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**Совет по правам человека**

Девятнадцатая сессия

Пункт 3 повестки дня

**Поощрение и защита всех прав человека,  
гражданских, политических, экономических,  
социальных и культурных прав,  
включая право на развитие**

**Доклад Специального докладчика по вопросу  
о достаточном жилище как компоненте права  
на достаточный жизненный уровень, а также  
о праве на недискриминацию в этом контексте  
Ракель Рольник**

Добавление

**Миссия в Аргентину\****Резюме*

В настоящем докладе содержатся выводы и рекомендации Специального докладчика по вопросу о достаточном жилище как компоненте права на достаточный жизненный уровень, а также о праве на недискриминацию в этом контексте, которые были сформулированы Специальным докладчиком по итогам поездки в Аргентину 13–21 апреля 2011 года. Цель поездки заключалась в анализе положения дел с осуществлением в стране права на достаточное жилище.

Специальный докладчик с удовлетворением отмечает активизацию национальной жилищной политики после 2003 года и готовность правительства страны рассматривать жилищную сферу в качестве сферы ответственности государства, что предполагает выделение в этой связи крупных бюджетных ассигнований. Несмотря на эти позитивные изменения, осуществлению права на достаточное жилище в Аргентине мешает целый ряд факторов, в том числе: недостаточное регулирование рынка земли и недвижимости, недостаточная координация на федеральном уровне деятельности по разработке и осуществлению

\* Резюме настоящего доклада распространяется на всех официальных языках. Сам доклад, содержащийся в приложении к резюме, распространяется только на том языке, на котором он был представлен, и на английском языке.

жилищных стратегий, отсутствие в законодательстве норм, гарантирующих выселяемым лицам право на надлежащий судебный процесс, и отсутствие комплексных и в достаточной степени диверсифицированных стратегий, призванных обеспечить долгосрочное удовлетворение различных потребностей в жилищной сфере.

В этой связи Специальный докладчик выносит ряд рекомендаций, затрагивающих пять основных тем: неэффективность осуществляемых в настоящее время стратегий в сфере жилья и недвижимости, существование неформальных поселений, практика выселений и конкретные ситуации, касающиеся коренных народов и мигрантов.

Специальный докладчик считает, что с учетом подвижек в деле совершенствования законодательства и инвестиционной деятельности в жилищной сфере, а также наблюдавшегося в последние годы экономического роста Аргентина располагает достаточными возможностями для мобилизации средств и создания социотерриториальной основы для целей осуществления всеми жителями страны права на достаточное жилище.

## Annex

### **Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik, on her mission to Argentina (13–21 April 2011)**

#### Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction.....	1–5	4
II. The housing situation in Argentina: general context.....	6–11	4
III. Legal and institutional framework.....	12–25	6
A. International obligations and legislative framework.....	12–18	6
B. Institutional framework.....	19–25	8
IV. Positive developments.....	26–30	9
V. Challenges and obstacles to the realization of the right to adequate housing in Argentina.....	31–48	11
A. Shortcomings of public housing policies.....	31–37	11
B. Informal settlements and the occupation of land and housing.....	38–42	13
C. Evictions.....	43–48	14
VI. Specific situations.....	49–56	16
A. Indigenous peoples.....	49–52	16
B. Migrant populations.....	53–56	17
VII. Conclusions and recommendations.....	57–75	18
A. Legal framework.....	59	18
B. Public policies.....	60–66	18
C. Evictions.....	67–70	19
D. Indigenous peoples.....	71–73	20
E. Situation of the migrant population.....	74–75	20

## I. Introduction

1. The Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik, conducted an official visit to the Republic of Argentina from 13 to 21 April 2011, at the invitation of the Government of Argentina.

2. The Special Rapporteur would like to thank the Government of Argentina for the invitation and for the support provided to her throughout her visit. She would also like to thank the United Nations country team for its cooperation, and Argentine civil society and the International Alliance of Inhabitants for their active participation in the visit.

3. The Special Rapporteur visited Argentina 10 years after the economic and social crisis of 2001, in a context marked by strong economic growth (which has benefited the housing sector and has had important implications for the right to adequate housing), by the firm commitment of the Government of Argentina to human rights (in particular concerning the steps taken to ascertain the truth, and guarantee justice, with regard to events that occurred during the military dictatorship from 1976 to 1983), and by the active efforts of civil society to find ways of ensuring the realization of the right to adequate housing for all.

4. During her visit, the Special Rapporteur met with various public authorities at federal, provincial and municipal level, including officials from: the Ministry of Foreign Affairs; the Office of the Under-Secretary for Urban Development and Housing; the National Housing Council; the Housing Institute of the Province of Buenos Aires; the Housing Institute of the City of Buenos Aires; the Office of the Chief Public Defender of the Nation (*Defensoría General de la Nación*); the Office of the Secretary for Municipal Affairs of the Ministry of the Interior; the National Institute to Combat Discrimination, Xenophobia and Racism; the Office of the Under-Secretary for the Promotion of Human Rights; the Office of the Chief Public Defender of the City of Buenos Aires; the National Land Commission; the Office of the Under-Secretary for Land-use Planning; the legislature of Tierra del Fuego; the Provincial Housing Institute of Tierra del Fuego; the mayor's office and legislature of Ushuaia; and the government of Tierra del Fuego province. The Special Rapporteur also met with parliamentarians and representatives of various political groups and United Nations bodies. Lastly, she met with neighbourhood organizations, associations of tenants, debtors and occupants, cooperatives, trade union organizations, NGOs and academics.

