

## **Informal Settlements and Human Rights**

### **Submission to the Questionnaire of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living**

**(May 2018)**

The Portuguese Ombudsman institution, in its capacity of national human rights institution fully in line with the Paris Principles and accredited with “A” status since 1999, hereby replies to the call for input received from Ms. Leilani Farha, the Special Rapporteur on adequate housing on informal settlements and human rights. The current mandate holder, Maria Lúcia Amaral, took office in November 2017.

#### **Foreword**

In February 2018, the Institute for Housing and Urban Rehabilitation (IHRU) produced, with the collaboration of the 308 Portuguese municipal councils (*Câmaras Municipais*), the National Housing Needs Survey, which was the first comprehensive study on housing needs in Portugal, with statistical data on the number of constructions lacking adequate conditions and families in need of rehousing<sup>1</sup>.

The main goal was to collect data and information of the most serious housing needs, therefore serving as a basis for some measures included in the "New Generation of Housing Policies" (for instance, the “1<sup>st</sup> Right - Programme to Support the Right to Housing”, below described). The survey was based upon an inquiry to municipalities councils.

Besides conducting an analysis on the national housing needs, the Survey complied with the Parliament Resolution no. 48/2017, of March 17, which recommended the Government (i) to identify the needs for resettlement and housing social protection, (ii) to evaluate the implementation of the Special Resettlement Programme (PER<sup>2</sup>) initiated in 1993, and (iii) to create a new National Housing Resettlement Programme aimed at guaranteeing effective fulfillment of the right to housing.

It should be stressed out that, in 2016, the Portuguese Ombudsman had recommended the Government the revision of the PER (Recommendation 3B/2016) since it prove to be outdated and unable to provide answers to the current housing needs. This Recommendation was issued further to complaints about the eviction and demolition of shacks and unconventional dwellings carried out by the Amadora Municipal Council, in the Lisbon Metropolitan Area.

On May 2018, and following a public consultation period where contributions from the

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<sup>1</sup>[https://www.portaldahabitacao.pt/opencms/export/sites/portal/pt/portal/habitacao/levantamento\\_necessidades\\_habitacionais/Relatorio\\_Final\\_Necessidades\\_Realojamento.pdf](https://www.portaldahabitacao.pt/opencms/export/sites/portal/pt/portal/habitacao/levantamento_necessidades_habitacionais/Relatorio_Final_Necessidades_Realojamento.pdf)

<sup>2</sup> The “Special Resettlement Programme” (PER), established in 1993, and the “PROHABITA - Funding Programme for Housing Access”.

municipal councils and other stakeholders were received, the Portuguese Government approved the "New Generation of Housing Policies", whose ultimate aim is to guarantee access to adequate housing for all and to develop the supported housing sector, namely by encouraging rehabilitation (Resolution of the Council of Minister's no. 50-A/2018, of May 2).

To the present day, part of the new measures have not yet been published in the Official Gazette, making difficult to provide a detailed answer, namely when it comes to timelines.

**1. Please provide statistical data on the numbers of people living in informal settlements, clarifying the definitions used and including disaggregated data by relevant characteristics (gender, disability, age, etc.) where available. Provide estimates of the number of households renting within informal settlements.**

The most recent data available of housing needs and inadequate housing are those compiled by National Housing Needs Survey of February 2018<sup>3</sup>.

Such data are not disaggregated by gender, disability, age, etc, even though legal criteria for rehousing give priority to single parents families, families with minors, persons with disabilities, persons over 65 and also victims of domestic violence<sup>4</sup>.

The results show that in 187 out of the 308 municipalities there are 25,762 families living in precarious conditions and, therefore, in need of rehousing.

74% of the families in need of rehousing live in the Metropolitan Area of Lisbon, which comprises 18 municipal councils, and in the Metropolitan Area of Porto, with 17 municipal councils.

