1) What is the definition of violence, bullying and sexual harassment in the legislation in your country applicable to the workplace, if any?

Article 23.º No. 1 of the “Código do Trabalho” (Labour Code) defines bullying at the work place (mobbing) as:

*The unwanted conduct, namely based on a discrimination factor, practiced when applying for work, at work or during vocational training, with the purpose or effect of disturbing or constraining a person, affecting its dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.*

Article 23.º No. 2 of the “Código do Trabalho” defines sexual harassment as:

*The unwanted - verbal, non verbal or physical - conduct of sexual nature, with the purpose or effect of disturbing or constraining a person, affecting its dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment.*

There is no specific definition of violence at work, but article 15.º of the “Código do Trabalho” states that employers as well as workers have a right to physical and moral integrity.
2) Does your country have specific regulations to guarantee the protection of workers against violence, bullying and sexual harassment in the workplace?

Yes, regarding mobbing and sexual harassment.

Article 29.º No. 4 of the “Código do Trabalho” punishes mobbing and sexual harassment with a fine.

3) Who has a legal obligation to refrain from all acts of violence and moral or sexual harassment at work? (private and/or public sector - employers, employees, third party?)

The prohibition on engaging in violence, bullying and harassment in the workplace extends to all individuals and corporations.

4) Is the employer required to put in place a policy to prevent violence, bullying and sexual harassment in the workplace?

5) Does the employer have to conduct a risk analysis taking into account the nature of his activities and the size of his business? What are the minimum preventive measures that he has to provide?

Law No. 102/2009, from the 10th of September ( “Regime jurídico da promoção da segurança e da saúde no trabalho” – Promotion of safety and health at work) states that employers have the obligation to analyse risks and put in place policies, training and similar measures to ensure that their workers enjoy a safe workplace. Nevertheless, the legislation governing this area does
not address expressly the prevention of violence, bullying and sexual harassment and it is questionable if it includes these aspects.

Article 127.º No. 1 al. c) of the “Código do Trabalho” prescribes the employers obligation to provide good work conditions regarding physical and moral aspects. It does not prescribe in detail the specific preventive measures an employer must take to protect his employees from violence, bullying and sexual harassment address, the obligation to analyse risks or to take minimum preventive measures.

6) How are employees informed of the risks, the preventive measures and the procedures applicable to the victims of violence and moral or sexual harassment at work?

Article 106.º No. 1 of the “Código do Trabalho” prescribes that the employer is obligated to inform the employee of relevant aspects regarding the labour contract.

There is no specific obligation of the employee to inform employees of the risks, the preventive measures and the procedures applicable to the victims of violence and moral or sexual harassment at work.

7) Is the employer required to appoint persons with specific skills to deal with cases of violence and moral or sexual harassment at work?

The employer is not required to appoint persons with specific skills to deal with cases of violence and moral or sexual harassment at work.
8) What are the sanctions against the employer who doesn’t adopt policies against violence and moral or sexual harassment at work?

Portuguese law does not provide for immediate, specific sanctions if an employer does not adopt policies against violence and moral or sexual harassment at work.

9) What are the ways of actions available to the victims?

- Internal procedures in the enterprise?

The internal procedure is possible in case of violence, bullying or sexual harassment by employees towards a colleague worker.

In this case the employer can take disciplinary action against the perpetrator. Should the internal investigation confirm that an employee used violence against a colleague worker, bullied or harassed him, disciplinary sanctions can be applied by the employer. The sanctions (reprehension, fine, reduction of holidays, suspension without payment and dismissal) depend on how severe the violation was.

The victim can also terminate legitimately its employment relationship.

- External procedures?

Employees can report violence, bullying and sexual harassment to the «Autoridade para as Condições do Trabalho» (public authority for work conditions; it is an administrative body with competence to take binding decisions). This authority may proceed to a formal inquiry and apply fines. If the perpetrator disagrees, he can apply for a review of the decision and the matter is pursued in court.
The employee can also file charges with the police or the public prosecutor.

Furthermore, the employee can seek help from his union or from external organisations, e.g. in case of discriminatory harassment, from the “Comissão para a Igualdade no Trabalho e no Emprego” (Commission for Equality in Labour and Employment). This public organisation, however, does not have competence to take binding decisions.

Legal remedies before the court?
- Civil?

The victim can raise a claim to be compensated for the physical and psychological damages suffered (article 29.º No. 3 do “Código do Trabalho”) due to the action of its colleague workers or the employer. In fact, the employer may be held liable for his own actions (should the employer be the perpetrator) or for the actions of his employees.

- Criminal?

Depending on the particulars and severity of the case, the conduct of the perpetrator can constitute a criminal act and is dealt also by criminal law.

Who can take an action (the worker and / or the employer, colleague workers of the victim, others persons in contact with the victim, the union representative or the agent of an organization of employers, etc.)?

10) As noted above, the worker may take action against the offender (co-worker, employer) and, depending on the facts, he can take action against the employer, even if the offender is a co-worker.
Anyone – e.g. the union, in case of a unionized worker - can file a complaint on behalf of the worker at the «Autoridade para as Condições do Trabalho».

**11) Who bears the burden of proof of the violent acts and moral or sexual harassment at work?**

In case of sexual harassment and of violence or bullying based on a discrimination factor (sex, age, etc.) by the employer, it is sufficient for the employee to indicate the colleague worker(s) regarding which he believes to be discriminated. The employer is then obliged to prove that the different treatment is not due to any discrimination factor (article 25.º No. 5 of the “Código do Trabalho”).

In all other civil court actions, the employee bears the burden of proof.

In case of criminal procedure or procedure before court following the decision of the «Autoridade para as Condições do Trabalho», the prosecution will be required to establish the elements of offence.

**12) In order to avoid reprisals at work, is there special protection provided for the victim and the witnesses?**

*Specify the nature and duration of the special protection.*

Article 129.º No. 1 of the “Código do Trabalho” forbids the employer to dismiss, take other disciplinary actions or treat less favourably the worker who has exercised or claimed his rights.

Disciplinary actions (including dismissals) taken till six months after the workers complaint regarding his legitimate rights are presumed abusive. This period extends to one year if the worker has claimed rights regarding equal
treatment and non discrimination (article 331.º No. 1 and 2 of the “Código do Trabalho”).

Abusive sanctions increase the amount of the compensation the employer has to pay the worker (article 331.º No. 3 to 6 of the “Código do Trabalho”).

The application of abusive sanctions is also punished with a fine.

13) What would be the consequences for a worker who has abused the procedure put in place to combat violence and moral or sexual harassment at work?

A worker who has abused the procedure put in place to combat violence and moral or sexual harassment at work may be subject to measures concerning his employment relationship, like disciplinary sanctions, including dismissal.

If the abuse of procedures involves manipulating the process, the court may condemn the employee to pay a fine and compensate the employer.

False accusations can also constitute a criminal offence and lead to penal sanctions.

14) Who is responsible for monitoring the measures put in place to combat violence and moral or sexual harassment at work?

The employer and the «Autoridade para as Condições do Trabalho». 
15) What are the sanctions applicable to perpetrators of violence and moral or sexual harassment at work?

The perpetrator may be obligated to pay damages (material and immaterial) to the victim, as well as a fine to the State.

If the offender is a colleague worker, he may be subject to disciplinary sanctions (even dismissal) by the employer.

The perpetrator can also be subject to criminal sanctions.