



The right to housing in the Sustainable City

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ABSTRACT

The right to housing is a fundamental piece to ensure the dignity of the human person. Although it is an independent right, its absence compromises the full exercise of other basic rights, such as health, education, work and leisure. Adequate housing, quality of urban life and social sustainability are intrinsically linked to the ability of the federal, state and municipal government to create laws, execute and supervise compliance with urban regulations for effective and efficient planning. **Objective:** to go through the legal evolution of the right to housing concept at the international and national levels. **Methodology:** The work is divided into three axes: the first demonstrates how the right to housing concept was constructed and the second one addresses this issue in the Brazil constitution. The third aims to incorporate public housing policies carried out into the Brazilian legislation analysis. **Results:** The results aim to verify whether there was a major impact of international and national legislation on public housing policies, with a special focus on federal actions implemented in Brazil.

KEYWORDS: Dwelling. Right to Housing. Public Policy. Sustainable City.

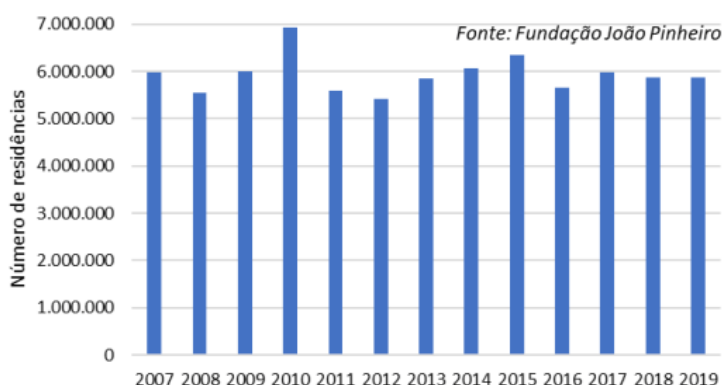
1 INTRODUCTION

The neoliberal system practices resulted in the consolidation of societies with great inequalities, where the majority of the population is not met in basic needs and where the lack of affordable housing has become one of the main social problems (MARICATO, 2015, p. 267).

In several countries, millions of people live in conditions that pose a risk to their health, in informal settlements, overcrowded slums, on the streets or in other conditions that violate human rights and dignity. Millions more people each year are evicted from their homes, or threatened with being forcibly removed. In addition, wars, guerrillas, political conflicts, hunger, etc., have led thousands of people to migrate from their places of origin to safer ones, looking for better living conditions.

In Brazil, it is possible to observe that, with the exception of 2010¹, the housing deficit is between 5.5 and 6.0 million homes, therefore, it is not possible to determine a significant drop (Figure 1).

Figure 1 – Housing deficit in Brazil.



Source: Fundação João Pinheiro, 2019.

¹ The data for 2010 differs from the others because it was calculated based on the census of that year, while the data for other years was based on the PNAD (National Household Sampling Survey).

The housing deficit and problems can only be solved if we consider that housing is a basic human function. Human beings need places where they can feel at home, safe, protected from unfavorable weather conditions (cold, heat, rain, wind and snow), protected from the dangers of nature and the street, free from threats, where they can rest, interact with privacy and express your individuality.

The essence of dwelling is to live satisfied in places or dwellings with built spaces and technologies suitable for social service, comfortable, safe, healthy, integrated in the immediate context, adequate to the physical-geographical conditions and the cultural reality of its users (SALCEDO, 2011, p. 163).

Housing has psychology and soul, formal and quantifiable qualities, in addition to providing a home, home being an individualized dwelling, an expression of personality, habits, customs, beliefs and culture (PALLASMAA, 2016, p. 14-16). Housing is the most typical product of vernacular design; therefore, it is more influenced by culture and varies with culture (RAPOPORT, 2003, p. 37).

Furthermore, “living, synonymous with dwelling, is the fundamental characteristic of man as a being-in-the-world; it is more than being under shelter; it is to be rooted in a safe place and to belong to that place” (RIFRANO, 2006, p. 63).

Sustainability is an action that complements adequate housing. According to the Brundtland Report (apud IBGE, 2015), sustainable development is a transformation process in which the exploitation of resources, the direction of investments, the orientation of technological development and institutional change harmonize and reinforce the present potential and future, with a view to meeting future needs and aspirations. Sustainable development is that meets the current needs without compromising the ability to meet the needs of future generations.

Adequate housing, quality of urban life and social sustainability greatly depend on the ability of the federal, state and local government to plan, structure and control the territory of the city to implement policies and monitor compliance with urban regulations, as well as its ability to invest in housing, equipment, services and urban infrastructure (MENDONÇA, 2006). In the context in question, the purpose of this study is to examine the legal evolution of the of the right to housing concept both internationally and nationally, in order to analyze its consequences on housing legislation and public housing policies in Brazil.

2 INTERNACIONAL LEGISLATION ON THE RIGHT TO HOUSING

The right to housing is essential to human dignity. However, although it is an autonomous right, its absence prevents the exercise of other basic rights such as health, education, work and leisure.

In 1948, the **American Declaration of the Rights and Duties of Man**² was approved. This was the first international instrument declaring human rights, mentioning housing under various subjects, but without referring explicitly to the right to housing (Board 1).

² The American Declaration of the Rights and Duties of Man is an international declaration approved in 1948 at the IX International Conference of American States held in Bogotá, the same conference where the Organization of

Board 1: Excerpts from Chapter One - Rights

Rights	Articles
Right of residence and transit.	Article VIII. Every person has the right to establish his residence in the territory of the State of which he is a national, to move freely through it and not to leave it except by his own will.
Right to the inviolability of the home.	Article IX. Everyone has the right to the inviolability of their home.
Right to the preservation of health and well-being.	Article XI. Everyone has the right to have his health safeguarded by sanitary and social measures relating to food, clothing, housing and medical care corresponding to the level permitted by public and community resources.
Property right.	Article XXIII. Every person has the right to private property corresponding to the essential needs of a decent life, and which contributes to maintaining the dignity of the person and of the home.