Areas	Number of families	Percentage
Lisbon Metropolitan Area	13.828	54%
Porto Metropolitan Area	5.222	20%
Other Areas	6.712	26%

Definitions used for housing types were:

Housing modality	Number of families	Percentage
Shacks and self-built dwellings	11.999	46,58%
Non-legalised neighbourhoods	941	3,65%
Encampments	327	1,27%

<sup>3</sup>[https://www.portaldahabitacao.pt/opencms/export/sites/portugal/portal/portal/habitacao/levantamento\\_necessidades\\_habitacionais/Relatorio\\_Final\\_Necessidades\\_Realojamento.pdf](https://www.portaldahabitacao.pt/opencms/export/sites/portugal/portal/portal/habitacao/levantamento_necessidades_habitacionais/Relatorio_Final_Necessidades_Realojamento.pdf)

<sup>4</sup> article 11 of Law 81/2014, of December 19, which establishes the supported rent regime (social housing).

Camping parks	4	0,02%
<b>Sub-total</b>	<b>13.271</b>	<b>51,52%</b>
Degraded urban neighbourhoods	6.556	25.45%
Social housing	3.837	14.89%
Areas of environmental risk	2.098	8,14%
<b>Sub-total</b>	<b>12.491</b>	<b>48,48%</b>
<b>TOTAL</b>	<b>25762</b>	<b>100%</b>

The constructions identified as “Social housing” were mostly built in the first half of the 20th century. Not only they do not meet adequate housing standards but, because of their state of degradation, also affect the dignity of the residents.

The majority of families still housed in shacks and self-built dwellings live in small or medium-sized clusters (about 8 families per cluster): 1,586 clusters were identified, with a total of 11,999 families in need of rehousing.

Although large concentrations of shacks and precarious buildings have been eradicated in the city/municipal council of Lisbon, in the Lisbon Metropolitan Area some families still live in shacks and precarious buildings (45%), in social housing neighbourhoods (22%) and in degraded urban areas (15%).

According to the information transmitted to the Ombudsman, there were 1431 persons living in the *Bairro do 2.º Torrão*<sup>5</sup>, (municipal council of Almada), 733 persons in the *Bairro da Jamaica* (municipal council of Seixal), 1553 families in *Cova da Moura*<sup>6</sup> (municipal council of Amadora) and 44 families still waiting for rehousing in *Bairro da Torre*<sup>6</sup> (municipal council of Loures).

In the Metropolitan Area of Porto the scenario is quite different since 70% of the households in need of rehousing live in degraded urban neighbourhoods and 28% in shacks and precarious buildings.

The estimate of the number of households renting within informal settlements is not available at the national level.

**2. Please provide information on access to water, sanitation, electricity and other services, including availability and costs. Also refer to any relevant qualitative studies or documentation of the lived experiences of residents.**

With regard to informal settlements, the information obtained by the Portuguese Ombudsman through the investigation of complaints indicates that full legitimate and safe access to essential water, sanitation and electricity services has not yet been achieved.

In 2016, the residents of *Bairro da Torre* complained to the Ombudsman due to the fact that the electricity supplier had cut off irregular energy connections, invoking reasons of safety for people and goods. In order to overcome the lack of electricity, the Municipal County

<sup>5</sup> Data of 2016.

<sup>6</sup> Data of 2018.

of Loures installed energy generators and provided public lighting to the neighbourhood. Part of the *Bairro da Torre* has access to the public water system, funded by the Municipal County of Loures on the grounds of the residents' insufficient economic means. The Municipality also installed public water access points to be used by the remaining residents and has been actively trying to solve the challenges faced by the residents.

In the *Bairro do 2.º Torrão*, the Municipal Council of Almada also built cost-free water supply points. There is no connection to the sanitation network but some constructions have septic tanks. Although there is no formal electricity supply to the *Bairro do 2.º Torrão*, a recent protocol was signed between the Municipal Council of Almada, the Association of Residents and the Energy Provider EDP in order to overcome the situation.

In the *Bairro da Jamaica*, dwellings are connected to the public water supply. The provider of energy installed a common electricity meter, since individual contracts were not admissible. It was transmitted to the Ombudsman that this system generates conflicts among residents: in case of non-payment from one of the households, the supply of energy to all members of the same lot is affected.

