

**MATERIALS OF PEACE
AND HUMAN RIGHTS, 15**



THE RIGHT TO HOUSING

Nolasc Riba Renom



Generalitat de Catalunya
Departament d'Interior,
Relacions Institucionals i Participació
**Oficina de Promoció de la Pau
i dels Drets Humans**



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Generalitat de Catalunya
Departament d'Interior,
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1. MOTIVATION

This paper seeks to address the status of recognition of the right to housing and assess the conditions of access to housing in the context of metropolitan Barcelona as an example of the approach to this right in the Spanish state and within the European Union. The paper reflects on research conducted on housing in the last few years in which the construction sector, real estate market and financial sector have undergone convulsions and in which people have had to make many sacrifices and great economic efforts to obtain a home.

As part of the Baix Llobregat Study Centre, Esther Hachuel, Carles Riba, and myself, have conducted research entitled, “*The housing problem in the most vulnerable groups of the Baix Llobregat. A study from experience*”, completed in 2008.¹ The study starts is based on the belief that knowledge and analysis of people’s experiences shed light on and contribute new elements to address the problem of housing. Part of the results of that research has led me to the thoughts embodied in this writing. I have to thank many people who, during this time, have helped me in some way or another, especially Esther Hachuel, Carles Riba, Paco del Monte, Quim Guinovart, Josep L. Atienza, Mercè Renom, and Oriol Escofet.

2. THOUGHTS ON HUMAN RIGHTS

The concept of **human rights** states that every human being has some inalienable and inherent universal rights, regardless of their nationality, ethnicity or religion, and the law in force at the time and place. They are the recognition of human capacity to exercise some basic freedoms and powers to ensure a decent life. These rights cannot be granted by anyone, and cannot be limited, changed or sold; they are universal to everyone, and can only be secured or violated.

Human rights are now an important frame of reference contained in the legislation of many countries and various international treaties, the most important of which is probably the 1945 Universal Declaration of Human Rights. This text is the commitment of the organization of the United Nations and all its Member States to ensure respect for human rights and fundamental freedoms while impelling them to work for the advancement of a world where people can live a dignified life, with freedom of speech and thought, and freedom from fear and want, with the understanding that this is the highest aspiration of mankind.

The **law** is a legal order, expressed through a set of rules used to govern a society, regulate conduct and resolve conflicts; it is an order that is based on the principles of justice. The concept of justice has its origins in the term *iustitia* and names a cardinal virtue: that of giving everyone what they deserve, or belongs to them. Justice is what should be done according to law, reason or fairness.

The dictionary of the Catalan language of the Catalan Studies Institute defines rights as “power to demand what is due us, to do what the law does not defend, to have, to demand, to use, etc., that which law or authority establishes in our favour.”

The term comes from the Latin root “directum” meaning, “that which conforms to the rule, the normative, to the law, or that which does not “divert to one side or another.”

Human rights are an important social advance. By means of emerging legislative tools, they aspire to lead societies towards an equality of capacities and well-being between people, the eradication of prejudice and injustice, and aim to seek greater personal freedom and collective fairness, and ensure the quality of life of all human beings.

1. The research “The problem of housing ...” CECBLL, 2008 was adjudicated by the Department of Environment and Housing of the Generalitat de Catalunya to the Centre d’Estudis Comarcals del Baix Llobregat.

2.1. Historical evolution

Human rights are tools that emerge as the historical context requires. Their legal configuration becomes consolidated from liberal revolutions, led by the war of Independence of the United States of America and the French Revolution, the purposes of which were to eliminate privileges in force in the previous regimes. These rights were initially driven by learned and liberal people, and by the bourgeoisie emerging from new commercial and industrial activities, hitherto discriminated against by royalty, nobility and church.

A local antecedent of the concept of human rights is the 1689 Charter of the Parliament of England, when Prince William III was forced to sign a document called the Bill of Rights in which the King pledged to respect some basic inalienable rights for all its citizen.

The famous motto of the French Revolution proclaiming the new democratic and liberal era was: Liberty, Equality and Fraternity. The struggle for economic freedom and the right to private property was the first and most significant change in that historical moment and was accompanied by an emerging liberal democracy (with significant restrictions for women and for those without certain economic levels). At a theoretical level, the freedom and equality of all human beings were proclaimed.

The rights of equality, freedom, safety and property are the first rights named in Article 2 of the French Bill of Rights in 1793, followed by others such as the inviolability of correspondence, the right to assemble, protection against arbitrariness, the presumption of innocence, etc. Article 16 once again proclaims the right to property and defends the right to enjoy and have assets, income and the fruits of labour and industry. Article 17 continues to defend that there is no type of work, culture or commerce that may be prohibited from citizens' initiative.

Article 19 says nobody can be deprived of any part of their property except for cases of clear legally proven public necessity, and by fair and objective compensation. Then there is another set with social rights such as health and education and, finally, legal and political rights originating from the democratic system.

This French Bill of Rights ensures that ignorance, negligence or disregard of human rights is the only causes of public calamities and of the corruption of governments.

The original notion of human rights based on the bourgeois ideology of philosophic individualism and economic liberalism, takes on a new dimension after the Second World War. Human rights adopt a social character incorporating rights such as the right to work, health or education. It is a turn oriented to combating the terrible conditions of the working classes, to include the struggles of union workers, guaranteeing the right to strike, and promoting acceptable working conditions.

This is a process that culminates with the Universal Declaration of Human Rights (UDHR) in 1948. The Organization of the United Nations (UN), created in 1945, proclaimed the Declaration (UDHR) in its general assembly, making it a text of international legal reference and creating various institutions and mechanisms for its promotion and guarantee.

The UN recommends that from that time on that this text is to be disseminated, discussed and debated around the world to build a new human rights education, which would enable the contents of the declaration to be protected and ensured.

It was at that time that the right to housing also emerged, and it was recognized that it constitutes an essential part of developing a decent life, of a personal identity, especially in aspects of privacy, but also in everyday life and the creation of life expectations. Its proclamation became more necessary in the new context of human agglomeration and the creation of modern cities, as a result of the concentration of economic activity.

Thus, a new form of civilization arose that was increasingly focused on cities. Urban concentration posed the challenge of population settlement in a small area of land, which was likely to be

badly run and overexploited by people with acquired rights over land that would become urban land.

Currently, in a third phase of consolidation of human rights, we are witnessing the emergence of new rights, basically groups related with ecology, heritage, peace, cooperation, self-determination, economic and political independence and national and cultural identity, among others.

