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# A Study on Public Housing Welfare Legislation

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Argentina II (HOUSING POLICIES AND REGULATORY FRAMEWORK)



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and Welfare Legislation  
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## Abstract

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This report provides an overview and analysis of Argentina's main policies regarding the right to housing. Its aim is twofold. First, it explains and describes the legal framework upholding the right to housing in Argentina as it stands today more than fifty years after the first explicit recognition by the National constitution. Indeed, during the twentieth century, positive rights began to be included in many legal systems. Argentina followed this trend starting in 1949 with a constitutional amendment and the right to housing was established since then as a central element of the legal system. Second, it presents an analysis of how the government has sought to comply with the constitutional mandates. That is, in spite of having a constitutional right to housing, a sizable fraction of the Argentine population lives in extremely precarious conditions, even in the streets. As a result, at least since 1977, low-income housing has occupied a central position in government policies. This report describes the housing policies developed by the Federal government since 1977, as well as on the housing policies developed by the government of the City of Buenos Aires. The paper is structured as follows. Section 2 provides a basic description of the housing situation at the National level and in the City of Buenos Aires. Section 3 analyzes the right to housing as it is regulated both at the Federal level and in the City of Buenos Aires looking, in particular, to the Argentine National Constitution, the many international treaties signed by the country and the constitution of the City of Buenos Aires. Section

4 examines the most important housing policies developed by both the Federal Government and the Government of the City of Buenos Aires. Finally, section 5 concludes briefly with an assessment of the right to housing and a few suggestions about future steps that federal and local authorities should consider in order to promote the right to housing.

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

# 목 차

Abstract .....	3
1. Introduction .....	7
2. Basic figures .....	11
3. The legal right to housing under the Argentine Constitution .....	17
3.1 The federal Constitution .....	17
3.2 The City of Buenos Aires .....	22
4. Housing policies by the Federal and the City of Buenos Aires Governments .....	25
4.1 Housing policies of the Federal Government .....	26
4.1.a) Low-cost housing programs administered by the Federal government .....	28
4.1.b) National Program to face high rates of housing deficits post 2001-crisis .....	32
4.1.c) Regional programs developed to address the 2001 crisis .....	37
4.1.d) Housing programs for “shanty towns” and precarious settlements .....	41
4.1.e) Housing programs directed at housing improvement .....	44
4.2 Housing policies of the Government of the City of Buenos Aires .....	46

4.2.a) Housing policies for the homeless .....	48
4.2.b) Housing policies for people living in precarious settlements .....	50
4.2.c) Housing programs addressed at particular boroughs .....	55
4.3 The right to housing in light of the recent jurisprudence of the national courts .....	62
5. Overall assessment and conclusions .....	71
Annex .....	75

# 1. Introduction

States have been concerned with housing issues for a very long time. Protecting one's abode has been a prominent preoccupation since the late middle ages. For example, in traditional English Law, a person was allowed to use deadly force to protect the sanctity of his home.<sup>1)</sup> Also, a bankrupt debtor could avoid creditors simply by hiding in his home where others were not allowed to break in to demand payment.<sup>2)</sup> Keeping with the nascent liberal tradition of the time, most -if not all- of these protections were structured as negative rights, where the State obligation towards any person's right, in this case her house, consisted merely on abstaining from interfering with that right.<sup>3)</sup> During the twentieth century, positive rights began to be included in many legal systems. Argentina followed this trend starting in 1949 with a constitutional amendment<sup>4)</sup> and the right to housing was established since then as a central element of the legal system.

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See SIR Edward Coke, *The Third Part of the Institutes of the Laws of England* 161-62 (R.H. Helmholz & Bernard D. Reams, Jr. eds., William S. Hein & Co. 1986) (1644), cited by John Fee "Eminent Domain and the Sanctity of Home", 81 *Notre Dame L. Rev.* 783, 787 (2006).

2) J. B. Heaton "Incomplete Financial Contracts and Non-contractual Legal Rules: The Case of Debt Capacity and Fraudulent Conveyance Law", 9 *Journal of Financial Intermediation* 169 (2000)

3) See Berlin, I., 1969, 'Two Concepts of Liberty', in I. Berlin, *Four Essays on Liberty*, London: Oxford University Press. New ed. in Berlin 2002

4) This amendment was abolished in 1955, but central concepts were re-introduced in



## 1. Introduction

In spite of having a constitutional right to housing, a sizable fraction of the Argentine population lives in extremely precarious conditions, even in the streets. As a result, at least since 1977, low-income housing has occupied a central position in government policies. The basic policies sketched in the 1970's were maintained until the early 2000's. However, after a four year recession period that exploded at the end of 2001 with a huge socio-economic crisis, the Federal Government redesigned its housing policies in order to address an increasing demand for low-cost houses and to ameliorate the high unemployment and poverty rates registered after the crisis.

The aim of this paper is twofold. First, the paper explains and describes the legal framework upholding the right to housing in Argentina as it stands today more than fifty years after the first explicit recognition by the National constitution. Second, the paper places special focus on analyzing how the government seeks to comply with the constitutional mandates. As a result, the paper focuses on the housing policies developed by the Federal government since 1977, as well as on the housing policies developed by a local Government, i.e. the government of the City of Buenos Aires.<sup>5)</sup>

Housing policies are important for several reasons. First, and foremost, housing policies strive to directly satisfy the right to housing of a country's population. Second, suited housing policies may generate several beneficial side-effects. Adequate housing policies could have positive

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1957. See section 3.1 below.

5) The paper focuses on the City of Buenos Aires for several reasons. First, the City of Buenos Aires is historically the wealthiest jurisdiction in Argentina. Second, it has the highest inhabitant per square kilometer ratio of the country. Third, and perhaps most importantly, it generally makes available better and more complete information about its policies and statistical results than other local jurisdictions.

effects on many different indicators, such as real estate values,<sup>6)</sup> investment,<sup>7)</sup> access to credit,<sup>8)</sup> human capital investment<sup>9)</sup>, or even health.<sup>10)</sup> Therefore, governments in general should pay special attention to, and invest accordingly in, the design and implementation of their housing policies.

It is important to note that this paper's focus explicitly leaves out some important aspects concerning the right to housing in a broad sense. Two of them are worth mentioning here. First, this paper only looks at housing financing when it is part of a government program, at the local or federal level. Housing financing is a key element of the right to housing as it provides for an avenue to obtain permanent access to a home.<sup>11)</sup> In order to complete the picture on the right to housing in Argentina a reference should be included on non-governmental participation in this market.<sup>12)</sup> A second element that the focus of this paper leaves out is the one concerning eviction policies. Eviction policies have the potential to be especially harmful as they could undo the efforts to provide with

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6) See Emmanuel Jimenez "Tenure Security and Urban Squatting", 66 *Review of Economics and Statistics* 556 (1984)

7) See Erica Field "Property Rights and Investment in Urban Slums", 3 *Journal of the European Economic Association* 279 (2005).

8) See Erica Field & Maximo Torero "Do Property Titles Increase Credit Access among the Urban Poor? Evidence from a Nationwide Titling Program in Peru", Mimeo, Princeton University.

9) See Sebastian Galiani & Ernesto Schardgrotsky "Property Rights for the Poor: Effects of Land Titling", 94 *Journal of Public Economics* 700 (2010).

10) See Sebastian Galiani & Ernesto Schardgrotsky "Effects of Land Titling on Child Health", 2 *Economics & Human Biology* 353 (2004)

11) See Gerardo M. Gonzales Arrieta "Mortgage Loans and Access to Housing for Low-Income Households in Latin America", 85 *CEPAL Review* 111, 112 (2005).

12) For a good description of the functioning of this market in Latin America, as well as the problems it faces in matching savings and loans, see *ibid.*, at 113-6.

## 1. Introduction

adequate housing. If the government is the one motorizing eviction processes, the housing policies suffer at their core.<sup>13)</sup>

The paper is structured in the following way. Section 2 provides a basic description of the housing situation at the National level and in the City of Buenos Aires. Section 3 analyzes the right to housing as it is regulated both at the Federal level and in the City of Buenos Aires. In particular, this section looks at the Argentine National Constitution, the many international treaties signed by the country and the constitution of the City of Buenos Aires, and provides a brief analysis of how the right to housing has been interpreted by international human right bodies. Section 4 examines the most important housing policies developed by both the Federal Government and the Government of the City of Buenos Aires. In addition, section 4.3 reports and analyzes the recent (and only) Supreme Court opinion on the right to housing. Finally, section 5 concludes briefly with an assessment of the right to housing and a few suggestions about future steps that federal and local authorities should consider in order to promote the right to housing.

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13) 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](http://www.cels.org.ar)

## 2. Basic figures

In order to discuss the right to housing in Argentina it will be convenient to describe some basic facts about the country.<sup>14)</sup> According to the 2010 census slightly over 40 million people (40,117,096) live in Argentina's vast territory.<sup>15)</sup> More than half of the country's population is located in four jurisdictions, namely the provinces of Buenos Aires (38.9%), Santa Fe (8%), and Córdoba (8.2%) and the City of Buenos Aires (7.2%). Within these four districts, the Buenos Aires metropolitan area ("Great Buenos Aires"), which is comprised of the City of Buenos Aires and 29 surrounding towns, concentrates almost one forth (24.7%). The national density is however, very small (10.7 inhabitants per square kilometer), whereas in the Buenos Aires metropolitan area, the population density is 2,694.8 inhabitants per square kilometer.

In terms of housing, two key concepts must be differentiated, namely households and houses. The term household (*hogares*) refers to an individual or group of individuals who live in the same house and share their food expenses. The second relevant concept is "houses", which for present purposes is meant to include not just apartments or houses but also collective houses such as military barracks, convents and monasteries, hospitals, geriatric centers, prisons, students' residences, schools, hotels, etc. There are 13,835,751 houses (99.8% of them are "private houses" and 0.17% are "collective houses") and 12,171,675 households in

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14) The information contained in this section was taken from Ministerio de Planificación Federal, Inversión Pública y Servicios. "Evolución de la situación habitacional 2001-2010. Informe Preliminar", available at <http://www.vivienda.gov.ar/docestadisticas.php> (last accessed on June 12 2012).

15) Argentina's extensive territory is comprised of 2,780,400 sq km.

## 2. Basic figures

Argentina. A first conclusion that must be drawn from these figures is that any potential housing deficit is not just a result of an absolute housing scarcity. Rather, it shows a dynamic of private investment in the real estate sector.<sup>16)</sup>

Out of the 12,171,675 households in the country, 7,493,755 (61.6%) live in a house of satisfactory building quality which does not need to be repaired or enlarged while 4,163,219 (34.2%) live in a house which must be repaired or enlarged; and 514,701 (4, 2% of the total) live in extremely precarious houses that cannot be repaired and must be replaced.<sup>17)</sup> On average, 3.5 people live in the same house and 1.1 households per house. As it can readily be seen, the housing deficit is at the very least of more than half a million houses and likely more.<sup>18)</sup>

Besides the building quality of each house, it is important to describe the situation regarding access to public utilities. In terms of basic public services, 97.8% of the Argentine households have direct access to drinking water.<sup>19)</sup> However, only 53.2% of the households live in a house with sewers. The situation is particularly bad in certain provinces, where only a minority of households live in houses with sewers (Misiones (18.6%), Santiago del Estero (21.9%), Chaco (26.4%), and San Juan (29.5%). Finally, only 56.2% of Argentine houses have access to natural gas connection. Lack of connection to the public natural gas is particularly

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16) Given the country's history of inflation, Argentineans typically try to save either by investing in real estate or US dollars. See Federico Sturzenegger & Jeromin Zettlemeyer "Debt Defaults and Lessons from a Decade of Crises", The MIT Press, Cambridge, Massachusetts, p. 7 (2007)

17) See Table 1 in the Annex to this paper.

18) Such would be the case if on average there is more than one household living in a precarious house.

19) Of these, only 83.9% of them have access to drinking water through a public connection.

serious in the Northwestern Region (which comprises the provinces of Catamarca, La Rioja, Tucumán, Salta, Jujuy and Santiago del Estero) and in the Northeastern Region (which comprises the provinces of Corrientes, Chaco, Formosa and Misiones).

Given the special focus that this paper makes on the City of Buenos Aires, it is important to use a few lines to describe the specific situation of Argentina's capital city. The City of Buenos Aires is an autonomous jurisdiction divided into 15 boroughs ("comunas"). According to the 2010 Census, 2,776,138 people live in the City of Buenos Aires. Its density stands at 14,450.8 inhabitants per square kilometer. There are 1,082,998 houses in the city and 1,150,134 households live in these houses (1.1 households per house). It is noteworthy to point out then that in the City of Buenos Aires there is an absolute housing deficit; as a result, any extra houses the country possesses, i.e. existing houses in excess of existing households, have to be situated outside the City of Buenos Aires.

On average, families living in the city of Buenos Aires have a monthly income of AR\$ 2,510, making it the wealthiest jurisdiction in Argentina.<sup>20)</sup> Within the City, the boroughs with the lowest median household income are concentrated in the Southern part of the city, whereas high-income people live largely towards the north. This translates into the number of households living per house: on average, 2.5 persons live in the same house. However, in the south, that is, in the poorest area of the city, the average rises to 3.1 persons for house; in contrast, it lowers to 2.1 in

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20) The information contained in this section was updated in 2010 and was taken from Dirección Nacional de Estadística y Censos del GCBA. "Tabulados básicos. Encuesta Anual de Hogares Ciudad de Buenos Aires 2010." Available at [http://estatico.buenosaires.gov.ar/areas/hacienda/sis\\_estadistico/EAH/2010\\_tabulados\\_basicos.pdf](http://estatico.buenosaires.gov.ar/areas/hacienda/sis_estadistico/EAH/2010_tabulados_basicos.pdf) (last accessed on 10 June 2012). The exchange rate at the time of the census was roughly four pesos per US dollar.

