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## Affordable and Workforce Housing in France

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## AFFORDABLE AND WORKFORCE HOUSING IN FRANCE

**Camille Mialot\***

I first met Julian Juergensmeyer ten years ago in Barcelona at a workshop co-organized by Georgia State University and the University of Barcelona. Not only was it the beginning of a constant friendship but also the start of a passionate academic adventure. From diving into his numerous land use and planning law writings, I got a renewed perspective on my own legal system. Legal concepts, absent from French urban planning law, such as the difference between comprehensive planning and zoning or exclusionary zoning helped me to better understand and then explain my own legal system. My contribution below is the fruit of this renewed perspective thanks to Julian. In an interview given 25 years ago by the French writer Régis Debray, talking about his master Louis Althusser, he said “ There are two kinds of masters : those who enslave you and those who elevate you” Julian belongs of this second kind of master that elevate you, let him be warmly thanked.

### I. AFFORDABLE AND WORKFORCE HOUSING

#### A) Elements of History

France has a deeply rooted tradition of affordable and workforce housing and the burning issue has always been, not the principle of affordable housing construction, but its location. At the beginning of the 17<sup>th</sup> century, in a famous letter sent by François Miron, Mayor of Paris, to King Henri IV, Miron advocated for what today we call social mix, “I repeat to my dear and beloved Master and Sovereign: it’s an unfortunate idea to build districts for the exclusive use of workers”.<sup>1</sup> In the middle of the nineteenth century, during the 2<sup>nd</sup> Empire, Louis Napoléon himself built in the 9<sup>th</sup> district of Paris a large building dedicated to workforce housing, known as “cité Napoléon”. This “common house” for workers aimed both at providing affordable and healthy housing and controlling workers opinions with the goal of keeping them away from socialism and the establishment of strict rules prohibiting alcoholic drinks and meetings.

The first industrial revolution gave birth to the first wave of privately-funded workforce housing. This first example of affordable housing built in

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<sup>1</sup> Brouant, Jean-Philippe “Social cohesion and Land use Law, is there a place for legal regulation in France ?” in “Land use Law, Housing and social and territorial cohesion” Dr. Juli Ponce, Rocky Mountain Institute 2006 p 59

France had two main characteristics that enable us to understand today's system of housing in France.

First, it relies on private initiative and financing. And French affordable housing is still a sector guided by the private sector and its incentives, such as profitability. Affordable housing, in this sense, is not equivalent to public housing in French housing law. Public housing is just a part of a larger system of affordable housing.

Second, the original goal was to control the working class and to keep them away from socialism. And until now, despite the legal principle of social mix (later explained), the idea of hierarchy among beneficiaries of affordable housing and maintaining the separation between affordable and free market housing continues.

At the end of the 19<sup>th</sup> century, the exponential increase in demand for affordable housing due to the rural exodus and consequent influx of workers to cities required state government intervention. The first statutory law on affordable housing, known as Loi Siegfried (named after one of its sponsors) was passed in 1894. The law created local private committees called “comités habitations bon marché” that were allowed to receive subsidies from the State and other public bodies in order to build, rent, or sell houses to workers. The political motive remained preventing the spread of socialism.<sup>2</sup> Twenty years later, in 1912, the Law Bonnefoy created local public agencies called “Office publics d'habitation bon marché” whose mission was to build and rent affordable housing. Since then, the affordable housing system has been divided into two parts: a public part owning more or less half of the total of affordable housing units, and a private one.<sup>3</sup> The whole sector is nowadays represented by a powerful federation, l'Union sociale de l'habitat (USH).

After the Second World War, the affordable housing sector experienced impressive growth due to the reconstruction, post-war baby boom, and the end of colonial wars. Under State initiative, using specific zoning tools known as *PUZ* (*ZUP* in French) (priority urbanized zones), more than 2 million affordable housing units were built between 1958 and 1970. The result of this huge effort to meet the demand of affordable housing was both a success and a failure. It was a success, as numerous affordable housing units were built in a very short time period. But it was also a failure because of

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<sup>2</sup> Pierre Merlin « Habitation à loyer modéré » in « Dictionnaire de l'urbanisme et de l'aménagement » Pierre Merlin Françoise Choay, PUF 2015 p 388

<sup>3</sup> Mallach, Alan “Social inclusion, fair share goals and inclusionary housing in France” in “Inclusionary Housing in international perspective” Nico Calavita and Alan Mallach, Lincoln Institute of Land and Policy 2010 p 207

the exclusionary zoning practices that resulted from the use of the *ZUP* tools, which located the new districts outside of the city.

One pragmatic reason for exclusionary zoning was that readily available and affordable land to meet housing demand was located outside the city. Political constraints also drove the legal framework. It's worth stating that the guidelines of the 1958 decree that created the *PUZs* specified that the goal was to create new districts dedicated to housing, with a minimum of 400 affordable dwellings per district. Both the minimum size, which is really large in fact, and the single use (affordable housing) led, predictably, to the concentration of poverty outside the city.

