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# Homeless in Europe

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**The Right to Housing:  
The Way Forward**



FEANTSA



## Awaiting the Spanish miracle: Reflections regarding the United Nations report visit

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The UN Special Rapporteur on adequate housing, Mr. Miloon Kothari, visited Spain in November of 2006 as a guest of the Spanish Government. The function of Special Rapporteur on the right to adequate housing was created as a result of Resolución 2000/9 by the United Nations Commission on Human Rights. The mandate of the Special Rapporteur focused on evaluating the right to adequate housing as part of the right to an adequate standard of living as reflected in Article 25 of the United Nations Universal Declaration and in Article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The ICESCR, and the obligations it entails, entered into force in Spain on 27 July 1977. In addition, Spain has ratified other international mechanisms that contain provisions regarding housing, like the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (Arts. 13 and 14.2), the 1989 Convention on the Rights of the Child (Art. 27.3) and the 1965 Convention on the Elimination of All Forms of Racial Discrimination (Art. 5.e). Article 47 of the Spanish Constitution (SC) of 1978 refers very particularly to the right to decent, adequate housing:

*"All Spaniards have the right to enjoy decent and adequate housing. The authorities shall promote the necessary conditions and establish appropriate standards in order to give effect to this right, regulating land use in accordance with the general interest in order to prevent speculation. The community shall have a share in the benefits accruing from the town-planning policies of public bodies"*

### WHAT DOES THE REPORT SAY?

Paradoxical to the potential of Article 47, the conclusions of the United Nations Rapporteur 30 years later are alarming. The following issues related to the violation of the right to housing were raised:

#### • Vacant dwellings

The number of dwellings built has exceeded 600,000 units per year since 2001, reaching 900,000 units in 2005. This figure equals those of France, Germany and the UK combined. But in addition to this chilling figure, it must be noted that the official number of vacant dwellings in Spain reached 3,091,596 in 2001, 25.5% more than in 1991.

#### • Shortage of social housing, particularly rental housing

At the start of the 21<sup>st</sup> century, social housing for rent accounted for barely 6.3% of all residences, compared to the European average of 13.7%<sup>2</sup>.

#### • Affordability

Housing prices rose 202% between 1995 and 2007. However, this increase was not matched by the population's income growth<sup>3</sup>. Housing prices are estimated to have risen 86.4% from 1997 to 2002, while wages increased only 15%.

The report highlights the following specific problems:

#### • Speculation

According to the Bank of Spain, land prices rose 580% and housing prices rose 150% between 1998 and 2005. Moreover, the implementation of the euro made it easier to launder money through the construction industry.

#### • Corruption

The report indicates that the lack of resources of local authorities contributed to the use of rezoning as a source of funding for political parties. It also notes that some politicians and civil servants took advantage of this situation for their own personal benefit.

#### • Housing harassment

This phenomenon affects, amongst others, tenants living in dwellings subject to old rental agreements (which establish the undefined duration of the agreement at prices considerably below market prices) or tenants of dwellings that may be subject to a change of use (hotels, offices, etc.).

In this context, the groups most affected by housing policy in the last 30 years have been women, young people, the elderly, the disabled, Roma, immigrants and homeless people. Official estimates place 21,900 people in the latter group. In addition, 2001 census data indicates that in Spain there are 112,824 people with no running water in their homes, 13,002 people living in buildings that are in a ruinous condition, 13,650 in deficient conditions, and 25,839 in poor conditions<sup>4</sup>.

The report by the United Nations Special Rapporteur paints a bleak picture, which reveals that we have failed to meet the three clear positive mandates<sup>5</sup> stemming from Article 47 of the SC: namely, to protect, promote and ensure the right to housing. Nor have we fulfilled the negative mandate of not violating this right, basically because we have failed to promote the "necessary conditions" or the "relevant regulations", nor have we avoided "speculation". All told, these factors have made it difficult to make the right to decent and adequate housing a reality for a large part

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2 Derecho a la Vivienda y políticas habitacionales. Informe de un desencuentro. Observatori DEDC. January 2008.

3 Derecho a la Vivienda y políticas habitacionales. Informe de un desencuentro. Observatori DEDC. January 2008.

4 Derecho a la Vivienda y políticas habitacionales. Informe de un desencuentro. Observatori DEDC. January 2008.

5 <http://www.derecho.org/files/original/repaso%20al%20informe%20del%202006.pdf>

6 Juli Ponce, Prologar Spanish version, *Housing Rights and Roma Rights*, Patrick Kenis, Associació ProHabitatge, June 2006.



of the population. This is not solely the responsibility of the Government, since the Spanish state is a decentralised state with 17 Autonomous Communities and 8,000 municipalities with competencies that have a direct influence on housing policy according to Articles 148 and 149 of the SC.

