**The Portuguese Ombudsman**

**Contribution to the Special Rapporteur on the right to adequate housing’s report to the United Nations General Assembly, 71st Session**

**The right to life and the right to adequate housing**

*1. Please provide any statistical indicators regarding the health, mortality and morbidity consequences of inadequate housing and homelessness in your country, disaggregated by sex, race, immigration status, age and disability, or other grounds, if and where possible. Please also provide references to any documentation (written, visual or otherwise) of the lived experiences that lie behind these statistics.*

There are no verifiable statistical indicators as mentioned in the question. Some studies address the effects of inadequate housing or homelessness from a social perspective rather than from a statistical one.

A 2014 National Study on Roma Communities[[1]](#footnote-1), while containing useful information on the housing conditions and the state of health of the members of these communities, does not establish any connection between the mentioned issues neither draws statistical conclusions in that respect.

In 2012, a survey was conducted on risk factors for cardiovascular disease among the homeless and in the general population of the city of Porto. Comparisons were made between subsamples of homeless people recruited in different settings and between the overall homeless sample group and a sample of the general population. The results and statistical analysis, limited to the Porto city, are available in English[[2]](#footnote-2).

The data on homeless population that supported the development of the National Strategy for the Integration of Homeless People, reported to 2009, were obtained through a survey conducted in the geographical areas where the problem proved to be most significant, namely in 53 municipalities out of the total 308[[3]](#footnote-3).

Currently, a National Indicators Matrix on the Right to Adequate Housing, based upon the list of illustrative indicators laid out by the Office of the High Commissioner for Human Rights (OHCHR) is being developed by a Working Group in which the Portuguese Ombudsman is represented.

*2.* *Please refer to the provisions of your state's constitution or human rights legislation which guarantee the right to life and explain whether these apply to circumstances where homelessness or inadequate housing place health, security or life at risk and whether positive obligations of governments have been recognized in this context. Please provide references to any relevant cases or other examples, if available.*

The Constitution of the Portuguese Republic (the Constitution) establishes the right to housing in Article 65[[4]](#footnote-4), included in the Chapter dedicated to social rights.

The realization of this fundamental right is committed to the State, in cooperation with regional and local authorities. Although it does not imply an obligation of the State to provide for housing to everyone, the principle of human dignity, enshrined on Article 1 of the Constitution[[5]](#footnote-5), imposes that adequate standards must be guaranteed to every person through the pursuit of social policies. The wording of Article 65, sustaining that everyone has the right to have an adequately sized house that provides hygienic and comfortable conditions and preserves personal and family privacy, is in line with the concept of human dignity.

The State and other authorities’ duties in regard to housing are not directly determined by the obligation to protect and respect the right to life, enshrined in Article 24[[6]](#footnote-6).

Public obligations oriented to the realization of the fundamental right to housing are ultimately based upon the respect for human dignity, constitutionally acknowledged as a foundation of the Portuguese Republic. The principle of human dignity provides a comprehensive ground for the constitutional enshrinement of both the right to life and the right to housing.

The Constitutional Court has recognized that “the right to housing is in fact a requirement of the dignity of a person and of its essence: a free human being with the right to live with dignity” (Decision 723/2004).

On different occasions, the Ombudsman has highlighted that the right to adequate housing is a fundamental condition to the full realization of a human being.

*3. Please explain whether and in what ways courts or human rights bodies in your state have recognized the disproportionate effect of homelessness and inadequate housing on particular groups (such as persons with disabilities, Indigenous peoples, women experiencing violence, etc.) as an issue of discrimination. Please provide references to any relevant cases or other examples, if available.*

Portuguese courts have recognized that the satisfaction of basic housing needs should prevail over a generic interest in ensuring the strict compliance of the law[[7]](#footnote-7).

Jurisprudence related to housing and discrimination of particular groups is scarce. In most cases, the decision imposes the fulfillment of the right to adequate housing not on the State but on individuals, which is justified by the social function of property and by the duty of solidarity. An illustrative example is the case of one landlord that was condemned to accept the installing of a lift in his property in order to be used by a tenant living with a physical disability[[8]](#footnote-8).

In 2013, a protocol was signed between the Commission for Citizenship and Gender Equality and the Institute for Housing and Urban Regeneration with the purpose of establishing a house exchange for victims of domestic violence in order to ensure their accommodation after leaving shelter houses. That same year, another a protocol was signed between the Government and the National Association of Portuguese Municipalities in order to achieve a better cooperation between the major stakeholders involved in the protection of victims of domestic violence. The municipalities undertook to include victims of domestic violence among their priorities when providing for social households and low-cost rentals. Both initiatives were oriented towards the positive discrimination of a vulnerable group in respect of housing.

The Ombudsman receives complaints against the enforcement of demolition orders and/or the refusal in providing social housing where complainants claim to be victims of discrimination on the grounds of race. It is extremely difficult to confirm whether such claims are justified but in most cases the intervention of the Ombudsman leads to positive results.

