QUESTIONNAIRE

Issues that Stakeholders may wish to include in their replies

(In reference to HRC resolution 42/22 requesting a study on arbitrary detention relating to drug policies)

1. Please provide information concerning the number of people held in pre-trial detention as well as the number of those who are imprisoned pursuant to a conviction for drug related offences. Please indicate what percentage of the pre-trial detention population are being held for drug-related offences. Please identify the percentage of the total prison population who have been convicted and imprisoned for drug-related offences. For those convicted of drug-related offences, what percentage of this group have been imprisoned for acquisition, use or possession of drugs for personal use? How many people convicted of drug use belong to disadvantaged groups (e.g. women, pregnant women, children and youth, indigenous people, se workers, lesbian, gay, bisexual, transgender (LGBT) persons, homeless people, people with HIV/AIDS, persons with disabilities, ethnic minorities, migrant communities?

As of 31 December 2019, 1862 individuals were in prison facilities pursuant to a conviction for drug-related offences.

2. Does your State consider the acquisition, use or possession of drugs for personal use a minor offence within the meaning of this term as set out in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (article 3, para. 4 (c)? If so, what percentage of people arrested for the acquisition, use or possession for personal use of drugs are diverted out of the criminal justice system, and what alternative measures, if any, are such people subjected to?

The acquisition, use or possession of drugs for personal use is a minor offence, according to Law no. 30/2000, of 29 November. Please see the comments provided to Question 8 for a more comprehensive description.

3.Has your State decriminalized the acquisition, use or possession of illegal drugs for personal use? If so, to what drugs does this apply and what are the amounts considered to be for personal use? What is the legislative or judicial basis for such decriminalization? If decriminalization has not taken place, what penalties apply the acquisition, use or possession of illegal drugs for personal use?

The acquisition, use or possession of illegal drugs for personal use has been decriminalized, under Law no. 30/2000, of 29 November. The regime of Law no. 30/2000 (legal regime applicable to the consumption of narcotics and psychotropic substances, together with the medical and social welfare of the consumers of such substances without medical prescription) applies to the substances foreseen in

Annexes I to V of Decree-Law 15/93, of 22 January, namely cannabis, heroin or cocaine.

The Law 30/2000 of November 29, 2000, establishes that consumption, acquisition and possession for personal consumption, provided that the amount involved does not exceed that necessary for the average individual consumption for ten days. Exceeded this amount, the individual will commit a crime, punished and foreseen (investigation, prosecution and trial) by criminal justice system. Under the limit alluded to, is no longer a crime and has become an administrative offence. It applies to use/possession of all illicit drugs, but it is restricted to use/possession of up to ten days' worth of a drug. In practice to: 0.1 g heroin, 0.1 g ecstasy, 0.1 g amphetamines, 0.2 g cocaine or 2.5 g cannabis (Decree Law 15/93, January 22, 1993).This administrative offences are sanctioned through specially devised Commissions for the Dissuasion of Drug Addiction (Decree Law n. º 130-A/2001, of 23 April).

The Law 30/2000 is implemented by the Commissions for the Dissuasion of Drug Addiction. These services within the Ministry of Health and supported administratively by General Directorate for Intervention on Addictive Behaviours and Dependencies, ensure compliance of this Law through the proceedings of administrative offences and the application of the measures and other sanctions foreseen in the Law. Nationally wide spread (one for each of the 18 districts), these structures are composed of three members appointed by the Ministries of Health and Justice, advised by multidisciplinary teams (legal experts, psychologists, social workers) with appropriate training in the field of addictive behaviours and dependencies and their main mission is to dissuade the use of drugs.

When a person is caught in possession of no more than 10 daily doses of drugs and the police have no suspicions or evidence that supply offences are involved, the drug will be seized. The case will then be transmitted to the Commission. The members meet the offender and evaluate his/her situation and then, based on the case assessment, the Commission hears the offender and rules on the offence, aiming to treat any addiction and rehabilitate the person using the most appropriate interventions. Several options are available to the commission when ruling on the drug use offence, including warnings, banning from certain places, banning from meeting certain people, obligation of periodic visits to a defined place, removal of professional licence or firearms licence. Sanctioning by fine, which may vary by drug involved, is an available option (though not for addicts) but it is not the main objective of the Law. Users found in possession of more than 10 daily doses will be prosecuted in court for a criminal consumption offence.

If a person fails to attend the Dissuasion Commission, an administrative sanction may be applied in their absence, such as a fine, revocation of a driving license or community service.

If a person comes before the Commission for the first time, the Commission almost always suspends the proceedings and does not issue a sanction. If an occasional user comes before the Commission again, they are fined around 30 to 40 euros, and proportionally more on further occasions. Other administrative sanctions include social work, regular reporting to the Commission, the withholding of social benefits, or six weeks of group therapy instead of a fine.

Similar sanctions may be applied to drug dependent persons at the first meeting if they do not voluntarily undergo treatment; however, such individuals are generally

not sanctioned because the Commission is trying to persuade them to undergo treatment, not force them into doing so. By law, a financial fine can never be applied to a drug dependent person since it is thought that this could result in further crimes being committed in order to obtain money to pay the fine.

The integrated approach of dissuasion goes beyond the mere application of the law. Focuses on the needs and motivation to change behaviour of individuals referred by police authority or courts in the context of an episode of possession or use of illegal psychoactive substances.

