**REDE- H**

**Input for the Call on Decriminalization of homelessness and extreme poverty from the Special Rapporteur on the right to adequate housing and the Special Rapporteur on extreme poverty and human rights**

Rede H is a Portuguese housing studies network launched in February 2020, comprising over 150 researchers, including activists and NGOs. In this document, Rede H aims to contribute to the joint report of the Special Rapporteur on the right to adequate housing and the Special Rapporteur on extreme poverty and human rights. Rede H aims at providing a contribution for the joint report of the Special Rapporteur on the right to adequate housing and of the Special Rapporteur on extreme poverty and human rights on efforts made to decriminalise offences frequently associated with homelessness and poverty, such as street vending, begging, staying, sleeping, easting or undertaking any other life sustaining activities in public spaces. It explores how the legal and policy framework contributes to the criminalization of poverty and homelessness and assesses steps taken to align these policies with the Guiding Principles on Extreme Poverty and Human Right ([**A/HRC/21/39**](http://www.undocs.org/A/HRC/21/39)) and the Guidelines for the Implementation of the Right to Adequate Housing ([**A/HRC/43/43**](http://www.undocs.org/A/HRC/43/43)).

In this report, we adopt a broad definition of homelessness, considering specific groups such as migrants, refugees, and the Roma community. We believe that this broader vision allows us to act preventively on historically disadvantaged groups who have crossed paths with homelessness.

1. **Laws or regulations that prohibit begging, eating, sleeping, or performing personal hygienic activities in all or certain public places (please kindly include the wording of these laws and regulations and specify whether they are effectively enforced).**

*Right to Housing and squatting*

The Right to Housing is guaranteed in the Portuguese Constitution (Article 65). In September 2019, a new Framework Law for Housing (Lei de bases da habitação, no. 83/2019) was enacted[[1]](#footnote-1). The law stipulates that the state is the warrantor of the right to housing (Art. 3, paragraph 1); that everyone has the right to adequate housing (Art. 7, paragraph 1); and that the state is responsible for creating a system of access to housing that is compatible with the income of the families (Art. 7, paragraph 2).

Portugal has also signed and ratified the International Covenant on Economic, Social and Cultural Rights (1966) (which in its article 11 (1) guarantees the right to housing), including the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ratified in 2013), which provides for an international individual complaint mechanism for violations of the rights in the Covenant, in particular of the right to adequate housing. Portugal is also bound by the Revised European Social Charter (1996) which in its Article 31 stipulates that the members promote access to housing of an adequate standard, prevent and reduce homelessness with a view to its gradual elimination, and make the price of housing accessible to those without adequate resources.

Yet the Portuguese legislation is tough on squatting in public or private dwellings, even when no other housing options are available. The Article 215 ("Squatting") of the Portuguese Criminal Code (Decree-Law no.48/95)[[2]](#footnote-2) states that “anyone who, by means of violence or serious threat, invades or occupies immovable property with the intention of exercising a right of ownership, possession, use or servitude not protected by law, judgement or a definitive and enforceable administrative act, shall be punished with imprisonment of up to 2 years and a fine of up to 50 days, if another higher penalty does not apply to them due to the means used.” However, the criminal proceedings are dependent on a complaint.

The Framework Law for Housing also includes an Article on “protection and follow-up in case of eviction” (Art. 13), which stipulates that the state cannot prompt an eviction without ensuring a solution for rehousing (Art. 13, 4). Yet the following paragraph excludes squatting of public housing from this measure by stating that evictions are undertaken following the “procedures that have been established in the law” (Art. 13, 5).

The evictions from social housing are regulated by the LAA, the Law for Subsidised Renting[[3]](#footnote-3), which gives a minimum of three days’ notice for evictions in the case of “occupations without a title” (Art. 35). It also states that the households that face housing shortages should be referred to “legal solutions of access to housing” or to existing housing support services (prestação de apoios habitacionais, Art 28, paragraph 6) prior to the eviction.

The City Council of Lisbon has a specific regulation on “de-occupation” of 2013[[4]](#footnote-4) that stipulates how the residents of the squatted council dwellings should be evicted (Câmara Municipal de Lisboa, 2013). It states that all squatted municipal dwellings will be de-occupied; only in the case of occupations that preceded the entry into force of the regulation on access to municipal housing regime RRAHM in 2009[[5]](#footnote-5) does the possibility exist to attribute the occupied dwelling to the occupier. Article 4, paragraph 3 states that the occupiers will be given a notice period of 90 days to leave the occupied dwelling. Yet paragraph 7A of the same Article adds that this does not apply to “non-authorised occupations of vacant dwellings”, which will be de-occupied immediately by the municipal police, and belongings taken to the municipal depository. It is also instructed that the “non-authorised occupations should be subject to an obligatory criminal charge” (Article 4, paragraph 8), under the terms of Article 242 of the Code of Criminal Procedure[[6]](#footnote-6).