In 2017, the Parliament recommended the Government that, until adequate housing solutions are implemented, measures should be taken in order to guarantee that residents in informal settlements and neighbourhoods have access to electricity (Resolution 151/2017, of July 17<sup>7</sup>) The Parliament also recommended the Government to adopt the legislative and administrative measures necessary to ensure that suppliers of essential public services, namely electricity, would sign contracts with families living in the mentioned conditions.

The package of measures approved under the New Generation of Housing Policies, in May 2018, includes the extraordinary regime on the temporary supply of electricity to families in vulnerable economic and social situation living in inadequate housing conditions. The Government announced the creation of conditions to allow the connection to electricity distribution networks of dwellings in informal settlements and neighbourhoods that have been identified as such by municipal councils. This legislation has not yet been published.

A final remark on the circumstance that the Portuguese Ombudsman is aware of some private companies refusal to provide services and delivery of goods in the *Cova da Moura* neighbourhood, invoking security reasons.

**3. Please provide information and data on environmental, health or security concerns and experiences, including violence against women, affecting residents in informal settlements. Please include disaggregated health statistics, including life expectancy, mortality and any data on injuries or fatalities of residents of informal settlements as compared to the general population.**

During the visits the Portuguese Ombudsman' staff made to informal settlements in the Lisbon Metropolitan Area, and besides the inadequate conditions of the self-built dwellings

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<sup>7</sup> <https://dre.pt/pesquisa/-/search/107693727/details/normal?l=1>

made of improvised materials, it was possible to detect situations posing serious threats both to the environment and public health, such as poor sanitation systems, exposure to cold, humidity and heat and overcrowding of dwellings.

In *Bairro da Torre*, Loures, the situation is aggravated by the accumulation of waste that results from the informal activity of buying and selling used materials and car parts and also from the accumulation of civil construction waste. In order to mitigate this situation, the Municipal County of Loures provides for clean-up operations on a weekly basis.

With regard to security, the 2017/18 International Amnesty Annual Report on Portugal accounts that “*the Public Prosecutor of the Amadora municipality charged 18 police officers for the ill-treatment of six men of African descent in February 2015 (the charges against one officer were struck out in December). The officers were accused of torture, unlawful imprisonment, grave abuse of power and other offences aggravated by racism.*”<sup>8</sup>. The six victims lived in the *Cova da Moura* neighborhood.

Some complaints to the Portuguese Ombudsman are filed by women victims of domestic violence claiming for their rehousing. According to the Supported Rental Regime (social housing) preferential criteria must be followed when it comes to rehousing victims of domestic violence<sup>9</sup>. The Portuguese Ombudsman is currently investigating a complaint submitted by a woman who resided in an informal settlement and was forced to leave because she was (allegedly) a victim of domestic violence. She had been excluded from the housing waiting lists, on the grounds that she no longer lived in that settlement, and the husband (the alleged perpetrator) was rehoused.

**4. What goals and timelines have been adopted to ensure that all informal settlements will be upgraded to meet the standard of adequate housing by 2030? Please provide information on plans, upgrading/resettlement policies and whether these plans include human rights standards. Please also explain how responsibilities have been allocated to different levels of government.**

As previously mentioned, the "New Generation of Housing Policies", approved by the Recommendation of the Council of Ministers 50-A/2018, of May 2, constitutes a new approach to address the structural problems related to the enjoyment of the human right to adequate housing and also to replace the mechanisms and programmes used throughout the last decades, considering current challenges.

The New Generation of Housing Policies encompasses the following programmes and instruments:

- “1<sup>st</sup> Right - Programme to Support the Right to Housing” (*1.º Direito - Programa de Apoio ao Acesso à Habitação*), aims to guarantee access to adequate housing for people living in poor housing conditions (including overcrowding, environmental risks or not meeting specific needs of persons with disabilities) and operates through the public financing of actions directed at this goal. The Programme is based on the granting of financial support to

<sup>8</sup> <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF> (page 303).