2.2. The right to housing

Article 25.1 of the UDHR states that everyone is entitled to an adequate standard of living that ensures health and well-being, and especially to food, clothing, housing, healthcare and necessary social services. It is the first time that housing is considered as one of the basic necessities that make a decent life possible.

Universal Declaration of Human Rights 1948, Article 25.

1. Everyone is entitled to an adequate standard of living that ensures them and their family health and welfare, especially food, clothing, housing, medical care and necessary social services; as well as the right to insurance in case of unemployment, illness, disability, loss of a spouse, old age or other lack of livelihood due to circumstances independent of their will.

Thus, considering housing as an essential item for every human being in society, the violation of the right to housing denies the possibility of a decent life.

The Industrial Revolution created densely populated urban areas that were unhealthy for a growing number of citizens. Since then, the density of urban growth has only increased. We are now at a point in which urban population has already equalled rural population around the world, and where the emerging mega-cities have replaced emerging modern cities.

Table 1 provides data for understanding the phenomenon of urban transformation that the world has undergone in the past two centuries. Developed countries progressed in the time of those transformations, but currently this phenomenon is occurring on a global scale, and has greatly accelerated in the last 50 years. The year 2007 was the first in which the world's urban population (towns of over 5,000 inhabitants) has exceeded the rural population. In Europe, the urban population is approaching 75%.

World	1800	1900	1950	2000
Average size (in inhabitants) of the 100 largest cities	200,000	700,000	2,000,000	6,300,000
Cities of more than 1,000,000 inhabitants	2	16	80	310
% of urban population (> 5,000 inhabitants)	6.2	18	29	46

That is why the right to housing has currently taken on a new dimension. The growing difficulties of an increasing urban population have made housing one of the largest social and personal problems of modern society. In our time, housing has become the main personal life project challenge, if measured in cost and investment.

The right of access to housing should be interpreted as the ability of citizens to enjoy a dwelling. Amartya Sen, Nobel Laureate in Economics in 1998, provides an interesting contribution: he

distinguishes between positive freedom, which allows free exercise of a right, and negative freedom, i.e., that which enables us to gain access to a right through the market. Access to housing through the market is conditioned by peoples' level of wealth.

Amnesty International draws attention to the ongoing violations of the right to housing in many areas devoid of political stability. Currently, groups of humans around the world are huddled in refugee camps or slums, displaced from areas of conflict or from sites that have governments or large companies have taken an interest in due to energy or for economic reasons. These are the consequences of an economic model based on maximizing profits.

2.2.1. Housing in Spain

As we have seen, the right to housing is present in the Universal Declaration of Human Rights and is also part of the rights recognized in most constitutions of modern states, including that of Spain. It is a second generation right, aimed at eliminating social differences in modern societies. The reading of Article 47 of the Spanish Constitution declares the right and legitimacy of all people to have access to decent and adequate housing, without making any reference to how it is held, in that it does not contemplate any right to be the owner of the dwelling. It continues by saying that public institutions should be involved and should legislate to make this right effective while avoiding the misuse of land and its improper marketing and speculation.

Spanish Constitution 1978, Article 47

«All Spaniards have the right to enjoy decent and adequate housing. Public authorities shall promote the necessary conditions and establish appropriate regulations to make this right effective, regulating land use in accordance with the general interest to prevent speculation. The community shall participate in the capital gains generated by the urban planning activities by public entities.»

Article 26 of the Statute of Catalonia concerning the right to housing includes a definition of beneficiaries, including those who do not have adequate resources.

Catalan Statute 2006, Article 26

Rights within the scope of housing

«Those persons who do not have sufficient resources have the right to decent housing, for which public authorities must establish by law a system of measures to guarantee this right under the Terms and Conditions established by law.»

The Constitution articulates that the public authorities and laws should be sufficient to be able to exercise this right.

Currently, therefore, the right to housing in Spain is fully acknowledged but, unfortunately, does not enjoy sufficient or suitable conditions to be effective. In practice, access to housing is immersed in the market. Purchase-sale and renting are the main ways of gaining access to housing; it could almost be said that they are the only ones,

If the right to housing can only be effected through the real estate market, we cannot speak then of the *positive freedom* of which Amartya Sen mentions. On the contrary, the recent management of real estate, in a free market context, has turned housing into an active investment with extremely high price levels, thereby excluding access to the vast majority of people.

In the last decade, the housing market has seen a 300% increase in prices. This increase was not a result of growth of demand – if we understand the need for housing as demand – but is motivated by the housing bubble that turned housing into the investment good with the highest gains. We must bear in mind that during this process of the increasing cost of housing between 2004 and 2007, the construction industry in Spain beat all records: in absolute number of homes built, as a

percentage of homes built in the EU, and turnover. It was precisely this industrial sector that was the main engine of the Spanish economy and which drove the GDP.

The high price increases and the speculation practiced in real estate are due to a deregulation of all sectors involved in the housing market and in land management, especially since Law 1998 on the conditions for Soil and Valuations (valid until 2007) together with some financial practices for easily obtaining mortgage loans for large amounts with very long return periods and, at that time, with very low interest rates that have fluctuated upward. These conditions, accompanied by a marked liberalization of all sectors of the real estate industry, have prompted speculation values and, ultimately, led to the real estate bubble and subsequent financial crisis.

The liberalisation promoted by the 1998 Land Act, considered that local authorities could re-zone the entire territory and, if appropriate, urbanize and build. This was a sweet opportunity for economically weaker municipal governments who saw a way to increase their financing capacity through a quick and easy source of revenue based on urban growth.

The urban growth of nearly all metropolitan municipalities and cities of our territory has not served to solve peoples' housing needs, but to generate revenue and create investment expectations among people who bought property under speculative conditions and who, today, are now putting great economic effort into housing with devalued prices.

So currently, the average price of rental housing in the Barcelona metropolitan area, of a fairly small dwelling, are equivalent to amounts approaching the minimum wage set by the government (€624 in 2009). So a person with minimal earnings cannot, alone, have access to housing. These are cost references of the 2009 property market, which is the first year since the end of the real estate bubble with price drops of up to 30% in the last twelve months.

As stated in the Constitution, housing (and consequently the land), cannot be managed in a free market context. Many customary free market practices are not feasible for avoiding speculation and to guarantee access for the population to such a necessary as well a life-building good in modern society.