4. What types of circumstances have led to unlawful and arbitrary arrest of people in your State for drug-related offences? What structures/institutions are in place so that people who are arrested for a drug-related offence can make a complaint about unlawful and arbitrary arrest and detention, or the threat thereof?

As referred to in the answer provided to Question 8, an individual could only be detained in accordance to Article 4 of Law no. 30/2000, taking into consideration that the situation is related to an administrative offence. Police authorities may detain the consumer in order to ensure that he/she appear before the Commission for Drug Addiction (CDT). However, this detention can only take place under the conditions of the legal system of detention for identification purposes, i.e. for such time as is strictly necessary for that purpose and in any case not exceeding six hours (Article 250 (6) of the Code of Criminal Procedure - CCP).

Nevertheless, it is important to have a general picture of the issue of possible detention or imprisonment when we are facing a drug related crime. It should be noted that Article 27 of the Constitution of the Portuguese Republic (CRP) enshrines the right to liberty and security. The deprivation of liberty of an individual, even for a short period, is subject to conditions imposed by the CRP and international human rights instruments.

Article 2 of CRP states that no one may be "*total or partially deprived of his or her liberty, except as a result of a judgment imposing a criminal conviction in the form of an act punishable by law* (...)' - *nullum crime, nulla poena sine lege*. Paragraph 3 of this provision sets out the exceptions to this rule, in particular in the case of arrest in the act of committing an offence or pre-trial detention. Despite of both situations, paragraph 4 refers that: "*Everyone in private liberty shall be informed immediately and in a comprehensible manner of the reasons for his detention and of his or her rights*".

As stated before, the detained person should be present before the CDT as soon as possible and for no more than 6 hours, otherwise the detention will become an illegal detention and allows the person the legal right to raise a complaint in any police station, to the Public Prosecution Service or in any court.

5. Does your State differentiate in its criminal procedures for persons alleged to have committed drug-related offences compared to those who have been arrested for other types of criminal offences? For example, are persons arrested or drug-related offences held in custody longer than persons arrested for other offences fore being charged or before being brought before a judge to determine the

legality of their arrest? Are persons charged with drug-related offences automatically held in pre-trial detention until trial? Is legal aid available for persons charged with drug-related offences in similar circumstances to which it would be available for other criminal offences? Does your State allow persons convicted of drug-related offences to be considered for suspended sentence, sentence reduction, parole, release on compassionate grounds, pardon or amnesty that are available to those who are convicted of o er crimes? Are legal presumptions used so that persons found with amounts of drugs above specified thresholds, or in possession of keys to a building or vehicle where drugs are found, are presumed to have committed an offence?

No differentiation is foreseen in the criminal procedures for persons alleged to have committed drug-related offences if compared to those who have been arrested for other types of criminal offences.

6. Have there been cases of torture or other cruel, inhuman or degrading treatment or punishment for persons arrested and detained on drug-related offences, with the objective, for example, to elicit a confession or to learn information about other alleged criminal actors or networks? Have there been cases where opioid substitution therapy has been withheld from drug dependent detainees in order to elicit a confession, or obtain . information concerning other alleged criminal or networks? What procedures exist to prevent torture and other of ill treatment of people detained for drug-related offences, and to bring to justice those responsible when it does occur? What monitoring measures are in place to ensure torture or other cruel, inhuman or degrading treatment or punishment does not take place? What avenue do detainees have for making a formal complaint to an independent authority if such practices occur?

No cases have been reported. It should be stated that all confessions obtained through torture or other cruel, inhuman or degrading treatment or punishment of persons arrested and detained are illegal and void, and could not be used in court as evidence in criminal proceedings.

As described in the assessment reports of Portugal related to the implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, training in human rights issues is regularly provided to law enforcement officials and prison guards. Both are subject to regular inspections by the existing departments within the Criminal Police and Directorate General for Probation and Prison Services.

All detainees or his/her legal representatives have to right to fulfill a formal complaint to the General Inspectorate for Justice Services (IGSJ), of the Ministry of Justice. The General Inspectorate is headed by a Public Prosecutor and acts as an independent body. In addition, formal complaints could also be sent to the Portuguese Ombudsman.

7. Does your State operate compulsory drug treatment centres? If so, what is the legislative basis for such deprivation of liberty? What procedures exist to ensure procedural guarantees are respected prior to confinement in such centres, including whether the detainee has the right to be represented by legal counsel and the right to appeal the decision on compulsory treatment. Is there a medical evaluation of the person's drug dependency prior to confinement? Is treatment in such centres individualized (as opposed to a mass treatment) evidence-based and in conformity with generally accepted medical practices for drug treatment as articulated by World Health Organization (WHO). Is a person detained in such a facility for a specific amount of time, or indefinitely until treatment has been determined to be successful? Can a person, or by way of his or her legal representative, or a family member, file a petition either with an administrative or criminal court for a hearing his or her release while detained?

In Portugal, drug treatment is always voluntary, except in very specific cases in which there is a threat for the health and security of the patient.