<sup>9</sup> Article 11 of Law 81/2014, of December 19, which establishes the supported rent regime (social housing).

municipalities, municipal enterprises, private social solidarity institutions, housing associations and cooperatives and also includes direct funding schemes. The planned budget allocation (€ 700 million for non-reimbursable grants) is based on the objective of eradicating, by 2024, the severe housing needs of 26,000 families. This program will gradually replace the PER and PROHABITA Programmes and has not yet been published;

- “Housing to Habitat Program” (*Programa da Habitação ao Habitat*) with the goal of promoting the socio-territorial integration of social housing neighborhoods and improving of the living conditions of its residents. The program is based on pilot interventions that include innovative solutions for integrated and participative management, concertation of objectives, share decision-making processes and articulation between all entities involved (programme not yet published);

-“Front Door – Programme to Support Emergency Housing” (*Porta de Entrada - Programa de Apoio ao Alojamento Urgente*), established by Decree-Law 29/2018, of May 4, whose objective is to provide a prompt solution to families temporarily or permanently deprived of their accommodation due to unforeseeable causes resulting from natural disasters (floods, earthquakes, fires) or to migratory flows. Besides providing financial support, this programme also includes benefits in kind (building materials) and technical support. Financial support is provided through reimbursement of expenses related to (i) immediate accommodation (ii) rental of housing and (iii) rehabilitation or reconstruction of houses. The IHRU is responsible for managing the Front Door through the granting of funding and the conclusions of protocols with municipalities, Autonomous Regions and social services. This Programme also partially replaces PER and PROHABITA;

-“Affordable Rental Programme” (*Programa de Arrendamento Acessível*), which aims to increase the supply of affordable housing for rent at prices that are calculated in accordance with the effort rate households can bear. The purpose of this programme is to respond to the needs of a significant part of individuals and families with intermediate income levels who find difficult to obtain adequate housing at market prices;

- “Key in Hand - Housing Mobility Program for Territorial Cohesion” (*Chave na Mão - Programa de Mobilidade Habitacional para a Coesão Territorial*), which aims to facilitate the housing mobility of families currently living in areas of strong urban pressure and who want to settle in low density areas and, at the same time, to increase the supply of affordable rental housing in areas of higher demand pressure.

Generally, the New Generation of Housing Policies strengthens the intervention of the municipal councils. However, some difficulties in the implementation of the New Generation of Housing Policies are anticipated: the National Association of Municipalities, during the public consultation period, expressed concerns on the limitations of the new Policies in terms of the human and financial resources that the municipal councils require in order to respond to the new paradigm of municipal intervention (for instance under the 1<sup>st</sup> Right Programme).

## **5. What are the primary reasons for people living in informal settlements? (eg. rapid**

**urbanization, gap between housing costs and income; loss of ancestral land; internal displacement; immigration; lack of titled land; etc). Please refer to relevant research or reports.**

During the second half of the twentieth century, the concentration of migrants in the outskirts of Lisbon resulted in a housing shortage that neither the social housing scheme, nor the private housing market, was able to respond to.

In 1975/76, further to the independence of African Portuguese-speaking countries, the arrival of Portuguese citizens and migrants living in Africa increased these numbers, since many of them could not find a solution in the private housing market at affordable prices.

These migration movements led to the development of neighborhoods formed by slums and non-conventional dwellings<sup>10</sup>.

The migratory flow from African Portuguese-speaking countries continued in the later decades, leading to an increase in the number of residents in slums and precarious housing. This problem has only been addressed, in significant temps, by the Special Resettlement Program (PER), since the beginning of the 1990s<sup>11</sup>.

According to a recent study on the "Characterization of Housing Conditions of Roma Residents in Portugal"<sup>12</sup>, a significant proportion of these families (32%) live in non-classical dwellings such as tents or mobile homes. The study acknowledges it may not reflect the real housing needs of the Roma community in Portugal since not all municipal councils responded to the inquiry based on which the characterization was made.

**6. What laws are in place to protect and ensure the rights of residents of informal settlements, before, during and after any upgrading, if it takes place? Have these laws been effective? Please provide references to any important court decisions.**

In general terms, decisions of the Public Administration must be preceded by the prior hearing of the person concerned, as set out the Code of Administrative Procedure (article 121). Consequently, administrative decisions aimed at the demolition or evacuations of informal settlements need to be previously transmitted to their inhabitants, so that they are fully aware of their content.

