

# Is Decriminalisation Enough?

Drug User Community Voices  
from Portugal





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# Introduction – Building on Our Consensus Statement

This is the first community-driven evaluation of the outcomes of Portugal’s decriminalisation of people who use drugs. Introduced in 2000, Portugal’s model of decriminalisation has been hugely influential and is frequently referred to as an example of legislative reform that has improved public health, social order, and the health and wellbeing of people who use drugs. This document builds on INPUD’s [Consensus Statement on Drug Use Under Prohibition: Human Rights, Health, and the Law](#)<sup>1</sup>. Our Consensus Statement collates a [declaration of 10 rights](#)<sup>2</sup> of people who use drugs that are commonly violated. In order to realise these fundamental human rights, INPUD emphasised a list of 24 demands which must be met, the first of which **is decriminalisation**: “People who use drugs, and drug use, must be decriminalised.” Our Consensus Statement was driven by global consultations with representatives of drug user rights organisations all over the world, and their **emphasis on the importance of decriminalising both drug use and people who use drugs was consistently and vocally articulated**. This document therefore demonstrates the outcomes, both the positives and the shortcomings, of Portugal’s model of decriminalisation. Importantly, it establishes that Portugal’s decriminalisation of people who use drugs is not – as is claimed – a full decriminalisation.



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<sup>1</sup> Available at [https://www.inpud.net/consensus\\_statement\\_2015.pdf](https://www.inpud.net/consensus_statement_2015.pdf)

<sup>2</sup> Available at [https://www.inpud.net/rights\\_and\\_demands\\_2015.pdf](https://www.inpud.net/rights_and_demands_2015.pdf)



## Portugal's Decriminalisation: An Overview

Since the adoption of Law 30/2000 in 2001, Portugal is frequently cited as *the* most important example of successful decriminalisation of drug use and of people who use drugs.

Held up as the principal model of progressive drug policy, Portugal's shift to a focus on health as opposed to criminalisation has seen a decline in morbidity and mortality related to drug use. Incidence of HIV amongst communities of people who use drugs has dropped considerably since the introduction of the 2001 law, from 1,016 cases in 2001 to 56 a decade later<sup>3</sup>, where "there has been a large decline in the incidence of HIV and AIDS associated with injecting drugs in this risk group since 1999-2000 (though CASO argue that hepatitis C prevalence amongst people who inject drugs has remained high)"<sup>4</sup>. Further to this, drug-related deaths have dropped considerably since 2001, from around 80 in 2001 to 16 in 2012.<sup>5</sup>

But interest in – and advocacy for – the Portuguese model of decriminalisation does not tend to go much further than analysing HIV prevalence, incidence, and drug-related deaths. Though these are, of course, extremely important and pressing considerations, the lived experiences, perspectives, and rights of the drug-using community are equally important, and these considerations are rarely taken into account in assessing the outcomes of decriminalisation in Portugal. **Interactions with the state and the police, and issues of violence, social exclusion, stigmatisation, and discrimination, are often entirely omitted from discussion and analysis of decriminalisation in Portugal.**

*"... drug-related deaths have dropped considerably since 2001, from around 80 in 2001 to 16 in 2012."*

In 2016, INPUD conducted consultations in Porto, Portugal, with Portugal's drug user rights organisation, CASO (Consumidores Associados Sobrevivem Organizados). These consultations built on our Consensus Statement work to explore the on-the-ground outcomes and impacts of Portugal's policy of decriminalisation, through documenting the views and experiences of communities of people who use drugs in Portugal. As with all of our consultations (and our Consensus Statement), the voices, views, testimony, and lived experiences of people who use drugs themselves form the foundation of this document. Testimony from representatives of CASO is woven through this document, providing a community-driven experiential and evidential backbone.

<sup>3</sup> EMCDDA (European Monitoring Centre for Drugs and Drug Addiction), 2014, cited in Transform, 2014, "Drug Decriminalisation in Portugal: Setting the Record Straight", 11 June, available at <http://www.tdpf.org.uk/blog/drug-decriminalisation-portugal-setting-record-straight> (last accessed 10 July 2017)

<sup>4</sup> EMCDDA (European Monitoring Centre for Drugs and Drug Addiction), 2017, *Portugal Country Drug Report 2017*, available at <http://www.emcdda.europa.eu/system/files/publications/4508/TD0116918ENN.pdf> (last accessed 10 July 2017)

<sup>5</sup> Transform, 2014, "Drug Decriminalisation in Portugal: Setting the Record Straight", 11 June, available at <http://www.tdpf.org.uk/blog/drug-decriminalisation-portugal-setting-record-straight> (last accessed 10 July 2017)

# The Law

## Portugal's Model of Decriminalisation

"People who use drugs, and drug use, must be decriminalised"

(INPUD's [Consensus Statement on Drug Use Under Prohibition](#))

In 2001, Portugal decriminalised people who use drugs, through decriminalising drug possession. Though the legislation is often cast as extremely liberal and progressive, the law and the understandings that justify it continue to problematise drug use, with the law intended to focus on reducing levels of drug use. The legislation should therefore not be seen as a movement towards societal acceptance of people who use drugs; instead, the focus is still on dissuasion of drug use. What has changed is the *tool* of dissuasion, shifting from criminalisation to a focus on the rationales of personal and public health as a means by which to reduce drug use:

"In 2001, the Portuguese model was put in law. The model [is designed] as a component of [drug use] dissuasion, so it keeps the moral censorship, the clinical views, and the civil sanctions [against] people that use [drugs] ..."