8. Do private drug treatment centres exist in your State? What steps does your State take to ensure that treatment in such facilities is voluntary and not a result of coercion? How is the informed consent for treatment obtained? How regularly do independent inspections of private drug treatment facilities take place to ensure that practices that constitute torture or other cruel, inhuman or degrading treatment or punishment do not occur? Do inspections of such facilities include a determination whether treatment is individualized (as opposed to treatment en masse), evidence-based and in conformity with generally accepted medical practices for drug treatment as elaborated by WHO? What guarantees exist that a person who has either voluntarily sought treatment or who has been coercively confined in a private drug treatment centre can freely leave if he or she so wishes? Can such persons make a complaint to inspectors who monitor such facilities or a competent authority if a person who is seeking to leave a private drug treatment centre is prevented from doing so? Are there any criminal or other penalties for failure to complete the treatment?

Decree-Law no. 15/93 of 22 January ratifies the 1988 UN Convention against illicit trafficking on narcotic drugs and psychotropic substances. The legal regime provided by Law no. 30/2000 of 29 November, is in line with the 1988 Convention, where this legal instrument does not require drug use to be regarded as a punishable offence, as referred to in the official commentary to the Convention.

Around the year 2000, the Portuguese Institute for Drugs and Drug Addiction (IPDT) which develops an innovative action, was set up to act on health by providing for treatment of drug abuse and addictive behaviours, through commissions set up to that effect and scientifically with studies on the subject. Some years later, the IPDT changed its designation to Institute for Drugs and Drug Addiction (IDT). Nowadays drugs issues are under the responsibility of the General Directorate for Intervention on Addictive Behaviours and Dependencies (SICAD)[1],

[1] Intervention and Dependence Intervention Service (SICAD):http://www.sicad.pt/EN/Paginas/default.aspx

whose mission is to promote the reduction of use of psychoactive substances, the prevention of addictive behaviors and the decreasing of dependencies.

SICAD sets out the Portugal's approach to drugs and addictive behaviors as a model of deterrence. Developing this idea, by decriminalizing drug consumption and possession in a limited manner, Portugal chooses to maintain the "social censorship" of consumption while maintaining the ban since there is no decriminalization. This system of deterrence was pioneer in Europe and strengthens the preventive approach by focusing on early intervention, as well as a motivational approach to behavioral change and adherence to support responses.

Thus, the adoption of Law no. 30/2000, of 29 November 2009, often referred to as the law on the decriminalization of consumption, provides for the possession, purchase and use of narcotic drugs or psychotropic substances up to a fixed amount (up to 10 days for individual average consumption) as an administrative offence, thus ceasing to be a criminal offence. The maximum amounts are defined by substance in the map annexed to Ministerial Implementing Order nº 94/96 of 26 March and from those quantities, the individual is then directed to the criminal justice system. For example, maximum amounts are 0,1 grams of heroin, 0,1 grams of ecstasy, 0,1 grams of amphetamine, 0,2 grams of cocaine and 2,5 grams of cannabis.

It should be noted that this Law does not apply to the cultivation of these substances which continue to be considered a criminal offence (Article 28 of Law no 30/2000), as provided for in Article 40 of Decree-Law no. 15/93.

Furthermore, in the case of children under age 18, the Committee cannot open a case and the case is referred to the National Commission for the Protection of Children and Youth at Risk.

The main objective of this Law is to promote conditions for understanding the motivation of the consumer and to forward it for treatment, while ensuring social reintegration measures. Article 3 proves it by ensuring that, in the event that the consumer or his/her legal representative seeks to treatment spontaneously, the provisions of the Law do not apply, that is to say, does not incur an administrative offence.

In fact, as an administrative offence, and as provided by this Law, the offender is directed to a Commission for Drug Addiction (CDT), governed by Decree-Law no. 130-A/2001.

These Commissions, after knowing the agent, the conditions of consumption, the degree of dependence and the economic conditions, discuss the decision to be applied, ranging from psychological support, administrative treatment or penalties (such as admonition, prohibition of attendance of certain places, prohibition to accompany or/and host certain persons, periodic presentations, revocation of professional licenses or revocation of weapons licenses, etc.). Before the final assessment the team assesses the psychosocial situation and verifies the individual's criminal record, the measures varying according to the consumer situation.

The Deterrence Commission, as its name indicates, has as its motto "rather treat than punish", so avoid imposing fines on individuals, opting more often for the admonition and offering the possibility of suspension of the sanction in case of the

individual accepted going for treatment. It should be noted that commissions do not have the authority to impose coercive treatment in any case.

In Portugal, the decriminalization of drug use, i.e. it no longer deals with the consumption and possession of drugs as a crime and the consumer as a criminal, as such acts are no longer provided by criminal law, but moving to the scope of an administrative offences. The individual is thus free of any sanction under criminal law, but administrative penalties can be applied. This means that, in practical terms, consumers of these substances will not be present to a court, not be in prison, nor will the facts be part of the criminal record. Therefore, in Portugal the individual who practices an infraction is referred to the dissuasive CDT.

It should also be noted that, in practical terms, this decriminalization provides for law enforcement authorities' intervention, but removes the possibility of imprisonment for the person while maintaining other sanctions as available, as already stated above.

There are several **private drug treatment centers** in Portugal licensed by the Ministry of Health with several protocols/conventions signed with various bodies.

As a rule, public or private drug treatment plans consist of a comprehensive, innovative and systematic systemic and psychosocial approach to the specificities of each individual — each case is a case.

Templates, Responses and Interventions

The model of treatment developed in Portugal in the public services of the Ministry of Health has always taken account of the complex nature of the addictive behaviours and dependencies, providing integrated care for users who used them.

