WOMEN IN PRISON IN PORTUGAL

Raquel Matos, Manuela Ivone Cunha, Paulo Moimenta De Carvalho, Raquel Tavares & Luís De Miranda Pereira

1. INTRODUCTION

This chapter aims at discussing the historical evolution of women's criminality and imprisonment in Portugal. Though focusing on women, whenever possible a comparison with men is brought into the discussion.

Portugal is no exception to the worldwide imbalance between men and women's incarceration rates. Women have consistently been the minority among the population behind bars. Currently, as well as until the 1990s, they represent less than 6%. However, after the democratic revolution in 1974 (which decriminalised one of the main causes of women's imprisonment during the dictatorship: prostitution), this proportion rose steeply by the second half of the 1990s, up to nearly 10% by the end of the century – one of the highest rates in the European Union (EU).

In fact, during the 1990s the total population behind bars (men and women) registered an unprecedented increase, and attained the highest carceral rate per 100,000 inhabitants (145) in the EU. One of the features of this substantial change in prison population was its massive provenance from the same low-income urban territories. As a result, co-prisoners are often neighbours, relatives or previous acquaintances, an aspect that altered the social world of the prison. This was both a consequence of selective drug control (intensive law enforcement targeting specific areas) and of the workings of the Portuguese retail drug economy (see section 4.2.3 below).

---

1 Raquel Matos is a Senior Lecturer within the Faculty of Education and Psychology at the Catholic University of Portugal. Dr Manuela Ivone Cunha (PhD) is a senior lecturer at the University of Minho. Paulo Moimenta de Carvalho is in the Directorate-General of Reinsertion and Prison Services. Ms Raquel Tavares is a Legal Adviser from the Office of Documentation and Comparative Law at the Prosecutor General's Office. Luís de Miranda Pereira is the retired Director General of the Portuguese Prison Service.

Although this change spanned both male and female prisons, it has been more concentrated and therefore more salient in the latter. Its prominence in women's institutions stems partly from the relative homogeneity of their population. In the 1990s, the variety of offenses behind women's imprisonment was sharply reduced. Although the population of male prisoners is also fairly homogeneous (property offenses and drug-related crimes together account for the majority of convictions), its internal distribution is more balanced than that of its female counterpart, which concentrates overwhelmingly on drug trafficking. As an example, analysed in Cunha’s study documenting these shifts during the 1990s: in 1997, 46% of men were imprisoned for property offenses and 34% for drug-related crimes, as against 16% and 69% in the female case. Women are proportionally more likely to be sentenced to imprisonment for drug-related crimes than men. The centrality of drug crimes in women's convictions is also what best explains the faster rise of female incarceration rates: these are the crimes with the highest conviction rates, and are amongst those most harshly sentenced. This means that the rise in women's incarceration rates owed little to possible changes in the way courts deal with this gender.

By the end of the century, women's imprisonment thus revealed more clearly than men's some important processes linking prisons to a range of urban neighborhoods, and that resulted in large clusters of co-imprisoned family members. This brought new aspects to women's prisons, where family relationships can include four generations and are no longer limited to infant-mother relationships. These aspects are still observed today, although on a less massive scale. Concerning prison facilities for women, we can say that the conditions under which women serve prison sentences in Portugal have improved significantly in the last few years. There are now prisons specifically designed for the female population, particularly the modern facilities of Santa Cruz do Bispo, where conditions have been created to meet the specific needs of women (e.g., healthcare services, nursery).

This contribution is organised into three main topics:

1. International and human rights framework (international organisations and conventions that specifically concern women).
2. Statistics on women in crime, in detention and in prison.
3. Deprivation of liberty (facilities for women in the penitentiary system; specific groups - young women in prison, pregnant women/women with children, foreign national women and minorities; health care, safety and security; contact with the outside world; training of staff; rehabilitation of women prisoners).

Throughout the text, official statistics and rules, as well as other information about the Portuguese penal and penitentiary systems, are presented. Empirical data from ethnographic and phenomenological studies developed since the 1980s are also used to discuss the way in which women have been engaged in criminal activity and have been experiencing imprisonment in Portugal.

2. INTERNATIONAL AND HUMAN RIGHTS FRAMEWORK

Portugal has assumed a wide range of obligations in terms of human rights; some of those obligations have a direct impact on the situation and treatment of, and duties towards, women in prison. This is the case, for instance, with the Council of Europe (CoE) Convention on preventing and combating violence against women and domestic violence. Portugal was, in fact, one of the first countries to ratify this Convention. Other examples are the conventions against torture and discrimination against women, and various other universal and regional treaties.

---


7 All the statistics presented in this chapter (text and charts) are official statistics from the following sources: Portuguese Directorate-General for Justice Policy – Ministry of Justice (at: http://www.dgp.mj.pt/secoes/estatisticas-da-justica) (last visited: 1 September 2015); Statistics Portugal (at: www.ine.pt) (last visited: 1 September 2015). We would like to thank Mónica Soares (The Catholic University of Portugal) for her support in research and text-formating tasks, and Eva Fernandes and Isabel Antunes (Directorate-General of Reininsertion and Prison Services) for the information on non-custodial sentences.
on such issues as civil and political, economic, social and cultural rights, racial discrimination, the rights of the child and rights of people with disabilities. Apart from those exceptions that are inherent to the execution of liberty deprivation measures, the provisions of all the instruments mentioned above apply to people deprived of their liberty, and Portugal is thus bound by them and subject to the full jurisdiction of bodies that monitor the compliance therewith, including the European Court of Human Rights and United Nations (UN) treaty monitoring bodies.

Furthermore, Portugal has been adopting important comprehensive policy instruments to combat discrimination and to promote the enjoyment of human rights at the domestic level, which can also be of importance in this field. Currently in place are, for instance, the IV National Plan for Equality (2011–2013), IV National Plan against Domestic Violence (2011–2013), National Plans on Rehabilitation and Reinsertion 2013–2015 (for juveniles and others), the National Plan against Trafficking in Human Beings (2011–2013), II Program of Action for the Elimination of Female Genital Mutilation (2011–2013), II Plan for Immigrant Integration (2010–2013) and the National Strategy for the Integration of Roma Communities (2013–2020).

The prison system has recently sustained reforms incorporating recommendations made by national and international entities, such as the UN Committee against Torture, the CoE Committee for the Prevention of Torture and the Ombudsman. The last of these was recently appointed as a national prevention mechanism under the Optional Protocol to the Convention against Torture and, as such, immediately undertook a general inspection of all prisons in February–March 2013.

2.1. INTERNATIONAL ORGANISATIONS

Portugal is a member, inter alia, of the following international organisations:

- World Health Organization (WHO, since 1948)
- Inter-Parliamentary Union (deliberation of 24 June 1977)
- Community of Portuguese-speaking Countries (since 17 July 1996).

2.2. INTERNATIONAL HUMAN RIGHTS TREATIES AND CONVENTIONS THAT SPECIFICALLY CONCERN WOMEN

Portugal ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 30 July 1980, and its Optional Protocol (OP–CEDAW) on 26 April 2002. It was one of the first countries to ratify the CoE Convention on preventing and combating violence against women and domestic violence, on 5 February 2013. No reservations have been made to any of the above treaties.