(Participant 1, Porto consultation with CASO)

Portugal's decriminalisation model has not done entirely as it claims, and the decriminalisation law itself is not as permissive and progressive as it is often understood to be: **people who use drugs are only partially, not fully, decriminalised**. Though possession of quantities of drugs was decriminalised in 2001, not *all* drug offences were decriminalised in Portugal. Only small amounts deemed for personal use are decriminalised, so that the possession of larger quantities of drugs still has legal implications:

"We can have a certain amount of substance to use, without running the risk of being criminalised."

(Participant 1, Porto consultation with CASO)

People found to possess larger amounts of drugs when stopped and searched by the police are still criminalised in Portugal.

*"... the law and the understandings that justify it continue to problematise drug use ..."*

"If I use heroin every day, I can [legally] have with me one gram for one week, and I remember, when I was, when I used every day heroin, I can smoke one gram in a day, and if the police catch me, for example with these five grams for one week, you can be considered criminal ... [You are allowed to carry] one gram of heroin, methadone one gram ... cocaine ... 25 grams of marijuana, 5 grams of hash ... If you have more, for example if



*“The distinction between decriminalisation and legalisation is one that is rarely discussed”*

you have one gram and a half of heroin from one week, you can be considered a criminal.”  
(Participant 2, Porto consultation with CASO)

Though it may be claimed that this is designed to target those who deal, traffic, and sell drugs, in reality those who are affected are those who most need their drugs, those who have bought larger amounts of drugs, and/or people with drug dependencies. All of these groups can still be prosecuted under legislation criminalising the supplying of drugs. It must therefore be emphasised that Portugal’s decriminalisation of people who use drugs is a **limited decriminalisation**.

## Portugal Has Not *Legalised* Drugs

“Barriers to health must be undermined and dismantled: not only must people who use drugs be decriminalised, but drugs must be produced in a legal and regulated context”  
(INPUD’s [Consensus Statement on Drug Use Under Prohibition](#))

Though people who use drugs are (partially) decriminalised, **drug production and provision are not legalised** in Portugal. The distinction between decriminalisation and legalisation is one that is rarely discussed in the Portuguese context. The lack of regulated drug production and legalisation means that, as with other contexts of prohibition, people who use drugs in Portugal are unable to accurately ascertain the contents of the drugs they buy and use. This means drugs can contain **toxic contaminants** and can be of **dangerous strength** and purity. Additionally, because of ongoing criminalisation in Portugal, buying drugs requires people who use drugs to enter **dangerous, clandestine environments**. These are environs marked by violence and social exclusion, creating further barriers to people who use drugs in accessing service and healthcare provision, and state-sponsored protection and assistance. As stressed in the below quotation, this is something of a paradoxical system: since people who use drugs are only *partially* decriminalised, the model continues to enforce the infrastructures of prohibition. In doing so, it perpetuates crime and heightens risks, dangers, and harms to health.

“It’s a contradiction, because it’s not a crime to buy a small amount for your use, but when you buy you have to enter a criminal environment, you know? A violent environment, to buy it ... So the model doesn’t give a solution to this contradiction ... this kind of schizoid system that you can use, but you can’t buy, so what is this? ... This environment is also producer of more crime ... it facilitates ... the development of more and more crime. And it’s more violent, and implies more violence for the person that is using.”  
(Participant 1, Porto consultation with CASO)

“The ultimate goal is for drugs and substances to be regulated, not forbidden ... in the first moment, the government should provide control and quality control, and

the access to these substances ... We don't know the purity, we don't know the quality, and even don't know what substance in reality we are using, you know. So this is a risk, a health risk ... [This can result] in death, in overdoses, in being in a trip for much more hours than you expected because instead of LSD you took other synthetic psychedelic ... sometimes you have pretty good heroin, much more pure, and if you're used to shoot two or three bags, if you do the same with the quality ... I had an overdose and my wife had to call the emergency service."

(Participant 1, Porto consultation with CASO)

Having said this, it must be emphasised that things have substantially improved in terms of the risks and danger of buying drugs in comparison to the period before Portugal's decriminalisation. When compared to contexts where drug possession is still criminalised, **Portugal is distinctly safer** for people who use drugs, who for the most part do not risk detention and incarceration for possession of drugs:

"I don't feel so stressed as I feel in London, where the dealer was, you know 'come with me to the next street, because cameras and so on, and so on'. And this reminded me of the stresses I have before [in Portugal]."

(Participant 1, Porto consultation with CASO)

Despite improvements brought about by Portugal's model of decriminalisation, there are still notable risks to people who use drugs. These risks occur principally due to the *partial* nature of Portugal's decriminalisation, and because an unregulated drugs market continues to exist in Portugal. The avoidable risks associated with drug use do not completely disappear with partial decriminalisation, as Portugal illustrates, and violence and risk of overdose – as well as other issues of health and safety – from adulterated and unknown purities of drugs remain.

