

## **Deprivation of Liberty of Women and Girls**

### **Submission to the Questionnaire of the Working Group on the issue of discrimination against women in law and in practice**

*October 2018*

The Portuguese Ombudsman institution, in its capacity of national human rights institution fully in line with the Paris Principles and accredited with “A” status since 1999, hereby replies to the call for input received from the Working Group on the issue of discrimination against women in law and in practice, contributing to thematic report on deprivation of liberty of women and girls. The current mandate holder is Maria Lúcia Amaral, since November 2017.

#### **Foreword**

The Portuguese Ombudsman investigates complaints presented by women deprived of liberty, carries out inspections to places of detention and acts also on his/her own initiative defending and promoting the citizens’ rights, freedoms and guarantees, as well as their legitimate interests, particularly the most vulnerable citizens on account of their age, race or ethnicity, gender or disability.

The Ombudsman frequently visits prisons and other detention facilities, following complaints or by her/his initiative. In 1996, the Ombudsman carried out the first general inspection to the Portuguese penitentiary system. All prisons in the mainland and in the regions of Azores and Madeira were visited. This initiative was repeated in 1999, 2003 and in 2013.

Concerning prison facilities for women, the conditions have been improved significantly over the last years. There are now three prison facilities, the Penitentiary



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Establishment of Tires, the Penitentiary Establishment of Odemira and the Penitentiary Establishment of Santa Cruz do Bispo.

However, and as recently acknowledged by the Portuguese Government, the distribution of penitentiary establishments in the national territory should be rethought taking into account geographical origin and gender of detained persons, as well as the proximity of the prison to the jurisdiction where the judicial process runs (in the case of pretrial detentions). The lack of facilities in certain areas, in particular in the South and in the interior of Portugal, is challenging for women since they are placed in prisons far removed from their home environment and families most of the time with difficulties in supporting transportation costs.

Several recommendations were made upon the findings of the visits carried by the Ombudsman and it is fair to say that some of the changes undergone by the penitentiary system in Portugal over the last years have been set in motion by the action of the Ombudsman.

For instance, following the inspection carried in 1996, the Ombudsman issued over 200 recommendations to the Minister of Justice, comprising recommendations on the adoption of legal and administrative measures.

It was recommended the creation of “*Houses for Mothers*”, located in a building separated from other penitentiary facilities, in which children under 5 years of age living in prison with their mothers, would be provided special medical and health services as well as educational and leisure activities. Notwithstanding the Law does not discriminate between men and women (Code of Enforcement Prison Sentences and Imprisonment Measures, Article 7, g) at this moment only two female prisons have the adequate facilities to admit children.

Also in 1996, the Ombudsman also recommended the right to intimate visits in prisons. In 2003, recommendations were made to ensure intimate visits to same sex

partners.

In respect of women detained living with disabilities, the Ombudsman stressed out that improvement works should be carried out in the Santa Cruz do Bispo prison in order to allow detainees with reduced mobility to access to cells specially adapted for them.

The current Ombudsman visited Penitentiary Establishment of Tires, marking the 2018 Women International Day<sup>1</sup> and, on the International Children's Day, drew attention to the rights of children living in prisons or whose parents are detained<sup>2</sup>.

In 2013, the Portuguese Ombudsman was appointed as the National Preventive Mechanism (NPM)<sup>3</sup> with powers to visit and regularly check treatment of persons deprived of liberty. Since then, juvenile justice establishments<sup>4</sup> (educational centers), female prisons and temporary accommodation centers at airports were visited and the NPM issued recommendations focused on the adaptation of some facilities and practices to the needs of girls and women, such as the need to provide for adequate toilet facilities<sup>5</sup>.

Following the visits made in 2015 to the juvenile justice system, some of the recommendations of the Ombudsman were addressed in a gender perspective, such as the (re)opening of an educational center intended exclusively for girls<sup>6</sup>.

With regard to institutions outside the justice system, in 2010 the Ombudsman team

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<sup>1</sup> <http://www.provedor-jus.pt/?idc=32&idi=17523>

<sup>2</sup> <http://www.provedor-jus.pt/?idc=35&idi=17543>

<sup>3</sup> Resolution of the Council of Ministers 32/2013 of May 20.

<sup>4</sup> In the adult criminal system girls can be detained from the age of 16 (age of criminal responsibility). It is important to mention that there is a special legal regime for children and youths aged between 16 and 21. This regime has particular provisions, namely regarding reduced sentencing and specially dedicated detention facilities.

<sup>5</sup> Recommendations no. 1/2015/MNP, 2/2016/MNP, 3/2016/MNP, 17/2017/MNP, available in <http://www.provedor-jus.pt/?idc=127>

<sup>6</sup> Report available at [http://www.provedor-jus.pt/site/public/archive/doc/ce\\_mnp\\_05012017.pdf](http://www.provedor-jus.pt/site/public/archive/doc/ce_mnp_05012017.pdf)



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carried out several visits to retirement homes for the elderly under direct and indirect management by the State. As a result of these actions, the Ombudsman pointed out shortcomings in legislation and drew attention to inadequacies revealed by some facilities.

## **I - Justice system**

***1. What are the main causes for women coming into conflict with the law and facing the associated deprivation of liberty, including pre-trial detention? Which are the groups of women who are most vulnerable and why? Please list the types of offenses for which women, or any particular group of women, are typically charged with, including administrative offenses.***

According to statistics provided by the General Directorate of Reintegration and Prisons (*Direção-Geral de Reinserção e Serviços Prisionais*), in December 31, 2017, there were 637 convicted detained women (table below) and 220 pre-trial detained women in Portuguese prisons (in 2017 Portugal's population was of 10.291.027 inhabitants).