Source: Prepared by the authors (2023) with data: COMISSÃO INTERAMERICANA DE DIREITOS HUMANOS. Declaração Americana dos Direitos e Deveres do Homem. Bogotá, 1948.

Six months later, on December 10, 1948, the right to housing was recognized by the **Universal Declaration of Human Rights (UDHR)** in Article 25, paragraph 1:

Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, in particular food, clothing, **housing**, medical care and necessary social services, and has the right to security in the event of unemployment, sickness, disability, widowhood, old age or other cases of loss of livelihood due to circumstances beyond his control (UNITED NATIONS, 1948, p.06 – our emphasis).

Craven (2003, p. 50) establishes that the American Declaration of the Rights and Duties of Man influenced the elaboration of the UDHR. Once the Universal Declaration of Human Rights was adopted, the United Nations (UN) began a process of deepening the principles in international documents that protected specific rights. Across the Member States, for two decades, they debated the provisions of these covenants, which explicitly confirmed certain aspects of human rights, which the Universal Declaration only implicitly referred to. It was an unprecedented action in which the General Assembly, in 1966³, with Resolution 2,200 (XXI), drew up two Covenants that codified the two series of rights outlined in the Universal Declaration: civil and political rights and economic, social and cultural rights.

The **International Covenant on Civil and Political Rights (ICCPR)** of 1966 reports in article 17, paragraph 1, which reports on interference with housing:

No one may be the object of arbitrary or illegal interference with his or her private life, family, **home** or correspondence, or illegal offenses to their honor and reputation (UNITED NATIONS, 1966a, p.07 – our emphasis).

American States (OAS) was created. The legal value of the Declaration has been much discussed, due to the fact that it is not part of the OAS Charter, nor is it considered a treaty, since, like other declarations, it is a letter of intent and not an instrument that must be ratified by the States. signatories. Some countries, like Argentina, include it in the constitution, giving it a constitutional hierarchy. Later, in 1969, the American Convention on Human Rights (also known as the Pact of San José de Costa Rica or CADH) was signed, which came into effect in 1978, establishing the Inter-American System for the Protection of Human Rights.

³ These pacts came into effect in 1976.

The **International Covenant on Economic, Social and Cultural Rights** (ICESCR), adopted by Resolution n.2.200-A (XXI) of the General Assembly of the United Nations, on December 16, 1966, is considered as the central instrument for the protection of the right to adequate housing, described in article 11, paragraph 1:

Article 11 §1 The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and **housing**, and to the constant improvement of his existence conditions. The States Parties shall take appropriate measures aimed at ensuring the realization of this right, recognizing for this purpose the essential importance of freely agreed international cooperation (UNITED NATIONS, 1966b, p.04 – our emphasis).

The notion of adequate housing is introduced and defined as: appropriate space, intimacy, adequate security, sufficient lighting and ventilation, basic infrastructure and adequate location in relation to the workplace and essential services (UNITED NATIONS, 2009). Concept that will become part of the documents prepared by UN-Habitat with the publication of General Comment No. 4 on adequate housing, prepared by the Office of the United Nations High Commissioner for Human Rights (UNITED NATIONS, 1991) together with UN-Habitat. It defines seven basic components for adequate housing: security of tenure; availability of services, materials, facilities and infrastructure; economy; habitability; accessibility; location and cultural appropriateness.

Other international human rights treaties have addressed the right to housing in different ways⁴. Some are of general application, while others cover the human rights of specific groups, such as women, children, indigenous peoples, migrant workers and their family members, or people with disabilities (Board 2).

Board 2: International Treaties dealing with housing.

International Treaties	Housing References
<p>Geneva Convention IV – Relating to the Protection of Civilians in Time of War (1949)</p>	<p>Article 49: Forced transfers, mass or individual, as well as deportations of protected persons from the occupied territory to that of the Occupying Power or to that of any other country, occupied or not, are prohibited for whatever reason. However, the Occupying Power may proceed with the total or partial evacuation of a given occupied region, if the security of the population or imperative military reasons so require [...]. The Occupying Power, when carrying out these transfers or evacuations, shall, as far as possible, ensure that protected persons are received in appropriate facilities.</p> <p>Article 53: The Occupying Power is prohibited from destroying movable or immovable property, belonging individually or collectively to private persons, to the State or public collectivities, to social or cooperative organizations, unless such destruction is considered absolutely necessary for military operations.</p> <p>Article 85: The Detaining Power has the duty to take all necessary and possible measures to ensure that protected persons are, from the beginning of their</p>

⁴ However, many regional human rights protection systems, such as the African Charter on Human and Peoples' Rights and the Additional Protocol to the American Convention on Human Rights (Protocol of San Salvador), do not include the right to housing in their provisions.