2.2.2. Evolution of income and housing prices

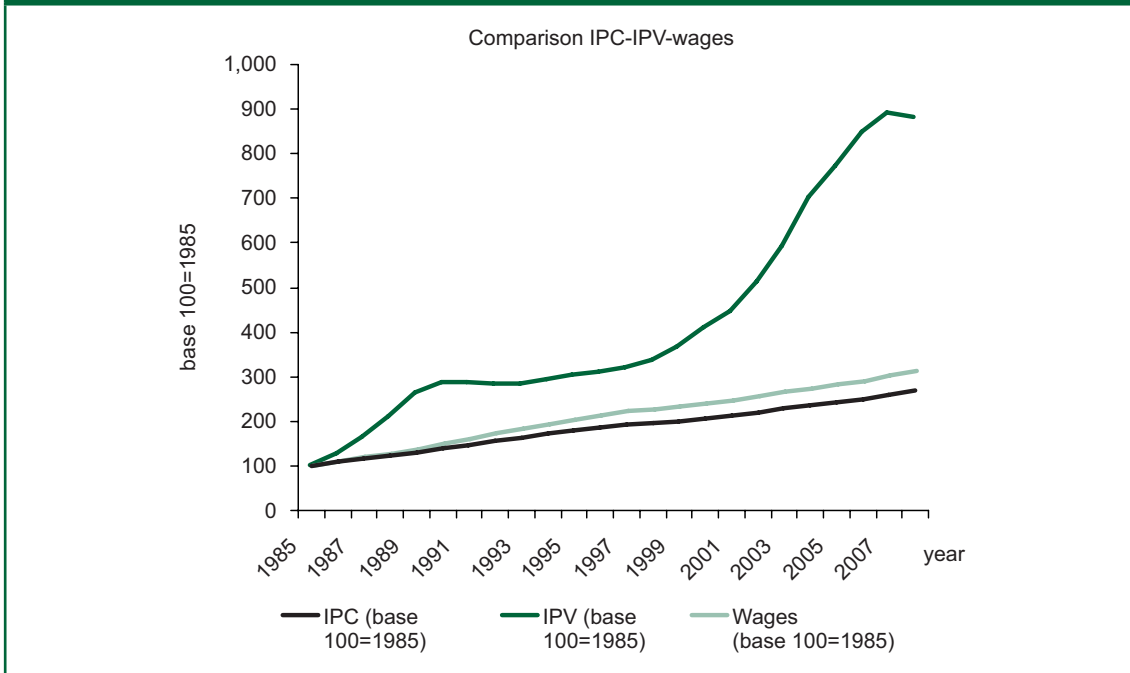
Since the 90s there has been a continuing liberalization in relation to housing, both for rents as well as for re-zoning of terrain, and for the mortgage market, which has led us to the real estate bubble responsible for the current financial crisis.

For a majority of citizens, many of the problems of access to decent housing are ultimately determined by economic limitations that, in recent years, have become an almost insurmountable difficulty. Not only due to the lack of economic resources but also to the harsh mortgage burdens that affect those who bought when prices were high and credit was easy to obtain.

It is considered that spending a maximum of 30% of one's income on housing costs is a suitable percentage and fits within the quality of life parameters for obtaining housing. In rent contracts, this percentage constitutes a guarantee that the tenant can keep paying rent to the landlord. Nevertheless, when the real estate bubble popped (2007-2008), this opinion was seen to be far removed from reality.

Indeed, the market prices of most family homes in the metropolitan area's first ring range between €200,000 and €350,000, and the majority of salaries between €1,000 and €1,500/ month. That means at least 200 months worth of salaries (more than 16.5 years) must be used for housing and if we also consider the long return of interest and loans mortgages required at that time, an entire lifetime of earnings from work must be used for purchasing housing.

Figure 1. Graph of the evolution of indices: consumer price index (CPI), housing price index (HPI), and salary increases



Source: Carles Riba in *La problemàtica de l'habitatge*, CECBLL, 2008.

While the growth in property value was far in excess of wage increases, interest rates, bank or even profits from most industrial sectors, housing has served as a system for easy enrichment of those who could afford it, but has also captured the dreams of ownership of those who could afford a mortgage at a time of easy credit. The idea of housing as an investment was the main motivation of this imbalance.

The UN Special Rapporteur, Raquel Rolink, highlights in her report on housing and the financial crisis that Spain is one of the areas where banking facilities have promoted and financed the recent real estate bubble, and how the liberalization of the property sector has only worsened the consequences:

«In the United States, some large national lenders of high risk credit had core competence in the marketing and sales but not in the responsible granting of loans¹³. In other countries, such as Spain, although the mechanism and the credit system are very different, they practiced other forms of high risk loans: 100% financing of the price of the dwelling, initially interest-free mortgages for young people, etc.»

Rolink cites our poor government when reflecting on the liberalization of the management of real estate in the rental sector, demonstrating the inability to achieve, in matters of housing, any optimal market point through the principles of economic liberalism.

«In Spain, the liberalization of rent contracts, which started in 1985 with the Boyer Act and continued in 1994 with the Urban Rental Law had as its purpose giving facilities to owners, so that they would rent out their properties. However, this measure does not seem to have been totally productive or have served as an incentive for the rental market, and may have possibly gone against the duration of the contract period.»

The quote continues including Spain among the countries where the housing price index has shot up:

«The calculations displayed in *The Economist* gave the impression that prices of dwelling reached unprecedented figures in relation to incomes in Australia, France, Ireland, the Netherlands, New Zealand, Spain, the UK and the United States.»

And, finally, we once again cite our country, pronouncing some of the serious consequences of the process experienced in real estate and financial markets.

«In Spain, where according to the information presented by the General Council of the Judiciary it is estimated that the percentage of foreclosures will increase in 2009 by 194% compared to 2007; Latin American immigrants will be especially affected by the crisis. It is estimated that 180,000 families, originally from Latin America, are at risk of defaulting on their loans because of the high interest of their mortgages.»

2.2.3. Legislation, the market and the real estate bubble

Our legislation through the Constitution explicitly forbids speculation on real estate and land; therefore, the most usual practices in the Spanish property market should be deemed illegal.

We can define land or real estate speculation as the activity of buying or selling property by taking advantage of a fluctuation in price, i.e., making money from an investment without any productive activity. Buying at one price to sell at a more expensive one is, according to the definition, an operation not considered legal, even though it is a common real estate practice between agents and sales brokers of property, especially during the years of liberalization of the sector.

Another factor that contributes to speculation is the fact of keeping a rare commodity off the market when there is an increased demand for that commodity. In housing, having real estate that is not in use in areas where there is a high demand is another of the common practices that work in favour of speculation. It turns out, however, that these practices are protected by the same legislation that protects the right to private property.

Thus, a conflict may arise between different rights, and not all of them have the same legal defence. The right to private property is backed up by all the legal and political tools so that it is effective with practically no limitations. In many cases, defending the right to property treads on the possibility and ability to freely exercise other rights, such as access to housing. Private property is the basis of the capitalist system implemented in the West for centuries; it stretches around the world in this new phase of globalization through guidelines from the World Bank and International Monetary Fund.