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CONVICTED DETAINED WOMEN IN PORTUGUESE PRISONS December 31, 2017							
Offenses	Women						
	Portuguese			Foreign national			Total
	16 to 18 years old	18 to 20 years old	over 21 years old	16 to 18 years old	18 to 20 years old	over 21 years old	
<b>Total</b>	-	<b>1</b>	530	-	-	106	<b>637</b>
<b>Crimes against persons</b>	-	-	102	-	-	10	<b>112</b>
Murder	-	-	43	-	-	6	49
Offenses to physical integrity	-	-	16	-	-	2	18
Domestic violence	-	-	9	-	-	-	9
Kidnapping / abduction / taking hostages	-	-	6	-	-	-	6
Trafficking in persons	-	-	-	-	-	-	-
Rape	-	-	-	-	-	-	-
Child sexual abuse / minor abuse	-	-	4	-	-	-	4
Other	-	-	24	-	-	2	26
<b>Crimes against property</b>	-	-	182	-	-	21	<b>203</b>
Simple theft / aggravated theft	-	-	73	-	-	10	83
Burglary	-	-	53	-	-	5	58
Simple fraud / aggravated fraud	-	-	26	-	-	4	30
Other	-	-	30	-	-	2	32
<b>Crimes against society</b>	-	-	4	-	-	7	<b>11</b>
Setting fire	-	-	-	-	-	-	-
Setting fire to forests	-	-	2	-	-	-	2
Dangerous driving	-	-	1	-	-	-	1
Driving under the influence of alcohol / narcotics	-	-	1	-	-	-	1
Criminal association	-	-	-	-	-	-	-
Other	-	-	-	-	-	7	7
<b>Crimes against the State</b>	-	-	13	-	-	5	<b>18</b>
Employee resistance and coercion	-	-	3	-	-	-	3
Disobedience	-	-	2	-	-	-	2
Corruption	-	-	2	-	-	-	2
Embezzlement	-	-	4	-	-	-	4
Other	-	-	2	-	-	-	2
<b>Drug related crimes</b>	-	<b>1</b>	175	-	-	56	<b>231</b>
Trafficking	-	-	153	-	-	53	206
Trafficking of small quantities and trafficking for onsumption	-	-	22	-	-	3	25
Other	-	-	-	-	-	-	-
<b>Other Crimes</b>	-	-	54	-	-	7	<b>61</b>
Fiscal evasion	-	-	-	-	-	-	-
Driving without legal authorization	-	-	13	-	-	1	14
Other	-	-	41	-	-	6	47

Translating the above figures to percentages:

<b>CONVICTED DETAINED WOMEN IN PORTUGUESE PRISONS</b>			
<b>December 31, 2017</b>			
<b>Offenses</b>	<b>Portuguese</b>	<b>Foreign national</b>	<b>Total</b>
<b>Crimes against persons</b>	16,02%	1,56 %	<b>17,58%</b>
<b>Crimes against property</b>	28,57%	3,29%	<b>31,86%</b>
<b>Crimes against society</b>	0,62%	1,09%	<b>1,71%</b>
<b>Crimes against the State</b>	2,04%	0,78%	<b>2,82%</b>
<b>Drug related crimes</b>	27,62%	8,79%	<b>34,41%</b>
<b>Other Crimes</b>	8,47%	1,09%	<b>9,56%</b>

Women’s drug related offences represent the most prevalent crimes (34% of the convicted detained women), although such offenses may assume different configurations.

Proportionally, foreign national women<sup>7</sup> are more likely to be involved in offences that lead to high conviction rates and harsher sentences, namely drug offences, than Portuguese women<sup>8</sup>.

Two different scenarios have been identified regarding foreign women in Portuguese prisons who were arrested for drug trafficking: *i) «women who come for European or South American countries (...) who were held at the airport for international drug trafficking (drug couriers)»; ii) women from African countries living in Portugal and arrested for drug trafficking practiced mainly in Portugal<sup>9</sup>.*

<sup>7</sup> Portuguese official statistics register nationalities, but not ethnicities. State statistics on crime and criminal justice also use generically category of foreign applies to residents and non-residents.

<sup>8</sup> «Cidadãos Estrangeiros em Portugal: Migrações, Crime e Reclusão», Raquel Matos, Mariana Barbosa, Gabriela Salgueiro, Carla Machado, page 41/42, available at <http://www.scielo.mec.pt/pdf/psi/v27n1/v27n1a03.pdf>

<sup>9</sup> “Women in prison in Portugal”, Raquel Matos, Manuela Ivone Cunha, Paulo Moimenta de Carvalho, Raquel Tavares e Luís de Miranda Pereira, in *WOMEN IN PRISON - The Bangkok Rules and Beyond, - Intersentia - IPPF, 2017*, page 637) <http://repositorium.sdum.uminho.pt/handle/1822/45387>

A study of the life trajectories of foreign national women in the Portuguese prisons revealed that the majority of them were detained for carrying drugs into the country. For some, the involvement with drug dealing was rooted in drug addiction, for other women was a consequence of their financial difficulties related to vulnerabilities like unemployment, loss of close relatives or health problems<sup>10</sup>.

Foreign detained women, away from their country, their families and with poor or no knowledge of the Portuguese language and legal system are often in a situation of special vulnerability.

