

See discussions, stats, and author profiles for this publication at: <https://www.researchgate.net/publication/290959948>

# Housing rights in constitutional legislation: A conceptual classification

Article · January 2014

CITATIONS

4

READS

91

3 authors, including:



**Michelle L. Oren**

Technion - Israel Institute of Technology

1 PUBLICATION 4 CITATIONS

[SEE PROFILE](#)



**Rachelle Alterman**

Technion - Israel Institute of Technology

149 PUBLICATIONS 910 CITATIONS

[SEE PROFILE](#)

Some of the authors of this publication are also working on these related projects:



Opening article in the new Transactions in Planning open-access journal launched by AESOP [View project](#)



historic (=heritage) preservation and planning law [View project](#)

# Housing Rights in Constitutional Legislation: a conceptual classification

Michelle Oren, Rachelle Alterman and Yaffa Zilbershatz

Forthcoming (2014) chapter in: *Contemporary Housing Issues in a Globalized World*, Edited by Padraic Kenna, Ashgate.

## Introduction

Housing rights are conditions granted by statutes or entitlements by law that rest on the understanding of a need for housing and imply certain duties and obligations either taken by the state or other entities and individuals.<sup>1</sup> Much has been written about housing rights in the international human rights context.<sup>2</sup> However little comparative work has been published at the national level, particularly in relation to any classification or categorization of the status of housing rights in constitutions.<sup>3</sup>

At the international level, housing rights are embedded in the *Universal Declaration of Human Rights*<sup>4</sup> at Article 25(1) and in the *International Covenant on Economic Social and Cultural Rights* (ICESCR) at Article 11(1).<sup>5</sup> The latter has been interpreted by the UN Committee on Economic Social and Cultural Rights (UNCESCR)<sup>6</sup> as well as several other international agreements<sup>7</sup>. In the

---

<sup>1</sup> King, P. (2003) 'Housing as a freedom right,' *Housing Studies* 18 (5) 661-672

<sup>2</sup> Leckie, S. (1992) 'From Human Needs to Housing Rights: An Analysis of the Right to Adequate Housing Under International Human Rights Law. International Institute for Environment and Development (IIED), London.

Leckie, S. (1995) The Justiciability Of Housing Rights, in The right to complain about economic, social and cultural rights: proceedings of the expert meeting on the adoption of an optional protocol to the international covenant on economic, social and cultural rights, held from 25-28 January 1995 in Utrecht / ed. by Fons Coomans, Fried van Hoof - Utrecht : SIM. - (SIM special no. 18) pp.24-30; Leckie, S. (2000) 'The Human Right to Adequate Housing' in Eide, A., Krause, C., Rosas, A. & Scheinin, M. (eds), *Economic, Social and Cultural Rights: A Textbook* (2nd ed., The Hague: Martinus Nijhoff Publishers); COHRE (2003), *Legal Resources for Housing Rights: International and National Standards*. Centre on Housing Rights and Evictions, Geneva, Switzerland; Kenna, P. (2010). International instruments on housing rights. *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction*, 2(1) 11-20

Kenna, P. (2011) *Housing Law, Rights and Policy*, Dublin, Clarus Press. Chapter 8: Housing Rights.

<sup>3</sup> Although the UN - Habitat Reports - UN-Habitat UNHRP Report Series, No. 3. *National housing rights legislation* (3rd ed) (HS/638/01E) (Nairobi, 2006). UN-Habitat UNHRP Report Series, No. 1. *Housing rights legislation: Review of international and national legal instruments* (HS/638/01E) (Nairobi, 2002) provide an overview many new constitutions have emerged since that research.

<sup>4</sup> The Universal Declaration of Human Rights (1948), (UDHR) UNGA Resolution 2200A (XXI) UN Doc A/810. Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948, stipulates in its Article 25 that: "Everyone has the right to a standard of living adequate for the health and wellbeing of himself [herself] and of his [her] family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his [her] control."

<sup>5</sup> UN Doc. A/6316 (1966) *International Covenant on Economic, Social and Cultural Rights*. (ICESCR) UNGA Resolution 2200A (XXI) Entered into force 3 January 1976, states in its Article 11(1): "The State parties to the ... [ICESCR] recognize the right of everyone to an adequate standard of living for himself [herself] and for his [her] family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."