These are not trivial concerns: states which continued to implement prohibition and wage a criminalising 'war on drugs' have seen increasing levels of drug-related morbidity and mortality. Overdose is *the* principal cause of death of North Americans younger than 50 years old; vast numbers of people overdose and die as a result of taking fentanyl and carfentanyl instead of heroin in North America and, increasingly, in Western Europe. These newer, far stronger drugs are increasing in prevalence and use due to the unregulated market of prohibition. People have also continued to die the world over as a result of toxic adulterants and contaminants being present in stimulants like MDMA and ecstasy, which are relatively *very* safe drugs when uncontaminated and when of known strength. Portugal's failure to introduce a regulated market means that these very real risks still exist: drug-related deaths are avoidable, and the resources, knowledge, information, education, and equipment are at hand to avoid these deaths, but they continue due to the effects of criminalisation, prohibition, and social exclusion.

*"Despite improvements brought about by Portugal's model of decriminalisation, there are still notable risks to people who use drugs"*



*“... most frequently harassed by the police are those who are most disenfranchised...”*

## Stop and Search

“People who use drugs must not be subject to arbitrary detention or arrest, [or] arbitrary stop and search”

(INPUD’s [Consensus Statement on Drug Use Under Prohibition](#))

Due to the fact that drug production and distribution are not legalised and are therefore still informal, criminal and clandestine in Portugal, there are environments that remain targets for police. The existence of such environments – coupled with the fact that people who are carrying criminalised quantities of drugs are still subject to police attention – means that **people who use drugs can still be stopped, searched, and harassed by the police** in Portugal, despite partial decriminalisation.

“If the police see you, you and somebody in the, close to the drug scene, can search you ... The police go there with vans – ten, eight police, in a van, and stop in the neighbourhood, and if [they] look [at] someone, if they think that is suspect, he can, they can [stop and search you].”

(Participant 2, Porto consultation with CASO)

Portugal’s ongoing policing of communities of people who use drugs is heavily disproportionate. Those most frequently harassed by the police are those who are most disenfranchised, impoverished, and subject to social exclusion. It is these communities who the police assume or already know to be people who use drugs.

“They can stop the person, ask for ID and ask for, do the search of drugs, and they can harass the person to tell [from] who [and] where they bought the substances. So the problem for the small, the less protected users, is still a big problem, because they are the ones who are more harassed by policemen, that want to know who is the dealer”

(Participant 1, Porto consultation with CASO)

Furthermore, despite the fact that people who use drugs are ostensibly decriminalised, police confiscate *all* drugs they find when they perform stops and searches, irrespective of the quantity of drug possessed.

“If the police catch you with one dose, they confiscate [your drugs] and send you to a [drug dissuasion] commission ... If you have only one dose for personal use ... [it is] still confiscated ... for me, [this] is one of the things that is lack[ing] in this law, because sometimes people have [spent] all day to arrange five euros, and if the police catch [them] with one dose, for personal use, the police confiscate ... and the drug users sometimes must go to rob [to acquire their drugs] ... if people use drugs for personal use, [they] must [be able to] keep their drugs ... [It] is strange, because it’s not a crime; why do police confiscate my drugs?”

(Participant 2, Porto consultation with CASO)

*“... the most marginalised drug users in Portugal are still ... experiencing forms of criminalisation and police control.”*

As emphasised above, the most marginalised drug users in Portugal are still, for all intents and purposes, experiencing forms of criminalisation and police control. They are most likely to be stopped and searched, and although they are less able to afford more drugs, their drugs are confiscated and destroyed by the police. As with other wars on people who use drugs, the Portuguese model seemingly acts as a route through which to police, harass, and disrupt the lives of the most marginalised communities of people who use drugs. As is noted in INPUD’s [Drug User Peace Initiative](#), “Enforcement of drug control legislation and prohibition has notably come to disproportionately impact some groups. Since police are permitted to use their discretion in harassing people on the suspicion that they use drugs, institutional racism informs who is harassed ... Police harassment of those who are suspected of drug-related offences is not only racially motivated, but discriminates against young people and those who are economically marginalised and disenfranchised ... The so-called ‘war on drugs’ is therefore a lens through which wars on people of colour, on young people, and on the poor are fought”.<sup>6</sup>



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<sup>6</sup> INPUD, 2014, *Drug User Peace Initiative – Violations of the Human Rights of People who Use Drugs*, available online at [http://www.druguserpeaceinitiative.org/dupidocuments/DUPI-Violations\\_of\\_the\\_Human\\_Rights\\_of\\_People\\_Who\\_Use\\_Drugs.pdf](http://www.druguserpeaceinitiative.org/dupidocuments/DUPI-Violations_of_the_Human_Rights_of_People_Who_Use_Drugs.pdf) (last accessed 2 October 2017)



# Violence, Abuse, and Displacement

“Those who enforce the law, particularly the police and members of the criminal justice system, must be sensitised to the needs and rights of people who use drugs”

“Violence perpetrated against people who use drugs, both in civil society and at the hands of the authorities, the police, and healthcare providers, must be investigated and prosecuted”

(INPUD’s [Consensus Statement on Drug Use Under Prohibition](#))

## Police Violence and Discrimination

Decriminalisation could reasonably be expected to reduce police violence. Following decriminalisation, interactions and altercations with the police should, in theory, be more limited:

“Before 2001, it was the police beating, search[ing] everyone. I remember when I, I don’t smoke heroin and cocaine, I live in the neighbourhood, with many people, traffic, and using, and I remember when I go home, after the disco, for example, many times the police stop – ID, sometimes with me, and at the time, I don’t use heroin and cocaine.”