This model of integrated treatment, based on a biopsychosocial approach, is the main axis of the multidisciplinary approach to the addictive behaviour and dependencies, where the different therapeutic resources are integrated and articulate in simultaneous or successive moments according to the diagnosis, the needs and capabilities of the user and family, or their surroundings and prognosis.

The amendments determined by the new organic law of the Ministry of Health, as expressed in Decree-Law no. 124/2011, of 29 December 2011, have reinforced fundamental aspects of this model. The extension of the responses to the use of additives and addictions to primary health care has made it possible to increase the possibility of intervention throughout all stages of the life cycle by strengthening the integration of this problem in healthcare provision to the general public. In this way, diagnosis and early intervention, as well as the possibility of referring to more serious situations for specialized structures from the consultations of general and family medicine, have resulted in a wider range of responses, reinforcing the support and implementation of this Integrated Model. Assuming that this new organization is the preferred entry door on the health care network for the use of additives and addictions, however, access to it may be possible directly by specialized treatment structures, thus increasing accessibility to treatment.

Thus, the new definition of the network of responses to the conduct of additives and dependencies maintained the characteristic of the model as regards the nature of the first outpatient care line, taking as a basis the relationship between the user and a health technician. In the light of this, the start of the treatment process may occur:

— By Primary Health Care - Functional Units: according to the organization of each Health Centre Group, these consultations can take place in the various types of existing functional units. Their aim is to assess, at an early stage of the assessment of the addictive behaviours and dependencies, in particular their level of severity. From this diagnosis, in terms of intervention, provision is made for the possibility of holding statements when the level of risk assessed is low. When more serious cases (consumption of risk, harmful use, addiction) are detected, these consultations should result in referrals from the Family Medical Officer to specialized care in the context of addictive behaviour and addiction.

Through medical care in the context of addictive behaviours and dependencies: the intervention in specialized units, resulting from either referral or own initiative, determines an initial assessment by doctor/psychiatrist. Often assessments in the field of psychology, social service and nursing are also important and required. This response constitutes the core of integrated therapeutic intervention: an established relationship with a reference technician shall be regularly monitored by the user and shall extend to ensure the consistency of the therapeutic gains and the re-acquisition of the skills and competences for the appropriate psychological and social operation. For this purpose, other interventions and links with other therapeutic methods will occur during this process, in accordance with the logic of the integrated model:

Psychology referrals:

Consultations are aimed at supporting the individual with addictive and addictive behaviour at an early stage or during their treatment process. The psychologist and user evaluates concrete issues related to overcoming obstacles/conflicts in the various dimensions of their lives, which are affected by the experienced problem and make proposals for change. The consultations encourage the creation of a relationship based on trust, in the interest of the user's knowledge, which makes it possible to better define change objectives by providing an emotional reinforcement/support that provides the relief of mental suffering.

Referral of psychotherapy:

Psychotherapy is a method of treatment for mental disorders by means of which, on the one hand, it is intended on the one hand to stabilize emotionally the user by reducing the symptoms obvious and, on the other, to identify the causes of the psychological illness to be brought into intervention.

There are various types of psychotherapy which are based on different theoretical models and with different intervention techniques (psychological psychotherapy, a brief psychotherapy, a systemic psychotherapy, psychological psychotherapy, a family psychotherapy, a family psychotherapy, a psychological psychotherapy, among others. Although they differ in their general theoretical and technical references, they all use the psychotherapist/user (individuals/families) relationship as a vehicle for change, on which therapeutic intervention is based. They differ from psychology, in particular the characteristics of the therapeutic contract which should, inter alia, define a predetermined regularity (once or twice a week). As a stand-alone therapeutic project, psychotherapy should not be distinguished as follows: as in other therapeutic projects, there are mandatory requirements to be fulfilled, given the depth of the intervention in question.

Nursing referral:

The aim of nursing referral is to facilitate the user's transition processes through processing, helping it to cope with the difficulties you are facing at the time, whatever his/her state of health/disease, and by seeking the health and well-being of the experiences in this process.

Through this consultation, nurse works with the user (patient/family) contributing to the alleviation of their malaise, by preventing possible health complications caused by addictive and addictive behaviour, helping them to manage the taking of medicines and by promoting the appropriate treatment of other associated diseases, where the user is a carrier.

Consultation of children and young people:

It shall act as a space for listening and listening to children and young people and their family members or other significant surroundings with addictive or addictive behaviour, to strengthen protective factors and to inhibit risk factors.

Consultations with pregnant women:

The pregnant woman has priority access to health care in targeted consultations aimed at providing integrated and comprehensive care during the gestation period and childcare. The involvement takes place whenever possible with the involvement of the partner and/or the family, and the monitoring of these patients follows an integrated intervention line with obstetric services, and with other services deemed necessary as the District Social Security Office and the Committees on Protection of Children and Youth at Risk.

Therapeutic media:

There are diversified patterns of group intervention, targeting different target populations (first-time entrants, families, young experimenters, and others) and may have differentiated targets.

They may be open or closed, at regular intervals (weekly, fortnightly or monthly), for therapeutic support as a single intervention in this field or complementary to other interventions in this area.

Opioid antagonist treatment program:

This program is indicated for heroin-dependents who are abject from consumption that reveals a level of personal organization and has family support. The program aims at the abstinence of heroin use and consists of the prescription of a drug blockers with prolonged period of action, which in the case of heroin use prevents the user from feeling its effect. Prevention of relapse, such as pulse prevention.