<sup>6</sup> *General Comment 3 Concerning Indigenous and Tribal Peoples* (1989); UN Doc. E/C.12/1771/4. UNCESCR, *General Comment 4. The Human Right to Adequate Housing*; UN Doc. E/1998/22 Annex IV. UNCESCR, *General Comment 7, The Right to Adequate Housing – Forced Evictions*; Istanbul Declaration: UN conference on Human Settlements: Vancouver Declaration (1976); UN Doc. E/CN.4/1987/19, *The Limburg Principles on the Implementation of the ICESCR*, (1987) 16 HRQ 37; *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*

broader European context, housing provisions are anchored in the Council of Europe's *European Social Charter* (ESC) (Part I principle 31), Articles 15(3), 16, 19(4), 30 and 31) (1961 revised 1996).<sup>8</sup> *The European Convention on the Legal Status of Migrant Workers* (Article 13) (1977) also provides for housing rights for this particular social group<sup>9</sup>. Additionally, some rights established under the *European Convention on Human Rights and Fundamental Freedoms* (ECHR) (1950) have indirect implications for housing rights.<sup>10</sup>

These international instruments have influenced domestic laws in different manners and to different degrees. However, the right to housing and other forms of housing rights were legislated in some national constitutions decades before they were debated in the international sphere. Mexico (1917), South Korea (1948), Costa Rica (1950), and possibly a number of other national constitutions that are no longer in force, already had a right to housing before the creation of the ICESCR. By the 1990's the right to housing and other forms of constitutional housing rights already existed in over 24 national constitutions (which are still in force). Indeed, it was only in the 1990's, according to Leckie,<sup>11</sup> that the right to housing began to gain importance within the international sphere leading to its official recognition as an international human right. The ICESCR General Comment 4 on the human right to adequate housing (1991)<sup>12</sup> accentuated the central importance of housing for the enjoyment of all other economic, social and cultural rights as "*the right to live somewhere in security, peace and dignity.*" The UNCHR Special Rapporteur on the Right to Adequate Housing suggested at the UN Commission of Human Rights in 1995 that all States proceeding with the elaboration of new, revised or amended national constitutions, should give due attention to including housing rights provisions in these texts.<sup>13</sup>

With the beginning of the 21<sup>st</sup> century came a better understanding of the way international human rights norms affect national and local levels laws, In several cases, constitutional or legislative texts were modeled after international standards, principles, and norms.

This chapter focuses at housing rights at the level of national constitutions. It presents an overview of the current state of the right to housing within national constitutions, and a classification of constitutional housing rights. The classification, which is based on a survey of 205 national constitutions (including non-sovereign states),<sup>14</sup> reveals three major forms by which countries have chosen to incorporate housing into their constitutions:

a. The explicit (direct) right to housing;

---

(1998) 20 HRQ 691; *Habitat Agenda* (1996).

<sup>7</sup> UNHRP Report No.2. *International instruments on housing rights*, (HS/639/01 E), UN Habitat, Nairobi, 2002).

<sup>8</sup> Turin, 18.X.1961, Council of Europe, European Treaty Series - No. 35; *European Social Charter: (Revised)* Council of Europe, Strasbourg 3/5/1996. Article 31: *Everyone has the right to housing*; Article 15 relates to the right of persons with disabilities to independence, social integration and participation in the life of the community; Article 16 relate to the right of the family to social, legal and economic protection; Article 19 (4) relates to the right of migrant workers and their families to protection and assistance; Article 30 relates to the right to protection against poverty and social exclusion. Article 31 states: "*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) to prevent and reduce homelessness with a view to its gradual elimination; (3) to make the price of housing accessible to those without adequate resources.*"

<sup>9</sup> Council of Europe, *European Convention on the Legal Status of Migrant Workers*, Strasbourg, 24.XI.1977, Article 13.

<sup>10</sup> Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms*, Rome, 4.XI.1950.

<sup>11</sup> Leckie, S. (2003) *National perspectives on housing rights*. (The Hague: Martinus Nijhoff Publishers) p. ix.

<sup>12</sup> See UN Doc. E/C.12/1771/4. UNCESCR, *General Comment 4. The Human Right to Adequate Housing*.

<sup>13</sup> UN Doc. E/CN.4/Sub.2/1995/12, *The Realization of Economic, Social and Cultural Rights, The Right to adequate housing*, Final report submitted by Mr. Rajindar Sachar, Special Rapporteur, paragraph 164

<sup>14</sup> All constitutions were collected from governmental sites. The constitutions presented in this chapter are official translations to English.

- b. Embedded rights, that is, rights included in articles referring to housing as a component of some other right;
- c. Indirect or implied rights.

Certain constitutions include up to ten articles (e.g. Ecuador, 2008) on housing, and a single national constitution may contain all three forms of housing rights, or any combination of them.