In guaranteeing certain human rights we may be harming another needs or powers that are equally respectable. All rights entail responsibilities. The rights of every person are inalienable and undeniable until they affect the rights of other people. Our rights are limited or reach their limits where the rights of others begin. In this manner, we can establish the rights-duty duality as the relationship based on the opportunities to exercise our rights in society. Hence, every right entails some responsibilities; this is true in the case of the right to private property as well.

On the subject of housing, we have analyzed the reasons that limit the exercise of this right, and abuses in the housing and land market that have distorted the prices of access to housing. It must be the duties on property and land, which will not allow speculation. Therefore, we need to establish certain duties on property so that it does not become a hindrance when exercising the right of access to housing.

At the same time, the process of urban growth has led to increased supply and has resulted in a perverse economic process. The continued rise in the number of homes has not been accompanied by a decrease in their prices. But in addition, has generated a continuous and growing pressure on land and on the environment. Thus, urban territory has been one of the hardest hit during this housing bubble process.

The natural environment also needs to be protected from human activity. Certain housing solutions based on the new urbanization of land surface take surface area from an already damaged ecosystem. We are faced with another conflict: to guarantee a right to housing, we may end up harming the natural environment.

To alleviate the generalized difficulties to exercise the right to housing, and to influence high market prices, administrations – in the best of cases – have chosen to make a certain number of flats available to the public by a drawing, priced at theoretically socially acceptable prices but pushed upward by real estate market prices, which means they are far removed from the original building costs, i.e., their actual cost.

It is a policy of subsidizations, financed with public funds. It is not aimed at lower or disadvantaged classes, but intended to replace a small portion of the housing market with subsidized property. These flats are priced at a slightly more affordable price than others on the market and they are really only affordable for the middle classes for whom they are actually intended.

Only structural policies on land and real estate markets, which actually eradicate the root of speculation, will be able to influence market prices. Pricing policies will not be influenced by the use of policies of subsidization.

The first legislative acts and socio-economic agreements that seek to reinterpret the meanings and guarantee the meanings and commitments of the declarations of rights and the Constitution have emerged in Spain during the recent property boom. Among these (all in 2007) are the following:

- *Land Law (8/2007)* that repeals the law, until then in force, *Land Administration and Assessment Law (6/1998)*, both at the countrywide level throughout Spain
- *Right to Housing Act (18/2007)*, within Catalonia
- *National Pact for Housing (2007-2016)*, within Catalonia

The new *Land Law (8/2007)* abandons the land assessment criteria of the previous law (6/ 1998) that had generated high expectations for urbanization and that had facilitated speculation and increased housing prices. The Act of 2007 assesses agricultural land values based on the revenues currently generated by the current agricultural use by the farm, which brings about an important reduction in the assessment price of the land.

This *law* has aspects of certain interest (some of them recovered from earlier legislation) in relation to processes of urbanization, especially as regards the transformation of rural land into urban land, as well as situations that have to do with the involvement of the administration (expropriation or land rights), and including obligatory subsidized housing percentages.

There are no regulations or criteria for assessing land once its value has been incorporated into the overall value of housing, not even in subsidized housing. Homes already built (the vast majority of the real estate holdings in our cities) or the value of land is subject to the law of the market by the speculation and expectations created by the continuous growth of cities.

Moreover, although the *Land Law* appeals to the social function of property, it does not establish new criteria to make it effective.

The *Right to Housing Act (18/2007)*, in force in Catalonia, makes a realistic diagnosis of the real estate market drift in recent years. It places “sensitive social sectors such as youth, the elderly, immigrants and people at risk,” in danger of “exclusion from the right to housing.”

The preamble acknowledges that the causes of the crisis are «The failure of housing policies traditionally adopted in both Spain and Catalonia» that «from the second half of the nineties were revealed as clearly insufficient and overtaken by new circumstances.» It also specifies, «Measures continued to be adopted that merely promoted the construction of subsidized housing by the state housing schemes developed by the Generalitat, and the promotion of the acquisition on the open market by means of generalized tax deductions on the purchase, regulated by national legislation.»

The Right to Housing Act states, «A change of focus [...] in the most structural manner possible» and «is committed to creating a specific stock of affordable housing that meets the housing needs of citizens requiring it [...] at a price within reach of low and medium incomes». The ambition is that «Within twenty years, 15% of main homes will be used for social policies.»

Certainly the Catalan Right to Housing Act is imbued with a new social sensitivity that places its central objective as the needs of the people. The «structural change of approach» that proposes to influence prices by means of the volume of social policies (15% of housing) and by some measures aimed at strengthening the social role of real estate property, but which leaves intact the foundations of the free market.

Finally, the *National Pact for Housing* (2007-2016) is an important agreement between the administration and representatives of some 35 Catalan social, economic and political organizations to promote actions to make the new philosophy of the *Right to Housing Act* effective. The pact is framed into five main areas: 1) Improve access to housing, especially for young people, 2) Improve the conditions of the housing stock, 3) Improve the accommodation of the elderly and people with functional diversity; 4) Prevent social residential exclusion, and 5) Guarantee decent and adequate housing for poorly equipped households.

In all these Laws and Pacts, actions to alleviate the situation prevail instead of a veritable structural measures intended to avoid speculation in the housing market.

Currently, in the area of housing and in order to offer solutions to needs, improve living systems, reduce social inequalities, and ensure the correct use of resources that are vital as well as common, we must devise a new structural policy that modifies the foundations of a market with an “economistic” orientation.

To make the right to housing effective and avoid the highly negative effects of speculative real estate markets, we need to start from new foundations based on the concept of this right.

2.2.4. Social movements and a new dimension of the right

During the convulsion of the property market since the deregulation legislation of 1998, citizens have demonstrated in various ways to denounce the injustices and growing abuses in the area of housing. Social movements have been the main engines of progress in human rights. It would now be good to analyze the arguments about housing that have arisen in recent public movements:

The assemblies that are grouped under the banner *de V de Vivienda* have been concentrated in massive demonstrations in all the capitals of the Spanish state ever since the start of the housing bubble. They have demanded the real ability to exercise the right of access to housing by middle and lower income people. They have made a critical analysis of the deregulation process that was poisoning the housing market and demanded structural changes in both the law governing that market, as well as in how the mortgage market functions. They have called for transparency and citizen participation in this process.

