
A Study on Public Housing Welfare Legislation

Argentina I (Rights to Housing for Elderly people)

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Abstract

This paper provides an overview and analysis of Argentina's main State policies concerning the right to housing of elderly people.

Argentina has one of the oldest pensions schemes in the world, and the country even introduced the draft Declaration of Old Age Rights back in 1948, pioneering the trend towards recognition of specific rights for the elderly. Furthermore, the Argentine National Constitution explicitly recognizes the right to housing. However, as a matter of fact, the real value of pensions in Argentina has suffered a significant decline over the last forty years; in addition, housing policies specifically aimed at alleviating the situation of the elderly have been few in that same period. This paper illustrates this trend, focusing specifically on the changes obtained over the last twenty years.

The paper proceeds as follows. Section 2 provides a brief overview of the Constitutional clauses regulating the right to housing of elderly people, with a particular emphasis on the role of Human Rights treaties under Argentine legal system. Section 3, in turn, examines the evolution of the legal and policy changes in the Argentine pensions' schemes. The analysis of the pension scheme is of the utmost importance given Argentina's slow progress in advancing policies specifically geared to satisfy elderly people's right to housing. It specifically tackles the policies and the regulatory framework aimed at fulfilling the right of housing of the elderly, though it recognizes that most of the time this has been done indirectly, through the standard pensions scheme, and the only

ambitious project aimed at specifically addressing the right to housing was eventually vetoed by the executive. Section 4 discusses the relevant case law before Argentine courts. A conclusion summarizes the main findings of this paper.

► **Keywords:** *Argentina, Accomodation, Right to Housing, Social Security Benefits, State Policies, Supreme Court.*

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1. Introduction

The rights of elderly people have been somehow neglected under both international and Argentine domestic law. The first references to elderly people's rights in contemporary international law were included in article 25 of the 1948 Universal Declaration of Human Rights, which establishes that “everyone has the right to (...) security in the event of (...) old age or other lack of livelihood in circumstances beyond his control.” Later on, Article 9 of the 1966 International Covenant on Economic, Social, and Cultural Rights (ICESCR) recognized the “right of everyone to social security, including social insurance.” In any event, both these references to the older persons are only indirect, “and generally limited to social protection and the right to an adequate standard of living.”¹⁾

The meagre protection awarded to elderly rights under international human rights law starkly contrasts the demographic evolution occurred in the second half of the XX century. The number of people above 60 years of age has increased significantly over the last fifty years. Although this is a global phenomenon, this increase is taking place mostly in the developing world.²⁾ Furthermore, women, who have traditionally outlived men, have increased their advantage in life expectancy globally in about 50%.³⁾ And yet, there is no binding legal instrument at the international

1) Sandra Huenchuan and Luis Rodríguez-Piñero, “Ageing and the protection of human rights: current situation and outlook” (United Nations, March 2011), at 27.

2) United Nations, *World Populations Prospect* (2009), and *World Population Ageing 2009* (ESA/P/WP/212). The fact that the population over the age of 60 has been growing at a faster pace in the developing world is partly explained by the much lower average life expectancy that these countries enjoyed in the 1950's.

3) United Nations, *World Populations Prospect* (2009). This has significant implications as many women who have attained that age did not work outside their houses.

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level focusing on the protection of their rights that is currently in force. Since the 1980s states have developed a variety of action plans, and human rights bodies have issued several statements aimed at addressing the most urgent needs and problems of the elderly.⁴⁾ Furthermore, it could be argued that nowadays there is a widespread consensus on the need to adopt a convention on their rights.

Argentina doesn't escape this global phenomenon. According to the 2010 National Census there are 5,725,838 people above 60 years of age in Argentina, of which 3,290,782 are women.⁵⁾ This paper provides an overview and analysis of Argentina's main State policies concerning the right to housing of elderly people. It must be noted though that Argentina shares in the worldwide trend of people in this age group still lives predominantly with their relatives (children or grandchildren). As a matter of fact, this phenomenon is significantly stronger in the developing world. In Latin America and the Caribbean, in fact, only 11% of individuals above 60 years of age live by themselves in average.⁶⁾ Yet the issue of housing is of particular concern in countries such as Argentina in light of the fact that poverty in people of 65 years of age and above

4) Rodríguez-Pinzón, Diego and Claudia Martin. "The International Human Rights Status of Elderly Persons." *American University International Law Review* 18, no. 4 (2003): 915-1008, at 947. See also, Report of the World Assembly on Ageing, Vienna, 26 July-6 August 1982, available at <http://www.un.org/es/globalissues/ageing/docs/vipaa.pdf> (last accessed on August 20, 2012); and Human Rights Council Advisory. *The necessity of a human rights approach and effective United Nations mechanism for the human rights of the older person*; Fourth Session, 25 - 29 January 2010, at para 63.

5) Censo Nacional 2010, data available at http://www.censo2010.indec.gov.ar/resultados-definitivos_totalpais.asp (last accessed on August 25 2012).

6) United Nations (2009), *World Population Ageing* (ESA/P/WP/212). This is less than half of the average in Europe or North America, but still higher than the average in Africa and Asia.

has been recently calculated at around 40%.⁷⁾ Indeed, in spite of having a constitutional right to housing explicitly recognized,⁸⁾ a sizable fraction of the Argentine population lives in extremely precarious conditions, even in the streets.

Much to our regret, housing policies specifically aimed at alleviating the situation of the elderly have been few over the last forty years. Similarly discouraging is the fact that the real value of pensions has suffered a significant decline over the same period. Eloquently, though, Argentina has one of the oldest pensions schemes in the world, and the country even introduced the draft Declaration of Old Age Rights back in 1948, pioneering the trend towards recognition of specific rights for the elderly.⁹⁾ There has been, however, very little progress on the part of Argentina on this issue.¹⁰⁾ This paper illustrates this trend, focusing specifically on the changes obtained over the last twenty years.

7) Robert Holzmann, David A. Robalino and Noriyuki Takayama (eds), *Closing the Coverage Gap: The Role of Social Pensions and Other Retirement Income Transfers* (Washington, DC: The World Bank, 2009), at 44. And Argentina is one of the only three countries in the Region in which the number of people aged 60 or above perceiving some kind of income from either pensions or work is below 30 per cent (see *Ageing Comprehensive Report (2010)*, at 34. The other two are Brazil and Uruguay).

8) See Section 2 below.

9) The document recognized and aimed at protecting elderly people's rights to assistance, accommodation, food, clothing, care of physical and moral health, recreation, work, stability and respect (*ibid.*, at 26).

10) *ibid.* More recently, in her statement on behalf of MERCOSUR to the Commission, the Argentinean representative said: "There is no legally binding instrument to standardize and protect the rights of older persons. Persuaded that we need to put an end to this situation, the Heads of State of MERCOSUR (...) committed themselves, within the framework of the United Nations, to call for an International Convention on the rights of older persons, with the goal to provide them with a legally binding instrument to standardize their rights and to establish mechanisms and organs to ensure them (...). We invite the States Members of the United Nations that have not yet expressed their position on this issue to strengthen their internal processes of participative dialogue,

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In order to achieve its objectives, this paper will proceed as follows. Section 2 provides a brief overview of the Constitutional clauses regulating the right to housing of elderly people, with a particular emphasis on the role of Human Rights treaties under Argentine legal system. Section 3, in turn, examines the evolution of the legal and policy changes in the Argentine pensions' schemes. The analysis of the pension scheme is of the utmost importance given Argentina's slow progress in advancing policies specifically geared to satisfy elderly people's right to housing. It specifically tackles the policies and the regulatory framework aimed at fulfilling the right of housing of the elderly, though it recognizes that most of the time this has been done indirectly, through the standard pensions scheme, and the only ambitious project aimed at specifically addressing the right to housing was eventually vetoed by the executive. Section 4 discusses the relevant case law before Argentine courts. A conclusion summarizes the main findings of this paper.

Before we start, however, a point of clarification is in order. This paper concentrates on State policies which assist directly or indirectly in safeguarding the right to housing of elderly people in Argentina. In so doing it has two significant limitations. It neither assesses non-governmental efforts towards ensuring adequate housing for the elderly, nor it discusses eviction policies. As we have noted elsewhere, eviction policies have the potential to be especially harmful as they could undo the efforts

analysis and reflection, in order to move forward in this framework towards an International Convention on the rights of older persons that must offer this valuable sector of our society the urgent and effective answers they deserve" (see Permanent Mission of Argentina to the United Nations, "Temas sociales 2010." Available at <http://www.un.org/esa/socdev/csd/2010/statements/govts/Argentina3b.pdf>, last accessed on August 25, 2012)

to provide with adequate housing.¹¹⁾ If the government is the one motorizing eviction processes, the housing policies suffer at their core.¹²⁾

11) Alejandro Chehtman, Martín Hevia, and Sergio Muro, *Argentina: Housing Policies and Regulatory Framework* (2012), at 2.

12) See CELS “Déficit Habitacional y Desalojos Forzosos en la Ciudad de Buenos Aires: Apuntes sobre una Política de Expulsión y Desresponsabilización”, in “Informe Anual de Derechos Humanos en Argentina. 2009” available at www.cels.org.ar

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Argentina's constitutional system has inherited a classical 19th Century liberal framework. As such, division of power and judicial review were among its main original concerns. Economic and social rights were ultimately incorporated in Article 14bis after a complicated process that included a substantial reform and an abrogation of that reform.¹³⁾ In 1957, a constitutional amendment took place and article 14bis of the National Constitution of Argentina was enacted. It establishes that 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"¹⁴⁾. The new rights awarded by the reform were further validated by another constitutional clause. Under article 28 any fundamental right contained in the constitution "shall not be modified by the laws that regulate their enforcement."¹⁵⁾ Given the political structure described above, the judiciary is the final arbiter of the accordance of

13) The Argentine Constitution largely follows the blueprint devised in 1853-60 as modified in 1994. For a standard guide to the Argentine system, see Miguel Angel Ekmekdjian, *Manual de la Constitución Argentina*, Editorial De Palma, 2nd ed, 1998. On the history of Argentine constitutionalism, see Roberto Gargarella, *The Legal Foundations of Inequality*, Cambridge University Press, 2010.

14) National Constitution of Argentina. Available at <http://www.senado.gov.ar/web/interes/constitucion/english.php/>

15) On how this provision has been interpreted by Argentine courts, see Section 4.3 below.

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any piece of legislation or act of the executive through an american-style system of judicial review.

Yet, the standard interpretation developed by courts and academics has been that article 14bis of the Argentine Constitution does not provide for directly enforceable rights. In effect, the nature of the rights under article 14bis is still contested under Argentine Constitutional Law.¹⁶⁾ Some of them are considered directly enforceable before the Argentine courts -mainly labor rights- but many others are not. Their non-enforceability basically entails that they need an Act of Congress that regulates them in order to be claimed before a court of justice. Together with the right to housing, the rights of social security provided for in the third paragraph of Article 14bis have traditionally been considered non-enforceable.

In addition to article 14bis, a new set of rights was awarded after the 1994 constitutional reform. This reform introduced the new article 75(22) which gave constitutional status to a set of international treaties that Argentina had entered to. Specifically, article 75(22) added that

“[I]n the full force of their provisions, they have constitutional hierarchy, do not repeal any section of the First Part of [the] Constitution and are to be understood as complementing the rights and guarantees recognized herein.”

This means that treaties mentioned in the constitutional text, as well as those incorporated later on, have constitutional status. Thus, the provisions from those treaties that make reference to elderly people's right have constitutional status in Argentina. Thus, in order to understand what rights elderly people have under the Argentine Constitution, it is of utmost importance to make reference to international human rights law.

16) María Angélica Gelli, *Constitución de la Nación Argentina. Comentada y Concordada* (Buenos Aires: La Ley, 3rd ed, 2005), 155.