## 2. Basic figures

more affluent parts of the city. In general, 4.9% of the inhabitants live in a precarious house (3% in a hotel, and 1.7% in a “conventillo”, among other precarious houses).<sup>21)</sup>

As far as the living conditions of the population are concerned, 86.1% of the households of the city live in a house whose building quality is satisfactory and does not need to be repaired nor widened, 13.6% of them live in a house which must be repaired or improved and 0.3% of the households live in extremely precarious houses which cannot be repaired and must be replaced by a new house. 10.2% of the households of the city live in an overcrowded house. However, overcrowding is worse in some of the less affluent boroughs.<sup>22)</sup> Standards of living are, in any event, significantly higher than the country’s average. Indeed, 99.9% of the households have access to drinking water and 98.2% of them live in a house with sewers. 92.2% of the houses have access to natural gas connection.

From the preceding account, it follows that the housing deficit is a persistent phenomenon in Argentina. A quick glance at the housing market evolution would beg the question as to why this is the case. As a matter of fact, the country’s population has been growing at a slower pace than housing construction over the last 30 years.<sup>23)</sup> Unfortunately,

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21) Precarious houses include “inquilinos o conventillos”, “hoteles o pensiones”, “construcciones no destinadas a vivienda, ranchos o casillas.”

22) According to the local government, a house can be considered “overcrowded” if there are two or more people per room.

23) See Marcela Cristini, Ramiro Moya & Guillermo Bermudez “Argentina’s Housing Market in the 2000s”, IDB Working Paper Series No. IDB-WP-262, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1946142](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1946142) (last visited 06/22/2012) (“In the last three decades, the availability of housing in Argentina has not kept pace with demand. Two important factors explaining the persistence of the housing deficit and the declining quality of life in large urban centers are highly cyclical construction

most of the increase in housing construction has been directed to either weekend or non-residential use. In addition, real estate prices have grown so much that most of the construction projects have been geared to high income consumers.<sup>24)</sup>

Internal migration flows to metropolitan areas have concentrated the housing deficit problem. Some fifty percent of businesses -in terms of national GDP- are concentrated in the largest metropolitan areas and they naturally attract individuals searching for employment opportunities.<sup>25)</sup> As a result, there has been a growing shortage of quality areas for housing developments. The combination of migration patterns and shortage of quality housing areas has translated into more overcrowding.

Typically, the housing market requires long term investment. The periodic and intense economic and financial crises that Argentina has gone through in the last 40 years haven't helped to solve the housing deficit. For instance, the mortgage market shrank substantially after the 2001 crisis and has never recovered since.<sup>26)</sup> In addition, the same economic and financial crises have affected construction due to the cyclicity of this industry. Consequently, federal and local governments have been required to step up several times in the recent past.

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activity affected by macroeconomic disruptions and poor design of social housing policies”)

24) See Demian Zayat & Victoria Ricciardi “El Derecho a la Defensa en los Casos de Usurpación en la Ciudad de Buenos Aires: un Estudio Empírico”, 1 Revista Institucional de la Defensa Publica de la Ciudad Autónoma de Buenos Aires 103 (2011)

25) See Marcela Cristini, Ramiro Moya & Guillermo Bermudez “Argentina’s Housing Market in the 2000s”, IDB Working Paper Series No. IDB-WP-262, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1946142](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1946142) (last visited 06/22/2012).

26) See Marcela Cristini, Ramiro Moya & Guillermo Bermudez “Argentina’s Housing Market in the 2000s”, IDB Working Paper Series No. IDB-WP-262, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1946142](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1946142) (last visited 06/22/2012).



## 2. Basic figures

It should be clear then that a sizable portion of the Argentine population, including a large number of people in the City of Buenos Aires, live in conditions that defy common sense understandings of adequate housing. In light of this factual situation, the next section will look at the right to housing regulatory framework both at the federal level and in the City of Buenos Aires.

### 3. The legal right to housing under the Argentine Constitution

As with any description of a hierarchical system of laws, our description of the right to housing starts with a special analysis of its treatment under the Federal Constitution and under the Constitution of the City of Buenos Aires. This method is especially appropriate as the right to housing is recognized in Argentina's National Constitution and in many international human right treaties to which Argentina is a party. For the purposes of this enquiry, it is important to note that the right to housing is also provided for in the Constitution of the City of Buenos Aires. This section succinctly examines the content and scope of this right, and describes the duties of the federal and local authorities in relation to it. Section 4 will consider how it has been dealt with as a matter of regulation, and by the Argentine courts.

#### 3.1 The federal Constitution

Argentina's constitutional system has inherited a classical 19th Century liberal framework. It provides for division of power and judicial review. Economic and social rights were ultimately incorporated in Article 14bis after a complicated process.<sup>27)</sup> In its relevant part Article 14bis establishes that "[t]he State shall grant the benefits of social security, which shall be

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27) 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, 2<sup>nd</sup> ed, 1998. On the history of Argentine constitutionalism, see Roberto Gargarella, *The Legal Foundations of Inequality*, Cambridge University Press, 2010.

### 3. The legal right to housing under the Argentine Constitution

of an integral nature and may not be waived. In particular, the laws shall guarantee (...) *access to a worthy housing*.”<sup>28)</sup> Furthermore, under article 28 any fundamental right contained in the constitution “shall not be modified by the laws that regulate their enforcement.”<sup>29)</sup> As indicated, the judiciary is the final arbiter of the accordance of any piece of legislation or act of the executive through an American-style system of judicial review.

The right to housing is also recognized explicitly in the American Declaration of the Rights and Duties of Man, the Universal Declaration of Human Rights, the American Convention on Human Rights, the International Covenant on Economic, Social and Cultural Rights (from now on ICESCR), and the Convention on the Rights of the Child. As it was originally stipulated in the 1853 constitution, all of these instruments “have a higher hierarchy than law.”<sup>30)</sup> Furthermore, after the 1994 constitutional reform new 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.”

As a result, the provisions in these treaties referring to the right to housing complement the content of article 14bis of the Constitution.

The provisions in these treaties indicate that the right to housing is deeply interconnected with other basic social and economic rights. The

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28) Emphasis added. The translation of all the provisions of the National Constitution included in this report follows the translation made by the Argentine Congress, available at <http://www.senado.gov.ar/web/interes/constitucion/english.php> (last accessed, on June 10 2012).

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

30) See Article 31 of the Argentine Constitution.

Universal Declaration of Human Rights, for instance, establishes that everyone has “a right to a standard of living adequate for the health and well-being of himself and of his family, including (...) housing.”<sup>31)</sup> Similarly, the American Declaration of the Rights and Duties of Man provides that “every person has the right to the preservation of his health through sanitary and social measures relating to (...) housing.”<sup>32)</sup> In turn, under article 27 of the Convention on the Rights of the Child, State parties “recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.” As a result, in accordance with national conditions and within their means, they “shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programs, particularly with regard to (...) housing.” Of particular relevance in this context is the ICESCR. Under article 11(1), States

“recognize[s] the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right.”<sup>33)</sup>

In accordance with article 2 (2) of the ICESCR, the enjoyment of this right must not be subject to any form of discrimination.

The concern of the international community on the right to housing hasn't stopped at establishing black letter law. Under the umbrella of the

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31) Article 25.

32) See article XI.

33) CESCR. “The right to adequate housing (Art.11 (1)): General comment 4” [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/469f4d91a9378221c12563ed0053547e?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/469f4d91a9378221c12563ed0053547e?Opendocument) (last accessed on June 10 2012).

### 3. The legal right to housing under the Argentine Constitution

United Nations, the Committee on Economic, Social and Cultural Rights (from now on CESCR) focuses on the application of the ICESCR mandates.<sup>34)</sup> The CESCR considers that the right to housing should not be interpreted in a narrow or restrictive sense.<sup>35)</sup> Far from being equated with having a roof over one's head, the right to housing should be seen as the right to live somewhere in security, peace and dignity. Even though CESCR documents are merely soft-law, it gives clear signals regarding the appropriate interpretation of ICESCR. The CESCR makes it clear that

“the reference in article 11 (1) must be read as referring not just to housing but to adequate housing. As both the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 have stated: "Adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities - all at a reasonable cost".”<sup>36)</sup>

Despite acknowledging that the concept of adequate housing may accept different definitions in different contexts, CESCR has made conscious efforts to avoid complete indeterminacy. Accordingly, the CESCR explains

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34) The Committee on Economic, Social and Cultural Rights (CESCR) is the body of independent experts that monitors implementation of the International Covenant on Economic, Social and Cultural Rights by its States parties. The Committee was established under ECOSOC Resolution 1985/17 of 28 May 1985 to carry out the monitoring functions assigned to the United Nations Economic and Social Council (ECOSOC) in Part IV of the Covenant. Source: <http://www2.ohchr.org/english/bodies/ceschr/> (last accessed on June 10 2012).

35) See also Rule 65 of the Rules of Procedure of the Committee, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G93/183/98/PDF/G9318398.pdf?OpenElement> (last accessed on June 10 2012).

36) *ibid.*

that while adequacy is partially determined by social, economic, cultural, climatic, ecological and other factors inherent to each community, in any society, a house can be considered “adequate” if and only if it meets, at least, the following seven conditions: legal security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy.<sup>37)</sup>

Argentina has undertaken the obligation to enforce the right to housing. Now, precisely what this means is open to discussion. Under article 26 of the American Convention on Human Rights, it has agreed “to adopt measures, both internally and through international cooperation (...) with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in (...) the Charter of the Organization of American States.” In this context, by approving article 34 of the Charter of the Organization of American States,

“Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their people in decisions relating to their own development are, among others, basic objectives of integral development. To achieve them, they likewise agree to devote their utmost efforts to accomplishing the following basic goals: (...) k) adequate housing for all sectors of the population.”

Yet, the standard position has been that neither article 14bis of the Argentine Constitution nor the relevant provisions on the right to housing in binding human rights instruments (most of them integrated to the

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37) The following seven points are based on CESCR. “The right to adequate housing (Art.11 (1)): General comment 4” [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/469f4d91a9378221c12563ed0053547e?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/469f4d91a9378221c12563ed0053547e?Opendocument) (last accessed on June 10 2012).

### 3. The legal right to housing under the Argentine Constitution

Constitution) provide for directly enforceable rights. In effect, the nature of the rights under article 14bis is still contested under Argentine Constitutional Law.<sup>38)</sup> 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. The right to housing has traditionally been considered non-enforceable, together with the rights of social security provided for in the third paragraph of Article 14bis. This is standardly derived from the text of the article which states that “[i]n particular, the laws shall guarantee (...) access to a worthy housing.”<sup>39)</sup> Furthermore, policies designed to secure the fulfillment of this right are often considered subject to financial possibilities, and the State’s political agenda.<sup>40)</sup> As it will be examined below, this standard interpretation could be challenged under very specific circumstances.

## 3.2 The City of Buenos Aires

The City of Buenos Aires emerged as an autonomous jurisdiction as a result of the 1994 constitutional reform. The Constitution of the City of Buenos Aires was passed shortly after, and was largely drafted borrowing principles from the National Constitution. The concern for social rights is elicited in two deeply interrelated provisions. First, in Article 17 it establishes that “[t]he City develops coordinated social policies in order

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

39) Walter F. Carnota, “El derecho de la seguridad social”, in Daniel Sabsay (dir), *Constitución de la Nación Argentina* (Buenos Aires: Hammurabi, 2009), 582.

40) See *ibid* 582 and Gelli, n 38 above, at 156.

to improve the living conditions of people living in abject poverty (...) and assists people who cannot meet their most basic needs.” This is a general provision that must be read in conjunction with the second relevant provision, i.e. article 31, which establishes that:

“The City recognizes the right of the population to a decent home and an adequate habitat. [In order to satisfy this right], it [will]:

Progressively address the housing and infrastructure deficit, giving due priority to people living in abject poverty and low income disabled people (...);

Promote (...) the urban and social integration of marginalized people, the recovery of precarious houses and the regularization of the legal situation of [illegally occupied houses].”

Again, the language in the cited provision and the traditional approach to its content suggest that the right to adequate housing was not really a directly enforceable right; that is, a right claimable by an individual or groups of individuals against the state. By contrast, it was mainly considered a policy objective or “programmatic” clause.<sup>41)</sup>

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41) On how the National Supreme Court revised this general take on the right to housing recently, see Section 4.3 below.



## 4. Housing policies by the Federal and the City of Buenos Aires Governments

It should be clear by now that governments, both at the federal and local levels, need to pay special attention to the housing situation of their respective jurisdictions. Given the division of power enacted by the national constitution and the strong political impact of the right to housing, it is rather unsurprising that housing policies have traditionally been approached through complementary action between the legislative and executive branches of government. The Argentine Congress would normally adopt some sort of framework legislation that would be administered, executed and monitored by the Administration (often with provincial or municipal authorities). The judiciary, by contrast, has been largely excluded from this picture. This is arguably linked with the idea that the right to housing has not been properly enforceable under Argentine law, that is, that the state was only responsible for ensuring its progressive development. The the City of Buenos Aires mirrored those developments starting its own initiatives in the late 1990s, as a result of having obtained its political and juridical independence with the new National Constitution of 1994.<sup>42)</sup>

In this section, the basic housing policies of the federal government and of the City of Buenos Aires will be explained. In addition, the recent evolution of the law in practice - as opposed to the law in the books - will be described. The organization of this section is as follows.

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42) In effect, most public services in the city, including policing, transport, and the like were exercised by the Federal authorities until very recently. And some of them still are.

#### 4. Housing policies by the Federal and the City of Buenos Aires Governments

Section 4.1 is concerned with housing policies at the Federal level while Section 4.2 concentrates on programs of the City of Buenos Aires. Section 4.3 considers in some detail one of the most progressive developments in this area, namely, the decision of the National Supreme Court to consider the right to housing as an enforceable legal right under the Argentine Constitution. In effect, it is only in 2012 that the National Supreme Court decided, in a ground-breaking opinion, to recognize housing as an enforceable right under the Argentine Constitution and the relevant human rights treaties.

##### 4.1 Housing policies of the Federal Government

Argentina has welcomed and pursued immigration for as long as it has existed as a country. Accordingly, the Argentine government has been concerned with access to housing issues almost since its inception. As a matter of fact, in 1860 the National Mortgage Bank (*Banco Hipotecario Nacional*, from now on BHN) was created.<sup>43)</sup> As explained by professor Zanetta

“the BHN was conceived as a source of financing for lower-middle income households, that, with the help of long term credit and low interest rates had the savings capacity necessary to afford the full cost of housing.”<sup>44)</sup>

Despite its objectives, the impact on low income housing was limited as income capacity limited the affordability of financing.