1. **Laws or regulations that allow the detention or imprisonment of individuals who are unable to pay the fine imposed for petty offences.**

The Article 47 (“Non-payment of fine”) of the Portuguese Criminal Code states that 1 - If the fine is not paid, the assets of the convicted person shall be confiscated. 2 - If, however, the fine is not paid voluntarily or coercively, but the convicted person is able to work, it shall be totally or partially replaced by the corresponding number of days of work in works or workshops of the state or other legal persons governed by public law. 3 - When the fine is not paid or replaced by days of work under the terms of the preceding paragraphs, the prison sentence imposed as an alternative in the judgement shall be served. 4 - If, however, the offender proves that he is not responsible for the non-payment of the fine, the alternative prison sentence may be reduced to 6 days or exemption from the sentence may be ordered. 5 - If the perpetrator has intentionally placed himself in a position of not being able to pay the fine in full or in part, or if it cannot be replaced by days of work, he shall be punished with the penalty provided for in Article 388(3).

1. **Comments whether any of these laws and regulations may violate international human rights law.**

The international law does not recognise a specific category of de-occupations;under the international framework, such as the InternationalCovenant on Economic, Social and Cultural Rights (United Nations, 1967),a de-occupation would clearly be considered a forced eviction, as itresults in a “permanent or temporary removal against the will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection” (OHCHR, 1997: Art. 3). Despite allegations to do so, the “de-occupied” households do not generally receive adequate housing alternatives. Most offered solutions amount to paying a weekend or a month in a pension, after which the household has to look for another housing solution. In fact, after complaints made to the CECSR Committee on “de-occupation” cases, facilitated by the Habita Association, the Office of the High Commissioner for Human Rights decided in favour of the request to adopt a precautionary measure, and reported that it has asked the Portuguese state and Lisbon City Council to take measures to prevent possible irreparable damage while the case is being examined by the Committee, on at least three separate occasions, in the decisions of 28 October 2021,of 16 December 2022, and of 25 May 2023.

1. **Information about attempts made or planned to decriminalize street vending, informal business activities, sex work, begging, eating, sleeping or performing personal hygienic activities in public places.**
2. **Information concerning initiatives to change the response of law enforcement officials and of the criminal justice system from penalization, punishment or detention, towards facilitating social inclusion of persons living in poverty or experiencing homelessness.**

*Migrants, refugees and Roma*

In Portugal, public narratives and alleged intentions are basically open and pro-immigration, creating expectations for those who come in search of protection, better living conditions and a future for themselves and their families. Although Portugal has not been receiving a very high number of migrants and requests of international protection, compared to other European countries, in recent years this situation has been steadily changing. The accommodation available to applicants for asylum seekers, is mainly provided through the free rental market. The existing reception centre has a reduced capacity to the volume of requests and so often, applicants move from the reception centre to a hostel. The financial support values and conditions in the free rental market are insufficient and precarious, sending this population into housing deprivation and homelessness (Branco & Xerez, 2023). As far as refugees are concerned, some arrive through European Programmes and International Reception Agreements, with some financial support given to the host organisations in the first few months. Nonetheless, despite the low number of refugees in the country, temporary reception centres (all located in the Lisbon Metropolitan Area) have also long been overcrowded and it is very difficult to find satisfactory accommodation (Freitas et al., 2021), especially in the capital, where, according to Oliveira (2022, p.162), "housing has been identified as one of the main challenges in reception and integration [...] affecting the autonomy of refugees".

Recently, there has been a gradual recognition of this problem on the part of the government, with the identification of women as the main victims of precarious housing. This recognition is in line with the general perception of important refugee associations and initiatives in the LMA (ARP - Association of Refugees in Portugal; UREP, Union of Refugees in Portugal; APIRP - Association for the Support of Migrants and Refugees in Portugal; Association Family of Refugees; Empowerment Initiative for Refugee Women in Portugal, Refugee Forum Portugal), which are in daily direct contact with civil society and seek to influence government structures, including their sectoral policies and/or practices, in order to change the response of the criminal justice system from punishment to facilitation of social inclusion. As Viegas (2022, p.51) points out, 'despite their small size, short duration of operation and limited space of influence, [these associations and initiatives] stand out as a space for sharing and projecting minority voices in a continuous exercise of building new collective meanings and citizenship’.