	<p>internment, accommodated in buildings or barracks that offer all the guarantees of hygiene and health and that ensure an effective protection against the rigors of the weather and the effects of war. Under no circumstances will permanent internment places be located in regions that are unhealthy or have a harmful climate for internees. Whenever they are temporarily interned in a diseased region, or with a climate that is harmful to health, protected persons must be transferred, as quickly as circumstances permit, to a place of internment where these risks are not to be feared. The premises must be completely protected from moisture, sufficiently heated and lighted, especially from dusk to dawn. The dormitories must be sufficiently spacious and well ventilated, the internees will have appropriate beds and blankets in sufficient numbers, taking into account the climate and the age, sex and state of health of the internees. During the day and night, internees will have access to sanitary facilities compatible with hygiene requirements and kept in a permanent state of cleanliness. They will be provided with water and soap in sufficient quantity for daily personal cleaning and for washing their clothes; the necessary facilities and facilities will be put at your disposal for this purpose. They will also have facilities for rain showers or immersion. The necessary time will be granted for hygiene care and cleaning work. Whenever it is necessary, as an exceptional and temporary measure, to house female inmates who do not belong to a family group in the same place of internment as men, separate dormitories and sanitary facilities must be provided. Article 134: The High Contracting Parties shall endeavor, at the end of hostilities or occupation, to ensure the return of all internees to their last residence or to facilitate their repatriation.</p>
<p>Convention on the Status of Refugees (1951)</p>	<p>Article 21: With regard to accommodation, the Contracting States shall, in so far as this matter is regulated by laws or regulations or is subject to the control of public authorities, accord to refugees lawfully residing in their territory, treatment as favorable as possible and, in any case, treatment no less favorable than that which is given, under the same circumstances, to foreigners in general.</p>
<p>International Convention on the Elimination of All Forms of Racial Discrimination (1965)</p>	<p>Article 5: In accordance with the fundamental obligations set forth in Article 2, the States Parties undertake to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone to equality before the law without distinction as to race, of color or national or ethnic origin, mainly in the enjoyment of the following rights: [...] e) economic, social and cultural rights, mainly: [...] iii) right to housing.</p>
<p>Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (1979)</p>	<p>Article 14, 2: States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on conditions of equality between men and women, that they participate in and benefit from rural development, and in particular, they shall ensure them the right to: [...] h) enjoy adequate living conditions, particularly in the areas of housing, health services, electricity and water supply, transport and communications.</p>
<p>Convention on the Rights of the Child (1989)</p>	<p>Article 16, 1: No child shall be the object of arbitrary or unlawful interference with his private life, his family, his home or his correspondence, nor of unlawful attacks on his honor and reputation. Article 27, 3: States Parties, in accordance with national conditions and within their possibilities, shall take appropriate measures to assist parents and other persons responsible for the child to give effect to this right and, if necessary, shall provide material assistance and support programmes, especially with regard to nutrition, clothing and housing.</p>
<p>ILO Convention 169 on Indigenous and Tribal Peoples.</p>	<p>1. Subject to the provisions of the following paragraphs of this article, indigenous and tribal peoples shall not be removed from the lands they occupy. 2. When, exceptionally, the removal and resettlement of these peoples is considered</p>

(1989)	<p>necessary, it can only be done with their consent, freely given, and with full knowledge of the facts. When it is not possible to obtain such consent, removal and resettlement may only be carried out after completion of appropriate procedures established by national law, including public consultations, where applicable, in which the peoples concerned have the possibility of being effectively represented. 3. Whenever possible, these peoples shall have the right to return to their traditional lands as soon as the causes that motivated their removal and resettlement cease to exist.</p>
<p>International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families (1990)</p>	<p>Article 43: 1. Migrant workers benefit from the same treatment as nationals of the State of employment in terms of: [...] d) Access to housing, including social housing programs, and protection against exploitation in leasing matter;</p> <p>3. States of employment shall not prevent employers of migrant workers from providing them with housing or cultural or social services. Without prejudice to the provisions of Article 70 of this Convention, a State of employment may subject the establishment of said services to the conditions generally applied in its territory in that field.</p>
<p>Universal Declaration of the Rights of Indigenous Peoples (2007)</p>	<p>Article 10: Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation will take place without the free, prior and informed consent of the indigenous peoples concerned and without prior agreement on fair and equitable compensation and, where possible, the option of return.</p> <p>Article 21, 1: Indigenous peoples have the right, without any discrimination, to the improvement of their economic and social conditions, especially in the areas of education, employment, professional training and retraining, housing, sanitation, health and social security.</p> <p>Article 23: Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to actively participate in the design and determination of health, housing and other economic and social programs that affect them and, as far as possible, to administer these programs through their own institutions.</p>

Source: Prepared by the authors (2023).

2.1 Sustainable Development Goals

In 2015, the UN General Assembly established the 2030 Agenda for Sustainable Development as a guide for country actions in the coming years, to put the world on a more sustainable and resilient path by 2030. The 17 sustainable development goals (SDGs) are integrated and indivisible, mixing in a balanced way the three dimensions of sustainable development: economic, social and environmental. These goals must be met by governments, civil society, the private sector and all citizens by 2030. The SDGs and their targets will stimulate actions of global importance for humanity: people, planet, prosperity, peace and partnerships.

Among the 17 SDGs linked to housing is Goal 11: Sustainable Cities and Communities - Make cities and human settlements inclusive, safe, resilient and sustainable. Based on Goal 11 of the SDG, the Sustainable Development Goals were defined in Brazil, with goals to be achieved by 2030 (Board 3).

Board 3: Targets of the United Nations and Brazil for SDG goal 11.

11. Sustainable Cities and Communities			
Goals	United Nations	Brazil	Indicators
11.1	By 2030, ensure access for all to safe, adequate and affordable housing and basic services and upgrade slums.	By 2030, ensure access for all to decent, adequate and affordable housing; basic services and urbanize precarious settlements in accordance with the goals assumed in the National Housing Plan, with special attention to vulnerable groups.	11.1.1 - Proportion of urban population living in precarious settlements, informal settlements or inadequate housing.
11.2	By 2030, provide access to safe, accessible, sustainable and affordable transport systems for all, improving road safety through the expansion of public transport, with special attention to the needs of vulnerable people, women, children, people with disabilities and the elderly.	By 2030, improve road safety and access to the city through more sustainable, inclusive, efficient and fair urban mobility systems, prioritizing mass public transport and active transport, with special attention to the needs of people in situations of vulnerability, such as those with disabilities and reduced mobility, women, children and elderly people.	11.2.1 - Proportion of population that has adequate access to public transport, by sex, age and people with disabilities.
11.3	By 2030, increase inclusive and sustainable urbanization and capacities for participatory, integrated and sustainable human settlement planning and management in all countries.	By 2030, increase inclusive and sustainable urbanization, improve capacities for planning, social control and participatory, integrated and sustainable management of human settlements, in all units of the federation.	11.3.1 - Ratio of soil consumption rate to population growth rate. 11.3.2 - Proportion of cities with a structure of direct participation of civil society in urban planning and management that operates in a regular and democratic way.
11.4	Strengthen efforts to protect and safeguard the world's cultural and natural heritage.	Strengthen initiatives to protect and safeguard Brazil's natural and cultural heritage, including its tangible and intangible heritage.	11.4.1 - Total expenditure (public and private) per capita spent on the preservation, protection and conservation of all cultural and natural heritage, by type of heritage (cultural, natural, mixed and by designation of the World Heritage Centre), level type of government (national, regional and local), type of expenditure (current/investment expenditure) and type of private funding (in-kind donations, non-profit private sector and sponsorships).
11.5	By 2030, significantly reduce the number of deaths and people affected by disasters, and substantially reduce	By 2030, significantly reduce the number of deaths and the number of people affected by natural disasters of hydrometeorological and climatological origin, as well as	11.5.1 - Number of deaths, missing people and people directly affected attributed to disasters per 100 thousand inhabitants

