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Wellington Migliari  
*University of Barcelona*, wemigliari@gmail.com

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## **NEW FORMS OF INEQUALITY IN CAPE TOWN: A COMPARATIVE ECONOMIC AND LEGAL STUDY TO DEFEND THE RIGHT TO HOUSING**

**Wellington Migliari<sup>1</sup>**

### **ABSTRACT**

Inequality has been a topic in the core of many studies about urban development. Different theories contributed enormously to innovative reflections on the 2008 global financial crisis. However, the perverse economic practices on city construction and the housing issues remain. The aim of the present article is to show how far the right to housing in Cape Town has been affected by risky real estate investments. Unemployment rates, public money being involved in the property market and mortgage system for speculative purposes are some of the dependent variables that can shed light on these new urban forms of inequality in South Africa. The usufruct of the right to property in Brasília and Terrassa, two models of spatial development in Brazil and Spain, respectively, leads us in the debate.

**KEYWORDS:** the right to housing, social function of property, urban development, property rights, risky real estate market

### **1. STRUCTURAL INEQUALITY IN URBAN DEVELOPMENT: LESSONS FROM THE CONSTRUCTION OF THE BRAZILIAN CAPITAL**

The City of Brasília was designed to be a sign of the most modern urban plan and architecture in Brazil during the 1950s. Nevertheless, its entire project represents in part the history of how a political agenda had been dictated by economic and power interests. Long before President Juscelino Kubitschek took office, the use of the state budget to construct the new capital in the middle of nowhere and promote the idea of a modern urban settlement was a consensus among the Brazilian *intelligentsia* after a long debate among the Brazilian elites.<sup>2</sup> It is also important to say that the spatial transformation

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<sup>1</sup> Ph.D Candidate in Law and Political Sciences, University of Barcelona, [wemigliari@gmail.com](mailto:wemigliari@gmail.com). I remain grateful to the federal Brazilian support CAPES Scholarship Programme.

<sup>2</sup> The term *intelligentsia* refers to urban developers, engineers, architects and skilful workers. They can be divided into two groups who either defended a more progressive view on land use through the construction of Brasília as an inspiration for future city projects or simply fought for the capital accumulation through property system. Up to a certain extent, the dispute persisted until 1964 when President João Goulart (1961-64) decided to put forward agrarian and labour reforms. That gesture was interpreted by the conservative elites as an assault to their property interests. Brasília remained a place of political power, where rich

needed a robust and engaged working class in order to attract as many labourers as possible in that project. As compensation, certain rights and public services, like education and medical assistance, housing and social benefits, would be at their disposal as never before. It was the beginning of a radical experience in terms of socioeconomic inclusion never seen in Brazil before. The notion of private property and individual responsibility for the well-being of families had to be put aside for a while. The community was the priority since there was a very limited quantity of resources. All unskilled and skilled workers were supposed to count on collective cooperation to survive in an inhospitable place. There was certainly a *momentum* of self-government and autonomy consolidating the supremacy of the social labour production on the urban transformation for a while.<sup>3</sup>

Nevertheless, all the efforts to make Brasília real resulted in a myth of urbanism, modernisation and social equality for many. The execution of the project revealed Brasília could work as a model of rapid urban development and socioeconomic inclusion if the access to social rights were effective. Drinkable water, appropriate sanitary conditions, edible food, health care, education for children, professional qualification for the adults and, mostly, the right to a shelter. All privation was also felt by the skillful workers. However, after Brasília's inauguration, the proof of city development for all

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proprietors lived in Lago Sul zone, and the poor working class lived in the outskirts of the city.

<sup>3</sup> SOUZA, Marcelo Lopes. Planejamento e gestão urbanos críticos vistos a partir de uma perspectiva autonomista. In: **Mudar a cidade: uma introdução crítica ao planejamento e à gestão urbanas**. Rio de Janeiro: Bertrand Brasil, 2002. pp. 169-189. The utopia of self-government and autonomy are part of a historical moment in which some leftist intellectuals believed architecture or urban planning could change the content of inequality in social class struggles. Although their different positions in the way cities should be constructed, Le Corbusier, Lúcio Costa and Oscar Niemeyer agreed with the notion of cities being produced for all. Their activities were mainly devoted to public buildings and spaces where that conception is a landmark. Read CORBUSIER, L. *La ville radiieuse*. Boulogne: Editions de l'Architecture d'Aujourd'hui, 1935. About the political ideas of leftist urban planners and Stalinist practices for city construction, read FRAMPTON, Kenneth. *Historia crítica de la arquitectura moderna*. Barcelona: G.Gili, 1982. The chapter "Le Corbusier y la Ville Radiieuse (1928-1946)" mentions the fact Le Corbusier was probably aware of the decision-making process as an inherent issue: "Le Corbusier influenciado sin duda por las vigorosas tradiciones de la región del Jura, vacilaba, al igual que sus colegas sindicalistas, entre el socialismo autoritario utópico de Saint-Simon y las tendencias anarco-sindicalistas latentes en los escritos de Fourier. En la *Ville Radiieuse*, Le Corbusier abogó, siguiendo líneas sindicalistas, por un sistema directo de gobierno a través de los *métiers* (gremios o sindicatos), y sin embargo, como sus colegas de editorial, parece haber tenido tan sólo una idea muy vaga acerca de cómo podía establecerse ese reino de los *métiers*", p. 187. For the Brazilian experiences, see HARRIS, Elizabeth D. *Le Corbusier: riscos brasileiros*. São Paulo: Nobel, 1987. Read particularly "Le Corbusier: uma visão geral (1929-1936)", pp. 38-44. The chapters "Contexto" and "Processo" point out the Brazilian experiences during the 1930s.