Numerous platforms of citizens organized to fight against specific development plans have also appeared throughout the territory, which have received less widespread support within the movement for decent housing, because the subject involved is generally a local or regional matter. They provide a vision on the surrounding area, environment and land, which is not linked to economic development and urban growth, but focused on proper land management and protection of heritage, with sustainability criteria and vision for the future. They defend a collective right to manage land and respect the natural environment.

These local movements have had varying degrees of success in attaining their objectives, depending on the case. Some citizens' platforms have been able to encourage some change of direction in the proposals of their governmental administrations to a greater or lesser degree.

Others, regardless of their ability to arouse the attention of public opinion, have failed to prevent the onset of development plans. Some platforms have been criminalized due to the confrontation they have demonstrated with regard to governmental positions and, quite often, they have faced judicial processes and the fines that accompany the mobilization of these less heard groups.

Another highly heterogeneous social movement, which is a personal choice in the strategy to obtain housing, is the squatters' movement, which has been progressively criminalized in the same period in which market influences, inflation and speculation have been predominant.

The principles of this movement are based on the reuse of empty spaces as individual means of obtaining housing, and as a collective claim over those empty sites for the articulation of social life in neighbourhoods, as the creation of an alternative culture to urban and economic growth and the eradication of speculation, starting with the areas occupied by squatters.

The official response to this third movement is an outright refusal to all of its practices, using large amounts of public money to vacate and wall up occupied buildings recovered for use, without any alternative or feasibility plan for the property that often goes back to being closed and abandoned, thereby actively contributing to land speculation.

Policies to ensure access to housing must be supported by a large proportion of the population, while considering the main demands of social movements that have been and are creating a debate about how to provide solutions to needs.

A sufficiently large proportion of society can bring about changes in political, legislative, and economic regulatory policies of that society. The legal system can provide the tools to ensure the fulfilment of our rights. Civic awareness and critical and transparent public analysis are guarantees of a society that is moving towards fulfilment of this.

3. THOUGHTS ON HOUSING

Housing is a central element of people's lives, both in its personal dimension, as well as in its social dimension.

In fact, the need to inhabit or occupy a place to live is not exclusive to the human race, but is a biological necessity shared by other animal species. Building one's own nest, or obtaining or creating a dwelling is the event that certifies the attainment of maturity and possibility to reproduce.

In humans, the role of housing is even more important because it is usually the framework for developing one's own life project, and goes beyond mere biological and reproductive functions. As societies have become more developed, the functions of housing have become more diverse and complex, so today we must transcend the meaning of dwelling as, "a place to live", and incorporate the concept of home "where one's own life project is developed."

Housing is a necessity that must make it possible to live one's life with decent health and personal development. In Western societies, housing also plays a certain legal role related to obtaining political and civil rights, and is usually a very important element for stability or professional development. Not having housing places people in difficult situations, forcing them to live in inadequate conditions.

The difficulties in obtaining housing in decent condition are probably the main cause of foregoing life projects and constitute veritable limitations to people's development. Without an adequate solution to housing, without public sanitation services, without an address where one can be found, a place to locate belongings, without a standard that allows one to acquire civil and political rights, it is very difficult to achieve a life project and maintain work options.

3.1. The basic functions of housing

In current developed societies, housing is a place to carry out many physiological and vital functions, and is an area of personal development. It is also, however, an important investment in which major economic, personal and group efforts are made. It is also the demonstration of our settlement in a region and space in which many facilities and services converge.

Both the government (laws, regulations and subsidies), as well as economic and social actors, often confuse functions that are different in nature (in particular, the *right to housing* is identified with that of being a *homeowner*). This confusion distorts the arguments of the debate and distracts attention from valid alternatives. Only functions related to the needs to enjoy a decent life in decent conditions enable the establishment of criteria on which to sustain the *right to housing*.

Below are the different functions of housing; to substantiate the argument of the right to housing three main groups can be established:

a) *Life project functions*

These contribute and enable one to implement a freely chosen project. These are the features that justify, and on which *the right to housing* is established.

Among the life project functions, we can include:

Basic physiological functions are those required by all living beings to maintain their basic vital functions (eating, sleeping and shelter); among them, are reproduction and rearing of young.

It is difficult for humans to articulate other higher functions of their life project without having covered the basic physiological functions.

Functions of cohabitation are related to the establishment of families or other freely chosen or accepted relational groups. We are speaking of emotional ties and solidarity, the ability to share and taking in people from outside the group (hospitality), among others.

The *functions of personal projection* are those that, from housing cover needs of a psychological nature, such as security, stability, intimacy and ability to communicate. They are functions that provide items of appropriation of inhabited space. In this regard, we can say that the *house* becomes a *home*.

These needs and functions make possible others that are fundamental for the proper development of the life project, such as rest and recreation, studying or professional growth.

b) *Socioeconomic functions*

Developed societies today are based on activities and socio-economic relationships with the greater complexity and intensity than in previous eras or in more primitive societies. In recent centuries they have evolved from primarily rural societies towards largely urban societies, which has brought about great changes in the environment, urban planning and economic activity related to housing.

Urban planning (environment and services)

Housing is one of the essential features of planning in urban areas. In addition to determining the settlement of the population, it generates needs for public and private services and facilities and conditions the employment equilibrium with its environment and generates mobility flows. In addition, housing must be respectful of the natural and cultural heritage.

Economic activity (construction industry and associated activities)

In developed countries, urbanization is the engine of the GDP. The occupation of the territory is in line with planning and licensing, and specialized construction activity creates a powerful

economic sector. Meanwhile, the huge resources put into play, and the number of jobs generated by this sector seems to justify the primacy of socio-economic role of housing over other functions.

Construction mobilizes a very important part of a country's financial resources and contributes a large number of jobs (over 10% of the Spanish economy). Therefore, governments are very sensitive to the economic evolution of this sector and its related activities

Construction is also the engine of other sectors: industrial (manufacture of materials, component and systems), installation (water, electricity, heating and air conditioning, elevators, communication, security, etc.) and services (financial, administrative, cleaning, maintenance, and so on).

It is not easy to resolve adequately the interrelationships, conflicts and opportunities between housing and planning. In general, when economic functions take precedence over functions related to life projects, planning becomes unsuitable for people and shows little respect for the environment.

Investment (and the possibility of speculation)

In cities, land becomes a scarce and strategic good and, often times, undergoes a continuous increase in valuation due to the increasing centrality that the successive enlargements of cities create. This means that with the evolution of the free market, prices tend to grow driven by urban land value. That increase is associated with factors such as greater centrality, or the improvement in services or the quality of the environment (result of a group effort), which are aspects completely detached from the value of the building.

In rural societies, housing also has an undeniable character of investment built up over relatively abundant land; its value is associated mainly with the value of the building and its state of maintenance.