According to new Article 75.22, the Universal Declaration on Human Rights (UDHR) has constitutional status. For our purposes, it is important to make a special reference to article 25 of the UDHR which establishes that “everyone has the right to (...) security in the event of (...) old age or other lack of livelihood in circumstances beyond his control.” It comes without saying that the article merely provides a vague standard which needs to be filled either by domestic legislation or judicial interpretation. This vague standard also provides a stark contrast to Argentina’s 1948 draft declaration proposal on old age rights.¹⁷⁾ Another human rights treaty that obtained constitutional status in 1994 was the International Covenant on Economic, Social, and Cultural Rights (ICESCR). The ICESCR establishes broadly the “right of everyone to social security, including social insurance.” Now, in spite of the constitutional status, “references to the older persons in [these] international human rights instruments are only indirect, and generally limited to social protection and the right to an adequate standard of living.”¹⁸⁾

With regards to the ICESCR, the Committee on Economic, Social and Cultural Rights ("CESCR") has issued general comments on the rights of the elderly. These comments are interpretations of how the text of the ICESCR should be interpreted. As such, they are binding on parties to the ICESCR like Argentina. In light of that, it is worth mentioning these comments in this paper.

17) See Dr. Alexandre Sidorenko “A Society for All Ages:UN Policy Action on Aging”, available at <http://www.icsw.org/publications/sdr/2001-dec-2002-march/society-all-ages.htm>

18) Sandra Huenchuan and Luis Rodríguez-Piñero. “Ageing and the protection of human rights: current situation and outlook.” United Nations, March 2011. Page 27. Note that in Argentina such indirect protection becomes especially problematic due to the traditional interpretation of these rights as non-enforceable. To wit, the fact that rights are defined in a vague way provides some support to the idea that those rights need to be regulated before courts could enforce them.

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In December 1995, the Committee on Economic, Social and Cultural Rights ("CESCR") issued "General Comment 6: the economic, social and cultural rights of older persons." The Committee stressed that although the ICESCR does not contain any explicit reference to the rights of older persons, "in view of the fact that the Covenant's provisions apply fully to all members of society, it is clear that older persons are entitled to enjoy the full range of rights recognized in the Covenant."¹⁹⁾ Furthermore, according to the Committee, "States parties to the Covenant are obligated to pay particular attention to promoting and protecting the economic, social and cultural rights of older persons"²⁰⁾, especially in times of economic crisis.²¹⁾ In order to comply with this duty, States should "determine the nature and scope of problems [affecting the elderly] within a State through regular monitoring, the need to adopt properly designed policies and programmes to meet requirements, the need to enact legislation when necessary and to eliminate any discriminatory legislation and the need to ensure the relevant budget support or, as appropriate, to request international cooperation".²²⁾

As far as the right to social security (article 9 of the ICESCR) is concerned, "states parties must take appropriate measures to establish

19) Committee on Economic, Social and Cultural Rights. **General comment No. 6, The economic, social and cultural rights of older persons.** Thirteenth session, 1995. E/1996/22. Available at <http://www1.umn.edu/humanrts/gencomm/epcomm6e.htm>. Paragraph 10.

20) *Idem.* Paragraph 13.

21) "Side by side with older persons who are in good health and whose financial situation is acceptable, there are many who do not have adequate means of support, even in developed countries, and who feature prominently among the most vulnerable, marginal and unprotected groups. In times of recession and of restructuring of the economy, older persons are particularly at risk. As the Committee has previously stressed (General Comment No. 3 (1990), para. 12), even in times of severe resource constraints, States parties have the duty to protect the vulnerable members of society." *Idem.*

22) *Idem.* Paragraph 18.

general regimes of compulsory old-age insurance, starting at a particular age, to be prescribed by national law.”²³⁾ Furthermore, states parties “must guarantee the provision of survivors' and orphans' benefits on the death of the breadwinner who was covered by social security or receiving a pension”²⁴⁾ and they should, “within the limits of available resources, provide non-contributory old-age benefits and other assistance for all older persons, who, when reaching the age prescribed in national legislation, have not completed a qualifying period of contribution and are not entitled to an old-age pension or other social security benefit or assistance and have no other source of income.”²⁵⁾ Finally, concerning the right to an adequate standard of living (article 11 of the ICESCR), the Committee referred to the principle of independence established in the United Nations Principles for Older Persons and to Recommendations 19 to 24 of the Vienna International Plan of Action on Ageing.²⁶⁾ These comments suggest that the protection of the rights of the elderly must be central despite the indirect prescription of its coverage.

In November 2007, the CESCR issued “General Comment 19: the right to social security (art. 9)”²⁷⁾. According to the CESCR, in order to guarantee the right to social security, states are obliged, at the very least:

“(a) To ensure access to a social security scheme that provides a minimum essential level of benefits to all individuals and families

23) Idem. Paragraph 27.

24) Idem. Paragraph 29.

25) Idem. Paragraph 30.

26) For a description of the Vienna plan and other international initiatives, please refer to the appendix.

27) Committee on Economic, Social and Cultural Rights. General Comment 19: the right to social security (art. 9). Thirty-ninth session, 2007. E/C.12/GC/19. Available at <http://www1.umn.edu/humanrts/gencomm/escgencom19.html>

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that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education. If a State party cannot provide this minimum level for all risks and contingencies within its maximum available resources, the Committee recommends that the State party, after a wide process of consultation, select a core group of social risks and contingencies;

- (b) To ensure the right of access to social security systems or schemes on a non-discriminatory basis, especially for disadvantaged and marginalized individuals and groups;*
- (c) To respect existing social security schemes and protect them from unreasonable interference;*
- (d) To adopt and implement a national social security strategy and plan of action²⁸⁾;*
- (e) To take targeted steps to implement social security schemes, particularly those that protect disadvantaged and marginalized individuals and groups²⁹⁾;*

28) “The duty to take steps clearly imposes on States parties an obligation to adopt a national strategy and plan of action to realize the right to social security, unless the State party can clearly show that it has a comprehensive social security system in place and that it reviews it regularly to ensure that it is consistent with the right to social security. The strategy and action plan should be reasonably conceived in the circumstances; take into account the equal rights of men and women and the rights of the most disadvantaged and marginalized groups; be based upon human rights law and principles; cover all aspects of the right to social security; set targets or goals to be achieved and the time-frame for their achievement, together with corresponding benchmarks and indicators, against which they should be continuously monitored; and contain mechanisms for obtaining financial and human resources. When formulating and implementing national strategies on the right to social security, States parties should avail themselves, if necessary, of the technical assistance and cooperation of the United Nations specialized agencies.” *Idem*, paragraph 68.

29) “States parties will need to establish non-contributory schemes or other social assistance measures to provide support to those individuals and groups who are unable to make sufficient contributions for their own protection (…). It is important that social

(f) To monitor the extent of the realization of the right to social security³⁰⁾.

As a result, and in order to guarantee the right to social security, States must develop a sustainable system, whether composed of a single scheme or variety of schemes, to ensure that benefits are provided for the relevant social risks and contingencies (i.e sickness, old age, unemployment, Employment injury, maternity and disability). In addition, “benefits, whether in cash or in kind, must be adequate in amount and duration in order that everyone may realize his or her rights to family protection and assistance, an adequate standard of living and adequate access to health care, as contained in articles 10, 11 and 12 of the Covenant (···). The adequacy criteria should be monitored regularly to ensure that beneficiaries are able to afford the goods and services they require to realize their Covenant rights.”³¹⁾

Sustainability is clearly not the only goal of a system that aims to guarantee the right to social security. Accessibility is equally important. Therefore, the CESCR considers that “all persons should be covered by the social security system; especially individuals belonging to the most disadvantaged and marginalized groups (···). In order to ensure universal coverage, non-contributory schemes will be necessary.” As a result, qua-

security schemes cover disadvantaged and marginalized groups, even where there is limited capacity to finance social security, either from tax revenues and/or contributions from beneficiaries. Low-cost and alternative schemes could be developed to cover immediately those without access to social security, although the aim should be to integrate them into regular social security schemes. Policies and a legislative framework could be adopted for the progressive inclusion of those in the informal economy or who are otherwise excluded from access to social security.” *Idem.* Paragraph 51.

30) *Idem.* Paragraph 59.

31) *Idem.* Paragraph 22.

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lifying conditions for receiving a benefit must be reasonable, proportionate and transparent. Moreover, if social security schemes require contributions by prospect beneficiaries, they should be stipulated in advance, must be affordable for all and must not compromise the realization of other rights.

In spite of the fact that the documents analysed in the foregoing paragraphs show that there is a widespread international normative consensus regarding the minimum contents of the rights of the elderly, “no human rights convention of universal scope currently exists to systematize and operationalize these rights and to establish a specific mechanism regarding their protection”³²). In fact, since the 1980s, Argentina and other states have developed a variety of action plans aimed at addressing the most urgent needs and problems of the elderly. Nowadays, there is a widespread consensus on the need to adopt a convention on their rights.

Summing up, the Argentine Constitution includes a specific provision on social security - Article 14 bis. Besides, according to Article 75.22 of the Constitution, the Universal Declaration on Human Rights and the ICESCR (as it has been interpreted by the CESCR) have constitutional status. These provisions are the supreme law of the country regarding the rights of the elderly. Thus, the laws and policies of the country are to follow their mandates.

32) Sandra Huenchuan and Luis Rodríguez-Piñero. “Ageing and the protection of human rights: current situation and outlook.” United Nations, March 2011. Page 47.

3. The Legal Framework: Evolution and Assessment of the Policies and Laws of the Pension System for the Elderly in Argentina

As was mentioned in the introduction, the Argentine legal system does not provide specific protections for the right to housing of the elderly. The main protection awarded to the elderly, and one which could potentially satisfy their right to housing is the right to pension. This section will describe and analyze the extent of that coverage.

3.1. Legal Origins of the Pension System

The pension system of Argentina is one of the oldest in the world. In 1904, Congress passed Act 4349 creating a retirement system for public servants. Under the system, public servants were granted an “ordinary privileged retirement pension” at the age of 50, if they had worked for 25 years. In addition, “[e]mployees accounting for 15 years of service who had not yet reached the age of 50, were entitled to their ordinary privileged retirement”³³), but they received a lower benefit until the age of 50.

From then on, new job-related pension systems were progressively established, usually designed as individual capitalization schemes. In the late 1940s, “a strong push by the new Peronist government resulted in a quick expansion of coverage, and a few years later nearly all workers in Argentina, including salaried and self-employed, were covered by relatively generous, partially funded schemes”³⁴).

33) Antonio Sales. The Argentinean Integrated Pensions and Retirement System Reform. Available at. http://www.ciss.org.mx/pdf/editorial/256/256_04.pdf Page 75

34) Rafael Rofman, Eduardo Fajnzylber and German Herrera. Reforming the pension

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In 1957, a constitutional amendment took place incorporating article 14bis. This article introduced for the first time the right to social security. As a result, the “State shall grant the benefits of social security, which shall be of an integral nature and may not be waived.”³⁵⁾

An important reform in the late 1960s consolidated the different schemes created so far into a single system, managed by the Federal Government. The financial structure of the system “was explicitly defined as a pay-as-you-go scheme (PAYG), and most parameters, including contribution rates, vesting period, minimum retirement age, and replacement rates were unified.”³⁶⁾ Under the system, the Federal Government granted “ordinary retirement pensions” to men aged 60 and women aged 55 who had worked for 30 years; “old age retirement pensions” to workers aged 65 and accounting for 15 years of service; “disability retirement pensions” to workers who had disabled while providing professional services; and “survivor pensions” to survivors of beneficiaries of the aforementioned benefits or workers who were entitled to a benefit.³⁷⁾

Due to rising unemployment and informality rates, the scheme established in 1967 ran into financial problems. A comprehensive reform was introduced in 1993. Governmental authorities aimed at enhancing the transparency and efficiency of the system and stimulating local capital markets.³⁸⁾

reforms: The recent initiatives and actions on pensions in Argentina and Chile. SP Discussion Paper No. 0831.May 2008. Available at. Page 8.

35) National Constitution of Argentina. Available at <http://www.senado.gov.ar/web/interes/constitucion/english.php/>

36) See Sales. Pages 78-9

37) See Sales. Page 78.

38) See idem.

3.2 The 1993 Reform

3.2.a) The Integrated System of Pensions and Retirements

In 1993, Congress passed Act Ley 24.241 establishing the “Sistema Integrado de Jubilaciones y Pensiones”³⁹⁾ [“Integrated System of Pensions and Retirements”]. The system comprised two basic pillars.