	the direct economic losses caused by them in relation to global gross domestic product, including water-related disasters, with a focus on protecting the poor and people in vulnerable situations.	substantially reduce the number of people residing in risk areas and the direct economic losses caused by these disasters in relation to the product gross domestic product, with special attention to the protection of low-income and vulnerable people.	11.5.2 - Direct economic losses in relation to GDP, including damage caused by disasters in critical infrastructure and interruption of basic services.
11.6	By 2030, reduce the per capita negative environmental impact of cities, including by paying special attention to air quality, municipal and other waste management.	By 2030, reduce the per capita negative environmental impact of cities by improving air quality indices and solid waste management; and ensuring that all cities with over 500,000 inhabitants have implemented air quality monitoring systems and solid waste management plans.	11.6.1 - Proportion of urban solid waste regularly collected and with adequate final destination in the total urban solid waste generated, by cities. 11.6.2 - Average annual level of inhalable particles (e.g with a diameter of less than 2.5µm and 10µm) in cities (weighted population).
11.7	By 2030, provide universal access to safe, inclusive, accessible and green public spaces, particularly for women and children, older persons and persons with disabilities.	By 2030, provide universal access to safe, inclusive, accessible and green public spaces, in particular for women, children and adolescents, the elderly and people with disabilities, and other vulnerable groups.	11.7.1 - Proportion of the built-up area of cities that is open public space for everyone to use, by sex, age and people with disabilities. 11.7.2 - Proportion of the population victim of physical or sexual harassment, by sex, age group, people with disabilities and place of occurrence, in the last 12 months.
11.a	Support positive economic, social and environmental relationships between urban, peri-urban and rural areas, strengthening national and regional development planning.	Support economic, social and environmental integration in metropolitan areas and between urban, peri-urban, rural areas and twin cities, considering territories of traditional peoples and communities, through inter-federative cooperation, reinforcing national, regional and local development planning.	11.a.1 - Proportion of population residing in cities that implement urban and regional development plans that include population projections and resource assessment, by city size.
11.b	By 2020, substantially increase the number of cities and human settlements adopting and implementing integrated policies and plans for inclusiveness, resource efficiency, climate change mitigation and adaptation, disaster resilience; and develop	By 2030, significantly increase the number of cities that have policies and plans developed and implemented for climate change mitigation, adaptation and resilience and integrated disaster risk management in line with the SENDAI Framework.	11.b.1 - Number of countries adopting and implementing national disaster risk reduction strategies in line with the Sendai Framework for Disaster Risk Reduction 2015-2030. 11.b.2 - Proportion of local governments that adopt and implement local disaster risk reduction strategies in line with national disaster risk reduction strategies.

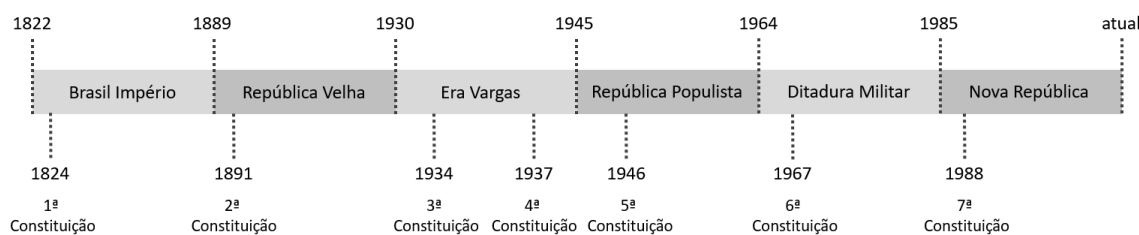
	and implement, in line with the Sendai Framework for Disaster Risk Reduction 2015-2030, holistic disaster risk management at all levels.		
11.c	Support least developed countries, including through technical and financial assistance, to build sustainable and resilient buildings using local materials.	Support less developed countries, including through technical and financial assistance, for sustainable and robust constructions, prioritizing local resources.	11.c.1 - Proportion of financial support to least developed countries for the construction and modernization of sustainable, resistant and efficient buildings in terms of resources, using local materials.

Source: Prepared by the authors with data from ipea.gov.br (2023).

3 HOUSING LEGISLATION IN BRAZIL

The legal concept of the right to housing in Brazil has come a long way, with few changes in the Constitutions (Figure 2). Only in the Amendment of the Federal Constitution of 1988, in the year 2000, did housing appear as a social right (Figure 2).

Figure 2 – Timeline: Government regimes x Constitutions.



Source: Prepared by the authors (2023).

In 1823, in the Empire of Brazil, D. Pedro I dissolved the Constituent Assembly and imposed, in 1824, his own project, which became the **first Constitution of Brazil**. In it, the issue of the right to housing is not contemplated, but the right to property in its fullness.

In Chapter VI (Do Ministerio) article 133, they mention the issue of property security, making the Ministers of State responsible.

Art. 133. Ministers of State will be responsible [...]

V. For what works against the Liberty, security, or Citizens **property** (BRASIL, 1824, n.p, our emphasis).

In Title 8th (Of General Provisions, and Guarantees of Civil and Political Rights of Brazilian Citizens) it denotes as a right the issue of property, housing as private property and compensation for public use if necessary (expropriation).