**Table 1. Conceptual Classification of Constitutional Housing Rights**

Conceptual classification of constitutional housing rights			
Direct rights	<ul style="list-style-type: none"> <li>• Right to housing, stand-alone</li> </ul>	<ul style="list-style-type: none"> <li>• Housing listed among other social rights</li> </ul>	
Embedded rights	<ul style="list-style-type: none"> <li>• Responsibilities of the state</li> <li>• Workers’ rights</li> <li>• Property rights (explicit)</li> <li>• Children/Youth rights</li> <li>• Elder rights</li> <li>• Planning and urban politics</li> <li>• Adequate standard of living</li> <li>• Responsibilities of regional and local authorities</li> </ul>	<ul style="list-style-type: none"> <li>• Human dignity</li> <li>• Fiscal policy</li> <li>• Inclusion and equality</li> <li>• Indigenous rights</li> <li>• Social security</li> <li>• Disabled rights</li> <li>• Mandatory Report on the implementation of the right to housing</li> </ul>	<ul style="list-style-type: none"> <li>• Right to challenge court decisions</li> <li>• Agricultural policy</li> <li>• Rural politics</li> <li>• Homelessness</li> <li>• Family rights</li> </ul>
Indirect rights	<ul style="list-style-type: none"> <li>• Property rights</li> <li>• Freedom of residence</li> </ul>	<ul style="list-style-type: none"> <li>• Right to privacy</li> <li>• Right to life</li> </ul>	<ul style="list-style-type: none"> <li>• Right to be free from cruel or degrading treatment</li> </ul>

**a. Direct Housing Rights within Constitutions**

Direct rights refer to constitutional articles that explicitly mention ‘the right to housing’ either as a dedicated article (stand-alone) or among a list of social rights.

(i) The right to housing as stand-alone

Incorporating the right to housing as a stand-alone article in a constitution is probably the strongest expression of recognition of housing as a national issue. While some countries merely recognize the right, others specify the measures and responsibilities in greater detail. In a five-level scale the following formats were found:

<ul style="list-style-type: none"> <li>• Every person/citizen has a right to housing;</li> </ul>
<ul style="list-style-type: none"> <li>• Public authorities shall promote the necessary conditions/policy to ensure the right to housing;</li> </ul>
<ul style="list-style-type: none"> <li>• Every person/citizen has a right to housing. State must take specified measures for the realization of the right.</li> </ul>
<ul style="list-style-type: none"> <li>• Everyone/citizens has/have the right to a specific standard of housing. The State must take listed measures for its implementation including a national plan, finance and specialized institutions or funds. The parties involved are listed (e.g. Municipalities, private sector);</li> </ul>
<ul style="list-style-type: none"> <li>• Everyone/citizens has/have the right to a specific standard of housing. The State must take listed measures for its implementation including a national plan, finance and specialized institutions or funds. The parties involved are listed (e.g. Municipalities, private sector); provides rent control.</li> </ul>

(ii) Partial list of social rights

Some national constitutions explicitly provide for ‘the right to housing’ among a list of other rights.

Thus the right to housing appears in a single article with a myriad of other social rights, such as education, social security as rights, food, work, maternity protection and assistance to the needy, leisure, decent standards of sanitation and access to safe water sources.

**Constitution of Kenya (2010)**  
**Chapter four.** The Bill of Rights.  
**Part 2.** Rights and Fundamental Freedoms.

**43.** (1) Every person has the right—  
 (a) to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;  
 (b) to accessible and adequate housing, and to reasonable standards of sanitation;  
 (c) to be free from hunger, and to have adequate food of acceptable quality;  
 (d) to clean and safe water in adequate quantities.

**(b) The Embedded Form of Constitutional Housing Rights**

The most widespread form of housing rights in national constitutions occurs in articles that, while explicitly mentioning housing, list those rights as a component of some other general right.

**(i) Responsibilities of the State**

These laws of State responsibility are the principles governing the what, when and how a State is held responsible to provide its citizens an agreed upon good (right, duty or other). This group of articles is usually included under the chapter of the ‘State’ or ‘Duties of the State’. The content of the housing related responsibilities varies between constitutions and may include:

- Granting the government exclusive jurisdiction over housing policies;
- Adopting measures for the provision of housing and distribution of public estates;
- Supplementing private initiative and responsibility by fulfilling the housing needs of citizens;
- Promoting housing construction programs and the improvement of living conditions;
- Satisfying the housing needs of citizens, combating homelessness, promoting low income housing, and supporting homeownership;
- Creating opportunities for citizens to obtain decent housing;
- Providing the basic necessities of life including housing;
- Permitting the greatest number of homeowner families and undertaking to see that every farm owner provides his workers with comfortable homes
- Pursuing a policy establishing rights to housing;
- Legislating against abuses in tenancy matters, particularly unfair rents, and challenging unlawful leases.