Concerning the participation of Portuguese women in drug trafficking *“Two scenarios have been reported in the relevant literature in Portugal: (i) young women whose participation in drug trafficking or associated with drug dependence and/or abusive partners; (ii) adult, but also young, women from economical depressed backgrounds, and for whom drug trafficking is an income-generating strategy often directed at supporting their households. These women operate autonomously as freelancers or in non-hierarchical partnerships with neighbors or family members. This is mostly the case in domestic drug trafficking which displays some particular aspects in Portugal and deserves a special focus*<sup>11</sup>.

In line with the overall tendency in Europe, prison population comes mostly from low-income urban territories, living in the margins of poverty and with poor education levels. According to a recent study, *“The typical profile of the incarcerated women at Odemira prison facility shows that in general terms imprisoned women lived in a situation of extreme precariousness - born into families of low socioeconomic status (usually accompanied by situations involving violence and maltreatment) - and presented a high rate of illiteracy or education levels far below the national average (...). At the time of their conviction, the majority were unemployed or working in unskilled and temporary jobs, relying on state welfare services or charity organizations. A large percentage are single mothers or lived with partners who were not the father of their children,*

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<sup>10</sup> “Women in prison in Portugal”, op. cit. page 627

<sup>11</sup> “Women in prison in Portugal”, op. cit., page 626



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*with teenage or young motherhood being the norm. In turn, this also corresponded to a large number of children in the care of relatives other than their progenitors, or situations of repeated institutionalization - whether they were voluntarily handed over by their mothers or retrieved by state agencies such as social security services or the Child and Youth Protection Services<sup>12</sup>.*

For female offenders, these different aspects merge with personal trajectories that usually present backgrounds marked by the lack of opportunities and family support networks, economic instability within unstructured environments or communities. These factors are tightly linked to the gender roles that characterize the still largely patriarchal frame of the Portuguese society, which is more acutely felt among women of lower education and professional skills, and therefore also more dependent on relations (family, husband, boyfriend, neighbors) that establish certain roles and duties for them to comply with<sup>13</sup>.

In 2012, following its visit to Portugal, during which a meeting was also held with the Ombudsman, the United Nations Working Group of Experts on People of African Descent noted that even if data are not available, the percentage of African descendant in detention is high: whereas only 1% of the population of Portugal has the nationality of an African country, around 12 % of prisoners have nationality from an African country<sup>14</sup>. Several Portuguese nationals are also African descendants, since they are second generation of migrants or have double nationality.

In its report released on October 2, 2018, the European Commission against Racism and Intolerance noted that, in Portugal, afro descendant women are more affected by unemployment and single mothers often have multiple jobs, devoting a limited amount of time to their children, who are exposed to risks such as drugs and crime.

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<sup>12</sup> “The Criminal Act at the Core of the Nexus Security – Insecurity: A Tentative Approach to Female Crime” by Catarina Frois, in “Female Crime & Delinquency In Portugal - in and out of the Criminal Justice System”, edited by Sílvia Gomes and Vera Duarte, Palgrave MacMillan, 2018, page 34.

<sup>13</sup> Idem

<sup>14</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/158/85/PDF/G1215885.pdf?OpenElement>



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Furthermore, it referred that “*There is also a perception that Black people are over-represented in prisons*” and mentioned that “*The UN Working Group of experts on people of African descent has recommended taking special measures on a temporary basis to break this vicious circle of poverty and inadequate education and employment*”<sup>15</sup>.

Pursuant to the conclusions of a study carried out in 2017 by a Portuguese newspaper<sup>16</sup> using official statistics<sup>17</sup>, 1 in every 1071 women from Portuguese-speaking African countries was detained whereas only 1 in 6732 Portuguese women were in detention in the penitentiary system.

According to a study carried out in 2011<sup>18</sup>, the Santa Cruz do Bispo penitentiary establishment had the higher percentage of detained Roma women, corresponding to approximately 27% of the total population. At the time of this study, in the Tires penitentiary facilities the percentage of Roma women in detention was of 2,2%. However, this figure was still far above the representativeness of this ethnicity in national territory, considering Roma population in Portugal (men and women) is estimated of approximately 0,4%, pursuant to a study published by the National Observatory on Roma Communities<sup>19</sup>.

On the other hand, it is possible to conclude that different age groups and generations are often represented in the penitentiary system: for instance, currently in the women's prison of Tires, four generations of the same Roma family are present, three of them detained and accompanied by the child. Incarceration of family members may be explained by the circumstance that detention of Roma people is often associated with

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<sup>15</sup> ECRI Report on Portugal (fifth monitoring cycle) <https://rm.coe.int/fifth-report-on-portugal/16808de7da>

<sup>16</sup> <https://www.publico.pt/2017/08/19/sociedade/noticia/a-justica-em-portugal-e-mais-dura-para-os-negros-1782487>

<sup>17</sup> Data published by the Directorate-General for Reintegration and Prison Services (number of prisoners in 31 December 2016), by the Directorate-General for Justice Policy (2015) and by CENSUS 2011

<sup>18</sup> “Criminalidade, Etnicidade e Desigualdades”, Sílvia Gomes, Universidade do Minho – Instituto de Ciências Sociais, 2011, available at

<https://repositorium.sdum.uminho.pt/bitstream/1822/17004/1/Relat%C3%B3rio%20Criminalidade%20Etnicidade%20e%20Desigualdades.pdf>

<sup>19</sup> [https://issuu.com/acmemrevista/docs/acm\\_emrevista\\_5\\_digital](https://issuu.com/acmemrevista/docs/acm_emrevista_5_digital)



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collective drug trafficking processes in which, when a family member is involved, the rest of the family is implicated, as dealers or accomplices.

A large part of the women in the penitentiary system, Portuguese and foreign nationals living in Portugal, comes from social neighborhoods in urban areas already considered problematic beyond prison walls.

