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# A Brief Assessment of the Portuguese Framework Law for Housing

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Four decades after the inscription of the right to housing in article 65 of the 1976 democratic Constitution of the Portuguese state, Portugal was still missing a law that would operationalise that very right. Amid a housing crisis that is cutting through most sectors of the society, and in face of the repoliticisation of this field,[1] the Portuguese Parliament launched, in 2017, a process which culminated in the recent approval of the Framework Law for Housing (*Lei de Bases da Habitação*; Law 83/2019, 3 September (<https://dre.pt/web/guest/pesquisa/-/search/124392055/details/maximized>); hereafter Law).[2]

What follows is an assessment of the text of the Law, put in wider perspective by taking stock of recent academic works on Portuguese housing conditions and policy,[3] and of the experience of Habita in supporting struggles for the right to housing. In summary, despite constituting an important step forward in the construction of a national policy and legal framework, the Law falls short of constituting a robust framework that could be concretely mobilised in the defence of the right to housing – with the weakest components being the provisions on the legal protection of the right to housing and on protections in the context of eviction.

## *Housing policy: an important step forward*

The Law has the ambitious goal to provide the policy and legal instruments to ensure the right to housing. Beyond the symbolic importance of its approval, the Law shows a number of positive features, especially with regard to the positive role of the state as the promoter of the right to housing through housing policy: housing is considered at the intersection of several areas of public action, from direct provision (and public works), to urban policy and planning; and the right of housing is interlinked with that to the habitat, that is, to services, facilities and transportation – the section on the right to habitat (§14-15) is among the most straightforward in stating the obligations of the state in providing for basic urban needs. The introduction of national and local housing programmes (§17) is a crucial provision for the operationalisation of state action in this field.

## *Shortcomings on the defence of the right to housing:*

The Law, however, falls short with regard to the legal provisions that could had proactively and reactively protected the right to housing. In general, most sections of the text are framed with a language that leaves wide space to interpretation and discretionality: e.g., the state “encourages”, provisions are applied “whenever possible”, and similar expressions. In this regard, it is important to remind that Portuguese framework laws (*lei de bases*) are above all intended to set the general guidelines for legislative and executive action, and need to be complemented by specific regulations and complementary legislation – in this case, to be prepared within 9 months from the publication (§68).

Still, it is our contention that the Law could had been more straightforward and unambiguous in a number of provisions. This is particularly the case of the articles on legal protection and on protection of evictions:

- The crucial art. 60, which concerns the legal protection of housing rights and interests, states the rights to defend subjective rights and of public action (§60.2.a), but does not clarify how shall said rights be defended. Citizens, for instance, have the right to ‘seek immediate cessation of a *gross* violation of the right to housing’ (§60.2.b; emphasis added): here, the introduction of the adjective ‘gross’ leaves wide room for interpretation. On the contrary, the right to ‘promote the prevention, cessation and repair of property and housing values violations’ shall be promoted ‘as rapidly as possible’ (§60.2.c) – that

is, the Law remains in line with a long-held interpretation of the right to property as a superior right than the right to housing. In cases in which the right to housing is undermined by action or inaction by the public administration, the Law states that 'complaints may be lodged with the Ombudsman' (§60.4), an institution which, in Portugal, lacks of executive power.

- Article 13 on the protection from eviction does not bring concrete advancements to the existing legislation. In case of evictions from private property, the only protection envisaged is that evictions cannot be undertaken at night-time (with exception for cases of emergency) (§13.3), they can, for instance, be undertaken during the winter. The state shall provide for the existence of 'public support and accompaniment services for vulnerable individuals or families' (§13.6.e): said services are already existing but systematically insufficient, and provide very short-term support. Indeed, in the case of a recent action promoted by Habita, a high authority within the national government explicitly declared to members of Habita that there are no emergency mechanisms in place to protect people and households evicted in the private market. An important provision makes it impossible the eviction of vulnerable individuals and families by the public administration without resettlement (§13.4) – this being probably an answer to the long-held practice by some local administrations to clear informal settlements without providing any solution. However, the protection does not apply to occupied public housing (§13.5), even in cases when the occupiers have squatted out of true necessity.

At this stage, then, on the one hand the Law can hardly be effectively mobilised in legal proceedings to defend individual, families' or groups' right to housing. On the other, the provisions on the protection of vulnerable households would only become effective with significant reform and reinvestment in social services – considering the concrete state of said services, a stronger protection *from* eviction seems to be urgently necessary. It is, at any rate, important to remind that a full and final assessment will only be possible once the complementary legislation will have been approved.<sup>[4]</sup>

## Further provisions

One of the positive features of the Law is that it is wide-encompassing and includes provisions on virtually all aspects of housing, housing policy and housing law – but, again, not always are said provisions as straightforward and effective as they could had been. Further comments on specific provisions follow:

