ABSTRACT

Housing is an essential component of the social and personal life of every individual. Experts estimate that, worldwide, over 1.6 billion people are currently inadequately housed. Existing urban growth trends and the expected rise in housing demand threaten to aggravate the global housing crisis. As a result, the problem of access to housing is of concern to many international and national bodies, which have urged governments to take action. At an international level, several documents recognize housing as a right, including the Universal Declaration of Human Rights (1948) and the International Covenant on Economic, Social and Cultural Rights (1966). At the national level, nations demonstrate a variety of legal and policy tools related to housing. Constitutional housing rights are often seen as the highest level of authority and a public policy approach, offer a real alternative that can guide the enactment of further housing legislation and policies by declaring the principles of the State.

This study is the first to span the entire set of the world’s national constitutions (205 nations, 188 UN member states) in order to analyze the extent to which they incorporate housing rights, their content and the degree to which they reflect the most broadly-recognized interpretation of adequate housing. The study incorporates content analysis and comparative analysis and utilizes both qualitative and quantitative components designed to explore the content of housing rights clauses. The categories for classification are based on existing knowledge in housing theory and theories concerning the meaning and role of rights and constitutional rights, including historical, philosophical and sociological approaches. The study fills an important gap in the field of housing studies. Existing studies have focussed on the lower housing policy level and less attention has been paid to the higher levels of legislation including the constitutional level.

The analysis performed in this study shows that about a third of the world's countries possess direct or explicit constitutional housing rights clauses and that these have shown a general increase over time. A country's legal system, linguistic heritage, constitutional "borrowing" practices and engagement in international covenants are all associated with the content of the legislation. The findings confirm that the right to housing is often framed as a commitment of the State to provide housing -- a commitment that is often too difficult to implement in practice. Meanwhile, international covenants and housing theorists frame this commitment as a principle that promotes wider accessibility to housing rather than physical provision – an approach that is rarely present in existing constitutional legislation.

The study concludes that, amid the pressing global demand for housing, constitutional housing-related commitments should strongly emphasize the promotion of sustainable living environments. Constitutional commitments should be based on existing knowledge of housing studies and should include the adoption of contemporary tools, such as planning long-term housing strategies that can ensure sufficient living accommodation; data-based development that takes into account the availability of transport networks and social facilities and that promotes participatory processes that include all sectors of society and involve all levels of government; as well as socially-just protections that ensure equal access to housing while challenging competing rights such as the right to property and land.