Expectations of continued increase in value of urban land lead to the temptation to use the property no longer just as an investment good (a type of "piggy bank") but also as an object for speculation. In this case, the function oriented towards people's life projects remain in the background and a serious difficulty in obtaining housing originates, even though there exists, at the same time, rampant construction and a large amount of empty housing.

The growth of the economy and GDP cannot be in and of themselves one of society's objectives, and even less so when involving a decrease welfare. (See Table 2).

c) Intermediate functions

These are the functions that meet intermediate objectives midway between life project goals and socio-economic interests, for example: the inheritance of the dwelling itself, homes for professional use, or holiday homes.

Often times, these intermediate functions serve as excuses for certain hegemonic groups to avoid taxes or regulations that affect them. For example, for purposes of inheritance taxes, it is not the same for someone who inherits a whole estate of houses as for a person who inherits the house in which they live.

Therefore, in regulating the right to housing, we must be very careful in how we treat intermediate functions, sorting out life issues from economic issues.

The primary purpose of housing is to be occupied. Currently, it has also become an economic asset and an investment good. One of the components of the housing is land, the land on which it sits, and this is a rare commodity. And in an environment of increasing demand, this scarcity can turn the house into a luxury good, thereby increasing its price. This association makes real estate an asset for any company balance, and also constitutes the main financial holdings of the families of our country.

Table 2. Basic functions of housing	
a) Life project functions	Functions
Basic physiological functions	Eating Sleeping Shelter Reproduction Rearing
Cohabitation	Life together Emotional ties Hospitality
Personnel advancement	Security and stability Intimacy Communication Rest and Leisure Professional advancement
b) Socioeconomic functions	Functions
Economic activity	Contribution to GDP Industrial activities Facilities and services Job positions
Planning	Relationship with environment Equipment and services Balance of activities Mobility
Investment good	Family investments Inheritance of descendents Speculation

This investment product is generally associated with a particular type of housing: single family, durable, ownership, etc. In this manner, a house has become a good investment that meets certain specific characteristics, suitable for a product that can easily be bought and sold: 3 or 4 bedroom size dwelling, with standard quality, without really being designed to adapt to the needs of diverse individuals or groups that may inhabit them. This function of housing as an investment good is a veritable distortion of the basic role of housing that can be added to the many difficulties of gaining access to housing.

The functions that we call life project are the only ones we have to consider at the time of analyzing and redefining the right of access to housing.

3.2. The concept of a decent dwelling

The definition of decent housing contains technical parameters such as minimum space in square meters per person, adequate energy supplies, water, drains and conditioning. Most importantly, at the legal level, a certificate of occupancy that guarantee the fulfilment of these parameters. The concept of decent housing must also incorporate other aspects such as the cost of obtaining housing is at most 30% of the salary, which is the figure that is considered a percentage that allows one to live in dignity.

This is stated by the V de Vivienda assemblies, with the proposal of between 20 and 30% of salary. Certain public bodies that promote renting set a maximum of 30%, which they consider will constitute a guarantee that the tenant will not stop paying for lack of resources in times of economic difficulty.

Newer definitions also pose other parameters related to free choice of group living, or territorial de-localization. The latter parameter is in connection with the maintenance of networks of personal relationships and the subjective quality of life in a particular environment.²

Housing is a necessity for humans. The concept of home includes all the connotations that allow people to be productive, develop human capacities, both relational and of survival and reproduction.

The main structural or inherent aspects in *residential satisfaction* are: 1. Intrinsic characteristics that meet the housing needs of residents, 2. That the economic effort involved allows the development of the remaining dimensions of people's lives; 3. That the location of the housing enables personal networks to be maintained, 4. That the environment (natural, human, facilities, services and mobility) provide an added value of quality.³

Together, these aspects go beyond the concept of decent housing (physical framework where one lives) and shape the concept of living with dignity (the experience of living).

The total fulfilment of all these parameters in the choice of housing is nearly impossible under the current market conditions. The economic role of housing has placed it at a price beyond the reach of middle and low wage earners, forcing most of the citizenry to make one or more sacrifices in some of the parameters that define residential satisfaction.

The main *sacrifices* observed when different people desire to access housing are: renunciation of independence (as is the case for many young people in recent generations that constitute an invisible demand), forced cohabitation (the case of many immigrants, young people or couples who are separated), residential expulsion to faraway areas and the consequent loss of networks of relationships (especially unfortunate in the case of couples with children or people with dependencies), inadequate housing (frequent for younger or older people).

The sacrifices are largely caused by "economistic" trend that overlays the socio-economic functions of housing over the functions related to people's life projects.

3.3. Cohabitation and social network models

We are experiencing a change in *models of cohabitation*, with a decline of traditional forms of family and a growth of multiple new ways of living that cannot meet their needs with the single-family model, indiscriminately repeated by builders and primarily conceived with real estate market criteria in mind.

2. For instance, in "The problem of housing ...", CECBLL, 2008.

3. See the ideas that sustain these arguments in "The problem of housing ...", CECBLL, 2008.

Indeed, the dominant construction trend has been clearly focused on building standardized housing, both in concept and design and size, so that they fulfil their economic role and adapt to the investment good model. Meanwhile, people living alone, those living in non-family groups, the elderly, and others have no creative or economic offers adapted to their needs.

Moreover, it is also important to note that the location of the housing conditions of the maintenance of family and social networks. In fact, this issue is part of a wider set of aspirations: to facilitate access to strategic points in the lives of people, which in practice are usually family, friends and the workplace.

The maintenance of networks of personal relationships provides security, promotes the establishment and mutual help and strengthens elements of personal significance and identity, as well as social cohesion.

In the previously mentioned study by the Baix Llobregat Study Centre, we see how the breakup of family and social networks is the sacrifice entailing the greatest effort for people in search of new housing.

4. THE EXERCISE OF THE RIGHT TO HOUSING

As we have seen, the right to housing is, nowadays, a right recognized in the Universal Declaration of Human Rights (UDHR, Article 25.1) and in the constitutions of most developed countries, including Spain.

Article 47 of the Spanish Constitution makes a general statement, “All Spaniards have the right to decent and adequate housing.” It grants authority to make this right effective, “Public authorities shall promote the conditions necessary and establish appropriate standards in order to put this right into effect.” It points out the regulation of land as a way to prioritize the public interest and prevent speculation, “Public authorities shall regulate land use in accordance with the general interests of society to prevent speculation.” And, finally, it refers to the socialization of benefits, “The community will participate in the gains generated by urban planning activities by public entities.”