Art. 179. The inviolability of the Civil and Political Rights of Brazilian Citizens, which are based on freedom, individual security, and **property**, is guaranteed by the Constitution of the Empire, as follows. [...]

VII. Every citizen has an **inviolable asylum in his home**. At night, you cannot enter it, except with your consent, or to protect it from fire or flooding; and during the day, entry will only be permitted in cases and in the manner determined by law. [...]

XXII. **The Property Right is guaranteed in all its fullness**. If the legally verified public good requires the use and use of the Citizen's Property, he will be previously compensated for its value. The Law will define the cases in which this sole exception will apply, and will provide the rules for determining compensation. [...] (BRASIL, 1824, n.p, our emphasis).

After the Proclamation of the Republic, on November 15, 1889, Brazil witnessed significant changes in its political and economic system. In 1891, the country's **second Constitution** was drafted. Although with a major system change, the relationship of ownership and housing remained very similar.

With regard to rights, the new Constitution follows the same line as its predecessor in relation to property, with no mention of the right to housing. In section II (Declaration of Rights) the issue of ownership is ensured, claiming the inviolability of the house and also highlights the issue of compensation, already using the word expropriation.

Art 72 - The Constitution assures Brazilians and foreigners residing in the country the inviolability of rights concerning liberty, individual security and **property**, in the following terms: [...]

Section 11 - The home is the **inviolable refuge** of the individual; no one can enter there at night, without the consent of the resident, except to help victims of crimes or disasters, nor during the day, except in the cases and in the manner prescribed by law. [...]

Section 17 - **The right to property remains in all its fullness**, except for expropriation for public necessity or utility, subject to prior compensation. [...] (BRASIL, 1891, n.p, our emphasis).

However, the tax issues appear more strongly in this Constitution. In the first Constitution, in Chapter II, article 36, the taxes initiative was the Chamber of Deputies responsibility, but it did not specify which items it covered (BRASIL, 1824). In the second, in Title I (Of the Federal Organization) article 9, it is clear the exclusive competence of the States in the taxes decree on rural and urban properties and in the transfer of ownership.

Art 9 - It is the exclusive competence of the States to enact taxes:[...]

2) on rural and **urban properties**;

3) on **transfer of property** (BRASIL, 1891, n.p, emphasis added).

In the Second Republic, in 1934, the **third Constitution** was drafted. Although it was a government with a populist bias, the Constitution did not change in housing regards, continuing with the same descriptions of Brazil Empire, although the right to subsistence appears. In Chapter II (On Individual Rights and Guarantees), in Article 113, the issue of property security

and the home as an inviolable refuge for the individual appear as in the previous ones and the issue of expropriation is complemented.

Art 113 - The Constitution assures Brazilians and foreigners residing in the country the inviolability of rights concerning freedom, **subsistence**, individual security and **property**, in the following terms: [...]

16) **The home is the inviolable refuge of the individual**. No one can enter it, at night, without the consent of the resident, except to help victims of crimes or disasters, or during the day, except in the cases and in the manner prescribed by law.

17) **The right to property is guaranteed**, which cannot be exercised against the social or collective interest, in the manner determined by law. Expropriation for public necessity or utility will be carried out under the terms of the law, upon prior and fair compensation. In case of imminent danger, such as war or intestinal commotion, the competent authorities may use private property as far as the public good requires, subject to the right to further compensation (BRASIL, 1934, n.p., our emphasis).

Regarding taxes, this Constitution complemented the cases of payments incidence. In Title I (On the Federal Organization) Chapter I (Preliminary Provisions) it is up to the States to enact the tax on territorial property (except urban property), the transfer of property *causa mortis* and *inter vivos* and the tax on the tangible assets transfer. It is worth noting that the Urban Territorial Property Tax (IPTU) became the responsibility of the municipalities in this Constitution.

Article 8 - It is also the exclusive responsibility of the States to:

I - enact taxes on:

- a) **land property**, except urban property;
- b) **causa mortis transfer** of property;
- c) **inter-vivo transfer** real estate ownership, including its incorporation into the company's capital [...]

II - charge fees for state services.

Section 4 - **The tax on transfer of tangible assets** is the responsibility of the State in whose territory they are located; and that of transfer *causa mortis*, of intangible assets, including titles and credits, to the State where the succession was opened. When this has opened abroad, the tax will be due to the State in whose territory the values of the inheritance were liquidated, or transferred to the heirs.

[...]

Art 13 - **Municipalities** will be organized in such a way as to ensure their autonomy in everything that respects their particular interest; And, especially:

Section 2 - In addition to those in which they participate, *ex vi* of articles 8, 2, and 10, single paragraph, and those transferred to them by the State, belong to the Municipalities:

I - license tax;

II - **urban property and land taxes**, the former being charged in the form of a tenth or income certificate;

III - the tax on public entertainment (BRASIL, 1934, n.p., our emphasis).

Article 125 presents the facilitation of fixing the man. Remembering that the Civil Code of 1916 already listed adverse possession as a modality of property acquisition.

Art 125 - Every Brazilian who, not being a rural or urban owner, occupies, for **ten continuous years**, without opposition or recognition of alien ownership, a stretch of land of up to ten hectares, making it productive by his work and having his home there, will acquire the domain of the soil, by duly transcribed declaratory sentence (BRASIL, 1934, n.p, our emphasis).

Since the emergence of the housing problem at the end of the 19th century until the 1930s, there were several types of housing to shelter the low- and middle-income population, including the tenement hotel, the rooming house, the corridor tenement, terraced houses and villas. (BONDUKI, 2004, p. 43). Housing produced and marketed by the private sector.