The first pillar were contributions from employers, accounting for 16 percent of workers’ salaries, that financed a flat social security benefit paid to all retirees complying with the minimum age and vesting requirements. The benefit was roughly equivalent to 28 percent of average salaries.⁴⁰⁾

The second pillar was based on personal contributions from workers, accounting for 11 percent of their salaries. Under this pillar, when entering the labor force, workers could choose to join a PAYG scheme, entirely managed by the “Administración Nacional de Seguridad Social” [“National Social Security Administration”-“ANSES”]. Workers would be granted a social security benefit in accordance with their pre-retirement wage and the number of contributions made.⁴¹⁾

By default, workers were affiliated to an individual capitalization scheme, managed by companies mostly owned by banks and insurance

39) “The changes introduced almost 15 years ago were, by no means, a “definitive” reform. Since the original law was passed in October 1993, nearly eight hundred fifty new regulations about the pension system were approved, including thirty four laws and one hundred and thirty five decrees. While many of these norms were adopted to implement or supplement the system, there was a clear tendency to introduce short term corrections to the system.” Idem.

40) See idem.

41) See idem.

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companies.⁴²⁾ Workers contributions to this scheme, net of fees and insurance costs, accumulated and, after retirement, they would receive a social security benefit paid as an annuity or as a scheduled withdrawal from their individual capitalization accounts.

Workers in the PAYG scheme were allowed to switch to the individual capitalization scheme at any time; in contrast, however, workers in the individual capitalization scheme could not move from the funded to the PAYG scheme. Approximately, 80% of workers were assigned to pension funds through this mechanism.⁴³⁾

The reform also established a minimum retirement age of 65 years for men and 60 years for women. In addition, in order to receive a retirement pension, they must have worked for, at least, 30 years. These requirements increased the minimum retirement age by five years and the contribution period by ten years, as compared to the previous law.⁴⁴⁾

Furthermore, the reform eliminated almost all the “special” regimes which had been designed to grant more favorable social security benefits to disadvantaged workers.⁴⁵⁾ Only the military and security forces continued to have their own retirement scheme. As far as provincial and municipal civil servants are concerned, almost half of the provinces continued to manage independent systems covering these workers and were allowed to authorize the operation of job-related funds to cover some professional activities, such as lawyers, engineers and accountants.

42) “These companies would compete for affiliates, under a strictly regulated marketing system. They were supervised by an autonomous Superintendency, which operated under the control of the Ministry of Labor and Social Security.” *Idem*.

43) *Idem*.

44) “To avoid sharp impacts on individuals close to retirement, the new minimums were to be implemented progressively, in a period of nearly 15 years after the reform.” *Idem*.

45) Namely, school teachers, academic researchers, diplomats, railroad workers, judiciary employees, etcetera.

Finally, after the 1993 reform, the non-contributory pension system⁴⁶⁾ was transferred to the Secretaría de Desarrollo Social [“Social Development Secretariat”], although ANSES was the authority in charge of paying the benefits. The system, established by Act 13.478 passed in 1948, provided a flat monthly transfer to individuals aged 70 and more with no other income sources. Late in the 1990s, 40 thousand elderly people were receiving this benefit which amounted to 66% of minimum pensions.⁴⁷⁾

3.2.b) Assessing the 1993 Reform

The 1993 pension system’s performance followed the macroeconomic trends of the period. Historically, Argentines have benefited from one of the highest pension coverage rate in Latin America. However, since the 1980s, as unemployment and informality progressively grew and compliance levels with social security obligations fell due to the worsening economic situation of the country, the percentage of active workers covered by the social security system started to decline. In fact, as Graphic 1 shows, in the early 1990s more than 45 percent of active workers were covered by the social security system, whereas roughly 30 percent were covered after the 2001-crisis. Moreover, the coverage of “occupied workers” (i.e. salaried or self-employed people) declined nearly

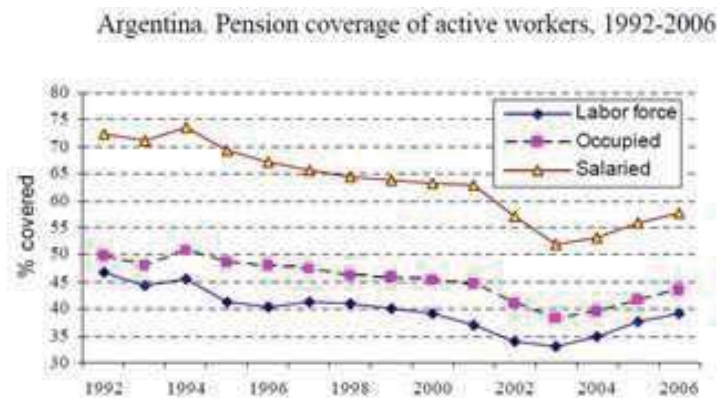
46) “The NCP programme grants seven types of benefits: (i) old-age; (ii) disability; (iii) mothers of seven or more children; (iv) families of the “disappeared”; (v) Malvinas war veterans; (vi) benefits granted by special legislation; and (vii) auxiliary benefits (pensionegraciables) granted by the national Congress. The first three of these are also referred to as assistance pensions.” Fabio Bertranou y Carlos O. Grushka. “The Non-Contributory Pension programme in Argentina: Assessing the impact on poverty reduction.” ESS Paper No 5. Page 4

47) See Rofman, et.al. page 10.

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10 % during the decade and the effect was also significant among salaried workers. In other words, all economic sectors suffered a severe decreased in terms of pension coverage from 1993 to 2007.

Graphic 148)



Note: Household surveys in Argentina inquire about pension coverage of salaried workers only. Thus, the coverage rate of occupied workers is somehow underestimated, as all self-employed workers appear as uncovered.

Source: Rofman and Lucchetti, 2007

This drop in the social security coverage rate of active workers had a limited impact on social security coverage among the elderly. This is due to the fact that the basic design of any contributory pension scheme reduces the short-term effects of changes in participation of active workers on old age coverage, “as most beneficiaries have been retired for years and many new retirees completed their vesting period long before the reforms or economic conditions changes.”⁴⁹⁾

There were changes in social security coverage among the elderly, but they did not derive from the drop in the social security coverage rate among active workers. On the contrary, social security coverage among the elderly declined as a result of changes in the vesting period estab-

48) Rofman. Page 11.

49) Rofman. Page 12.

lished by the 1993 reform. As we have explained, the reform increased the vesting period to 30 years. By doing so in a context of growing unemployment and informality, the reform excluded many workers from the social security system. In fact, the amount of incoming beneficiaries fell from 8900 new benefits per month in 1992-93 to 3600 new benefits per month, five years later. As a result, the total number of beneficiaries of the national system went from 2.1 million in late 1992 to 1.6 million in 2005.

The decline in the amount of beneficiaries had a severe impact on the elderly coverage rate. In 1992, 80% of the people aged 65 or more were beneficiaries of the system, whereas, in 2003, the beneficiaries amounted to 68% of the elderly. The population of least resources was specially affected by that decline: in 1992, 63% of the elderly of least resources received social security benefits; by 2003, this percentage fell roughly twenty points.⁵⁰⁾ Given its role as a provider of resources necessary to access adequate housing, the coverage rate drop was also dramatic for our purposes.

In spite of the prohibition of indexation of social security benefits,⁵¹⁾ on average, the amount of social security benefits paid to retirees progressively raised during the 1990s. This growth derived from a combination of ad-hoc adjustments of individual benefits ordered by the Judiciary and the increasing amounts paid to new beneficiaries. However, later in the decade, social security benefits suffered a sharp loss in real values due to the 2001 crisis. As far as the financial situation and performance of the individual capitalization scheme are concerned, they

50) All the figures included in this paragraph were taken from Rofman, page 13.

51) Article 7 of Act 24.463, passed in 1995,

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evolved unevenly as they were affected by the crisis and by normative adjustments.⁵²⁾

As far as the minimum social security benefit for retirees is concerned, the proportion of people receiving the minimum benefit fell from nearly 40% in 1994 to approximately 16% in 2001.⁵³⁾ In addition, early in the 1990s, the minimum benefit was established at AR\$150 and was not modified later on. As a result, the minimum benefit, which represented nearly 60 percent of the average benefit in 1994, amounted to less than 50 percent of the average benefit, in early 2002.

In 2002, the Government decided to progressively increase the minimum benefit. As a result, after a sharp decrease in 2002 caused by inflation rates and the devaluation of the national currency, by mid-2003, the minimum benefit had recovered its previous real value and, by the end of 2005, the real value of the minimum benefit was 60 percent higher than in 2001. As there were very limited adjustments to other benefits, by 2005, the minimum benefit amounted to 85% of the average benefit. This trend continued and, by June 2007, the minimum benefit amounted to 90% of the average benefit.

3.3. The 2004- 2007 Reform

3.3.a) Reforms Concerning Social Security Benefits for the Elderly

As we have explained in the preceding section, from 1993 to 2006, social security coverage among the elderly declined. By 2003, only 68%

52) See Rofman. Page 10.

53) All the figures included in this paragraph were taken from Rofman, pages 13-14.

of the elderly were beneficiaries of the system and the coverage rate among the elderly of least resources, 63% in 1992, had fallen roughly twenty points. In order to address this complex social situation affecting the elderly, from 2004 and 2007, the Federal Government developed three major social security programs: “(i) a relaxation of restrictions to access non-contributory benefits, (ii) the “moratoria” program, that allowed many elderly with insufficient or no contributions to retire immediately, and (iii) an early retirement program”.⁵⁴⁾ We discuss them in turn.

3.3.a)(i) A relaxation of restrictions to access non-contributory benefits

In the 1990s, the number of benefits granted under the non-contributory pension system was limited through access barriers.⁵⁵⁾ In order to reduce these barriers, the Federal Government designed two programs.

In March 2002, the National Executive passed Decree 565/02 establishing the “Plan Mayores” (“Elderly Plan”).⁵⁶⁾ The program aimed at

54) *Idem*.Page 21.

55) The benefits granted under this program “were rationed and qualified applicants had to join a waiting list to receive the benefit.” *Idem*.Page 21.

“In order to grant a new benefit, there must be a decrease in the number of beneficiaries so that resources may be made available to pay for the new benefit.” Fabio Bertranou y Carlos O. Grushka. “The Non-Contributory Pension programme in Argentina: Assessing the impact on poverty reduction.” ESS Paper No 5. Page 13.

56) This plan was part of a wider plan aimed at the Northwestern and Northeastern provinces of Argentina (Salta, Jujuy, Tucumán, Catamarca, and Santiago del Estero, Chaco, Corrientes, Entre Ríos, Misiones, and Formosa). These regions have been, specially affected by the severe 2001 socio- economic crisis. In these regions, unemployment and poverty rates escalated to alarming levels. As a result, the Federal Government developed a wide variety of policies aimed at improving the living conditions of the population of these provinces. Among other actions, it executed two housing projects, the “Housing Emergency Program” and the “Housing Solidarity Program.” For a discussion of these programs, see Chehtman, Hevia & Muro, “Argentina: Housing Policies and Regulatory Framework”, available on file with the

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providing a benefit of AR\$150 to elderly people aged 70 or older living in the provinces of Formosa, Misiones, Jujuy, Chaco, Corrientes, Salta, San Juan, Entre Ríos, Catamarca, Tucumán, La Rioja and Santiago del Estero⁵⁷⁾ who lacked other income.

In addition, in August 2003, the National Executive passed Decree 582/2003 and Decree 583/2003 creating the “Programa para el Adulto Mayor Más” which removed budgetary obstacles that prevented the government from increasing the number of non-contributory pensions granted. As a result, there was a sustained increase in the number of beneficiaries, which more than doubled by 2006. Monthly benefits were also adjusted: by 2003 they had recovered to the pre-crisis levels and, three years later, they were approximately twice the real value of 2001⁵⁸⁾.

3.3.a)(ii) The “moratoria” program

Under Act 24.476, passed in 1995, independent workers were allowed to pay social security contributions owed before September 30, 1993 in installments. In December 2003, Congress passed National Act 25865 and extended this scheme, for a one year period, to contributions owed after 1993.

In addition, in 2004, Article 6 of newly enacted Act 25994⁵⁹⁾ allowed independent workers aged 65 years or older by December 31, 2004 who owed contributions to the system after September 1993 to apply to the “moratoria” up to April 2007, retire immediately and pay the debt while receiving pension benefits.

authors

57) Article 4. Decree 565/02

58) Idem. Page 21.