5. The Special Rapporteur visited settlements, slums, holdings and squats, as well as State-run housing construction projects in the Autonomous City of Buenos Aires, the greater Buenos Aires area and the city of Ushuaia. She also took part in a public hearing at the Senate, organized by the association *Habitar Argentina* and attended by delegations from many Argentine provinces; in meetings held in the Buenos Aires legislative chamber; and in a public hearing in Ushuaia with representatives of Ushuaia and Río Grande. These activities gave the Special Rapporteur an opportunity to hear accounts of typical situations in Argentina, including in the Autonomous City of Buenos Aires, the provinces of Buenos Aires, Formosa, Tucumán, Río Negro and Santiago del Estero, and the cities of Mendoza, Córdoba, Rosario, La Plata, Ushuaia and Río Grande.

## II. The housing situation in Argentina: general context

6. During her visit, the Special Rapporteur observed that housing was a source of tension and conflict, particularly in certain regions of the country. With 90 per cent of the population living in urban areas, and more than 30 per cent concentrated in Buenos Aires

and the surrounding area, Argentina has had a serious shortage of adequate housing for decades. As a result, millions of Argentines are living in substandard conditions in slums and other types of inadequate housing. The situation deteriorated from the mid-1970s onwards, when there was a shortage of developed land accessible to low-income groups and little investment in the installation of mains services for, and the consolidation of, informal settlements.

7. During the 1990s a number of economic reforms<sup>1</sup> that had serious socio-economic repercussions were implemented, making the housing situation even worse. Funding for public housing policies was scarce throughout the decade, and there was an even greater shortage of developed land for low-income groups in a context of falling salaries and rising unemployment. In addition, the National Mortgage Bank was privatized and, under the privatized system, the cost of public services rose.

8. These policies led to a recession, which started in 1998 and culminated in a serious social, political and economic crisis at the end of 2001. The shortage of adequate housing increased both in quantitative terms (more homeless people) and qualitative terms (more overcrowding, lack of adequate services, irregular tenancies, etc.). According to the most recent census available, conducted in 2001,<sup>2</sup> approximately 20 per cent of all households lived in housing that was inadequate in some way.<sup>3</sup> Also, a considerable percentage of the population — 15.7 per cent of households — were occupants in an irregular situation.<sup>4</sup>

9. Despite the fact that employment and income indicators have improved since 2001, and that the State has invested considerably in housing policies since 2003, there does not appear to have been any real improvement in the housing situation. On the basis of partial data published recently by the National Statistics and Census Institute, indicators show a small improvement between 2001 and 2010 (in housing sanitation and building materials).<sup>5</sup> While the full results of the 2010 census must be obtained before a more accurate assessment of housing needs can be made, information brought to the attention of the Special Rapporteur shows that there has been an increase in the number of homeless people, informal settlements, slums and squats, an increase in the number of people housed in hostels, tenements, rented rooms and halfway houses and an increase in the number of overcrowded homes.<sup>6</sup> Also, the entire country would appear to be affected by the housing

<sup>1</sup> Centro de Derecho a la Vivienda y contra los Desalojos (Centre on Housing Rights and Evictions – COHRE), *El derecho a la vivienda en Argentina: Informe misión de investigación*, 2004, pp. 41–48.

<sup>2</sup> Available at [www.indec.mecon.ar/webcenso/index.asp](http://www.indec.mecon.ar/webcenso/index.asp). At the time of writing, the Special Rapporteur only had partial results of the population, household and housing census carried out in 2010.

<sup>3</sup> Data compiled by the National Directorate of Housing Policies, Office of the Under-Secretary for Urban Development and Housing, based on the 2001 Population Census, *La política federal de vivienda: balance de cuatro años de gestión*, at: [www.vivienda.gov.ar/docestadisticas.php](http://www.vivienda.gov.ar/docestadisticas.php). It should be noted that the Office of the Under-Secretary considered the following situations to constitute a “shortage of adequate housing”: households living in unsafe dwellings that may or may not be suitable for renovation, households living in overcrowded rooms in safe dwellings, or overcrowded households – i.e. more than one household per dwelling.

<sup>4</sup> *Ibid.* In line with the wording used in the census, occupants in an “irregular” situation include owners of the housing only, occupants of loaned housing, and de facto occupants. Occupants in a “legal” situation, on the other hand, include owners of the housing and land, tenants and dependent occupants.

<sup>5</sup> For example, the number of dwellings built using solid materials, with bathrooms, increased from 59.9 per cent to 61.6 per cent, while the number of dwellings without bathrooms decreased from 28.5 per cent to 22.2 per cent.

<sup>6</sup> See, inter alia, COHRE, “Informe preparado por COHRE para la Oficina del Alto

crisis, as shown by the “housing emergency” declared — or requested to be declared — in the legislatures of many provinces and cities (Autonomous City of Buenos Aires, Córdoba, Tierra del Fuego, Bariloche, Salta, Neuquén, etc.).

10. This situation — renewed insecurity at a time of economic growth and increased public investment in housing — would appear to be related to the fact that prices for land, urban land, real estate and rents have risen proportionally more than most people’s income,<sup>7</sup> and to the lack of policies on landholding, loans and housing options, including for the middle classes. Over the past 10 years in the main cities in Argentina, the real-estate and construction market has witnessed a boom, driven by speculation and characterized by a high percentage of investments aimed at high-income groups. This has restricted access to housing for low- to middle-income groups, and has encouraged the spread of informal housing.<sup>8</sup>

11. The situation has been exacerbated by the large increase in the number of evictions carried out in various regions<sup>9</sup> and by the rise in discrimination against specific groups, particularly migrants and indigenous peoples.