Realizing that the low-income population would not be able to have access to decent housing without government support, the Vargas government (1930-1945) implemented the first initiatives to build and finance housing for salaried workers. Measures were adopted to regulate the conditions for reproduction of the workforce, such as the reorganization of the social security sector, which resulted in the raising of substantial funds for state financing of housing production. To this end, federal or regional housing production bodies were created, such as the Property Portfolios of the Institute of Retirement and Pensions (IAPs), the Popular House Foundation and the Department of Popular Housing of the Federal District (BONDUKI, 2004, p. 13 -14).

The use of resources from IAPs in social housing programs was induced by the Revolution of 1930, thanks to Article 2 from Decree 19469 of 12/17/30. Both the construction of housing complexes produced by the State, as well as the production and financing of small property housing, with low-cost housing solutions self-undertaken by the worker, were carried out in the peripheral areas of Brazilian cities.

On November 10th, 1937, Getúlio Vargas revoked the 1934 Constitution, dissolved Congress and granted the country, without any prior consultation, the **fourth Constitution**: the Constitutional Charter of the New State. This legislation, from a totalitarian nature, did not touch on the issue of housing. On the issue of individual rights and guarantees, the right to subsistence which was included in the previous Constitution was withdrawn. The mention that the house is the inviolable asylum of the individual, which appeared since the first Constitution and was changed to inviolability of the domicile, save for the exceptions expressed by law (Article 122, section 6), was also removed. However, paragraphs 2 and 6 were suspended by Decree No. 10,358 of 1942.

Art 122 - The Constitution guarantees Brazilians and foreigners residing in the country the right to freedom, individual security and **property**, in the following terms: [...]

2) all Brazilians enjoy the right to free movement throughout the national territory, being able to settle in any of its points, acquire **real estate** there and freely exercise their activity; [...]

6) the **inviolability of the home** and correspondence, except for the exceptions expressed by law (BRASIL, 1937, n.p, our emphasis).

Regarding property taxes, no significant changes were made.

Art 23 - It is the exclusive competence of the States:

I - the decree of taxes on:

- a) territorial property, except urban property;
- b) transfer of property *causa mortis*;
- c) transfer of immovable property *inter vivo*, including its incorporation into the company's capital; [...]

II - charge state service fees.[...]

Section 4 - The tax on the transfer of tangible assets is the responsibility of the State in whose territory they are located; and that of transfer *causa mortis* of intangible assets, including titles and credits, to the State where the succession was opened. When this has opened in another State or abroad, the tax will be due to the State in whose territory the values of the inheritance were liquidated or transferred to the heirs.

[...]

Art 28 - In addition to those assigned to them by art. 23, Section 2, of this Constitution and those transferred to them by the State, belong to the Municipalities:

II - property tax and urban land tax;

III - taxes on public entertainment (BRASIL, 1937, n.p).

Article 148 presents the facilitation of man's fixation in relation to adverse possession similar to the 1934 Constitution.

The **fifth Constitution**, dated September 18th, 1946, resumed the democratic line of 1934 and was enacted legally, after the deliberations of the newly elected Congress, which assumed the tasks of the National Constituent Assembly.

In chapter II (On Individual Rights and Guarantees) article 141, in relation to the previous Constitution, the inviolability of rights concerning life was added, however, the withdrawal of the right to subsistence was continued. In section 15, the text of article 113 (item 16) of the 1934 Constitution is resumed.

However, the law removed from section 16 the phrase “which may not be exercised against the social or collective interest” existing in article 113 (item 17) of the 1934 Constitution.

Art 141 - The Constitution guarantees to Brazilians and foreigners residing in the country the **inviolability of rights concerning life**, liberty, individual security and **property**, in the following terms:

[...]

Section 15 - **The home is the inviolable refuge of the individual**. No one may enter it at night, without the consent of the resident, except to help victims of crime or disaster, or during the day, outside of cases and in the manner established by law.

Section 16 - The **right to property** is guaranteed, except in the case of expropriation for public necessity or utility, or for social interest, upon prior and fair compensation in cash. **In case of imminent danger, such as war or intestinal commotion**, the competent authorities may use private property, if the public good so requires, however, the right to further compensation is assured (BRASIL, 1946, n.p, our emphasis).

In relation to section 16, in 1964, through Constitutional Amendment nº 10, the exception provided for in section 1 of article 147, which deals with expropriation in rural territory, was inserted:

Section 1 For the purposes set forth in this article, the Union may promote expropriation of rural territorial property, upon payment of prior and fair

compensation in special public debt bonds, with an exact monetary correction clause, according to indices established by the National Council of Economy, redeemable within a maximum period of twenty years, in successive annual installments, ensuring its acceptance at any time, as a means of payment of up to fifty percent of the Rural Land Tax and as payment for the price of public lands (BRASIL, 1946, n.p.).

In chapter I (Preliminary Provisions) article 15, paragraph 1, for the first time appears the tax exemption for minimum matters related to housing:

Article 15 - It is incumbent upon the Union to enact taxes on: [...]

Section 1 - **Articles that the law classifies as the minimum essential for housing**, clothing, food and medical treatment of people of restricted economic capacity are exempt from consumption tax (BRASIL, 1946, n.p., our emphasis).

In article 156, adverse possession is presented, as in the previous Constitution, however, the description that this law must be implemented, preferably, for the lower class and/or unemployed, in rural areas, is complemented. Another issue is the increase to twenty-five hectares and later to one hundred⁵.

Article 156 - The law will facilitate the settlement of men in the countryside, establishing plans for colonization and use of public lands. For this purpose, preference will be given to nationals and, among them, inhabitants of impoverished areas and the unemployed. [...]

Section 3 - Anyone who, not being a rural or urban owner, occupies, for ten uninterrupted years, without opposition or recognition of alien ownership, a stretch of land not exceeding twenty-five hectares, making it productive by his work and having in it his address, he will acquire the property, by means of a declaratory sentence duly transcribed (BRASIL, 1946, n.p.).