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43) See Cecilia Zanetta, *The Influence of the World Bank on National Housing Policies: The Case of Mexico and Argentina during the 1990'S*, Ashgate Publishing, Ltd., 2004, p. 183

44) Ibid.

During President Peron's first and second presidency (1946-1955), BHN's role increased. Peron acknowledged the pressing need for housing of the time and considered it an opportunity to spur economic activity.<sup>45)</sup> The BHN was able to increase its mortgage financing as it shifted its own funding source from private deposits to Central Bank rediscounts.<sup>46)</sup> After a coup d'état ousted Peron in 1955, the BHN reverted to private funding.

The housing difficulties faced by the poor grew in time and finally in 1977 a fresh new approach was taken with the establishment of the National Housing Fund (*Fondo Nacional de Vivienda*, from now on FoNaVi).<sup>47)</sup> The FoNaVi is the starting point for this report. Yet it concentrates particularly on developments obtained after the crisis of 2001. In effect, despite the sustained growth of shanty towns or "*villas de emergencia*" in most, if not all important cities in Argentina (with particular emphasis in the Metropolitan Area of Buenos Aires) efforts by national and local authorities have been largely piecemeal. This situation, in turn, gave way to total inaction in 2000-3 when the economic crisis crippled the State and its capacity to fund and carry out serious works.<sup>48)</sup>

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45) See Oscar Yujnovsky, *Claves Políticas del Problema Habitacional Argentino*, 1955-1981, Buenos Aires, Grupo Editor Latinoamericano, 1984.

46) Ibid. This policy implied large subsidies to individual mortgagees that by the early 1950's began to deplete the National reserves.

47) For a century, from 1860 to 1960, Argentina's GDP per capita grew at an average rate of 1.2% per year. Starting in the 1970's economic growth diminished significantly until 2003 for several reasons. Perhaps the key factor has been Argentina's recurring high fiscal deficits. See Francisco Buera, Gaston Navarro & Juan P. Nicolini "The Argentine Economy after Two Centuries", 48 *Latin American Journal of Economics* 133 (2011).

48) In 1999, the Federal Government built 48,359 houses whereas in 2003, it built 19,813 houses. See Fernando Cuenin, Ramiro Moya, *Cambios en las políticas de vivienda social en la Argentina (1976-2007): ¿Cambiaron también los resultados habitacionales?*

#### 4. Housing policies by the Federal and the City of Buenos Aires Governments

It was only in 2003 that new efforts begun to materialize both in terms of scope and importance of programs. It is on this scenario that this paper mainly focuses.

A driving force behind this change has been the need to face the collapse of the Argentine economy in 2001, which had serious and overarching social effects. In order to decrease the housing deficit and to reactivate the building industry, the Federal Government developed a variety of *temporary* housing programs as of 2003, of which the Federal Home-Building Program was the most important one. In fact, it replaced the FoNaVi as the most important housing policy of the Federal Government. Later on, the Federal Home-Building Program was complemented by the “Federal Subprogram for the Urbanization of Squatter and Precarious Settlements.”<sup>49)</sup> As a rule, the Federal Government designed these programs according to its own assessment of the necessities of the population or following requests made by provincial governors. In 2009, the Federal Government decided to convert some of its temporary programs into *permanent* housing plans.

##### 4.1.a) Low-cost housing programs administered by the Federal government

From 1977 to 2004, the FoNaVi was the most important housing policy for low-income people of the Argentine Federal Government. The fund was created by Act 21581, enacted by the Argentine military Junta.<sup>50)</sup> The FoNaVi was created in 1977 as a permanent program aimed at

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(Banco Interamericano de Desarrollo, 2010), page 14. Available at <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=35458953> (last accessed on June 12 2012).

49) *ibid.*

50) On the powers exercised by the Military, see, eg, <http://www.cidh.org/countryrep/>

building low-cost houses for families whose members lacked enough resources to obtain mortgages in the private market. It provided resources for the construction of “low-cost houses” for “families with insufficient resources”<sup>51)</sup> who did not own a house. Under the law, “low-cost houses” are those which have “minimum conditions of habitability”, as established by the complementary regulation, and that “are a center of attraction and meeting for the family.”<sup>52)</sup> The Fund also provided for the possibility of granting flexible loans to “families with insufficient resources” who want to build, expand or restore their houses.<sup>53)</sup> Finally, it further allocated resources for the construction of infrastructure, urbanization and complementary works next to the houses built under the program.

Originally, the FoNaVi was financed through a 1.5 percent tax on cattle sales, an emergency urban tax and a 2.5 percent payroll tax on both private and public sector salaries.<sup>54)</sup> Although the FoNaVi funding experienced some modifications over time, the most fundamental one happened in 1995 with the enactment of National Act 24464. At that time, the program became predominantly financed by a national tax on liquid fuels and natural gas.<sup>55)</sup> In 2003 and 2004, the Federal Government supplied the National Fund with additional funds for an amount of US\$ 71,700,000 in order to reactivate the program and palliate the

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Argentina80eng/chap.9.htm (last accessed on June 12 2012).

51) National Act 21,581, article 4. Available at <http://www.dnrpi.jus.gov.ar/normativa/ley21581.htm> (last accessed on June 10 2012).

52) *ibid.*

53) For its purposes, “families with insufficient resources” are those whose members do not have enough resources to satisfy its basic necessities and afford the amortization cost of a “low-cost house” in a period of time of up to 30 years.

54) See Cecilia Zanetta, *The Influence of the World Bank on National Housing Policies: The Case of Mexico and Argentina during the 1990'S*, Ashgate Publishing, Ltd., 2004, p. 185

55) National Act 21,581, article 3.

#### 4. Housing policies by the Federal and the City of Buenos Aires Governments

effects of the 2001 crisis. It was clear that in spite of the difference in political origin, all subsequent governments shared the view that Argentina faced a housing crisis and the FoNaVi was the key tool to deal with that crisis.

The FoNaVi suffered structural modifications in its governance through the years too. Until 1992, the Federal Government was responsible for deciding which housing projects would be financed, according to its own assessment of the housing deficit, the necessities of the population and the financial capabilities of the Fund.<sup>56)</sup> The Federal Government was also in charge of defining the characteristic of the houses, who would be the beneficiaries of the program and the conditions that they had to meet to obtain a house. The provinces, thorough the provincial housing institutes, were in charge of executing the works under the supervision of the Federal Government. In 1992, the federal authorities and the provincial governments signed an agreement which partially modified Act 21,581.<sup>57)</sup> Under this new scheme, the Federal Government was in charge of administering the FoNaVi, sending funds to the provinces periodically and supervising how the provinces spent these funds. Each province, in turn, would receive a percentage of the money. Critically, each province would administer the resources sent by the Federal Government, design the housing projects, select the contractors and supervise the works. Furthermore, the provincial institutes determined who the beneficiaries of each project would be.

Since its inception, the beneficiaries of the FoNaVi have been families lacking enough resources to obtain private financing to buy a house, but

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56) Ibid.

57) This agreement was ratified by National Act 24,130.

who can afford the price of the houses built under the program. In order to decide who will be the beneficiaries of the program, provincial governments typically keep a list of potential beneficiaries organized following an order of priority that takes into account the characteristics and the socio-economic situation of the families.<sup>58)</sup> Families chosen as beneficiaries usually receive a single-story house and, in return they must pay a price equivalent to the sum of the building costs plus the cost of the land in which it was built. The government offers the beneficiaries a variety of payment plans but, ultimately, if the beneficiaries were not to pay the agreed installments they would have to return the house to the building authorities.

As a result of the financial crisis of 2001,<sup>59)</sup> two main concerns appeared in relation to this program. First, mistakes were made in the selection of beneficiaries: many beneficiaries of housing projects did not in fact comply with the requirements established by law to qualify as beneficiaries. Furthermore, and partly as a result of the crisis, other beneficiaries were not being able to repay their respective installments for their houses.<sup>60)</sup> In the light of these problems, in 2004 the Federal and Provincial Governments established the Federal Program for the Reactivation of the National Housing Fund (*Programa Federal de Reactivación de las Obras FONAVI*).<sup>61)</sup> This instrument provided that the recovery of

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58) National Act 24, 464, Section V, articles 14, 16-17.

59) The 2001-2 crisis has been compared to the great depression in the United States. See, for example, Horacio Spector “Don’t cry for me Argentina: Economic Crises and the Restructuring of Financial Property”, 14 *Journal of Corporate and Financial Law* 771, 777 (2009).

60) On this, see <http://www.vivienda.gov.ar/fortalecimientofonavi.php> (last accessed on June 12 2012) and the text of the Federal Program for the Reactivation of the National Housing Fund, cited below.

61) This section is largely based on “Convenio Marco del Programa Federal de

#### 4. Housing policies by the Federal and the City of Buenos Aires Governments

the housing investment through the collection of the unpaid quotas would be a priority of federal and provincial authorities in order to increase the resources of the federal housing system. The provinces assumed the obligation to arrange a new payment plan with delayed beneficiaries and agreed to create a system of incentives for those who complied with their payment plans. The provinces also assumed the obligation to certify the fulfillment of the basic conditions of registered and potential beneficiaries of projects being executed in 2004.

##### 4.1.b) National Program to face high rates of housing deficits post 2001-crisis

In 2004 the Federal Government developed a new housing program to complement the FoNaVi, the Federal Home-Building Program (*Programa Federal de Construcción de Viviendas*). This new program did not replace the FoNaVi as they are both currently in force.<sup>62)</sup> The aims are slightly different, as the Federal Home-Building Program is aimed specifically at satisfying the housing demand of low-income families living in cities with high rates of housing deficits.<sup>63)</sup> Reducing the unemployment rate, which had reached frightening levels after the 2001 socio-economic

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Fortalecimiento y Optimización del Recupero de Cuotas FONAVI”, available at <http://www.vivienda.gov.ar/fortalecimientofonavi.php> (last accessed on June 10 2012).

62) However, it has become the most relevant national housing policy program in Argentina.

63) In Argentina, roughly 70% of the country’s economic activity (as measured by GDP) is concentrated in the seven largest metropolitan areas, which explains the program’s focus. See Marcela Cristini, Ramiro Moya & Guillermo Bermudez “Argentina’s Housing Market in the 2000s”, IDB Working Paper Series No. IDB-WP-262, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1946142](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1946142) (last visited 06/22/2012). Note, nonetheless, that the objectives of both programs overlap to a great extent. The main difference could be seen in terms of each programs’ focus.



crisis, was an additional objective of the program.<sup>64)</sup> The Federal Home-Building Program was initially conceived as a temporary plan which was based under two successive agreements between federal and local governments: the 2004 and the 2005 ones. In 2009, however, the Federal Government decided to turn this plan into a permanent home-building program and did so through Resolution 248/2009.

Under the 2004 Agreement,<sup>65)</sup> the Federal Government assumed the obligation to provide the provinces with the necessary financing to cover the building costs of 120.000 houses. Special attention was given to the Metropolitan area of Buenos Aires and the provinces of Córdoba, Santa Fe, Chubut, and Santa Cruz.<sup>66)</sup> The whole scheme of financing was provisional. Once a trimester, the plan had to be revised in order to take into account: a) how efficiently each province spent the resources provided by the Federal Government, b) the housing deficit and the unemployment rates registered in each province and c) whether the provinces complied with the obligations established in the Federal Program of Reactivation of the National Housing Fund or not. It is important to note that only on that basis would the Federal Government provide the funds necessary to build the houses and the adjacent infrastructure. Funds, however, were not received by the provinces in full, but rather on an item by item basis for each housing project approved by the National government. Provinces were also authorized under this scheme to partially finance

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64) The program has been governed by the following instruments: The Federal Home-Building Program Agreement (2004), the Multi-year Federal Home-Building Program Agreement (2005), and Resolution 248(2009). References to each of these programs are provided below.

65) This section is based on the Federal Home-Building Program Agreement, available at <http://www.vivienda.gov.ar/construccion/normativa.html> (last accessed on 12 June 2012).

66) Around 60 % of the housing projects would be built in these areas.

#### 4. Housing policies by the Federal and the City of Buenos Aires Governments

projects which required land purchases or complementary works of infrastructure. Local governments could also participate in the financing if they wanted to improve the projects previously agreed on with the National government. In turn, provincial authorities were responsible for designing each housing project,<sup>67)</sup> selecting the beneficiaries and collecting the installments due for each unit.

In August 2005 the Federal Government and the provinces signed a further instrument approving a *Multi-Year Federal Home-Building Program*.<sup>68)</sup> The new agreement was an extension of the 2004 Federal Home-Building Program Agreement focusing on the same objective, namely, to satisfy the housing demand of low-income families living in cities with high rates of housing deficits. And yet, this agreement took special consideration of housing demand by population who could not cover its basic needs. Under the Agreement, the Federal Government assumed the obligation to fund the construction of 300.000 houses in the City of Buenos Aires and the provinces of Buenos Aires, Córdoba, and Santa Fe.<sup>69)</sup>

The 2005 agreement replicated much of the features of its predecessor. Under the new understanding, the Federal Government was responsible for funding the building costs and the infrastructure works conducted around them. In turn, the provinces were authorized to partially finance

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67) Projects must comply with certain requirements, including that houses are no smaller than 44m<sup>2</sup> (and if they are located in Patagonia, size must not be inferior to 49m<sup>2</sup>); building works must not last longer than 12 months; and projects must provide for intensive labor.

68) This section is based on the Multi-year Federal Home-Building Program Agreement. Available at <http://www.vivienda.gov.ar/construccion/normativa.html> (last accessed on 9 June 2012).

69) Table 2 in the Annex to this paper shows the number of houses to be built per province. Like the 2004 Agreement, the 2005 Agreement makes clear that the pattern of financing described in this Table is provisional.

the projects if they had to buy terrains in order to build the houses, to do complementary works of infrastructure, or if they wanted to improve the projects. Funding was derived from the national budget and was awarded to each housing project separately. However, before requesting funds under the 2005 Agreement, the provinces were required to exhaust the quota assigned to them in the 2004 Agreement.<sup>70)</sup> In terms of housing project design, each province was responsible for coming up with a project which met the “minimum standards of quality for social interest’s houses” established by federal authorities.<sup>71)</sup> Provincial governments were also required to select the contractors, to supervise the works and to determine the beneficiaries, including responsibility for collecting the payment for the houses in installments. These functions could be transferred to the municipalities or well-known and solvent organizations of the civil society.