### III. Legal and institutional framework

#### A. International obligations and legislative framework

12. Argentina is a party to the core international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights, which recognizes the right to adequate housing as an integral component of the right to an adequate standard of living (art. 11), and to other international and regional treaties that recognize the right to adequate housing. The Special Rapporteur welcomes the recent ratification by Argentina of the Optional Protocol to the Covenant (31 October 2011).

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Comisionado para los Derechos Humanos sobre Argentina para usar en la preparación de la documentación para el Consejo de Derechos Humanos de las Naciones Unidas: Primer Examen Periódico Universal”, Geneva, November 2007, at: [www.upr-info.org/IMG/pdf/Cohre\\_Argentina\\_Off\\_2008.pdf](http://www.upr-info.org/IMG/pdf/Cohre_Argentina_Off_2008.pdf). For the situation regarding the Autonomous City of Buenos Aires, see Facundo Di Filippo, *Buenos Aires sin techo. La ausencia de políticas de acceso a la vivienda: una violación de los derechos humanos*, Office of the Chairperson, Housing Committee, Legislature of the City of Buenos Aires, November, 2009.

<sup>7</sup> In the Autonomous City of Buenos Aires, for example, in the period 2002–2006, the price of land rose by an average of 375 per cent. Demián Zayat and Victoria Ricciardi, “El derecho a la defensa en los casos de usurpación en la ciudad de Buenos Aires: un estudio empírico”, *Revista Institucional de la Defensa Pública de la Ciudad Autónoma de Buenos Aires*, vol. 1, No. 1, March 2011, p. 103, at: [www.defensoria.jusbaires.gov.ar/attachments/article/2341/Revista%20Institucional%20MPD%20CABA.pdf](http://www.defensoria.jusbaires.gov.ar/attachments/article/2341/Revista%20Institucional%20MPD%20CABA.pdf).

<sup>8</sup> In the Autonomous City of Buenos Aires, for example, 43 per cent of the total number of square metres for which multi-family housing building permits were granted between 2002 and 2006 were in the “lavish” category. A further 38 per cent of permits were requested for developments in the “luxurious” and “comfortable” categories, aimed at high- and middle-income groups. Zayat and Ricciardi, “El derecho a la defensa ...” (footnote 7 above), pp. 3–4.

<sup>9</sup> In the city of Buenos Aires alone, for example, in 2008 at least nine families were evicted every day. See Di Filippo, *Buenos Aires sin techo ...* (footnote 6 above), p. 93.

13. In Argentina, the right to adequate housing has constitutional rank.<sup>10</sup> The amended Constitution of 1949 recognized the social function of private ownership and the right to housing, but only within the framework of the welfare of workers and senior citizens. While the 1957 constitutional reform abolished these progressive changes, it introduced a new article 14 bis, under which the right to adequate housing was specifically recognized, in the context of social security benefits granted by the State, and access to decent housing was required to be guaranteed by law.<sup>11</sup>

14. Under the 1994 constitutional reform (Constitution, art. 75, para. 22), the Covenant — and thus the right to adequate housing — acquired constitutional rank, as did a number of other international human rights treaties, and was considered to supplement all the rights recognized under the Constitution.

15. The right to adequate housing has, furthermore, been specifically recognized in local legislation, in particular in the constitutions of eight provinces (Chaco, Chubut, Córdoba, Formosa, Rio Negro, Salta, Santa Cruz and Tierra del Fuego, Antártida e Islas de Atlántico Sur) and in the constitution of the Autonomous City of Buenos Aires.

16. The legislation required under article 14 bis of the National Constitution was never passed, and the country still has no framework legislation on this right. The current system of public housing in Argentina — the Federal Housing System — was established in 1995 by Act No. 24464, with the specific aim of “putting the necessary conditions in place to provide fast and efficient access to decent housing for persons unable to afford it, in accordance with article 14 of the National Constitution”.<sup>12</sup> The Act establishes the funding mechanisms for the Federal Housing System, requiring the National Housing Fund (FONAVI)<sup>13</sup> to fund all or part of the work necessary to ensure compliance with the Act.

17. In addition to the legislation governing the current public housing system, other laws relating to the right to adequate housing have been adopted at national level, including: Act No. 21499 (1977), which provides for expropriation on the grounds of public utility;<sup>14</sup> Act No. 24374 (1994), which established the Formalization of Ownership Scheme for occupants of urban buildings intended primarily to provide permanent accommodation;<sup>15</sup> and Act No. 14394, which established the Family Property Scheme, the aim of which is to protect a family dwelling from being attached, mortgaged or sold.<sup>16</sup> In addition, laws introducing special measures to deal with housing emergencies have been passed in a number of cities and provinces in Argentina.

<sup>10</sup> Sebastián Tedeschi, *El derecho a la vivienda a diez años de la reforma de la Constitución*, at: [www.fedevivienda.org.co/documentosin.htm](http://www.fedevivienda.org.co/documentosin.htm).

<sup>11</sup> Article 14 bis: “The State shall grant social security benefits, which shall be comprehensive and inalienable in nature. In particular, ... access to decent housing shall be established by law.”