In this period, in the context of social housing policies, the government of Humberto Castelo Branco (1964-1967) began a new period of social housing, creating a true housing policy, made possible by the creation of the National Housing Bank (BNH) in 1964, with the creation of a source of permanent resources linked to wages, generated from compulsory contributions by workers employed in the formal sector of the economy (Fundo de Garantia por Tempo de Serviços – FGTS). This period is characterized by the articulation between the public sector as the main financier and the private sector as executor of the housing policy, that is, the housing housing production.

The main innovation of the National Housing Bank (BNH) was the introduction of the monetary correction system in housing financing, as an inflationary compensation mechanism.

The popular segment (for families earning up to three minimum wages and then up to five minimum wages) would be served by COHABs (housing companies at municipal or state

⁵ In Constitutional Amendment No. 10 of 1964, the section was changed to: Section 3 Anyone who, not being a rural or urban owner, occupies, for ten uninterrupted years, without opposition or recognition of alien ownership, a stretch of land that he has made productive by his work, and his family, will acquire the property by means of a declaratory sentence duly transcribed. The area, never exceeding one hundred hectares, must be characterized as sufficient to ensure subsistence conditions and social and economic progress for the farmer and his family, in the dimensions established by law, according to regional agricultural systems.

level). The economic segment (for families with a family income of three to six minimum wages, range expanded later) was served by housing cooperatives (non-profit associations formed from professional categories and are intermediaries between borrowers and the BNH). The middle segment aimed to serve families with monthly income above six minimum wages, and mainly private agents (Real Estate Credit Societies, Savings and Loans Associations) that form the Brazilian System of Savings and Loans and serve the so-called middle class and also its luxury construction sectors, which would form the upper segment (VÉRAS; BONDUKI, 1986).

From 1964, the federal government “financed five million housing units, enough to house about twenty-five million people, more than 20% of the housing units built in Brazilian cities in the period” (BONDUKI, 2004, p. 318).

The BNH's political action was more focused on generating labor than on social action. The programs and housing complexes did not serve the populations for which they were intended, “the quantitative balance of housing supply [continued] to be derisory for the popular market, given the demand for housing by lower income classes. This policy financed luxury buildings, stimulating the upper market (VÉRAS; BONDUKI, 1986, p.45). To lower the costs of social housing for the low-income population, housing complexes were implemented on the outskirts of cities, devoid of equipment and collective services, built with low-quality materials and reduced room dimensions.

In 1967, under the military regime, the **sixth Constitution** was drafted. Over again from a totalitarian nature, he did not mention the housing issue (dwelling).

In Chapter II (On the Competence of the Union), in article 8º XVII f), it is incumbent upon the Union to legislate on expropriation (article 8º XVII f).

In Chapter IV (On Individual Rights and Guarantees) Article 150 remains with the same guidelines as in the previous Constitution. However, the adjective “individual” was removed from the security law.

Art 150 - The Constitution guarantees to Brazilians and foreigners residing in the country the inviolability of rights concerning **life, liberty, security and property**, in the following terms:

Section 10 - **The home is the individual's inviolable refuge**. No one can enter it at night without the consent of the resident, except in the case of a crime or disaster, or during the day, except for cases and in the manner established by law.

Section 22 - The **right to property** is guaranteed, except in the case of expropriation for public necessity or utility or for social interest, upon prior and fair compensation in cash, subject to the provisions of **art. 157 Section 1**⁶. In case of imminent public danger, the competent authorities may use the private property, ensuring the owner further compensation (BRASIL, 1967, n.p, our emphasis).

In Title III (Of the Economic and Social Order), Article 157 Section 1, cited in paragraph 22, some changes were also made, such as the omission of monetary correction through indices

⁶ Article 157 Section 1 - For the purposes set forth in this article, the Union may promote the expropriation of rural territorial property, upon payment of prior and fair compensation in special public debt bonds, with an exact monetary correction clause, redeemable within a maximum period of twenty years, in successive annual installments, ensuring its acceptance, at any time, as a means of payment of up to fifty percent of the rural territorial tax and as payment of the price of public lands.

set by the National Council of Economy. In 1969, as of Institutional Act nº9, the section was added where the just compensation would be “set according to the criteria established by law”⁷.

Paragraph five deals with expropriation for agrarian reform purposes. In 1969, however, by Institutional Act nº 9, this article was replaced by “The President of the Republic may delegate the attributions for the expropriation of rural properties, for social interest, the declaration of priority zones being exclusive to him” (BRASIL, 1967, n.p.).

Art 157 - The purpose of the economic order is to achieve social justice, based on the following principles:

Section 5 - Plans involving expropriation for the purposes of agrarian reform shall be approved by decree of the Executive Power, and their execution shall be the responsibility of collegiate bodies, made up of Brazilians, of notable knowledge and suitability, appointed by the President of the Republic, after approval the choice by the Federal Senate (BRASIL, 1967, n.p., our emphasis).

The tax exemption contemplated, in the previous Constitution, for people of restricted economic capacity, in articles classified as the minimum necessary for housing, clothing, food and medical treatment was omitted from the present Constitution.

In the 1980s, high inflation, unemployment, wage flattening, defaults, led to growing liabilities for the Housing Financial System (SFH). The housing sector suffered a profound internal crisis, which began with the extinction of BNH, which was incorporated into Caixa Econômica Federal in 1986.

The **seventh Federal Constitution** (Citizen Constitution) drawn up in 1988 included, in Article 6, assistance to the homeless, but **did not specify housing as a social right**.

Art. 6th Education, health, work, leisure, security, social security, maternity and childhood protection, **assistance to the destitute**, in the form of this Constitution are social rights (BRASIL, 1988, n.p., our emphasis).

However, housing appears as a competence of the Union, the States, the Federal District and the Municipalities.

Art. 21. It is incumbent upon the Union:[...]

XX - establish guidelines for urban development, including housing, basic sanitation and urban transport.

[...]

Art. 23. It is the common competence of the Union, the States, the Federal District and the Municipalities:[...]