**(ii) Workers’ rights**

Workers' rights and claims regulate labour relations between workers and employers, such as workers' pay, benefits, and safe working conditions. In this context, housing related articles include:

- Establishing a minimum wage/income that meets housing needs;
- Specifying which enterprises must provide housing to their workers;
- Establishing specific entities to support the finance of worker’s housing projects;

- |  |
|--|
| <ul style="list-style-type: none"> <li>• Establishing a national housing fund for workers and cooperative construction societies;</li> </ul> |
| <ul style="list-style-type: none"> <li>• Providing an exclusive housing right to agricultural workers and peasants.</li> </ul>               |

(iii) Property rights

While property rights are a classic example of indirect rights, there are cases in which housing is explicitly mentioned in a property related article. Housing related articles include those which:

- |  |
|--|
| <ul style="list-style-type: none"> <li>• Oblige the state to provide housing for citizens with limited income;</li> </ul>                              |
| <ul style="list-style-type: none"> <li>• Protect rights to acquire and own housing;</li> </ul>   |
| <ul style="list-style-type: none"> <li>• Protect from arbitrary deprivation of housing;</li> </ul>   |
| <ul style="list-style-type: none"> <li>• Compensate owners for expropriated land for purposes such as housing;</li> </ul>                              |
| <ul style="list-style-type: none"> <li>• Protect against eviction, resettlement and demolition of poor dwellers' urban and rural dwellings.</li> </ul> |

(iv) Children's rights

These rights give special protection and care to the young, including their right to association with both biological parents, human identity, as well as the fulfillment of basic needs for food, universal state-paid education, health care, criminal laws appropriate for the age and development of the child, and *shelter*.

<p><b>Constitution of Honduras (1982)</b>  <b>Chapter iv.</b> □ Rights of children.</p> <p><b>Article 123.</b> Every child shall enjoy the benefits of the social security and education. Have the right to grow and develop in good health, for which must be □ provided, both to him and his mother, special care from the prenatal period, taking right to enjoy food, housing, education, recreation, sports and □ adequate medical services.</p>
---

(v) Elder rights

Factors such as rapid increases in the elderly population and age, as well as ageism, have led to the advent of Elders' Law. Benefits to the elderly include social security, pensions and access to nursing homes, provision of housing suited to their needs and their state of health, or of adequate support for adapting their housing.

<p><b>Constitution of Angola (2010)</b>  <b>Chapter III</b> Economic, Social and Cultural Rights and Duties.</p> <p><b>Article 82 (The elderly)</b></p> <ol style="list-style-type: none"> <li>1. The elderly shall have the right to economic security, housing and a family and community life that respects their personal autonomy and prevents and overcomes isolation or social marginalization.</li> <li>2. Policies for the elderly shall include economic, social and cultural measures that offer elderly people opportunities for personal fulfillment through active participation in community life.</li> </ol>
--

(vi) Planning and urban politics

Planning and urban politics are the technical and political processes concerned with the control of the use of land and design of the urban environment, including transportation networks. The role of planning is to ensure the orderly development of human settlements and communities. Housing rights are found in various formats here, including:

<ul style="list-style-type: none"> <li>• Providing that urban development, housing, infrastructure and transport be under the regulatory control of the state;</li> </ul>
<ul style="list-style-type: none"> <li>• Claim ownership over property used for living purposes;</li> </ul>
<ul style="list-style-type: none"> <li>• Providing that programs of urban land reform and housing be undertaken by both the state and the private sector;</li> </ul>
<ul style="list-style-type: none"> <li>• Providing that housing plans be determined by laws aimed at ensuring sufficient affordable housing and state control of real estate for public housing;</li> </ul>
<ul style="list-style-type: none"> <li>• Providing for legislation to regulate citizens' rights to undertake construction of housing and to protect the interests of landlords and tenants.</li> </ul>

(vii) Adequate standard of living

The right to an adequate standard of living is understood to establish a minimum entitlement to food, clothing and housing at a subsistence level.

<p><b>Constitution of Armenia (1995 revised in 2005)</b>  <b>Chapter 2. Fundamental Human and Civil Rights and Freedoms.</b></p> <p><b>Article 31.</b>  Every citizen is entitled to an adequate standard of living for himself or herself and his or her family, to adequate housing, as well as to the improvement of living conditions. The state shall provide the essential means to enable the exercise of these rights.</p>
--

(viii) The responsibilities of regional and local authorities

Regional and local authorities are recognized as a form of public administration by many national constitutions, and in most contexts, they exist as the lower tiers of administration within a given state, as entities distinct from national or federal authorities. Some constitutions enumerate the duties and responsibilities of regional and local jurisdictions, including housing affairs.

<p><b>Constitution of Venezuela (1999)</b>  <b>Chapter IV Municipal Public Power.</b></p> <p><b>Article 178.</b> A Municipality has competence to govern and administrate its interests, as well as over the management of those matters which are assigned to it by this Constitution and national laws as regards local life, in particular the ordering and promotion of economic and social development, the equipping and providing of household public utility services, the application of policy with respect to these matters on a basis of fairness, justice and social interest content, according with delegation established on law related to this matter, the promotion of participation and improvement, in general, of living conditions in the community, in the following areas:(...) housing in the interest of society;</p>
--

(ix) Human dignity

Dignity is intimately linked to humanity, freedom and equality. Humans are born with dignity as an inherent quality that is neither deserved nor capable of being confiscated. This commitment to dignity has been endorsed in the vast majority of codified constitutions, and some constitutions explicitly list housing as a component of this right.