59) It was passed in December 2004

3.3.a)(iii) The early retirement program

Under the early retirement program established by article 2 of Act 25.994, workers who had reached the minimum vesting requirement, and were at most five years younger than the minimum retirement age (60 years for men, 55 for women), could retire earlier, but with a reduced benefit⁶⁰⁾. This early retirement scheme aimed at granting a social security benefit to those individuals who had lost their jobs during the 2001 socio-economic crisis and that, due to their age, had not found a new job by November 2004.

Table 2⁶¹⁾

REQUIREMENTS	MORATORIA PROGRAM	EARLY RETIREMENT PROGRAM
AGE	SATISFIED 65 OR OLDER (BY 31/12/04)	NOT SATISFIED 60 (MEN) OR 55 (WOMEN)
VESTING REQUIREMENT	NOT SATISFIED	SATISFIED
OTHER		UNEMPLOYED BY NOVEMBER 2004
RELEVANT DETAILS	BOTH PROGRAMS WERE AVAILABLE UP TO APRIL 30, 2007. NOWADYS, PEOPLE CAN ONLY APPLY TO A MORATORIA FOR CONTRIBUIONS OWED BEFORE 1993.	

60) Rofman, et.al. Page 23.

61) Table elaborated by the authors

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3.3.b) Assessing the Reforms Concerning Social Security Benefits for the Elderly

As a result of the three programs described in the preceding section (i.e. the “moratoria” program; the early retirement program and the elimination of barriers to accede to non-contributory pensions), the number of beneficiaries of the social security system has steadily risen since 2006: the number of beneficiaries increased 74.82% from 2006 to 2010.⁶²⁾ In addition, social security coverage among the elderly rose from 57.1% in 2006 to 91% in 2011. Since 2006, social security coverage among the elderly has steadily risen. As a result, nowadays, roughly 90% of the elderly population receives some social security or social assistance benefit.

Table 3⁶³⁾

Year	2006	2007	2008	2009	2010
Beneficiaries	3,122,180.00	4,351,145.00	4,681,630.00	5,261,289.00	5,458,306.00
% of elderly people covered	57.6	76.4	77.8	81.4	87.6

According to information provided by ANSES, by May 2011, 2.4 million elderly people had adhered to the moratoria established by Article

62) Instituto Nacional de Estadística y Censos. “Beneficios del Sistema Nacional por tipo de beneficio, según provincia. Septiembre de 2006-2010.” Available at http://www.indec.mecon.ar/principal.asp?id_tema=6784. Last accessed on August 4, 2012.

63) Elaborated by the authors. The information included in the table was taken from Instituto Nacional de Estadística y Censos. “Beneficios del Sistema Nacional por tipo de beneficio, según provincia. Septiembre de 2006-2010.” Available at http://www.indec.mecon.ar/principal.asp?id_tema=6784. Last accessed on August 4, 2012

6 of Act 25994. 76% of them were women.⁶⁴⁾ With regards to non-contributory pensions, the number of beneficiaries of these social assistance benefits also increased from 513,327 in 2006 to 1,098,827 beneficiaries in June 2011.⁶⁵⁾ Specially, there was a sharp increase in the benefits for disabled people (see Graphic 3 in the Annex). By 2010, “Pensiones a la vejez”(old age pensions), pensions to mothers of seven children and non-contributory pensions to disabled people amounted to 60.07% of the non-contributory benefits granted [the main features of these benefits are described in Section 4 of this paper]. By June 2011, elderly people beneficiaries of non-contributory pensions amounted to roughly 19% of all the beneficiaries of the social security system.

Table 4⁶⁶⁾

Non-contributory pensions 1,098,827					
					December
June	2006	2007	2008	2009	2010
2011	513,327	592,192	688,580	892,162	1,022,760

64) Information based on Cobertura del Sistema Previsional. Available at <https://www.ilo.org/gimi/gess/ShowTheme.do?tid=2888>. Last accessed on August 4, 2012

65) Instituto Nacional de Estadística y Censos. “Pensiones no contributivas. Beneficios por tipo de prestación y haber promedio en pesos. Diciembre de 2006-2010.” Available at http://www.indec.mecon.ar/principal.asp?id_tema=6784. Last accessed on August 4, 2012

66) Elaborated by the authors. The information included in the table was taken from Instituto Nacional de Estadística y Censos. “Pensiones no contributivas. Beneficios por tipo de prestación y haber promedio en pesos. Diciembre de 2006-2010.” Available at http://www.indec.mecon.ar/principal.asp?id_tema=6784. Last accessed on August 4, 2012

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Table 567)

Year	2006	2007	2008	2009	2010
Number of beneficiaries of the system (all benefits included)	3,122,180.00	4,351,145.00	4,681,630.00	5,261,289.00	5,458,306.00
Number of beneficiaries of non-contributory pensions	513,327.00	592,192.00	688,580.00	892,162.00	1,022,760.00
% of beneficiaries of non-contributory pensions in relation to all the beneficiaries of the system	16.44	13.61	14.71	16.96	18.74

Table 668)

Year	“Pensiones graciables” granted by Congress		Benefits established by special laws		“Pensiones a la vejez”, pensions to mothers of seven children and non-contributory pensions to disabled people		
	Beneficiaries	Amount paid, on average	Beneficiaries	Amount paid, on average	Beneficiaries	% of all the non-contributory pensions paid	Amount paid, on average
2006	132,343	260.4	120,094	467.63	260,890	50.62	335.58
2007	124,662	487.9	157,331	593.32	310,199	52.20	429.08
2008	117,936	567.73	204,680	693.05	365,964	52.99	495.49
2009	113,662	728.36	268,344	830.12	510,156	57.05	590.52
2010	109,118	925.17	298,026	1,050.74	615,616	60.07	746.13

67) Idem.

68) Idem.

As a result of these changes, in 2007, roughly 50% of the beneficiaries of the social security system were elderly people who did not qualify for a social insurance benefit and, thus, had to adhere to the “moratoria”, retire early or request a non-contributory pension. In 2009, these beneficiaries received 61% of all the benefits paid (i.e. social insurance and social assistance benefits), whereas in 2011, they were granted 58% of all the benefits paid. In other words, in 2011, only 42% of the beneficiaries of the system were elderly people aged 65 or older who had complied with the vesting requirement.

3.3.c). Changes in the Multi-Pillar Social Security Model

Under the 1993 reform, workers willing to make personal contributions to the social security system had two options. When entering the labor force, they could choose to join a PAYG scheme. By default, workers would be affiliated to an individual capitalization scheme. Workers in the PAYG scheme were allowed to switch to the individual capitalization scheme at any time, but workers in the individual capitalization scheme could not move from the funded to the PAYG scheme.

Under the 2004-2007 reform, different groups of active workers were transferred from the individual capitalization scheme to the PAYG scheme. Firstly, starting in 2001, the special social security schemes for teachers, researchers, diplomats, and judiciary employees, which had been eliminated in 1994, were progressively reinstated. Moreover, in May 2007, governmental authorities “decided that all workers of these schemes would have to direct their contributions to the public system. Approximately

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174,000 contributors, 1.5% of the total number participating in the individual capitalization scheme, were transferred to the PAYG through this process in May 2007.”⁶⁹⁾

Besides, in 2007, under National Act 26.222⁷⁰⁾, unless they had made an explicit request to remain in the individual capitalization scheme, women aged 50 years or more and men aged 55 or more who had contributed less than AR\$20,000 to their individual accounts were also transferred to the PAYG scheme.⁷¹⁾ Thus, nearly 1.1 million affiliates (approximately 10 % of the affiliates) were transferred between July 2007 and March 2008.⁷²⁾

Act 26.222 also allowed all workers to switch to one scheme or the other once every five years. During the first “switching period”, from June to December 2007, almost 1.3 million affiliates decided to switch from the funded to the PAYG scheme.

69) Idem.

70) “The focus of this reform was to revise the balance between the funded and individual capitalization schemes in the multi-pillar model. The message of the Executive Branch to Congress made explicit eight goals in this reform, as an indirect way to explain its motivation. These were:

- To improve coverage
- To guarantee citizen’ freedom of choice between the funded and unindividual capitalization schemes
- To improve the equity and transparency of the system
- To increase the replacement rate of the system
- To ensure a genuine financing of the system
- To reduce the administrative costs of the privately managed pension funds
- To deepen the role of the State
- To guarantee a minimum benefit to all beneficiaries, without distinction between the two schemes.”

Rofman, et.al. Page 17.

71) On opting out mechanisms and individual behavior see Richard H. Thaler& Cass R. Sunstein “Nudge. Improving Decisions About Health, Wealth and Hapiness”, Penguin Books, New York, New York, 2009, pp. 85-9.

72) Rofman, et.al. Page 20.

3.4. The Abrogation of the Capitalization System (2008)

Act 26.222 also modified the default option. If new workers did not make an explicit choice, they would be enrolled in the PAYG scheme. As a result of all these steps, by early 2008, 2.5 million affiliates (21%) to pension funds had voluntarily or compulsorily switched to the PAYG scheme.⁷³⁾

3.4. The Abrogation of the Capitalization System (2008)

In November 2008, Congress passed Act 26.425 abolishing the individual funded scheme and absorbing it into the “Sistema Integrado Previsional Argentino” [“Argentine Integrated Pension System” - SIPA], a public PAYG scheme.⁷⁴⁾

After the reform, funds accumulated in the individual capitalization scheme were transferred to the “Fondo de Garantía de Sustentabilidad del Régimen Previsional Público de Reparto”⁷⁵⁾ [“Guarantee Fund to Sustain

73) Idem.

74) It has been argued that Arguably, the abrogation was possible due to the fact that the 2008 financial crisis highlighted the vulnerability of the funded scheme: pension funds lost 20 per cent of the value of their assets as a result of the crisis: “The nominal return for the period 11/2007 to 10/2008 was -19.1 per cent and the historical nominal annual return to October 2008 was 12.7 per cent and 6.6 per cent in real terms.” International Social Security Association. “The abolition of the individual accounts pension scheme.” Available at <http://www.issa.int/Observatory/Country-Profiles/Regions/Americas/Argentina/Reforms/The-abolition-of-the-individual-accounts-pension-scheme>. This situation coupled with the positive results of the 2007 reform on the public pay-as-you-go scheme,

75) “In order to monitor the use of social security funds, a parliamentary commission (Comisión de control de los Fondos de la Seguridad Social) has been established, comprising six senators and six deputies. To enable the monitoring of the pay-as-you-go system's resources, the Council of the Guarantee Fund to Sustain the Integrated Retirement and Pensions System of Argentina (Fondo de Garantía de Sustentabilidad del Sistema Integrado Previsional Argentino) has been formed. The Council will define its functions within the framework of the National Social Security Administration and

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the Public Pay-as-you-go Pensions Scheme” - “the Guarantee Fund”], established in 2007. Moreover, if workers had made voluntary contributions to the individual capitalization scheme, they were allowed to transfer them either to the PAYG scheme to improve benefits or to a private investment company.

In light of these transfers, the Guarantee Fund received USD 30 billion, the accumulated capital of the individual capitalization accounts⁷⁶⁾, and an annual income of approximately USD 4.5 billion from members' contributions. These funds may only be devoted to paying social insurance benefits and can be invested in accordance with the same conditions governing the individual capitalization scheme. However, under Act 26.425, the funds cannot be invested in foreign securities.

As far as the benefits are concerned, the law guarantees both members and beneficiaries⁷⁷⁾ of the individual capitalization scheme that they will be granted the same or higher benefits than those paid to beneficiaries of the PAYG system. Individual contributions accumulated under the individual capitalization scheme are to be the same as if they had been accumulated under the public PAYG system.

will comprise: government representatives, beneficiaries, workers, employers, the banking sector and legislators.” Idem.

76) “In October 2008, the individual capitalization scheme has 9.5 million members, but only 3.5 million of them contributed regularly to the scheme.” International Social Security Association. “The abolition of the individual accounts pension scheme.” Available at <http://www.issa.int/Observatory/Country-Profiles/Regions/Americas/Argentina/Reforms/The-abolition-of-the-individual-accounts-pension-scheme>.

77) In October 2008, the system was paying 453.000 benefits. International Social Security Association. “The abolition of the individual accounts pension scheme.” Available at <http://www.issa.int/Observatory/Country-Profiles/Regions/Americas/Argentina/Reforms/The-abolition-of-the-individual-accounts-pension-scheme>.