Opioid treatment program:

Indicated for dependents, this is an opioid maintenance treatment with an agonist opioid effect (morfinomimetic) which, given the appropriate dose, prevents physical distress caused by abstinence and physical necessity to consume it while reducing the 'craving'. The prescription of this program shall not be placed as the first therapeutic response, except where there are indications that the opioid maintenance is the first treatment, when the overall clinical picture is a clinic indication for this (e.g.: as methadone hydrochloride for pregnant women). Outside this scope, these programs should be proposed when other therapeutic methods have not proved effective in helping the patient.

In order to achieve the objectives of this therapeutic program, a "therapeutic contract" should be drawn up with detailed rules for a fixed duration. At the end of the program or even before, if the original conditions are changed, the situation is reassessed and the future of the intervention is defined.

Admission to these programs results from a medical indication, defining the reference method of administration to be used in each case. At the beginning of the Program, the medicinal product shall be given daily and face-to-face by an element of the nurse or pharmacist team; there is good progress in treatment, and clinical supervision remains on it, and the user can gradually be given greater autonomy in administering the medicine.

Day areas/ Day centers:

The Centers of day are support structures for treatment and reintegration, which are essential at certain stages of the therapeutic design aimed at rehabilitation, personal development, acquisition and training of social skills for the social reintegration of individuals. The Day Centers are mainly for users who are dependent on licit or illicit substances at a time of abstinence, with insufficient or non-existent family support, still without a social reintegration project and therefore emotionally vulnerable users. These specialized units, which have a variety of forms of intervention, enhance and diversify the therapeutic process, while at the same time constituting a connection between treatment and reintegration by making available to users therapeutic, educational, training and occupational activities.

When the user's integrated approach to addictive behaviors and addictive behaviors demonstrates a set of characteristics and associated problems (type and severity) that need more specific and specialized intervention, other more differentiated structures will be mobilized for the treatment process:

Smoking cessation units:

They are scheduled short stay (7 to 10 days in comorbidly), where through a psycho-pharmacological approach, psychotherapeutic support and health education, treatment of deprivation syndrome is promoted in users who do not have individual or social conditions for outpatient treatment. In these units, there is also a stabilization/adjustment of the dose/transfer/discontinuation of opioid treatment programmes, as well as treatment and stabilization of psychiatric and light medical loading. As part of the integrated care model interventions for users with addictive behaviour and addicted out of a stay in a unit of smoking cessation, care must always be taken to ensure continuity of care and, as such, the need to continue with his or

her various forms of care is reinforced with the user, by developing strategies for the maintenance and improvement of adherence to the therapeutic measures prescribed by it, or even by initiating any new interventions aimed at the promotion of abstinence.

Therapeutic Communities:

They are specialized units of long-term residential treatment (usually 3 to 12 months), in a secure environment, where psychological and socio-therapeutic support is sought to assist in the reorganization of the internal world of users and to look towards its future. The therapeutic communities are thus residential spaces designed to promote the biosocial rehabilitation of the user by means of a therapeutic programme articulated at different stages, whereas Community dynamics distinguish them from other treatment approaches. These therapeutic devices operate with a multidisciplinary team, under the psychiatric supervision. The aim is to promote self-control over drug use, to develop personal and social skills in order to empower users and their full social inclusion.

In order to respond more appropriately to the characteristic problems of the most vulnerable groups of users, in the framework of treatment in therapeutic Community, there are specific programmes which seek to respond more comprehensively to their needs, in terms of both therapeutic and social rehabilitation: Young people, Graphics, Outstanding alcohol disorders, users with concomitant serious mental illness, users of prolong evolution.

Units of Alcohology:

Specialized alcohol related drug treatment units are responsible for providing more differentiated and integrated care to users with problems of harmful use and addiction to alcohol, moderate to severe. In the case of poly-drug use, the units of Alcohology provide support in situations where alcohol is predominant. Where outpatient or inpatient are provided, these units involve users with alcohol abuse or addiction, following the most appropriate treatment arrangements.

Mental health services:

Operating in the context of mental health care, the intervention of Psychiatry departments and mental health in the treatment of users with addictive behaviours and addictions takes place where there is a need for more differentiated and targeted responses, in particular in view of the most serious psychiatric frames associated with the consumption of substances. These services have outpatient and inpatient responses, operating in a multidisciplinary model, combining their intervention with the units specializing in addictive behaviours and addiction, allowing the user to continue processing in all the areas it needs.

Medical Services — Hospital Services:

The use of these services, which are often used as part of the integrated treatment of users with addictive behavior and addiction, results from the risks and harm to physical health that their primary disease usually carries on.

Physical co-morbidities are targeted by these units, who are responsible for the treatment, outpatient and inpatient, of patients with addictive behaviors and dependencies that require specific and specific care, such as infectious diseases, among others, special conditions such as pregnancy and nursery care are also in need of integrated and specific care, in view of their characteristics of the greatest biosocial fragility. Functioning in an integrated manner with the specialized units which follow these users by reason of their addition, the interaction between services enables the user to maintain its treatment for his additive problem, at the same time as the care which he needs in his physical health.

Private treatment centres exist in Portugal, mainly Therapeutic Communities (TC). After obtaining a license to operate, they can apply for funding by the State. Admission procedures make that client has to be double –informed about the treatment (by therapist form outpatient centre and by TC staff member), and its basic nature of being voluntary – informed consent is obtained in an individual consultation, after these procedures. Furthermore, all private entities have to be licensed accordingly with the law, which requires, among other things, that TC should make available access to complaint procedures (physical and online).