<sup>12</sup> National Act No. 24464, available at: [www.infoleg.gov.ar/infolegInternet/verNorma.do?id=16331](http://www.infoleg.gov.ar/infolegInternet/verNorma.do?id=16331).

<sup>13</sup> Established in 1972 by Act No. 19929.

<sup>14</sup> Before the State can expropriate the land of a private owner, legislation must be passed by the National Congress declaring it to be of public utility and confirming that the property is subject to expropriation. The State must pay compensation in cash, in line with the valuation by the National Valuation Tribunal.

<sup>15</sup> Under the Act, in order to benefit from the scheme, a person has to prove that he/she occupied the dwelling publicly, peacefully and continuously for three years prior to 1 January 1992, and must demonstrate legitimate cause. A further period of 10 years’ occupancy is then required in order to obtain the title.

<sup>16</sup> The property can only be attached in the event of unpaid taxes or fees relating to the property, a building loan or a home improvement loan.

18. With regard to evictions, the Special Rapporteur notes that there is no national legal instrument incorporating international standards in this area. On the contrary, against the background of the 2001 crisis, Act No. 24441 amended civil and criminal procedures for evictions (Code of Civil and Commercial Procedure, arts. 680 bis and 684 bis, and Code of Criminal Procedure, art. 238) and established the special scheme for home foreclosures, which “created new tools for expediting repossessions and removed the legal safeguards for evicted persons”.<sup>17</sup> In practice, under this new legislation, eviction on grounds of trespassing, non-payment, expiry of contract or squatting can be ordered as a precautionary measure, before a final ruling is handed down. In addition, under the scheme, creditors can obtain the early repossession and auction of a property without the need for legal proceedings. Debtors cannot raise a defence, lodge an appeal or file an interlocutory plea to suspend the early repossession or auction unless they can credibly demonstrate that they meet certain specific requirements.<sup>18</sup>

## B. Institutional framework

19. The Republic of Argentina is a presidential federal State, consisting of 23 provinces and the Autonomous City of Buenos Aires (the legal status of which is in many ways similar to that of the provinces). The Argentine federal system is characterized by the autonomy of its provinces and municipalities. All provinces are autonomous states that exercise all powers not specifically delegated to the Nation, as well as any powers expressly reserved by special order when the province was incorporated into the Republic, and have the legislative powers set out in their respective constitutions.<sup>19</sup> The National Constitution also recognizes municipalities as autonomous entities established by the provincial governments, through laws governing the exercise of their autonomy.<sup>20</sup>

20. The extensive autonomy enjoyed by the provinces, the Autonomous City of Buenos Aires and the municipalities is reflected in the decentralized implementation of housing policies. At the level of the national executive branch, the main body responsible for housing is the Office of the Under-Secretary for Urban Development and Housing (“Office of the Under-Secretary”), which formulates national housing policy, and designs, implements and funds the national or provincial public housing programmes. However, under Act No. 24464, the implementing agencies in the provinces and the Autonomous City of Buenos Aires — the provincial housing institutes and the city’s housing institute — are responsible (either directly, or in conjunction with the municipalities, communes or intermediate entities) for planning, implementing, monitoring, assigning and recovering investments made under the National Housing Fund programme, which is the main housing programme at national level. In other words, the provinces manage federal funds and assign public housing, despite the fact that Act No. 24464 established the National Housing Council as a federal, jointly managed body tasked with setting funding distribution rates (in line with the principle of federal joint participation) and suggesting assignment criteria to the provinces and to the government of the Autonomous City of Buenos Aires.

21. Another body at the level of the national executive branch that plays an important role in housing is the National Commission on Land for Social Housing, which directly assists the Chief of the Cabinet of Ministers in formulating land policies that facilitate the

<sup>17</sup> Centre for Legal and Social Studies (CELS), “La problemática de los desalojos en CABA: un abordaje institucional”, Buenos Aires, 5 December 2007, p. 3, at: [www.cels.org.ar/common/documentos/desalojos\\_caba2007.doc](http://www.cels.org.ar/common/documentos/desalojos_caba2007.doc).

<sup>18</sup> See Act No. 24441, arts. 54 and 64.

<sup>19</sup> National Constitution, art. 121.

<sup>20</sup> *Ibid.*, art. 123.



provision of suitable land for the implementation of social programmes, and in taking action to identify State-owned property that can be used for social purposes.<sup>21</sup>

22. At the level of the executive branch, the Special Rapporteur notes that in 2008 an under-secretary's office was set up in the Office of the Secretary for Human Rights at the Ministry of Justice and Human Rights to deal with economic, social and cultural rights, including the right to adequate housing. The Special Rapporteur notes, however, that this body has a mandate merely to "promote" such rights, and does not carry out any protection work.

23. With regard to the judicial branch,<sup>22</sup> both federal and provincial courts have competence to rule on human rights matters, while the Supreme Court and lower courts have competence to rule on all matters governed by the National Constitution, national legislation or international treaties. Despite the constitutional rank of the Covenant and the competence of the Supreme Court and lower courts to rule on human rights matters, the Special Rapporteur regrets that national and international standards on the right to adequate housing have only been applied to a limited extent in the resolution of disputes involving the right to housing.<sup>23</sup>

24. With regard to the legislative branch, the Special Rapporteur welcomes the work carried out by various committees in the Senate and the National Congress in the area of human rights, and the work carried out by the Ombudsman's Office (at national and provincial level) in the area of the right to adequate housing.