The Legal Regime of Urban Planning and Construction establishes that the order of demolition of constructions is preceded by hearing of the interested party (article 106, 2).

The Central Administrative Court of the South determined, in 2007, the suspension of the eviction order of a shack, issued by the Loures Municipal Council, considering that the occupants did not have any other housing alternative and the implementation of the eviction would cause them inevitable damage. The Court took into consideration that their

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<sup>10</sup> <http://www.revistainvi.uchile.cl/index.php/INVI/rt/printerFriendly/777/1156>

<sup>11</sup> [https://www.om.acm.gov.pt/documents/58428/183261/EstudoNacional\\_Web.pdf/54b9d9df-c68f-48ea-bfeb-cbfa776ad46](https://www.om.acm.gov.pt/documents/58428/183261/EstudoNacional_Web.pdf/54b9d9df-c68f-48ea-bfeb-cbfa776ad46)

<sup>12</sup> [http://www.portaldahabitacao.pt/opencms/export/sites/portal/pt/portal/publicacoes/documentos/caraterizacao\\_condicoes\\_habitacao.pdf](http://www.portaldahabitacao.pt/opencms/export/sites/portal/pt/portal/publicacoes/documentos/caraterizacao_condicoes_habitacao.pdf)

human right to housing, established in the Constitution, should prevail over the municipal interest in implementing the PER<sup>13</sup>.

Since 2012, the Ombudsman is actively monitoring the eviction and forced demolition programme of two slums by the Municipal Council of Amadora. The Ombudsman suggested that the demolitions and evictions should be suspended until the municipality, the State, and eventually other social institutions, were able to rehouse all persons that did not have alternative housing.

The Supported Rental Regime (“social housing”)<sup>14</sup> contains rules for the protection of residents in case of relocation. Examples of this are (i) the possibility that, in case of late payment of rent, a debt settlement agreement can be concluded (article 20.4), (ii) the establishment of special cumulative conditions to the termination of the agreement (article 26) and (iii) the obligation to refer the evicted families to the available solutions for rehousing (article 28, 6).

In 2012, the Central Administrative Court of the South, faced with the imminent eviction of a municipal housing, decided that the right to housing should prevail over a generic interest in the defence of legality and the collection of public funds by the municipality<sup>15</sup>.

**7. Please provide, if applicable, information on international development assistance received for projects and programmes related to informal settlements. To what extent are these projects implemented within a human rights framework and linked to the achievement of the 2030 Agenda targets?**

Under the initiative “Portugal 2020”, a partnership agreement between Portugal and the European Commission in force from 2014 to 2020, structural European funds are available. One of the priorities for the European intervention in this period is social inclusion.

European Funds finance, amongst others, the European Urban Development Funds (PEDU) and the Integrated Action Plans for Disadvantaged Communities, which consist of programming instruments that provide financial support to municipal councils for interventions oriented at the economic and social regeneration of deprived areas, including social neighborhoods or other areas where disadvantaged communities live.

For instance, the Almada Municipal Council applied for European co-financing under the Strategic Plan for Urban Development in order to obtain funds to be invested in the *Bairro do 2º Torrão*.

**8. Please provide information about successful upgrading or resettlement projects or experiences that could provide good practices elsewhere. Please also share lessons learned from unsuccessful projects or approaches.**

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<sup>13</sup><http://www.dgsi.pt/jtca.nsf/170589492546a7fb802575c3004c6d7d/6dade7c0c1ba7364802572e60037421c?OpenDocument&Highlight=0,barraca%20>

<sup>14</sup> Law 81/2014, of December 19

<sup>15</sup> Ruling of June 14, 2012, Case no. 883/12

Over the last decades, the Portuguese State has developed significant efforts that resulted in a considerable decrease of non-conventional dwellings, including slums.

The implementation of the Special Resettlement Program<sup>16</sup> (PER), in the 90's, set up with the political intent of solving the proliferation of slums around the biggest cities was decisive<sup>17</sup>. It represented the chance for many families to have a decent house, contributing to eliminate dwellings without minimal standard conditions for living.