<p><b>Constitution of Belgium (1994)</b>  <b>Title II. On Belgians and their rights</b>  <b>Article 23.</b></p>
---

Everyone has the right to lead a life consistent with human dignity. To that end, the laws, decrees or rules established under article 134 guarantee, taking into account the corresponding obligations, economic, social and cultural rights of which they determine the conditions for their implementation. These rights include, in particular,  
... (3) The right to adequate housing.

(x) Fiscal policy

Fiscal policy is the means by which a government adjusts its levels of spending in order to monitor and influence a nation's economy. Housing is one of the policy areas where large spending may be involved, and constitutions explicitly mention housing in articles defining the fiscal policy of the state.

**Constitution of the Islamic Republic of Iran(1979)**

**Chapter IV. Economy and Financial Affairs.**

**Article 43.** The economy of the Islamic Republic of Iran, with its objectives of achieving the economic independence of the society, uprooting poverty and deprivation and fulfilling human needs in the process of development while preserving human liberty, is based on the following criteria:

(1) The provision of basic necessities for all citizens: housing, food, clothing, hygiene, medical treatment, education and the necessary facilities for the establishment of a family.

(xi) Inclusion and equality

Inclusion and equality involve eliminating discrimination, and enabling equal opportunity by providing access to housing or protection against exclusion. Housing is explicitly mentioned in such articles in the following forms:

- The Provision of a national development plan, composed by housing among other, will to be guided by these principles including non-discrimination;
- Uplift of economically and socially backward groups (landless, squatters and victims of conflict including women) and marginalized populations by making provisions that include housing.

(xii) Indigenous rights

Indigenous rights involves the recognition of the specific conditions of those defined as the original settlers of a land that has been conquered or colonized. Such rights include the right to physical survival and integrity, preservation of land, religion, language and other elements of cultural heritage, including housing.

**Constitution of Guatemala (1985)**

**Title II. Human rights.**

**Chapter II. Social rights.**

**Section III. Indigenous communities.**

**Article 67. Protection of Indigenous Agricultural Lands and Cooperatives.**

The lands of the cooperatives, native communities, or any other forms of communal possession or collective of agrarian ownership, as well as the family heritage and popular housing will enjoy the special protection of the State, preferential credit and technical assistance, which may guarantee their ownership and development in order to insure an improved quality of life to all inhabitants.

(xii) Social security

Social security is defined as government action programs intended to promote welfare for the population at large as well potentially vulnerable segments of the population such as children, elderly, sick and unemployed. It is provided through assistance measures guaranteeing access to sufficient resources for food and shelter, and to promote health and wellbeing.

**Constitution of Argentina (1994)**

**First Part.**

**Chapter I. Declarations, rights and guarantees.**

**Section 14bis.** Labor in its several forms shall be protected by law, which shall ensure to workers: dignified and equitable working conditions; limited working hours; paid rest and vacations; fair remuneration; (...)

□ The State shall grant the benefits of social security, which shall be of an integral nature and may not be waived. In particular, the laws shall establish: compulsory social ...insurance, which shall be in charge of national or provincial entities with financial and economic autonomy, administered by the interested parties with State participation, with no overlapping of contributions; adjustable retirements and pensions; full family protection; protection of homestead; family allowances and access to a worthy housing.

(xiii) Disability rights

Disability covers impairments, activity limitations, and participation restrictions. These rights are meant to secure equal opportunities and equal rights for people with disabilities including accessibility and safety in transportation, architecture and the physical environment, freedom from abuse, neglect, and violations of patients' rights, equal opportunities in independent living, employment, education, and housing. Housing in the context of disabled people's rights appears in the constitutions of Ecuador and Switzerland.

**Switzerland Constitution (1999)**

**3rd title:** confederation, cantons and communes

Chapter 1: relations between the confederation and the Cantons.

Section 8: Housing, Employment, Social Security and Health.

**Art. 112c51.** Aid for elderly people and people with disabilities\*

The Cantons shall provide for assistance and care in the home for elderly people and people with disabilities.

(xiv) Mandatory Report on the implementation of the right to housing

The South Africa Constitution (1996) declares the functions of the South African Human Rights Commission. Chapter 9, section 184 states that each year, the South African Human Rights Commission must require relevant organs of state to provide the Commission with information on the measures that they have taken towards the realization of the rights in the Bill of Rights concerning housing among other subjects.

(xv) Right to challenge court decisions

The Ukrainian Constitution (1996) states that human and citizens' rights and freedoms [including the right to housing enumerated in Articles 47 and 48 of the Constitution] are protected by the court (Article 55). Everyone in Ukraine has the right to appeal for the protection of his or her rights to the Authorised Human Rights Representative of the Verkhovna Rada of Ukraine. After exhausting all domestic legal remedies, everyone has the right to appeal for the protection of his or her rights and freedoms to the relevant international judicial institutions or to the relevant bodies of international

organisations of which Ukraine is a member or participant.