Human rights laid down in treaties in force in Portugal and fundamental rights established in the Portuguese Constitution (CPR) are directly enforceable by domestic courts, in accordance with Article 20 (1) CPR, which states that "[e]veryone is guaranteed access to the law and the courts in order to defend those of his/her rights and interests that are protected by law" (emphasis added).

Human rights and fundamental rights norms are undoubtedly "protected by law". In the latter case by the CPR, in the former, by international norms binding Portugal by virtue of its ratification of, or accession to, human rights treaties, or even resulting from international customary law. The status of international law in the Portuguese legal system is governed by Article 8 CPR, which establishes that "the norms and principles of general or common international law form an integral part of Portuguese law" (No. 1) and that

"The norms contained in duly ratified or approved international conventions come into force in Portuguese internal law once they have been officially published, and remain so for as long as they are internationally binding on the Portuguese state." (No. 2)

In addition, Article 16 establishes that "the fundamental rights enshrined in the Constitution shall not exclude any others set out in applicable international laws and legal rules", and prescribes that "constitutional precepts concerning fundamental rights must be interpreted and completed in harmony with the Universal Declaration of Human Rights".

Furthermore, in accordance with Article 18 CPR, "the constitutional precepts with regard to rights, freedoms and guarantees are directly applicable to and binding on public and private entities" and may only be restricted by law "in cases expressly provided for in the Constitution, and such restrictions must be limited to those needed to safeguard other constitutionally protected rights and interests". "Rights, freedoms and guarantees" include rights set out in Title II
CPR (such as the rights to one’s life, personal integrity and other personal rights) and “fundamental rights of an analogous nature”.

The Standard Minimum Rules for the Treatment of Prisoners 1955/1977, the Basic Principles for the Treatment of Prisoners 1990, the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, the Declaration on the Elimination of Violence against Women and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment 1998 are among a large group of human rights and humanitarian law instruments that have been translated into Portuguese, published and made available online9 for free.


International rules concerning the treatment of prisoners have been taken into account, for instance, in the reforms of the penitentiary system undertaken in the last 30 years (see, for instance, reference to the UN Standard Minimum Rules in paragraph 4 of Decree-Law 265/79, of 1 August, and to the European Prison Rules in Chapter I.4.2 of Act 41/2008, of 13 August).

Portugal is a party to a large number of human rights and humanitarian law instruments, many of which contain relevant provisions that must be fully complied with, as they concern such aspects as conditions of detention, accommodation, food, education and cultural activities, labor, parental rights, complaint and inspection mechanisms. For instance, the UN International Covenants on Civil and Political Rights and on Economic Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of Persons with Disabilities, the International Convention for the Protection of All Persons from Enforced Disappearance and all existing Optional Protocols to these treaties.

At the CoE level, Portugal is party to, inter alia, the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocols 1, 4, 6, 7, 13 and 14 thereto, the Revised European Social Charter and European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, as well as the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, and the Convention on Human Rights and Biomedicine and its Protocol on the Prohibition of Cloning Human Beings.

Other relevant treaties include ILO Conventions 29 (Forced Labour), 100 (Equal Remuneration), 138 (Minimum Age), 155 (Occupational Safety and

---

9 See http://direitoshumanos.gddc.pt/3_2/IIIPAG3_1.htm (last visited: 1 September 2015).

2.3. NATIONAL HUMAN RIGHTS/CIVIL RIGHTS

The CPR contains an extensive catalogue of fundamental rights, many of which are of the utmost importance for detained persons, including women. For instance, the right to personal integrity, both moral and physical, and the prohibition of torture or cruel, degrading or inhuman treatment or punishment (Article 25).

The right to freedom and security is established in Article 27, according to which “no one may be wholly or partially deprived of their freedom, except as a consequence of a judicial conviction and sentence imposed for the practice of an act that is legally punishable by a prison term or the judicial imposition of a security measure”, providing also for a number of exceptions to this principle. Several guarantees are recognised for people deprived of their liberty, including the right to be immediately informed, in an understandable manner, of the reasons for one's arrest, imprisonment or detention and of applicable rights, and the right to compensation in the event of illegal deprivation of liberty (Article 27 (4) and (5)). The right to habeas corpus is provided for in Article 31, while Article 32 establishes various safeguards in criminal procedure, such as the presumption of innocence, the right to counsel, the right to appeal, the right to be heard and the prohibition on the use of evidence obtained through “torture, coercion, infringement of personal physical or moral integrity, or improper interference with personal life, home, correspondence or telecommunications”. Other safeguards include limits to being remanded in custody (Article 28) and the principle of legality in the application of sentences or security measures (Article 29).

Article 30 CPR establishes the following limits on sentences and security measures:

- a prohibition on those of a perpetual, unlimited or undefined duration;
- mandatory judicial review for the maintenance of those security measures that restrict freedom in mental health cases;
- a prohibition on the transfer of criminal liability;
- a prohibition on the automatic loss of any civil, professional or political right as the result of a sentence; and
the number of female suspects has been quite stable at around 37,500–37,650. However, in 2012, there was a peak of 38,857 female suspects (see Table 1).

Table 1. Women officially suspected of crime

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number</td>
<td>Not</td>
<td>Not</td>
<td>39,745</td>
<td>36,682</td>
<td>38,961</td>
<td>37,557</td>
<td>37,625</td>
<td>38,857</td>
<td>37,646</td>
</tr>
<tr>
<td>women</td>
<td>available</td>
<td>available</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total number</td>
<td>Not</td>
<td>Not</td>
<td>17,4903</td>
<td>211,049</td>
<td>214,632</td>
<td>183,529</td>
<td>177,030</td>
<td>172,356</td>
<td>160,977</td>
</tr>
<tr>
<td>men</td>
<td>available</td>
<td>available</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>% women of all</td>
<td>Not</td>
<td>Not</td>
<td>18.5</td>
<td>14.8</td>
<td>15.3</td>
<td>16.9</td>
<td>17.5</td>
<td>18.3</td>
<td>18.9</td>
</tr>
<tr>
<td>suspects</td>
<td>available</td>
<td>available</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>% women of</td>
<td>0.7</td>
<td>0.6</td>
<td>0.7</td>
<td>0.6</td>
<td>0.6</td>
<td>0.7</td>
<td>Not available</td>
<td></td>
<td></td>
</tr>
<tr>
<td>total women</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>population of</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>your country</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

As expected, when compared to men, far fewer women are suspected of crime. Nevertheless, in the last year for which data are give – 2013 – we found the largest ratio of women officially suspected of crime (18.9%), with a continuous and consistent growth since 2000. Regarding the proportion of women who are officially suspected of crime out of the whole Portuguese female population, the percentages range from 0.6% to 0.7% since 1995.

3.2. WOMEN IN PRISON

As mentioned in section 1 above, until the revolution of 1974 and the consequent change to a democratic system in Portugal, the incarceration rate of women in Portugal displayed significant proportions (9% in 1970). From 1974 up to the early 1990s, that proportion dropped due to the decriminalisation of acts that used to lead to women’ imprisonment (e.g., prostitution). Thus, in 1990 the proportion of women in prison had dropped to 5.8% (529 women) of the prison population in Portugal. From that moment onwards, this ratio increased, exceeding the threshold of 10% of all prisoners, one of the highest in the EU, in 1997.

