

The Portuguese Ombudsman
Contribution to the Special Rapporteur on the right to adequate housing
Homelessness

1. Please explain how your organisation or institution defines homelessness in various contexts, for example, when measuring the extent of homelessness or conducting research about it, or preparing proposals and advocacy projects. Please explain why the definition was chosen. Do these definitions differ from those used by your government? Please provide any available data on the extent of homelessness in general and among particular groups in your country and identify any limitations to this data.

Until 2009, there was no specific legislation targeting homelessness in Portugal. The Mental Health Act (Law No. 36/98 of 24 July) although not referring specifically to homeless people, provided legal support for compulsory treatment and hospitalization of patients suffering from severe mental illness. The establishment, in 1996, of a guaranteed minimum income, currently named the Social Integration Income, represented a step forward in providing support to the homeless.

On March 2009, the Portuguese Government launched the National Strategy for the Integration of Homeless People – Prevention, Intervention and Follow-Up, 2009–2015 (hereinafter the “National Strategy”). The National Strategy was developed by a structure involving various stakeholders such as State departments, public entities, municipalities, NGOs, civil society and security forces. The coordination of the National Strategy’s implementation was committed to the Institute of Social Security.

However, the National Strategy has never been approved by the Council of Ministers, whose approval is necessary to turn it into a legally binding document. This, contrary to other national strategies and plans that were approved by the Council of Ministers, such as the National Strategy on Disability, the National Plan

of Promotion of the Accessibility, the National Strategy for the Integration of Roma Communities, the 2015-2020 Strategical Plan for Migrations or the Plan for the Integration of Immigrants.

The Ombudsman acknowledges the definition of homeless people outlined in the National Strategy. Such definition was based on the ETHOS - European Typology on Homelessness and Housing Exclusion concept developed by the European Federation of National Organisations working with the Homeless (FEANTSA):

«A homeless person is considered to be an individual who, regardless of nationality, age, sex, socio-economic status and mental and physical health, is roofless and living in a public space or insecure form of shelter or accommodated in an emergency shelter, or is houseless and living in temporary accommodation for homeless people».

The Ombudsman is aware that homelessness has been mainly understood as an issue to be addressed by social services, rather than housing services, unlike in other countries. In this sense, the allocation of social housing in Portugal focuses primarily in the needs of families living in a situation of serious housing disadvantage.

2. What population groups are most affected by homelessness in your country/ in your organization's area of work? Please provide any information you have about the extent or experiences of homelessness among particular groups such as children and youth, women, indigenous peoples, persons with disabilities, and others. If relevant studies exist please indicate or share a link, a reference or a copy.

The data on homeless population that supported the development of the National Strategy, 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 308. At the time, 2,133 cases were flagged, 63% of which occurred in Lisbon and Porto:

Portuguese nationality	82%			
Gender distribution	84% male - 16% female			
Age group between 30-49	60%			
Cases of social isolation	83%			
Education	first cycle 31%		second cycle 23%	
Main causes	family disruption: 33,1 %;		unemployment: 22,3%	
Main need for support	drug addiction 28%	alcoholism 19%	lack of occupation 17%	mental disorder 11%.

In April 2014 the Institute of Social Security, provided the Ombudsman with information regarding 4,420 cases flagged and followed up during 2013 in the 18 districts of the continental territory. The numbers regarding the district of Lisbon do not include the Lisbon municipality since social services in this area are committed to an institution of public utility, the «Santa Casa da Misericórdia de Lisboa».

District	Female	Male	Total
Aveiro	55	124	179
Beja	40	87	127
Braga	29	152	181
Bragança	15	30	45
Castelo branco	5	20	25
Coimbra	37	149	186
Évora	12	44	56
Faro	108	367	475
Guarda	8	23	31
Leiria	51	129	180
Lisbon	217	597	814
Portalegre	18	57	75
Porto	304	1.051	1.355
Santarém	22	80	102
Setúbal	105	292	397
Viana castelo	15	59	74
Vila real	21	49	70
Viseu	14	34	48
Total	1076	3344	4420

The complaints the Ombudsman has received related to homelessness are connected with others themes. The intervention of the Ombudsman refers mainly to:

- complaints filed by persons seeking assistance to benefit from the Social Integration Income and other subsidies;
- complaints lodged by persons requiring social housing;
- requests presented by people that come across homeless persons and ask the Ombudsman to take action; in these cases, the Ombudsman's services flag the situation to the Institute of Social Security, cooperate in finding an adequate answer and follow-up the case;
- few complaints seek the compulsory institutionalization of persons suffering from mental disorders that drive them to live in a situation of homelessness.