The following examples of the Ombudsman activity are worth being mentioned.

Since 2012 to the present date, the Ombudsman is actively monitoring the eviction and forced demolition programme of two slums by the Municipal Council of Amadora. The evictions that displaced numerous families were based on the Spatial Resettlement Program of 1993, which revealed to be outdated due to the natural changes in the population that occurred since then. Special attention is being paid to situations involving senior citizens, persons living with disabilities or suffering from serious illness and ethnic minorities. The Ombudsman suggested that the demolitions and evictions should be suspended until the municipality, the State and eventually other social institutions are able to rehouse all persons that do not have alternative housing.

In 2011, the Ombudsman handled the case of three Roma children living with their mother in a tent under a bridge, without the basic conditions of hygiene, safety and comfort. The case was flagged to the Commission for Protection of Children and Young People that interacted with the Municipal Council to provide for adequate housing. As result of the Ombudsman intervention, the family was moved to a house while waiting to be granted social housing.

Also in 2011, the Ombudsman dealt with a case where a Roma community opposed to the cut of water supply invoking discriminatory treatment. The situation was investigated and it was not possible to confirm the allegations.

In 2009, the Ombudsman received a complaint from a Roma individual who claimed to be persecuted by African descendant neighbours. He complained against the City Council of Loures for not rehousing him in another neighbourhood. Further to the inquiries carried out by the Ombudsman, the complainant was given alternatives for housing.

In 2008, an *ex officio* intervention was carried out regarding the lack of accessibility of a social housing neighbourhood where a Roma community resided, as result of the closing of an underway passage to the city centre of Pombal. The City Council explained that the passage way was located in a private property and it had been cut off by the owner. In order to solve the problem, an upper passage was under construction. The Ombudsman monitored the construction works, which lasted a few months, pointing out to the City Council the need to provide for timely solutions whenever housing issues are concerned.

In 2007, the Ombudsman investigated a case concerning the precarious living conditions of several Roma families in the municipality of Albufeira. The Ombudsman tried to raise awareness amongst the various entities involved. The municipality acquired a plot of land to install households for those families. The project, developed jointly with the Santa Casa da Misericórdia (a Portuguese charity) and the District Centre of Social Solidarity and Social Security of Faro, did not succeed due to the lack of funding. In the meantime, a new municipal neighborhood was built and the Roma families were included in the list of beneficiaries for that residential area.

In 2003, the Ombudsman, following an amendment to the Urban Lease Regime, considered that the rights of landlords over 65 years old or living with a disability had not been conveniently protected by comparison with the rights of tenants in the same conditions. The Ombudsman requested the Constitutional Court to review the legal provisions in light of the principle of equality. The Constitutional Court did not accept the objections made by the Ombudsman.

1. http://www.poatfse.qren.pt/upload/docs/Documentos/estudo\_ennic.pdf [↑](#footnote-ref-1)
2. http://www.scielo.br/scielo.php?script=sci\_arttext&pid=S0102-311X2012000800010&lng=en&tlng=en [↑](#footnote-ref-2)
3. These data are referred to in our previous reply to the previous questionnaire on Homelessness. [↑](#footnote-ref-3)
4. Article 65 - Housing and urbanism

   1. Everyone has the right for him/herself and his/her family to have an adequately sized dwelling that provides hygienic and comfortable conditions and preserves personal and family privacy.

   2. In order to ensure the right to housing, the State is charged with:

   a) Programming and implementing a housing policy that is incorporated into general town and country planning instruments and supported by urbanisation plans that guarantee the existence of an adequate network of transport and social facilities;

   b) In cooperation with the autonomous regions and local authorities, promoting the construction of low-cost and social housing;

   c) Stimulating both private construction, subject to the general interest, and access to owned or rented housing;

   d) Encouraging and supporting local community and popular initiatives that work towards the resolution of the respective housing problems and foster the formation of housing and self-building cooperatives.

   3. The State shall adopt a policy that works towards the establishment of a rental system which is compatible with family incomes and provides access to individual housing.

   (…) [↑](#footnote-ref-4)
5. Article 1

   (Portuguese Republic)

   Portugal is a sovereign Republic, based on the dignity of the human person and the will of the people and committed to building a free, just and solidary society. [↑](#footnote-ref-5)
6. Article 24 (Right to life)

   1. Human life is inviolable.

   2. In no case shall there be the death penalty. [↑](#footnote-ref-6)
7. http://www.dgsi.pt/jtca.nsf/170589492546a7fb802575c3004c6d7d/ba723a55917c0ada80257a23003d59fe?OpenDocument [↑](#footnote-ref-7)
8. http://www.dgsi.pt/jstj.nsf/954f0ce6ad9dd8b980256b5f003fa814/7551d0747921682380257df8005d76cc?OpenDocument [↑](#footnote-ref-8)