Other immigrants, also of different origins, cultures and religious beliefs (e.g. from Africa, Asia and the Middle East), some of them racialised, are in a vulnerable situation as well. This is particularly the case in large urban areas, especially in the Lisbon Metropolitan Area, but also in medium-small areas and in rural ones. On the one hand, in the centre of Lisbon, the growing problems of gentrification, touristification and the attraction of foreign capital continue to generate a dynamic of overcrowding that also affects immigrants, with the media reporting the death of two people and 14 injured (in February 2023)[[7]](#footnote-7) as a result of an accidental arson in an apartment in very poor conditions, which at the time housed 22 people. A substantial number of these immigrants residing in Lisbon have legal status, having come to the city either through work visas or for family reunification purposes. On the other hand, the deconcentration of immigrants has revealed many socio-spatial and territorial imbalances, with adequate housing being an important dimension determining their integration/exclusion. Homeless female immigrants are especially vulnerable to sexual exploitation, as sexual services or sex work might be demanded in exchange for accommodation.

In the municipality of Odemira, located in Alentejo, for instance, it is approximated that migrant labourers from rural areas, such as those working in greenhouses, constitute over 40% of the overall population, leading to a profound alteration of the local landscape. While on a much smaller scale, this process also affects the neighbouring Algarve region. However, our knowledge of the housing situation of these immigrants is limited, as many of them live in illegal, temporary accommodation on private land, without the access of public structures and civil society. This situation draws attention to illegal migration, labour exploitation and international trafficking networks. In turn, the medium/long term effects and implications of recent government responses[[8]](#footnote-8), such as the obligation to create IATA's (decent removable temporary accommodation facilities for seasonal workers) are still to be seen. These are just a few visible examples of a changing urban society, which the Portuguese government promotes as intercultural, but which also faces increasingly complex problems of xenophobia.

The situation of Ciganos/Roma deserves special attention due to the precarious housing and poverty levels that characterise many Roma families in Portugal and in most EU countries. In our view and in the case of Ciganos/Roma, difficult access over time to adequate housing is an indicator of structural inequalities, sometimes extreme poverty, revealing a particular socio-housing vulnerability that greatly affects the Ciganos/Roma population (Mendes, in press). Recently, the Fundamental Rights Agency Report (FRA, 2022) significantly revealed some indicators that clearly mark structural inequalities between the Ciganos/Roma population and the general population in several European countries. Thus, in 2021, 80% of the Roma population lived below the poverty line in their country of residence, and in Portugal this figure was 96% (FRA, 2022). It should also be noted that more than half of Roma households (52%) suffer from housing deprivation in all countries analysed, a figure that is approximately three times higher than that recorded for the general population in the EU (17%) . In addition to the precarious socio-housing situations that characterise a significant part of Ciganos/Roma, this population faces increased obstacles when looking for housing, being more exposed to (and fearing) evictions and evictions more frequently than the general population. On average, the percentage of Ciganos/Roma households that are forced to abandon their home was 5% in 2021, with one of the highest rates being precisely in Portugal (18%) (FRA, 2022). A substantial proportion of Ciganos/Roma continue to face discrimination structural when looking for accommodation. In Portugal, the value rises to 77% (FRA, 2022).

Legislation in relation to the Roma that we consider would need amendment:

In particular, “nomadic Ciganos” are still the target of processes of stigmatisation and repression by police forces, configuring processes of forced nomadism as a historical process still present in Portuguese society, as they will not be able to occupy and remain for more than 24 hours in a given terrain/space. Ordinance No. 722/85 (General Regulations for the Service of the Republican National Guard/GNR), in articles 81 and 82, mentions the special surveillance to which nomads, beggars and vagrants are subject.[[9]](#footnote-9)

The GNR (Republican National Guard) must exercise special surveillance over groups and caravans that habitually move from land to land doing business, participating in fairs or carrying out any other activities typical of itinerant life, observing them in their movements to prevent and repress the practice of criminal acts (Costa, 1995). This regulation violates the most basic human rights, namely those set out in Universal Declaration of Human Rights (art. 8 and 9), and the European Convention on Human Rights (art. 14)

There remain several constraints inherent to regulations and regulations of local authorities that limit access and allocation of social housing by “Nomadic Ciganos/Roma” (e.g. having to certify residence (and/or uninterrupted stay) in the municipality for more than 2 years in Évora or 5 years in the case of Montemor-o-Novo). In some municipalities, Ciganos/Roma continue to be the target of constant expulsions, having created a new and/or old “category”, that of the compulsively nomadic gypsy population.(Mendes, in press)