- Amid evidences (including those collected in Fahra, 2017) that the current housing crisis is linked with foreign investment and financial speculation, Habita and other national actors have advocated for a robust regulation of the housing market. The Law falls definitely short of creating a framework for such regulation, as the relevant article (§33) does not introduce regulatory mechanisms, but is overly based on the production and release of updated data on the real estate market – based on the idea that this would *per se* contribute to curbing speculation. Reference is made to instruments to attract foreign investment: for instance, the Law states that Golden Visa scheme and fiscal incentives for foreign residents, pointed out among the causes of the current national housing crisis, should be compatible with national housing policy (§33.5) – but, in our opinion, these schemes only favour speculation and should be straightforwardly abolished. The only significant factor of regulation is delegated to land use policy (§34), which is responsible to prevent speculation and contribute to increase the supply of housing. The latter provision rests on a long-held idea about the possibility to curb housing prices by increasing supply – an idea that is hardly compatible with the scarce elasticity of the housing market and its increasing role as asset for financial leverage. Another generic reference to the need for 'appropriate instruments' for regulation is made in the article on housing lease (§40).
- An important provision (§36.4) states that refurbishment works shall abide by regulations on energy efficiency, seismic vulnerability and accessibility, a principle that had been reverted by regulations approved during the external bailout in the name of relaunching the construction sector – it will be important to monitor the effective reform of those regulations in the next future.
- The contrast to harassment in the context of rental, already object of specific legislation, is strengthened by its inclusion in the Law (§44.2).
- Residents' associations and organisations are included among the actors in several provisions, strengthening the legal power of an important dimension of the Portuguese civic activism in the field of housing.
- With vacant housing being a long-held cause of distortion in the national housing system, an important provision states that housing tax policy shall penalise fiscally vacant housing (§29.1.f). However, no provisions on the expropriation of long-term vacant housing have been considered.
- With regard to cases of mortgage default, the Law states that 'transfer in lieu of payment of the debt is permitted, extinguishing the debtor's obligations regardless of the value attributed to the property for this purpose' (§47.3): however, this is not compulsory and only applies to cases when contractually established.
- The right to pre-emption by residents and the public administration is affirmed, but no provisions is included for limiting the cost of purchase – which is often prohibitive for residents and local authorities.
- Rent insurances are included among the instruments to promote stability and confidence in the rental market (§44.1.a). However, in face of extremely low rates of rental default, it is not clear what is the goal of this provision other than creating new financial markets in the housing field.

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[1] For which an important role was played also by the 2016 visit and 2017 report of the UN Special Rapporteur on Adequate Housing (see Fahra, 2017).

[2] Be it noted that the English version available on the Portuguese Parliament website (available at this link (<http://app.parlamento.pt/webutils/docs/doc.pdf?path=6148523063446f764c324679626d56304c334e706447567a4c31684a53556c4d5a5763765130394e4c7a457851304650564552515445677651584:+Housing+Basic+Law++PT-EN.pdf&Inline=true>) and used as reference for the present text), translates literally, and misleadingly, *Lei de Bases* into 'Basic Law' (basic laws have constitutional power, and this is not the case here).

[3] In particular: the report by Leilani Fahra (2017) and a recent critical commentary (Morais et al., 2018); some short essays included in a special volume of *Cidades: Comunidades e Territórios* (Allegra and Tulumello, 2019; Allegra and Colombo, 2019; Tulumello, 2019); and a recent book on financialization of housing (Santos, 2019)

[4] It is however important to refer that there are differing interpretations on this issue. In particular, the principal proponent of the Law, former MP Helena Roseta, has recently argued in public events (e.g. exPERts conference, ICS-ULisboa, 30/10/2019; Housing For All, Goethe Institut, 15/11/2019) that, in her interpretation, many provisions can be already be used in legal proceedings.

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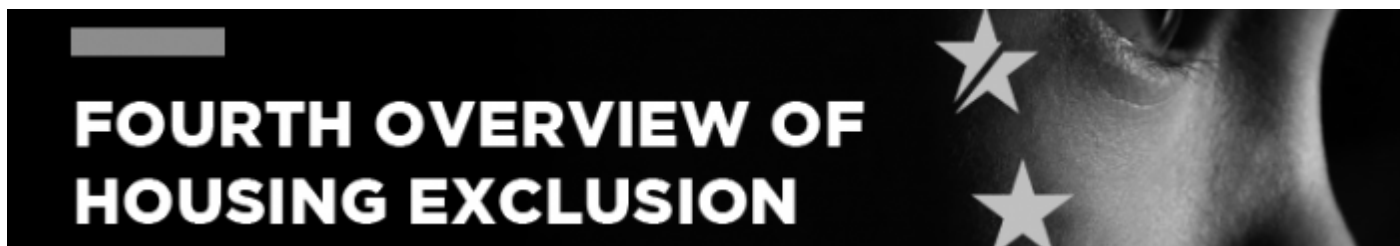
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