25. Finally, the Special Rapporteur notes the important work carried out by independent bodies to defend the right to adequate housing, in particular the Public Defence Service (*Ministerio Público de la Defensa*). The mandate of the Chief Public Defender of the Nation (*Defensor General de la Nación*) is not only to represent defendants in specific cases, but also to "make every effort to defend and protect human rights" and to "promote and implement policies to help groups that are discriminated against to gain access to justice".<sup>24</sup> In this regard, the Chief Public Defender's Office has been very active in matters relating to the right to housing, as witnessed by the adoption of resolution DGN No. 1119/08 on protecting minors affected by evictions and the various training and awareness-raising activities conducted for judges and officials in the public legal service, with the aim of improving the way cases involving the right to housing are managed and the defence is handled.

#### IV. Positive developments

26. The Special Rapporteur welcomes the revival and renewed funding of national housing policies since 2003 and the national Government's recognition that housing is the responsibility of the State and therefore requires a considerable budgetary investment.<sup>25</sup> The

<sup>21</sup> See information at: [www.jgm.gov.ar/paginas.dhtml?pagina=44](http://www.jgm.gov.ar/paginas.dhtml?pagina=44).

<sup>22</sup> National Constitution, art. 116.

<sup>23</sup> See, inter alia, COHRE, *El derecho a la vivienda en Argentina ...* (footnote 1 above), pp. 35–38; CELS, "La problemática de los desalojos en CABA ..." (footnote 17 above).

<sup>24</sup> Act No. 24946, art. 51, paras. (d) and (e).

<sup>25</sup> See documents issued by the Office of the Under-Secretary for Urban Development and Housing, available at: [www.vivienda.gov.ar/docestadisticas.php](http://www.vivienda.gov.ar/docestadisticas.php). Between 2003 and 2007 the budgetary expenditure of the Office of the Under-Secretary was 11,439,046,864 Argentine pesos. According to information given to the Special Rapporteur during the public hearing at the Senate organized by the association Habitar Argentina, between 1992 and 2003 the consolidated public expenditure (national and provincial level) for housing and town planning was between 0.24 per cent and 0.49 per cent of GDP, while between

Special Rapporteur notes that these policies were introduced as a countercyclical tool to kick-start the economy, against the backdrop of the 2001–2002 crisis, and that this influenced the type of policies promoted, which were mainly concerned with financing the supply of housing, and were based on the construction and financing of new housing by private companies.

27. Since 2003, the Office of the Under-Secretary has been developing federal programmes for persons on low- and low-to-middle incomes, which over time have become more diverse and now focus on three areas:<sup>26</sup> the construction of new housing (FONAVI-Revival I and II, Federal Emergency Housing Programme, Federal Housing Solidarity Programme); housing improvements (the “*Mejor Vivir*” federal housing improvement programme); and neighbourhood improvement and/or land-title regulation (the PROMEBA neighbourhood improvement programme).

28. While housing policy has remained much the same since the 1950s, the total investment and number of interventions since 2003 mark a break from the policies for housing, urban land and city access implemented after 1976, which have been described as “a series of provisions for the deregulation of markets, with regard to land use, rents and, in particular, finance”.<sup>27</sup> Renewed State intervention has had a positive effect on job creation in Argentina; according to official sources, it has generated more than 600,000 “housing solutions”<sup>28</sup> since 2003.

29. In this context, the Special Rapporteur welcomes the efforts undertaken by Argentine civil society — with support from the State<sup>29</sup> — to set up housing, employment and consumer cooperatives, creating a vast social fabric underpinned by the principles of solidarity and mutual support in order to deal with the crisis.

30. In the face of rampant real-estate and land speculation, the Special Rapporteur welcomes the initiatives undertaken by a number of municipalities to implement land-management policies,<sup>30</sup> in particular the bill to promote low-income housing in Buenos Aires province;<sup>31</sup> the initiatives provide tools to ensure that developed land is available for adequate social housing, whether public, cooperative or private. In this context, the Special Rapporteur welcomes the work of the National Land Commission for Social Housing in providing urban land for low-income groups, and the establishment in 2004 of the Social

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2004 and 2008 it was between 0.41 per cent and 0.75 per cent of GDP. Budgetary resources assigned to housing and town planning in 2011 were the equivalent of 0.51 per cent of GDP.

<sup>26</sup> For a description of the various programmes, see *Programas habitacionales desarrollados en la República Argentina*, available at: [www.vivienda.gov.ar/docestadisticas.php](http://www.vivienda.gov.ar/docestadisticas.php).

<sup>27</sup> Omar David Varela and Raúl Fernández Wagner, “El retorno del Estado: Los programas federales de vivienda en el AMBA”, in María Cristina Cravino, ed., *Construyendo barrios: Transformaciones socio territoriales a partir de los programas federales de la vivienda en el área metropolitana de Buenos Aires (2004–2009)*, p. 2.

<sup>28</sup> Ministry of Federal Planning, Public Investment and Services, Office of the Under-Secretary for Urban Development and Housing, “Resumen total del Estado de avance desagregado por programa entre mayo 2003 y julio 2011”, at: [www.vivienda.gov.ar](http://www.vivienda.gov.ar).

<sup>29</sup> The Federal Housing Emergency Programme is based on the construction of housing through the intermediary of cooperatives.

<sup>30</sup> Office of the Secretary for Municipal Affairs, Universidad Torcuato di Tella and Lincoln Institute of Land Policy, *Regulación del Uso del Suelo en Municipios Argentinos: Encuesta Nacional 2009*.