***2. Please indicate if there are cases of women facing detention in relation to civil law suits and identify the particular groups of women mostly affected.***

There are no cases of women, or men, facing detention in relation to civil law suits, which are not grounds for the deprivation of liberty, according to the Portuguese Constitution (Article 27, on the Right to freedom and security)<sup>20</sup>.

***3. What are the main challenges for women's access to justice, including, for example, the availability and quality of legal representation, the ability to pay for bail, and the existence of gender stereotyping and bias in judicial proceedings?***

As provided for in the Constitution (Article 20) and in the law (Law 34/2004, of July 29) legal protection is provided for those who cannot afford it due to the lack of financial resources. Legal protection comprises legal advice, before court proceedings, and legal aid, including representation by lawyer and exemption or reduction of court fees. Portuguese citizens, citizens of other European Union member States and foreign nationals may benefit from legal protection, which is ensured through cooperation between the Institute of Social Security and the Portuguese Bar Association.

The Ombudsman intervention regarding the judiciary may only be exercised with regard to the administrative aspects of the court's activity, such as the case of judicial delays, and cannot scrutinize the content or merits of judicial decisions and sentences.

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<sup>20</sup> <http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf>

It should be mentioned that delays are a systemic issue in Portugal, meaning that they do not specifically affect detained women.

The Ombudsman, even if in a low number, receives complaints about delays in the effective designation of lawyers, although it is not a gender issue. A complaint was filed by a detained woman against the delay in the appointment of a lawyer to represent her in a disciplinary procedure. Considering disciplinary action is an urgent procedure that must be completed within 10 days (Code of Enforcement Prison Sentences and Imprisonment Measures, Article 110, no. 3) delays in appointing a lawyer affect the rights of the defendant.

In 2015, the Special Rapporteur on the independence of judges and lawyers, on her mission to Portugal noted that «obstacles in accessing justice can have particularly harmful impact for sectors of the population particularly vulnerable to violence, such as persons in detention, women and children. She reported complaints on excessive delays in the designation of a lawyer and on the quality of assistance provided<sup>21</sup>.

Portuguese jurisprudence has been criticized for gender stereotyping.

In this regard, a civil society organization, working on the defence and promotion of women's rights, filed a complaint challenging a court decision in which prejudice argumentation was used to justify domestic violence. Although the Ombudsman has no powers to scrutinize the contents of judicial decisions and sentences, the current mandate holder did not fail to express her understanding that domestic violence, which continues to affect women in a disproportionate manner, constitutes an intolerable violation of fundamental rights.

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<sup>21</sup> «(...) according to some lawyers and civil society representatives, the comparatively low remuneration paid by the legal system aid only attract lawyers with less experience and qualification», Report available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/136/97/PDF/G1513697.pdf?OpenElement>

In July 2017, the European Court of Human Rights, in the case of Carvalho Pinto de Sousa Morais versus Portugal (application no. 17484/15), decided in favour of the applicant, considering there had been a violation of Article 14 (prohibition of discrimination) and Article 8 (right to respect for private and family life) of the European Convention on Human Rights. The Court decided that the applicant's age and sex had apparently been decisive factors in the national courts' final decision, which had also been based on the general assumption that sexuality was not as important for a 50-year-old woman and mother of two children as for someone of a younger age, reflecting the prejudices prevailing in Portugal's judiciary.

The elimination of stereotypes is a central concern of the National Strategy for Equality and Non-Discrimination 2018-2020, approved by the Council of Ministers Resolution no. 61/2018, of 8 March.

***4. What have been the main drivers for the increasing or decreasing of the female prison population in your country in the past decade? To what extent are non-custodial measures used, in accordance with the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)?***

On September 15, 2018, there were 12.910 detainees in the Portuguese penitentiary system, 822 women (convicted and on pre-trial detention) and 12.088 men (convicted and on pre-trial detention)<sup>22</sup>. The number of women detainees decreased in 2018, being stable over the last years, around 6%, in line with other European countries. Between 2009 and 2018, the number of women in detention was as follows:

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
<b>Number of detained women</b>	613	627	711	758	853	841	862	869	856	838 <sup>23</sup>
<b>Percentage</b>										

<sup>22</sup> These statistics do not include 155 persons (16 women and 139 men) admitted in non-prison psychiatric institutions and 3 women in inmates hospitalized in psychiatric prisons

<sup>23</sup> Including 193 foreign nationals and 167 in pre-trial detention.



of women in the penitentiary system	5.5%	5.4%	5.6%	5.5%	5.9%	6%	6%	6%	6.3%	6.4%
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When comparing to 2016, the total number of detainees (women and men) has decreased by 339 in 2018, being the second consecutive year to reveal such trend<sup>24</sup>.

In regard to the use of non-custodial measures, statistics provided by the General Directorate of Reintegration and Prisons on the use of non-custodial measures applied to women are presented in the following tables.

### Number non-custodial sentences applied to women

	Coercion measures	Provisional suspension of procedures	Community work	Suspension of the execution of prison sentences	Parole	Security measures	Total
2010	38	192	392	546	238	17	1.423
2011	58	303	547	741	231	21	1.901
2012	68	470	694	870	212	22	2.336
2013	65	546	839	960	227	25	2.662
2014	47	587	752	1.006	222	25	2.639
2015	56	753	855	1.120	221	25	3.030
2016	57	818	929	1.299	193	23	3.319
2017	52	747	908	1.315	190	26	3.238
31 August 2018	57	677	849	1.315	199	25	3.122

<sup>24</sup> Annual Homeland Security Report of 2017, page 131, available at <https://www.portugal.gov.pt/download-ficheiros/ficheiro.aspx?v=9f0d7743-7d45-40f3-8cf2-e448600f3af6>

Considering the figure reached by 31 August, a strong increase of the number of non-custodial measures is expected by the end of 2018.

