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OPTION REPORTS

RIGHT TO SHELTER

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The following report is one of a series produced by the Constitutional Design Group, a group of scholars dedicated to distributing data and analysis useful to those engaged in constitutional design. The primary intent of the reports is to provide current and historical information about design options in written constitutions as well as representative and illustrative text for important constitutional provisions. Most of the information in these reports comes from data from the Comparative Constitutions Project (CCP), a project sponsored by the National Science Foundation. Interested readers are encouraged to visit constitutionmaking.org for further resources for scholars and practitioners of constitutional design.

Note that the dates provided herein for constitutional texts reflect either the year of initial promulgation *or* of a subsequent amendment, depending on the version used for analysis. For example, Brazil 2005 refers to the Brazilian Constitution of 1988, as amended through 2005.

1. INTRODUCTION

The issue of housing has been and remains to be a great concern in developing countries. Below we present the evolution of the right to shelter as a constitutional provision.

2. DATA SOURCE(S)

The analysis reported below is based on data the Comparative Constitutions Project (please see the appendix for more information on this resource). As of this writing, the project sample includes 550 of the roughly 800 constitutions put in force since 1789, including more than 90% of constitutions written since World War II.

3. CLASSIFICATION AND HISTORICAL TRENDS

Figure 1 shows percent of constitutions that provide for the right to shelter over time, and demonstrates that the provision is not very common among constitutions. Only 15% of constitutions in the sample grant the right to Shelter or Housing. The percentage has increased over time and is now present in roughly 25% of constitutions. There is significant regional variation, as Figure 2 shows. The provision is most common among the constitutions in Latin America and Eastern Europe, where about 40% of the texts provide for the right. It is less common among the constitutions in force in 2000 in Western Europe, Sub-Saharan Africa, and South Asia, where only about 20% of constitutions grant the right to housing. Finally, the provision is the least likely to be found in East Asia and absolutely absent in the constitutions of Oceania.

Figure 1. Percentage of Constitutions that grant the Right to Shelter by Year (N=550)

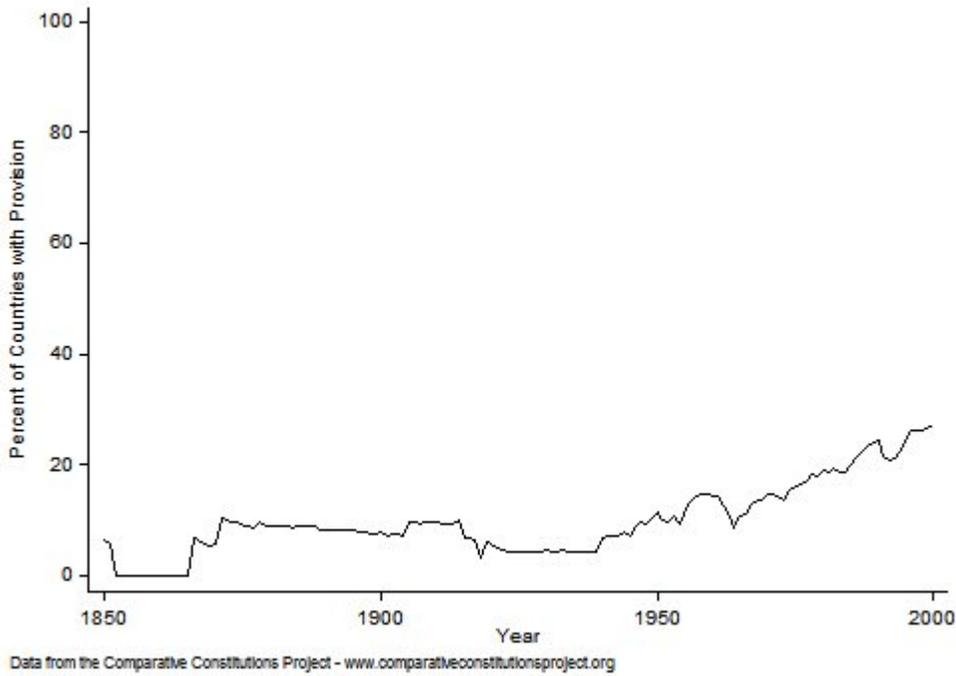
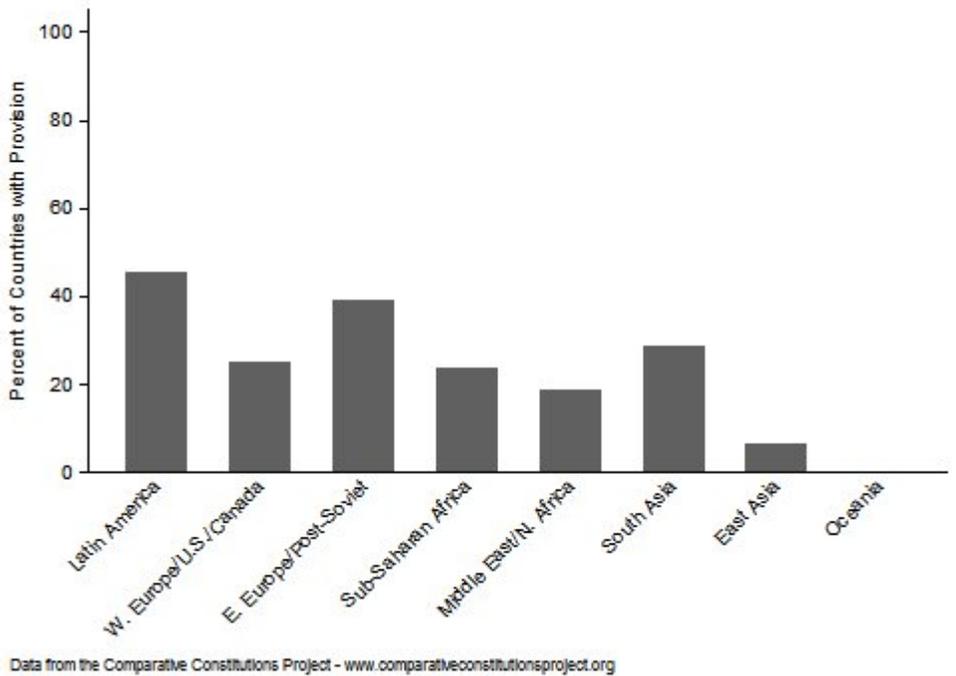