At the end of the 1970's the main characteristics of today's system had emerged: French affordable housing, originally financed and promoted by private entities, is still partially financed, promoted and run by the private sector. Affordable housing in France is not equivalent to social inclusion or inclusionary housing. On the contrary, and paradoxically, social housing and exclusionary zoning are, at least partially, synonymous. It is only since the end of the 20<sup>th</sup> century that the important work to address the issue of ghettos in France has occurred, and with mixed results.<sup>4</sup> The rise of public intervention after WWII helps to explain the features of affordable housing stock in France.

## **B) Stakeholders of the French Affordable Housing System**

### 1) Definition

First, it is worth explaining the French definition of affordable housing. French affordable housing cannot be reduced to what we usually call HLM (Habitation à Loyer Modéré - low rent housing or low-income housing), previously known as HBM (habitation bon marché - affordable housing). HLM units are owned by specific entities, private or public, HLM organization. They are subsidized and subject to a specific legal framework. HLM housing units are only for renting to low-income individuals.

Indeed, in a wider approach, affordable housing may also consist of all housing units directly or indirectly subsidized, a very large category, that includes all allowances for low-income individuals to buy housing units, and even broader, all individuals benefiting from housing allowances, which represent around 22% of French households, an annual budget of 16,7 billion euros.<sup>5</sup>

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<sup>4</sup> Jean-Philippe Brouant id.

<sup>5</sup> Le Monde 25 juillet 2017

In the broadest sense, in addition to the former categories, affordable housing may include all private market housing units subject to rent control.

## 2) Social Housing Bodies

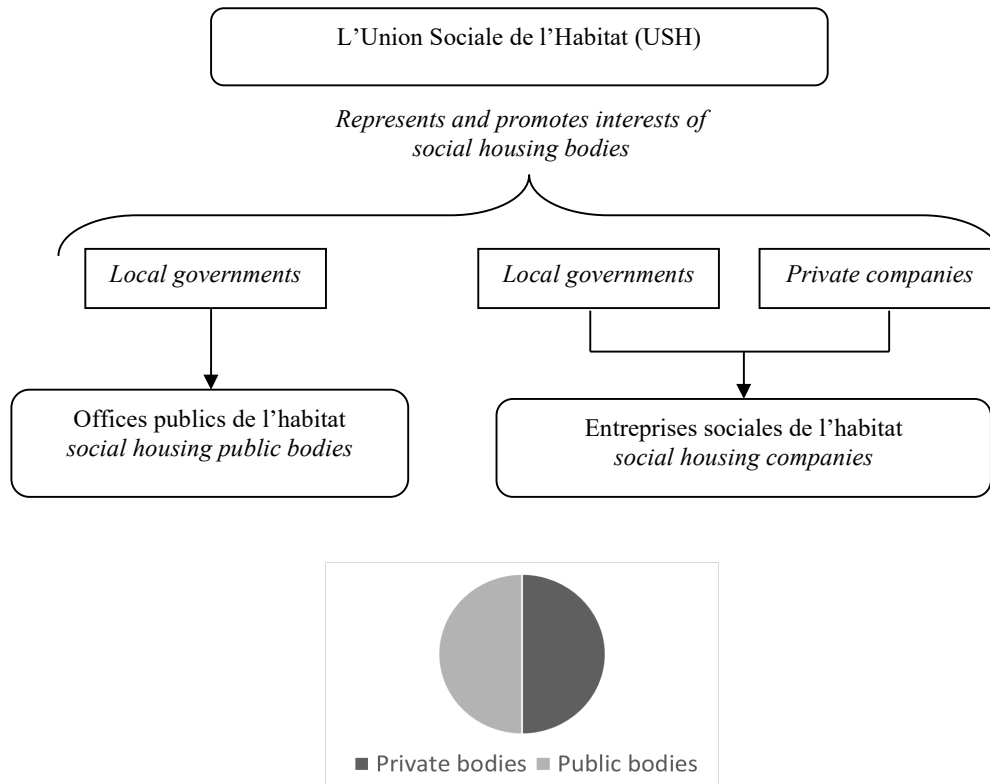
Social housing bodies (organismes de HLM) promote, build, and manage affordable housing, mainly for renting. The legal framework regulating their activity derives from the end of the 19<sup>th</sup> and beginning of the 20<sup>th</sup> centuries, and is now codified in the building and housing code. According to article L 411-2 of the code, both private and public social housing bodies are in charge of the public service of social housing.

As previously explained, the state regulates two principal categories of social housing bodies.