(Participant 2, Porto consultation with CASO)

Yet despite decriminalisation, the possession of larger quantities of drugs remains criminalised, and police still have a mandate to search and detain people who use drugs. Such encounters with the police vary, with the community reporting that state violence and harassment continue to feature in the lives of people who use drugs in Portugal.

“I think the new law managed to open space to some policemen, and some judges, and some security forces can be more open and comprehensive. But it depends, you know? You can have that night a policeman that is very strict and rigid and can beat you, and so on.”

(Participant 1, Porto consultation with CASO)

“But before 2001, it’s worse, but now, it [violence] still happens ... I remember, after this decriminalisation, one, two, three years after, I remember the police kill[ed] two drug users.”

(Participant 2, Porto consultation with CASO)

*“... most frequently harassed by the police are those who are most disenfranchised...”*

“Three years ago, a girl, that I meet, is living the van, close to the neighbourhood ... the police go there, and ask ‘Who is sell drugs?’ The other say ‘I don’t know’ and police pick

## Is Decriminalisation Enough? Drug User Community Voices from Portugal Violence, Abuse, and Displacement

up the gun and say 'If you don't tell me, I kill your dog'. And she say 'I don't know' and the police kill the dog in front of her ... we have this problem. For us, the lack also is for the training for the police ... I remember also that one [police] chief is the first to say to the other police, 'Beating drug users, I want to see drug users killing themselves'."

(Participant 2, Porto consultation with CASO)

Despite the change of legislation in Portugal, people who use drugs continue to face stigma and discrimination. This is especially the case with police and authorities, who require sensitisation on the principle of non-discrimination:

"The policeman and security forces also feel that they lack the training to deal with new laws ... you have to train a new generation of police forces, you have to train a new generation of social workers, of outreach teams and so on. So they don't keep the ... patronising approach to the victim that is not able [to] direct its own life, you know? So I think there's lots of work to do regarding stigma, prejudice, and also the political use of the figure of evil that the drug user is."

(Participant 1, Porto consultation with CASO)

As emphasised repeatedly above, those people who come to experience the most significant abuse, discrimination, and violence from the state and police are those who are disenfranchised. As concisely expressed below, 'the exclusion is against poor people':

"We had this financial crisis also, so lots of people that are less protected with less social support and so on and so on, lots of relapses in heroin consumption, and they are the ones that are more subject to police violence, to police harassment ... Poor people get much more troubles and obstacles in this process, are much more marginalised and excluded. And rich people with family support, with access to private doctors and so on, can develop ways of managing the use with less suffering, you know? So the exclusion is against poor people."

(Participant 1, Porto consultation with CASO)

### Community Violence

Violence towards people who use drugs in Portugal has therefore continued in spite of decriminalisation. This **drug-userphobic violence** is not only perpetrated by the police, but is also meted out by the community at large, who blame, stigmatise, and socially exclude people who use drugs. The **scapegoating** of people who use drugs continues unabated the world over; and it is very concerning to note that despite the decriminalisation of people who use drugs in Portugal, drug-userphobic and community-perpetrated violence still occurs.

*"The scapegoating of people who use drugs continues unabated the world over ..."*



*“... state-sponsored harassment and intimidation has the result of displacing communities of people who use drugs.”*

“The population that live in the neighbourhood, sometimes speak ‘Oh I don’t want to see you using drugs here’, and beating sometimes drugs users ... Not the police, the population that they lived in this neighbourhood, sometimes is the first to beating drugs users and say ‘Don’t want to see you using drugs in my door’.”

(Participant 2, Porto consultation with CASO)

## **Displacement**

People who use drugs, despite decriminalisation in Portugal, are still subject to harassment, stops and searches, violence and abuse perpetrated by police. This state-sponsored harassment and intimidation has the result of **displacing communities of people who use drugs**. In fact, it seems that though drug use is arguably not officially considered a *criminal* phenomenon, it is still **perceived to be a moral blight** on Portuguese society. Decriminalisation, therefore, has not fully undermined the entrenched pejorative notions surrounding drug use, policies, and social exclusions.

“In Porto, the mayor, the president of Porto, tried to close every space where the drug users smoke [drugs]. Because they say it’s not beautiful for the tourists to see drug use in the streets, using. And send the police, and they say [to] the police: ‘Clean this street. No matter what. Do what you do’. And police sometimes go there, and [are] beating the drug users: ‘I don’t want to see you here’. And [it] is not working because the police go [to] one place, and tomorrow, the drug users [have moved to the] next neighbourhood.”