After 2000, the proportion of women among prison inmates decreased, being quite stable over the last few years at around 5.6%, in line with other European countries (see Table 2).
Table 2. Women in prison

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of women in prison</td>
<td>418</td>
<td>529</td>
<td>1,077</td>
<td>1,206</td>
<td>875</td>
<td>627</td>
<td>711</td>
<td>758</td>
<td>797</td>
</tr>
<tr>
<td>Total number of men in prison</td>
<td>4,638</td>
<td>8,655</td>
<td>11,266</td>
<td>11,565</td>
<td>12,014</td>
<td>10,986</td>
<td>11,970</td>
<td>12,856</td>
<td>13,444</td>
</tr>
<tr>
<td>% women of all prisoners</td>
<td>9</td>
<td>5.8</td>
<td>8.7</td>
<td>9.4</td>
<td>6.8</td>
<td>5.4</td>
<td>5.6</td>
<td>5.6</td>
<td>5.6</td>
</tr>
</tbody>
</table>

* June

3.2.1. Pre-trial and trial detention

Concerning the number of women in pre-trial and trial detention in Portuguese prisons, from 1990 until June 2013 it ranged from a low of 176 women (7.6% of all the pre-trial and trial detainees) in 2010 to a peak of 653 women in 1995 (15.2%) (see Table 3).

Table 3. Women in (pre-trial and trial) detention (prison system)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of women</td>
<td>Not available</td>
<td>223</td>
<td>653</td>
<td>460</td>
<td>272</td>
<td>176</td>
<td>199</td>
<td>204</td>
<td>233</td>
</tr>
<tr>
<td>Total number of men</td>
<td>Not available</td>
<td>2,652</td>
<td>4,290</td>
<td>3,394</td>
<td>2,772</td>
<td>2,131</td>
<td>2,271</td>
<td>2,457</td>
<td>1,856</td>
</tr>
<tr>
<td>% women of all detainees</td>
<td>Not available</td>
<td>7.7</td>
<td>15.2</td>
<td>11.9</td>
<td>8.9</td>
<td>7.6</td>
<td>8</td>
<td>7.6</td>
<td>11.1(**)</td>
</tr>
</tbody>
</table>

* June

** The last available figures, referring to June 2013, point to 11.1% (N = 233) women among all detainees remanded in custody.

3.2.2. Convicted women

In Portugal, the percentage of convicted women increased during the last decade of the 20th century, rising from 4.9% in 1990 to 8.4% in 2000, the year with the highest proportion of convicted women. Since then, this percentage has displayed the opposite tendency, diminishing to 4.9% in 2010. In more recent years (2011–13), the percentage of women convicted of crime remained stable at approximately 5% (see Table 4).

Table 4. Women convicted of crime

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total number of women convicted of a crime</td>
<td>Not available</td>
<td>306</td>
<td>424</td>
<td>746</td>
<td>603</td>
<td>451</td>
<td>512</td>
<td>554</td>
<td>564</td>
</tr>
<tr>
<td>Total number of men convicted of a crime</td>
<td>Not available</td>
<td>6,003</td>
<td>6,976</td>
<td>8,171</td>
<td>9,242</td>
<td>8,855</td>
<td>9,699</td>
<td>10,399</td>
<td>11,588</td>
</tr>
<tr>
<td>% women of all convicts</td>
<td>Not available</td>
<td>4.9</td>
<td>5.7</td>
<td>8.4</td>
<td>6.1</td>
<td>4.9</td>
<td>5.0</td>
<td>5.0</td>
<td>4.6</td>
</tr>
</tbody>
</table>

* June

3.3. CRIMINAL CAREER OF WOMEN

The literature on criminal careers states that female delinquent trajectories tend to start in late adolescence, or even in adulthood, and continue throughout adult life, escalating in terms of severity. This feature seems to distinguish male and female delinquent trajectories, as in male trajectories severity is usually associated with early starts.11

The official prison statistics reveal that the proportion of women inmates as compared with men inmates is at its greatest in the age group 40–59 years, being smaller in the younger age groups (see Figure 1). Though the differences are minimal, they have been stable throughout the years.

---

However, if we consider data from both the juvenile justice and the prison systems, we conclude that the discussion of age and deviant trajectories implies a more complex analysis. For instance, the figures show that the proportion of girls among young persons with educational measures (14% in 2011) is higher than the proportion of women among the total prison population (5.6% in 2011). In addition, unlike what happens with women in prison, girls in the juvenile justice system do not tend to be older than boys (2011: mean age for girls – 15.65; mean age for boys – 15.83).

Thus, despite evidence that women serving time in prison tend to be older than men, to commit crimes later and to reoffend less, we believe this question should be carefully addressed. In fact, there is empirical evidence that gender issues mark the involvement of women in crime, with some deviant trajectories being strictly associated with the fact that the protagonists are women. But, on the other hand, young women offenders often present delinquency paths that come close to those traditionally associated with young men, either generically, due to the diversity of criminal experiences, or specifically due to a certain "criminal lifestyle".  

3.4. CATEGORIES OF CRIME PERPETRATED BY WOMEN

Even though in the 1980s the commission of drug-related offenses already stood out as an important factor leading women to prison, along with property offenses, it was mainly after the 1990s that they became a top cause of women's imprisonment. Compared to men, women's drug-related offenses, despite decreasing in their proportion in recent years (see Figures 2a, 2b and 2c), not only represent the most prevalent, crimes but also stand out from other types of crimes in terms of proportion.

Figure 2b. Types of crimes committed by men and women imprisoned (2005)

<table>
<thead>
<tr>
<th>Crime Type</th>
<th>Men</th>
<th>Women</th>
</tr>
</thead>
<tbody>
<tr>
<td>Crimes against the person</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Crimes against life in society</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Property crimes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Drug related crimes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other crimes</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

26.9% 15.6% 9.2% 15.4% 5.2% 1.6%

24.8% 19.7% 7.4% 7.0% 19.8% 19.1% 19.8% 6.7%

Figure 2a. Types of crimes committed by men and women imprisoned (2000)
It is important to realise, however, that drug-related offenses committed by women have assumed different configurations over the past decades. Imprisoned women were involved mostly in small-scale drug trafficking, whether as international drug couriers, or in domestic retail drug dealing (see below). Two scenarios have been reported in the relevant literature in Portugal: (i) young women whose participation in drug trafficking is associated with drug dependence and/or abusive male partners;\(^\text{15}\) (ii) adult, but also young, women from economically 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 neighbours or family members. This is mostly the case in domestic drug trafficking,\(^\text{16}\) which displays some particular aspects in Portugal and deserves a special focus.

In the 1990s, small-scale drug trafficking brought to impoverished urban neighborhoods a boom in illegal opportunities. Its freelance structure presented few barriers to women's participation. Whereas other European countries and the US drug markets increasingly adopted at that time a rigid business structure involving (nearly male-only) hierarchical crews and wage relations, in Portugal the structure of the drug market evolved in that same decade in the opposite direction, based on autonomous individual entrepreneurs or small circles of associates.\(^\text{17}\) This structure revealed itself as more open to women's participation, being very little stratified by gender or age. With relative ease, women of every age could start up on their own, dealing as freelancers, obtaining drugs on a loan or consignment basis through neighborhood circles. Other women also collaborated with male partners in commercial drug transactions, but as relatives, friends and neighbours, not as their subordinate employees. In addition to this more open structure, retail drug markets in Portugal are also less violent when compared to same-scale markets in other countries,\(^\text{18}\) and there are few cultural and ideological barriers to women's access. This has thus become a favorable environment of illegal opportunities for women.