Social housing public bodies (offices Publics de l'habitat) are placed under the jurisdiction of local governments (municipalities, groups of municipalities and counties/departments). Public bodies represent half of the total of social housing bodies (around 260) and half of the total of affordable housing units (around 2.3 million housing units).<sup>6</sup> Social housing private bodies, qualified by law as “social housing companies” (entreprises sociales de l'habitat) are controlled by both local governments and private companies. The law of the 23<sup>rd</sup> of November 2018 fosters the merging of the smallest social housing bodies and allows the sale of social housing units to their tenants with a mechanism of compensation: in those municipalities that do not comply with the quota of affordable housing (see below section IV) half of the sale price must be invested in the building of affordable housing.

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<sup>6</sup> USH annual report 2017 <https://www.union-habitat.org/sites/default/files/actualites/documents/2018-01/Les%20Hlm%20en%20chiffres%202017.pdf>



### 3) Local Government

Municipalities and public bodies of intermunicipal cooperation (specifically Metropolis)<sup>7</sup> have jurisdiction over housing policies. They control planning tools such as zoning, development permits, urban renewal operations and the local housing (Programme local de l'habitat), as well as social housing public bodies. They have a key role and liability in housing policies.

Nevertheless, the central State, in a yet-centralized country, often intervenes in urban renewal operations, even nationalizing major concerns.

<sup>7</sup> Griffith, Janice (2017) "The French Metropole: How it Gained Legal Status as a Metropolis," *Journal of Comparative Urban Law and Policy*: Vol. 2 : Iss. 1 , Article 3, 20-43. Available at <https://readingroom.law.gsu.edu/jculp/vol2/iss1/3>

#### 4) The State

Today, the state plays a leading role in housing, either directly through the Ministry of Housing and statutory laws adopted at the pace of nearly one per year, or indirectly through national agencies such as the National Agency for Housing (ANAH) and National Agency for Urban Renewal (ANRU). ANRU,<sup>8</sup> created in 2003, is both a public agency and a public fund dedicated to urban renewal, that cooperates with local governments through financing contracts in the poorest areas zoned by state authorities.

The main metropolitan areas of urban renewal operations are in the hands of the State through State planning bodies such as EUROMEDITERRANÉE in Marseille. The second largest Metropolis in France after Paris, EUROMEDITERRANÉE is a national planning body in charge of the urban renewal of the center of Marseille.<sup>9</sup>

#### 5) Other Affordable Housing Stakeholders

Action Logement (“Action for Housing”), dedicated to workforce housing, is a fund underwritten by a specific public tax on employers and borrow interests (the fund controlled 3.2 billion euros in 2017).<sup>10</sup> The fund is governed by representatives of employers and unions,<sup>11</sup> under the control of a state agency, the Control on Social Housing National Agency (ANCOLS). Action Logement is legally a private, independent, non-profit organization organized under the law of 1901 on associations; however, de facto, Action Logement is a holding company with many subsidiaries.

It is worth mentioning the important role and influence of several powerful associations dedicated to the defense of homeless and low-income people: ATD Forth World, DAL (*droit au logement* or right to housing), the DALO (*droit au logement opposable* or enforceable right to housing), and the Abbé Pierre foundation (Catholic).

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<sup>8</sup> Mallach, Alan id p 227

<sup>9</sup> McArdle, John F. (2017) "Regional Public/Private Partnerships as Entrepreneurial Bricolage," *Journal of Comparative Urban Law and Policy*: Vol. 2 : Iss. 1 , Article 5, 65-77, p 76 Available at: <https://readingroom.law.gsu.edu/jculp/vol2/iss1/5>

<sup>10</sup> Annual report of action logement : <http://rapport-annuel.actionlogement.fr/2017/>

<sup>11</sup> Mallach Alan, id p 230

## II. FINANCING, SUBSIDIES, RENT CONTROL

Financing in French affordable housing has been called sophisticated, diversified, complex,<sup>12</sup> even overfinanced.

Rather than explain this complex system in all its detail, which is the result of the interplay between many direct and indirect subsidies, we present three case studies.

### A) Three Examples of Subsidized Affordable Housing Operations

The first case is classic: a social housing body builds multi-family affordable housing for rental (see the scheme below).

Depending on the category of low-income tenants, the financing will vary. There are three primary types of housing programs. The PLA-I program (subsidized for integration rental loan)<sup>13</sup> is designed to address the needs of poorest people, subsidies are consequently higher. The PLI program (intermediate rental loan) is designed for middle class individuals. The PLUS program (social rental loan) is the classic financing scheme.<sup>14</sup>

One specific characteristic of the financing of the construction of affordable housing units should be highlighted: The financing is based on social categories and consequently leads to gather people of the same social class in the same building, in other words, an affordable housing unit built under a PLA-I program may only be for people with very low-income. Therefore, in a given housing project, different kinds of programs are implemented in order to foster social mix (see below section IV).