(xvi) Agricultural policy

Agricultural policy describes a set of laws relating to domestic agriculture and imports of foreign agricultural products. Governments usually implement agricultural policies with the goal of achieving a specific outcome in the domestic agricultural product markets, such as a guaranteed supply level, price stability, land use or employment. The Brazilian Constitution (1988) Article 187 establishes that an agricultural policy shall be planned and implemented pursuant to law, with regular participation in that process by the production sector — involving both rural producers and workers — as well as by the marketing, warehousing and transportation sectors, considering housing for the rural worker among other subjects.

(xvii) Rural politics

Rural politics focuses on the key issues affecting rural areas today, such as water pollution, forestry, the greening of agricultural policy, as well as mainstream agricultural policy. The Democratic Republic of Korea's Constitution (1998) Article 28 provides that the State undertake the building of production facilities of the cooperative farms and modern houses in the countryside, at its expense, with the purpose of increasing the role of the countryside and eliminating city/country divide.

(xviii) Homelessness

Homelessness is defined as the condition of people who are often unable to acquire and maintain regular, safe, secure, and adequate housing or night-time residence. The legal definition of "homeless" varies from country to country and among institutions in the same country or region. The Greek Constitution (2001) Article 21(4) addresses homelessness by stating that providing housing to those who are homeless or live in inadequate housing conditions shall be the subject of special attention by the State.

(ix) Access to basic domestic services

In modern times, access to and delivery of basic needs includes obtaining water, food, health services and shelter in adequate quantity and quality to ensure survival and satisfy their right to "life with dignity." The Bolivian Constitution (2009) Article 20 guarantees access to basic domestic services in a universal and equitable manner, including potable water, sewage, electricity, domestic gas, postal and telecommunications. Services must be accountable, accessible, continuous, quality, efficient, effective, with equitable and necessary coverage rates, with participation and social control.

(xx) Family rights

Human rights law upholds the positive right of all peoples to marry and found a family. It bolsters the family unit by specifying State obligations to keep families together and to reunify them when they have become separated e.g. as a result of refugee crises. It insists on maternity rights for mothers to allow time and space for the bond to develop between mother and child. It also prescribes detailed standards for the treatment of children who lack parental care and require state intervention and the provision of foster care or adoption. In the Constitution of Paraguay (1992) at Article 59 protects family property, recognized as an institution of a social interest. Family property consists of the family house or estate and its furniture and working tools, which cannot be subjected to any attachment.

### (c) Indirect or Implied Constitutional Housing Rights

Indirect form of protection does not include an explicit mentioning of housing, thus in order to turn constitutional language into operative law the courts and the parliaments would need to interpret general constitutional language into concrete protection.

#### (i) Property rights

Property rights grant the peaceful enjoyment of material possessions such as dwellings and land while protecting owners from their deprivation. According to Youngs,<sup>15</sup> property must be subject to the State's power to impose taxes, enforce court decisions and intervene wherever the balance between the public interest and the applicant's right to peaceful possession is disrupted. Forms of State intervention include deprivation, limitation, expropriation or compulsory purchase, and compensation.

Some countries have no constitutional protection of housing rights, but do hold a strong protection of private property. The Constitution of the United States, for example, protects property rights mainly through the Fifth Amendment's 'Takings or Just Compensation' Clause: "*nor shall private property be taken for public use without just compensation.*" America's Founders understood clearly that private property is the foundation, not only of prosperity and basic fairness, but of individual liberty itself.<sup>16</sup> Hartman<sup>17</sup> refers to this as the American anti safety-net political climate, because housing is viewed primarily as property and a commercial asset.

In contrast, the Dutch Constitution (1983) includes a housing right (Article 22), but it does not include a general right to property, although it includes a prohibition of unlawful expropriation (Article 14). The reason, which has been defended by successive governments, is that property rights are so fundamental to Dutch society that it is redundant to explicitly mention them.<sup>18</sup>

Housing and property rights also intersect in the event of 'repossession', that is, the right of refugees and displaced persons to repossess property they have lost in conflict situations through abandonment and subsequent reallocation. Repossession is considered sustainable if the displaced persons can return to their pre-conflict homes, and in many cases has been elaborated in peace treaties ending hostilities. The reference to 'home' has often been defined as return and repossession of the actual property lost during the conflict. The term 'home' here may be wider than the term 'housing'.

#### **Bosnia and Herzegovina (1995)**

Article II. Human Rights and Fundamental Freedoms.

Paragraph 5. Refugees and Displaced Persons:

All refugees and displaced persons have the right freely to return to their homes of origin. They have the right, in accordance with Annex 7 to the General Framework Agreement, to have restored to them property

<sup>15</sup> Youngs R. (2007) *English, French and German: Comparative law*. London: Cavendish, pp. 302-4.