In the first decade of the 21st century, international drug trafficking assumed greater prominence as a principal reason for women's imprisonment. To a large extent, that change was related to the increase in the proportion of foreign nationals among women in prison, which rose from 11.44% in 2000 to 32% by the end of 2009. A study of the life trajectories of foreign national women in the Portuguese prisons, developed in 2008-11,\(^\text{18}\) revealed that the majority of them were detained for carrying drugs into the country. For some, this involvement in the drug trade was rooted in their drug addiction. For other women, the circumstance of travelling to Portugal as drug couriers was a consequence of financial difficulties related to vulnerabilities like unemployment, loss of close relatives or health problems.

As we can conclude from the analysis of Figures 2a–2c, in more recent years, other kinds of offenses, particularly property offenses or crimes against the person, have assumed higher proportions, and drug-related offenses have become less predominant, though still being the first cause of women's imprisonment in Portugal. At the same time, numbers of foreign nationals among women in prison have been decreasing, representing in the last official data (December 2012) 23.1% of women prisoners. It seems, therefore, that a new scenario of women's criminality and incarceration in Portugal, more similar to the late 1980s and early 1990s, will characterise this second decade of the 21st Century, and that further analysis about this topic will be important in the coming years.


time frame, there was a consistent trend, with women serving mostly three- to nine-year prison sentences. From 2009 to 2012 there was a slight decrease in the higher sentences and an increase in the less severe sentences (see Figures 3a and 3b).

Comparing men to women, it can be seen that the sentences ranging between three and nine years' imprisonment are the only ones where women are more heavily represented. It should be emphasised that weekend detention is applied almost exclusively to men, having only a residual application to women.

Figure 3a. Sentences by gender (2012)

<table>
<thead>
<tr>
<th>Sentence Duration</th>
<th>Men (%)</th>
<th>Women (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-2 months</td>
<td>3.0%</td>
<td>2.5%</td>
</tr>
<tr>
<td>3-4 months</td>
<td>4.1%</td>
<td>3.1%</td>
</tr>
<tr>
<td>5-6 months</td>
<td>14.1%</td>
<td>11.4%</td>
</tr>
<tr>
<td>7-8 months</td>
<td>51.0%</td>
<td>64.6%</td>
</tr>
<tr>
<td>9-10 months</td>
<td>12.8%</td>
<td>9.2%</td>
</tr>
<tr>
<td>11-12 months</td>
<td>8.1%</td>
<td>5.2%</td>
</tr>
<tr>
<td>13-14 months</td>
<td>0.4%</td>
<td>0.2%</td>
</tr>
<tr>
<td>15-16 months</td>
<td>2.0%</td>
<td>3.3%</td>
</tr>
</tbody>
</table>

Figure 3b. Sentences by gender (2009)

<table>
<thead>
<tr>
<th>Sentence Duration</th>
<th>Men (%)</th>
<th>Women (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-2 months</td>
<td>3.6%</td>
<td>0.9%</td>
</tr>
<tr>
<td>3-4 months</td>
<td>3.9%</td>
<td>2.5%</td>
</tr>
<tr>
<td>5-6 months</td>
<td>4.5%</td>
<td>2.3%</td>
</tr>
<tr>
<td>7-8 months</td>
<td>14.3%</td>
<td>6.5%</td>
</tr>
<tr>
<td>9-10 months</td>
<td>45.0%</td>
<td>66.7%</td>
</tr>
<tr>
<td>11-12 months</td>
<td>10.0%</td>
<td>10.6%</td>
</tr>
<tr>
<td>13-14 months</td>
<td>9.0%</td>
<td>6.9%</td>
</tr>
<tr>
<td>15-16 months</td>
<td>0.5%</td>
<td>0.0%</td>
</tr>
<tr>
<td>17-18 months</td>
<td>2.8%</td>
<td>3.7%</td>
</tr>
</tbody>
</table>

In 2013, a total of 5,665 women were serving non-custodial sentences. Particular emphasis was given to the provisional suspension of proceedings and community work (33% each) (see Figure 4). In that same year women represented 11% of the total population serving non-custodial measures. As this proportion is twice

the rate of women among the prison population, it can be said that women have been more susceptible to this type of measure than men.

Figure 4. Non-custodial sentences applied to women (2013)

| Measure                          | Women (%)
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Coercion measures</td>
<td>128 (2%)</td>
</tr>
<tr>
<td>Provisional Suspension of</td>
<td>1,897 (33%)</td>
</tr>
<tr>
<td>Proceedings</td>
<td></td>
</tr>
<tr>
<td>Community work</td>
<td>1,887 (33%)</td>
</tr>
<tr>
<td>Suspension of the execution of the</td>
<td>1,403 (26%)</td>
</tr>
<tr>
<td>prison sentence</td>
<td></td>
</tr>
<tr>
<td>Parole</td>
<td>305 (9%)</td>
</tr>
<tr>
<td>Security measures</td>
<td>45 (1%)</td>
</tr>
</tbody>
</table>

Analysing the distribution of non-custodial sentences according to women's age groups, we can see that there is a high number of young women (under 21 years old) compared to the numbers of young women in prison (see Table 5).

Table 5. Non-custodial sentences applied to women/per age group (2013)

<table>
<thead>
<tr>
<th>Age</th>
<th>Coercion measures</th>
<th>Provisional Suspension of Proceedings</th>
<th>Community work</th>
<th>Suspension of the execution of the prison sentence</th>
<th>Parole</th>
<th>Security measures</th>
<th>total</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>17-20</td>
<td>13</td>
<td>384</td>
<td>90</td>
<td>74</td>
<td>0</td>
<td>0</td>
<td>561</td>
<td>10%</td>
</tr>
<tr>
<td>21-30</td>
<td>39</td>
<td>606</td>
<td>527</td>
<td>415</td>
<td>47</td>
<td>2</td>
<td>1,636</td>
<td>29%</td>
</tr>
<tr>
<td>31-40</td>
<td>35</td>
<td>432</td>
<td>561</td>
<td>432</td>
<td>85</td>
<td>18</td>
<td>1,563</td>
<td>28%</td>
</tr>
</tbody>
</table>

(continued)

19 According to the official statistics, young women from 16 to 20 years old represented 1.08% of women in prison by the end of 2012 (at: http://www.dgpt.mj.pt/sections/estatisticas-da-justica) (last visited: 1 September 2015).
Table 5 continued