IX - promote housing construction programs and the improvement of housing conditions and basic sanitation (BRASIL, 1988, n.p)

The 1988 Constitution favored the definition and implementation of urban development policy, giving rise to the emergence of Urban Law in Brazil as we know it today. As an example,

⁷ Section 1 - For the purposes set forth in this article, the Union may promote the expropriation of rural territorial property, upon payment of fair compensation, fixed according to the criteria established by law, in special public debt securities, with an exact clause, monetary correction, redeemable within a maximum period of twenty years, in successive annual installments, ensuring their acceptance, at any time, as a means of payment of up to fifty percent of the rural land tax and as payment of the price of public lands.

it is possible to verify the legal outline for the elaboration of the master plan and the insertion of the social function of the property (Article 5, XXIII).

The 1988 Constitution adds that policies, programs and housing construction are the competence of the States and Municipalities. In this way, policies and programs were created for the construction of social housing for the low-income population, such as the Programa Atuação em Cortiços (PAC) implemented in the municipal administration in São Paulo, by Luiza Erundina (1989–1993).

Regarding the Union's housing policies, in the period from 1985 to 1989, there was the creation of the National Community Mutirão Program, which prioritized families with an income below three minimum wages and aimed to build 550,000 housing units, but failed due to the bad use of resources and clientelistic actions. The period from 1990 to 1992 was marked by superficial changes in the SFH, with the facilitation of the settlement of properties and the change in the mechanism for correcting installments.

On January 24, 1992, the pacts referring to Universal rights ICCPR and ICESCR were ratified by Brazil, with the aim of enforcing the commitments established in the Universal Declaration of Human Rights. Therefore, the conjuncture of these rights should be monitored by the States Parties, through the preparation of periodic reports, assessing the degree of their implementation and the difficulties to put them into effect, while the supervision of the pacts is up to the UN Committees (BRASIL, 2019, p 04).

After 12 years, in the Constitutional Amendment nº26 of 2000, housing appears as a social right, as well as in the Constitutional Amendments of 2010, 2015 and 2021.

Social rights are education, health, work, housing, leisure, security, social security, maternity and childhood protection, assistance to the destitute, in the form of this Constitution (BRASIL, 2000, n.p, our emphasis).

It is important to note that in Constitutional Amendment #90 from 2015, transport became a social right, and is also an important element for an adequate quality of life.

Art. 6th Education, health, food, work, housing, transportation, leisure, security, social security, maternity and childhood protection, assistance to the destitute, in the form of this Constitution are social rights (BRASIL, 2015, n.p, our emphasis).

To meet some parameters of adequate housing established by the UN (1992), Brazil created legislation for the construction of housing complexes that would enable the implementation of some parameters such as: habitability, accessibility, infrastructure services.

In the government of Fernando Henrique Cardoso (1995-2002) housing policy followed two lines: housing promotion directly by States and Municipalities and financing programs directly to the final borrower, including the Residential Leasing Program -PAR (LAW No. FEBRUARY 12, 2001).

In 2001 a very important law was drafted. Law nº 10,257, entitled **City Statute (Estatuto da Cidade)**, started to define the right to housing as part of the right to the city, along with the right to urban land, environmental sanitation, transportation, urban infrastructure, work, leisure, etc.

In the Government of Luiz Ignácio da Silva (2003-2010) the Ministry of Cities (MCIDADES) was created with 4 secretariats: Housing, Urban Programs, Sanitation and Urban Mobility. “In 2005, the Ministry redefines a National Housing Policy, with the creation of the National Housing System of Social Interest (SNHIS) and the creation of funds, as well as the institution of local housing councils” (SALCEDO, 2023, p. 35). Housing action based on the federal structure in the delimited period was also strongly linked to CEF's Residential Lease Program (PAR). For the first time, a federal action of social housing policies for the whole country is structured from the local level (ROSSETTO NETTO, 2017, p. 62).

It is also worth highlighting the Federal Law 11.888/2008, known as the **ATHIS Law** (Technical Assistance for Social Interest Housing). It ensures free public technical assistance for projects, renovations and even construction of housing for families with up to three minimum monthly wages.

In 2009, the Minha Casa Minha Vida (MCMV) Program was created (Law 11,977; 07/07/2009), for low-income population housing. It establishes higher values for housing production, if compared to the PAR, prioritizing lower income families (Bracket 1). The program impact was high, leading to the re-edition of MCMV2 (launched in 2011) and MCMV3 (launched in 2015) (SALCEDO, 2023) during Dilma Rousseff's government (2011-08/31/2016). The federal MCMV program was discontinued under Jair Bolsonaro (2018-2022). Through the Ministry of Regional Development (MDR), the Casa Verde e Amarela program was created in 2021, to finance home ownership, especially low-income ones. Currently, in the government of Luiz Ignácio da Silva (2023-current) the MCMV program was resumed.

4 FINAL CONSIDERATIONS

Housing is one of the human rights guaranteed to all by international law and also by the Brazilian Constitution. Housing as a fundamental right for all people was recognized in 1948 by the Universal Declaration of Human Rights (UNITED NATIONS, 1948) and enhanced in 1966 by the International Covenant on Economic, Social and Cultural Rights (UNITED NATIONS, 1996b), accepted and applicable in all parts of the world.

In Brazil, the construction of social housing as an action of public policies had a long process, culminating in the right to housing in the Amendment of the Constitution of Brazil in 2000.

The Brazilian Federal Constitutions did not address the issue of the right to housing from the beginning. Even with changes in government regimes, it is not possible to notice a major change in housing issues. Only with the 1988 Constitution did this theme have a greater focus, bringing the issue of the social function of property.

The state housing policy began under Getúlio Vargas (1930-1945), having a higher social nature under Castelo Branco (1964-1967) and culminating in a policy aimed at the low-income population under Fernando Henrique Cardoso (1995-2002) and Luiz Ignácio Lula da Silva (2003-2010; 2023-current).

The 17 Sustainable Development Goals (UN, 2015) prepared by the United Nations, especially Goal 11: Sustainable Cities and Communities, which has housing as the main theme, was adhered to in parts by Brazil, through federal legislation.

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