Matters concerning the rights of children, elderly persons and persons with disabilities are handled by a specialized structure – the Department on Children, Elderly Persons and Persons with Disabilities (N-CID) – which has been in operation since late 2009. The N-CID has brought together three specialized and toll-free telephone services of the Portuguese Ombudsman: the Children's Hotline, the Elderly Citizens' Hotline and the Citizens with Disabilities' Hotline.

In 2013, the Elderly Citizens' Hotline received 88 calls somehow connected to homeless situations, and 58 calls in 2014. The Children's Hotline received 22 calls in 2013 and 8 calls in 2014. The cases are forwarded to the National Social Emergency Services and followed-up whenever necessary.

3. In your organization's view, what are the primary systemic and structural causes of homelessness? How is your organization addressing these and how should these be addressed by Governments?

Homelessness, construed in accordance with the ETHOS definition, is a complex reality resulting from various factors (*e.g.* unemployment, lack of housing, social conflicts, family disruption, discrimination, health problems, disability, etc.) or a combination of these and different causes.

The Ombudsman considers that primary systemic and structural causes of homelessness are (i) unemployment, (ii) lack of housing, (iii) family disruptions and (iv) health problems.

In respect of homelessness, the Ombudsman has been acting mostly based on complaints, as described in answer to question 2, and on calls received through the hotlines.

4. Please provide any information available about discrimination and stigmatization of people who are homeless, including laws or policies that may be used to remove homeless persons from public spaces or to prohibit activities in public spaces such as sleeping, camping, eating, sitting, or asking for money. Please explain whether such discrimination is prohibited by law at national and/or local levels and describe any initiatives being taken or proposed to address this problem.

All forms of discrimination are forbidden by the Portuguese Constitution. Pursuant to Article 13 (2) no one shall be privileged, favored, prejudiced, deprived of any right or exempted from any duty on the basis of ancestry, sex, race, language, place of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation. Article 15 (1) establishes that foreigners and stateless persons who find themselves or who reside in Portugal shall enjoy the same rights and be subject to the same duties as Portuguese citizens. Furthermore, Article 6 of the Administrative Procedure Code establishes that public administration, in its relations with individuals, shall be guided by the principle of equality and cannot benefit, harm, deprive of any right or exempt from any duty

anyone because of ancestry, sex, race, language, place of origin, religion, political or ideological convictions, education, economic status, social status or sexual orientation.

Presently, there are no laws or regulations against mendicity or street begging in force that can be used against homeless persons. The existing rules on salubrity, health conditions, maintenance of public order and use of public spaces are to be observed by everyone.

Regarding the issue of homelessness, the Ombudsman flagged that the address given in the Portuguese Identity Card is not subject to inquiry by the competent services. It is a postal address that may be freely declared by the holder and does not need to correspond to an actual residence of the holder.

To the present date, the Ombudsman received a complaint against a situation of lack of health conditions and accumulation of waste in public space attributed to homeless persons. The case is currently ongoing.

5. Please indicate if you know whether homelessness has been recognized as a human rights violation by courts, by national human rights institutions in your country/ in the area of your expertise, and if so, on the basis of which human rights (for example: right to adequate housing, right to life, etc) Provide information on any initiatives being taken by your organization or others to address homelessness using an explicit human rights framework.

According to Article 65 the Portuguese Constitution «All people have the right to have, for themselves and their family, a house of an adequate size, with comfort and hygienic conditions and which allows the preservation of individual life and family privacy».

In December 2014, the media reported that a social movement dedicated to the homelessness cause and mostly composed of homeless persons (the Porto's movement called One Life as Art) had decided to file a judicial claim against the Portuguese State for violation of human rights. The claim would be based on Article 65 of the Constitution and on provisions of both the Universal Declaration of Human Rights and the European Convention on Human Rights. However, there is no further information indicating that such action was indeed filed.

6. Please provide information on how your organization has used or intends to use administrative procedures to challenge homelessness as a violation of human rights?

The Ombudsman understands involuntary homelessness as a violation of human rights in the sense that the State should ensure all people the enjoyment of their civil and political rights, as well as the realization of economic, social and cultural rights, including the right to housing, social security and health services.

When dealing with homelessness cases, the Ombudsman conveys this human rights approach to the entities involved, namely (i) the Social Security Services, regarding the Social Integration Income and other subsidies as well as the cases where people signal homelessness situation, (ii) municipalities, in respect of social housing, and (iii) local public health authorities and hospitals social services whenever mental disorders are involved.

If deemed necessary, the Ombudsman issues suggestions or recommendations and also acts as mediator. Many times, cases are monitored after a certain period of time in order to ensure their actual resolution.