<table>
<thead>
<tr>
<th>Age</th>
<th>Coercion measures</th>
<th>Provisional Suspension of Proceedings</th>
<th>Community work</th>
<th>Suspension of the execution of the prison sentence</th>
<th>Parole</th>
<th>Security measures</th>
<th>total</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>41–50</td>
<td>30</td>
<td>251</td>
<td>439</td>
<td>301</td>
<td>102</td>
<td>9</td>
<td>1,132</td>
<td>20%</td>
</tr>
<tr>
<td>51–60</td>
<td>10</td>
<td>131</td>
<td>218</td>
<td>126</td>
<td>52</td>
<td>8</td>
<td>545</td>
<td>10%</td>
</tr>
<tr>
<td>60+</td>
<td>1</td>
<td>47</td>
<td>52</td>
<td>53</td>
<td>19</td>
<td>7</td>
<td>179</td>
<td>3%</td>
</tr>
<tr>
<td>Missing</td>
<td>0</td>
<td>46</td>
<td>2</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>49</td>
<td></td>
</tr>
<tr>
<td>total</td>
<td>128</td>
<td>1,897</td>
<td>1,887</td>
<td>1,403</td>
<td>305</td>
<td>45</td>
<td>5,665</td>
<td></td>
</tr>
</tbody>
</table>

3.6. CRIMINOLOGICAL REASONS

To conclude this section, we focus on those circumstances that may have implications for the involvement of women in crime. Such circumstances were discussed in the previous sections, with examples from studies that have been developed in Portugal in the last few decades.

It has been seen that drug offenses have been central, and that women were engaged in this type of crime in the 1990s within different scenarios. First, some women's involvement in crime was closely related to their own drug dependence. It should be noted, however, that compared to men, women in prison present far less of a history of drug dependence. Another important circumstance that seems to lead women to prison is their experience of abuse by male partners. This connection can shape several scenarios: sometimes partners coerce women into committing crimes; at other times the partners are abusers and the women commit crimes to end the experience of victimisation.

Economically depressed settings also seem to play a role in women's criminality. In the particular case of drug trafficking, it often seems to be a strategy to support women's households. In impoverished neighborhoods in the 1990s, women had increased chances of participating in small-scale drug trafficking with a freelance structure.

International drug trafficking, a top reason for women's imprisonment in the early years of the 21st century, could be related to women's drug addiction. It could also be a consequence of the vulnerabilities that women face, such as unemployment or other circumstances that push women into social and economic difficulties.

We would like to conclude this section by stressing the fact that gender seems to play an important role in women's criminality and incarceration. Women in prison may present pathways more or less in accordance with the conventional gender roles. In any case, their condition as women often seems to be at the root of the crimes they commit.

4. DEPRIVATION OF LIBERTY PHASE: CONDITIONS UNDER WHICH WOMEN ARE HELD IN DETENTION AND PRISON, AND APPLICABLE NATIONAL PENITENTIARY LAW

4.1. FACILITIES FOR WOMEN IN THE PORTUGUESE PENITENTIARY SYSTEM

The existence of prisons specifically for women has been a reality in Portugal since the beginning of the 20th century, and today has its legal foundations in the CEP (Code of Enforcement of Punishments and Custodial Measures – Law 115/2009 of 12 October), particularly in Article 9, No. 2 paragraph d, where the requirement is set out for prisons or units especially designed for the execution of custodial sentences and measures applied to women.

In fact, of the existing 49 prisons in the Portuguese penitentiary system, three of them are for the female prisoners, namely: Tires20 (446 inmates + 30 children), Santa Cruz do Bispo (females) (315 inmates + 15 children) and Odemira (49 inmates).

Facing specific problems concerning women's imprisonment (e.g., special healthcare needs, lack of conditions for mothers and children), the Portuguese authorities moved to construct a modern correctional facility that opened in 2005. The prison of Santa Cruz do Bispo was built to address such specific problems, being equipped with cells for mothers, a nursery and bedrooms for conjugal visits. This building also allows, according to the law, for inmates to be separated according to the length of their sentence and to judicial conditions. This policy aims at building adequate opportunities for the development of the individual re-adaptation process, favoring resocialisation; humanising the inmate populations’ lives, ensuring respect for fundamental rights as well as the satisfaction of daily needs; and increasing the efficiency and effectiveness of the management and administration of the existing resources.

Nevertheless, women still face detention in small sections of four prisons designed for men, particularly to ensure their presence in court (Guarda, in the north interior of Portugal – 8 inmates; Funchal, on Madeira – 11 inmates; and Angra do Heroismo and Ponta Delgada, in The Azores – 6 inmates each).

The Portuguese prison system privileges as criteria of allocation, among others, the proximity of the inmates to their family, social environment, school and professional opportunities (Article 20 paragraph 2 of the CEP).

20 Though classified and organized as a prison for women, Tires also accommodates male inmates in a separate building.
4.2. SPECIFIC GROUPS

4.2.1. Young women in prison

Portuguese law provides that young people aged under 21 must serve sentences separate from adult inmates, and for that purpose, prisons or units especially designed for young offenders should be created. When beneficial, this treatment extends to those who are 25 years old.

In Portugal, Leiria prison is reserved for young male inmates serving sentences, and no specific facilities for young women inmates have been created so far. In other prisons throughout the country, the inmates’ placing takes age into account in order to protect the young prisoners and to facilitate their treatment.

As regards the enforcement of sentences, Portuguese law is concerned to ensure that prisoners aged under 21, regardless of the length of their sentences, are given the opportunity to benefit from the development of an Individual Rehabilitation Plan (IRP). This plan forms the basis of treatment available to youths during incarceration, and it is reviewed and updated periodically. For adult offenders, the IRP is mandatory only if the sentence is longer than one year.

Indeed the execution of custodial sentences and measures applied to young people must especially encourage social reintegration and a sense of responsibility through the development of specific programs and activities in the areas of teaching, guidance and vocational training, acquisition of personal and social behaviors, and the prevention and treatment of addictive behaviors.

According to research on young women inmates developed in Portugal, many of them make sense of crime with narratives involving their families, school or peer groups, pointing out their juvenile condition. Some of these young women prisoners resemble girls within the juvenile justice system. On the other hand, others do not seem to differ from adult women who commit crimes, making sense of their criminal behavior with reference to their marital relationships or their role as care-takers. We consider that all young women inmates would benefit from a system that takes their age and stage of development into account, and that prepares them for the post-imprisonment period.

21 According to the last official numbers (31 December 2012), there were 18 women inmates up to 21 years old and 51 aged from 21–24 years old.

4.2.2. Pregnant women, breastfeeding mothers and mothers with children in prison

After being flagged by the prison facility management and subjected to an individual diagnosis, pregnant women inmates are accommodated in a specific care unit that offers logistical and structural conditions to meet their special needs. Regarding mother-inmates, particularly those who have to give continuous care to their children, a similar approach is followed.

In terms of breastfeeding, health guidelines and recommendations designed by the WHO – Ten Steps to Successful Breastfeeding24 – are adopted by the prison clinical services as a tool to make specific care plans concerning inmates who have recently given birth or who have a child. From a clinical point of view, situations representing contraindications to breastfeeding are reviewed by the health team and then adjusted to the use of bottle-feeding.

According to the official rules, pregnant inmates are authorised to give birth in a hospital. Through this process, a clinical follow-up is carried out, consultations are scheduled, and medical examinations and peri-partum care are divided between the prison health team and the hospital’s team. The moment of childbirth should ideally occur in hospital, with the permission of the Directorate General of Prison Services (DGPS). In cases of clinical emergency, security measures are enforced by security elements, to preserve both the execution of the punishment adequately and the needs of the woman giving birth. These measures are authorised by prison facilities direction and the DGPS.