We assume that in this first example, the program is a PLA-I. In this case, the land may be given or sold by a municipality for less than market value. Then, the social housing body may benefit from direct subsidies from local governments or the state through the ANRU program which may represent 20% or more of land and construction costs. The PLA-I program is based on a long term loan (40 years, for example) at a very low interest rate and guaranteed by a bank, commonly a public bank - la Caisse des dépôts. The financing of the Caisse des dépôts and other private banks is, in turn, permitted by a specific bank passbook called “livret A” with a guaranteed interest rate and tax exemptions. The PLA-I program project will benefit from

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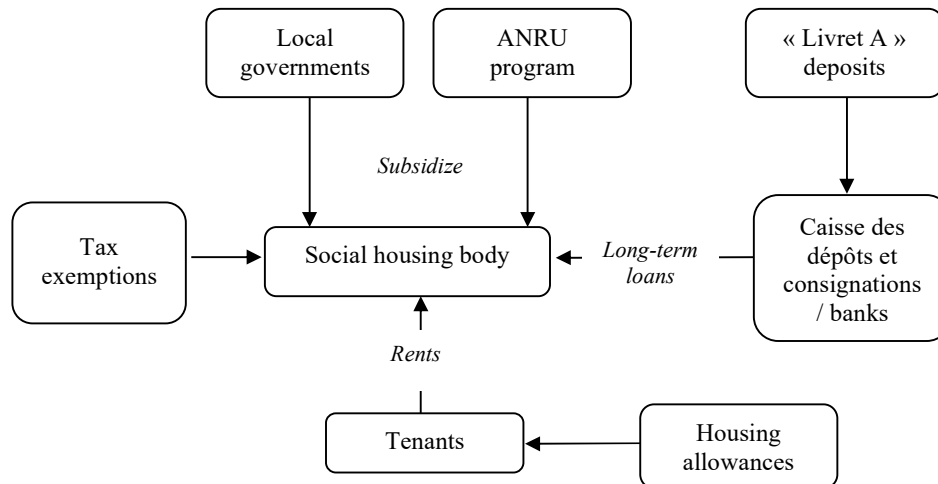
<sup>12</sup> Mallach Alan, *ibid* p 210

<sup>13</sup> Pierre Merlin « Habitation à loyer modéré » *id* p 390

<sup>14</sup> Mallach, Alan, *id* p 216

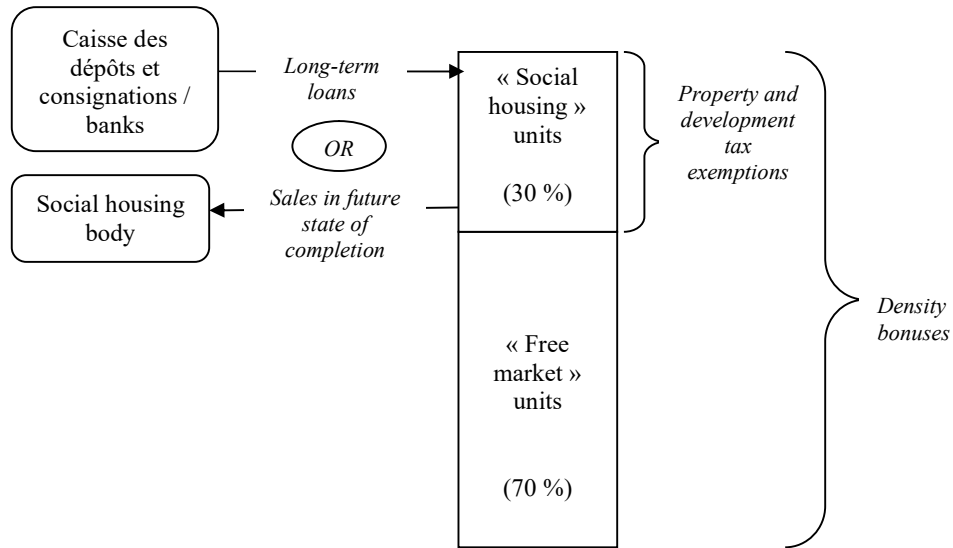


an exemption of all property taxes and development taxes, a reduced VAT and an exemption of society tax. The future low-income tenants will benefit from personal housing allowances, and in the case of housing units belonging to social housing bodies, those personal allowances will be directly paid to the housing body and the rent will be guaranteed. In addition, from the planning and zoning point of view, the project will benefit by receiving density bonuses for affordable housing when the building permit is issued.