During 2012, The Ombudsman mediated a case where the funding of the project "Houses First" project providing housing to 65 homeless persons was at stake. The

project had been developed by the NGO «AEIPS- Associação para o Estudo e Integração Psicosocial» and was funded by the Institute of Social Security that stated it was no longer possible keep its financial support. With the Ombudsman mediation, additional funding was obtained from the «Santa Casa da Misericórdia de Lisboa» and from the Gulbenkian Foundation. The Institute of Social Security agreed to finance 25%.

In early 2015, the Ombudsman suggested to the Municipality of Amadora to suspend the procedure of eviction and demolition of unauthorized buildings located in an illegal neighborhood, considering that some households would be displaced and could give cause to homelessness. The Ombudsman underlined that the Municipality, the State and eventually other institutions should be able to relocate all households that do not have housing alternatives and is currently monitoring further developments.

7. Please provide information about any proposed or existing strategies or legislation that your organisation or institution might be familiar with aimed at reducing or eliminating homelessness. Explain any goals or timelines that have been adopted for this purpose, describe how progress has been monitored, describe how those affected by homelessness have been involved and provide information on results to date. Does your institution/organization have any suggestions for how existing or proposed strategies could be improved?¹

Up to 2009, the homelessness sector in Portugal was fragmented, with no common guidelines and lacking cooperative initiatives. The National Strategy was the first of its kind to be adopted in Southern Europe. It envisaged a change in the

¹ The answer to this question includes information from the article “The First Portuguese Homelessness Strategy: Progress and Obstacles” by Isabel Baptista and available at http://www.feantsaresearch.org/IMG/pdf/ib_review.pdf

understanding of the homelessness problematic and the adoption of innovative local public policies and partnerships.

The Ombudsman recognizes the merits of the integrated approach set by the National Strategy, aimed at developing cooperation between different stakeholders, the involvement of local municipalities and the development of local networks.

The Strategy laid out a structure for the implementation, monitoring and evaluation both at a central level (an executive unit, responsible for coordination and monitoring, and consultation bodies) and at a local level (executive units and cooperation with local social networks). It focused strongly in local action, establishing guidelines for local assessment of homelessness and for the development of local action plans to be designed and implemented together with local social networks.

Nevertheless, the current results prove to be below the anticipated.

The central structures of the National Strategy reduced their activity as from 2011 and stopped functioning since 2013. Although state funding for central structures had been publicly announced, it never materialized. This may be regarded as a result of the austerity measures adopted to face the economic crisis.

At a local level, the implementation of the National Strategy has relied on the initiative of local stakeholders. Homelessness units have been created with the support of municipalities, NGOs and local social security services. Still, the number is relatively low.

So far, the Ministry for Solidarity, Employment and Social Security has not disclosed any post-2015 plan or program. Various organizations working with homeless

people suggested to the Ministry the extension of the National Period, but no position was taken on this proposal.

In October 2015, the Institute of Social Security Institute informed the Ombudsman that a report on the implementation of the National Strategy was being drafted but did not provide any input on respect of future measures.

Besides the National Strategy, several programmes and policies have been put forward in Portugal to respond to the housing needs of low income families, therefore preventing situations of homelessness:

- Re-housing programmes launched in the 1990's (PER and PER-families) aimed at re-housing population living in slums.
- Measures and initiatives to support families with housing difficulties, namely by promoting cost-controlled housing within Cooperative Promotion (PROHABITA).
- Rehabilitation programmes to support, through the grant of public incentives, upkeep work and the improvement of degraded real estate and dwellings (RECRIA).
- Programmes intended to finance, through interest free loans, renovation works in permanent own housing and vacant housing owned by individual or public entities (SOLARH);
- Establishment of 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 (Law 58/2012, of 9 November).
- Special credit line for the protection of «permanent own housing» provide by the Treasury Department at the Ministry of Finance line (Decree-Law 103/2009, 12 of May).

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

CONCERNS OF THE OMBUDSMAN

The absence of a systematized method for collecting information prevents the regular monitoring of homelessness. Updated statistics are crucial to the definition of policies, strategies and solutions to effectively address homelessness.

The National Strategy, an initiative considered innovative in southern Europe and pointed out as an example of good practice, delivered results below the expected. The Portuguese Government should consider reinforcing its commitment and capitalize the innovative approach to homelessness brought by the National Strategy.

The fact that the National Strategy has not been approved by the Council of Minister, therefore lacking binding force, may be perceived as a weak commitment from the Portuguese Government in dealing with homelessness. This may also contribute to undermine a human rights approach to homelessness.

The lack of funding of the National Strategy compromised the projected outcomes and the commitments undertaken. The objectives of the National Strategy at the central level were not met. At the local level, the progress achieved relied on the support of local entities and NGOs.

The period covered by the National Strategy is running out and still no program or plan tackling homelessness has been disclosed. Thus, it is urgent that the Portuguese Government takes a clear position on the post-2015 approach to homelessness.