ended up in two different models of urban experience.<sup>4</sup> On the one hand, the result of a total transformation meant property, infrastructure and opportunity for few. On the other hand, the lower working class families had to leave and settle new neighbourhoods lacking basic infrastructure in places called “satellite-cities”. Brasília generated in few years an enormous *surplus value* brought by the political and economic elites after the capital was inaugurated. After completing its process of transformation, the usufruct of public investments in infrastructure was totally transferred to few. Therefore, present structural inequality is intrinsically connected to the process of city transformation. Urban development in Brazil has been well known by its segregationist, gentrified and contrastive spatial forms denying the usufruct of social rights to people.<sup>5</sup>

In the Brazilian space transformation we can see how cities need unskilled labour force in their surroundings to generate surplus value in the property system. In Western Cape Town, South Africa, the zone known as District Six was the object of forcible eviction during the Apartheid Era (1948-1994) and the place to where the urban *intelligentsia* expansion went. Its poor working class was forced to leave and community bonds unmade. They were sent to sandy-bleak flats twenty-five kilometres away supported by a governmental report saying the area was a centre for gambling, prostitution and social conflicts. Over the years, since the old neighbourhood disappeared, the lands were transferred to white proprietors.<sup>6</sup> After many years and from the 1990s on, when the debate whether returning or not the space to the old owners, Noor Ebrahim tells us he used to think what would happen to people when the moment to move arrived: “I wonder what will happen when the people of District Six have to move? They have been so kind and we are such a close community.” He works for an institution pro memory in the zone called the District Six Museum. His fear was mostly connected to the disrespect of people’s rights in periods of political changes.<sup>7</sup>

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<sup>4</sup> The idea of the myth during the construction of Brasília comes from an anthropological and urban study. See HOLSTON, James. *As intenções ocultas do projeto*. In: **A cidade modernista: uma crítica de Brasília e sua utopia**. São Paulo: Companhia das Letras, 2010. pp. 66-105

<sup>5</sup> ERMINIA, Maricato. *Metrópole, legislação e desigualdade*. *Estudos Avançados*. 2003, vol.17, n. 48, pp. 151-167. Not always does urban planning generate inequality, but the conviction that the transformation of the cities will diminish the concentration of income is an illusion. Le Corbusier had already mentioned how and why plans can be a false image of development. See CORBUSIER, L. *Towards a new architecture*. London: Butterworth & Co, 1987. Read the chapter “The illusions of plans”, pp. 175-198

<sup>6</sup> WESTERN, J. *Outcast Cape Town*. London: George Allen and Unwin, 1981.

<sup>7</sup> EBRAHIM, Noor. *Noor’s Story: my life in District Six*. Cape Town: IM Publishing, 2016. p. 55. For a study about the memory in District Six, read MCEACHERN, Charmaine. *Mapping the Memories: Politics, Place and Identity in the District Six Museum, Cape Town, Social Identities*. *Journal for the Study of Race, Nation and Culture*. 1988, vol. 4, n. 3, pp. 499-521

## 2. THE STRUCTURAL INEQUALITY IN URBAN DEVELOPMENT AND ITS NEW FORMS

The right to property was quintessential for the elites in Brasília and Cape Town to put in practice a plan of urban development concentrating the capital that exceeded from urban transformation in few hands. However, that process gained new forms since both countries live in formal democracies in which the rule of law shall prevail. Thus public investment in real estate markets, which refers to the purposes of our debate on the city developments and the economic access to land ownership, has exponentially favoured speculative property markets after democracy was re-established in Brazil and in South Africa. In both countries, national elections led to power conservative, elitist or even the interests of minority groups at the very beginning of the 1990s. Along the same decade, neoliberal economic ideologies lost visibility since unemployment, social and human rights used to draw more people's attention. For both realities, the sector of construction was a way to establish public confidence in a new democratic era. Although the creation of jobs also corresponded to an increasing gross national income, which means higher levels of employment and real salaries, cities have become more expensive for the working class. The results of such economic and urban process led the working class to an enormous production of wealth, but not accessing the surplus value or the wealth generated in cities.<sup>8</sup> The Chart 1 below illustrates how consumerism growth was part of political agendas in both Brazil and South Africa; Charts 2 and 3 illustrate unemployment rates.<sup>9</sup>

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<sup>8</sup> COTTLE, Eddie. Twenty years of transformation of the construction sectors in South Africa since the end of apartheid. *Bargaining Indicators 2014. Twenty Years: a Labour Perspective*. 2014. Cape Town: Labour Research Service, p. 141. See [http://www.lrs.org.za/docs/BI2014-lowres\\_Chapt7.pdf](http://www.lrs.org.za/docs/BI2014-lowres_Chapt7.pdf). All data are available at FILHO, D. C. M. et al. *Construção Civil no Brasil: investimentos e desafios. Perspectiva de Investimento 2010-2013*. 2013. Banco Nacional de Desenvolvimento Econômico e Social (BNDES). [http://www.bndes.gov.br/SiteBNDES/export/sites/default/bndes\\_pt/Galerias/Arquivos/conhecimento/liv\\_perspectivas/09\\_Perspectivas\\_do\\_Investimento\\_2010\\_13\\_CONSTRUCAO\\_CIVIL.pdf](http://www.bndes.gov.br/SiteBNDES/export/sites/default/bndes_pt/Galerias/Arquivos/conhecimento/liv_perspectivas/09_Perspectivas_do_Investimento_2010_13_CONSTRUCAO_CIVIL.pdf)

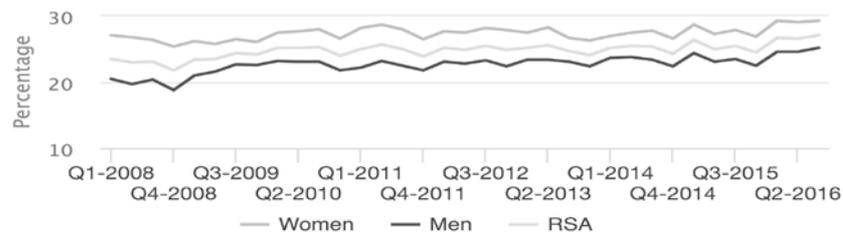
<sup>9</sup> Since 2009, Brazil has delivered more than 3.8 housing units for lower and middle-class families while in South Africa the figures are about 4.3 million houses since 1994. For the Brazilian statistics, see <http://www.brasil.gov.br/infraestrutura/2015/05/minha-casa-minha-vida-atinge-3-857-milhoes-de-moradias>. For the South African case, consult the numbers and figures available at <http://www.gov.za/about-sa/housing>.