### Variation of non-custodial sentences applies to women <sup>25</sup>



### Women serving sentences or security measures under electronic surveillance

	Obligation of house permanence	House arrest	Parole	Electronic surveillance (domestic violence)	Electronic surveillance (stalking)	Total
<b>31 August 2018</b>	36	27	9	4	1	<b>77</b>

In 2017, the Penal Code was amended in order to strengthen the resocialization of detainees, extinguishing the weekend detention regime as well as the semi-detention regime, and extending house arrest to sentences not exceeding two years (Law 94/2017, of 23 August, Article 43). In addition, the court may "authorize absences necessary for the frequency of resocialization programs or for professional activity, professional training or studies of the convicted person". Since the entry in force of this law, the number of house arrests has increased more than 300% by June 2018 <sup>26</sup>.

After three months of implementation of this legislative innovation, 70 new sentences to serve under house arrest had been applied, which represent a significant increase

<sup>25</sup> Graphic provided by the General Directorate of Reintegration and Prisons

<sup>26</sup> Directorate-General for Justice Policy, Electronic Surveillance, Monthly Statistics - June 2018 (<http://www.dgsp.mj.pt/>)

in the use of this non-custodial measure.

At present, there are no girls between 16 and 20 years old in the Portuguese penitentiary system (on 31 December 2017, only one girl was serving sentence in a penitentiary establishment, as described in page 4).

Regarding to juvenile justice, family and children courts initiate procedures when girls, between the age of 12 and 16, adopt conducts that are qualified by the Penal Code as a crime. The most severe measure is the internment in an Educational Centre (institutional), which temporarily removes the child from his/hers natural environment. Alongside other requirements (i.e the seriousness of the offense) a child can only be sentenced to internment in a closed Educational Centre if he or she is, at least, 14 years old. Younger aged girls (at least 12) can be interned in open or semi-open Educational Centres.

Between 2010 and 2017, there was a decrease of 35,0% regarding the number of youngsters in educational institutions (from 226, in 2010, to 147 in 2017). This decrease is due to a 35.5% reduction in the number of boys and to a 30.4% reduction in the number of girls<sup>27</sup>.

The Directorate of Juvenile Justice Services has recently conducted a study (January 2018) that accompanied the route of 191 youngsters who have been subjected to educational guardianship measures and has concluded that 31% of these youngsters returned to crime two years after the end of such<sup>28</sup>.

The Educational Tutelary Law, approved by Law 166/99, of September 14, provides

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<sup>27</sup> Statistics provided by Directorate-General for Justice Policy, available at [http://www.dgpi.mj.pt/sections/sections/siej\\_pt/destaques4485/estatisticas-sobre9554/downloadFile/file/20180521\\_Reclusos%20e%20jovens%20internados\\_Destaque58.pdf?nocache=1527683758.24](http://www.dgpi.mj.pt/sections/sections/siej_pt/destaques4485/estatisticas-sobre9554/downloadFile/file/20180521_Reclusos%20e%20jovens%20internados_Destaque58.pdf?nocache=1527683758.24)

<sup>28</sup> <https://portal.oa.pt/comunicacao/imprensa/2018/03/06/dois-anos-apos-saida-de-centros-educativos-31-dos-jovens-reincidem/>



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alternatives to internment, namely the Suspension of the Process - an extra procedural measure that seeks to suspend the process, by presenting and complying with a conduct plan that indicates the child is willing to avoid disruptive behaviours. Another example is the Educational Monitoring measure which, as a more serious educational measure to be carried out in the community, allows higher risk youngster to train and develop their skills within community, avoiding his/hers internment.

## II. Other institutions

***1. What other institutions outside the justice system exist in your country wherein women and girls are institutionalized on grounds such as care, correction, protection and prevention against potential harms, etc.? Please list the groups of women and girls who are most concerned in each situation.***

Outside the justice system and the juvenile system there are several institutions, under State monitoring, wherein women and girls may be institutionalized on grounds such as care, correction, protection and prevention against potential harms, namely:

- i) Homes for children and youth in danger, up to the age of 18 years old to whom a measure of promotion and protection has been applied either by the Commission for the Protection of Children and Young People or by the Court (*Lares de Infância e Juventude*);
- ii) Autonomisation Apartments functioning as transitory facilities for young people from 15 to 21 years old oriented to foster autonomy (*Apartamentos de Autonomização*);
- (iii) Temporary shelters for children and young people up to the age of 18 in danger (*CAT – Centros de Acolhimento Temporário*);
- iv) Institutions for women with disabilities which are collective accommodation facilities for persons over 16 years old with disabilities and incapacities (*Lares Residenciais*);
- iii) Retirement homes and residential units for the elderly who have no family support (*Lares Residenciais* and *Residências Autónomas*);
- iv) Temporary accommodation facilities for adults in a situation of need in order to



- direct them to the most appropriate social response;
- v) Temporary accommodation facilities for drug addicts who, after leaving treatment facilities, prison establishments, educational centres or other, face challenges in reintegration into the family or community, at school or at work;
  - vi) Residential facilities for persons with HIV/AIDS, in family crisis and socioeconomic disadvantaged;
  - vii) Shelter houses for temporary accommodation of women victims of domestic violence, accompanied or not by their children remain in their habitual residences, due to security reasons;
  - viii) Supported living units and protected life units for persons with psychiatric illness, disabled youngsters and adults without autonomy to organize the activities of daily living or without adequate family or social support;
  - ix) Institutions for the protection of victims of trafficking of people.