All TC are subject of inspection, either regularly, as well as triggered by a complaint by client, relative or professional. Inspections are conducted by an independent body within Ministry of Health (Inspection General of Health Activities) and are quite thorough in what concerns TC functioning. Inspectors may address clients individually, and clients' individual files are analysed, in order to see if specific client needs are being addressed, being those of medical, psychological or social nature. Also, the type of care delivered is also assessed, in order to determine if guideline/recommended/approved treatments are being put to practice. In what concerns leaving freely the facilities outside the scope of a clinical discharge, the first point to highlight is that the phenomenon occurs quite often; also, for this as for all points addressed in this answer, it should be said that visits from family or significant others are previewed since early stages of TC treatment, as well as incursions in the community by the client, mainly in the rehabilitation process phase. These two dispositions that should be inserted in a TC programme in order to be approved are quite detrimental to whatever possible disposition by TC regarding forced confinement of clients.

No criminal penalties take place in case of failure of treatment – there are dispositions, however, that prevent a client that has failed twice in a row to accomplish treatment in a private TC to be readmitted at that same TC for a period of 6 months. It should be mentioned that these dispositions apply either for clients admitted to TC by their own will, as for clients derived from the justice system. Although in the latter some type of judicial injunction is in order, in these cases clients are informed that TC will treat them as any other client, and by any means will act as a detention facility ; the difference should be that because of the judicial injunction, TC has a duty to report to judicial authorities about the compliance with the treatment process; all other clinical information about these clients will remain solely within the scope of his individual treatment in TC and therefore, is not to be passed to judicial authorities.

9. Do drug courts which seek to use treatment as an alternative to imprisonment exist in your State? Please describe their operations, including applicable procedural guarantees for the accused. Does the accused have to plead guilty to the drug-related offence prior to being diverted into treatment? Are only accused persons who are drug dependent on opioids diverted for treatment, or are people who use other drugs that do not cause drug dependence diverted? Can treatment exist for a period that is longer than the period of imprisonment provided for in the offence for which the accused has been charged? Does the accused still have to serve a period of imprisonment if the treatment is not successful? What constitutes a successful treatment and does the person in treatment have the right to a hearing before an independent authority and to be represented by legal counsel and present expert medical testimony on the evolution of his or her treatment?

Portugal does not have special courts devoted only to drug issues, namely to consumers issues. Please see the answer to Question 14.

10. Does your State have specialized criminal courts for people accused of drug-related offences that do not have as their focus diversion for drug treatment, but rather operate as specialized criminal courts and normally sentence those charged to prison after conviction? What differences exist between specialized criminal drug courts and regular criminal courts? What is the legislative justification for having specialized criminal courts for drug-related offences? Please describe how such specialized courts conform to the procedural guarantees for detention and fair trial under international norms.

Portugal does not have specialized criminal courts for people accused of drug-related offences. Please see the answer to Question 14.

11. Does your State use military courts to try people for drug-related offences? Please describe how such military courts conform to the procedural guarantees for detention and fair trial under international norms. Are military personnel involved in law enforcement operations against individuals or groups suspected of drug-related crimes? If so, are these regular military forces or the military police? Have they received training in human rights standards for law enforcement and the use of force? How is coordination undertaken with civilian law enforcement?

Portugal does not have military courts for the trial of people related to drug offences. Please see the answer to Question 14.

12. Does your State have legislation that provides for administrative detention for people who use drugs who are considered a danger to themselves or others? If so, can you please describe the legislative basis for such detention, applicable procedural . safeguards, including the right to be represented by legal counsel and to present expert medical testimony, and a right of appeal? Can other legislation such as that aimed at individuals with psycho-social disabilities be used in relation to those who use drugs and are considered a danger to themselves or others? If so, can you describe the legislative basis for such detention, applicable

procedural safeguards, including the right to be represented by legal counsel and to present expert medical testimony, and a right of appeal?

Please see the answer to Question 13.

13. Does your State provide for the involuntary detention of pregnant women who use drugs in circumstances where such drug use has been deemed to constitute a danger to the fetus, and where voluntary attempts by health professional to work with the pregnant woman have failed? Please describe the legislative basis and applicable procedural guarantees in case of such an involuntary detention.

Article 43 of Decree-Law no. 15/93 refers the possibility of carrying out an appropriate medical examination for the 'verification' of the quality of drug users.

The requirements and procedures are the following:

> 1 — If there are indications that a person is a usual consumer of a plant, substance or preparation referred to in Tables I to IV, thus posing a serious risk to his/her health or revealing social danger, an appropriate medical examination may be ordered by the Public Prosecutor (s) of his/her place of residence.
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> 2 — The examination shall be carried out by the public prosecutor's office or may be required by the legal representative, spouse, sanitary or police authority, and in any event shall take the necessary steps to establish the evidence referred to in the previous paragraph.
>
> 3 — The examination shall be granted to a doctor or specialized public or private health service, and shall be carried out within a period of no more than 30 days, in accordance with the necessary adaptations to the rules governing criminal proceedings, in particular as regards the obligation to appear, and the experts may give a commitment to intervene in more than one examination or procedure.
>
> 4 — The examination may be carried out on blood or urine or other analysis as may be necessary.
>
> 5 — If, in the course of the examination, he finds that the person subject to it is suffering abuse, the prosecutor will propose to voluntarily submit the treatment which, if accepted, would take place under the responsibility of a specialized public or private health service.'