3.5. Social Security and Social Assistance Benefits Granted to Elderly People Under the Current System

The Federal Government of Argentina provides elderly people with “social insurance” and “social assistance” benefits.⁷⁸⁾ As far as social insurance benefits are concerned, the government grants “Old-age pensions” to men aged 65 and women aged 60⁷⁹⁾, with at least 30 years of contributions and service.⁸⁰⁾ It also pays “Advanced-age old-age pensions” to those elderly people aged 70 or older who had contributed to the system for at least 10 years, including, at least, five of the last eight years before leaving employment. In addition, disabled elderly people (aged 65 years and older) receive “advanced-age disability pensions” if, as a result of a disability, they have lost at least 66% of their earning capacity. Finally, if a pensioner or an active worker who had paid contributions on a regular⁸¹⁾ or irregular⁸²⁾ basis dies, his survivors⁸³⁾ are paid a “survivor

78) Social Security Programs Throughout the World: The Americas, 2011. Available at <http://www.google.com.ar/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CE4QFjAA&url=http%3A%2F%2Fwww.ssa.gov%2Fpolicy%2Fdocs%2Fprogdsc%2Fssptw%2F2010-2011%2Famericas%2Fargentina.pdf&ei=wOMNULKhIsq70QGFh4D4Bw&usg=AFQjCNF67AVc8iY7TuiMydInS9pYw8G-ng&sig2=uCpwiAdr-hk6jRkbZkaNhg>

79) “Women may retire at age 65 with a higher pension.” Idem.

80) “The retirement age and contribution requirements are reduced up to 10 years for hazardous or unhealthy occupations.” Idem.

81) “Regular contributors must have met the minimum contribution qualifying condition for the basic old-age pension or have paid at least 30 months of contributions in the last 36 months before death.” Idem.

82) “Irregular contributors must have 18 months of contributions in the last 36 months before death or meet 50% of the minimum contribution qualifying condition for the basic old-age pension and have paid at least 12 months of contributions in the 60 months before death.” Idem.

83) “Eligible survivors include a widow(er) or partner who lived with the deceased for

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pension.” The government also pays a “funeral grant” to the person who finance the insured’s funeral or to survivors.

On the other hand, social assistance benefits are granted in the form of non-contributory pensions. There are three types of non-contributory pensions for elderly people: a) “Pensiones a la vejez”; b) “Pensiones graciabiles” and c) Pensions established by special laws. The “Pensiones a la vejez”, ruled by article 9 of Act 13478 and Decree 582/03, are granted to elderly people aged 70 or older who lack enough income to satisfy their basic needs and does not meet the necessary conditions to receive a social insurance benefit. The “Pensiones graciabiles” are ruled by Act 13337. They are granted by the National Congress to people aged 70 or older who have made an extraordinary or eminent contribution to the Nation and people who have retired from the military or who have worked in a public agency and lack enough resources to meet their basic needs, among other people. Finally, Congress has also established special social assistance benefits for former presidents and vice-presidents, former members of the National Supreme Court of Justice, Argentinean Nobel Prize winners, Argentinean Olympic Games medalists and relatives of disappeared people. In addition, the system grants non-contributory disability pensions “to persons in need who lack family support for food, are assessed with a total and permanent disability of at least 76%, and are not receiving benefits.”⁸⁴⁾ Furthermore, mothers with seven or more children and Malvinas war veterans also received a social assistance benefit.

at least five years (two years if they had children) and who is not receiving benefits; an unmarried child younger than age 18 who is not receiving benefits; a widowed daughter younger than age 18 who is not receiving benefits; and a child with a disability (no age limit) who was dependent on the deceased.” Idem.

84) “The monthly pension is 854.44 pesos (70% of the minimum pension of 1,227.78 pesos).” Idem.

3.5. Social Security and Social Assistance Benefits Granted to Elderly People Under the Current System

All pensions are paid on a monthly basis. Beneficiaries also receive a 13th payment equal to the regular monthly payment, which is paid in two installments made in June and December.

Under National Act 26.417, social insurance benefits are adjusted automatically in March and September based on changes in tax revenue, wage indexes, and revenue of the National Social Security Administration. As far as “social assistance benefits” [i.e. non-contributory pensions] are concerned, they are adjusted in accordance with minimum pension’s adjustments.

The “Administración Nacional de Seguridad Social” [“National Social Security Administration”] supervises and administers the social insurance system, whereas the “Comisión Nacional de Prestaciones Asistenciales” [“National Social Assistance Pensions Commission”] administers the social assistance pension program.

The “Instituto Nacional de Servicios Sociales para Jubilados y Pensionados” [“National Institute of Social Services for Retired People and Pensioners”, hereinafter “the NISSRPP”] is devoted to providing retired people and pensioners with comprehensive health and social services⁸⁵⁾ aimed at guaranteeing their right to health. The NISSRPP is an autonomous public entity⁸⁶⁾ created by Act 19.032.

85) Article 1, Act 19.032

86) Article 2, Act 19.032

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SOCIAL INSURANCE BENEFITS GRANTED BY ANSES⁸⁷⁾

Type of benefit	Applicable rule for establishing the benefit	Amount paid- 2011	
Old-age pension	Constituents		
	Basic pension	AR\$580.06	
	Compensatory pension	“1.5% of the insured’s average adjusted monthly earnings in the last 10 years (weighted average adjusted amounts for all periods for self-employed persons), multiplied by the number of years of contributions paid before July 1994” ⁸⁸⁾	Combined minimum monthly pension: AR\$1,227.78. Combined maximum monthly pension: AR\$8,994.94.
	Additional pension	“1.5% of the insured’s average adjusted monthly earnings in the last 10 years (weighted average adjusted amounts for all periods for self-employed persons), multiplied by the number of years of contributions paid after July 1994” ⁸⁹⁾	
Advanced-age old-age pension	“70% of the basic old-age pension” ⁹⁰⁾	AR\$1,227.78	

87) Elaborated by the authors. The information included in the table was taken from Social Security Programs Throughout the World: The Americas, 2011. Available at <http://www.google.com.ar/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CE4QFjAA&url=http%3A%2F%2Fwww.ssa.gov%2Fpolicy%2Fdocs%2Fprogdesc%2Fssptw%2F2010-2011%2Famericas%2Fargentina.pdf&ei=wOMNULKhIsq70QGFh4D4Bw&usg=AFQjCNF67AVc8iY7TuiMydInS9pYw8G-ng&sig2=uCpwiAdr-hk6jRkbZkaNhg>

88) Social Security Programs Throughout the World: The Americas, 2011. Available at <http://www.google.com.ar/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CE4QFjAA&url=http%3A%2F%2Fwww.ssa.gov%2Fpolicy%2Fdocs%2Fprogdesc%2Fssptw%2F2010-2011%2Famericas%2Fargentina.pdf&ei=wOMNULKhIsq70QGFh4D4Bw&usg=AFQjCNF67AVc8iY7TuiMydInS9pYw8G-ng&sig2=uCpwiAdr-hk6jRkbZkaNhg>

89) Idem

90) Idem

3.6. Governmental Policies Aimed at Satisfying Elderly People’s Right to Housing

Type of benefit	Applicable rule for establishing the benefit	Amount paid- 2011
Advanced-age disability pension	“70% of the basic old-age pension, plus the insured’s compensatory old-age pension and the additional old-age pension” ⁹¹⁾	Minimum monthly advanced-age disability pension: AR\$1,227.78. Maximum monthly advanced-age disability pension: AR\$8,994.95.
Survivor pension	“70% of the reference payment” ⁹²⁾	The minimum monthly survivor pension is AR\$1,227.78.
Funeral grant		AR\$1,800

... or the pension the deceased received or was eligible to receive is paid to a widow(er) or partner without dependents; 50% to a widow(er) or partner with children”⁹³⁾.

3.6. Governmental Policies Aimed at Satisfying Elderly People’s Right to Housing

In this subsection we review specific housing programs which may fill the gaps left by the pensions plan incomplete coverage.

91) Idem

92) “The reference payment is 70% of the deceased’s average monthly earnings (regular contributor) or 50% of the deceased’s average monthly earnings (irregular contributor) in the five years before death.” Idem.

93) See Social Security Programs Throughout the World: The Americas, 2011.

3. The Legal Framework: Evolution and Assessment of the Policies and Laws of the Pension System for the Elderly in Argentina

3.6.a) The Failed Act 25.759 (2003)

In July 2003, the National Congress passed Act 25.759, known as “Ley Nacional de Adultos Mayores” [National Law for the Elderly]. The law aimed at “preserving the rights of the elderly” and at guaranteeing their health and socio economic well-being by providing them with medical, legal, educational and psychological assistance. In order to do so, the law ordered the National Executive to develop a “Plan Gerontológico Nacional”, a permanent program devoted to “promoting, protecting, assisting and rehabilitating” the elderly.

According to article 7 of the law, the “Plan Gerontológico Nacional” had to “guarantee that the elderly have access to a decent accommodation”, which also had to allow them to preserve their autonomy and privacy. Moreover, article 7 established that, at least, ten percent of the houses built under all the housing programs financed with public funds had to be adjudicated to retired people or pensioners, giving due priority to those who received the lowest retirement pensions.

In addition, under the same article, the National Executive had to grant special loans to retired people incapable of meeting their most basic needs, in order to finance the building works required to restore or widen their houses. These loans had to be reimbursed by the beneficiaries of the program, but the amount to be paid by them could not be higher than 20 per cent of their income.

Finally, Article 7 of Act 25.759 obliged the National Executive to adopt the necessary measures in order to encourage that some amount of the houses built under all the housing programs developed by the federal, provincial and local governments had to be adjudicated to retired people

3.6. Governmental Policies Aimed at Satisfying Elderly People's Right to Housing

or pensioners who do not receive any social security benefit. These houses had to be assigned to them "en comodato", giving due priority to those incapable of meeting their most basic needs.

In August 2003, the National Executive vetoed Act 25.759. As a result, the "Plan Gerontológico Nacional" was never developed and the obligations imposed by article 7 never came into force.

3.6.b) Housing Services Provided by the NISSRPP (National Institute of Social Services for Retired and Pensioned People)

3.6.b).(i). Accommodation in retirement homes

In Argentina, many retired people and pensioners suffer physical and mental disabilities. As a result, they need comprehensive health assistance. Many families are unable to provide their old relatives with this assistance, due to socio economic problems. In addition, lots of retired people cannot have access to this assistance because they do not even have relatives and lack an adequate house to live in.⁹⁴⁾

In order to address the health and housing needs of its disabled beneficiaries, the NISSRPP provide them with transitory or permanent accommodation in retirement homes, where they also receive comprehensive health assistance.⁹⁵⁾

The provision of transitory or permanent accommodation to elderly people by the NISSRPP is ruled by Resolution 559/01 of the NISSRPP.

94) Paragraph 1, Annex IV of Resolution 559/01 of the "Instituto Nacional de Servicios Sociales para Jubilados y Pensionados"

95) Paragraph 2, Annex IV of Resolution 559/01 of the "Instituto Nacional de Servicios Sociales para Jubilados y Pensionados"

3. The Legal Framework: Evolution and Assessment of the Policies and Laws of the Pension System for the Elderly in Argentina

By passing Resolution 559/01, the NISSRPP created the “Registro de Prestadores del Servicio de Geriátria”, a registry of retirement homes devoted to providing accommodation to the beneficiaries of the NISSRPP. Resolution 559/01 also approved the “Reglamento del Registro de Prestadores del Servicio de Geriátria”, the regulation of the services provided by the retirement homes incorporated to the registry. Among other duties, all the retirement homes incorporated to the registry must provide accommodation, meals and medical assistance to the beneficiaries of the NISSRPP. The beneficiaries’ relatives must be allowed to visit them for, at least, two hours in the mornings and four hours in the afternoons.⁹⁶⁾ In addition, retirement homes must allow the beneficiaries to go out whenever they want.⁹⁷⁾

Under article 29 of Annex A of Resolution 559/01, the NISSRPP finances the accommodation expenses and health services provided to the beneficiaries living in all the retirement homes incorporated to the registry. It is forbidden for the retirement homes to charge the beneficiaries or their relatives for the accommodation and medical services that they provide. In 2001⁹⁸⁾, the NISSRPP paid AR\$ 590 per each beneficiary, per month. If the beneficiary also received psychological assistance, the amount paid by the NISSRPP was ten percent higher.