**Chart 1. Gross National Income (current US\$)**

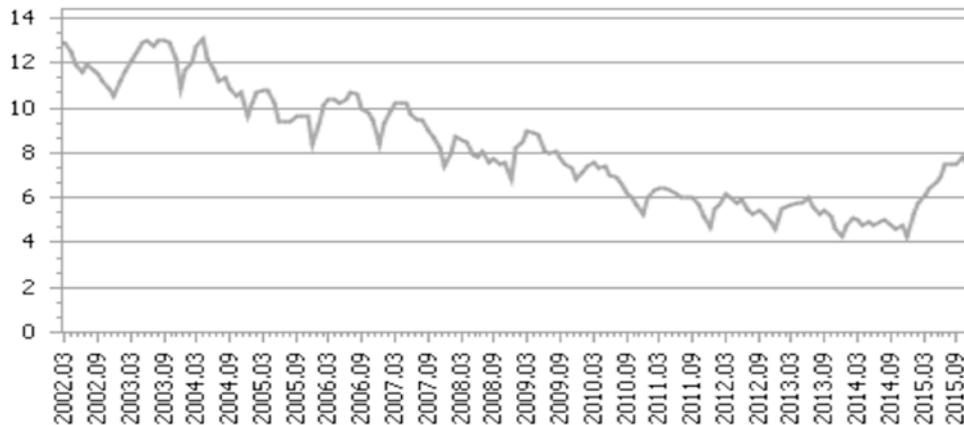


Source: World Bank. See <http://data.worldbank.org/>

**Chart 2. Unemployment, Annual Rates (%) 2008-2015 (South Africa - RSA)**



Source: Stats SA. See [http://www.statssa.gov.za/?page\\_id=737&id=1](http://www.statssa.gov.za/?page_id=737&id=1)

**Chart 3. Unemployment, Annual Rates (%) 2002-2015 (Brazil)**

Source: <http://www.ipeadata.gov.br/ExibeSerie.aspx?serid=38401>

The Brazilian and South African economic policies kept the same urban model of unequal development along all these years. Although concentration of income went down in both economies, the property system benefitted mostly the owners' stratum. Allured by the value of equities in real estate markets and positive expectations for employment, the workers were induced to think they could afford their own houses by borrowing large quantities of money from banks without affecting the speculative housing market. In order to support the property selling, mortgage credit and the city construction plan itself, a series of actions had to be taken. One of them is the financial practice of leverage in highly risky operations in the stock exchange market. Another one is the use of public money to acquire bonds and other assets in speculative real estate business.<sup>10</sup> However, negative externalities are caused by a speculative spiral in the housing market. The rising indebtedness of the present borrowers affects all subsequent debts since the more mortgages are sold the more the price of the credit rises. In other words, in a long-term run the demand for houses under a speculative property market puts at risk healthy real estate investments. Indebtedness means expansionist monetary policies will forever be needed to continue city transformation. On the verge of credit exhaustion, creditors tend to restrain the transference of their capital

<sup>10</sup> "This can present new opportunities for developers, lenders and governments seeking new housing strategies with which to expand their mission and business model. This understanding can also inform governments of the most effective means of leveraging its investment in the bottom rung of the housing ladder to span the gaps between the lower segments, to promote lending and access to credit, and to ensure affordability while building an economic base for future generations. This creates a more robust market overall, which can in turn drive stable economic growth for more and more South Africans". See p. 9, *Housing Finance Africa*, South Africa, available at <http://www.housingfinanceafrica.org/wp-content/uploads/2015/09/The-South-African-Housing-Market-Overview-2015.pdf>

in exchange for more assets. So, real estate clients start testing how solid their bonds are in not buying new assets and waiting for the debtors to pay back liabilities. If credits stop flooding construction plans, new urban plans will not be realised and the levels of unemployment will increase. The production of surplus value is interrupted and the economy frozen.<sup>11</sup>

Such a process favoured the Brazilian and South African governments in their expansionist monetary policies while both economies presented positive growth. Through the public debt bonds and enlarging the fiscal expenses at the same time keeping their exchange rates relatively stable, both countries allured international investments for city construction and the housing market. The formulation of a block with other emerging countries, the BRICS (Brazil, Russia, India, China and South Africa), gave more credibility to investors between 2008 and 2011 especially re-financing the G-7 economies.<sup>12</sup> The critical point happens, as we can see in Charts 4 and 5, when the house price index increases and their gross national incomes start shrinking as a consequence of a positive variation in the mortgage interest rates. From 2004 to 2011, Brazil and South Africa had an economic boom mainly favoured by the prices of their commodities, but since 2011 the GDP results have been declining. So, the difference between rising prices and the declining salaries represented by the shortening of the aggregate demand tends to make difficult the access to housing programmes, credits and puts at risk the families paying their mortgages monthly. The figures involving gross national income, house price index and mortgages in city transformation are relevant to understanding access to the right to housing.<sup>13</sup> We will present