1. **Measures and services available at national, regional or municipal level to support people living in poverty and in situations of vulnerability from having to resort to begging, sleeping, washing, defecating or performing other hygienic activities in public places, because they lack access to employment, social assistance, adequate housing, public showers and toilets.**

In Portugal, three national strategies should be highlighted, which seek to combat poverty, exclusion and various dimensions of precariousness, namely housing and social exclusion: the National Strategy for Combating Poverty (ENCP 2021-2030)[[10]](#footnote-10), the National Strategy for the Integration of Homeless People (ENIPSSA 2017-2023)[[11]](#footnote-11), and the National Strategy for the Integration of Ciganos/Roma Communities (ENICC 2013-2022)[[12]](#footnote-12), with housing being one of their main axes, with strategic objectives. Although at the central level there are clear guidelines, objectives and goals, this does not always have repercussions at the local level.

The survey carried out within the scope of ENIPSSA (Inquérito de Caracterização das Pessoas em Situação de Sem-Abrigo, 2021[[13]](#footnote-13)) states that 9,604 people were signalled as being homeless, out of which 4,873 ‘roofless’ and 4,731 ‘houseless’. This reflects the fact that ENIPSSA, as well as the Lisbon Municipal Plan for the Homeless (2019-2023[[14]](#footnote-14)), consider only two categories of homeless people: those sleeping rough and in emergency accommodation; and those who are in temporary shelters designated for the homeless. It thus leaves out the ETHOS categories[[15]](#footnote-15) of insecure accommodation and inadequate accommodation, despite the need highlighted by FEANTSA, the European Federation of National Organisations, to use a more inclusive definition of homelessness. The restrictive definition of homelessness leaves out many cases of family homelessness and women’s homelessness, as women, and especially mothers with children, tend to avoid sleeping rough, relying on informal support such as friends or acquaintances or occupying vacant homes to keep them accommodated (Bretherton, 2017; Pleace, 2015). Yet this survival strategy turns against them as due to this practice, they are not considered homeless in the eyes of the state (Saaristo, 2022). The 2018 data, from Santa Casa de Misericórdia de Lisboa, of homeless people users in Lisbon, shows that 13.1% of the homeless people are roofless and 69.1% houseless; 79% are male and 21% female, the majority (65%) are between 35 and 64 years old, 60.9% are Portuguese, and 25.5% are from the African countries. The housing responses are mainly in rooms in the private rental market (36%). The accommodation centres represent 30.9%; hostels 0.4%; Housing First represents 1.8%. The constraints on accessing housing derive from the dependence on the private rental market, the response to homelessness relies on the financialisation and liberalisation of the free rental market (Branco, Xerez, & Lima, 2023).

Thus, many cases of women’s and family homelessness are likely to have been left in the homelessness surveys and statistics in Portugal. Statistics also tend to highlight the relationship between homelessness and use of drugs[[16]](#footnote-16), which might result in a skewed and prejudiced characterization of the homeless population.

A gender perspective in homeless responses is essential but not very often implemented in the Portuguese context. Homeless women often complain of lack of security in shelters, lack of beds available, and difficulties in maintaining proper hygiene. The SOMOS Mulheres association[[17]](#footnote-17), founded in 2022 by women who have been homeless, reports on these shortcomings. At the moment this is the only NGO in Portugal exclusively dedicated to the issues of homeless women.

*Housing First*

Housing First responses are also showing a growing trend in other regions of the country, and even in autonomous regions such as the Azores, where the results are positive when compared to previous models. This policy is mostly implemented through partnerships with third sector organisations that work directly with homeless people.Housing First, implemented in Lisbon since 2009, has provided housing to 340 homeless people, according to the Lisbon City Council.[[18]](#footnote-18) The project Housing First is being implemented by four non-governmental organisations: AEIPS - Associação para o Estudo e Integração Psicossocial; CRESCER - Associação de Intervenção Comunitária; GAT - Grupo de Ativistas em Tratamentos e VITAE – Associação de Solidariedade e Desenvolvimento Internacional.

We would point out that this solution is severely compromised by the exponential rise in housing prices in Portugal, especially in the two major metropolitan areas, where the majority of homeless people are concentrated, particularly Lisbon. This is because the Housing First project relies on engaging private landlords. Initially, the project uses its funds to rent properties from these private landlords and then assigns them to homeless individuals through associated organisations. Consequently, factors like intense tourism and gentrification are directly contributing to both the increase in the number of homeless people and the greater difficulty in finding decent housing solutions for this group within the context of a Housing First approach. We then need to create more effective responses, perhaps by increasing these responses and making them less dependent on the open market. It has yet to be said that Portugal has one of the smallest public housing stock in the EU, just 2 per cent.

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