To ensure that housing meets its social function: i.e., to be inhabited, we need a change of perspective that leads to the eradication of improper practices in the housing market, the poor usage of urban land associated with speculation, market abuse, the excess of unoccupied housing, and unjustified urban growth, among others.

The overvaluation of land in areas of special interest and high demand, and consequently of homes and buildings that are built on it is due either to human intervention on that territory (centrality, services, communications, environment), or natural causes (climate or landscape).

Speculation would not exist if the urban land was publicly held or owned, so only the buildings that are constructed or its use, are marketable, i.e., object of exchange in a market context. Any policy that aims to prevent speculation should be based on the radical consideration that the goods offered by nature, or those who have obtained an overestimation due to community activity should not be an object for private enrichment. This land would be exempt from speculative temptations.

4.1. Prioritizing the legal use of property

In the case of housing, we see a conflict between two fundamental rights: the right to housing and the right to private property. They are certainly not incompatible rights if their limits are properly established and rights balanced with duties.

Indeed, in the Spanish Constitution the right to housing is not associated with its ownership or any other tenure. But, it can truly be affirmed that the right to property is much better established in Spanish case law and in most countries with a market economy, whereas the right to housing is still an emerging right.

It is proper then to encourage housing solutions related to its use to the utmost, over its economic function, and emphasize people's life projects. In short, the legal usage of housing should be made a priority instead of simply its ownership; housing should be considered as a necessity for people, not as a good investment.

Because the economic view enjoys comprehensive legislative protection for being recognized and effective, we must encourage other forms of tenure to promote more flexible use with less investment effort, even though that may provide lower business expectations for real estate.

A creative, demanding and responsible industrial sector, committed to defending the right of access to housing, would aim at creating construction models and diversified regimes of tenure to meet the needs of different individuals and cohabiting groups. This is a very unattractive offer for the speculative market, but adequate to meet the needs of people.

4.2. Housing costs and criteria for a non-speculative market

Housing, like many of the goods we produce and use, has components that come from two sources: the first are provided by nature, i.e., natural resources used to produce the good, and others from human beings, comprised by the work of those who have produced that good. In housing, the resource provided by nature is the land that is built on and the natural surroundings. They are a scarce resource, likely to be in high demand in an urban environment, and to become the object of speculation.

The components of housing that come from nature have a great strategic and reference value, and must be managed collectively with the utmost care and minimum affectation. They must be considered collective goods. The most important of all of them is land, but climate, environment, landscapes and other similar analogous aspects must be taken into account.

There is no justification for the private appropriation of goods freely offered by nature and even less for not establishing regulations that eradicate speculation. This is the case of land where housing is built. A theoretical ideal would be for all urban land to be publicly owned, recognizing only the ownership of the homes and buildings constructed on it.

The components that are products of human labour are those used to provide materials and construct the building (the construction itself) and those that provide management services (technical, sales, financial, etc.). But the products of human labour also include land conditioning (urbanization), and all the infrastructures and services that enable the dwelling to be used (access, roads, facilities and installations for water, electricity, gas, communications, etc.). Everything that is the fruit of work should be rewarded; it must be evaluated regularly as is done in different economic sectors, and a reasonable remuneration of capital also considered.

The work that enables urbanization, construction, services and conditioning of a city are factors that should be the main cost of access to housing. This is reflected in rural societies, where land is relatively abundant in relation to the needs of a dispersed population so human efforts at construction became the main factor of production costs of housing.

Excluding the value of the land price from urban housing, it would adjust to its production costs. This measure would make the access to housing affordable for most people.

Considering the origin of these two components of housing (gift of nature, the fruit of human labour) assessments should be based on the following criteria:

Land transformed for human uses (agricultural, urban and even forest exploitation), incorporates human labour costs. Land cannot be attributed value by simply being a desired natural good, but

rather by the cost of the work which has led to the transformation and adaptation to current activities (and in any case offset by depreciation and maintenance activities).

In the areas of high concentration, there are or occur, locations that generate high economic prospects due to their significance (historic centres, emblematic buildings), ease of travel connections (railways, motorways, ports and airports), or their location (centrality, area services, the environment, landscape quality), quality and maintenance. These factors must be considered (the opportunity and scarcity value) in order to allocate the capital gains generated for the benefit of the community. This opportunity value was generated by the cost of labour that, over generations, society has invested in the territory.

The assessment of the buildings already in use should be on the basis of the update of work accrued or based on the assessment that it may cost to do this now, considering depreciation and maintenance.

Following this assessment of speculation-free property, the cost of renting would include over the years, a decrease following the depreciation of the initial investment in the buildings and, on the other hand, a gradual increase in maintenance costs.

Moreover, certain unique natural resources belonging to private owners who have inherited previous historical rights should be left out of any possible speculation, because they are scarce resources needed for social welfare.

4.3. Principles for assessing housing

As seen, housing is, initially, an essential good linked to people's life projects and is considered, therefore, a human right.

But housing is also a good linked to land (not mobile, fixed), and the value of urban land is linked to various factors such as its centrality, ease of travel connections, area services, quality and significance of the natural environment. Housing also has a value in itself in terms of quality and significance of a building itself and its own services.

These factors, which change over time, provide the basis for a market assessment that does not simply correspond to the cumulative value of work on buildings and on land, but includes the value of opportunity and/or scarcity, the value of the land and, with it, the option to speculate.

Urban speculation rests mainly on urban land. The basis for eradicating it probably lies in how this land is valued. The best way would be to not include the land as part of the property of dwellings, and consider it a good of public interest.

Understanding that access to housing is currently exercised in a real estate market based on the right to private ownership of land, the challenge lies in how to condition, in an urban environment, the real estate market so that the differences between the value of the use of the property and its market price does not result in abuses that generate serious social problems for accessing housing.

It is fundamental that we break down the value of housing to ascertain separately the value of land and buildings. Their analysis, done separately, will aid in obtaining new references for adjusting the value of housing on the market, whether purchasing, renting, surface-rights or other conditions or deals, such as urban tenancy or reverse mortgage.

Consistent with the previously stated arguments, it seems fair to reward what human work has meant, such as construction or urbanization. It also seems necessary that nobody has exclusive rights to the uses or the benefits of natural assets (as in the case of housing or land). To avoid misuse and speculation, capital gains must be regulated, which is provided for in Article 47 of the Constitution.

Normally, the **building value** corresponds with its updated cost (adjusted for devaluation, maintenance and improvements). The opportunity factor in building has little significance outside of some special situations such as buildings that have become personal assets.

In contrast, the **value of urban land**, in addition to the *updated cost of urbanization*, including a significant *opportunity value* related to centrality, travel connections, quality and maintenance of the urban environment or the natural environment that, in privileged situations, can be very high. In some cases of unfavourable environments (degraded districts, rural areas in decline), a negative opportunity value may decrease the value of land.