With regard to the groups of institutionalized women and girls who are most concerned, the following ones should be mentioned: (i) women that have suffered sexual abuse or other forms of violence, fearing further ill-treatment, (ii) pregnant girls, due to the social stigmatization to which they may be subjected, to their inexperience of dealing with pregnancy and the lack of adequate facilities for them, (iii) foreign national women due to language barriers, lack of social networks to support them and poor awareness of their rights, (iv) women with mental illness and (v) in more general terms, women with no family support.

***2. Please explain the decision-making process for the institutionalization of women and girls in each situation, including the role of women and girls themselves in the decision on institutionalization. Please highlight any good practices in terms of enabling women to exercise agency within institutional systems, with due respect to their rights?***

The institutionalization of legally capable women is only possible after free and informed consent of the interested party, in full respect for the autonomy of her will

(Article 67 of the Civil Code).

In distinct situation are women who are prevented from exercising their full rights due to mental illness and any other state of long-term vulnerability or behaviour, which is expected to be improved with the entry in force of the recently approved Law 49/2018, of 14 August. This law establishes a new regime for the adults in need of support and abolished the legal institutes of incapacity and interdiction and it is expected to positively impact on the elderly. This regime aims to provide adequate protection not only for older people but for adults of any age in a state of lasting vulnerability, regardless of the reason for that situation, and also to ensure those persons can maintain the greatest degree of autonomy. The support is requested by the adult or, upon her/his authorization, by the spouse or partner, by any relative with succession rights or, independently of any authorization, by the Public Prosecutor's Office, and decided by a court of law after personal hearing of the adult concerned. In any case, the institutionalization of the adult depends always of the express authorization of the court.

The adoption of measures for the promotion and the protection of children and young people's rights in danger is governed by the principle of mandatory hearing. The child or youngster has the right to be heard and to participate in the definition of the measure aiming the promotion and protection of their rights (Law 147/99, of 1 September, which approved the regime for the protection of children and young people in danger impoverished backgrounds, (v) women with mental illness and (vi) in more general terms, women with no family support).

With regard to young girls, the institutionalization in shelters is decided by the Commission for the Protection of Children and Young People and depends on the non-opposition of the child over 12 years of age. The opposition of children under the age of 12 years is considered relevant according to their capacity to understand the meaning of the intervention. If there is judicial intervention, children and girls are heard by the court on the situations that gave rise to the intervention and are also



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heard on the review or cessation of protective measures. Upon reaching the age of majority, the protection measure can be extended up to 25 years, provided that the girl requests it.

In general term, good practices enabling girls and women to exercise their rights within institutional systems should include (i) educational and awareness-raising programmes on women's rights according to national and international standards, (ii) dissemination of human rights materials, such as on-line manuals with guidelines, books, posters, leaflets and brochures, (iii) providing training to staff working in institutions, enabling them to adequately deal with the specific situation of girls and women institutionalized and (iv) encouraging girls and women in institutions to actively participate in all matters of their own interest, including those relating to the definition and execution of their life project and goals, and also in regard to the operation of the institution.

### **III. Forced confinement in private contexts**

*1. What forms of forced confinement of women and girls exist in a private or social context sanctioned by family, community or group of individuals such as abduction, servitude, guardianship and “honor” practices, trafficking, home detention, “witch camps”, widowhood rites, etc.?*

The crime of trafficking in human beings is often associated with other criminal offenses such as slavery and abduction. In December 2017, there were 280 persons, both men and women, in the Portuguese penitentiary system convicted for abduction and hostage-taking, and 6 detainees convicted for trafficking in human beings.

In accordance with the Annual Homeland Security Report <sup>29</sup>, in 2017 there were 175 flagged victims of trafficking in human beings. Of these, 150 victims were registered in Portugal and 25 victims were Portuguese citizens abroad. Most cases of trafficking refer to labour exploitation, followed by sexual exploitation and begging. Victims of

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<sup>29</sup> <https://www.portugal.gov.pt/download-ficheiros/ficheiro.aspx?v=9f0d7743-7d45-40f3-8cf2-e448600f3af6>

trafficking in human beings for labour purposes are mainly exploited in the agricultural sector<sup>30</sup>.

Although the Portuguese Ombudsman has not received recently any complaint on trafficking in human beings, the subject is a matter of concern for the institution: an ex-officio investigation on the action of Portuguese authorities on preventing and combating labour exploitation was initiated in 2014. In 2015, the Portuguese Ombudsman organized a seminar on the condition of the persons detained within the penitentiary system, in which participated an expert in the care and protection of victims of trafficking.

In Portugal, the minimum age of marriage is set at 16 years old, with the consent of the parents until the age of 18.

The media reported in 2017 the case of an 18 year old Roma girl abducted by her father and forced to marry a man she was "promised" to. The girl was rescued by the Judiciary Police as part of a police operation that led to the arrest of six people suspected of abduction, forced marriage and rape <sup>31</sup>.