Figure 2. Percentage of Constitutions that grant the Right to Shelter in 2000 by Region (N=191)



4. NOTES ON ATYPICAL CASES

Constitutions address housing questions in two main ways. Some explicitly grant the right to housing. For example, the 2003 constitution of East Timor states “[a]ll have the right to housing for themselves and their family, of adequate size that meets satisfactory standards of hygiene and comfort and preserves personal intimacy and family privacy.” Others, however, refer to varying degrees of state obligation with regard to housing without explicitly establishing a right. This report focuses on those constitutions with an explicit right, but also includes constitutions which provide for a state duty to promote the conditions necessary for implementation of the right to housing.

5. SAMPLE CONSTITUTIONAL PROVISIONS

(Note: dates provided reflect the version of the constitution used to obtain sample provisions, and represent either initial year of promulgation or year through which subsequent amendments are included.)

It shall be a fundamental responsibility of the State to attain...

1. the provision of the basic necessities of life, including food, clothing, shelter, education and medical care.

- *Bangladesh 2004. Article 15.1*

Citizens of the Republic of Belarus shall be entitled to housing. This right shall be safeguarded by the development of state, and private housing and assistance for citizens in the acquisition of housing. The State and local self-government shall grant housing free of charge or at available prices in accordance with the law to citizens who are in need of social protection. No one may be deprived of housing arbitrarily.

- *Belarus 2004. Article 48*

Everyone has the right to lead a life worthy of a human being. For this purpose, the laws, decrees or rules specified in Article 134 shall guarantee [these rights]...These rights in particular include:

...

3. The right to decent housing.

- *Belgium 2005. Article 23.3*

Education, health, labor, *housing*, leisure, security, social security, protection of motherhood and childhood and assistance to the destitute, are social rights, in accordance with this Constitution.

- *Brazil 2005. Article 6*

Education, instruction, formation, work, social security, housing, sport, leisure, health, protection of Motherhood and of Infancy, assistance to the aged or handicapped persons and in social cases, artistic and scientific creation constitute the social and cultural rights recognized by the present Constitution which aims to promote them.

- *Burkina Faso 2002. Article 18*

Everyone shall have the right to proper housing; the State shall have the duty to achieve this by gradually promoting, according to national economic development, adequate institutional, regulatory, and infrastructural conditions to encourage and support initiatives of local communities to stimulate private construction and access to proper housing.

- *Cape Verde 1999. Article 69*

The State is the guarantor of public health. Every citizen shall have the right to a level of life sufficient to assure his health, his well being and that of his family, notably food, clothing, shelter, medical care as well as necessary social services.

- *Congo 1992. Article 34*

All have the right to housing for themselves and their family, of adequate size that meets satisfactory standards of hygiene and comfort and preserves personal intimacy and family privacy.

- *East Timor 2002. Article 58*

The construction of housing is declared to be of social interest. The State shall endeavor so the greatest possible number of Salvadoran families become the owners of their home.

It shall promote that every rural farm owner provide a sanitary and comfortable home for resident workers, and adequate installations for temporary workers; and for this purpose, shall promote the access (*facilitará*) of small property owners to the necessary means.

- *El Salvador 2003. Article 119*

The state guarantees social and health insurance, the basics for a free and honorable life for the individual and the family - especially children and women - and works to protect them from illiteracy, fear and poverty and provides them with housing and the means to rehabilitate and take care of them. This shall be regulated by law.

- *Iraq 2005. Article 30*

Everyone has the right to a home. No one may be arbitrarily deprived of a home.

- *Russia 1993. Article 40.1*

Everyone has the right to have access to adequate housing.

The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of this right...

- *South Africa 2003. Article 26*

All Spaniards have the right to enjoy decent and adequate housing. The public authorities shall promote the conditions necessary and establish the pertinent norms to make this right effective, regulating the use of land in accordance with the general interest to prevent speculation.

- *Spain 1992. Article 47*

Every person has a right to an adequate, comfortable, hygienic dwelling with basic services which include a habitat which humanizes family, neighborhood and community relations. The progressive satisfaction of this right is a shared obligation between the citizens and the State in all their areas.

- *Venezuela 1999. Article 82*

6. APPENDIX

This report is based on the following question(s) from the Comparative Constitution Project's "survey instrument":

[SHELTER] Does the constitution provide for the right to shelter or housing?

1. Yes
2. No
96. Other, please specify in the comments section
97. Unable to Determine

Instructions: If no right to housing is mentioned but the text does place some obligation or duty on the state with regard to housing please code "other with comment."

For additional documentation on the Comparative Constitutions Project, (including the full codebook, the sample, the sources of constitutional texts and translation issues related to those texts, coding procedures,

publicly available data, etc.) please visit the project website at www.comparativeconstitutionsproject.org.