As indicated above, the Federal Home-Building Program was a temporary plan aimed at the construction of 420,000 houses, under the 2004 and

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70) For instance, under the 2004 Agreement the Federal Government committed itself to funding the construction of 4,000 houses in the Province of Chubut. Similarly, under the 2005 Agreement the Federal Government agreed to fund building costs of 8,000 more houses in the same province. Now, before requesting the funds available under the 2005 Agreement, the province of Chubut must develop housing projects aimed at building the first 4,000 houses. This means that if the province of Chubut has developed housing projects to build 4,000 houses under the 2004 Agreement but only 25% of the houses have been finished at the time the new projects are submitted for their approval by the Federal Government, Chubut can only develop housing projects to build 2,000 houses under the 2005 Agreement (25% of the 8,000 houses agreed in the 2005 Agreement).

71) See Ministerio de Planificación Federal, Inversión Pública y Servicios, Secretaría de Obras Públicas, Subsecretaría de Desarrollo Urbano y Vivienda. ESTÁNDARES MÍNIMOS DE CALIDAD PARA VIVIENDAS DE INTERÉS SOCIAL. Available at [www.vivienda.gov.ar](http://www.vivienda.gov.ar) (last accessed on June 20, 2012).

In addition, at least, five percent of the houses built under the program must be delivered to disabled people.

#### 4. Housing policies by the Federal and the City of Buenos Aires Governments

2005 Agreements. Nonetheless, in 2009 the Federal Government decided to transform this plan into a permanent home-building program. In order to do so, the Ministry of Federal Planification, Public Investment, and Services passed Resolution 428/2009 approving the Regulation of the Federal Home-building Program - “Techo Digno.”<sup>72)</sup> “Techo Digno” aims at reinforcing the reduction of the housing deficit achieved through the 2004 and 2005 Agreements, improve the living conditions of the population and support the economic reactivation of the building industry.

The distribution of tasks between the Federal and provincial Government follows the 2004 and 2005 Agreements. The beneficiaries are families who do not own a house and have not been beneficiaries of any other housing program financed with public funds. According to “Techo Digno”, in order to decide who will be the beneficiaries of the program, provincial governments keep a list of potential beneficiaries organized following an order of priority that takes into account their structure and socio-economic situation. Big families, disabled people’s families, and families who are in charge of “women heads of household” are given priority.

Before concluding this section, let us succinctly assess the total number of housing units built under both the FoNaVi and the Federal Home-Building Program, from 1993 to 2010.<sup>73)</sup> From 1993 to 2010, the Federal Government built 466,166 houses under the FoNaVi.<sup>74)</sup> Of those houses,

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72) This regulation applies to housing projects developed after its approval and to all the housing projects which had been designed under the 2004 and 2005 Agreements and were being executed at the time of its approval.

73) 1993 is the year in which the federal and provincial authorities reached an agreement on the implementation of Act 21,581.

74) And yet, numbers vary over time. The number of houses finished under the program, per year, increased from 1993 to 1998 while it decreased, sharply, from 1999 to 2003. In 2005, in the light of the Federal Program of Reactivation of the National Housing Fund, established in 2004, this amount increased from 8,339 houses in 2004 to 13,455

70,489 were built during the 2004-2010 period, which was the period when the FoNaVi lost its role as the exclusive National Housing fund. According to the information published by the Federal Government in 2012, from 2004 to December 2011 169,852 houses and infrastructure works were built under the Federal Home-Building Program, more than doubling the number of houses built under FoNaVi. Moreover, in December 2011 65,059 works were being executed and plans to build 9,634 more houses had already been approved. In short, since the implementation of the Federal Home-Building Program the percentage of houses finished under the FoNaVi relative to the total number of houses finished under all the housing programs of the Federal Government has decreased significantly.<sup>75)</sup>

#### 4.1.c) Regional programs developed to address the 2001 crisis

The Northwestern<sup>76)</sup> and Northeastern<sup>77)</sup> provinces of Argentina were specially affected by the severe 2001 socio-economic crisis. In these regions, unemployment and poverty rates escalated to alarming levels. In order to assist the population of these regions and reduce the housing deficit, the Federal Government developed two housing projects, the “Housing Emergency Program” and the “Housing Solidarity Program”, specifically tailored to address the situation in these parts of the country.

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houses in 2005. This increase was only temporary.

75) “Auditorias FONAVI y Programas Federales 2010 - Informe Síntesis”, available at <http://www.vivienda.gov.ar/docestadisticas.php> (last accessed on June 12 2012).

76) This region includes the Provinces of Salta, Jujuy, Tucumán, Catamarca, and Santiago del Estero.

77) This region includes the Provinces of Chaco, Corrientes, Entre Ríos, Misiones, and Formosa.

#### 4. Housing policies by the Federal and the City of Buenos Aires Governments

In 2003, the Federal Government and the authorities of eight provinces signed an agreement approving the Housing Emergency Program (*Programa “Emergencia Habitacional*).<sup>78)</sup> The program was essentially a home-building plan aimed at palliating the housing deficit and reducing unemployment rates by assigning the execution of the building works to unemployed people. The Federal Government initially committed itself to fund the construction of 6,208 houses in the provinces of Buenos Aires, Corrientes, Chaco, Entre Ríos, Jujuy, Misiones, Tierra del Fuego and Tucumán. It was also responsible for approving each housing project, coordinating the relevant parties and auditing the works.<sup>79)</sup> Each province, in turn, was responsible for the administration of the funds, and was also in charge of selecting the beneficiaries. The provinces were also responsible for collecting the prize that each new owner had to pay for the house they received.<sup>80)</sup> Finally, the municipalities are responsible for designing the building projects, celebrating building contracts with the cooperatives and paying them for the works.

The intended beneficiaries of the program are low-income families, especially families in abject poverty or vulnerable to marginality and emergency situations. In order to decide who will the beneficiaries of the program be, provincial governments must keep a list of potential beneficiaries and give priority to members of the cooperatives that execute the

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78) This section is based on the “Housing Emergency” Program Agreement, available at <http://www.vivienda.gov.ar/emergencia/normativa.html>

79) According to Article 75.8 of the National Constitution, the National Congress has the power to “fix annually, according to the standards laid down in the third paragraph of subsection 2 of this Section, the general budget of expenses and the estimate of resources of the National Administration, based on the general program of the government and on the public investment plan, and to approve or reject the investment account.”

80) These funds are not reimbursed to the Federal Government. They are spent in other housing projects developed by the provinces.

building works. The family that is chosen as beneficiary of the housing project acquires an ownership right over the house. Besides, it must pay a price for the house: a monthly payment of a figure equivalent to U\$S 11.49 during fifty years.<sup>81)</sup> A key aspect of this plan was that the building works were executed by worker cooperatives owned and managed by unemployed people. These individuals had to be, at the same time, beneficiaries of the Federal “Unemployed Women and Men Heads of Household” Program (*Programa Jefes y Jefas de Hogar Desocupados*), a federal program developed in order to ameliorate the high unemployment and poverty rates registered after the 2001 economic crisis.<sup>82)</sup>

From May 2003 to December 2011, 19,646 houses were built under the program. Besides, in December 2011, 8,427 houses were already under construction and the Federal Government had approved plans to build 1,755 more houses in the following years. As a result, in spite of being a temporary program the “Housing Emergency Program” remains an important program today.<sup>83)</sup>

A month after the signing the Housing Emergency Program” Agreement, the Federal Government and the provinces of Corrientes, Chaco, Entre

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81) Subsecretaría de Desarrollo Urbano y Vivienda. Programas Habitacionales desarrollados en la República Argentina. Available at <http://www.vivienda.gov.ar/docestadisticas.php> (last accessed on June 12 2012).

82) “The program provides a payment of 150 pesos per month to a head of household for a minimum of 4 hours of work daily. Participants work in community services and small construction or maintenance activities, or are directed to training programs (including finishing basic education). The household must contain children under age 18, persons with handicaps, or a pregnant woman.” Pavlina R. Tcherneva and L. Randall Wray, *Gender and the Job Guarantee: The impact of Argentina’s Jefes program on female heads of poor households* (December, 2005). Available at <http://www.cfeps.org/pubs/wp-pdf/WP50-Tcherneva-Wray.pdf> (last accessed on June 10 2012).

83) Subsecretaría de Desarrollo Urbano y Vivienda, “Resumen Total del Estado de Avance desagregado por Programa”, available at <http://www.vivienda.gov.ar/docestadisticas.php> (last accessed on 12 June 2012).



#### 4. Housing policies by the Federal and the City of Buenos Aires Governments

Ríos, Formosa, Jujuy, Misiones, Salta and Tucumán signed a new agreement creating the Housing Solidarity Program (*Programa Solidaridad Habitacional*).<sup>84)</sup> The program covers the building costs of the houses<sup>85)</sup> and of the basic infrastructure of the area. In line with the “Housing Emergency Program”, this plan aims at covering the housing demand of low-income people who live in cities with high unemployment rates. The basic structure of the program is virtually the same. The Federal Government is responsible for funding the building costs, approving housing projects, and auditing the works while the Provinces administer the resources sent by the Federal Government, determine who will be the beneficiaries of the projects, transfer the ownership rights over the houses to the beneficiaries and collect the money that they must pay for the house they receive.<sup>86)</sup> In this case, however, the Provincial housing institutes are also responsible for designing the housing projects, selecting the contractors and supervising the works. In this instance, they are also authorized to partially finance the projects if they have to acquire land to build the houses on or if they want to further improve the projects.

The Housing Solidarity Program establishes a number of conditions that each housing project must meet. Namely, the houses to be built must be situated in cities with high unemployment rates; each housing project must contemplate the construction of no more than 40 houses; each building contractor can execute no more than two projects; the building works must be executed in eight months, as a maximum and, at least, fifty percent

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84) This section is based on the “Housing Solidarity” Program Agreement, available at <http://www.vivienda.gov.ar/solidaridad/normativa.html> (last accessed on 10 June 2012).

85) It establishes a fixed amount of AR\$20,000 per house.

86) These funds, again, are spent in other housing projects developed by the provinces.



of the workers hired by the building contractors must be beneficiaries of the *Programa Jefes y Jefas de Hogar Desocupados* (“Unemployed Women and Men Heads of Household” Program). These conditions must be verified by the Federal government before approving each housing project.

The beneficiaries of the program are low-income families whose members do not have a house of their own, but who can afford the amortization cost of the house. They receive a 42m<sup>2</sup> house with two bedrooms of which they obtain property. Furthermore, the government offers the beneficiaries a variety of payment plans.

From May 2003 to December 2011, 35,310 houses were built under this program while 6,081 were still under construction, and 2,589 more had been approved. Accordingly, and like the “Housing Emergency Program”, in spite of being a temporary program the “Housing Emergency Program” remains active as a housing program of the Federal Government. The reason for this is, allegedly, that the objectives settled in the 2003 Agreement have not been met yet.<sup>87)</sup>

#### 4.1.d) Housing programs for “shanty towns” and precarious settlements

A second line of policies of the Federal Government is that directed towards the most precarious forms of housing, namely, shanty towns and informal settlements. Thus, in January 2005 the Federal authorities established the Federal Subprogram for the Urbanization of Shanty Towns and Precarious Settlements (*Subprograma de Urbanización de Villas y*

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87) Subsecretaría de Desarrollo Urbano y Vivienda, “Resumen Total del Estado de Avance desagregado por Programa”, available at [www.vivienda.gov.ar/doceestadisticas.php](http://www.vivienda.gov.ar/doceestadisticas.php) (last accessed on June 10 2012).

#### 4. Housing policies by the Federal and the City of Buenos Aires Governments

*Asentamientos Precarios*).<sup>88)</sup> This program was a temporary program specifically directed to improve the housing situation in informal settlements located in the cities of Avellaneda, La Matanza, La Plata, Lomas de Zamora, Morón, Quilmes, San Isidro, San Martín and Vicente López (which are part of the Metropolitan area of Buenos Aires). The program was enacted through an agreement signed between the Federal Government, the Province of Buenos Aires, and the local authorities in each town.<sup>89)</sup> It was aimed at the construction of 15,807 new houses and the improvement of another existing 1,781 houses. Furthermore, it included funds for a wide variety of works of basic infrastructure, such as the development of water, electricity and gas connections, and the construction of internal roads.

The Federal Government is responsible for providing the funds, approve each housing project and for auditing the works. The province of Buenos Aires is also entitled to partially finance projects under this scheme. The local governments, in turn, are entrusted with designing the housing projects and executing the building works. Before authorizing a project, though, the Federal Government must be assured that it includes a comprehensive plan aimed at improving the housing situation of the settlements in which they will be executed and they must not be developed in illegally occupied terrains. Otherwise, the municipalities must regularize this situation before executing the projects.

In 2009, however, the Federal executive passed Resolution 1209 approving the so-called “Particular Regulation” of the new Federal

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88) This program is a byproduct of the Federal Home-Building Program described in the next section.

89) The content of this section is based on “Convenio Marco Subprograma Federal de Urbanización de Villas y Asentamientos Precarios”, available at <http://www.vivienda.gov.ar/construccion/normativa.html> (last accessed on June 12 2012).

Program for the Urbanization of Shanty Towns and Precarious Settlements.<sup>90)</sup> This new permanent Program replaced the Federal Subprogram for the Urbanization of Squatter and Precarious Settlements. Besides improving the living conditions of the population residing in shanty towns and precarious settlements, this program seeks to regularize the legal situation of the families whose houses are situated in illegally occupied terrains and execute basic infrastructure works. Appropriately, it also aims at relocating the population who lives in areas under high environmental risk.

These objectives are to be achieved through a) the construction of new houses to replace the most precarious houses of the settlements, the houses that will have to be demolished to build new roads or the houses situated in areas under high environmental risk;<sup>91)</sup> b) the improvement of existing houses;<sup>92)</sup> and c) the construction of urban infrastructure and complementary works. When selecting the projects to be financed, the Federal Government will give priority to those projects to be developed in areas under high environmental risk or whose population lives under extremely deficient sanitary conditions. Building projects to be developed in legally occupied terrains capable of supporting the houses and the infrastructure works to be built will also have priority.