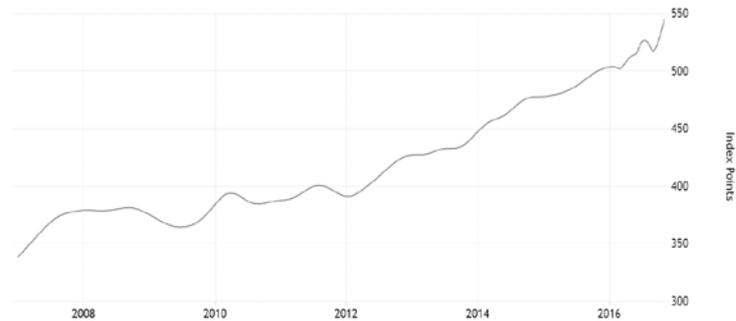
<sup>11</sup> Tail risks, herding and derivatives in 2008 housing crisis are suggested by Raghuram G. Rajan as one of the causes we translate along our debate as credit interruption. Read RAJAN, Raghuram G. Has financial development made the world riskier?. *National Bureau of Economic Research*. 2005, vol. 1, n. 11728, pp. 1-45. For the author, it is probable a chain of global assets was created through an enormous pyramid of debts without any intermediation of financial institutions in charge of controlling the nominal creation of capital. Such practice in Iceland was considered a financial crime. See the [Case No. 498/2015](#), *Kaupthing* case.

<sup>12</sup> “For the longer term, it will be essential to avoid significant reductions in resource allocation to these critical areas, in spite of the fact that government budgets will need to be cut to reduce public debt brought about by the present stimulus spending”, p. 5. Read the whole document in SCHWAB, Klaus et al. *The globe competitiveness report 2010-2011*. **The World Economic Forum**. Geneva: SRO-Kundig, 2010. Available at [http://www3.weforum.org/docs/WEF\\_GlobalCompetitivenessReport\\_2010-11.pdf](http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2010-11.pdf)

<sup>13</sup> “But the sense of the plan has been lost for the last hundred years. The great problems of tomorrow, dictated by collective necessities, based upon statistics and realized by mathematical calculation, once more revive the problem of the plan. When once the indispensable breadth of vision, which must be brought to town planning, has been realized, we shall enter upon a period that no epoch has yet known. Towns must be conceived and planned throughout their entire extent in the same way as were planned the temples of the East and as the Invalides or the Versailles of Louis XIV were laid out”. See CORBUSIER, L. *Towards a new architecture*. New York: Butterworth, 1989. pp. 51-52. However, if planners apprehend the exterior drawing line as an automatic extension of interior life, they are close to what Le Corbusier calls illusion of plans. Read the chapter “The illusions of plans”, pp. 175-198

other variables in the following section to base our debate on structural inequality in urban development and its new forms from the perspective of the right to housing.

**Chart 4. South African House Price Index**



Source: [www.tradingeconomics.com](http://www.tradingeconomics.com). ABSA Group Limited

**Chart 5. Brazilian House Price Index**



Source: [www.tradingeconomics.com](http://www.tradingeconomics.com). FIPEZAP (Brazil)

### **3. CAPE TOWN: RISKY INNOVATIVE FORMS OF CAPITAL SPECULATION THROUGH REAL ESTATE MARKETS**

Labour force and inequality have been central in urban planning.<sup>14</sup> In that sense, unemployment becomes a key factor in creating intrinsic disputes among workers. In periods of crisis, the economically active population enlarges in proportion to the number of opportunities and end up competing for lower salaries to avoid an undignified life. Previously, Chart 2 showed

<sup>14</sup> As S. Terreblanche says: “Many of the foreign corporations that invested in South Africa exploited cheap and docile African labour to make very big profits”. Read TERREBLANCHE, Sampie. The legacy of colonialism, segregation, and apartheid. In: **A history of inequality in South Africa 1652-2002**. Sandton: University of KwaZulu-Natal Press, 2002. p. 375

how unemployment varied positively in South Africa after the 2008 global crisis, and construction is one the most important sectors affected by the housing bubble. In Chart 3, Brazil suffered from the same effects caused by the 2008 depression, illustrating that beginning in 2015, the internal capacity of the country to recover from the long-term effects of a worldwide economic recession diminished. It was thought that the liberalisation of the South African and Brazilian economies sophisticated financial systems would satisfy their populations' respective demands for more social rights. Mortgages have been a new form of propaganda felt as an opportunity for all, but at the same time disguising the structural inequality more evident in moments of economic crises. In South Africa, liberalisation in economy has been a risky plan and mostly connected to the development of housing market: "The few years of prior financial liberalization after 1985 combined with a class differentiation strategy by apartheid's rulers was manifest in the granting of 200,000 mortgages ('bonds') to first-time black borrowers over the subsequent four years. But the long 1989-93 recession left 500,000 freshly unemployed workers and their families unable to pay for housing."<sup>15</sup>

Table 1 presents the increasing amount of money paid by individuals and families to financial institutions. The figures include the costs for mortgages, premiums, insurances and other hire-purchase payments. The data covering the period of 2009-2015 shows that debts rose significantly between 2009 and 2013. During the period, the indebtedness increased 35%. Even with the 2008 global crisis, the volume of credit related to insurances and mortgages tended to follow the urban spatial production. That also means mortgages tend to rise in price and volume even under a default menace. The logic of unequal liberalisation persists as we saw between the end of the 1980s and the beginning of the 1990s in the South African economy. The Brazilian scenario is not different from South Africa's as shown in Chart 7. The country has shown a rising credit condition indicator for mortgages even when the level of unemployment rose from 2015 to 2016. Expensive conditions for mortgage contracts or social tenancy have also been the core of social vulnerability for the lower working class in developed countries.<sup>16</sup>

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<sup>15</sup> BOND, Patrick. The "Right to the City" Limits to Rights Talk and the need for rights to the Commons. *Theomai*. 2013, vol. 1, n. 27-28, pp. 42-63

<sup>16</sup> Whitehead, Christine; Scanlon, Kathleen. **Social housing in Europe**. London: LSE, 2007.