<sup>16</sup> See Ziegler and Laitos (2011) Property Rights, Housing, and the American Constitution: The Social Benefits of Property Rights Protection, Government Interventions, and the European Court on Human Rights' Hutten-Czapska Decision. *Indiana International & Comparative Law Review*, Vol. 21, No. 25, 2011.

<sup>17</sup> Hartman, C. (2003) The Case for a Right to Housing in the United States, in Leckie S. (2003) *National perspectives on housing rights*. (The Hague: Martinus Nijhoff Publishers), pp. 230-231.

<sup>18</sup> As a corollary to these property rights it is significant that independent housing associations were incorporated into the Dutch housing laws over 100 years ago making the Netherlands' housing policy rather unique. See Olds, K. 'The role of Courts in making the right to housing a reality throughout Europe: Lessons from France and the Netherlands' 28 *WILJ* (2010) 170-199.

of which they were deprived in the course of hostilities since 1991 and to be compensated for any such property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void.

Two subjects that deserve their own chapters are takings and evictions. Recently, much literature has been dedicated to evictions, including many reports by the UN on forced evictions. Takings (expropriations/eminent domain) and compensation are frequently mentioned in constitutions, in most cases, as an integral part of the right to property.<sup>19</sup> Although housing may not be mentioned in these clauses, expropriation issues necessarily have a direct bearing on housing.

#### (ii) Freedom of Residence

Freedom of residence is a component of freedom of movement. It guarantees the liberty to choose where to live within the territory of a state and it often provides legal protection from discrimination in housing. Most national constitutions have incorporated this freedom. In the European Union, a directive on the right of citizens of the Union to move and reside freely within the Member States has been adopted. The EU directive brings together the piecemeal measures found in the complex body of legislation that has governed this matter to date.

Areas in conflict frequently find themselves restricting and even violating this freedom. In apartheid South Africa, freedom of residence was systematically violated by the apartheid regime, which used legislation to heavily restrict the free movement of black citizens to and from urban areas.

In situations of internal displacement, the right to freedom of movement and freedom of residence are temporarily restricted. Such was the case in Zimbabwe in 2005 where, despite the constitutional freedom provided, the Government of Zimbabwe embarked on *Operation Restore Order*, with little or no warning. The movement, which began in Harare, rapidly evolved into a nationwide demolition and eviction campaign carried out by the police and the army. While purporting to target illegal dwellings and structures and to clamp down on alleged illicit activities, it resulted in the destruction of homes, business premises and vending sites. It is estimated that 700,000 people in cities across the country lost their homes.<sup>20</sup>

#### **Constitution of Zimbabwe (1979)**

#### **Chapter III. The Declaration of Rights.**

#### **Section 22. Protection of freedom of movement.**

(1) No person is deprived of his freedom of movement, that is to say, the right to move freely throughout Zimbabwe, the right to reside in any part of Zimbabwe, the right to enter and to leave Zimbabwe and immunity from expulsion from Zimbabwe.  
(...)

#### (iii) Right to Privacy

Privacy rights are embedded in personality rights and include the protection of privacy, marriage and family life, home and correspondence. The right to privacy states that no interference with this right by a public authority is permitted. The right may be limited in accordance with the law and as

<sup>19</sup> Alterman, R. (2012) *Takings International, A Comparative Perspective on Land Use Regulations and Compensation Rights*. (Chicago: ABA Press).

<sup>20</sup> See Internal Displacement Monitoring Centre (IDMC)/Norwegian Refugee Council. *Training on the protection of IDPs*. Available at: [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/86B7E7913E385A9EC125711500473D9B/\\$file/Protection%20from%20module%20handout%20prevention.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/86B7E7913E385A9EC125711500473D9B/$file/Protection%20from%20module%20handout%20prevention.pdf) (last accessed 24 April 2013).

necessary in a democratic society, in the interest of national security, public safety or the economic wellbeing of the country for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others.<sup>21</sup> Privacy and housing rights come within the ambit of family rights, since home is where private life and family life develop. Where members of a family are at risk, such as in situations of unsanitary living conditions, the state may interfere with privacy in order to implement social welfare policies and may provide public housing/shelter.<sup>22</sup>

Housing and privacy are also relevant in the context of inviolability of the home, which is the right to respect for the physical area of a home and quiet enjoyment of it. State interference may include nuisance, emissions, smells or other disruptions. The State must take positive steps to protect rights even in the area of relationships between individuals.<sup>23</sup> The right to privacy is found in most constitutions worldwide. An example from a recent Constitution is Kyrgyzstan (2010):

**Constitution of Kyrgyzstan (2010)**

**Chapter II.** Human rights and freedoms.

**Article 30.**

1. Everyone shall have the right of the inviolability of housing as well as other objects to which he/she has proprietary or other right. No one may penetrate housing or other objects against the will of a person who uses them. (...)