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90) This Regulation applies to housing projects developed after its approval and all the housing projects which had been designed under the “Subprogram for the Urbanization of Squatter and Precarious Settlements” and were being executed when Resolution 1209/2009 was approved. The Particular Regulation is available at <http://www.vivienda.gov.ar/construccion/normativa.html> (last accessed on June 9 2012).

91) For the construction of new houses, the budget per house is AR\$92.900, corresponding to the building cost of a 55m<sup>2</sup> single-story house with two bedrooms.

92) For the improvement of existing houses, the amount financed per house is AR\$37.200, corresponding to 40% of the building cost of a 55m<sup>2</sup> single-story house with two bedrooms.

#### 4. Housing policies by the Federal and the City of Buenos Aires Governments

From May 2003 to December 2011, 8,962 houses and infrastructure works were executed under both programs. By December 2011, 16,698 works were under construction and the Federal Government had approved plans to develop 3,077 works in the following years.<sup>93)</sup>

##### 4.1.e) Housing programs directed at housing improvement

In July 2004, the Federal Government and the provincial governments signed an agreement establishing the Federal Home-Improvement Program (*Programa Federal de Mejoramiento de Viviendas*).<sup>94)</sup> This program aims at improving those houses which do not have sanitary facilities, lack connection to the water supply system, or are not big enough for the families living in them. Under the program, the Federal Government funds the building works required to improve 140,000 houses belonging to low-income families in the provinces of Buenos Aires, Santa Fé, Córdoba, Misiones and Tucumán. It also contemplates improving houses in Patagonia (which comprises the Provinces of Nuequén, Río Negro, Chubut, and Tierra del Fuego) where houses must be specially equipped to resist extreme weather conditions.<sup>95)</sup> Again, funding under this program

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93) Subsecretaría de Desarrollo Urbano y Vivienda. Resumen Total del Estado de Avance desagregado por Programa, available at <http://www.vivienda.gov.ar/docestadisticas.php> (last accessed on June 8 2012).

94) The content of this section is based on “Convenio Marco Programa Federal de Mejoramiento de Viviendas”, available at <http://www.vivienda.gov.ar/mejorvivir/normativa.html> (last accessed on June 8 2012).

95) As a result, these provinces will receive more money than other provinces. In fact, the provinces situated in Patagonia will receive from AR\$14.000 to AR\$22.000 per work to be executed, where the provinces located in other regions will receive AR\$10.000 per house to be restored, with the exception of the City of Buenos Aires, which will receive AR\$13.500, per household.

is linked to progress, ie, funding patterns are to revised each trimester in order to take into account: a) how efficiently each province spends the resources provided by the Federal Government; b) the housing deficit and the unemployment rates registered in each province; and c) whether the provinces comply with the obligations established in the Federal Program of Reactivation of the National Housing Fund or not.<sup>96)</sup>

In November 2010, the “Subsecretaría de Obras Públicas”, passed Resolution 1030/2010 establishing the Federal Home-Improvement Program- “Living Better” (*Programa Federal de Mejoramiento de Viviendas “Mejor Vivir”*).<sup>97)</sup> This program replaces the “Federal Home- Improvement Program” and regulates all housing projects developed under the previous scheme. Unlike the 2004 plan, the “Living Better Scheme” is a permanent program. It prioritizes projects which comply with the “Minimum standards of quality for social interests’ houses” and are going to be developed in legally occupied terrains. The amount financed per house is AR\$ 37,200, corresponding to 40% of the building cost of a 55m<sup>2</sup> single-story house with two bedrooms. Funding is assigned to each housing project separately.

Provincial housing institutes are, in turn, responsible for administering the funds, designing the projects, selecting the contractors, supervising the works, and informing the federal authorities of progress achieved. They are also in charge of selecting the beneficiaries of the projects and collecting the money that the beneficiaries must pay for the works done

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96) Table 3 in the Annex describes the number of works and the total amount of money to be financed per province.

97) This section is based on Resolution 1030/2010 and the “Particular Regulation” of the Programa Federal de Mejoramiento de Viviendas “Mejor Vivir” (“Federal Home-Improvement Program-Living Better”) available at <http://www.vivienda.gov.ar/construccion/normativa.html> (last accessed on June 10, 2012).

#### 4. Housing policies by the Federal and the City of Buenos Aires Governments

in their houses. From May 2003 to December 2011, 75,914 houses and infrastructure works were executed under both programs. By December 2011 34,757 works were under construction and the Federal Government had approved plans to restore 10,119 more houses in the following years<sup>98</sup>).

### 4.2 Housing policies of the Government of the City of Buenos Aires<sup>99</sup>)

The second part of this section is dedicated to examine the housing policies conducted by the City of Buenos Aires. The reason to focus on this particular jurisdiction is twofold. Firstly, it is one of the most densely populated areas in the Country. Secondly, the symbolic and political importance of this district cannot be exaggerated. And yet, research indicates poor coordination between plans (as they were designed “one-borough-at-a-time”), erratic or non-existing information as to their results, and a particular proneness to under-execution in terms of budgetary provisions for housing.<sup>100</sup>) The local government mainly operates through

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98) Subsecretaría de Desarrollo Urbano y Vivienda. Resumen Total del Estado de Avance desagregado por Programa, available at <http://www.vivienda.gov.ar/docestadisticas.php> (last accessed on June 10 2012).

99) It is important to note that, in contrast to the housing programs of the federal government, it is almost impossible to find complete and updated information about the housing policies developed by the Government of the City of Buenos Aires. As a rule, the available information is outdated: most of the programs described in the webpage of the government, the cheapest and easiest source of information for people wanting to improve their housing conditions, are not current housing programs of the government. In addition, the information available online is extremely incomplete.

100) See, eg, Werner Perrot, “La subejecución también es bienvenida”, *Página 12*, 20 May 2011, available at <http://www.pagina12.com.ar/diario/elpais/1-168508-2011-05-20.html> (last accessed on June 13 2012); Francisco Jueguen, “Polémica por el gasto en vivienda del gobierno de la ciudad”, *La Nación*, 10 December 2010, available at <http://www>.

the “Housing Institute of the City of Buenos Aires” (hereinafter HICBA) in this area. The HICBA was established by Act 1251(2004) of the local legislature. It is an autonomous entity responsible for designing and executing the housing policies of the local government and promoting the right to decent housing of the inhabitants of the city. In order to comply with these duties, it must develop and execute housing building projects; stimulate the housing supply and demand through loan policies financed with public funds; and promote and coordinate the urbanization of precarious settlements and design mortgage loan programs for low-income disabled people. The Institute is also in charge of permanently assessing the housing situation of the population. Like the federal government, in general, the housing institute has designed programs according to its own assessment of the necessities of the population, or following requests made by people who are experiencing extremely precarious living conditions. Each housing plan is typically ruled by its own set of norms and regulations.

In 2004, shortly after creating the HICBA, the local legislature passed Act 1408 declaring that the population of the City was experiencing a “housing emergency” (i.e. extremely precarious living conditions) and establishing the Housing Emergency Fund (*Fondo para la Emergencia Habitacional*). This fund was established as a temporary program for a period of three years. However, in 2007, the local legislature passed a law extending the program for three more years; and in 2010, the program was extended again until 2013. All in all, programs by the Government of the City of Buenos Aires in this area have developed along four lines,

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[lanacion.com.ar/1332475-polemica-por-el-gasto-en-vivienda-del-gobierno-porteno](http://lanacion.com.ar/1332475-polemica-por-el-gasto-en-vivienda-del-gobierno-porteno) (last accessed on June 13 2012).

#### 4. Housing policies by the Federal and the City of Buenos Aires Governments

namely, housing policies for the homeless (4.2.a), policies aimed at people living in precarious settlements (4.2.b), mortgages for low-income families (4.2.c), and housing programs aimed at particular boroughs (4.2.d). The following sections address each one of them.

##### 4.2.a) Housing policies for the homeless

In 2006, the local government established the Program for the Assistance of Families Living in the Streets (*Programa Atención para Familias en Situación de Calle*).<sup>101)</sup> The program aims at assisting people living in the streets by granting them a subsidy and providing them with governmental guidance in the search for a permanent housing solution. As originally designed, beneficiaries of the program include individuals (or families) incapable of meeting their most basic needs and who were living in the streets or would be imminently living in the streets. To qualify as a beneficiary, each person must have been living in the City of Buenos Aires for at least one year. If the governmental assistance was requested by a family, the head of household would receive the subsidy, and would be in charge of complying with the duties imposed by the decree. If both parents were heads of household, the woman head of household would be designated as the beneficiary of the subsidy.

The maximum subsidy granted under this scheme is of AR\$2,700,<sup>102)</sup> which must be employed to meet housing expenditures. The Government also provided guidance in the search for a permanent solution to the housing problem. In order to define the amount of money to be paid to each beneficiary, several factors are taken into consideration, such as the

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101) Passed under Decree 690/06.

102) This figure is currently close to u\$s 500. See Annex for currency and equivalents.



structure of the family, the employment situation, and whether some family members are disabled people or pregnant women. The subsidy is provided in six equal and consecutive installments and at the end of this period local authorities have discretionary authority to provide the beneficiaries with an additional subsidy of up to AR\$1,800. This additional subsidy is paid in four equal and consecutive payments of AR\$450. The decision to grant this additional subsidy depends on an assessment of the economic and housing situation of the families. Beneficiaries need not only satisfy certain basic conditions, but they must also fulfill certain obligations while receiving the subsidy. These obligations include meeting certain conditions related to basic health and education issues, eg the children had to attend school and pregnant women and babies had to undergo periodical medical monitoring, among other duties.

In August 2008 this program was amended on the basis of two considerations.<sup>103)</sup> On the one hand, the expenditures of the local government under this program amounted to 42.5 percent of the funds assigned to all the social emergency programs by the local budget. On the other hand, in the light of the economic situation of the country the AR\$ 2,700 subsidy was considered insufficient to finance the housing expenditures of the beneficiaries. Accordingly, local authorities decided to reduce the number of beneficiaries of the program and to increase the amount of money to be paid to them. Thus, Decree 960/08 excluded from this program people who would be *imminently* living in the streets. A family (or individual) could request the subsidy if and only if its members are already living in the streets. This situation must be verifiable. Further-

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103) Decree 690/06 was amended by Decree 960/08.

#### 4. Housing policies by the Federal and the City of Buenos Aires Governments

more, the government increased the minimum required residency in Buenos Aires from one to two years. The amount of the subsidy was increased to AR\$ 4,200, with the possible discretionary conferral of an additional subsidy of up to AR\$2,800 for another four months in order to address particular requests or needs of the beneficiaries.

##### 4.2.b) Housing policies for people living in precarious settlements

In 1998 the local legislature passed Act 148 establishing that the local government had to give priority to the fulfillment of the social and housing needs of the population living in precarious settlements.<sup>104)</sup> The law also created a Commission integrated by representatives of the local executive and legislative power and of the population living in the settlements. The Commission was in charge of planning and controlling the execution of housing programs designed to improve the living conditions of the population living in precarious settlements, extremely deteriorated houses, or illegally occupied houses or terrains. Among other duties the commission had to develop a five-year integral plan with the objective to transform and urbanize the precarious settlement located in the city.<sup>105)</sup> This plan had to contemplate an integral assessment of the living conditions of the population living in the settlements. In addition, it had to envisage the regularization of the legal situation of the families whose houses were situated in illegally occupied terrains; the integral urbanization of the settlements, through the construction of internal roads

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104) In Spanish, "*Ley 148 de Atención prioritaria a la problemática social y habitacional en las villas y núcleos habitacionales transitorios.*"

105) Article 3, Act 148.

and infrastructure works; and the development of social policies in order to improve the living condition of the population.

However, due to coordination problems between its members by 2001 the commission had still not met most of its aims. In light of this situation, then Major Anibal Ibarra created the Program for the Eradication and Transformation of Precarious Settlements (*Programa de Radicación, Integración y Transformación de Villas y Núcleos Habitacionales Transitorios*).<sup>106)</sup> In addition to this program, the local decree also established a special agency which would be in charge of making sure that the objectives of Act 148 were met. The agency had, among other things, the duty to assist the Commission initially created by Act 148, and inform about the progress made in the execution of the program.

According to the information publicly available,<sup>107)</sup> the local government was planning to build under this program 25,000 houses and infrastructure works in 16 precarious settlements in Buenos Aires. It also expected to build 7,000 in the subsequent four years. The funding for these developments would be provided by the Government of the City and the Federal Housing Program. As far as the infrastructure works were concerned, they included the development of water, electricity and gas connections and the construction of internal roads, schools, sport centers and hospitals. To direct these efforts, local authorities would carry out an annual census in order to obtain updated information about the living conditions of the population of the settlements.

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106) Passed through Decree 206/01.

107) Asociación Civil por la Igualdad, Centro por el Derecho a la Vivienda contra Desalojos -Programa de las Américas la Justicia, INFORME: “EL IVC FRENTE A LAS VILLAS DE LA CIUDAD: POCO DERECHO Y MUCHA DISCRECIONALIDAD”, November 1 2011. Available at [http://acij.org.ar/wp-content/uploads/El\\_IVC\\_frente\\_a\\_las\\_villas\\_de\\_la\\_Ciudad.pdf](http://acij.org.ar/wp-content/uploads/El_IVC_frente_a_las_villas_de_la_Ciudad.pdf) (last accessed on June 12 2012).

4. Housing policies by the Federal and the City of Buenos Aires Governments

Details of the houses and works of infrastructure being executed under this program are contained in the following table: <sup>108)</sup>

NEIGHBOURHOOD	AMOUNT OF MONEY TO BE SPENT (IN ARGENTINIAN PESOS)	NUMBER OF HOUSES TO BE BUILT
N.H.T ZAVALETA	10.748.890	116
	11.792.222	160
VILLA 20	598.430	CENTER FOR THE INTEGRAL ATTENTION OF FAMILIES
	3.220.599	28
VILLA 21-24	10.748.890	10
VILLA 6	1.533.886	SOCIO-CULTURAL CENTER
	2.362.922	32
VILLA 1-11-14	1.736.725	24
	1.817.491	24
	7.738.100	87
	14.424.352	160
	598.430	HEALTH CENTER
VILLA 17	10.960.900	160
	9.119.526	86
VILLA 3	8.053.000	120

<sup>108)</sup> The table reflects information available at [http://www.buenosaires.gov.ar/areas/planeamiento\\_obras/vivienda/obras/index.php](http://www.buenosaires.gov.ar/areas/planeamiento_obras/vivienda/obras/index.php) (last accessed on 12 June 2012).