**Table 1. South African Multiple Option Settlement (SAMOS) 2009-2016**

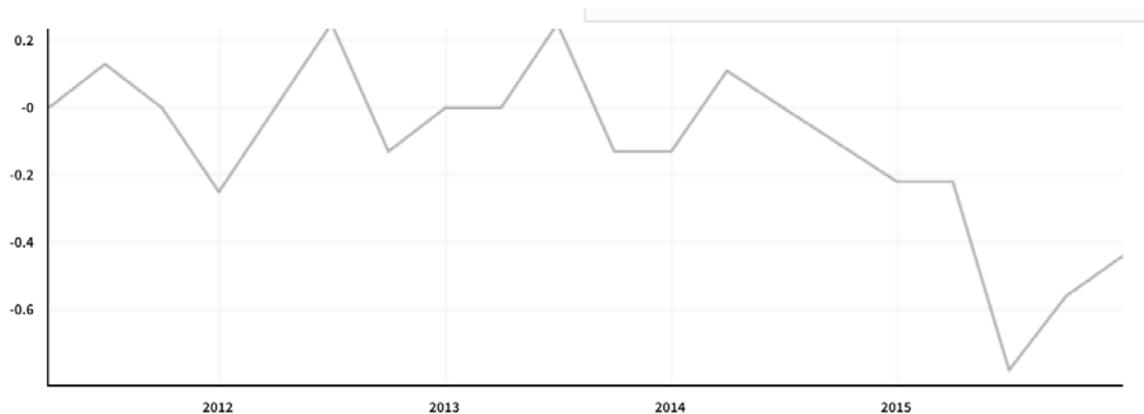
	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	Growth: 2009/10 to 2015/16	2015/16 monthly average
	R billions							Per cent	R billions
Real-time line (RTL) <sup>1</sup> .....	66 988,8	70 473,1	76 327,8	79 174,3	88 316,2	102 271,8	113649,0	69,7	9 470,8
Electronic funds transfer (EFT) credits <sup>2</sup>	4 411,1	4 904,0	5 498,6	6 157,5	6 914,3	7 492,3	8031,5	82,1	669,3
EFT debits <sup>3</sup> .....	498,6	538,1	610,3	687,2	695,1	650,2	675,7	35,5	56,3
Cards <sup>4</sup> .....	256,5	318,1	388,7	519,5	675,3	800,6	926,4	261,2	77,2
Cheques.....	944,3	810,5	685,7	399,1	258,0	199,0	151,1	-84,0	12,6
Automated teller machines (ATMs).....	79,8	94,0	105,3	123,1	134,9	152,4	172,3	116,0	14,4
AEDO.....	4,5	5,2	5,5	5,3	7,3	9,2	10,8	141,6	0,9
NAEDO .....	32,4	46,1	60,9	75,5	84,8	95,8	99,3	207,0	8,2
Real-time clearing (RTC) <sup>5</sup> .....	27,5	43,9	75,4	121,6	146,1	178,2	209,6	661,5	17,5
<b>Total settlement amount.....</b>	<b>73 243,38</b>	<b>77 233,05</b>	<b>83 758,38</b>	<b>87 263,15</b>	<b>97232,03</b>	<b>111 849,47</b>	<b>123 925,8</b>	<b>69,20</b>	<b>10 327,15</b>

1. RTL is the high-value, low-volume interbank settlement facility that is provided to the settlement banks in SAMOS to effect immediate, final and irrevocable payments.
2. EFT credit transactions are "credit-push" in nature, that is, the payer initiates the payment with sufficient funds being available. EFT credits are mainly used by employers to pay salaries and facilitate internet payments.
3. EFT debit is the payment stream where debit orders are processed to collect monthly premiums, such as insurance policies, mortgages and hire-purchase payments.
4. 'Cards' include the debit card, credit card, Visa, MasterCard, Amex, Diners Club and Fleet payment streams. Cards are the primary alternative to cash and cheques, offering convenience for consumers and merchants alike, making the payment system more efficient.
5. The RTC payment option was introduced in 2007 to provide increased transaction processing speed and convenience to customers. Once payment is effected, the payee's account is credited within 60 seconds.

Source:

[https://www.resbank.co.za/RegulationAndSupervision/NationalPaymentSystem\(NPS\)/Documents/Oversight/Annual%20oversight%20Report%202015-2016.pdf](https://www.resbank.co.za/RegulationAndSupervision/NationalPaymentSystem(NPS)/Documents/Oversight/Annual%20oversight%20Report%202015-2016.pdf)

**Chart 6. Brazilian Credit Condition Indicator for Mortgages 2011-2016**



Source:

<https://www.quandl.com/data/BCB/21395-Credit-Condition-Indicator-Mortgage-Observed-supply>. Banco Central do Brasil.

The population of South Africa stands at 55.6 million, Western Cape 6.3 million people and the City of Cape Town 4 million based upon the figures of the last Community Census in 2016.<sup>17</sup> It is a huge market and the capital expenditure on new construction projects is one of the most important sources of investment for South African public policies as seen in the Chart 7. The City of Cape Town depends greatly on the financial system, insurance, property and business services. In fact, government is also one of the clients in the speculative real estate market. That tension between private-public interests confirms urban contradictions. On the one hand, Western Cape upscale neighbourhoods such as Bakoven, Bantry Bay, Camps, Clifton, Fresnaye, Green Point and Mouille Point, for example, are the upper-middle class and rich property urban areas carrying the seeds of new types of inequality.<sup>18</sup> On the other hand, some of its neighbourhoods like Langa, Nyanga, Gugulethu and Khayelitsha suffer daily from vegetables shortages, lack of drinkable water, toilets disconnected from the sewage system and mostly public security.<sup>19</sup> Cape Town was considered the fourth richest city in Africa in 2015, and still occupies the top ten list in Africa after Johannesburg, Cairo, Luanda and Lagos.<sup>20</sup>