(Participant 2, Porto consultation with CASO)

Such displacement certainly does nothing to assist and empower communities of people who use drugs. Instead, displacing people who use drugs from public spaces undermines their dignity and rights, and serves to create significant **barriers to accessing services**, healthcare provision, harm reduction and state-sponsored assistance. Such displacements are nothing less than diametrically opposed to Portugal’s claimed focus on the health of people who use drugs, as opposed to a focus on criminalisation and social exclusion.

“Especially in the city centres, with lots of tourism, there’s strong efforts to put drug users in other places. They don’t care where they go, you know. It’s not effective because you go to a neighbourhood in this moment, people go to the next neighbourhood and everyone is still using – but becoming more hidden ... They have to hide more. So I think at the same time there is a risk of not paying the real attention to the problematic use, because we don’t see it so much, in some places. There are other places that are emerging.”

(Participant 1, Porto consultation with CASO)

# Stigma, Discrimination, Pathologisation

“People who use drugs must not be assumed to be sick, deviant, or criminal”

(INPUD’s [Consensus Statement on Drug Use Under Prohibition](#))

Contrary to expectations that people who use drugs in Portugal are no longer stigmatised as criminals as a result of Portugal’s decriminalisation model, the stigma and discrimination associated with criminalisation have not magically disappeared. More specifically, the stigma surrounding criminal immorality very much remains, and is now augmented by **another stigma**: Portugal now focuses on drug use as a *health* issue as opposed to a *criminal* one, and so people who use drugs are now seen to be unhealthy and are accordingly **pathologised as being sick**; drug use is conceptualised as a disease, illness, or pathological disorder.

“Stigma is not a thing that disappears magically, so for years and years, we have been looked [at] like criminals, or with moral defect, or, so that won’t disappear by magic. And at the same time, they’re now introducing a new stigma – the mental health disorder, which can be as bad as the criminal stigma, so it’s very important to be vigilant to these new experiences . . . over that already existent stigma, now there’s another stigma of the sick person . . . the stigma is still there, the prejudice is still there, the labelling is still there.”

(Participant 1, Porto consultation with CASO)

This new conceptualisation of drug users as sick is stigmatising and disempowering; such pathologising serves to undermine the agency and self-determination of people who use drugs. If drug users are defined as sick, they can be cast as unable to make meaningful decisions about their own lives, and unable to provide reliable testimony as to their lived experiences. This has real consequences and implications in terms of the human rights of people who use drugs and the service and healthcare provision that they receive in Portugal. In fact, it is used to justify compulsory dissuasion and medicalised intervention and interference in their lives, as discussed further below. In sum, even though progress has been made in Portugal – with partial decriminalisation undermining stigmatising assumptions of criminality – social reform has not been progressive enough if society is satisfied with substituting one form of stigma for another.

“Now . . . society don’t look to the drug users as criminals. For me it’s more important . . . that drug users don’t go to jail. And I don’t like the term – now drug users is [seen to] look like sick person, but I don’t like the term, like I say. But is better than to see a criminal . . . before, we were criminals and now we are sick people.”

(Participant 1, Porto consultation with CASO)

“... before, we were  
criminals and now  
we are sick people.”



# Harm Reduction Services and Healthcare Provision

*“The Portuguese model of decriminalisation represents a move from criminalisation to a health model...”*

“People who use drugs must have access to the highest attainable standard of healthcare, service provision, and harm reduction”

(INPUD’s [Consensus Statement on Drug Use Under Prohibition](#))

The Portuguese model of decriminalisation represents a move from criminalisation to a health model; viewing people who use drugs as being in need of medical intervention and assistance. Before the legislation, harm reduction services and healthcare and service provision for people who use drugs were limited (though CASO noted that a needle and syringe programme had been operating prior to the legislation), with considerable **sharing of injecting paraphernalia** due to a lack of available harm reduction services and needle and syringe programmes, accompanied by a **high incidence and prevalence of HIV** amongst the drug-using community. Following the legislation, the focus has changed:

“We didn’t have real services of harm reduction before that [decriminalisation] ... it was the beginning of harm reduction ...

And since 2000, they created lots of different services in harm reduction.”

(Participant 1, Porto consultation with CASO)

“I remember, before ‘93, we saw many drug users injecting in the open scene, change the needles, the HIV is increase, and the government start to [open] needle exchange in the pharmacy, [for] free ... After that, in ‘99, the people think [of] this law, in 2000, the law appears, and in 2001, after 2001, open the doors to professionals, professionals start the outreach team, and put the people in treatment – if the people want, of course.”