<sup>31</sup> Available at: [www.iiied-al.org.ar/Ley%20Promocion%20Habitat%20Popular%20PBA%20-%20Version%2012%20-%2024%20feb%202011.pdf](http://www.iiied-al.org.ar/Ley%20Promocion%20Habitat%20Popular%20PBA%20-%20Version%2012%20-%2024%20feb%202011.pdf).

Land Bank,<sup>32</sup> and urges that implementation of decree No. 835/2004 should be regulated as soon as possible.

## V. Challenges and obstacles to the realization of the right to adequate housing in Argentina

### A. Shortcomings of public housing policies

31. The Special Rapporteur observed that, in response to the country's many and diverse housing needs, the system of funding for housing policies is based only on the production of finished dwellings and home improvements. The Special Rapporteur also notes the lack of an analytical framework for identifying the various approaches to urbanization and their policy requirements. The Special Rapporteur notes that the Office of the Under-Secretary has conducted studies on the shortage of adequate housing on the basis of the 2001 census. However, censuses provide information only on housing units and not on the quality of the urban environment or on the conditions of social integration in the neighbourhoods built. It is also regrettable that there are no intermediate mechanisms (between decennial censuses) for adjusting policies and procedures accordingly.<sup>33</sup>

32. The Special Rapporteur considers that, despite the existence of home improvement and urban improvement programmes (such as the PROMEBA programme and the Federal Housing Improvement Programme) and the efforts made over the last eight years to diversify housing policy programmes, the Government's priority remains the production of finished dwellings (turnkey homes) for low- and middle-income households, with overly standardized designs which, in most cases, focus solely on the production of housing and not an integrated housing concept. In this connection, the Special Rapporteur notes in particular the lack of rental subsidies and regularization policies, and the problems associated with implementing self-managed housing policies. Such policies are characterized by inadequate resources, poor management, excessive delays in carrying out the projects and their low completion rate.<sup>34</sup>

33. The Special Rapporteur notes that the housing policies implemented have not as yet been accompanied by appropriate planning and land-use policies;<sup>35</sup> this often leads to housing developments being located far from job and employment opportunities.<sup>36</sup> There is no national law in Argentina regulating land use and occupation. Thus, particularly at a time of intense speculation in the land and housing markets, weak intervention by the State

<sup>32</sup> Decree No. 835/2004, available at: [www.lexisnexis.com.ar/Noticias/MostrarNoticiaNew.asp?cod=42&tipo=3](http://www.lexisnexis.com.ar/Noticias/MostrarNoticiaNew.asp?cod=42&tipo=3).

<sup>33</sup> In this regard, the Special Rapporteur commends the Ministry of Federal Planning, Public Investment and Services on the work carried out by the Office of the Under-Secretary for Land-use Planning in order to prepare jointly with other ministries, provinces and municipalities a strategic land-use plan for 2010–2016. Bicentenary/Strategic Land-use Plan, Ministry of Federal Planning, Public Investment and Services 2010.

<sup>34</sup> Di Filippo, *Buenos Aires sin techo ...* (footnote 6 above), pp. 90–91.

<sup>35</sup> See, inter alia, Universidad Nacional de General Sarmiento, Instituto del Conurbano, Info-Habitat Metropolitano, Movimiento por la Reforma Urbana en la Argentina and COHRE, "Conclusiones del seminario sobre derechos humanos y prevención de desalojos forzados en la Argentina", Buenos Aires, 29 and 30 September 2008, p. 59, at: [www.infohabitat.com.ar/web/img\\_d/est\\_18072009213733\\_n18072009213410.pdf](http://www.infohabitat.com.ar/web/img_d/est_18072009213733_n18072009213410.pdf); and Andrea C. Catenazzi, *La planificación urbana en cuestión*, January 2011, at: [www.vocesenelfenix.com/content/la-planificaci%C3%B3n-urbana-en-cuesti%C3%B3n](http://www.vocesenelfenix.com/content/la-planificaci%C3%B3n-urbana-en-cuesti%C3%B3n).

<sup>36</sup> Varela and Fernández Wagner, "El retorno del Estado ..." (footnote 27 above), pp. 20–21.

in land markets has had an adverse effect on its housing policy, rendering it “fragmented and remedial”.<sup>37</sup>

34. The shortage of vacant developed land has in fact been one of the main barriers to the implementation of programmes to promote access to housing.<sup>38</sup> The most common mechanism has been the establishment of agreements between the State and the municipalities; under these agreements, the State funds the infrastructure and the municipalities provide the land. However, in the absence of regulatory frameworks at the local level facilitating access to land for low-income households,<sup>39</sup> these agreements have been easier to implement outside the big cities and in more remote areas without infrastructure.

35. The Special Rapporteur also notes the need for greater coordination and cooperation among municipal, provincial and national authorities in order to improve the implementation of federal housing policies. Despite the adoption of a federal housing system and the strengthening of institutions at the national level in terms of the planning and funding of these policies, the extensive autonomy enjoyed by the provinces and the Autonomous City of Buenos Aires, along with their powers to determine the use of land, has had a considerable impact on implementation. Although there is an agreement between the State and each province (and the Autonomous City of Buenos Aires) on implementing the national housing programme, there is no obligation on provinces to do so. Thus, for example, the Autonomous City of Buenos Aires, which accounts for 30 per cent of Argentina’s population, hardly participates at all in national programmes.