Thus, according to this provision, where the consumer does not agree to undergo voluntary treatment, there may be, if necessary, a compulsory hospitalization provided for in the Mental Health Law, so that the person may be given the necessary medical care in order to withdraw it from the suffering and degradation framework in which he/she is found and to prevent his/her conduct from adversely affecting the order and peace of mind, the security of own and third parties.

Article 27 of the CRP, as stated before, guarantees the right to liberty and security, however, the restriction of freedom may be justified when it is the only way of implementing the necessary and appropriate treatment. The patient (consumer) retains its remaining rights which are unchanged (e.g. voting, communication with

the family, lawyer and authorities, sending/receiving of correspondence, receiving visits, religious worship, confidentiality).

In these circumstances, the judge is not only responsible for driving and legitimizing the compulsory hospitalization process, but also the guarantee of respect for the fundamental rights of the individual, in the light of the Constitution.

From a procedural point of view, patients' rights are safeguarded at all stages of the procedure, i.e. application, psychiatric evaluation and decision. Once a compulsory accommodation is sought, the court is responsible for the information/notification to the family and to the Public Prosecution Service, as well as for the immediate appointment of a lawyer, free of charges. However, the patient can refuse and choose another lawyer, being responsible for any expenses.

14. Does your State provide drug treatment to people in custodial or pre-trial detention, or who have been imprisoned following a conviction? Do these drug treatment services include harm reduction services? Please describe what types of drug treatment and harm reduction services are available to detainees and imprisoned people. Please also indicate if such services are available to those in administrative detention such as undocumented migrants or those subject to a deportation order. If no such services are available, does this in forced confessions or people not being able to participate in their defense?

As stated before, when we are facing the commission of an administrative offence, it is possible, provided that the individual voluntarily accepts, the application of a fine or other, for the purposes of processing for his/her dependency.

When a crime is committed, we cannot speak in substitution, at least in the same way. However, it is possible to suspend the execution of the sentence (penalty) with the obligation imposed on the offender to deal with his/her drug abuse or with the submission to a proof regime. Failure to do so, will result in the withdrawal of the measure and the subsequent execution of the penalty applied.

In view of the above, it is now important to draw attention to the procedure for these cases in a prison environment. The DGRSP has different approaches to deal with addictive behaviors and dependencies such as:

Programs structured and abstinence

There are three Prison Units, where 53 inmates were placed on 31 December 2019. In the so called "Checkout house", within the Caldas da Rainha prison with 9 inmates placed at the date of 31 December 2019.

Drug free units

Units Free of Drugs are physical spaces that are distinct and independent from the common prison areas, to which drug addicts who 'want to have a life free of drugs' are sent to prison.

The treatment program in these residential units, targeted at drug withdrawal, has an average duration of 18 months and integrates educational, occupational and therapeutic activities.

In a group context, the group is both an instrument and the subject of work, providing a context of learning and experimentation with personal and social skills that facilitate and promote the organization of a life: free life project.

Checkout house

This is a residential unit, installed in the perimeter of Caldas da Rainha prison that receives sentenced persons who have successfully completed the program for the treatment of drug abuse and which meet the conditions foreseen in the criminal law in order to be placed in RAVE (outdoor open system for inmates).

Its primary objective is to consolidate the purchases made during the treatment by the social and labor market, making use of a number of Community resources which make available places of work.

The experience of this "space" and interaction with the free community creates a dynamic context of socializing and standardization, which goes against and minimizes segregation and marginalization.

Pharmacological Programs:

These programs are available in all Prisons, either in order to give continuity to the programs initiated in free media, either to initiate. In six prisons the technical responsibility of the Program are the health professionals working there, and 356 inmates were in attendance on 31 December 2019. In the remaining Prisons, the technical responsibility of the Program lies with the different DICAD (Division for Intervention in Behaviors and Dependencies) of Regional Health Administrations (ARS). On 31 December 2019, 572 prisoners were attending these programs.

15. Are juveniles (those under the age of 18) subject to arrest, detention and imprisonment for drug-related crimes? For crimes relating to the acquisition, use or possession for personal use of drugs? If so, are they detained or imprisoned in facilities for children in conflict with the law who are under 18, or are they detained or imprisoned in facilities for adults? Can such juveniles be subjected to compulsory drug treatment or treatment with the consent of their families /legal guardians?

The age of civil majority, in Portugal, is 18 years old.

Children under the age of 16 years are considered to be unimpeachable (article 19 of the Penal Code), so not subjected to arrest, detention or imprisonment for drug-related crimes. The legal regime applicable to young people between the ages of 12 and 16 is included in the general Education Law. The purpose is to re-educate, avoiding the negative consequences of a criminal conviction identical to that of an adult.

Although the decriminalisation law applies to all individuals older than 16 years of age, in practical terms there are some differences concerning procedures in the operationalization of the law for minors.

As the minimum age to be referred to a Commission for the Dissuasion of Drug Addiction is 16 years old, youngsters between the ages of 16 and 18 (incapacitated on grounds of age) must be accompanied by their legal representatives, who must have been notified to appear at the Commission. In cases where the police authorities have not notified the legal representatives, the Commission has to do it. From the age of 18, the individuals are considered adults, assuming full criminal and civil responsibility for their actions.