Women with children in prison have access to suitable items necessary for a child’s daily care, namely: one baby buggy; one child bath; one duvet; one changing pad; two sets of sheets; two pillowcases; one guard; one bath towel; two cloth diapers; one lunch kit; one dinner plate; one soup bowl; one spoon with cable; one cup; one bottle.

It should be pointed out that the two main Portuguese prisons for women are equipped with particular spaces for inmates with children, named “Mothers’ House” at Tires, and “DayCare Space” at Santa Cruz do Bispo. The latter has regular sessions on weekdays, from 8:30 a.m. to 5:00 p.m., implemented by an educational expert and supported by other operational technicians. In January 2014, such activities were provided to about 15 children aged 6 months to 5 years living in Santa Cruz do Bispo, giving them individual educational care.

Concerning clinical services, the prison health units ensure specific care for mother-inmates and their children, inside or outside the prison facilities. Medical care in areas like gynaecology, obstetrics, neonatology and paediatrics is guaranteed. There is a concern with providing primary healthcare services, implementing the "National Plan for Vaccination" and encouraging and
4.2.3. Foreign women prisoners and minorities

Portuguese official statistics register only nationalities, not ethnicity or phenotype ("race"). Ethnic/racial categories or minorities are not specified. State statistics on crime and criminal justice also use the generic category of foreigners, without distinguishing between residents/immigrants — documented or undocumented — and visitors. "Foreigners' applies to residents and non-residents without Portuguese citizenship.

The discrepancy between foreigners and nationals in the Portuguese criminal justice system has become especially salient since 1998, because at that time the country registered a fall both in the total prison population and in the number of Portuguese defendants. Over the same period, for foreigners alone, and particularly in relation to foreign women, the trend has been in the opposite direction. According to a national study that focused on the period between 1997 and 2003, the number of foreign defendants increased 118%, and the rise in the conviction rate has been proportionally much higher for foreigners (257%) than nationals (50%). Also, the former were overall more likely to be convicted than the latter (81% of convictions in the case of foreign defendants, as against 66% for Portuguese nationals).

Foreigners are proportionately more likely than Portuguese to be involved in those types of offenses that lead to higher conviction rates and harsher sentences — namely, drug offenses. This pattern is even more noticeable in the case of foreign women. Among foreign men sentenced to a lengthy prison sentences in 2011, 39.6% were convicted for drug offenses; amongst their female counterparts, the figure was 90.1%. The over-representation of foreigners in the prison population seems to stem both from their greater involvement in crimes that are subject to more severe punishment and from a tendency of the criminal justice system to punish foreign citizens more harshly.

The number of foreign women prisoners in Portugal has been closely linked with drug offenses as a major cause of women's imprisonment. There have been two different scenarios regarding foreign women in Portuguese prisons who were arrested for drug trafficking: (i) women who come from European or South American countries, who did not live in Portugal, and 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 practised mainly in Portugal. The second scenario (domestic trafficking) was more prominent in the second half of the 1990s, when the proportion of women among the population behind bars was also at its peak; the first scenario (international drug couriers) was more salient during the 1980s, and this trend has resumed in the 21st century. This has resulted in a rise in foreign women among the total female population behind bars, from around 11% by the end of the 20th century to 30%, a proportion that has been stable since 2007. However, the increase in this proportion resulted less from a rise in the numbers of incarcerated foreign women and more from the decreasing proportion of women in the general prison population (i.e. in relation to male prisoners): from almost 10% to less than 6%. Since this drop has a stronger influence on the numbers of women in prison out of the national female population, which constitutes the majority of women prisoners, than on those of foreign origin, the proportion of foreign women prisoners becomes more salient again, even if its total has not changed substantially in absolute numbers.

Whether in domestic or international trafficking, most foreign women were involved in small-scale operations. In the case of domestic trafficking, foreign women (mostly immigrants from Lusophone African countries — Mozambique, Angola, Cape-Verde, Guinea-Bissau) have benefited from the open structure of local retail drug markets, which are as little stratified by ethnicity or nationality as they are by gender — unlike similar drug markets elsewhere in Europe and in the U.S. The Portuguese retail drug economy is generally occupied by both poor minorities (including national and non-national African and Roma/Gypsies) and non-minorities alike. Before imprisonment they lived in the same urban neighborhoods, and shared similar income-generating strategies in both the legal and the illegal economies.

A more recent study on foreign national women in Portuguese prisons added a third scenario to the European or South American women who did not live in the country and were detained as "drug couriers", and the African women who lived in Portugal and were in prison for their activities in domestic drug dealing. It identified, among foreign national women prisoners, a small group coming from European countries, with residence in Portugal and serving sentences for other types of crimes.

25 General Prisons Regulation, 'Regulamento Geral dos Estabelecimentos Prisionais' (RGEP).
26 Hugo Seabra & Tiago Santos, A Criminalidade de estrangeiros em Portugal. Um inquérito científico, Lisbon: ACIME, 2005.
27 Statistics from the former DGPS, 2011.
28 In 2000, there were 138 foreign female prisoners among a total of 1,206 women behind bars; in 2010 they were 183 among 623 (see Justice Statistics, Ministry of Justice).
During imprisonment, and according to an ethnographic study by Cunha\(^{31}\) on how categories of differences unaccounted for by official statistics may be at play in law enforcement and in the experience of imprisonment, “race/ethnicity (regardless of national/foreigner citizenship status) impacts less on the prisoner’s social world than locality or other communities of experience.

In Matos’ study, women described their experiences as foreign national inmates, pointing out several difficulties: (i) facing more bureaucracy (e.g., delays in judicial decisions, delays in the process of getting out); (ii) having less control in the custody processes (e.g., being more easily subject to prison transfers); (iii) facing language barriers. They also describe the length of the sentence as a negative aspect of being detained in Portugal (as was mentioned earlier, foreign offenders are detained mostly for drug-related offenses, which result in harsher sentences in Portuguese law). But they see advantages in the conditions of confinement, which they consider better than in their home countries’ prisons. According to these women, another cause of stress in serving a sentence in a foreign country is their inability to manage family relationships long-distance, either because they have no visits and feel isolated or because they cannot take care of their children and other relatives.

Notwithstanding foreign national women prisoners’ perspectives, there has been a concern within the Portuguese justice system to define special rules for the execution of custodial sentences and measures applicable to foreign nationals (CEP, Article 4; RGEP, Articles 229h–236). The aim is to guarantee, as far as possible, the expression of foreign prisoners’ cultural values, and to mitigate the difficulties of social integration, providing, inter alia, for contact with diplomatic or consular entities or organizations supporting immigrants and the inmates’ integration in Portuguese language courses.

In order to attempt the greatest possible integration of foreigners in the prison, and the enhancement of contact with their families and social background, several programs are implemented and specific intervention guidelines – concerning education, social and economic support, information/legal support and the strengthening of contacts with the outside world – are defined. There is also tighter monitoring to detect situations involving lack of income, absence of visits or any other kind of support from abroad, in order to guarantee effective social and economic support.