Paragraph 3 of Annex IV of Resolution 559/01 regulates the procedure to be followed by the beneficiaries in order to get accommodation in one of the retirement homes incorporated to the registry. Firstly, the beneficiary (or his relatives) must submit a note requesting the NISSRPP

96) Paragraph 4.1 of Annex IV of Resolution 559/01

97) Ídem.

98) There is not updated information about the amount of money paid by the NISSRPP in 2012.

3.6. Governmental Policies Aimed at Satisfying Elderly People's Right to Housing

to provide him with accommodation in one of these retirement homes. An “Estudio Social”, a report about the socio-economic situation of the beneficiary, and an “Informe Médico”, a report about the physical and mental health situation of the beneficiary, must be attached to the note. After approving the request, the NISSRPP must notify its decision to the beneficiary. Then, the beneficiary can choose the house for the aged where he or she wants to live from a list provided by the NISSRPP. Afterwards, the NISSRPP submits an “Orden de Internación”, a final document approving the provision of accommodation and health services, to the house for the aged chosen by the beneficiary. After receiving the “Orden de Internación”, the house of the aged must contact the beneficiary and her relatives to coordinate the necessary steps to move her to the house⁹⁹).

3.6.b) (ii) Programa de Asistencia a Situaciones de Alto Riesgo Socio-Sanitario

In 2008, the NISSRPP passed Resolution 1490/08 establishing the “Programa de Asistencia a Situaciones de Alto Riesgo Socio-Sanitario” [“Program for the assistance of people experiencing situations of high socio-sanitary risk”]. The program aims at assisting those beneficiaries of the NISSRPP who are experiencing a socio-sanitary crisis.¹⁰⁰) In order to receive a subsidy, the beneficiaries of the NISSRPP and their relatives¹⁰¹) must be incapable of affording their food, housing or medical expense

99) Paragraph 3 of Annex IV of Resolution 559/01.

100) Information available at [http://www.jus.gob.ar/guia-de-derechos/programas/programa-de-asistencia-a-situaciones-de-alto-riesgo-socio-sanitario-\(prosar\).aspx](http://www.jus.gob.ar/guia-de-derechos/programas/programa-de-asistencia-a-situaciones-de-alto-riesgo-socio-sanitario-(prosar).aspx)

101) Specially those relatives who are legally obliged to provide the beneficiaries with socioeconomic assistance, namely their sons and daughters, sons and daughters in law, grandsons and granddaughters aged 21 or over and their brothers and sisters.

3. The Legal Framework: Evolution and Assessment of the Policies and Laws of the Pension System for the Elderly in Argentina

s¹⁰²⁾. Under the program, the NISSRPP grants them a six-month subsidy. When the subsidy is granted in order to finance the housing expenses of the beneficiaries, they receive AR\$650, as a maximum, in order to cover their rental expenses and AR\$90, as a maximum, to finance taxes and other services.¹⁰³⁾ As it can already be seen, the nature of the regulation providing housing for the elderly is heavily influenced by medical reasons. The housing need of an elderly person having full health would at the very least lack priority among the possible wealth of other requests. This fact emphasizes the need to pass a law such as the failed National Law for the Elderly.

102) Information available at [http://www.jus.gob.ar/guia-de-derechos/programas/programa-de-asistencia-a-situaciones-de-alto-riesgo-socio-sanitario-\(prosar\).aspx](http://www.jus.gob.ar/guia-de-derechos/programas/programa-de-asistencia-a-situaciones-de-alto-riesgo-socio-sanitario-(prosar).aspx)

103) NISSRPP. Annex III, Resolution 1490/08. Information provided to the authors by the National Ombudsman for the Elderly, Eugenio Semino.

4. Recent Case Law on the Adjustability of Social Security Benefits

In this section we will describe recent case law developments concerning social security benefits. These cases are especially relevant to the objective of studying the protection of the right to housing in Argentina because they deal with how pensions’ benefits (indirect protections against homelessness) are adjusted to inflation and the mere passage of time.

4.1. The Supreme Court “Badaro” Cases

As we have explained in the preceding sections, under article 14bis of the National Constitution, “[t]he 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 (···) adjustable retirements and pensions.¹⁰⁴⁾ However, article 7 of Act 24.463, passed in 1995, prohibited

104) Article 14bis of National Constitution. “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; minimum vital and adjustable wage; equal pay for equal work; participation in the profits of enterprises, with control of production and collaboration in the management; protection against arbitrary dismissal; stability of the civil servant; free and democratic labor union organizations recognized by the mere registration in a special record.

Trade unions are hereby guaranteed: the right to enter into collective labor bargains; to resort to conciliation and arbitration; the right to strike. Union representatives shall have the guarantees necessary for carrying out their union tasks and those related to the stability of their employment.

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.” Available

4. Recent Case Law on the Adjustability of Social Security Benefits

automatic indexation of social security benefits. In the light of this provision, the purchasing power of the benefits progressively fell since 1995. The slow decline suffered a steep acceleration in 2002 when the purchasing power of social security benefits experienced a sharp decrease due to the high inflation rates and the 300% peso devaluation that followed the 2001 socio-economic crisis.

The Federal Government gradually increased minimum benefits on discretionary basis, but there were very limited adjustments to other benefits. This public policy coupled with the lack of automatic indexation determined that, by 2006, many retirees had not recovered the purchasing power they enjoyed in the 1990s. In fact, benefits' real value fell from AR\$5000 in 2001 to AR\$3400, in 2011 (see Graphic 1). In addition, as the minimum benefits increased more than other pensions, there was a "rapid compression of the benefits pyramid, weakening the contributory nature of the system."¹⁰⁵⁾ As Graphic 2 shows, minimum benefits increased 500% from 2007 to 2010, whereas the average benefit increased 240% in the same period.

at <http://www.senado.gov.ar/web/interes/constitucion/english.php/>
105) Rofman et.al. Page 24.

Graphic 1¹⁰⁶⁾

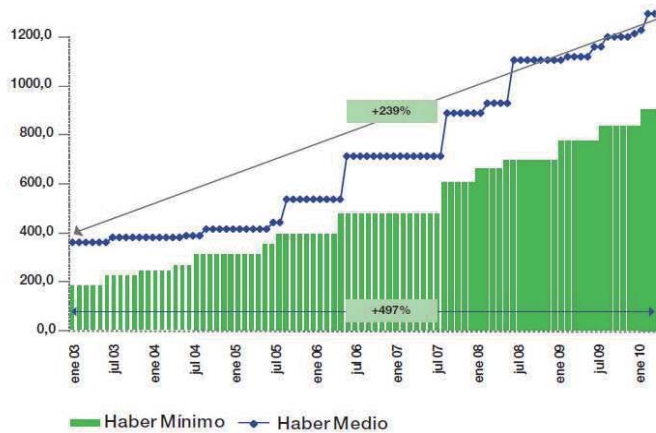
Evolución real de los haberes que en el año 2000 eran superiores a los \$1000 (a precios de 2011)



Fuente: elaboración propia en base a Boletín de Seguridad Social corregidos por la inflación minorista medida por los Institutos de Estadísticas Provinciales de 8 provincias (Neuquén, Río Negro, Chubut, La Pampa, Jujuy, San Luis, Santa Fe y Córdoba).

Graphic 2¹⁰⁷⁾

Gráfico 4.6. Evolución del haber jubilatorio mínimo y medio, enero 2003 - mayo 2010. En pesos.



106) Taken from Escuela de Economía de la Universidad Católica Argentina. “El sistema previsional avanza hacia una nueva crisis.” Available at http://www.uca.edu.ar/uca/common/grupo83/files/34-_2012-02.pdf

107) ANSES. “Análisis de la cobertura previsional del SIPA: protección, inclusión e igualdad.” Available at http://www.google.com.ar/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CE0QFjAA&url=http%3A%2F%2Fobservatorio.anses.gov.ar%2Ffiles%2Fsubidas%2FAn%25C3%25A1lisis%2520de%2520la%2520Cobertura%2520del%2520SIPA.pdf&ei=SrwdUIDuD4j69QSRp4DoBQ&usg=AFQjCNH7iumdONTCXAlx3CqXF9yH4_4afg&sig2=wo5UTQP8kKu2AbA8n2Dkrg Page 17.

4. Recent Case Law on the Adjustability of Social Security Benefits

In order to remedy this situation, thousands of elderly people receiving a social security benefit higher than the minimum¹⁰⁸⁾ sued the federal government requesting it to adjust their benefits according to inflation and salary adjustment rates. In August 2006, the National Supreme Court decided one of these cases: the “Badaro I” case.¹⁰⁹⁾ The Court expressly recognized that minimum benefits had increased more than other pensions and there had been a compression of the benefits pyramid, what was contrary to the contributory nature of the system. According to the Court, even if the national government was especially interested in addressing the situation of those beneficiaries experiencing extremely precarious living conditions, the government was not allowed to indefinitely disregard the social security rights of other beneficiaries.

In particular, the Court stressed that social security benefits must guarantee their beneficiaries “a decorous subsistence in accordance with the economic situation that they experienced during their working life.”¹¹⁰⁾ As a result, social security benefits for retired people must keep a “reasonable proportion” with worker salaries; they also must be proportionally adjusted taking into account variances in worker salaries. In addition, the Court held that any legislative provision absolutely banning the adjustability of social security benefits for an indefinite period of time is contrary to the National Constitution.

In Badaro I, however, the Court did not reach a decision on how the plaintiff’s benefit had to be adjusted. According to the Court, the National Congress is the authority in charge of establishing adjustments to social

108) Namely, benefits higher than AR\$1000 in 2002.

109) National Supreme Court of Argentina. “Badaro, Adolfo Valentín c/ANSES s/Reajustes Varios” B.675.XLI. 8/08/06

110) Idem.

security benefits. As a result, it ordered Congress to “adequately repair the loss suffered by those elderly people receiving higher social security benefits [higher] than the minimum”¹¹¹⁾, a loss derived from the fact that their benefits had not been adjusted in accordance with variances in worker salaries. In addition, it ordered Congress to do so within a “reasonable time.”

Unexpectedly, National Act 26.222, passed in February 2007 to reform the social security system, did not address this matter. On the contrary, the National Congress passed the 2007 National Budget Act establishing a 13% adjustment to the benefits paid to all the beneficiaries by December 31, 2006 and authorizing the National Executive to further adjust the benefits during the fiscal year, in accordance with the financial situation of the system. Thus, in September 1, 2007, all the benefits were increased 12.50% by the National Executive.

Mr. Badaro asked the Judiciary to declare that the 2007 National Budget Act did not comply with the holding of the Supreme Court August 2006 ruling. In November 2007, in a decision known as “Badaro II”, the Supreme Court upheld the claim.¹¹²⁾ The Court considered that the 2007 National Budget Act did not adequately address the negative effects of the social security policy of the Federal Government concerning benefit adjustments from 2002 to 2006: contrary to the contributory nature of the system, the decrease in the real value of the benefits derived from the lack of adequate adjustments and the compression of the benefits pyramid due to the fact that minimum benefits had increased more than the others.

111) *Idem*.

112) National Supreme Court of Argentina. “Badaro, Adolfo Valentín c/ANSES s/Reajustes Varios.” 26 de noviembre de 2007

4. Recent Case Law on the Adjustability of Social Security Benefits

The Court took a step further. In the light of the fact that, from 2002 to 2006, social security benefits had not been adjusted in accordance with worker salaries¹¹³⁾, the Court declared that the provisions ruling adjustments to social security benefits (i.e. article 7. 2 of National Act 24.463) were contrary to the National Constitution. As a result, it ordered ANSES to adjust the Plaintiff's benefit in accordance with the increase registered in worker salaries in the relevant period. It also urged Congress to pass a law establishing a new adjustment system compatible with the National Constitution.

In October 2008, Congress passed National Act 26.417. It established that all social security benefits would be automatically adjusted twice a year (in March and September), in accordance with variances in worker salaries and changes in the financial situation of the system.

In October 2010, National Congress passed National Act 26.649. The law established that minimum benefits would be equivalent to 82% of the "salario mínimo, vital y móvil", the minimum wage salary fixed by the "Consejo Nacional del Empleo, la Productividad y el SalarioMínimo, Vital y Móvil." In order to comply with this provision, minimum benefits would be adjusted twice a year, in both March and September.