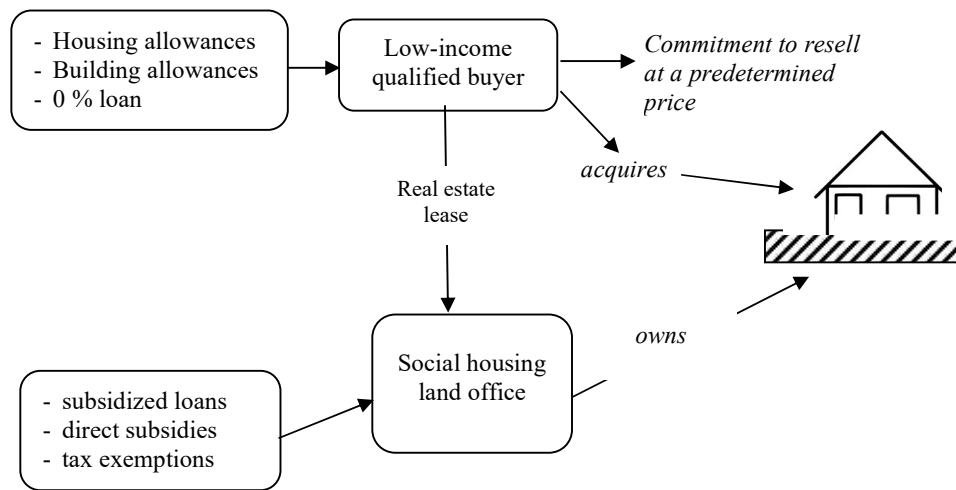


In the second case, we assume that affordable housing is built by a private developer, and affordable housing represents around 30% of the housing project due to an inclusionary provision of the local plan (see below section IV). The whole project will benefit from density bonuses. The social part of the project will benefit from a property and development tax exemption. Then two options are possible: the part of the project dedicated to affordable housing may be financed through a PLI or a PLS program and stay in private hands (it rarely occurs), or it is sold to a social housing body by means of a VEFA contract (sale in the future state of completion),<sup>15</sup> that allows the financing of the social part and often guarantees the financial feasibility of the whole operation; building affordable housing in France is profitable! This kind of project may be subsidized by Action Logement, as well, in order to set aside part of the project for workforce housing.

<sup>15</sup> Mallach, Alan id p 221



The third case is based on social home ownership. One of the main problems of social home ownership is the resale at private market value. A new mechanism set up by the law of the 20<sup>th</sup> of July 2016 on solidarity real estate lease, is an experiment to guarantee the social assignment of the housing long term. The system is based on the separation of the land and building: land is owned by a social housing land office, and the building is acquired by a low-income qualified buyer through a real estate lease. The real estate lease is a long-term lease up to 99 years, passed under the condition of a social resale at a predetermined price, ensuring a resale to low-income individuals at an affordable price. Land is financed either by a subsidized loan or direct subsidies and may even be given or bought under market price from a local government and benefit from tax exemptions property tax, development tax etc. The low-income qualified buyer may receive multiples subsidies: first, a direct subsidy to buy, called “aide à la pierre” (building allowance); second, a zero percent loan (PTZ) covering part of the purchase; and third, a low-income qualified buyer may benefit from individual allowances to pay the loan.



## B) Rent Control

From a government budget perspective, rent control is the cheapest way to make housing affordable because the private owner pays for the subsidy. By imposing a cap on rent, public authorities increase the supply of affordable housing on the private market because even in a market like France where affordable public housing is subsidized, housing shortages still abound.<sup>16</sup>

Rent control is also an indirect means of controlling real estate prices by determining the profitability of real estate investments. Rent control is not only the control of lease prices, but also the control of the conditions of the lease.

An important law on rent control was enacted in 1948 in order to address the tremendous lack of housing after WWII and the consecutive real estate crisis.<sup>17</sup> The law of 1948 is still in effect, but affects less than 1% of tenants on the private market. Since the ENEL law of 2006, units under the 1948 law lease cannot be passed on to heirs and consequently, will disappear.

The law of 1989 establishes a balance between landlords and tenants by imposing limited conditions to the landlord to exit the lease. The lease is

<sup>16</sup> Haut Comité Pour le Logement des personnes défavorisées annual report juin 2015 [http://www.hclpd.gouv.fr/IMG/pdf/18e\\_rapport\\_web-2.pdf](http://www.hclpd.gouv.fr/IMG/pdf/18e_rapport_web-2.pdf)

<sup>17</sup> Loïc Bonneval, Robert François et autres, "Les politiques de contrôle des loyers, comparaisons internationales et enseignements historiques 1914-2014 rapport PUCA [http://www.urbanismepuca.gouv.fr/IMG/pdf/Rapport\\_controle\\_loyers\\_juin\\_2015.pdf](http://www.urbanismepuca.gouv.fr/IMG/pdf/Rapport_controle_loyers_juin_2015.pdf)

renewable for three years and can only be cancelled under three limited conditions 1) the sale of the housing unit, 2) owner intent to occupy, 3) tenant fault. The rent itself is determined by a price index. This law helped curb the increase of prices until the end of the 1990s.