(Participant 2, Porto consultation with CASO)

<sup>7</sup> The WHO, UNODC, and UNAIDS specify nine pillars of harm reduction, with a heavy focus on HIV and blood-borne infection transmission. The harm reduction interventions listed in this document, however, include interventions to reduce a broader set of drug-related harms. The nine pillars are:

1. Needle and syringe programmes (NSPs)
2. Opioid substitution therapy (OST) and other drug dependence treatment
3. HIV testing and counselling (T&C)
4. Antiretroviral therapy (ART)
5. Prevention and treatment of sexually transmitted infections (STIs)
6. Condom programmes for IDUs and their sexual partners
7. Targeted information, education and communication (IEC) for IDUs and their sexual partners
8. Vaccination, diagnosis and treatment of viral hepatitis
9. Prevention, diagnosis and treatment of tuberculosis

(WHO, UNODC, UNAIDS, 2009, *Technical Guide for Countries to Set Targets for Universal Access to HIV Prevention, Treatment and Care for Injecting Drug Users*, p. 6, available online at [http://www.unodc.org/documents/hiv-aids/idu\\_target\\_setting\\_guide.pdf](http://www.unodc.org/documents/hiv-aids/idu_target_setting_guide.pdf) (last accessed 22 November 2017)). Community distribution of naloxone was added to a subsequent rewrite.

*“People who use drugs are seen as being sick and in need of dissuasion from their moralised drug use ...”*

Despite a considerably increased focus on service provision, healthcare provision, and harm reduction, services in Portugal for people who use drugs are lacking in some regards, and are **not comprehensive**.<sup>7</sup> Peer distribution, or, indeed, widespread availability, of **naloxone**, which reverses opiate overdose, is non-existent. Additionally, Portugal does not have **drug consumption rooms**, despite there never having been one overdose death in a drug consumption room anywhere in the world, and despite their demonstrated impact in improving the health and wellbeing of people who use drugs.

“Emergency service are the only ones that have naloxone – you can’t buy it in pharmacies, you haven’t got it on the outreach team.”

(Participant 2, Porto consultation with CASO)

“Since 2000, they created lots of different services in harm reduction ... the drug consumption room, that over all these years still doesn’t exist in Portugal.”

(Participant 1, Porto consultation with CASO)

Interventions such as these are particularly crucial in a world which is witnessing a rising number of overdose deaths, as a result of an unregulated drug market.

## **Compulsory ‘Dissuasion’**

“People who use drugs must not be subject to compulsory treatment”

(INPUD’s [Consensus Statement on Drug Use Under Prohibition](#))

There are service and healthcare providers that practice inclusively and provide non-judgemental support in Portugal, and CASO were explicitly praising of these service providers. However, a particularly worrying outcome of the Portugal model of decriminalisation is the introduction of dissuasion committees. In Portugal, carrying small quantities of drugs is decriminalised, and if you are stopped and searched and found to be in possession of small quantities of drugs you are no longer arrested, charged, or imprisoned. However, though people who use drugs are decriminalised, the focus of law and policy has shifted to one of **pathologisation**. People who use drugs are seen as being sick, and incarceration has given way to rehabilitation and **‘dissuasion’**. People who use drugs are now obliged to be supervised by a lawyer and a social worker in this Commission for the Dissuasion of Drug Addiction. Though this is involuntary, failure to comply results in a relatively small fine (though this would have substantially more impact for those who are impoverished), much like an administrative offence such as a parking fine. Drug use, then, results in some sort of intervention, either punitive or medicalised; as noted by drug user rights organisation, CASO, “there are no fines for alcohol drinkers”.



“When you’re caught . . . you go to this commission of dissuasion, and sometimes you have to go to treatment, sometimes you have to go to pay a fine . . . [If you don’t go to the dissuasion commission] sanctions can be higher. For instance, the first time you are caught, if in the next six months, if you are not caught, the process is archived. The second time you got caught, you can have to pay a fine or do some community work.”  
 (Participant 1, Porto consultation with CASO)

“Every time you go to the commission, [you are] sent from the police. When the police catch drug users in the street, is the police every time, send the drug users to the commission.”  
 (Participant 2, Porto consultation with CASO)

It is important to stress also that, as the European Monitoring Centre for Drugs And Drug Addiction note: “Punitive sanctions can be applied, but the main objective is to explore the need for treatment and to promote healthy recovery.” Though these commissions may well be preferable to arrest or incarceration, they **should not be regarded as an all-out victory for drug policy reformers**. These attempts to dissuade people from using drugs are fed by stigmatising constructions of people who use drugs as sick, undermine their agency and self-determination, and show Portugal to be a far cry from a country that no longer polices or controls the lives of people who use drugs.

Whilst a medical approach to drug use may be preferable to criminalisation, the lens of pathology continues to be used to justify unacceptable incursions into the lives of people who use drugs. A pathologisation of drug use, and narratives that undermine the agency and self-determination of people who use drugs, alongside policies that enforce medicalised/biopsychosocial interventions irrespective of the wishes of people who use drugs themselves, have, in other contexts internationally, provided justification for the detainment of people who use drugs in compulsory detention centres. In the name of ‘rehabilitation’ and ‘treatment’, people are detained in these centres without due legal process, and in many states are subject to physical and sexual violence, torture, degrading treatment, and forced labour, as discussed in INPUD’s [Consensus Statement](#).

*“... the lens of pathology continues to be used to justify unacceptable incursions into the lives of people who use drugs.”*

Often assumed to be solely deployed in low- and middle-income countries, compulsory treatment for people who use drugs also takes place in the Global North, mandated in numerous states including in the North Americas and in Western Europe. The popularisation of compulsory drug treatment through the practice of drug courts<sup>8</sup> is of growing concern. In short, the lines between compulsory drug detention, compulsory rehabilitation and ‘dissuasion’, and medicalised incarcerations, can at times be very fine.