36. The Special Rapporteur notes in this regard the shortcomings in the federal housing system with respect to the clear allocation of powers, funding and tasks, and considers that further efforts should be made to ensure that, in terms of its design, management and implementation, the system fully reflects the right to adequate housing as defined in international law. The Special Rapporteur notes with particular concern the shortcomings of social housing allocation systems. Each province and municipality can define its own allocation criteria<sup>40</sup> (or even have no criteria at all, as in the Autonomous City of Buenos Aires); this opens the door to discrimination, in particular against migrants from other countries or from other regions of Argentina.<sup>41</sup> In this regard, the Special Rapporteur notes that the amendment to Act No. 24464 establishes a 5 per cent quota for persons with disabilities in each National Social Housing Fund plan, and that this percentage will have to be brought into line with the actual percentages of persons with disabilities in the different cities and provinces. Lastly, the Special Rapporteur notes that the allocation system would appear to lack transparency, especially in instances where there is an absence of legally established criteria.<sup>42</sup>

<sup>37</sup> Universidad Nacional de General Sarmiento, Instituto del Conurbano, Info-Habitat Metropolitano, Movimiento por la Reforma Urbana en la Argentina and COHRE, “Conclusiones del seminario ...” (see footnote 35 above), p. 2.

<sup>38</sup> Office of the Secretary for Municipal Affairs, Universidad Torcuato di Tella and Lincoln Institute of Land Policy, *Regulación del Uso del Suelo ...* (footnote 30 above), p. 21.

<sup>39</sup> *Ibid.*, pp. 21–22. According to this survey, fewer than 20 per cent of municipal regulatory frameworks contain regulations facilitating access to land for low-income households.

<sup>40</sup> The State concludes framework agreements with the various jurisdictions, but the process of allocating housing is the responsibility of the provinces; however, some general criteria are applicable.

<sup>41</sup> See paragraph 55 below.

<sup>42</sup> Asociación Civil por la Igualdad y la Justicia (ACIJ) and COHRE, “El IVC frente a las villas de la ciudad: poco derecho y mucha discrecionalidad”, at: [www.elhardin.com.ar/paneles/acij/v2/programas/adjuntos/EL\\_IVC\\_frente\\_a\\_las\\_villas\\_de\\_la\\_Ciudad.pdf](http://www.elhardin.com.ar/paneles/acij/v2/programas/adjuntos/EL_IVC_frente_a_las_villas_de_la_Ciudad.pdf), pp. 16–18. It should be

37. Lastly, the Special Rapporteur notes with concern the limited participation of the general population and beneficiaries in federal housing programmes (with the exception of the Federal Emergency Housing Programme, which is based on the establishment of cooperatives). Although recognition has been given to organizations voicing criticism over access to land and housing, large-scale federal building programmes have been mainly designed in cooperation with businesses and trade associations.<sup>43</sup>

## **B. Informal settlements and the occupation of land and housing**

38. In Argentina's recent past, informal occupation has been the main form of access to land and housing for low-income households. According to several sources, settlements and occupations have increased in many of the country's urban areas in recent years.<sup>44</sup> In addition to "traditional" slums, the number of informal settlements is reported to be increasing; unlike traditional slums, they are located on land that is unsuitable for development, have extremely poor living conditions and lack basic infrastructure and services.<sup>45</sup> In the greater Buenos Aires area, in particular, the increase in the number of land occupations and squats is closely linked to the ending of the sale of plots on the city outskirts to low-income households. This land is now mainly used for the construction of gated communities for high-income households, thereby increasing the uneven and fragmented occupation of urban space.

39. In this context, the Special Rapporteur notes with concern the highly ambiguous way in which the authorities have dealt with the issue of land occupations and how this has allowed the topic to become the subject of partisan disputes and to be exploited for political purposes. This has made the inhabitants of these settlements highly vulnerable, since decisions as to whether they are allowed to reside and remain there or are evicted are made on a case-by-case basis. The Special Rapporteur notes that this situation is inconsistent with land-title regularization policies because, since the last dictatorship (when a slum-eradication policy was promoted), the State, through a series of initiatives at the national and provincial levels, has recognized that regularization and urbanization of informal settlements is the lasting solution to the illegal occupation of land. In particular, at the national level, under programmes implemented by the National Land Commission, the State has the tools available to regularize the occupation of publicly owned land that has had permanent housing built on it. In order to regularize informal settlements on private land occupied by low-income households, the State can also invoke Act No. 21499 of

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noted that, in municipal ordinances listing successful applicants, no rationale for the allocation of housing is provided and, furthermore, this occurs in a broader context of lack of access to public information about housing allocation criteria.

<sup>43</sup> Varela and Fernández Wagner, "El retorno del Estado ..." (footnote 27 above), p. 16.

<sup>44</sup> See Ombudsman's Office of the Autonomous City of Buenos Aires, "Informe de situación: Desalojos de 'nuevos asentamientos urbanos'", July 2006, and "Los desalojos y la emergencia habitacional en la Ciudad de Buenos Aires", 2008, both available on the Ombudsman's Office website at [www.defensoria.org.ar/areastematicas/vivienda10.php](http://www.defensoria.org.ar/areastematicas/vivienda10.php). According to the Ombudsman's Office of the Autonomous City of Buenos Aires, for example, the number of people living in slums rose by 300 per cent between 1983 and 1991 and by a further 150 per cent in the last decade, to stand at more than 120,000 people in 2006. Furthermore, there are 200,000 people living in squats and a further 70,000 in makeshift dwellings. See also Zayat and Ricciardi, "El derecho a la defensa ..." (footnote 7 above).