### FUTURE PROSPECTS

Such is the balance with the United Nations' mandate regarding the right to housing after 30 years of democracy in Spain. What does the future hold in store? The report by the United Nations Special Rapporteur cites the new Land Law 8/2007 by the central government and the recent approval of the Technical Building Code concerning renewable energies as examples of good practices. Moreover, the Ministry of Housing is currently making changes to the Horizontal Property Law, the Code of Civil Procedure, and the Urban Leasing Law. One of the objectives is to expedite legal eviction proceedings as an argument to spur the rental market, but we hope that the Government will develop more preventative policies. We must also state that successive Spanish governments have failed to ratify the 1996 Revised European Social Charter, and they have not signed and ratified the Additional Protocol of 1995 establishing the system that provides for collective complaints. This is a hindrance to improving the effective application of the right to housing. Gaining greater European commitment in social matters is one of the Spanish executive branch's main "unfinished tasks".

The Special Rapporteur also cites experiences in the Basque Country and Catalonia as good practices. These Autonomous Communities show us two different strategies that seek to achieve the same right. In the Basque Country, the new draft housing law has chosen the Scottish way, which calls for ensuring the rights of its citizens by law to housing by 2012. However, it appears that this initiative has not achieved sufficient political consensus for now. For its part, Catalonia approved the Housing Rights Law 18/2007, which does not acknowledge the enforceability of the right to housing by the courts, but has been combined at the political level with the 2007-2016 National Housing Pact with developers, professional associations, political parties and social institutions in a bid to meet the objectives achieving the greatest possible consensus. This law features measures such as Title V, "On public housing protection policy," based on the French *Solaires et Renouvellement Urbain 2000* (SRU) Law, and Title IV, "On protecting consumers and users of housing," Article 45 of which transposes the European Anti-discrimination Directives, thus linking civil and political rights to economic, social and cultural ones. In this way, "All persons must be able to have access to a dwelling and occupy it provided that they meet the legal and contractual requirements

applicable to every legal relationship, without being subject to discrimination, either direct or indirect, or harassment." Harassment is understood to mean "any action or omission involving the abuse of law whose objective is to disrupt harassed persons in their peaceful use of their dwellings and to create a hostile environment against them in material, personal or social terms, with the ultimate goal of forcing them to make a decision against their wishes with regard to the right to occupy the dwelling to which they are entitled." For the purpose of the present law, housing harassment constitutes discrimination. The unjustified refusal of a dwelling's owners to collect rent is a sign of housing harassment."

Thus, these two Autonomous Communities may be viewed as being at the forefront in legal terms when it comes to housing rights in Spain. But all of us are aware that in order to make a law effective, a budget is needed to enable its development and political will is even more vital. We are now coming to the end of what has been called the "Spanish Miracle." Spanish growth has rested on two pillars over the last decade: the construction industry and domestic consumption. Clear signs of a cooling off of domestic consumption and loss of investment are being shown in 2008, particularly in construction, and more specifically in housing construction. According to the Euroconstruct<sup>7</sup> group, forecasts for 2008 and 2009 show a lengthening of the "readjustment" with a fall in production of at least 15% (a large stock of dwellings for sale, but scant inclination by banks to finance house buying, and growing unemployment). For now, the construction industry is resisting major housing price cuts which, according to various agencies, should range from 20% to 30% over the next 4 years<sup>8</sup>. For their part, government administrations will suffer greatly, as 10% of total government revenues comes from real-estate transactions and 22% of the resources of local governments is linked to these transactions<sup>9</sup>.

This context calls for deep reflection at the political and professional level on why poverty has not declined during the period of economic growth, and still remains at about 18.9% of the total population. Where have we gone wrong?

In order for the right to housing to become a reality, more government intervention is needed, and above all, it is necessary to reformulate housing policy with a new, more general study framework, as it is affected by aspects such as the property rights regime, housing finance regime, residential infrastructure regime, regulatory regime, and housing subsidies/public housing regime.<sup>10</sup> To paraphrase Einstein: "If you want different results, don't keep doing the same things over and over again." Meanwhile, there are people who will still be waiting for a miracle to happen.

7 Euroconstruct Report, July 2008.

8 An adverse global scenario intensifies the slowdown of the Spanish economy, José Luis Gutiérrez, IREHA Study Series, July 2008.

9 Public Housing Policy, Miguel Ángel Casallo, Basque Government, 31 May 2008. Seminar: How to Secure Decent Housing?

10 Housing Law and Policy Initiative, Patricia Reina, Clavin Press, April 2008.