(iv) Right to Life

The essential right to live means that a human being has the right not to be killed by another human being. In the context of housing, the right to life applies to regions with extreme weather conditions where a lack of emergency shelter could pose risks to life and personal security. This component of the right to life was identified by the International Human Rights Committee while dealing with Canada. The Committee concluded that homelessness could lead to serious health problems and death.<sup>24</sup>

Finland, where the coldest winter days can be as low as  $-40^{\circ}\text{C}$  ( $-40^{\circ}\text{F}$ ), provides an example of an attempt to incorporate a specific right to shelter into the clause on the right to life. Section 7 of Chapter II of the Constitution of Finland originally was meant to include shelter, but when the clauses were re-ordered in the final draft a clause on subsistence and care was transferred to the section of economic and social rights.<sup>25</sup>

**Constitution of Finland (2000)**

**Chapter II.** Basic Rights and Liberties.

Section 7. The right to life, personal liberty and integrity.

(1) Everyone has the right to life, personal liberty, integrity and security.

(2) No one shall be sentenced to death, tortured or otherwise treated in a manner violating human dignity.

(v) The right to be free from cruel, inhuman or degrading treatment

<sup>21</sup> Youngs, R. (2007) *English, French and German: comparative law*. (London: Cavendish), p. 222.

<sup>22</sup> *Ibid*, pp. 224-225.

<sup>23</sup> *Ibid*, p. 227.

<sup>24</sup> UN Doc. CCPR/C/79/Add.105, *Concluding Observations on Canada*, 7 April, 1999.

<sup>25</sup> Scheinin, M. (2003), "Protection of the right to housing in Finland", in Leckie, S., (ed.) *National Perspectives on Housing Rights*, (Geneva: COHRE), p. 245.

The right to be free from cruel, inhuman or degrading treatment defines the minimal conditions that a person should be allowed, in order to preserve his human character in places where liberty is deprived, such as in prisons. This right relates to housing by defining the minimal needs in terms of shelter, needed to preserve human dignity.

For example, Haiti's Constitution (1987) requires the Government of Haiti to protect the rights of individuals deprived of their liberty. Yet, prisons and detention centers in Haiti have been reported to be overcrowded, poorly maintained and unsanitary, periodically lacking in food and water, as well as basic medical services and medical isolation units for contagious patients. In certain cases, especially following a cholera outbreak, the conditions have resulted in an arbitrary deprivation of life.<sup>26</sup>

#### **Constitution of Haiti 1987**

##### **Chapter II. Basic Rights.**

##### Section J. ARTICLE 44-1:

Prisons must be operated in accordance with standards reflecting respect for human dignity according to the law on this subject.

## **Conclusions**

Examination of the various constitutions shows the complexity of housing rights. They are not always presented in distinct clauses, but at times are embedded in other rights. The findings presented in this chapter could serve as a guide for legislators seeking to constitutionalize housing rights. The findings shed light on the comparative variations in housing rights across the world's constitution, and reveal the many categories and nuances of these rights.

The broad range of expression of housing rights in the constitutions of nations around the world should enrich the discussion within each jurisdiction.<sup>27</sup> It is hoped that this survey of approaches will allow cross-learning from one jurisdiction to another, not only in new legislation but also in the ongoing interpretations by the courts – those that permit incorporation of approaches from foreign court opinions<sup>28</sup>.

---

<sup>26</sup> Avril, P. (2007) *Justice versus politics in Haiti (2001-2004)*. (Universal Publishers. Boca Raton, Florida); Institute for Justice and Democracy in Haiti (IJDJ) (2011) Criminal Justice: Submission to the UN Universal periodic review <http://ijdh.org/wordpress/wp-content/uploads/2011/03/UPR-Prisons-SR-English-Final.pdf>

<sup>27</sup> See Lefler, R. (2002) "A Comparison Of Comparison: Use of Foreign Case Law as Persuasive Authority by the United States Supreme Court, The Supreme Court of Canada, and the High Court of Australia" *Southern California Interdisciplinary Law Journal*, Vol. 11:165.

<sup>28</sup> An example of such use is seen in 2011 following the legislation of a right to housing in Kenya's new Constitution (2010): Two court-decisions taken by the High Court of Kenya on domestic housing matters quoted extensively from the South African Constitutional authorities *Satrose Ayuma and Others v The Registered Trustees of the Kenya Railway Staff Benefits Scheme and others* (High Court Petition No. 65 of 2010); and *Susan Waithera and others v The Town Clerk, Nairobi City Council and others* (High Court Petition No. 66 of 2010). See also *Government of the Republic of South Africa v Grootboom and Others* (2001) (1) SA 46 CC; *Modderklip Boerdery v President Van Die Rsa en Andere* (2003) (6) BC LR 638(T).