Legal information is provided to the inmate about the possibility of transfer to the country of origin in order to complete the remainder of the sentence under the law or international treaties and conventions, including the Convention on the transfer of sentenced prisoners, directing a request to the Public Prosecutor (Ministério Público) along with the Court for the Enforcement of Penalties (Tribunal de Execução de Penas). In the case of foreign prisoners to whom the accessory penalty of expulsion has been applied, the Prison Director informs the Foreign and Borders Service of the predicted date of the term of the sentence or release, and informs about the validity of the inmate’s identification documents, in order to prepare for a return to the country of origin, also ensuring, pursuant to RGEP Article 233, the possibility of being visited by a foreign lawyer who complies with the requirements demanded by the regulations of the Bar for the exercise of advocacy in Portugal.

Opportunities for contact with the outside world are duly provided, as the prisoners are informed about the opportunity to make their situation known to their diplomatic or consular authority, or other entity representing their interests. The prisoner is allowed to call this entity free of charge, in addition to the usual free telephone calls to family or lawyers.

If foreign national inmates express the wish to contact their diplomatic and consular authorities, these visits do not require the permission of the prison administration and occur on weekdays in the normal period. Also to facilitate contacts with the outside world, if the visiting person resides abroad, rules regarding the duration and frequency of personal visits and phone contacts may be adapted. In situations of economic deprivation, to enable the maintenance of contacts with the outside world, one pad of writing paper, one pen and telephone calling card are provided to each prisoner.

4.3. HEALTH CARE

First, the Portuguese General Prisons Regulation provides for the periodic provision of a basic set of toiletries (e.g., sanitary napkins, toilet paper, soap, toothpaste, detergent) to prisoners who do not have the means to arrange their acquisition themselves.\(^{32}\) Thus, conditions for the maintenance of inmates’ proper hygiene and healthy living conditions are ensured. Moreover, according to the CEP (Law 115/2009 of 12 October), the prison population has the right to the same healthcare conditions as general citizens. So, for all intents and purposes, inmates can access the national healthcare service.

At the moment of admission, all prisoners are directed to the prison clinical services. Usually, the first medical contact occurs in the first hours after an inmate’s admission, during which personal and family backgrounds and relevant biometric data are evaluated. Drug screening and alcohol tests, as well as immune pregnancy tests (for those of childbearing age), are also carried out. Through

---


this procedure, a healthcare plan based on individual needs is developed. In some cases, this plan displays the need for specific clinical services, enabling health care to be more individualized.

In the first 72 hours, all subjects are examined by a physician, who may request extra medical exams and approve the inmate's admission to other medical departments (e.g., gynaecology, paediatrics, psychiatry), located either in prison or in external hospitals. It should be noted that multidisciplinary teams provide mental health care in prison facilities, adopting the National Suicide Prevention Plan (2013–17). In this context, all employees of the health unit and other services, in particular in the area of surveillance/security, are sensitive to the need to address suicide in prisons, recognizing indications that may translate into damaging, self-harming behavior.

Regarding suspicions of sexual abuse, all inmates are evaluated by a clinical team that looks out for signs of such behavior prior to arrest, but also in cases in which the inmate has had contact with the outside world (e.g., inmate visits; probation). Whenever the suspicion becomes confirmed, the inmate is subject to specific and continued healthcare procedures. The situation is also communicated to the management of the prison facilities. The clinical and institutional monitoring of sexual abuse victims respects standards of human dignity and endorses a long-term approach to physical and emotional recovery.

Following CEP general principles, health care is based on a gender-specific perspective, sensitive to women's special needs. Indeed, prison health professionals involved in health care comply with this perspective, which takes into account aspects of female physical, emotional and social life. In order to achieve an in-depth knowledge of female inmates (specifically, those who have children) and their characteristics, Santa Cruz do Bispo female prison has implemented a distinguished experimental project, in which intervention is delivered by an external entity named "Santa Casa da Misericórdia do Porto", DGRPS' partner in prison facilities' management. This partnership has allowed the maintenance of a high level of support in terms of health care to the prison population.

The importance of network intervention – with drug, cardiovascular and infectious disease-related entities, as well as maternal and child health care and family planning – the main objective of which is to optimise health care and to facilitate the integration of all inmates into the prison environment, should be pointed out. It similarly minimises the impact that detention may have on female bio-psychosocial well-being. This intervention follows legal, national and international guidelines (e.g., guidelines for the pregnant population, in breastfeeding and the paediatric population). All these instruments help to improve the quality of care, stimulating inmates' family and social reintegration, and protecting their rights and duties, established in the CEP and in international norms, notably "The Bangkok Rules".

4.4. SAFETY AND SECURITY

Safety and security issues require specific attention to special groups of inmates. Concerning women, there are circumstances, such as pregnancy or the postpartum period, requiring special rules and procedures that differ from those applied to the prison population as a whole.

Concerning searches, it is guaranteed that they are performed preserving the respect and dignity of prisoners. Guards of the same sex as the prisoners perform the searches.

With regard to compliance with disciplinary actions, including the most severe (being placed in a disciplinary cell for up to 21 days), a special scheme is provided for prisoners who have minor children in prison. In such cases, the inmate remains in the disciplinary sector only during the day, returning to her cell at night.

This disciplinary measure cannot be applied to prisoners within six months of childbirth. In the case of pregnancy, postpartum or following abortion, the prison physician is consulted before implementation of the disciplinary cell measure.

The means of protection of the inmate population are guaranteed under Article 116 of the CEP, which sets out the rights of complaint, petition and exposure.

4.5. CONTACT WITH THE OUTSIDE WORLD

The Portuguese prison legislation provides for visits as a prisoner's right (CEP, Article 7, No. 1, paragraph f), which allows the maintenance of contact with the outside world, and the promotion of the inmate's family and professional ties.

Personal visits, a particular concern of the prison system, include regular visits with spouses, family and friends. The contact with significant others is also possible on special occasions, of particular human and religious significance. Intimate visits are monthly and last three hours.

The women prisoners benefit from two periods of regular personal visits per week, lasting up to an hour each (an hour and a half, in the case of an inmate placed in the Open Regime). The visits preferably occur during the weekend, with access to three people in each visit, not including in this limit a minor under the age of 3 years old.

In the case of inmates remanded in custody, the frequency of the visits can be flexible; when visitors reside outside the national territory or have difficulty in

---

travelling in the country, specific measures regarding the duration and frequency of visits can be adopted.

Portuguese law also establishes, as a right of the inmate (CEP, Article 7, No. 1, paragraph g), the possibility of accommodating in prison children up to 3 years old or, exceptionally, up to 5 years old, if authorised by the other party with parental responsibility. If both parents are in prison, visits between the couple and the minor child, taking place every two weeks, are permitted in order to maintain family ties.

Intimate visits are monthly and have a maximum duration of three hours, which may be changed as long as the annual limit on visits is respected. There may also be some flexibility when the visitor lives abroad or has difficulties in travelling. If inmates are placed in Security, visits can be made as long as the formal requirements of access (Article 120, CEP) are fulfilled.

The visits depend on a specific request from the prisoner, who can allow or disallow access by specified persons, family or not, with whom they may or may not want contact, e.g. for security reasons. There are specific rooms for the purpose of visits (Parlatorium), always under the direct visual control of the surveillance and security staff. To minimise risky situations, visits can be stopped and further visits from certain individuals can be prohibited, regardless of the expressed will of the prisoner.