At the beginning of the 2000s rent prices increased rapidly and the law ALUR of 2014 tried to address this issue by establishing rent control in areas under pressure such as the largest metropolis of France. Article 140 of ELAN's act (law for the evolution of housing, planning and digital) of November 2018 establishes a new system of rent control. Only three major metropolises are affected - Paris, Lyon, and Marseille. Article 140 set an experimental term of five years. Rent controls are subject to intermunicipal bodies initiative. Prima facie, Article 140 of ELAN act appears to give less guarantees to the tenants than the ALUR law system and for a shorter period of time. However, the law issues the state a new set of enforcement: in case of abusive prices, the landlord may be fined.

### III. RIGHT TO HOUSING AND FRENCH DALO<sup>18,19</sup>

#### A) The Legal Framework of Right to Housing

Housing rights in France are developed by the state's lawmaking bodies. There are two legal pathways for housing law development: (a) European and constitutional statutes; and (b) statutes developed through the legislative framework featuring prominent antecedents to DALO.

##### 1) European and Constitutional Law

European law framework is an increasing source of housing law.<sup>20,21</sup> The Council of Europe, the European Court of Human Rights and the European Committee of Social Rights all contribute to laws protecting the right to housing.<sup>22</sup>

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<sup>18</sup> Lawlor, Leila (2017) "Three Cases in Point: A Comparison of Legal Access to Housing for Low-Income and Homeless Populations in Cape Town, Marseille and Miami," *Journal of Comparative Urban Law and Policy*: Vol. 2 : Iss. 1 , Article 8, 129-153. Available at: <https://readingroom.law.gsu.edu/jculp/vol2/iss1/8>

<sup>19</sup> Mialot, Camille and Ponce, Juli (2017) "Ten Years of the French DALO and the Catalan Right to Housing Act: European Innovation in the Fields of Land Use Planning and Housing," *Journal of Comparative Urban Law and Policy*: Vol. 2 : Iss. 1 , Article 7, 101-128. Available at: <https://readingroom.law.gsu.edu/jculp/vol2/iss1/7>

<sup>20</sup> Lora-Tamayo Vallvé, Marta "the Europeanization of planning law " Aranzadi 2017

<sup>21</sup> Id. at 20, Mialot, Camille and Ponce, Juli

<sup>22</sup> <http://www.housingrightswatch.org/page/council-europe-housing-rights>

The revised charter on social rights explicitly names a right to housing. According to article 31 of the charter, “With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed: 1) to promote access to housing of an adequate standard; 2) prevent and reduce homelessness with a view to its gradual elimination; 3) make the price of housing accessible to those without adequate resources.”

Citing Article 31, France was condemned by the European Committee of Social Rights for excluding the poorest from receiving a right to housing. In decision 2006/0033 of the 5 December 2007 *ATD Fourth World vs. France*, the European Committee of Social Rights considered that: “(..) the allocation procedure does not ensure sufficient fairness and transparency, since social housing is not reserved for the poorest households. The application of the concept of “social mix” in the 1998 Act, which is often used as the basis for refusing social housing, often leads to discretionary results excluding the poor from access to social housing. The major problem stems from the unclear definition of this concept in the law, and in particular, from the lack of any guidelines on how to implement it in practice. Therefore, the Committee considers that the inadequate availability of social housing for the most disadvantaged persons amounts to a breach of the Revised Charter.”

Nevertheless, the Conseil d’Etat (French administrative supreme court) does not give effect to all the provisions of the charter. In other words, some of the provisions may be used to challenge French law and other may not.<sup>23</sup>

The right to housing is not part of the French Constitution of 1958. In the context of post-World War II, a declaration of human rights with a prominent social content was adopted in 1946. This declaration is a part of the preamble of the 1946 Constitution whose social content can be explained by the political context of the time, with the Communist Party forming a majority in France. Until a decision of the French Constitutional Council of 1971, which recognized the constitutional value of the preamble of Constitution of 1946, it was considered a text without legal value. Indeed, this text was not explicitly included in the 1958 Constitution. Two sections implicitly refer to housing: "Section 10. Nation guarantees to the individual and the family the necessary conditions for its development. Section 11. Nation guarantees everyone, and especially the child, the mother and the retired workers, the protection of health, material safety, rest and leisure. Every human being who, due to his age, his physical or mental state or his economic situation, is unable to work, has the right to obtain from the community the necessary means of existence."

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<sup>23</sup> Conseil d’État le 10 février 2014 (req. 358992) Fischer

From these provisions the Constitutional Council concluded in its decision n ° 94-359 DC of January 19, 1995 apt.7: "The possibility for any person to have a decent accommodation is an objective of constitutional value."

However, a goal of constitutional value does not create a constitutional right warranting protection, but merely an ideal that is imposed on the public powers and the legislator. Beyond the preamble and the aforementioned decision of 1995, the constitutional framework does not directly support the right to housing as a constitutional right.

## **B) The Legislative Framework**

The legislative framework is more relevant and recent history is of particular interest.

The statutory law of June 22, 1982 proclaims in Article 1 that the right to housing is a fundamental right; however, this law deals with rent, and not the general housing issue. The statutory law of May 31, 1990 for the implementation of the right to housing, recognizes a subjective right and a correlative obligation of the community to enforce it. From this point of view, it is an innovation.