The PER involved 28 municipalities in the Metropolitan Areas of Lisboa and Porto. According to the United Nations – Habitat III National Report on Portugal<sup>18</sup> more than 48.000 families were identified as living in slums, 30.000 of which in the Lisbon Metropolitan Area and 15.000 in the Porto Metropolitan Area. Approximately 35.000 families were resettled under the PER, in houses acquired by municipalities or built expressly for that purpose.

We learned of cases where persons living in the neighborhoods were not included in the PER. Also, many persons moved to the dwellings that had been emptied, becoming residents of those neighborhoods and creating the expectation that they would benefit from support programs.

The recent National Housing Needs Survey describes that the implementation rate of PER reached about 78,8% of the dwellings listed in the Porto Metropolitan Area and 68,6% in the Lisbon Metropolitan Area.

If in the 90s the program with greatest impact was the PER, in the 2000s it was the PROHABITA Program – Access to Housing Financing, in force since 2004<sup>19</sup>, that played a major role on providing adequate housing. State-sponsored programs accounted for providing housing to about 64.500 households, covering almost 155.000 people<sup>20</sup>.

Although those programs achieved the elimination of a significant number of unconventional dwellings, they have shown some rigidity with regard to their scope and conditions of access. In addition, State-sponsored programs to provide support to urban regeneration, and that could be used as an alternative for the PER, were suspended due to lack of funds. Therefore, and as acknowledged by the New Generation of Housing Policies, there are still inadequate housing situations that need to be solved.

A number of activities has been carried out by the Portuguese Ombudsman with the purpose of contributing to improve housing conditions of persons that still live in neighbourhoods in inadequate conditions.

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<sup>16</sup> Approved by DL 163/93, of May 7

<sup>17</sup> [http://habitatiii.dgterritorio.pt/sites/default/files/ficheiros\\_publicos/PT\\_UN-HabitatIII\\_NationalReport\\_2016\\_08\\_04\\_EN.pdf](http://habitatiii.dgterritorio.pt/sites/default/files/ficheiros_publicos/PT_UN-HabitatIII_NationalReport_2016_08_04_EN.pdf)

<sup>18</sup> [http://habitatiii.dgterritorio.pt/sites/default/files/ficheiros\\_publicos/PT\\_UN-HabitatIII\\_NationalReport\\_2016\\_08\\_04\\_EN.pdf](http://habitatiii.dgterritorio.pt/sites/default/files/ficheiros_publicos/PT_UN-HabitatIII_NationalReport_2016_08_04_EN.pdf)

<sup>19</sup> Approved by DL 135/2004, of June 3 and revised by the DL 54/2007, of 12 March.

<sup>20</sup> For information on other programs, please see the above mentioned to the United Nations – Habitat III National Report on Portugal.

Our institution received complaints from residents in self-built neighbourhoods located in the Lisbon Metropolitan Area, such as *Bairro da Torre*, in Loures, *Bairro do 2º Torrão*, in Almada, and *Bairro da Jamaica*, in Seixal. The Portuguese Ombudsman's team visited the neighbourhoods and confirmed cases of precarious inadequate housing not compatible with twenty-first century standards. Currently, the Ombudsman is making an overall assessment on the situation.

The Portuguese Ombudsman suggested that the Amadora Municipal Council should expropriate land plots where non-conventional-dwellings were installed, in order to be in ownership of such plots and to promote therein the construction of new housing at controlled costs. This would provide adequate housing to the residents without moving them from their territorial context. This suggestion, however, was not accepted.

In 2016, the Portuguese Ombudsman recommended the Government to promote new census that would make possible to find suitable housing solutions for the residents excluded from the PER and also to promote better coordination among various entities involved (Government, Social Security Institute and Municipalities).

A word of praise to the efforts developed by some municipal councils to improve the housing conditions of persons living in informal settlements and neighbours while they are not rehoused. Examples of this include the installation of public water supply points in the *Bairro do 2º Torrão*, in Almada, and in the *Bairro da Torre*, in Loures, and the endeavours made by both municipalities to provide access to electricity.