

Mandate of the Special Rapporteur on the right to adequate housing

III. Questionnaire

A. *Distribution of responsibilities related to the right to adequate housing:*

1. *Please identify the levels of government (provincial/state, municipal) primarily responsible for the following: (where primary responsibility is shared please check more than one):*

	National/ Local	Provincial/ State	Municipal	Explanatory Notes
Housing programme	x		x	Please see answer to question 3.
Income support (eg: transfer payments to individuals, welfare, social security and/or rent subsidies/supplements)	x		x (some)	<p>Rent subsidy.</p> <p>The Government created a special credit line for the protection of «permanent own housing». The Treasury Department at the Ministry of Finance provided for this credit line (Decree-Law 103/2009, 12 of May).</p> <p>The Government created, as well, the Investment Fund for Rental Housing to support families with financial difficulties. It allows families to sell their houses to an Investment Fund, with whom they celebrate a rental contract, with option to buy back the property later on (Law 58/2012, of 9 November).</p>
Tenancy and security of tenure legislation	x	x		<p>It is competence of the Legislative Assembly of Azores to legislate about special regimes for urban lease (Article 67, 1, of the Political and Administrative Statute of the Autonomous Region of the Azores).</p>
Infrastructure (eg: Water/sanitation, electricity)	x		x	The legislation regarding water providing and sanitation is on both national and municipal level.

Prohibition of discrimination in housing	x		Discrimination, whether in the context of programmes to support families in obtaining housing or in cases of forced eviction is prohibited. The prohibition of discrimination is contained in articles 13 of the Constitution and in article 5 of the Administrative Procedure Code.
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2. *What are the primary bases for the allocation of responsibilities among different levels of government? Please identify the appropriate provision(s) and provide a copy or link if possible:*

X *Constitutional*

The Portuguese state shall respect the autonomous islands system of self-government and the principles of subsidiarity and the autonomy of local authorities. In order to ensure enjoyment of the right to housing, the State shall be charged with:

- a) Planning and implementing a housing policy that is embodied in general town and country planning documents and supported by urban planning documents 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 private construction, subject to the general interest, and access to owned or rented housing;
- d) Encouraging and supporting local community initiatives that work towards the resolution of their housing problems and foster the formation of housing and self-building cooperatives.

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

4. The state, the autonomous regions and local authorities shall lay down the rules governing the occupancy use and transformation of urban land, particularly by means of planning instruments and within the overall framework of the laws concerning town and country planning and urban planning, and shall expropriate such land as may be necessary to the fulfilment of the purposes of public-use urban planning.

(Constitution of the Portuguese Republic, Article 65, 3)

The legislative autonomy of Azores and Madeira applies to the matters that are set out in the respective political and administrative statute and do not fall within the exclusive competence of the entities that exercise sovereignty.

In the absence of specific regional legislation on matters that do not fall within the exclusive competence of the entities that exercise sovereignty, the current legal norms shall apply in the autonomous regions (Article 228 of the Constitution).

Within the limits laid down by the Constitution, the laws, and regulations issued by a higher category of local authority or by the authorities with the power of oversight, local authorities have their own regulatory power (Article 241 of the Constitution).

See <http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf>

National framework legislation or housing strategy

The Strategic Housing Plan, that seeks to improve the right to housing, is developed by the Central Administration and includes the coordination with municipalities, namely through Local Housing Plans.

(see

http://www.portaldahabitacao.pt/pt/ihru/estudos/plano_estrategico/documentos_plano_estrategico_habitacao.html

The Legal Regime for Local Authorities and Responsibilities of State Transfer (Article 23, 2, i), establishes that municipalities have attributions in the field of housing.

The Legislative Assembly of Azores has competence to legislate about special regimes for urban leases (Article 67, 1, of the Political and Administrative Statute of the Autonomous Region of the Azores).

See http://www.alra.pt/images/alra/doc_alra/estatuto_raa/estatuto_ing.pdf

Concerning with Autonomous Region of Madeira please see Article 67, i), of the Political and Administrative Statue of the Region.

- Inter-governmental agreement*
- Other – Please explain*

3. What role does the national level government play in relation to housing and related programs? How is compliance with the right to adequate housing structured between the national and sub-national levels? If possible, please kindly provide concrete examples of how these roles and compliance mechanisms are operationalized.

Special efforts have been made to reduce housing shortages in Portugal, namely through Programmes indexed to household income and aimed at people with limited economic returns.

Those housing programmes involve public financing, most of them aiming to enable access to homeownership and other affordable housing by the poorest segments of society.

Several programmes implicate agreements between the Autonomous Regions or/and Municipalities and the Central Administration and burden sharing agreements.