The biggest concern of the services in this area relates to the lack of family support of some prisoners, often due to socioeconomic conditions that do not allow families to regularly support the inmate. To enhance the chances of inmates being visited, they usually serve sentences in prisons close to their original social environment. To minimize their social isolation and the weakness of family bonds, there is a legal possibility of providing social and economic support, with the aim of helping to resolve personal or family problems arising from the imprisonment itself.

Private institutions and voluntary associations play an important role in supporting prisoners, as they establish connections between prisoners and their families and help them to resolve specific problems.

An innovative practice enshrined in the Portuguese prison legislation is the possibility and effective accomplishment of visits by videoconference. This practice is implemented when particular inmates do not receive visits because of the long distance between the prison and the visitors' residence. In such cases, visitors can use the videoconference system of the nearest prison.

4.6. TRAINING OF STAFF

Though the prison staff training plan is designed to prepare professionals to deal with all prisoners, there is special concern with specific groups of prisoners, such as young people, the elderly and pregnant women.

Working with women in prison is a complex and very challenging process, which requires experienced and well-trained staff, especially those who interact directly with the women inmates. Because of the specificities of the work with female prisoners, it is difficult to select and keep trained professionals with the requisite personal and technical skills.

The Portuguese Government approved a rule with which all public agencies have to comply: to implement a working environment tolerant of gender differences and paying particular attention to the needs of special groups in prison, such as women inmates and, among them, those who have small children in their care.

4.7. REHABILITATION OF WOMEN PRISONERS

Intervention in the Portuguese prison and probation services is based on the Risk, Needs and Responsivity (RNR) rehabilitation model. Intervention programs are addressed to criminogenic risk factors, which are assessed with gender-sensitive tools. Level of Service/Case Management Inventory34 (LS/CMI) is used for the pre-sentencing phase, along with an internally developed risk assessment instrument, which allows the individual rehabilitation plans to be planned and established after the sentence.

There are several programs provided by the Portuguese prison and rehabilitation services in order to improve the chance of women's adaptation to life following release and to reduce the risk of reoffending. Besides the official programs provided by the prison services, a set of intervention programs targeted at women in prison and their children has been developed by external institutions in close cooperation with the prison staff. An example is the program Gender, Parenting and Social Inclusion (GPS), which aims at promoting equal opportunities for women after imprisonment, through re-establishing family connections and promoting social reintegration.35

The legal framework of the Portuguese execution of sentences allows for flexible measures to assist the prisoner during the transition to freedom, such as special prison leave, open and semi-open regimes and parole periods, in order to progressively prepare the prisoner for the reintegration process.

Prior to release, the prisoner is assessed, and the remaining reintegration needs are addressed with an individual reintegration plan, where all the interventions and reintegration activities that the ex-offenders have to attend are planned, in order to successfully complete this period.

---

Under the Rehabilitation and Reintegration National Plan, recently approved by a government rule, the creation of two half-way houses is planned, to accommodate ex-prisoners without social and professional support; one of them is aimed at women ex-prisoners in such circumstances.

Concerning non-custodial sentences, there are no specific guidelines or procedures applicable to women. Nevertheless, there is a growing concern with this specific population, and several National Programs for citizenship and gender equality have been created. Such programs include a special concern with the penitentiary and reinsertion context. The Fifth National Plan for Gender Equality, Citizenship and Non-Discrimination (2014–2017) includes the “Strategic Area 2 – Promotion of Equality between Men and Women in Public Policy”. Some concrete measures, principally to “Develop awareness and training about gender in professionals working with vulnerable populations” (measure 34), cover staff from the Reinsertion and Prison Service. The Sectorial Plan of the Ministry of Justice for 2011–13, in the strategic area of “Social Inclusion”, comprised a measure aiming to “monitor the situation of girls and women in situations of deprivation of liberty, implementing mechanisms that reduce gender inequality, particularly in the following areas: a) compulsory education or equivalent vocational training; b) health care, housing and other social supports”. In its final implementation, the DGRPS reported that it “participated in qualifying actions towards the reduction of inequality of a total of 22 young women in the Juvenile Justice System in 2013”; and that in the same period, “a total of 407 women inmates were included in academic and vocational training, which contributes to the reduction of inequality”.

5. CONCLUSION

This chapter is about the specific situation of women in the Portuguese penal and penitentiary systems. We would now like to conclude by highlighting the main topics that were discussed in the four preceding sections of the chapter.

Women represent a small proportion of the population facing the justice system; according to the last official figures, they represent 18.9% of those suspected of crime, 11% of those serving non-custodial sentences and 5.6% of the prison population.

In Portugal, women are traditionally detained for drug-related offenses, though other crimes are increasing in their proportions. The idea of “typical female criminality” has been empirically rebutted, as women present several trajectories of involvement in crime. For instance, even within one single category of crime – the drug-related offenses – we know that different configurations emerge in women’s lives. However, it is known that gender plays an important role in the way women get involved in crime, and that they have specific needs while in prison.

An important question to raise in this conclusion is to what extent the Portuguese justice system has been responsive to gender in the creation and enforcement of law, as well as in the prison conditions provided to women?

On women’s participation in the processes of creation and application of the criminal law, we can say that there has been a significant evolution in the country. In fact, since September 2009, most judges are women (53% of a total of 1,970 judges). One cannot deny the trend of change, as 85% of those enrolled in the Centre for Judicial Studies (CEJ) are women, even though the Portuguese Judiciary System has been open to females only since 1974. But the distribution of women in the system shows that there is still some resistance to their access to top positions, meaning that (in)equalities of gender must still be of concern.

As we have seen throughout this chapter, there is in fact a concern with gender equality in terms of public policies with an impact on the justice system (e.g., gender-responsive training of staff, actions towards women inmates). Indeed, there are National Plans aiming to enhance citizenship and gender equality, which include the justice system and its actors.

In terms of sentences, the fact that the proportion of women serving non-custodial sentences is twice the rate of women among prisoners indicates that women seem to be more subject to this type of measure when compared to men. It may express society’s concern with maintaining women’s bonds with their family and social milieu.

On the conditions of women’s imprisonment, we believe there has been a positive response in recent years, as new modern facilities have been created. Overall, the three national prisons for women have conditions that meet the specific needs of women. As the Bangkok Rules recommend, in Portuguese prisons attention is paid to women and their children. There are special units for mothers and children, kindergartens, and intervention directed at mothers and children. Women prisoners also tend to be allocated to prisons close to their social background, permitting the maintenance of family ties. In terms of health, gender-specific care is provided in adequate facilities. However, we
believe that mental health services could improve, both as to their resources and intervention. In this area, Santa Cruz do Bispo seems to be an example of good practice.

Some questions remain, however, as object of concern in the current context of women’s imprisonment in Portugal. We highlight the conditions for the specific groups of young and foreign national women. We believe that the best preparation for life after sentence is to implement intervention practices responsive not only to gender, but also to age and citizenship. As the Bangkok Rules recommend, it is necessary to give particular attention to these groups to ensure conditions appropriate to the specificities of women’s citizenship, stage of development and gender.