4.2 Housing policies of the Government of the City of Buenos Aires

NEIGHBOURHOOD	AMOUNT OF MONEY TO BE SPENT (IN ARGENTINIAN PESOS)	NUMBER OF HOUSES TO BE BUILT
	4.393.189	55
	4.245.844	55
	788.000	18
	4.211.079	55
	4.216.117	55
VILLA LA DULCE	9.907.507	128
TOTAL	123.216.099	1256

However, according to reports by NGOs and certain public entities, in November 2011 the program was being executed only in some of the settlements initially envisaged (Villa 1.11.14, 3, 17, 19, 20, 21-24, NHT Zavalia, Barrio Rivadavia I). Moreover, NGOs report that the budget assigned to the program has been under-executed, limiting the potentially beneficial effects. For instance, in 2005, local authorities spent AR\$ 85,970,673 of a total amount of AR\$144.828.386 assigned to the program (59% of the total)<sup>109</sup>).

In addition to the Program for the Eradication and Transformation of Precarious Settlements, in February, 2000, the local legislature passed in February 2000 Act 341 establishing a mortgage loans program aimed at improving the living conditions of low-income families who experienced an extremely precarious housing situation. Hence the local government assumed the obligation to partially or completely finance the purchase,

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109) See n 107 above.

#### 4. Housing policies by the Federal and the City of Buenos Aires Governments

construction or improvement of low-cost houses for these families. Under this program, the local government must grant the beneficiaries a mortgage loan of up to AR\$42,000.<sup>110)</sup> If, due to changes in the economic situation of the country, this amount became insufficient to achieve the objectives of the program, local authorities were authorized to modify it. The beneficiaries are expected to repay the loan by paying up to 20% of the monthly incomes of the family.

These loans can be requested by individuals or cooperatives and non-governmental organizations created by the families. In order to qualify as beneficiaries, individuals must not own a house and members of the family must not have been beneficiaries of any other housing program financed with public funds. Among all the potential beneficiaries, according to Act 341 mentioned earlier, the local government must give priority to families whose homes were destroyed by a natural disaster or a blast, or people who have been evicted from their homes and families whose members suffer domestic violence.

As per the information available, most of the building works financed under Act 341 are being executed by cooperatives and non-governmental organizations. As a result, the local government created the Program for self-organized housing (*Programa de Autogestión para la Vivienda*). Under this program, the HICBA provides advice to the cooperatives and monitors the works executed by them.<sup>111)</sup>

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110) At the time this figure represented u\$s 42000 as the Argentine peso was pegged to the US dollar. As of the writing of this paper, the same figure would represent less than u\$s 10000 which would be insufficient to cover purchasing costs of a house or an apartment in the City of Buenos Aires.

111) On the number of cooperatives working under this scheme and a succinct diagnosis of the evolution of projects see Table 4 in the Annex.

#### 4.2.c) Housing programs addressed at particular boroughs

This final section, concerned with the policies of the Government of the City of Buenos Aires, succinctly examines five different programs addressing specific areas, namely the former Highway 3 (*Autopista 3*), Housing complex built by the Municipal Housing Commission, the housing complex in Colonia Sola, and the programs directed to the borough of La Boca and the Matanza-Riachuelo basin, in the South of the City. These projects are have been developed to address specific crisis situations in different neighborhoods. They therefore seem to show an entire lack of a coherent approach or plan to housing issues in the City of Buenos Aires.

In December 1999 the local legislature passed Act 324 creating the Program for the Recovery of the ex-Highway Three (*Programa de Recuperación de la Traza de la ex Autopista 3*) covering an area in the Northern part of the City. Its main purpose is to improve the housing situation of low-income families living in houses owned by the Government of the City of Buenos Aires. These houses used to belong to private owners but were expropriated in the 1970s as they were to be demolished in order to build a highway, ie, Highway 3. This project was subsequently dismissed and the empty houses were abandoned. Before long they were occupied by families usually living in poverty. The plan envisages a complete renovation of the area, including the construction of squares, schools and health centers and the improvement of public transport access to the area.

#### 4. Housing policies by the Federal and the City of Buenos Aires Governments

This program was aimed at low-income families who do not own a house and have not been beneficiaries of any other local housing program financed with public funds. Families interested in becoming beneficiaries must express their intention to take part in the program. Otherwise, the local government has the duty to evict them from the buildings where they live. Furthermore, in order to be chosen as beneficiaries of the program, the families must have been living in the area before August 6 1999, and their monthly income could not be greater than AR\$1,200. The program aims at providing them with a definitive solution to their housing problem and at improving their socioeconomic situation. However, the program gives priority to families who opt for a housing solution out of the area and to the families who are living in extremely precarious houses.

The program provides four “alternative solutions” to the housing problems of the families who adhere to it. The first option consists in providing families with access to a mortgage loan aimed at financing the purchasing, recovering or building costs of houses located out of the area.<sup>112)</sup> The second alternative allows families to buy the houses where they live to the Government of the City of Buenos Aires. In order to finance the purchase of the houses, the government will grant the families a mortgage loan similar to the loan described in the first alternative. The third possibility is to allow the families to buy terrains in order to build their houses. Again the City would provide access to mortgages and the necessary construction would be executed by the

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112) The effective annual interest rate must not be higher than 4% and the beneficiaries must reimburse the money in 20 years, as a maximum.



beneficiaries, through cooperatives or non-governmental organizations assisted by the local government, or by the HICBA. Finally, there's a fourth option but only geared towards families living in abject poverty. Under this alternative, the local government will grant them a subsidy in order to finance collective programs designed to build new houses or recover old ones. Moreover, beneficiaries who are in this situation and are above 60 years of age can request the government to grant them a lifetime loan for use over their houses.

The second program relevant for this section is the Program for the Rehabilitation and Maintenance of the Housing Complexes and Neighborhoods built by the Municipal Housing Commission (*Programa para la Rehabilitación y el Mantenimiento de los Complejos Habitacionales y Barrios construídos por la Comisión Municipal de Vivienda*).<sup>113)</sup> It was developed by the HICBA to refurbish 22,161 houses located in twenty boroughs of the city.<sup>114)</sup> The program also includes infrastructure works, repairing sewers, providing access to gas and drinking water, and recovering the structures and facades of the buildings located in these neighborhoods.

Three different local acts, responding to three very specific situations, regulate this program. The Municipal Housing Commission had built the

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113) The Municipal Housing Commission preceded the Housing Institute of the City of Buenos Aires as the authority in charge of developing and executing the housing policies of the local government. Nowadays, the program is called Emergency Zero in Urban Housing Complexes Program (Programa Emergencia Cero en Complejos Urbanos). Source: Plan de Gestión del Instituto de la Vivienda de la Ciudad de Buenos Aires. Power Point file provided to the authors by the HICBA.

114) These include Presidente Rivadavia I, Presidente Rivadavia II, Villa Soldati, Piedrabuena, Presidente Illia, Mariano Castex, CardenalSamoré, Consorcio XVI, J.J. Castro, Nágera, Savio III and Semana de Mayo, among others. On a more complete list, see the relevant table below.

#### 4. Housing policies by the Federal and the City of Buenos Aires Governments

following housing complexes and neighborhoods: Lafuente, Cardenal Samoré, Donizetti, Rivadavia II, Illia, Consorcio 16, Savio III and Copello. However, by 1999, the parties had not complied with the necessary steps in order to transfer the ownership rights over the complexes to the beneficiaries of the housing projects. Thus in 1999 the local Legislature passed Act 177 to seek to remedy the situation. Under the law the local Executive would create a commission in charge of transferring the ownership rights to the beneficiaries. Under Act 623 (2001), by contrast, the local authorities recognized a housing emergency in “Presidente Illia” Housing Complex. This act provided that within one year the local Executive would provide with a solution to this emergency. The one-year period was prolonged three times (in 2002, 2004 and 2005) for one year. The last piece of legislation was Act 625 (2001) which declared a housing emergency in the “Villa Soldati” Housing Complex. Again, the law mandated that the local Executive had the obligation to develop the necessary measures in order to solve the building failures of the units of the complex and to improve its infrastructure, among other actions. The one-year period was prolonged three times (in 2002, 2004 and 2005) for one year. The following table<sup>115)</sup> briefly summarizes the results of the program, in terms of buildings refurbished and individuals benefited:

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115) Available at [http://www.buenosaires.gov.ar/areas/vivienda/programa\\_puesta\\_en\\_valor.php?menu\\_id=29439](http://www.buenosaires.gov.ar/areas/vivienda/programa_puesta_en_valor.php?menu_id=29439) (last accessed on 12 June 2012). References: “Conjunto” is the name of the housing complex or settlement; “Viviendas” refers to the number of houses being built; and “Población beneficiaria” refers to the number of beneficiaries.

#### 4.2 Housing policies of the Government of the City of Buenos Aires

Conjunto	Viviendas	Población beneficiaria
<b>Cardenal Urbano Samoré</b>	1218	6.000
<b>Consortio XVI</b>	240	1.200
<b>Conjunto Urbano Lafuente</b>	411	2.055
<b>CU Savio III</b>	408	2.400
<b>CU Copello</b>	3.263	13.000
<b>CU Soldati</b>	408	2.400
<b>CU Comte. Luis Piedrabuena</b>	2.100	10.500
<b>CH Dr. Mariano Castex</b>	891	4.455
<b>CU Don Orión</b>	4.350	21.800
<b>CU Irala</b>	466	233
<b>CU Donizetti</b>	408	2.040
<b>Barrio Rivadavia I</b>	1.051	6.538
<b>Barrio Rivadavia II</b>	456	2.736
<b>Barrio Pte. Illia</b>	600	3.055
<b>Barrio Dr. J.J. Nágera</b>	1.032	7.812
<b>Barrio J. J. Castro</b>	400	2.000
<b>Barrio Justo Suárez</b>	126	630
<b>Barrio Ramón Carrillo</b>	466	2.330

In August 2000, the local legislature created the Program for the Rehabilitation of the Colonia Sola Housing Complex (*Programa de Rehabilitación del conjunto habitacional Colonia Sola*).<sup>116)</sup> The Colonia Sola Housing Complex is situated in Barracas neighborhood, in the Southern area of the City. It comprises 71 housing units and is inhabited by low-income families. The complex was bought in April 1999 to a Federal Government department by a non-governmental organization created by the families living in the complex. However, by August 2000 the parties had not complied with the necessary steps in order to transfer the ownership rights over the complex to the buyers. Moreover, the complex was extremely deteriorated, a situation that created a risk to the lives of its inhabitants and deteriorated their already precarious living conditions. Thus, the program aimed at regularizing the legal situation of the

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116) Established through Act 459 (2000).

#### 4. Housing policies by the Federal and the City of Buenos Aires Governments

complex and completely restoring its housing units. In order to achieve these objectives, the local Executive Power would grant subsidies and mortgage loans to its inhabitants. This program also included the creation of a Commission in charge of assessing and controlling the execution of the program.

The Program for the Rehabilitation of the borough of La Boca (*Programa de Rehabilitación del Hábitat del Barrio de La Boca*) was created to improve the housing situation of 324 families living in 26 “conventillos”<sup>117)</sup> and 5 “hogares de tránsito”<sup>118)</sup> owned by the Government of the City of Buenos Aires and located in “La Boca” neighborhood.<sup>119)</sup> Under the program, the HICBA seeks to improve and recover the old buildings where the “conventillos” and the “hogares de tránsito” are located. Families living in the “conventillos” receive an ownership right over the housing unit where they live. They must, however, pay for their house; to this end they are offered special mortgages by the HICBA.

Finally, the government of the City of Buenos Aires has established the Housing plan to improve the housing situation of families living in the Matanza-Riachuelo basin. In July 2004, a group of residents of the Matanza-Riachuelo basin filed an action of amparo<sup>120)</sup> before the Supreme

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117) A “conventillo” is a large house with several rooms or housing units.

118) A “hogar de tránsito” is a temporary house provided by the government to families who are living in the streets or in extremely precarious houses.

119) The Program is ruled by Resolution 1142/SS/00 of the Municipal Housing Commission.

120) The action of amparo is regulated by article 43 of the National Constitution: “Any person shall file a prompt and summary proceeding regarding constitutional guarantees, provided there is no other legal remedy, against any act or omission of the public authorities or individuals which currently or imminently may damage, limit, modify or threaten rights and guarantees recognized by this Constitution, treaties or laws, with open arbitrariness or illegality. In such case, the judge may declare that the act or omission is based on an unconstitutional rule.”

Court of Argentina against the national government, the Province of Buenos Aires, the City of Buenos Aires and 44 companies located in the area. They claimed a compensation for damages derived from the pollution of the basin and the end of polluting activities in the area. In July 2008, the Court ordered the national government, the Province of Buenos Aires and the City of Buenos Aires to take measures to improve the living conditions of the population located near the basin, remedy the environmental damage and prevent future damage.<sup>121)</sup> In order to comply with these obligations, in August 2006, the local Legislature passed Act 2057.

The law declares that the inhabitants of the Matanza-Riachuelo basin are experiencing a sanitary and environmental emergency. In the light of this emergency, the local executive would have to carry out a census in order to determine the environmental conditions and the socioeconomic situation in the area.<sup>122)</sup> On the basis of this census, the government would be required to relocate those families who are living in precarious settlements which are being negatively affected by the pollution in the area. The following table<sup>123)</sup> describes the housing projects being executed by the HICBA in order to relocate those families who are living in the most precarious settlements of the area:

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121) Information available at International Network for Economic, Social and Cultural Rights [http://www.escr-net.org/caselaw/caselaw\\_show.htm?doc\\_id=1469150](http://www.escr-net.org/caselaw/caselaw_show.htm?doc_id=1469150) (last accessed on June 12 2012). See the Argentine Supreme Court decisión in “Mendoza, Beatriz Silvia y otros c/Estado Nacional y otros s/daños y perjuicios (daños derivados de la contaminación ambiental del Río Matanza Riachuelo), ruling of June 20, 2006, available at <http://wp.cedha.net/wp-content/uploads/2011/07/2007-07-20-Caso-Mendoza-Riachuelo.pdf> (last accessed on June 20, 2012)

122) Act 2057, Article 2.