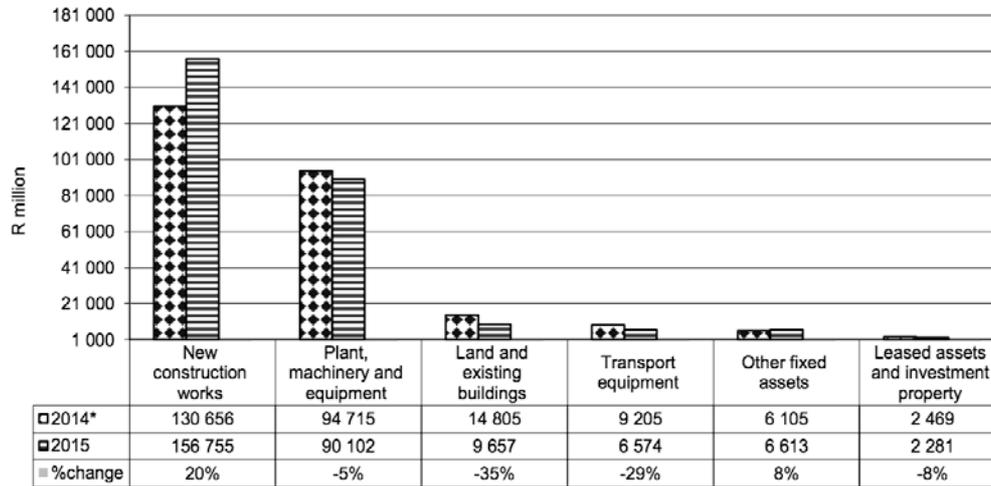
<sup>17</sup> See [http://cs2016.statssa.gov.za/?page\\_id=270](http://cs2016.statssa.gov.za/?page_id=270)

<sup>18</sup> See [http://www.statssa.gov.za/?page\\_id=993&id=city-of-cape-town-municipality](http://www.statssa.gov.za/?page_id=993&id=city-of-cape-town-municipality). Around 56.2% of Cape Town residents live in full-paid places. 78.4% of its population have a formal dwelling, 21.6% in townships, non-formal dwellings or even other types of informal places. Khayelitsha is the biggest township in Cape Town Metropolitan area. Only 34.6% have piped water inside their dwellings. 71.7 % of flush toilet connected to sewage system. In Brasília, Federal District, the average for piped water inside reached 97.8% in all metropolitan area, although sewage 85.95%. Read other documents about Brasília and the satellite-cities available at <http://www.codeplan.df.gov.br/noticias/artigos/item/3428-distribui%C3%A7%C3%A3o-geogr%C3%A1fica-do-saneamento-b%C3%AAsico-em-bras%C3%ADlia.html>

<sup>19</sup> The problem of insecurity in South Africa, which includes also the City of Cape Town, has generated a robust market of private security. The debate is another face of the socioeconomic contrasts and concentration of income. See BERG, Julie; NOUVEAU, Jean-Pierre Nouveau. Towards a third-phase of regulation: re-imagining private security in South Africa. 2011, *SA Crime Quarterly*, n. 38, pp. 23-32

<sup>20</sup> See *Future trends and market opportunities in the world's largest 750 cities. How the global urban landscape will look in 2030*, Oxford Economics, 2015, p. 2

**Chart 7. Capital expenditure by public-sector institutions for the financial years ended in 2014\* and 2015 according to type of expenditure**



Source: <http://www.statssa.gov.za/publications/P9101/P91012015.pdf>

Table 2 shows a list of investors operating in speculative stock exchange markets with their respective shareholders in connection with the public expenditure seen in the Chart 7.<sup>21</sup> We point out in the right column top five shareholders investing in urban development with highly speculative profiles. We also identify that the most common speculators are Government with taxpayer money and pension funds, insurance companies and other international risky capital. The entries “speculation” and “speculative” are used in this paper as entries with the notion of risky assets in a short-term run. It is a typical low-quality capital with investors multiplying their surplus value in real estate and transferring their capital to other profitable and stable projects. In order to keep the prices rising – as we saw in Charts 4 and 5, these firms routinely search for real estate markets with undersupply. Charts 8 and 9 show, respectively, the rising profits in emerging economies and how the

<sup>21</sup> See COHEN, Tim (Editor). The property handbook 2015. *Annual Report*. Johannesburg: Financial Mail, 2015. pp. 22-24. Henri Lefebvre calls the new forms capital in city construction “urban capitalism of organisations” opposing the expression to the idea of organised capitalism. It is a group that dictates the urban consumerism and not a market in itself oriented by supply-demand logic. Nowadays, it can be translated as the dialectics between an apparent planned urban model and the constant disorganisation of national economies by the international speculative capital. See LEFEBVRE, Henri. *A ilusão urbanística*. In: *A revolução urbana*. Belo Horizonte: Humanitas, 1999. p. 147

concentration of income operated from the 1980s liberalisation period until 2010.<sup>22</sup>

**Table 2. Investors Operating in Western Cape Urban Lands**

<b>Real Estate Firms</b>	<b>Top Five Shareholders</b>
Accelerate Property Fund	Government Employees Pension Fund & Private Shareholders
Arrowhead Properties	Public Investment Corporation & Private Shareholders
Attacq	Government Employees Pension Fund & Private Shareholders
Capital Property Fund	Government Employees Pension Fund & Private Shareholders
Capital & Counties Properties	Public Investment Corporation & Private Shareholders
Delta Property Fund	Public Investment Corporation & Private Shareholders
Dipula Income Fund	Government Employees Pension Fund & Private Shareholders
Emira Property Fund (14%)	Public Investment Corporation & Private Shareholders
Equites Property Fund (100%)	Foreign Direct Investments/National investors
Fortress Income Fund	Foreign Direct Investments/National investors
Growpoint Properties	Public Investment Corporation & Private Shareholders
Hospitality Property Fund (22%)	Foreign Direct Investments/National investors

<sup>22</sup> See about the international phenomenon of city construction through speculative international markets in HARVEY, David. *Rebel Cities: from the Right to the City to the Urban Revolution*. London: Verso, 2012.