The legislation applicable to the housing programmes sets the provisions for fund allocation. The national body responsible for allocation funds (Institute for Housing and Urban Rehabilitation) monitors their use. The breach of contract gives the state the right to suspend the allocation of funds.

- PER and PER-families are specific re-housing programmes, launched in the 1990's. These programmes aimed at re-housing population living in slums and effectively led to the end of slums in Portugal's two major cities. Unfortunately, slums are coming comeback with financial and economic crisis.
- PROHABITA integrates a number of measures and initiatives to support families with housing difficulties, namely by promoting cost-controlled housing within Cooperative Promotion; reinforcing retrofitting; constructing or transforming buildings into social facilities in social housing neighbourhoods;

and providing direct financial support to family households for re-housing in case of natural disasters or emergency situations.

- RECRIA is a rehabilitation programme to support, through the grant of public incentives, upkeep work and the improvement of degraded real estate and dwellings.
- Housing Comfort Programme for the Elderly (PCHI) improves the basic residential conditions and accessibility of the elderly in partnership with the Municipalities.
- SOLARH is a programme intended to finance, through interest free loans, works and improvements to permanent own housing and vacant housing owned by individual or public entities, common parts of buildings included;
- PORTA 65 grants young people from 18 to 30 years old, direct subsidies to access the rental housing market. This programme envisages meeting the following objectives laid down in the National Action Plan for Inclusion (PNAI) for the area of housing: i) promoting rent controlled housing for young people; ii) promoting housing benefits and mobility, making available public and private property for direct or mediated rent through housing stock; iii) supporting the management of the public rental stock by establishing contracts with local authorities previously certified; iv) Supported housing (Cohousing): promoting a support instrument to entities which rent collective housing for population groups with permanent or temporary specific needs.

The Institute for Housing and Urban Rehabilitation also supports families with low income through its own housing stock.

Housing was one of the areas of intervention of National Plan for The Integration of Immigrants to 2010-2013, approved by the Resolution of the Council of Ministers 74/2010, of 17 September. That Plan allocated responsibilities to the Central Government in articulation with Local Authorities (Measure 41 to 45).

The 1st National Strategy for the Integration of Homeless People (2009-2015) was launched on March 14, of 2009, with a rights-based approach, including the right to housing and equal opportunities.

Housing is also one of the areas of Strategy of Integration of Roma Communities, approved by the Resolution of the Council of Ministers 25/2013, of 17 March, in partnership with local authorities.

4. Where sub-national governments hold key responsibilities in relation to the right to adequate housing, please describe how programs and policies are co-ordinated nationally and what responsibilities remain with national level institutions.

Local authorities co-finance the construction of low cost housing; the re-housing programmes and the recovery of degraded houses. They also provide for rent subsidies.

Municipalities are responsible to ensure the management of their housing stock but also assign houses built or acquired by the State. Local authorities also cooperate with the central government in identifying the housing needs and in the maintenance and recovery of housing stock.

The Government exercises administrative supervision over the legality of the acts of local authorities through inspections, inquiries and investigations, through the analysis of information and verifying the implementation of laws and regulations by local authorities.

The auditing of accounts of local authorities is exercised by the Court of Auditors, which has jurisdiction over the relevant accounts and over the control of the legality and budget covering expenses.

5. *Where housing and related programs are administered by sub-national level governments, by whom and how are these programs funded? Are conditions attached to the funding which seek to ensure the resources are spent in a way that protects the right to adequate housing? How is this monitored?*

The Portuguese legislation applicable to the housing programs reflects the concerns about the right to adequate house.

Government and municipalities fund the housing programs. PROHABITA programme involves the participation of the European Investment Bank. The Institute for Housing and Urban Rehabilitation supervises housing programmes. The breach of contract gives the state the right to suspend the allocation of funds.

The Court of Auditors controls the funding system of the Institute for Housing and Urban Rehabilitation.

B. *Accountability of Sub-National Governments*

1. *Are sub-national governments legally accountable to the right to adequate housing on the basis of any of the following?*
2. *With respect to the above and where applicable, please identify:*
 - i. *the relevant provision.*
 - ii. *the sub-national levels of government to which the legal provision applies.*
 - iii. *the means of enforcement (eg: courts, tribunals, national human rights institution, including ombudsmen, administrative mechanisms, etc.) and examples of how these means have been applied.*

X *International human rights law?* (Yes) – see Article 8 (2), of Constitution of the Portuguese Republic, provides for direct application of the international conventions.