123) Plan de Gestión del Instituto de la Vivienda de la Ciudad de Buenos Aires. Power Point file facilitated by the HICBA (on file with author).

#### 4. Housing policies by the Federal and the City of Buenos Aires Governments

PROJECT	NUMBER OF FAMILIES WHO WILL BE RELOCATED	SETTLEMENT WHERE THE BENEFICIARIES ARE LIVING
Av. Castaños y Lafuente	169	El Pueblito Magaldi
Av. Lacarra y Cruz	29	Luján
Gral. Paz y Castaños	280	Magaldi Villa 21-24
Piletones	25	Magaldi
San Antonio 721	64	Villa 26
Luzuriaga 837	118	Villa 26
Lacarra 2049	68	Villa 26 Villa 21-24
Iguazú 1835	320	Villa 21-24
Orma entre Magaldi y Luna	160	Villa 21-24
Valparaíso 3570	48	Villa 21-24
Veracruz 3459	16	Villa 21-24
Hubac y Echeandia	29	Villa 21-24
La Fuente 2617	21	Villa 21-24
Parque Roca	485	Villa 21-24
Total	1832	

#### 4.3 The right to housing in light of the recent jurisprudence of the national courts

It should be quite clear by now that there is some degree of inconsistency between the constitutional mandates and the factual situation. It

is quite astonishing then that this inconsistency has not been reflected in judicial opinions on the matter. This situation is reflected on the 2011 Special Report of the United Nations on adequate housing, where Raquel Rolnik, the Special Rapporteur, regretted the limited use of international standards on the resolution of conflicts relating to the right to housing.<sup>124)</sup> Several explanations could be offered for this paradoxical situation, chief among them the relative litigation abilities of local or national governments vis-à-vis a person deprived of basic human rights, such as the right to housing. Whatever the correct reason behind the lack of precedents, this situation seems to have been remediated just as we write this paper.

On April 24 2012, the National Supreme Court of Justice of Argentina reached a final decision in the “*Q. C., S. Y. c/ Gobierno de la Ciudad de Buenos Aires s/ amparo*”<sup>125)</sup> case. In its decision the Court analyzed for the first time the scope of the right to housing and described the obligations of the federal and local governments concerning this right. Mrs. Sonia Yolanda Quisberth Castro (“Q. C. S. Y”) was born in Bolivia and migrated to the City of Buenos Aires in 2000 looking for better job opportunities. By the late 2000s, she and her severely disabled son were suffering an extremely precarious socioeconomic situation. She requested the local government to include them in one of the governmental housing programs designed to assist people living in a situation of social emergency. Under Decree 690/06, the Government granted them a

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124) See “Informe de la Relatora Especial sobre Vivienda Adecuada como Elemento Integrante del Derecho a un Nivel de Vida Adecuado, y sobre el Derecho a la no Discriminación en este Contexto, Raquel Rolnik”, available at <http://www.ohchr.org/P/NewsEvents/Pages/DisplayNews.aspx?NewsID=10955&LangID=S>

125) National Supreme Court of Justice, *Q. C., S. Y. c/ Gobierno de la Ciudad de Buenos Aires s/ amparo*, Q. 64. XLVI. April 24, 2012.



#### 4. Housing policies by the Federal and the City of Buenos Aires Governments

AR\$2,700 subsidy during 10 months. This subsidy allowed the Plaintiff to pay for a hotel room. After the ten-month-period, she further requested an additional subsidy, but the Government rejected the request. Consequently, Mrs. Quisberth Castro and his son were evicted from the hotel. From then on, they lived in the streets.

In 2010 Mrs. Castro filed a remedy of amparo against the Government of the City of Buenos Aires. The Plaintiff alleged that the local government was infringing her and her son's rights to health, dignity and housing by excluding them from governmental housing programs. She requested the Judiciary to order the Respondent to provide them a definitive housing solution. She also asked the judiciary to issue a provisional measure ordering the local government to immediately include them in one of the governmental housing programs.

The judiciary granted the provisional measure which obliged the local government to pay the Plaintiff an AR\$1,700 subsidy in order to finance the rental expenses of a hotel room. Furthermore, the district judge upheld the action on the merits. This decision was later confirmed by the Appeals Chamber. In its ruling, the Chamber ordered the local government to grant the Plaintiff a subsidy in order to fully finance the expenses of an adequate accommodation for her and her son. On appeal, the Superior Tribunal of the City of Buenos Aires rejected the action. In order to justify its ruling, it referred to its decision in "*Alba Quintana, Pablo c/ GCBA y otros s/ amparo (Artículo 14 CCABA) s/ recurso de inconstitucionalidad concedido.*"<sup>126)</sup> The Superior Tribunal argued that local authorities had considerable discretion to select the beneficiaries of

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126) Superior Tribunal of Justice of the City of Buenos Aires, Quisberth Castro, Sonia Yolanda c/ GCBA s/ amparo (art. 14 CCABA) s/ recurso de inconstitucionalidad concedido", October 4, 2010.



#### 4.3 The right to housing in light of the recent jurisprudence of the national courts

the program, and that there were no clear provisions establishing a priority order among potential beneficiaries or guaranteeing equality among all the people equally affected by the lack of a decent home. Only if local authorities granted subsidies without complying with the priority order established in article 31 of the local Constitution, they infringed the right to housing of those people who do not receive the subsidy.

In addition, the Tribunal recognized that the subsidies established by the decrees were temporary and had been designed to partially finance the housing expenses of the beneficiaries. According to the Tribunal, the partial and temporary character of the subsidies does not imply that they are contrary to the right to housing. This is so because the City of Buenos Aires is not obliged to provide a house to any inhabitant who does not own one. At the very least, it must ensure the satisfaction of minimum essential levels of the right to housing and it complies with this obligation if it provides low income people with a “basic shelter and housing.” Accordingly, the Tribunal held that the decision of the local government to deny Mrs. Castro and her son an additional subsidy to finance their housing expenses is not contrary to their right to housing.<sup>127)</sup>

Put briefly, the gist of that decision was that the local government, through the local legislature, must only progressively adopt measures in order to guarantee the right to housing. Under this interpretation, the right to housing does not encompass an immediate and unlimited right to receive a house from the government. If an individual lacks a house and meets all the requirements established in local regulations, he can request the government to provide him a subsidy. The subsidies granted

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127) The decision of the Superior Tribunal of Justice of the City was severely criticized by human right organizations because the state-own “paradores” or hotels do not meet these conditions.

#### 4. Housing policies by the Federal and the City of Buenos Aires Governments

by the local government are a palliative measure. The judiciary is only empowered to grant subsidies to control whether they are distributed according to the priority order established in article 31 of the local Constitution.

After a new appeal, the National Supreme Court reached on April 2012 a final decision in the *Q. C., S. Y. c/ Gobierno de la Ciudad de Buenos Aires s/amparo*.<sup>128)</sup> The Court began by finding that both the federal and the local Constitutions recognized a right to a decent house, and that federal and local authorities have a duty to protect especially vulnerable groups, such as disabled people or children, from precarious living conditions. According to the Court, federal and local governments, through their legislative and executive powers, are the authorities responsible for safeguarding the right to housing. As far as the Judiciary is concerned, it is only empowered to assess the *reasonableness* of these laws and regulations.<sup>129)</sup>

The court also argued that Federal and local authorities infringe the “reasonableness rule” if their housing policies and regulations (or their omission to develop them) impose a “serious threat to the very existence of the individual” affected by them. As a result, federal and local authorities have the obligation to ensure the satisfaction of, at the very least, the “minimum essential levels” of the right to housing.<sup>130)</sup>

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128) n 125 above.

129) In order to explain what this “reasonableness rule” means, the Court expressly referred to John Rawls. It considered that reasonableness is related to the “democratic equality” principle and the “difference principle.” Under both principles, “each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others but it is possible to introduce exceptional inequalities if they are aimed at maximizing the benefits to the least advantaged members of society” (in n 125 above).

130) Contrary to the decision of the Superior Tribunal of the City, the National Supreme

#### 4.3 The right to housing in light of the recent jurisprudence of the national courts

As far as the right to housing of the Applicants is concerned, in a public audience held before the National Supreme Court, City authorities declared that the local government has not developed a special program in order to address the housing situation of people living in the streets, like Mrs. Castro. The government assists this group by granting them a temporary subsidy or by providing them accommodation in a state-owned “parador.”<sup>131)</sup>

According to the Court, in the light of the special circumstances of Mrs. Castro and her son, neither of these options satisfies their right to housing. The reason for this is that, on the one hand, building conditions of the “paradores” are not suitable for a child who suffers a severe disability, like the Plaintiff’s son. And on the other hand, as far as the subsidies are concerned, they do not provide the Plaintiff with a definitive solution to her family’s housing problems. On the contrary, by granting them a subsidy, the Respondent has only provided Mrs. Castro and her son with a temporary and partial solution to their difficulties.

According to the Court, the governmental investment in the provision of a housing solution to the Plaintiff and her son was not “adequate”: it was not effective in improving or solving their housing problems<sup>132)</sup>. As

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Court did not analyzed the scope of this obligation ensure the satisfaction of, at the very least, the “minimum essential levels” of the right to housing.

131) Used in this context “parador” refers to something akin a hostel.

132) According to the Court, in order to assess whether a state is complying with its obligation to take steps “to the maximum of its available resources”, the Judiciary must not analyze the amount of money spent by the state. On the contrary, it must analyze how the state spends that amount. The governmental investment must be “adequate”: it must effective in improving or solving the housing situation of the population.

In order to explain this point, the Court referred to the “Statement by the Committee: An evaluation of the obligation to take steps to the “Maximum of available resources” under an optional protocol to the Covenant of the CESCR: “[t]he “availability of

#### 4. Housing policies by the Federal and the City of Buenos Aires Governments

we have explained, in addition to filing an action of amparo against the local government, Mrs. Quisberth Castro requested the judiciary to issue a provisional measure ordering their inclusion in one of the governmental housing programs. The judiciary issued the provisional measure and the local government was obliged to pay the Plaintiff a AR\$1,700 subsidy in order to finance the rental expenses of a precarious hotel room. The room was located on the second floor of an old building and did not have windows. Besides, it did not have a private bathroom and Mrs. Quisberth Castro had to sleep in the same bed with her son. The health condition of the Plaintiff's son got worse presumably as a result of the precarious living conditions in the hotel. Moreover, the rental expenses of the room were higher than the rental expenses of a flat in the same neighborhood. In other words, the local government was financing a precarious room which was more expensive than other housing solutions more suitable to the particular needs of the Plaintiff and her son.

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resources”, although an important qualifier to the obligation to take steps, does not alter the immediacy of the obligation, nor can resource constraints alone justify inaction. Where the available resources are demonstrably inadequate, the obligation remains for a State party to ensure the widest possible enjoyment of economic, social and cultural rights under the prevailing circumstances. The Committee has already emphasized that, even in times of severe resource constraints, States parties must protect the most disadvantaged and marginalized members or groups of society by adopting relatively low-cost targeted programmes” and “Should a State party use “resource constraints” as an explanation for any retrogressive steps taken, the Committee would consider such information on a country by-country basis in the light of objective criteria such as: (a) the country's level of development; (b) the severity of the alleged breach, in particular whether the situation concerned the enjoyment of the minimum core content of the Covenant; (c) the country's current economic situation, in particular whether the country was undergoing a period of economic recession.” United Nations Committee on Economic, Social and Cultural Rights. Statement by the Committee: An evaluation of the obligation to take steps to the "Maximum of available resources" under an optional protocol to the Covenant. Thirty-eighth session; May 2007. E/C.12/2007/1. Available at <http://www2.ohchr.org/english/bodies/cescr/docs/statements/Obligationtotakesteps-2007.pdf> (last accessed on 12 June 2012).

#### 4.3 The right to housing in light of the recent jurisprudence of the national courts

In the light of these considerations, the Court ordered the local government to provide Mrs. Quisberth Castro and his son with governmental guidance in the search for a permanent solution to their housing problems. In the meanwhile, the local government must provide them suitable accommodation, taking into account the special needs of the Plaintiff's son.

## 5. Overall assessment and conclusions

The Argentine housing situation clearly shows structural deficits. Every problem generated by the housing deficit has been compounded during each economic and financial crisis. The government's response since the last crisis has replicated, in one way or another, the virtues and vices of the past. The various housing programs implemented to improve the living conditions of the population of least resources were designed without the development of a comprehensive white paper on the matter. The dire economic situations that Argentina has repeatedly gone through over the last 40 years have played a major role in limiting complete housing situation assessments by the government. In other words, Argentina still lacks both a general assessment and a correlative general regulation recognizing the right to housing of the population, according to the international criteria established by the ICESCR. This absence is especially important given the multiple and heterogeneous housing needs of the country.<sup>133)</sup>

As a result, each program has been ruled by its own set of norms and regulations. At the same time, each program has followed either the federal government's own assessment of the necessities of the population at a particular time, or the special requests made by provincial governors. In either case, the justification of each program's objectives and implementations has been highly opaque. In addition, the general efficiency of this kind of approach appears patently questionable.

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133) See "Informe de la Relatora Especial sobre Vivienda Adecuada como Elemento Integrante del Derecho a un Nivel de Vida Adecuado, y sobre el Derecho a la no Discriminación en este Contexto, Raquel Rolnik", available at <http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=10955&LangID=S>

## 5. Overall assessment and conclusions

It is clear then that some sort of general regulation should be developed in order to define a priority order in governmental housing investment in favor of the population of least resources, targeting specially those living in the most disadvantaged provinces. Besides addressing right to housing pressing needs, such a regulation could help to ameliorate migration patterns which tend to compound housing problems. In addition, by passing this kind of regulation, Congress can prevent the federal government from distributing public funds according to its political preferences or to the “loyalty” expressed by local governments.