<sup>8</sup> Drug courts are specialised courts which mandate drug treatment in lieu of criminal and custodial sentencing. Often framed as a progressive approach, critics have pointed to the coercion of individuals into treatment, the ways they constitute the marriage of the criminal justice and treatment system, and the continued criminalisation of drug dependency.

## Nothing About Us Without Us

“People who use drugs must be respected as experts on their own lives and lived experiences”

“The wellbeing and health of people who use drugs and their communities must be considered first and foremost in the formation of laws and policies and programmes that relate to drug use”

(INPUD’s [Consensus Statement on Drug Use Under Prohibition](#))

INPUD has demanded, again and again, that people who use drugs be involved in decisions that relate to their own lives; in the formation of laws and policies that relate to their lives, health, wellbeing, and lived realities; and in not only the design, but additionally in the implementation, monitoring and evaluation, of said policies and programmes. Drug user rights activism and network formation in Portugal is strong, is well integrated with harm reduction service provision, and includes meaningful involvement of people who use drugs in the delivery of services and healthcare provision for their peers. CASO’s ongoing contribution to drug policy discourse in Portugal is extensive; CASO note that they have a seat on the Commission that monitors the national programme of needle and syringe exchange, a seat on the national civil society forum for HIV/AIDS, tuberculosis, and hepatitis, and they have been asked additionally to contribute to the *National Plan for Reducing Addictive Behaviours and Dependencies 2013-2020*. Since the consultation that informs this document, CASO have participated in the Portuguese working group regarding drug services, identifying the competencies of outreach workers, with this working group producing a manual which included some of CASO’s recommendations. CASO have participated in a further working group focussing on the future directions of the Portuguese model; formed by the Minister of Health, this working group included representatives of drug services and mental healthcare. Though CASO were not on the working group, they were consulted with.

“CASO, since the beginning, tried to evoke, and tried to say that it’s time to review the model – with our participation of course ... because yeah – ‘nothing about us, without us’. And we know about what we need. We know what are necessities, and we have something to say.”

(Participant 1, Porto consultation with CASO)

“... more marginalised communities of people who use drugs remain disempowered.”

However, despite strong activism and activist organising in Portugal, more marginalised communities of people who use drugs remain disempowered. As argued



*“... Portuguese drug discourse clearly pathologises people who use drugs as sick.”*

in this document, it is these communities of people who use drugs who are most subject to police interference, violence, and abuse. Portuguese **decriminalisation has not been to the betterment of all of the drug-using community**. People who use drugs are still harassed, remain subject to state-sponsored violence and social exclusion, and report that they do not feel that they are living under full decriminalisation. Indeed, they are not.

“If you ask, ‘Do you know that you can use without go to jail?’ No, some drug users don’t know that.”

(Participant 2, Porto consultation with CASO)

Though drug user organising is strong in some areas, the impacts of which are notably seen in health services and peer harm reduction services in Portugal, communities of people who use drugs are still not invariably meaningfully included in the development of policy, and in contributing to discourse and debate. This is, perhaps, not surprising given that Portuguese drug discourse clearly pathologises people who use drugs as sick; such constructions undermine agency and self-determination, and can be used to **silence marginalised communities**, while ‘experts’ and professionals instead speak on their behalf.

“Till now, not many doors are open to the involvement of users in the development of a national programme ... in the end they call us, but with the project already finished, you know? So it’s not like we’re participate since the beginning.”

(Participant 1, Porto consultation with CASO)

“We get together, without funds, we fight against oppression, against discrimination, yeah. And we want to be at the table with deciders [decision makers] ... Like we say, our community – ‘nothing about us, without us’.”

(Participant 2, Porto consultation with CASO)



# Conclusions: Decriminalisation is Not Enough

## **The Outcomes of Portugal’s Drug Law, Policy, and Discourse**

Portugal’s decriminalisation of people who use drugs has had **substantial and substantive positive impacts upon the health and wellbeing of people who use drugs**, specifically in terms of morbidity and mortality associated with drug use. But to paint a picture of Portugal’s legislation and policy as perfect, as a magic bullet that addresses all drug-related harm and prioritises the rights, lives, and health of people who use drugs is, bluntly, simplistic and facile. We should not, in our advocacy, be asking for a blanket and unaltered application of the Portuguese model.

Firstly, people who use drugs are **not fully decriminalised** in Portugal: carrying larger amounts of drugs is still criminalised, which means that people who use drugs are still stopped, searched, and harassed by the police, and displaced from certain public spaces in Portugal. Additionally, prohibition has not ended in Portugal. Despite the possession of small quantities of drugs being decriminalised, the drugs that people buy and use are still produced in a **black-market context**, which means that people still use drugs of **unknown purity and content** – drugs that can be **dangerously strong** and/or contain dangerous and/or **toxic contaminants**. And since drugs themselves are not legalised and regulated, this also means that when people buy drugs, they must travel into **unmonitored and dangerous environs** to do so, risking their health and safety. Further to this, if people are found to be in possession of *any* drugs, the **drugs are confiscated and destroyed by police**, even though the possession of small quantities of drugs has been decriminalised. Though some people who use drugs are now decriminalised, the drugs that they use are not.