Hyprop Investments (48%)	Government Employees Pension Fund & Private Shareholders
Investec Property Fund	Public Investment Corporation & Private Shareholders
Redefine Properties (18%)	Government Employees Pension Fund & Private Shareholders
SA Corporate Real Estate Fund	Government Employees Pension Fund & Private Shareholders
Texton Property Fund	Foreign Direct Investments/National investors
The Pivotal Fund	Foreign Direct Investments/National investors
Tower Property Fund (43%)	Foreign Direct Investments/National investors
Vukile Property Fund	Public Investment Corporation & Private Shareholders

Source: COHEN, Tim (Editor). The property handbook 2015. *Annual Report*. Johannesburg: Financial Mail, 2015.

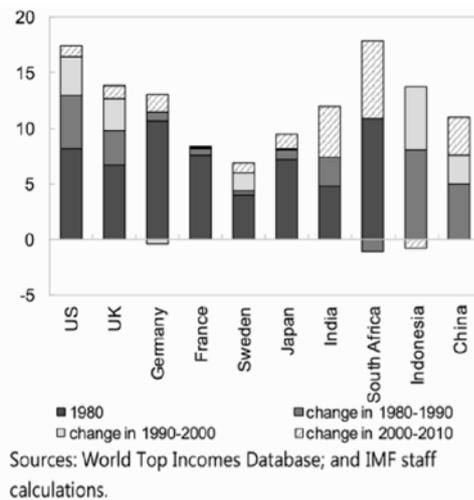
Charts 8 and 9 produced by the International Monetary Fund also reveal two important aspects for urban planning models of inequality.<sup>23</sup> The first one is how global wealth for the 1% of emerging and developed economies is still high. The second element is that the wealthiest individuals and families have reproduced their fortunes in urban contexts based upon city development. Consuming, speculating and investing in ambitious property housing markets are some of the dramatic consequences of that model of urban development.<sup>24</sup> Another aspect is how the estimation of corporate

<sup>23</sup> See *Causes and Consequences of Income Inequality: A Global Perspective Era*, written by Dabla-Norris, Kalpana Kochhar, Nujin Suphaphiphat, Frantisek Ricka, Evridiki Tsounta, International Monetary Fund, SDN/15/13, June 2015, p. 13. See <https://www.imf.org/external/pubs/ft/sdn/2015/sdn1513.pdf>

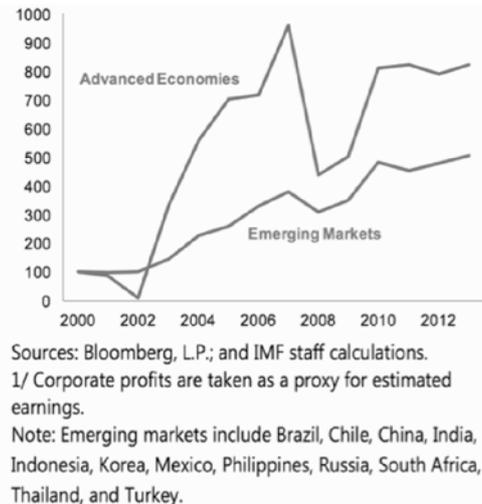
<sup>24</sup> One of the battles cities have led is the price of the land and system of credits reifying the right to an adequate and dignified house. Global financial markets have reached all continents. See ROLNIK, Raquel (2015). *Guerra dos lugares*. São Paulo: Boitempo. Read the chapter on global housing financially *modus operandi* “Financeirização global da moradia”, pp. 19-140. Raquel Rolnik was the Brazilian special rapporteur (2008-2014) on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context.

profits follows the same rising patterns in advanced and emerging markets. These two charts also show that global standards for consumerism have been more and more standardised as a plan of socioeconomic development.

**Chart 8. Top 1% Income Share (1980-2010)**



**Chart 9. Estimated Corporate Profits (Index)**



#### 4. LESSONS FROM BRAZIL AND SPAIN: THE RIGHT TO HOUSING FOR CITY CONSTRUCTION

Are the highly speculative business of real estate investments putting at risk the right to housing? According to *The Property Handbook 2015*, real estate firms have up to 10% of their portfolios in vacant housing units.<sup>25</sup> The responsibilities of these investors are many. One of them is to better the quality of investments and re-direct the government speculation seen in Table 2 to tackle urban inequality. A second responsibility is social housing. And lastly, to re-insert the public money to work in favour of people living in vulnerable socioeconomic conditions through better public services such as drinkable water, public security and efficient means of transportation in cities. The Constitutional Court of South Africa has already paved the path with a well-known judgement involving an adequate and affordable place to live in the case *Grootboom and Others v. Government of the Republic of South Africa*.<sup>26</sup> The South African Constitutional Charter affirms that the right to

<sup>25</sup> COHEN, Tim (Editor). *The property handbook 2015. Annual Report*. Johannesburg: Financial Mail, 2015.

