question that it gave us the idea that, in some way, this paralyzes them or makes them feel powerless.

The understanding of DV as punctual acts related with family conflicts and the “preservation of the family harmony”, can be connected with some prevailing conceptions in Portuguese society that it is up to the woman to build or maintain the “family unit”.

Concerning the “minority case”, participants debated mainly the Roma communities. Some professionals, mainly police officers, have been able to find out “creative” strategies to intervene in Roma communities. Moreover, the general tone of the debates about Roma was devoid of the usual pejorative stereotypes and prejudice that are usually held in the Portuguese society at large and that emphasize how the “Gypsy” attitudes and culture collide with the Portuguese culture. This may indicate that the professionals are more aware of victims’ rights and have better training to deal with these issues. Nevertheless, some of the professionals seemed to view Roma communities in a stereotyped way as being more rigid and homogeneous in comparison to the mainstream Portuguese society.

Once again, already mentioned in other studies, the lack of social responses for Roma women stand out — and this was referred to by the NGO’s and IPSS’s. The problem of the benefits of Social Security for Roma and the (lack of) payment of taxes by them were also raised.

Two more questions were debated about Roma communities: children’s rights, mainly the compulsory education; and forced marriages.

About the other groups — the general idea was that they are in Portugal, they should follow Portuguese laws.

The dilemma of “victims consent”, “victims will” was debated as positioned against the “State’s responsibility”, and the intensity invested in the arguments show the professional implication as well as the emotional involvement. Conflicts and contradictions emerged in the workshops about this dilemma. It was more *between* professionals than *within* professionals. The professionals positioned themselves in different sides of this dilemma.

Judges stressed their concern about what to do with the perpetrators, fearing that they could turn to indigence or become homeless. The women’s suffering was rarely mentioned, what fits with Portuguese

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<sup>21</sup> Some authors, from social work, brought this concept to talk about how beneficiaries of social security have to go around the institutions to get their rights. This was aggravated with the squeezing of the welfare State.

society where the icon of the suffering mother still prevails. Nevertheless, the recognition of the specific vulnerability of the victims because of the violence was expressed by the majority of the participants.

Taken for granted is data exchange among professionals and agencies with the underlying idea that without this exchange no efficient intervention can be done.

Some of the dilemmas presented by CEINAV in the workshops were apprehended more as “frustrating” moments or “failures” of their professional duties: the silence of the victims, or the disclosure of the victim but only in the beginning of the proceedings. It seemed especially frustrating for the professionals that some women decide to stay silent or change their statement and highlight that the aggressor “is a good husband, a good father”.

Concerning the legitimacy of intervention versus personal ethical values, it is worth to notice that in the workshops, although without direct confrontation, some heated moments happened between police and magistrates, judges and NGO’s representatives.

What we could understand is that the security forces would consider ethical a clearer and more autonomous intervention from police, in initial phases of the process, without waiting for prosecutor or Court mandates. They argued that they are called in the crisis moments and they consider that these moments most likely provide women strength to speak out and to disclose the violence.

The question of the victim’s/survivors’ will and respective consent was taken into consideration more because the judicial proceedings will not proceed if the woman does not speak. The Portuguese law relies on the “direct testimony” therefore, if the woman decides to be silent or if she changes her testimony afterwards, this can lead to acquittal of the offender, or to the suspension of criminal proceedings or its closure.

Finally it is worthy of note the richness of the debates and the satisfaction of that time we spent together. The scope and the nuances that participants brought to the CEINAV workshops can only be achieved with further research and reflexion.

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## APPENDIX

### Abbreviations:

AMUCIP – Association of Gypsy Women of Seixal [Associação de Mulheres Ciganas do Seixal]

CIG – Citizenship and Gender Equality Commission, Portuguese State mechanism for gender equality [Comissão para a Cidadania e Igualdade de Género]

EPAV PSP – Special office to support victims in the urban police stations [Equipa de Proximidade e Apoio à Vítima da Polícia de Segurança Pública]

IPSS – Private Institutions for Social Solidarity [Instituição Privada de Solidariedade Social]

NIAVE GNR – Office with special unit to investigate and support special victims in rural police (GNR) stations [Núcleo de Investigação e Apoio a Vítimas Especiais – Guarda Nacional Republicana]