Secondly, the Portuguese model of decriminalisation has not put an end to entrenched ideas that surround drug use, and that apply to people who use drugs. People who use drugs still experience **violence and discrimination** from police, service and healthcare providers, and from the community at large. This is fed by **drug-userphobic stigma**, and understandings of people who use drugs as criminal and dangerous. In addition to the ongoing demonisation of people who use drugs, Portugal’s model of decriminalisation has been accompanied by a shift in focus from drug use as *criminal* to drug use being understood in Portugal as an *illness*.

*“... people still use drugs of unknown purity and content ...”*



*“Those found to be in possession of drugs are sent to dissuasion committees ...”*

As well as being demonised as deviant and dangerous, people who use drugs are additionally **stigmatised as sick, pathological**, and unable to exercise agency and self-determination. And though drug user rights activism in Portugal is strong, people who use drugs are still excluded from comprehensively contributing to laws and policies and programmes that relate to their own lives, due to the reinforcement of entrenched beliefs about drug users being sick, pathological, and lacking agency.

Thirdly, even though harm reduction and service provision for people who use drugs have markedly improved since Portugal introduced decriminalisation in 2001, not all interventions are strictly voluntary: understandings of people who use drugs as sick and disempowered have informed a Portuguese desire for abstinence-orientated drug legislation and policy. Those found to be in possession of drugs are sent to **dissuasion committees**, and must attend medicalised dissuasion appointments to encourage a cessation of drug use or accept a fine (and it bears repeating that people who use drugs are still punished for their drug use when found to be in possession of amounts over the decriminalised threshold). That people who use drugs continue to be mandated to attend involuntary rehabilitation, even under a model of decriminalisation, continues to undermine their agency and self-determination.

### **Decriminalisation: The First Step, Not the Last**

Demand 2 of INPUD’s Consensus Statement emphasised “Decriminalisation alone is not enough”. During the consultations that INPUD conducted with drug user rights organisations globally for our Consensus Statement, calls for decriminalisation of people who use drugs were accompanied by an emphasis that decriminalisation **was a first step, but was not – in and of itself – the final step:**

“[Decriminalisation is] a first step, which is not ... the best thing, but it’s yet a better thing to have at least the free consumption, you know. That the violence is going down of the police, of course, when the consumption is allowed.”

(ASUD, France, London consultation)

“There’s lots of things which I think should be changed in the law, from straight-up decriminalisation, straight to legalisation.”

(TaNPUD, Tanzania, Dar es Salaam consultation)

To end this document, INPUD stresses that it is very important that, in discussion of drug policy reform, while we emphasise the positive outcomes of partial decriminalisation, we are not blinkered regarding its failings, shortcomings, and detrimental side effects and discourses. The Portuguese model of (partial) decriminalisation is an **important first step**, but **it is not the end point**.

*“... legalisation and regulation are urgently required to decrease harms that can be associated with drug use.”*

“There should have been movement in the model, and the model got stuck ... [There should have been] legalising the psychoactive substances ... As Portugal was one of the first countries to stretch the conventions to its limits and decriminalise all substances, it should [have] kept this pace, it should have kept this movement towards legalisation ... So decriminalisation was a first step to develop, I think, more open policies. And they just gave the first step and stopped there, so our expectations as users, for me, were defrauded.”

(Participant 1, Porto consultation with CASO)

In conclusion, ‘decriminalisation’ must mean just that: not *partial* decriminalisation, not compulsory drug dissuasion committees, but **full decriminalisation** of people who use drugs, a full removal of all criminalising legislation and policy, as well as penalisation and sanctioning, related to people’s personal drug use.

Further to decriminalisation, **legalisation and regulation are urgently required** to decrease harms that can be associated with drug use. The International Network of People who Use Drugs underlines and emphasises that decriminalisation, legalisation, and regulation should be accompanied by an **end to the stigmatisation, discrimination, and social exclusion** to which people who use drugs globally – Portugal included – are subject.

The International Network of People who Use Drugs (INPUD) is a global peer-based organisation that seeks to promote the health and defend the rights of people who use drugs. INPUD will expose and challenge stigma, discrimination, and the criminalisation of people who use drugs, and its impact on the drug-using community's health and rights. INPUD will achieve this through processes of empowerment and advocacy at the international level, while supporting empowerment and advocacy at community, national and regional levels. [www.inpud.net](http://www.inpud.net)

INPUD is part of Bridging the Gaps – health and rights for key populations. This unique programme addresses the common challenges faced by sex workers, people who use drugs and lesbian, gay, bisexual and transgender people in terms of human rights violations and accessing much-needed HIV and health services. Go to [www.hivgaps.org](http://www.hivgaps.org) for more information.

INPUD is very grateful for financial support from Bridging the Gaps and the Robert Carr civil society Networks Fund.

INPUD would also like to thank CASO, who contributed to the consultations that informed this paper, and particularly Rui Miguel Coimbra Morais and Sérgio Rodrigues for their insight and assistance with this document.

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2018

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**BRIDGING THE GAPS**  
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**First published in 2018 by**

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