As far as other social security benefits are concerned, article 4 of the law established that they would also be adjusted twice a year in accordance with the "índice de salarios nivel general", a salary index elaborated by the INDEC, or the "índice RIPTE -Remuneraciones Imponibles Promedio de los Trabajadores Estables", a salary index published by the "Secretaría de Seguridad Social" [Social Security Secretary], if it was more favorable for the beneficiaries.

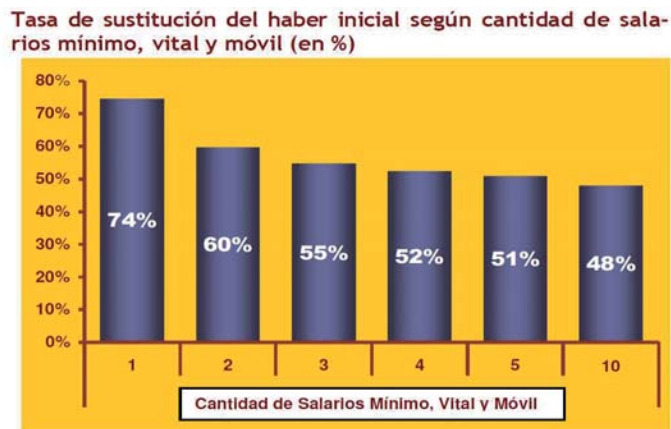
113) In the relevant period (2002-2006), the Plaintiff's benefit had registered an 11% increase, whereas prices had risen 91.26% and salaries had been increased in 88.57%.

Finally, the law aimed at complying with the Badaro II ruling. Under Article 7 of the law, all social security benefits paid between 01-01-2002 and 31-12-2006 would be retroactively adjusted in accordance with the salary index elaborated by the INDEC.

However, the National Executive vetoed the law, alleging that its implementation created a risk to the financial sustainability of the system.

In spite of the clear ruling of the Badaro cases¹¹⁴⁾, social security benefits do not seem to keep a “reasonable proportion” with worker salaries, in accordance with the Badaro I ruling. Workers whose salaries amount to one “salario mínimo, vital y móvil” will be granted a social security benefit equivalent to 60% of their current salary; workers whose salaries amount to ten minimum salaries will be granted a social security benefit equivalent to 48%. On average, Argentine workers are paid two minimum salaries. As a result, prospect beneficiaries of the system will receive a benefit equivalent to 60% of their salary after retirement.

Graphic 3¹¹⁵⁾



114) It is important to note that the Supreme Court does not hear abstract cases. This means that its rulings are only binding for the parties to the particular case before the Court. However, the persuasive value of the Court’s rulings are

115) Taken from Escuela de Economía de la Universidad Católica Argentina. “El sistema

4.2. The “Amílcar Menéndez, Juan Manuel Caride et al. vs. Argentina” case

In 1995, Menéndez and Juan Manuel Caride filed a petition before the Inter-American Human Right Commission.¹¹⁶⁾ They alleged that Argentina was infringing their rights to judicial protection, to a hearing within a reasonable time, to property and to equal protection (Articles 25.2.c, 8, 21 and 24, respectively, of the American Convention on Human Rights) and their rights to the preservation of health and to well-being, to social security as it relates to the duty to work and contribute to social security (Articles XI, XVI, XXXV and XXXVII of the American Declaration of the Rights and Duties of Man).

The petitioners “allege[d] that during proceedings brought against ANSES and later in the nation’s courts, whereby they sought the readjustment of their retirement benefits, they were subjected to an administrative and legal process that was circuitous and endless, which in most cases did not result in the enforcement of the rights to which they are entitled.”¹¹⁷⁾ The delays in the proceeding derived from Article 19 of Act 24.463, which allowed the parties to a readjustment lawsuit to appeal decisions of the Federal Social Security Court of Appeals before the National

previsional avanza hacia una nueva crisis.” Available at http://www.uca.edu.ar/uca/common/grupo83/files/34-_2012-02.pdf

116) This section is based on Report No. 168/11. Petition 11.670. Friendly Settlement Amílcar Menéndez, Juan Manuel Caride *et al.* Argentina. November 3, 2011 <http://www.google.com.ar/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CFEQFjAA&url=http%3A%2F%2Fscm.oas.org%2Fpdfs%2F2012%2FCIDH%2FENG%2FSettlement%2F84.doc&ei=X78dUIjJFJPg8wTngoGQDA&usg=AFQjCNG-5u1-A1j4vT8--sDP5O1XD3A0wQ&sig2=qGfvmOFMsZNU-TnK2ZQC8Q>

117) *Idem.* Paragraph 13.

Supreme Court of Justice. In almost every lawsuit, ANSES made use of this procedural tool to prevent the judiciary from reaching to a final decision. “Furthermore, Articles 16 and 22 of Law 24.463, known as Social Security Solidarity Law (Solidaridad Previsional) allowed the State to claim limited resources as an argument to exempt itself from payment, thus postponing indefinitely the collection of the adjusted retirement benefits. Therefore, on one hand, legal proceedings through which the petitioners sought to have their retirement benefits adjusted or established were taking excessive amounts of time from the moment the administrative complaint was filed until payment was finally adjudicated and made firm. On the other hand, even after judgments were firmly established and had the force of *res judicata*, the State agency charged with making the payments, ANSES, raised countless hurdles and obstacles to releasing the payments.”¹¹⁸⁾

In October 2003, the State and the petitioners engaged in “a dialogue aimed at exploring the possibility of a friendly settlement of the petition”¹¹⁹⁾. As a result of the dialogue between the parties, in April 2005, Congress passed Act 26.025 revoking Article 19 of Act 24.463. In addition, in October 2006, it passed Act 26.153 revoking Articles 16, 17, 20 and 23 of the Act 24.463 and reformulating Article 22 “in terms

118) “It is important to note that enforcement of Law 24.463 only aggravated the situation of the retirees, because ANSES used (Article 16) to defend itself in the courts, in cases regarding the readjustment or establishment of the retirement benefits, claiming limited budget resources needed to execute court rulings that declared a case to have standing and extending the application of this argument to other analogous cases. In such cases, ANSES could offer as legitimate evidence a report by the Office of the General Auditor of the Nation (Auditoría General de la Nación) (Article 17) and claim limited resources to defend itself from having to comply with judgments handed down against the social security administration (Article 22).” *Idem.* Paragraph 13.

119) *Idem.* Page 5.

4. Recent Case Law on the Adjustability of Social Security Benefits

agreed among the parties. With these reforms to the law a substantial portion of the petitioners' original complaint was satisfied: the revocation of a regulation that had become an obstacle to prosecuting lawsuits."¹²⁰⁾

Furthermore, through Resolution 23 of 2004, the Secretariat of Social Security (SESS) instructed ANSES to comply strictly with firm legal judgments, thus preventing delays in legal proceedings on retirement income cases.¹²¹⁾

In November 2011, the parties reached a friendly settlement agreement. In the document, ANSES committed to "formalize a system to liquidate payroll settlements of court judgments that will guarantee compliance with the terms and time frames specified in the final rulings of the court; [n]ot to appeal court judgments in the trial and appeals phase that were ruled in favor of the beneficiaries on allegations of fact on which the Supreme Court has already ruled."¹²²⁾

120) *Idem*.

121) *Idem*.

122) *Idem*. Page 6.

5. Conclusion

This paper explores the different ways in which the right to housing of elderly people has been protected and promoted in Argentina, with special focus on the last quarter of a century. The Argentine Constitution contains more than one explicit reference to the right to housing, and to specific rights of the elderly people. Furthermore, the Argentine legal system has incorporated into its Constitution some of the relevant international human rights instruments which contain a few provisions addressing the situation of elderly people. And yet, we have been able to identify only a handful of initiatives aimed specifically at ensuring that people above 60 years of age have access to adequate housing. On the one hand, it may be argued that a significant number of elderly people live with their extended family. On the other hand, however, it must be noted that poverty in people of 65 years of age and above has been recently calculated at around 40%. In this context, the need for appropriate public policies tackling this issue is pressing.

The main way in which Argentine authorities have complied with the right to housing can be said to be the general pension system. Argentina has one of the oldest pension systems in the world and Argentines have traditionally benefited from one of the highest pension coverage rates in Latin America. However, benefits have suffered a significant loss in real value since the 1980s, with the lowest point probably during the 2001 crisis. Furthermore, the pension system was reformed during the early 1990s, in order to include, next to the traditional pay as you go system, an individual capitalization scheme, managed by companies mostly owned by banks and insurance companies. During this period, the total

5. Conclusion

number of beneficiaries of the national system went from 2.1 million in late 1992 to 1.6 million in 2005.

In 2002, however, the Government decided to progressively increase the minimum benefit. As a result, after a sharp decrease in 2002 caused by inflation rates and the devaluation of the national currency, by mid-2003, the minimum benefit had recovered its previous real value. By the end of 2005, the real value of the minimum benefit was 60 percent higher than in 2001. The coverage of the system was improved in this same period. As a result of a few progressive policies, the number of beneficiaries of the social security system has steadily risen since 2006. Social security coverage among the elderly rose from 57.1% in 2006 to 91% in 2011. Nowadays, roughly 90% of the elderly population receives some social security or social assistance benefit. During this period, different groups of active workers were transferred from the individual capitalization scheme to the pay as you go scheme, until the former scheme was altogether abrogated in November 2008. All the funds in this scheme were subsequently administered by the State.

This paper has shown, however, a systematic deficit of public policies specifically tailored to address the right to adequate housing of elderly people. The most ambitious program in this area, which was included in the National law for the Elderly (Act 25.759 (2003)), was ultimately vetoed by the Executive. Current policies are restricted to limited accommodation in retirement homes and a subsidy in cases of high socio-sanitary risk. Yet, there is little or no reliable data as to the beneficiaries of these two schemes. Finally, there are no decisions by local courts enforcing the right to housing of elderly people.

Appendix

Supranational Initiatives on Elderly Rights Involving Argentina

As we explained above, there is no international treaty specially referring to the rights of the elderly nor to each state's obligations towards them. Argentina made early efforts to prevent this situation by promoting the adoption of an international declaration on the rights of the elderly since 1948, when it presented the draft Declaration of Old Age Rights. The document recognized and aimed at protecting elderly people's rights to assistance, accommodation, food, clothing, care of physical and moral health, recreation, work, stability and respect.¹²³⁾ "There was, however, very little follow-up or progress made with regard to this early initiative on the part of Argentina."¹²⁴⁾

In the 1980s, states developed a comprehensive action plan in order to promote elderly people's rights. In 1982, representatives of 124 states, including Argentina,¹²⁵⁾ met in the World Assembly on Aging in Vienna

123) "The General Assembly referred the draft declaration to the Economic and Social Council for its consideration and requested that it prepare a report on the matter for a forthcoming session (United Nations, 1948). The following year, the Economic and Social Council requested the Secretary-General to draft a brief report on the subject for submission to the Social, Humanitarian and Cultural Committee and the Commission on Human Rights at its next session (Economic and Social Council, 1949). In response, the Commission on Human Rights sent a memorandum to the Secretary-General in which it informed him that, due to the fact that there was so little time between the session of the Economic and Social Council and the Commission's session, it would not be able to prepare the necessary documentation; it therefore proposed that the question be considered at the following session of the Commission (Commission on Human Rights, 1949)." Sandra Huenchuan and Luis Rodríguez-Piñero. "Ageing and the protection of human rights: current situation and outlook." United Nations, March 2011. Page 26.

124) *Idem*. Page 26.

125) Argentina also represented Paraguay during that conference.

and adopted the “International Plan of Action on Aging”, known as the "Vienna Plan". The plan stressed “issues related to health and nutrition, protection of elderly consumers, housing, social welfare, family, income security, unemployment, and education”¹²⁶). As far as income security is concerned, recommendation 36 of the Plan established that “[g]overnments should take appropriate action to ensure to all older persons an appropriate minimum income”¹²⁷). To that end, they should develop social security systems based on the “principle of universal coverage for older people” and ensure that the minimum benefits granted are enough to meet the essential needs of the elderly and guarantee their independence. Finally, governments should make efforts to allow elderly people to maintain the purchasing power they enjoyed before retiring.

Furthermore, the Plan recognizes that adequate housing and agreeable physical surroundings are necessary for the well-being of all people, especially for the elderly, “whose abodes are the centre of virtually all of their activities”¹²⁸). As a result, under recommendation 19, far from viewing housing for the elderly as a mere shelter, states should also take into account its psychological and social significance.