The Committee on the Elimination of Discrimination against Women in its Concluding Observations on the last period report of Portugal (2015) recommended to the State to raise the minimum age of marriage to 18 years. The CEDAW Committee also noted it is “*particularly concerned about the high school dropout rates among Roma girls owing to child and/or forced marriage*” <sup>32</sup>. The Portuguese Government, on the report submitted to the Group of Experts on Action against Violence against Women and Domestic Violence of the Council of Europe, dated 8 September 2017, reinforced that according to the law “*No justification culture, custom, religion, tradition or so-called honour*

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<sup>30</sup> Idem

<sup>31</sup> <https://observador.pt/2018/05/18/jovem-cigana-raptada-pelo-pai-obrigada-a-casar-e-violada-por-marido/>

<sup>32</sup> [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fPR T%2fCO%2f8-9&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fPR T%2fCO%2f8-9&Lang=en)



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*can be regarded as justification or regarded as mitigating circumstances where any of the acts of violence covered by the Convention is committed.”<sup>33</sup>.*

The perpetration of crimes against women such as domestic violence and genital mutilation may involve forced confinement. In August 2015, the Penal Code was amended and female genital mutilation offense was autonomously criminalised (Article 144 A). Between January 2016 to January 2017, 80 cases of female genital mutilation have been registered with health authorities<sup>34</sup>.

***2. Please identify the groups of women and girls who are most affected by these situations.***

Foreign national girls and women are the most vulnerable victims of trafficking in human beings.

According to the 2015 Concluding Observations of the CEDAW Committee “*poverty among and the social exclusion of women, in particular disadvantaged and marginalized groups of women such as migrant, asylum-seeking and Roma women, increase their risk of becoming victims of trafficking (...)*”<sup>35</sup>.

***3. What is the role of law and policy (including customary law and authorities) in your country concerning these types of confinement?***

The Portuguese Penal Code, in the chapter on crimes against persons and against personal liberty, criminalizes the following conducts: forced marriage (Article 154-B), preparatory acts with the intent of forced marriage (Article 154-C), abduction (Article

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<sup>33</sup> <https://rm.coe.int/portugal-state-report/168074173e>

<sup>34</sup> <https://www.cig.gov.pt/wp-content/uploads/2017/07/Relat%C3%B3rio-Intercalar-de-Execu%C3%A7%C3%A3o-do-III-PAPEMGF-2016.pdf>

<sup>35</sup>

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fPR.T%2fCO%2f8-9&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fPR.T%2fCO%2f8-9&Lang=en)

158), slavery (Article 159) and trafficking in human beings (Article 160).

The role of public policies in this respect is oriented at (i) strengthening awareness on criminal conducts, (ii) disseminating information throughout vulnerable groups, (iii) ensuring that victims have better access to their rights, providing them with adequate protection and assistance, and (iv) reinforcing combat against crime through coordinated intervention of several entities such as criminal police agencies, judicial authorities, the High Commissioner for Migrations, the Commission for Citizenship and Gender Equality (CIG), the Commission for Equality in Labour and Employment (CITE), the Commission for Equality and Against Racial Discrimination (CICDR), the National Institute for Rehabilitation (INR), the Observatory for Trafficking in Human Beings, the Regulatory Authority for Working Conditions and NGOs, particularly in the implementation of prevention actions.

Law no. 96/2017, of 23 August, defined the objectives, priorities and guidelines of the national criminal policy for 2017-2019, establishing as priority prevention crimes, among others, the crimes against freedom and sexual self-determination, the crimes of trafficking in human beings and the crimes committed against children and young people and other vulnerable persons. The first two types of crime are also considered priority investigative crimes. Furthermore, this law also sets as priorities the victim's protection and the compensation for damages resulting from the crime, also establishing that adequate information and support to the victims' rights should be provided.

Between 2007 and 2017, three national plans for preventing and combating trafficking in human beings were implemented, with the purpose of strengthening collaboration between public authorities and civil society organizations.

The Fourth Plan of Action for the Prevention and Fight against Trafficking in Human Beings 2018-2021 aims to reinforce awareness and information on this crime and to ensure that victims have better protection of their rights, as well as to promote the

fight against organized crime networks, namely by dismantling both the “business model” and the trafficking chain.

This Plan of Action, together with the National Strategy for Gender Equality and Non-Discrimination 2018-2021, implement by (i) the Action Plan on Equality between Women and Men, (ii) the Action Plan for Preventing and Combating Violence against Women and Domestic Violence and (iii) the Action Plan to Combat Discrimination on the basis of Sexual Orientation, Gender Identity and Expression, and Sexual Characteristics, are the basis for a comprehensive national policy aimed at preventing violent offenses against women.

#### **IV. Migration and crisis situations**

##### **1. What are the specific risks of detention and confinement encountered by women on the move in the context of asylum seeking, internal displacement and migratory processes?**

In Portugal there are two types of detention centers for migrants and asylum seekers: the temporary detention centers located in the international zone of the airports and the only detention center located outside an airport, the *Unidade Habitacional de Santo António* in Porto.

In practice, asylum seekers *who apply for asylum at border posts* are placed in the airports’ temporary reception centers. This is also where the accommodation of immigrants found to be *illegally entering* the territory is made. Persons who are currently under deportation proceedings are usually placed in the detention center in Porto.

All these detention and accommodation centers in Portugal separate women and men in different sectors. This separation was aimed at protecting women from the risk of sexual violence and, thus, to comply with International and European legal norms. However, and despite being required by Law (Article 35.-B, n.7 of the Asylum Law



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and Article 146-A, n. 6 of the Immigration Law), these centers do not have separate and private rooms *for families*. In Porto's detention center, families may, however, spend some time together during the day, in common leisure areas and also during meals. Nevertheless, the same cannot be said in the airports' detention centers, where complete separate sectors do not allow couples to spend time together. Couples' separation adds a stress factor to the detention that may put women's mental health at risk. This risk may be more serious where children are involved.

Migrant women may also face other types of risk during their stay at the airports' detention centers. For example, as witnessed by the National Preventive Mechanism, these centers do not always provide women's hygiene items. Migrants in detention are also not allowed to keep their personal luggage with them, allegedly due to security reasons. Deprivation of personal or women's hygiene items may also contribute to inadequate reception conditions and added stress.