<sup>26</sup> "Housing entails more than bricks and mortar. It requires available land, appropriate services such as the provision of water and the removal of sewage and the financing of all these, including the building of the house itself. For a person to have access to adequate housing all of these conditions need to be met: there must be land, there must be services, and

environment, property and housing is all part of the Bill of Rights, Constitution of South Africa, in its Articles 24, 25 and 26. Furthermore, everyone has the right to a non-harmful environment free from pollution and ecological degradation. The concept of sustainability is also connected to justifiable economic and social development. With reference to property laws, expropriation of private ownership shall respect due process and avoid any sort of arbitrariness. Fair and equitable compensation is predicted in the case of properties subject to expropriation. The usufruct of the right to property in South Africa, its market value, how the State can re-direct investment and, finally, the cases of expropriation shall respect the rule of law. We do not suggest a critical review of speculative real estate businesses disregarding legal parameters, but pose suggestions on how the construction of cities can benefit from the making of surplus value. The famous *Grootboom* case indicates that the right to adequate housing is part of the South African Constitution taking into account “all the relevant circumstances.”<sup>27</sup>

Being aware of the rising prices for rents and properties, public powers are expected to make more effective the right to housing using the social function of property. According to the 16.050 Urban Development Plan passed by the City of São Paulo and the Housing Act 18/2007, Province of Catalonia, the social function of property is one of the mechanisms municipalities can use to make more effective the right to housing in both countries. Although the idea of restricting the property right usufruct by public powers, the juridical rationale is much more linked to how general interest should be connected to the surplus value since real equity gains are generated by public urban investments through taxes as well. In the South African Constitution, there is no reference to the use of property limited by its social function; however, as we have seen, the top real estate firms have managed public assets in their portfolios making technically public powers proprietors of a correspondent part in their investments.

The 18/2007 Catalonian Housing Act in its article 113 affirms properties shall not be left unoccupied longer than two years. If left unoccupied, the local administration is able to fine the proprietor for not accomplishing the social function of property in its usufruct. The article 118.1 also gives support to the constitutional principle of social function.<sup>28</sup> In the

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there must be a dwelling. The right of access to adequate housing also suggests that it is not only the State that is responsible for the provision of houses, but that other agents within society, including individuals themselves, must be enabled by legislative and other measures to provide housing”. See *Government of the Republic of South Africa and Others v Grootboom and Others*, 2000 (11) BCLR 1169, paragraph 41.

<sup>27</sup> See the whole document on the official webpage <http://www.gov.za/documents/constitution/chapter-2-bill-rights#25>.

<sup>28</sup> See The Constitution of Spain (1978), article 33.2 and the Brazilian Federal Constitution (1988), article 5, XXII. The right to housing, respectively, see the article 47 and 6.

Brazilian case, all municipalities with more than twenty-thousand inhabitants must have a city plan as it is said in the Statute of the City, the Brazilian Federal Act 10.257/2001. Based upon the Binding Decision 668 and the 29 Constitutional Amendment, local public administrations are also able to evoke the social function of property through extra taxes to discourage empty housing units while the country faces an enormous housing deficit. The other aspect is connected to the surplus value of those properties constructed in noble areas. Even occupied, the taxes paid by owners vary progressively making the house prices accompany the fluctuation of proprietors equity in urban context. Both criteria observe the progressiveness of property values along time and space where the more the property market speculates, the more owners contribute. In both constitutional legal systems, the main purpose is to discourage surplus value in urban development since public budget is part of property price growth. In Terrassa, a Spanish city in Catalonia, local administration has dealt with some empty houses and started a long juridical battle to make effective the 17/2008 Housing Act. They succeeded in promoting the right to housing through fines and the legal instrument started being applied in other municipalities of Catalonia. The cases *SA Spanish Popular Bank v. Terrassa City* and *Building Center SAU v. Terrassa City* are very eloquent examples in converting empty housing units waiting for higher prices into a possibility of an adequate place to live for vulnerable families with social rents.<sup>29</sup> Barcelona followed the same logic in 2016. In 2014, the City of São Paulo passed in its local legislative power the progressive taxes in time and space through the 16.050, Urban Development Plan. Its articles 5, II, the paragraph 2 of that same provision, and 89, 91 and 100 specify the connection with the social function of property to housing issues and the right to the city. It is important to note that in both countries, public powers have controlled speculative real estate markets and used the social function of property more attentive to banks, giant constructors and the housing market with a substantial capacity in colonising land prices. For the City of Cape Town, although the possibility of using legal frameworks to restrict land speculation and protect vulnerable communities, the social function of property may be one of the most adequate instruments to limit the aggressiveness of the capital flows in urbanism. Based upon that juridical category, the exercise of competences by local governments is developed through property taxes in which a correspondent part of the surplus value comes back to public funds.<sup>30</sup> On the one hand, the idea is to correct

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<sup>29</sup> See the entire document available at [http://aclegalabogados.com/upload/2015\\_12\\_30-sentencia-estiman-recurso.pdf](http://aclegalabogados.com/upload/2015_12_30-sentencia-estiman-recurso.pdf), Recurso Contencioso-Administrativo Ordinario nº 176/ 2015-F, 402/2015; and [http://aclegalabogados.com/upload/2015\\_10\\_27-sentencia-desestiman-recurso.pdf](http://aclegalabogados.com/upload/2015_10_27-sentencia-desestiman-recurso.pdf), Juzgado Contencioso-Administrativo de Barcelona 13, Barcelona, 147/2015-B.

<sup>30</sup> The International Monetary Fund (IMF) has recently published a study showing that the housing prices is effectively controlled with rising taxes. The surplus value tends to decrease and the same for the prices of the volatility of mortgages in a long run. See POGHOSYAN,

proportionally artificial prices since equities reflect more causal relations linked to urban public investments than private assets. On the other hand, local legislators may defend the social interest in city projects making evident speculative purposes create false urban socioeconomic development. Perhaps it would be encouraging for South Africa legal and administrative practices towards the notion of social function in property system.

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Tigran. Can Property Taxes Reduce House Price Volatility? Evidence from U.S. Regions. *IMF Working Paper*. 2016, vol. 16, n. 216, pp. 1-26

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