In addition, “to release the aged from dependence on others”, national housing policies should pursue the following goals:

“a) Helping the aged to continue to live in their own homes as long as possible, provision being made for restoration and development and,

126) Rodríguez-Pinzón, Diego and Claudia Martin. "The International Human Rights Status of Elderly Persons." *American University International Law Review* 18, no. 4 (2003): 915-1008. Page 947

127) REPORT OF THE WORLD ASSEMBLY ON AGEING, VIENNA, 26 JULY-6 AUGUST 1982, U.N. Sales No. E.82.1.16 (1982), available at <http://www.un.org/es/globalissues/ageing/docs/vipaa.pdf>

128) Idem. Paragraph 64

where feasible and appropriate, the remodelling and improvement of homes and their adaptation to match the ability of the aged to get to and from them and use the facilities;

(b) Planning and introducing--under a housing policy that also provides for public financing and agreements with the private sector--housing for the aged of various types to suit the status and degree of self-sufficiency of the aged themselves, in accordance with local traditional and customs”¹²⁹⁾.

In 1991, the United Nations General Assembly passed Resolution 46/9¹³⁰⁾ [“Implementation of the International Plan of Action on Ageing and Related Activities”] and approved the “United Nations Principles for Older Persons”¹³¹⁾, which encompasses the principles of independence, participation, care, self-fulfillment and dignity. According to the principle of independence, older persons should have access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self-help. As far as "participation" is concerned, it refers to the right of the elderly to form associations and movements with the aim of participating in the "formulation and imple-

129) Idem. Recommendation 19.

130) “These instruments, often group under the label of “soft law,” have obviously a legal status that differs from treaties. However, this does not entail that they lack juridical relevance. Inasmuch as they have been adopted by the highest representative body of the United Nations, and with a view to expressing the common concerns, commitments and aspirations of the international community regarding the rights of the older persons, these instruments should be seen as authoritative reflections of an emerging normative consensus regarding the minimum contents of those rights under international law.” Sandra Huenchuan and Luis Rodríguez-Piñero. “Ageing and the protection of human rights: current situation and outlook.” United Nations, March 2011.

131) General Assembly. Resolution 46/91: Implementation of the International Plan of Action on Ageing and related activities. 74th plenary meeting. 16 December 1991. A/RES/46/91. Available at <http://www.un.org/documents/ga/res/46/a46r091.htm>

mentation of policies that affect their well-being".¹³²⁾ In addition, under the principle of care, older persons should be able to enjoy human rights and fundamental freedoms when residing in any shelter, care or treatment facility, including full respect for their dignity, beliefs, needs and privacy and for the right to make decisions about their care and the quality of their lives. "With regard to "self-fulfillment", the Principles that older persons should pursue opportunities for the full development of their potential through access to the educational, cultural, spiritual and recreational resources of their societies. Lastly, the section entitled "dignity" states that older persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse, should be treated fairly, regardless of age, gender, racial or ethnic background, disability, financial situation or any other status, and be valued independently of their economic contribution."¹³³⁾

A year later, the General Assembly passed *Resolution 47/86* ["Implementation of the International Plan of Action on Ageing: integration of older persons in development"] adopting "the global targets on ageing for the year 2001 as a practical strategy on ageing"¹³⁴⁾ and urging states to support that strategy. As far as housing is concerned, under the global targets, states should "provide support for the elderly so they may continue living in their own homes as long as possible or choose alternative accommodation if their home is no longer suitable or desired.

132) *Idem*.

133) Committee on Economic, Social and Cultural Rights. **General comment No. 6, The economic, social and cultural rights of older persons**. Thirteenth session, 1995. E/1996/22. Available at <http://www1.umn.edu/humanrts/gencomm/epcomm6e.htm>. Paragraph 5.

134) General Assembly. Resolution 47/86. 47th Session. 89th plenary meeting, 1992. A/RES/47/86. Available at <http://www.un.org/documents/ga/res/47/a47r086.htm>

These supports may include in-home health and social services, home maintenance and rental assistance.”¹³⁵⁾

It also approved *Resolution 47/5* proclaiming year 1999 as the International Year of Older Persons and adopting the Proclamation on Ageing. In its Proclamation, the General Assembly, “[r]ecognizing the need for a practical strategy on ageing for the decade 1992-2001”¹³⁶⁾, urged states to promote the implementation of the International Plan of Action on Ageing and to “support the practical strategies for reaching the global targets on ageing for the year 2001.”¹³⁷⁾ It also urged “the support of national initiatives on ageing in the context of national cultures and conditions, so that (...) [a]ppropriate national policies and programmes for the elderly are considered as part of overall development strategies (...); [g]overnmental and non-governmental organizations collaborate in the development of primary health care, health promotion and self-help programmes for the elderly (...) [and] policies and programmes are developed which respond to the special characteristics, needs and abilities of older women.”¹³⁸⁾

Ten years later, in April 2002, 159 states met at the Second World Conference on Ageing in Madrid and reviewed the Vienna Plan. The Conference resulted in the International Plan of Action ("the Madrid Plan"), which “devotes particular attention to developing countries and

135) Idem. General Assembly. “Global targets on ageing for the year 2001: a practical strategy. Report of the Secretary-General.” Forty-seventh session. 10 September 1992. A/47/339. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N92/332/26/PDF/N9233226.pdf?OpenElement>

136) General Assembly. Resolution 47/5. 42nd plenary meeting, 1992. A/RES/47/5. Available at <http://www.un.org/documents/ga/res/47/a47r005.htm/>

137) Idem.

138) Idem.

defines some of the central themes as follows: The full realization of all human rights and fundamental freedoms of all older persons; and Ensuring the full enjoyment of the economic, social and cultural rights and the civil and political rights of persons and the elimination of all forms of violence and discrimination against older persons.”¹³⁹⁾

The plan includes “recommendations for action” on three priority directions: Older Persons and Development, Advancing Health and Well-Being into Old Age, and Ensuring Enabling and Supportive Environments. In addition, the Plan enunciates the most relevant issues related to each priority, outlines states’ objectives in relation to them and lists relevant actions that should be taken to achieve these goals.

As far as the *first priority* is concerned, it “includes recommendations regarding the development and implementation of policies to ensure economic and social protection for older people, to ensure gender equality in social security systems, and to establish social security systems for older persons who lack other sources of income.”¹⁴⁰⁾ Particularly, the seventh issue related to this priority refers to “*income security, social protection/ social security and poverty prevention.*” According to the document, “income security and social protection/social security measures, whether contributory or not, (···) are part of a foundation for economic prosperity and social cohesion.”¹⁴¹⁾ As a result, the first aim related to this issue

139) Sandra Huenchuan and Luis Rodríguez-Piñero. “Ageing and the protection of human rights: current situation and outlook.” United Nations, March 2011. Page 32

140) Rodríguez-Pinzón, Diego and Claudia Martín. "The International Human Rights Status of Elderly Persons." American University International Law Review 18, no. 4 (2003): 915-1008. Page 949

141) Report of the **Second World Assembly on Ageing**, 1-43, U.N. Doc. A/CONF.197/9, U.N. Sales No. E.02.IV.4 (2002). Available at http://www.c-fam.org/docLib/20080625_Madrid_Ageing_Conference.pdf .Paragraph 49.

should be the “promotion of programs to enable all workers to acquire basic social protection/social security, including where applicable, pensions, disability insurance and health benefits.”¹⁴²⁾ To that end, states should “develop and implement policies aimed at ensuring that all persons have adequate economic and social protection during old age; ensure, where appropriate, that social protection/social security systems cover an increasing proportion of the formal and informal working population; consider innovative social protection/social security programs for persons working in the informal sector; strive to ensure the integrity, sustainability, solvency and transparency of pension schemes, and, where appropriate, disability insurance”¹⁴³⁾ among other actions. The second objective of states should be the provision of “sufficient minimum income for all older persons, paying particular attention to socially and economically disadvantaged groups.”¹⁴⁴⁾ In order to achieve this goal, states should “consider establishing where appropriate, a non-contributory pension system and disability benefit system; organize, as a matter of urgency where they do not exist, social protection/social security systems to ensure minimum income for older persons with no other means of support (...); [and] take measures to counteract the effects of hyperinflation on, as appropriate, pension, disability insurance and savings arrangements.”¹⁴⁵⁾

“The *second priority* focuses on health promotion, the need to ensure universal and equal access to healthcare services, and the mental health needs of older people. Finally, the *third priority* includes recommendations with regard to the availability of services, and the affordability, acce-

142) Idem. Paragraph 52

143) Idem

144) Idem. Paragraph 53.

145) Idem.

ssibility, and cultural adequacy of the right to housing.”¹⁴⁶⁾ In this context, the first issue related to the last priority refers to “housing and the living environment.” According to the document, “[h]ousing and the surrounding environment are particularly important for older persons, inclusive of factors such as: accessibility and safety; the financial burden of maintaining a home; and the important emotional and psychological security of a home. It is recognized that good housing can promote good health and well-being. It is also important that older persons are provided, where possible, with an adequate choice of where they live, a factor that needs to be built into policies and programs.”¹⁴⁷⁾ As a result, the first objective to be achieve is the “*promotion of “ageing in place” in the community with due regard to individual preferences and affordable housing options for older persons.*” To that end, states should “promote equitable allocation of public housing for older persons; link affordable housing with social support services to ensure the integration of living arrangements, long-term care and opportunities for social interaction; provide older persons, their families and caregivers with timely and effective information and advice on the housing options available to them; ensure that housing provided for older persons takes appropriate account of their care and cultural needs; [and] promote the growing continuum of housing options for older persons”¹⁴⁸⁾, among other actions.

Recently, Argentina has increased its international efforts to obtain

146) Rodríguez-Pinzón, Diego and Claudia Martin. "The International Human Rights Status of Elderly Persons." *American University International Law Review* 18, no. 4 (2003): 915-1008. Page 950.

147) Report of the **Second World Assembly on Ageing**, 1-43, U.N. Doc. A/CONF.197/9, U.N. Sales No. E.02.IV.4 (2002). Available at http://www.c-fam.org/docLib/20080625_Madrid_Ageing_Conference.pdf .Paragraph 95.

148) *Idem*. Paragraph 98.

declaration on the rights of the elderly. At the forty-seventh session of the Commission for Social Development, in 2009, the delegation of Argentina noted that although the main international human rights instruments implicitly recognized the rights of the elderly, there is no international treaty specifically ratifying the issue of older persons.¹⁴⁹⁾ In addition, in 2010, in her statement on behalf of MERCOSUR to the Commission, the Argentinean representative said: “There is no legally binding instrument to standardize and protect the rights of older persons. Persuaded that we need to put an end to this situation, the Heads of State of MERCOSUR (...) committed themselves, within the framework of the United Nations, to call for an International Convention on the rights of older persons, with the goal to provide them with a legally binding instrument to standardize their rights and to establish mechanisms and organs to ensure them (...). We invite the States Members of the United Nations that have not yet expressed their position on this issue to strengthen their internal processes of participative dialogue, analysis and reflection, in order to move forward in this framework towards an International Convention on the rights of older persons that must offer this valuable sector of our society the urgent and effective answers they deserve.”¹⁵⁰⁾

Argentina’s renewed efforts in this area have been recognized with a leadership role. In February 2011, the UN General Assembly passed Resolution 65/182 establishing an “Open-ended Working Group on Ageing” “for the purpose of strengthening the protection of the human rights of

149) Statement by the delegation of Argentina, forty-seventh session of the Commission for Social Development, 6 February 2009

150) Permanent Mission of Argentina to the United Nations, “Temas sociales 2010.” Available at <http://www.un.org/esa/socdev/csd/2010/statements/govts/Argentina3b.pdf>.

Appendix

older persons by considering the existing international framework of the human rights of older persons and identifying possible gaps and how best to address them, including by considering, as appropriate, the feasibility of further instruments and measures, and requests the Secretary-General to provide all necessary support within existing resources for the duration of its mandate.”¹⁵¹⁾ In 2011, the working group was chaired by Argentina.

151) General Assembly. Resolution 65/182: Follow-up to the Second World Assembly on Ageing. Sixty-fifth session. 4 February 2011. A/RES/65/182. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/523/46/PDF/N1052346.pdf?OpenElement>. Paragraph 28.