(See <http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf>)

- Article 25 (1) of the Universal Declaration of Human Rights.
- Article 11 of The International Covenant on Economic, Social and Cultural Rights

X *Constitution/National Bill of Rights* (Yes)

(see <http://www.en.parlamento.pt/Legislation/CRP/Constitution7th.pdf>)

- i. *the relevant provision.*
Constitution of the Portuguese Republic, Article 65, (3)

- ii. *the sub-national levels of government to which the legal provision applies.*

Autonomous regions (Azores and Madeira) and local authorities

- iii. *the means of enforcement (eg: courts, tribunals, national human rights institution, including ombudsmen, administrative mechanisms, etc.) and examples of how these means have been applied.*

Constitutional Court; Courts.

By a decision of 14 June 2012, the South Administrative Central Court considered that right of housing is more important than the generic defence of law and legality and the collecting of income.

National or sub-national legislation (Yes)

See <http://www.portaldahabitacao.pt/pt/portal/legislacao/index>

- iv. *the relevant provision.*

- Decree law 797/76, of 6 November, article 3 (municipal services regarding housing)
- Law 21/2009, of 20 Mai applicable to cessation of the use of social housing.
- The Special Re-Housing Programme (PER) launched in 1993 through Decree-law 163/93, and amended by Decree-Law 271/2003 of 28 October, with the objective of eradicating the slums.
- Decree-Law 135/2004 of 3 July create the PROHABITA. Later on the Decree-Law 54/2007 of March 12th deepened its coverage of precarious housing situation.

- v. *the sub-national levels of government to which the legal provision applies.*

Local Authorities

Autonomous Regions and Local Authorities

- vi. *the means of enforcement (eg: courts, tribunals, national human rights institution, including ombudsmen, administrative mechanisms, etc.) and examples of how these means have been applied.*

Courts

- The North Administrative Central Court, in its judgment of 13 July 2012, considered that a Municipality should have assessed the concrete situation of the family before the eviction of the residents.
- By a decision of 25 September 2012, the Administrative Supreme Court found that a municipality violated the principle of good faith through the eviction of a tenant.

State level or municipal level Bills of Rights/Charters (Yes)

Within the limits laid down by the Constitution, the laws, and regulations issued by a higher category of local authority or by the authorities with the power of oversight, local authorities have their own regulatory power (Article 241 of Constitution).

(See, for example, local regulation in Lisbon Municipality in <http://habitacao.cm-lisboa.pt/index.htm?no=4045001>)

- Inter-governmental agreements (Yes/No)*
- Conditional financing (eg: budget transfers from national level to sub-national)*
Yes
 - Decree-law 54/2007, of 12 March (PROHABITA)
- 2. *Are sub-national governments involved in State reporting to international human rights monitoring mechanisms and in implementing recommendations? (eg, UN treaty monitoring body, Universal Periodic Review). If so, how? Please kindly provide an example.*

These data are not available

3. *Apart from the legal and international accountability described above, what political or institutional accountability mechanisms are in place in your country through which sub-national governments are held accountable to standards or requirements linked to the implementation of the right to adequate housing (eg, Government review procedures, ombudsman/national human rights institutions, local human rights councils). Please provide any useful examples of how these have been used and, if possible, assess the outcome.*

- Citizens can complain directly to the Institute for Housing and Rehabilitation, and to the municipalities.
- Citizens can present complaints to Ombudsman against alleged violations of right to housing. During recent years, the Ombudsman has received an increasing number of complaints concerning delay in access to social housing, the rent charges and delay in repairs and maintenance works. The Ombudsman recently suggested to the Municipality of Amadora to suspend the procedure of eviction and demolition of unauthorized buildings located in an illegal neighbourhood, considering that some households would be displaced. The suggestion was well received but Ombudsman is still monitoring further developments.
- Any person, group of persons or non-governmental organization, with knowledge of the facts, may submit a complaint of alleged violation of human rights to enjoyment of Human Rights Observatory. The right to housing has been appreciated by the Human Rights Observatory.

See, for example, Report of May 2013, about the right of housing in http://www.observatoriodireitoshumanos.net/relatorios/Relatorio_DireitoHabitacao.pdf

4. *Please kindly identify what in your view may be the three most significant challenges in your country to effective accountability of sub-national governments to the right to adequate housing as guaranteed under international human rights law and identify key strategies or ideas for addressing these challenges.*

Considering Portugal is experiencing an economic and financial crisis that affects housing policies, in our view the most significant changes in our country to effective accountability of sub-national governments to the right to adequate housing are:

- The offer of social housing doesn't match the demand;

- Large numbers of dwellings empty or without proper habitability;
- Dependence of sub-national governments on State funding programmes.