Finally, as the reports of the National Preventive Mechanism show, these centers do not have conditions for accommodating migrants in a dignified manner for long periods of time. They lack satisfactory outdoor areas and may easily get overcrowded. Moreover, they are not "opened" to NGOs or civil society organizations. There are only two exceptions to this *closure*: the authorities responsible for supervising detention conditions in Portugal, such as the Ombudsman, acting as National Preventive Mechanism, and the Portuguese Council for Refugees, acting as a representative of the United Nations High Commissioner for Refugees, who can visit detained asylum-seekers (Article 35-B, n. 3 of the Asylum Law). Diversely, the Porto's detention center is accompanied by the Jesuit Refugee Service, which has permanent personnel in its premises and by the *Médecins du Monde* and the International Organization for Migrations, which visit and provide assistance to detainees two times per week.

The Immigration Law also allows immigrants who are detained to contact in private with their lawyers (Article 146-A, n.2). However, the Ombudsman has received



several complaints that report serious challenges to the enforcement of this right. Allegedly, several lawyers were required to pay a fee to enter the premises of the temporary detention center located in the international area of the Lisbon Airport. This payment was requested by the private entity that manages the airport and, thus, also manages the temporary reception center located therein. The Ombudsman has tried to overcome this difficulty with the Ministry of the Interior. However, it is still unclear whether this problem is definitely settled.

Finally, the risk of isolation is also aggravated due to the insufficiency of mechanisms allowing detainees to contact with their family members or other persons. Such communication is foreseen as right by the Immigration Law (Article 146-A, n.1) and by the Asylum Law (article 35-B, n.3) and has been fully respected in the Porto's detention center, where detainees have a daily access to their cell phones. However, the same cannot be said for detainees who are staying at the airport's detention centers. In these centers, detainees are provided with a phone card with a credit of 5€ to make calls. This credit may be insufficient when the detention may last for two months and detainees wish to speak to their country of origin. The National Preventive mechanism has also found some cases where no phone card was provided to the detainees.

These factors encompass a risk of isolation that may lead distress and conflicts between detainees, as well as an increased risk of mental health deterioration.

## **2. What is the policy relating to the administrative detention of women migrants including pregnant women and women with children?**

Detention in the context of Migration is expressly allowed by Article 27, 3, c) of the Portuguese Constitution, which sets forth an exception to the right of personal freedom to all those who have illegally entered or remained in Portuguese territory, or who are currently under extradition or deportation proceedings. The Portuguese Immigration Law allows detention of migrants precisely in these two circumstances.



The Asylum Law also sets forth some cases where asylum seekers may be detained: applicants may be placed or kept in a temporary facility for reasons of national security, public policy, public health or where there is a risk of absconding, on the basis of an individual assessment and if other alternative and less serious measures cannot be effectively implemented. Applicants may also be placed or kept in a temporary reception center if no other alternative measures may be effectively implemented in the context of *asylum applications made at border posts*. In all these cases, detention or other coercive measure must be judicially controlled in 48 hours.

However, the case-law of the Superior Courts have been insisting that detention must be applicable only where there is true risk of escaping and attention must be paid to the *principle of proportionality*. Thus, judges may preferably apply alternative measures to detention, such as periodic presentation to the judge or house arrest. Judges must pay attention to the person's personal situation when deciding the most adequate measure. Where “vulnerable persons” are concerned, their particularly fragile situation must be taken into account.

The Portuguese Asylum Law has transposed several Directives of the European Union that qualify some migrant women as “especially vulnerable”: that is the case, *inter alia*, of pregnant women and women who arrive alone with minor children. Women with disabilities, elder women, women who were victims of torture or sexual violence must also be considered as “vulnerable persons”. However, the Asylum Law does not exempt these women from being detained according to the general rules. Nonetheless, as previously said, their vulnerability shall be one factor that the judges should balance while deciding the specific measure to be applied. Moreover, Asylum Law sets forth that they must be regularly accompanied and supported, with due consideration to their health situation (Article 35-B, n. 8 and Article 56).

However, in practice, these duties are not being adequately fulfilled. First of all, asylum seekers are usually detained at the *airports' detention centers*, since the main cause for detaining asylum seekers concern the asylum requests *made at the border*. As we have



showed in the previous question, detention centers that are located in the airports' international areas are particularly *closed to the civil society*. Thus, the special needs of vulnerable women may be insufficiently supervised due to this closure. Moreover, the *Asylum Database Information* has highlighted in its 2018 report that, due to the increase of the number of asylum seekers entering in the Portuguese territory, after 2017 the Aliens and Borders Service ceased to systematically identify those persons who should be considered vulnerable. This means that vulnerable persons may be detained with no consideration to their special needs.

As for women who have not requested asylum, they are subjected to the general rules enshrined in the Immigration Law. Thus, all migrant women who were found irregularly staying in the territory or who are under an expulsion procedure may be detained according to the above explained general rule. Again, these measures are judicially controlled and must be balanced according to the principle of proportionality. Judges must pay due consideration to their personal situation and apply preferably non-custodial measures.

Article 146-A of the Immigration Law sets forth that detained migrants are entitled to the provision of urgent health care and basic treatment of diseases, with particular attention being paid to the situation of vulnerable persons, in particular minors, unaccompanied minors, persons with disabilities, the elderly, pregnant women, families with minor children and persons who have been victims of torture, rape or other serious forms of psychological, physical or sexual violence. Whereas women detained in *Unidade Habitacional de Santo António* in Porto may be dully accompanied, the same cannot be said, as previously explained, regarding women who are detained in the airports' detention centers.

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