Indeed, the value of the building essentially responds to investment effort and costs of maintenance and improvement, which are paid by the owner. In contrast, the value of urban land, mainly tied to the quality and maintenance of the environment, infrastructures and services provided by the city, is funded by the community.

City maintenance costs paid by the regular tax on housing and real estate (the current IBI) should be based on *land value*, and also consider the *opportunity value*. The maintenance and improvement of cities increases the value of urban land, with higher incidence where the opportunity value is greater.

4.4. Property taxes as a reference: a proposal

The cadastral assessment distinguishes between the **value of buildings**, usually coinciding with its *updated cost* (objective), and the **land value**, which includes the *updated cost of the urbanization* and the opportunity value; the latter is much more difficult to objectify and currently depends on the free market.

We understand that the way to establish an equitable distribution of burdens (city maintenance taxes) and real estate benefits (sale price, rental, etc.) of housing is to place all of them in reference to a common and transparent base of land assessment that must respond to the **cadastral assessment**.

Presentation of the proposal:

The component of the cadastre *value of land* could be determined by the owner within established margins and it would become the basis for calculating the standard tax on homes and properties intended for maintaining the city (current IBI). The component of the *value of the building* outside of special cases such as those declared to be of patrimonial value should not intervene in the city maintenance tax, as it is the owner who carries out the maintenance.

The *cadastral value* and its components should be the valid reference for the sale and purchase (land price value, of the building, or the whole), rents, surface rights, etc.

Thus the component of *land value* of the cadastre would have repercussions, on the one hand, on tax contributions to city maintenance (the higher the *land value*, the higher the contribution would be), and, on the other hand, it would be the maximum value that the land could be taxed for sales, purchases and rents (the higher the *value of land*, the greater the possibility of benefits). This would balance the obligations (taxes) and profits (sales, rental), i.e., the rights and duties.

The standard tax on housing must meet the normal needs for maintaining and improving the city and, probably, will be higher than the current one. Paradoxically, with the end of the dynamic of expansion of the property sector, greater shortage of urban land, and the end of the new building licenses (which create more maintenance needs for the near future), city councils have faced a lack of sufficient resources to maintain today's cities. Municipal administrations cannot finance the maintenance of cities based on urban growth. The forms of inspection and action by administrations must cause us to consider the opportunity to purchase land in any transaction of sale of properties. This measure would have the following results: people could acquire property without the necessity of buying urban land, which means it would be more affordable; there would be a progressive

transfer of private land to public land; the housing stock on public land would gradually increase, and not be subject to the free market.

If we take the cadastral register as a reference, the administration would have the power to intervene in case of sales or rents at higher prices, to ensure that there is no speculation with the *land value*.

Making the property tax a valid reference and providing the administration with the aforementioned incident would contribute the following positive implications:

- It would balance owners' rights (potential benefits) and obligations (contribution to city maintenance). It would increase municipal tax income, while containing prices to access housing.
- Capacity of withdrawal by the administration to obtain priority in the purchase of urban land and turn it into public land. Greater capacity to intervene to prevent an increase in speculation on land prices in the event regulations or violated.
- The freedom to set the value of land in the Land Registry, within margins, providing some flexibility to the market, while giving autonomy to adapt to family economies.
- We should foster a better understanding of citizens of the city's maintenance costs and greater co-responsibility and participation.

5. RECAP AND FINAL RECOMMENDATIONS

The right to housing is present in the Universal Declaration of Human Rights (1948), and is recognized in the Spanish Constitution (1978) and in the Statute of Catalonia (2006). However, tools are needed to guarantee the exercise of this right.

Housing is not merely shelter, but rather is also the space where the life project functions are developed. The conditions for residential satisfaction are not only physical (decent housing) and economic (affordable housing), but also include empirical aspects (choice of group living, maintenance of networks of relationships) that make up a new dimension of what it is to live with dignity.

For many people, access to housing involves numerous sacrifices of residential satisfaction factors. The majority of the sacrifices are limited to economic capacity. Problems associated with housing have worsened in recent years.

The process of liberalization of the property market experienced in recent decades has resulted in great economic growth driven by increased construction of housing and a reduction in people's residential satisfaction. Housing prices have become distanced from their costs and have reached a level unattainable for most people. The offer is very uniform, and conceived for an investment market, which is inadequate to meet varied individual demands as well as those of various cohabitating groups.

The model of urban growth, which has also been the manner for financing local governments, has brought a negative impact on the land without ultimately contributing to the creation of prosperity.

Land is the main resource of the community where people settle and develop. The rapid and uncontrolled exploitation of this resource not only affects the present generation, but also constitutes a serious mortgage for future generations.

In the current circumstances, it is possible to find feasible solutions to obtain housing for everybody removed from the excesses of the housing market and urban growth.

The transformation of the property and land market in order to implement the right to housing requires measures with a legal, legislative and economic foundation that are outside the scope of this brief paper. However, it is essential to progress in the following practical aspects:

Placing the emphasis on the use of housing

To achieve the goal of the housing stock supplying solutions to the needs of the population, its use must be prioritized; its use, regardless of forms of tenure. And, as a corollary, the reuse of all spaces must be encouraged instead of allowing a speculative disuse.

Forms of tenure in relation to the use of housing, not necessarily associated with their ownership, should be promoted. These require a smaller investment effort and provide greater flexibility for both people needing housing and for government and the economic system in general. These solutions are especially appropriate at a time when there is an overproduction of real estate and a significant stock of empty housing.

Transparency and publication of data in reference to housing

Most citizens, as well as politicians, accept the market prices as if they were objective values, although they are often the result of speculation. In the current crisis, the prices (market) have started to drop, but there is still a margin between their current speculative price (now lowered) and its updated cost.

It is, therefore, of great importance to establish and publicize the *construction cost* of housing as a reference for all assessments of the *updated cost* of housing, rents and property tax valuations. This responsibility should lie with the authorities, in co-operation with professional associations and industry associations.

Transparency is needed on ownership of urban land and buildings that incur some of the practices we have defined as misuse or abuse, in order to demand accountability.

Seriousness in land registry references

Given the need to end arbitrary prices, cadastral assessment should be used to establish a reference for valuation as well as for establishing city property taxes (current function), as well as for limiting the values of transactions and calculating rents.

The registers must fit with the *value of the building* at its *updated cost* in the most objective way possible and in an exercise of finding the balance between rights and duties, and as the common basis *land value* used both for determining the tax contribution to the maintenance of the city as well as for establishing its market value.

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