In terms of general framework, the situation in the City of Buenos Aires is slightly better. In the City of Buenos Aires there is a general regulation recognizing the right to housing of the population and establishing a priority order in governmental housing investment in favor of the population of least resources.<sup>134)</sup> However, we can observe a similar pattern of deficiencies. The local government has not developed a comprehensive set of housing policies aimed at improving the housing situation of the population of least resources. Specifically, almost all housing plans of the local government were developed in order to address housing emergencies in particular neighborhoods. In this context, the local government should give priority to carry out a complete and exhaustive assessment of the housing situation of the population of the City of Buenos Aires and to design comprehensive strategies in order to address the housing needs of each segment of the population.

Once these assessments are made and policies are developed on those bases, both governments should publish complete and updated information about the housing policies developed. Such publication would be of

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134) See Article 31 of the local constitution

utmost importance not only to prevent arbitrary distribution of state funds, but also to limit negative side-effects of the existing supply side housing policies, i.e. patronage and political maneuvering.<sup>135)</sup>

Now, within this complex scenario, there's certainly nascent hope for better times to come. The groundbreaking National Supreme Court decision in the Quisberth Castro case strongly suggests that governments' approach to the right to housing will be changing for the better. In the *Quisberth* case, the local government ought to provide Mrs. Quisberth Castro suitable accommodation. Nonetheless, 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. Thus, formally speaking, the ruling is not binding for the question of whether other potential plaintiffs are automatically entitled to suitable accommodation. In any event, it is clear that the Quisberth case has opened the door for further litigation regarding housing rights in the City of Buenos Aires, as well as in other local jurisdictions. Furthermore, in fact, the recognition of the operational nature of the constitutional mandates concerning the right to housing will force both federal and local governments to reconsider their housing policies in order to give both immediate and long-term solutions to the housing problems. Otherwise, both federal and local governments would be playing catch up to satisfy the right to housing demands, and they would be in risk of losing control of their spending.

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135) See Marcela Cristini, Ramiro Moya & Guillermo Bermudez "Argentina's Housing Market in the 2000s", IDB Working Paper Series No. IDB-WP-262, available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1946142](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1946142) (last visited 06/22/2012).



## Annex

### Some basic data

Currency Unit: The Peso (AR\$)

AR\$ 1.0 = USD1 1990-Jan 2002

AR\$ 3.1 = USD1 2002

AR\$4.43 = USD1 1/6/2012<sup>136)</sup>

**Fiscal year:** January 1 - December 31

### Inflation rate<sup>137)</sup>

Year	Inflation
2006	7,97
2007	21,52
2008	20,60
2009	18,47
2010	27,02
2011	23,27

136) Available at [http://www.bna.com.ar/bp/bp\\_cotizaciones.asp?op=m](http://www.bna.com.ar/bp/bp_cotizaciones.asp?op=m)

137) Dirección Provincial de Estadística y Censos de la Provincia de San Luis. INDICE DE PRECIOS AL CONSUMIDOR SAN LUIS, base 2003=100. Evolución del Índice de Precios al Consumidor, Nivel General. <http://www.estadistica.sanluis.gov.ar/estadisticaWeb/Contenido/Pagina76/File/abril%202012/Nivel%20general.pdf>

Table 1138)

Provincia	Calidad material									
	Absoluto					%				
	I	II	III	IV	Total Hogares	I	II	III	IV	Total Hogares
<b>Total del país</b>	<b>7.493.755</b>	<b>2.697.945</b>	<b>1.465.274</b>	<b>514.701</b>	<b>12.171.675</b>	<b>61,6</b>	<b>22,2</b>	<b>12,0</b>	<b>4,2</b>	<b>100</b>
<b>REGIÓN METROPOLITANA</b>										
Ciudad Autónoma de Buenos Aires	989.748	128.103	29.131	3.152	1.150.134	86,1	11,1	2,5	0,3	100
24 partidos del Gran Buenos Aires	1.794.588	688.782	407.900	43.103	2.934.373	61,2	23,5	13,9	1,5	100
<b>REGIÓN PAMPEANA</b>										
Interior de la provincia de Buenos Aires	1.357.844	283.094	189.864	24.309	1.855.111	73,2	15,3	10,2	1,3	100
Santa Fe	619.449	250.250	133.528	20.550	1.023.777	60,5	24,4	13,0	2,0	100
Entre Ríos	249.208	64.047	51.131	10.735	375.121	66,4	17,1	13,6	2,9	100
Córdoba	532.526	439.809	45.852	13.656	1.031.843	51,6	42,6	4,4	1,3	100
La Pampa	83.258	15.843	7.923	650	107.674	77,3	14,7	7,4	0,6	100
<b>REGIÓN CUYO</b>										
Mendoza	277.782	149.677	23.481	43.901	494.841	56,1	30,2	4,7	8,9	100
San Juan	72.753	51.698	3.936	48.768	177.155	41,1	29,2	2,2	27,5	100
San Luis	81.218	34.752	6.712	4.240	126.922	64,0	27,4	5,3	3,3	100
<b>REGIÓN NORESTE</b>										
Corrientes	135.819	57.256	43.510	31.212	267.797	50,7	21,4	16,2	11,7	100
Chaco	119.775	62.548	76.481	29.618	288.422	41,5	21,7	26,5	10,3	100
Formosa	52.190	27.000	34.242	26.871	140.303	37,2	19,2	24,4	19,2	100
Misiones	160.098	55.596	50.540	36.719	302.953	52,8	18,4	16,7	12,1	100
<b>REGIÓN NOROESTE</b>										
Catamarca	45.257	28.555	6.723	15.466	96.001	47,1	29,7	7,0	16,1	100
La Rioja	43.424	33.556	3.529	10.588	91.097	47,7	36,8	3,9	11,6	100
Tucumán	172.632	53.332	123.788	18.786	368.538	46,8	14,5	33,6	5,1	100
Salta	98.778	70.766	88.212	42.038	299.794	32,9	23,6	29,4	14,0	100
Jujuy	48.601	50.762	53.306	21.961	174.630	27,8	29,1	30,5	12,6	100
Santiago del Estero	88.040	59.727	27.071	43.187	218.025	40,4	27,4	12,4	19,8	100
<b>REGIÓN PATAGÓNICA</b>										
Neuquén	121.751	25.979	13.015	9.312	170.057	71,6	15,3	7,7	5,5	100
Río Negro	134.446	27.420	26.668	10.655	199.189	67,5	13,8	13,4	5,3	100
Chubut	114.276	27.369	11.177	4.344	157.166	72,7	17,4	7,1	2,8	100
Santa Cruz	67.524	8.919	4.714	639	81.796	82,6	10,9	5,8	0,8	100
Tierra del Fuego	32.770	3.105	2.840	241	38.956	84,1	8,0	7,3	0,6	100

138) Ministerio de Planificación Federal, Inversión Pública y Servicios. “Evolución de la situación habitacional 2001-2010. Informe Preliminar.” Available at <http://www.vivienda.gov.ar/doceestadisticas.php>

Table 2139)

Región	Provincia	Total Programa	Sup. Mínima	Monto Max. Por Viv.	Monto Total a Financiar	Porcentaje Distrib. Viviendas
Patagonia Sur	Chubut	8.000	60	70.000	560.000.000	2,7%
	Santa Cruz	8.000	60	93.300	746.400.000	2,7%
	Tierra del Fuego	5.000	60	108.000	540.000.000	1,7%
	<b>Total Región</b>	<b>21.000</b>			<b>1.846.400.000</b>	<b>7,0%</b>
Patagonia Norte	La Pampa	3.600	60	55.000	198.000.000	1,2%
	Neuquén	5.000	60	70.000	350.000.000	1,7%
	Río Negro	5.000	60	70.000	350.000.000	1,7%
	<b>Total Región</b>	<b>13.600</b>			<b>898.000.000</b>	<b>4,5%</b>
Cuyo	La Rioja	8.000	55	52.500	420.000.000	2,7%
	Mendoza	11.000	55	52.500	577.500.000	3,7%
	San Juan	10.000	55	52.500	525.000.000	3,3%
	San Luis	5.000	55	50.000	250.000.000	1,7%
<b>Total Región</b>	<b>34.000</b>			<b>1.772.500.000</b>	<b>11,3%</b>	
NOA	Catamarca	8.000	55	52.500	420.000.000	2,7%
	Jujuy	8.000	55	52.500	420.000.000	2,7%
	Salta	12.000	55	52.500	630.000.000	4,0%
	Santiago del Estero	10.000	55	50.000	500.000.000	3,3%
	Tucumán	10.000	55	50.000	500.000.000	3,3%
<b>Total Región</b>	<b>48.000</b>			<b>2.470.000.000</b>	<b>16,0%</b>	
NEA	Chaco	10.000	55	50.000	500.000.000	3,3%
	Corrientes	10.000	55	50.000	500.000.000	3,3%
	Entre Ríos	9.900	55	50.000	495.000.000	3,3%
	Formosa	8.000	55	50.000	400.000.000	2,7%
	Misiones	10.000	55	50.000	500.000.000	3,3%
<b>Total Región</b>	<b>47.900</b>			<b>2.395.000.000</b>	<b>16,0%</b>	
CENTRO	Córdoba	18.000	55	50.000	900.000.000	5,3%
	Santa Fe	21.000	55	50.000	1.050.000.000	7,0%
	<b>Total Región</b>	<b>37.000</b>			<b>1.850.000.000</b>	<b>12,3%</b>
METROPOLITANA y BUENOS AIRES	Ciudad de Buenos Aires	6.000	55	66.600	399.600.000	2,0%
	Interior Bs. As	23.500	55	50.000	1.175.000.000	7,8%
	Partidos Gran Buenos Aires	69.000	55	66.600	4.595.400.000	23,0%
	<b>Total Región</b>	<b>98.500</b>			<b>6.170.000.000</b>	<b>32,8%</b>
<b>TOTAL PAIS</b>		<b>300.000</b>			<b>17.401.900.000</b>	<b>100,0%</b>

139) This table is part of Annex I to the 2004 Agreement. References:

Región: region; Provincia: Province; Número de viviendas: number of houses; Superficie Mínima: Minimum area of the houses; Costo por vivienda: cost per house; Monto a financiar: amount of money financed per province; Porcentaje: percentage. NOA: North Western Region; NEA: North Eastern Region; Patagonia Sur: Southern Region of Patagonia; Patagonia Norte: Northern Region of Patagonia; Centro: central region of the country; Metropolitana: Metropolitan Region of the country.

Table 3<sup>140)</sup>

Región	Jurisdicción	N° de Mejoram.	Monto por Mejoram.	Monto a financiar	Porcentaje
Patagonia Sur	Chubut	1.600	14.000	22.400.000	1,5%
	Santa Cruz	1.100	19.000	20.900.000	1,4%
	Tierra del Fuego	600	22.000	13.200.000	0,9%
	<b>Total Región</b>	<b>3.300</b>		<b>56.500.000</b>	<b>3,9%</b>
Patagonia Norte	La Pampa	850	11.000	9.350.000	0,6%
	Neuquén	1.750	14.000	24.500.000	1,7%
	Río Negro	2.220	14.000	31.080.000	2,1%
	<b>Total Región</b>	<b>4.820</b>		<b>64.930.000</b>	<b>4,5%</b>
Cuyo	La Rioja	1.520	10.000	15.200.000	1,0%
	Mendoza	5.360	10.000	53.600.000	3,7%
	San Juan	2.220	10.000	22.200.000	1,5%
	San Luis	1.510	10.000	15.100.000	1,0%
	<b>Total Región</b>	<b>10.610</b>		<b>106.100.000</b>	<b>7,3%</b>
NOA	Catamarca	1.750	10.000	17.500.000	1,2%
	Jujuy	3.500	10.000	35.000.000	2,4%
	Salta	5.710	10.000	57.100.000	3,9%
	Santiago del Estero	4.900	10.000	49.000.000	3,4%
	Tucumán	6.850	10.000	66.500.000	4,6%
	<b>Total Región</b>	<b>22.510</b>		<b>225.100.000</b>	<b>15,5%</b>
NEA	Chaco	6.760	10.000	67.600.000	4,6%
	Corrientes	4.660	10.000	46.600.000	3,2%
	Entre Ríos	4.430	10.000	44.300.000	3,0%
	Formosa	3.500	10.000	35.000.000	2,4%
	Misiones	6.650	10.000	66.500.000	4,6%
	<b>Total Región</b>	<b>26.000</b>		<b>260.000.000</b>	<b>17,9%</b>
CENTRO	Córdoba	9.910	10.000	99.100.000	6,8%
	Santa Fe	10.500	10.000	105.000.000	7,2%
	<b>Total Región</b>	<b>20.410</b>		<b>204.100.000</b>	<b>14,0%</b>
METROPOLITANA	Ciudad de Buenos Aires	4.550	13.500	61.425.000	4,2%
	Partido gran Buenos Aires	32.640	10.000	326.400.000	22,4%
	Interior Bs. As	15.160	10.000	151.600.000	10,4%
	<b>Total Región</b>	<b>52.350</b>		<b>539.425.000</b>	<b>37,0%</b>
<b>TOTAL PAIS</b>		<b>140.000</b>		<b>1.456.155.000</b>	<b>100,0%</b>

140) **Región:** region; **Jurisdicción:** Province; **Núm. demejoram.:** number of houses to be restored; **Montopormeior.:** amount of money financed per house; **Monto a financiar:** amount of money financed per province; **Porcentaje:** percentage. **NOA:** Northwestern Region; **NEA:** Northeastern Region; **Patagonia Sur:** Southern Region of Patagonia; **Patagonia Norte:** Northern Region of Patagonia; **Centro:** central region of the country; **Metropolitana:** Metropolitan Region of the country.

Source: "Convenio Marco Programa Federal de Mejoramiento de Viviendas", available at <http://www.vivienda.gov.ar/mejorvivir/normativa.html>



Table 4<sup>141)</sup>

DIAGNOSIS	NUMBER OF COOPERATIVES
They do not have a terrain where to develop the projects and have not initiated the building works	296
They have a terrain where to develop the projects but have not initiated the building works	43
They have a terrain where to develop the projects and have initiated the building works	50
They have finished the building works but they have not reimbursed the credits	15
They have finished the building works and they have reimbursed the credits	3
They have finished the building works, reimbursed the credits and transferred the property rights over the houses.	0
TOTAL	407

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141) Plan de Gestión del Instituto de la Vivienda de la Ciudad de Buenos Aires. Power Point file provided to the authors by the HICBA.