It consists of the implementation of a departmental plan of housing and accommodation reserved for people who do not have a decent accommodation, in the hands of the prefects, representatives of the State, and a mechanism to promote the construction of social housing. This 1990 Act is, in a way, the basis of the 2007 DALO Act. It was the failure of the 1990 Housing Act that led to the adoption of the DALO Act 17 years later.

### **1) The French DALO Act**

The description of the DALO Act of 2007 below provides an overview of the system enforced by this statutory law, allowing us to understand that the principal innovation remains in the central role of the holder of the right to housing.<sup>24</sup> The mechanism is set to make this right to housing effective, enforceable. One must keep in mind that the DALO was created as a response to an internal failure of affordable housing allocation, which excluded the poorest people from the affordable housing system.

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<sup>24</sup> Lawlor, Leila (2017) "Three Cases in Point: A Comparison of Legal Access to Housing for Low-Income and Homeless Populations in Cape Town, Marseille and Miami," *Journal of Comparative Urban Law and Policy*: Vol. 2 : Iss. 1 , Article 8, 129-153. Available at: <https://readingroom.law.gsu.edu/jculp/vol2/iss1/8>

The preamble of the DALO Act of March 5, 2007, indicates that the Act aligns with the previous laws, in particular the statutory law of 2006 (ENEL Act). But in our opinion, it is quite innovative. Unlike the previous statutory laws, the DALO Act, in effect, places the owner of the right to housing at the center of the system.

It is necessary to emphasize a distinction in the French affordable housing system that is explicitly included in the DALO act - the distinction between the right to housing and the right to shelter. The right to shelter refers to homeless people, while the right to housing corresponds to people who already have accommodation but, belonging to the categories of poorly housed, may have a right to rent in social housing. It should be noted that the right recognized through the DALO is not a right to own affordable housing; DALO is limited to the rental of affordable housing.

The DALO is an administrative procedure through which a right to affordable housing is recognized by a mediation committee. The applicant, the central stakeholder of DALO, asks for the recognition of his or her right to housing. The State is the debtor of DALO. The representative of the State (*Préfet*) in the provinces (*départements*) is in charge of the policy of shelters and housing aimed at people who lack decent housing. The representative of the State has the part of social housing and accommodation, called "reserved", for said emergency policy since the 1990 statutory law. The request of DALO is addressed to the State.

In case of non-response or inadequate response from the State, the latter is obliged to provide shelter or housing. In case of breach of duty, the responsibility of the State can be sought before the administrative litigation courts. The mediation commission, one for each province, is in charge of examining the applications for the DALO and recognizing an enforceable right to housing. The commission includes: 3 representatives of the State, 3 representatives of the territorial collectivities (municipality, province metropolitan area), 3 representatives of the entities managing social housing, 3 representatives of associations for the insertion and representatives of tenants, and 3 representatives of associations of defense of people without housing or poorly housed. It follows from the composition of the commission that stakeholders, who are on the side of the applicant, are the minority.

The administrative courts role is an innovation of DALO and a central element of the mechanics. In case of noncompliance with the commission's decision by the State, an administrative appeal before the courts of administrative litigation is opened in the form of measures of a maximum duration of two months; it is the logical consequence of the enforceable nature of the right to housing.

The evaluation committee, established by law, is responsible for annually evaluating the application of the law, producing an opinion with studies and proposed reforms. This regular monitoring of the application of the law is also an innovation, ensuring effectiveness. As we will see later, the committee takes its role very seriously and makes a detailed and critical control of the application of the DALO Act.

#### **IV. URBAN SEGREGATION, SOCIAL MIX, REMOVING OBSTACLES (ANTI-EXCLUSIONARY), POSITIVE REQUIREMENTS (INCLUSIONARY ZONING AND SET-ASIDES).**

Today, urban segregation is still an issue in France and all policies related to affordable housing tend directly or indirectly to address the hot issue,<sup>25</sup> better known in France as “la Banlieue.” The word ban-lieu means location-out. Today, ghetto is a word commonly used by sociologists to refer to French urban segregation.<sup>26</sup>

Even though urban segregation has been a structural problem in France since the late 1960’s as told in the visionary “Right to the City” by Henri Lefebvre,<sup>27</sup> very little was done until the beginning of the 1990’s, except to stop building large multifamily housing (les grands Ensembles) outside the city.

The statutory framework law of on Cities (*loi d'orientation sur la Ville, LOVE*) of 1991 guarantees in Article 1 the right to the city. Today, such a right would perhaps include the right to housing, but at the time, it was defined as a public obligation to foster inclusion. This first article may have been of particular importance, but it was repealed with the reform of the urban planning code in 2014.