When the Commission where the indicted is presented concludes that he is under 16 years, support will be provided to him through appropriate public health service, as long as the representative of the minor express his agreement by writing. There will no process open on his name, only the communication of the occurrence to the database for statistical purposes (Decree-Law 130-A/2001, Article 14º, n. 6). Once signalized to the Commission, young people are subject to a first risk assessment, and although not subject to an intervention by the Commission, they are referred to the Commission for the Protection of Children and Young People at Risk (CPCJR), governmental institution that protects and promotes the rights of children and young people (Law no. 147/99 of 1 September). The CPCJR intervenes to promote the rights of the protection of children and young people when their safety, health, education or integral development is at risk/danger (examples: abandonment, physical and/or mental abuse, sexual abuse, child labour, behaviours/activities/consumption that harm the child or young person).

According to Article 3(1) of Law No 30/2000 of 29 November, the provisions of the present law are not applicable where the consumer or, in the case of a minor, their legal representative, requests the assistance of public or private services.' It means that the consumer will not be punished with an administrative offence if he/she requests spontaneously the treatment.

Where criminal proceedings are concerned, Article 50 of Decree-Law no 15/93 provides for measures concerning minors — 'It is for the courts with jurisdiction in the minor area to apply the measures provided for in this Decree-Law, *mutatis mutandis*, when the person subject to them is a minor, under the special legislation on minors, and without prejudice to the application by the ordinary courts of the legislation relating to young people aged 16 to 21.'

Thus, as a minor is concerned, it should be noted that individuals aged 16 are criminally liable and courts are able to use the penal regime for juvenile offenders — Decree-Law n.º 401/82, of 23 September. Article 9 of the Criminal Code refers to (this) special legislation, the penal regime applicable to 16 and 21 year olds.

The regime laid down in Decree-Law 401/82, of 23 September, is the rule that applies to young people between the ages of 16 and 21, and the application of this system is not an option, but it may be a duty which the judge must use whenever the relevant conditions are met.

This reference to a specific criminal regime for the so-called "juvenile offenders" translates into one of the fundamental policy choices that will be linked to the integration and socialisation purposes.

It is therefore explained in the preamble of the legal instrument that its scheme is guided by the general principle of flexibility in the application of the remedies so as to allow for measures to be taken by the State, in order to enable young people to be held responsible for less than 21 years of age, to be merely corrective, which represents the assumption by the State of a special scheme of the consequences of the acts described as a criminal offence when practised by young people, taking into account the need for their rehabilitation.

The regime set out here contains a twofold set of options in the field of penalties which are:

- to prevent, as far as possible, the sentence of imprisonment by imposing special attenuation where the prognostic conditions laid down in Article 4 are met;

- the establishment of a specific framework of corrective measures (Articles 5 and 6);

With regard to the mitigation of the penalty applied, Article 4 of Decree-Law no. 401/82 lays down the following requirements:

(a) there is no automatic application, but application on a case-by-case basis, according to the individual case;

(b) understanding of the Court's own motion;

(c) the judge has the power to apply it when its conditions are met;

(d) it is compulsory to apply where there are *'serious grounds'* to believe that it will result in benefits for the social rehabilitation of the young person;

(e) their application should always be considered;

(f) its non-application should always be justified.

One way of pursuing this aim, set forth in Article 4 of Decree-Law no. 401/82, is the 'imposition' by the court of the duty to mitigate in particular the sentence *'where it has reason to believe that the attenuation results in advantages for the social rehabilitation of the sentenced young person'*.

Procedural law provides for the collection by the court of elements which enable it to exercise the power/obligation to apply the special regime for young people who, as a rule, will require particular proof of the determination of the specific and measure of the penalty to be imposed. With that in mind, Articles 370 and 371 of the Code of Criminal Procedure contain particularly appropriate rules: '*The* court may at any time during the trial (...) request the drawing up of a social report or information from the probation services, or update it when it is already in the proceedings."; and to order 'the production of any additional proof necessary, or, where possible, the criminological expert, probation officer, probation officer and any person who can give evidence of significance as to the personality and the living conditions of the person concerned.'

Minors are detained or imprisoned in facilities for children in conflict with the law who are under 18years old and not detained or imprisoned in facilities for adults.

16. What provision is in place for those drug users and their dependents who are detained in the context of migration in your State?

All the above identified legal provision are applicable to the persons found in Portugal or that are detained in the context of migration.

17. Are there any good practices being developed or implemented in your State in relation to drug-related detention and drug policies? If so, please provide examples.

In the answers to the previous Questions some good practices are referred to, namely the provisions applicable to minors and the regime implemented by Law no 30/2000 on the consumption of narcotics and psychotropic substances, together with the medical and social welfare of the consumers of such substances without medical prescription, attached.

The key point about the Portuguese system is not only the decriminalisation, but the nationwide and consistent focus on health-related oriented responses rather than penalties for users. The objective has changed from punishment from breaking the law, to assistance to overcome a potential health and social problem.

As stated by the Chairman of the International Narcotics Control Board in 2016 "Portuguese approach could be considered as a model of best practice, fully committed to the principles of the International Drug Control Conventions, putting health and welfare at its centre and applying a balanced, comprehensive and integrated approach, based on the principle of proportionality and the respect for human rights".

18. Are there any new or emerging trends in drug-related detention and drug policies that could be addressed by this study?

No.