The Anti-Exclusion Act of July 29, 1998, later codified in article L.115-2 of the Social and Family Action Code, establishes that combating exclusion is a national challenge, but based on the principle of equal dignity for all human beings sets it as a national policy priority. The Act seeks to ensure universal access to fundamental rights in the fields of employment, housing, health, justice, education, training and culture, and family and child protection. Central government, local and regional authorities and other public bodies such as municipal and joint municipal social services departments, social security bodies and other social and medical institutions shall contribute

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<sup>25</sup> Brouant, Jean-Philippe id

<sup>26</sup> Lapeyronnie, didier *Ghetto urbain. Ségrégation, violence, pauvreté en France aujourd'hui*, Paris, Robert Laffont, coll. « Le monde comme il va », 2008, 624 p., ISBN : 9782221107669.

<sup>27</sup> Lefebvre, Henri *Le droit à la ville*,. Éditions Anthropos, Paris, 1968



to implementing these principles. They should implement policies designed to identify, prevent and remedy situations that might lead to exclusion.

### A) The SRU Act and Social Mix

The Solidarity and Urban Renewal Act (SRU Act) of 2000 establishes the principle of social mix<sup>28</sup> (*mixité sociale*) and institutes a minimum quota of social housing per municipality.<sup>29</sup> Article 1 of the SRU Act requires that all urban plans adhere to the principle of diversity of urban functions and social mix in urban housing and rural housing, providing for sufficient construction and rehabilitation capacities to satisfy, without discrimination, present and future housing needs.

Article 55 sets a quota system: “The provisions of this section apply to communes with a population of at least 1,500 inhabitants in Ile-de-France and 3,500 inhabitants in the other regions which are included, within the meaning of the general census of the population, in an agglomeration of more than 50,000 inhabitants comprising at least one commune of over 15,000 inhabitants, and in which the total number of social rental housing units represents, on 1 January of the previous year, less than 20% of the main residences.” “From 1 January 2002, an annual levy on the fiscal resources of the municipalities referred to in Article L. 302-5 shall be made, with the exception of those which benefit from the urban solidarity endowment provided for in Article L. 2334-15 of the general code of local authorities when the number of social housing exceeds 15% of the main residences. This levy is equal to 1000 F (150€) multiplied by the difference between 20% of the principal residences within the meaning of I of the Article 1411 of the General Tax Code and the number of social housing units existing in the municipality the previous year, as stated in Article L. 302-5, without exceeding 5% of the actual operating expenses of the municipality recorded in the administrative account for the penultimate year.”

To summarize, municipalities under the quota of 20% of affordable housing are required to build affordable housing, or be subjected to penalties. One can easily deduce from this system that the richest municipalities under 20% can afford to pay the penalties without building more affordable housing, even if in some cases the city may lose the ability to issue new building permits when the municipality resists building affordable housing.

Moreover, there is, in fact, no penalty for those municipalities that continue to concentrate affordable housing and poverty as long as they are above the quota. In other words, one of the weaknesses of this statutory law is

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<sup>28</sup> Brouant, Jean-Philippe id

<sup>29</sup> Mallach, Alan id p 212

to impose a minimum quota without imposing at the same time a maximum quota, therefore, not addressing the concentration of poverty.

The progress obtained through the SRU Act must be put in perspective. It should be emphasized as well as that the Constitutional Council itself distorted, in part, the scope of the principle of social mix by specifying in its decision n° 2000-436 DC of December 7, 2000, using the technique of reservation of interpretation, that the law could not impose an obligation of result to municipalities, forcing the judge to make a minimum control, called control of compatibility, of the urban plans.<sup>30</sup> Twenty years after the enactment of the law, no zoning ordinance has been withdrawn by a court on the ground of breach of social mix.

The 2006 ENL Act (National Housing Commitment Act) adopted an economic point of view, focused merely on housing supply, and pursues the objective of promoting it. Nevertheless the law provides for a new zoning tool for inclusionary zoning and allows municipal and intermunicipal bodies in charge of zoning to create mix zones in the zoning ordinance with a quota of affordable housing per square meters to build or housing unit to build: for instance a zoning ordinance may contain a provision stating that a housing project above 20 housing units may contain 30% of affordable housing.

The law ALUR of March 2014 increased the SRU law quota up to 25%.

## **B) Next Steps**

The law Equality and Citizenship of January 2017 starts a new quota system in order to address segregation within the allocation of affordable housing, ten years after the condemnation by the European committee of social rights. It requires that 25% of affordable housing outside the poorest zones, or ghettos, must be allocated to the lowest income beneficiaries in order to desegregate the poorest zone. Similarly, a new system is being experimented with: in order to foster desegregation, municipalities are allowed to set a universal rental price for affordable housing regardless of the financing program; as previously explained, rents in affordable housing are determined according to the financing program and thus leads to segregation. The city of Rennes, one of the first cities to experiment with this new system, will try it for the next five years.

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<sup>30</sup> Brouant, Jean Philippe id