<sup>45</sup> See Ombudsman's Office of the Autonomous City of Buenos Aires, "Informe de situación ..." (footnote 44 above).

1977.<sup>46</sup> Similar or even more ambitious programmes and laws have also been introduced at the provincial level, for example the programme implemented by the Autonomous City of Buenos Aires to upgrade and install mains services for slums and disadvantaged neighbourhoods.<sup>47</sup>

40. In this context, the Special Rapporteur notes that these programmes have achieved very little in terms of the regularization and urbanization of informal settlements. According to a 2004 report, only 44 per cent of available land had been transferred to the provinces, 27 per cent of which had been titled.<sup>48</sup> Several factors seem to have adversely affected the implementation of these programmes, including the lack of coordination between the State, the provinces and the municipalities, the failure of local authorities to take action and the increase in the number of people living in irregular settlements.<sup>49</sup> In addition, the expropriation law has been little used by the Government to guarantee security of tenure, although it has been used by some provincial governments. The Special Rapporteur notes that even in cases where the decision to upgrade a slum is taken in accordance with a law and with institutional consultation mechanisms in place,<sup>50</sup> as in the case of Villa 31 and 31 bis in the city of Buenos Aires, the same barriers stand in the way of implementing the plans, thereby postponing concrete measures indefinitely.

41. Although informal occupation of land has been the predominant form of access to housing in Argentina in recent years, there is a growing phenomenon in various regions of the country whereby people who occupy land or housing are criminalized and stigmatized. This applies especially to the migrant population.

42. Lastly, the Special Rapporteur notes that in instances where decisions are made to relocate the inhabitants of irregular settlements, mainly because of environmental considerations and the health of the persons concerned, it is rare for those communities to be offered alternative solutions in line with international standards on the right to adequate housing. A typical example in this regard is the clean-up of the Matanza Riachuelo Basin. The Special Rapporteur notes the shortcomings in the relocation policies implemented by some municipalities within this process: there is a lack of participation by those concerned and a lack of public information. Furthermore, the Special Rapporteur is concerned that the implementation of the relocation policy is based on a court order rather than a comprehensive urbanization policy for the basin.

## C. Evictions

43. During her visit, the Special Rapporteur received numerous testimonies about the exponential increase in the number of evictions carried out in various provinces of

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<sup>46</sup> See paragraph 17 above.

<sup>47</sup> Ombudsman's Office of the Autonomous City of Buenos Aires, "Los desalojos y la emergencia habitacional ..." (footnote 44 above), pp. 24–30.

<sup>48</sup> COHRE, *El derecho a la vivienda en Argentina* (footnote 1 above), p. 55. The *Arraigo* programme was established in 1991 to "promote measures to achieve the land-title regularization of publicly owned land by its transfer to its occupants". This programme was replaced in 2008 by the National Social Land Commission under Decree No. 341/2008.

<sup>49</sup> Ombudsman's Office of the Autonomous City of Buenos Aires, "Los desalojos y la emergencia habitacional ..." (footnote 44 above), p. 30.

<sup>50</sup> It has been noted that the need for ad hoc rules to regularize specific settlements "reflects the failure to fulfil comprehensive regularization plans" and "at the same time hampers the adoption of a plan that treats all inhabitants fairly and makes it possible to move away from a policy based on preference and arbitrariness". ACIJ and COHRE, "El IVC ..." (footnote 42, above), p. 21.

Argentina, in both urban and rural areas, on the initiative of private actors and the State.<sup>51</sup> In this regard, the Special Rapporteur has noted in particular a proliferation of criminal cases involving the offence of squatting in which evictions are generally called for,<sup>52</sup> and how, in many instances, it is the Government itself that initiates the proceedings.<sup>53</sup>

44. In urban areas, most evictions are reportedly related to the insecurity of tenure of people living in slums and other informal settlements and to speculation in the housing and land market, which has led to a large increase in rents and the size of mortgages,<sup>54</sup> an increase in land and building occupations, ever greater interest in urban land on the part of investors and, consequently, an increase in the number of conflicts over land and property. Evictions in rural areas affect indigenous and campesino communities and would seem to be mainly related to the lack of titling of indigenous lands and conflicts over the exploitation of natural resources in indigenous and campesino areas.

45. Extensive evidence submitted to the Special Rapporteur suggests that, in many cases, evictions are being carried out in violation of international standards. Contrary to general comment No. 7 of the Committee on Economic, Social and Cultural Rights, evictions have, in many cases, been carried out without exploring all feasible alternatives in consultation with the affected persons with a view to avoiding, or at least minimizing, the need to use force and without a genuine participatory process involving those affected.

46. The Special Rapporteur notes with particular concern that, in cases that reach the criminal or administrative courts, the national legislation currently in force<sup>55</sup> makes it easier for evictions to take place and fails to observe international standards of due process.<sup>56</sup> The Special Rapporteur is also concerned about what appears to be — with a few exceptions — a widespread lack of awareness among Argentine judges of international standards on the right to adequate housing and evictions. Many of the procedural protections set out in general comment No. 7 are ignored and no effort is made to find solutions to the housing problems of those evicted.<sup>57</sup>

47. The Special Rapporteur notes with concern that evictions are exacerbating the country's housing crisis, since in many cases they have resulted in those affected being rendered homeless or exposed to the violation of other human rights, without the State taking all appropriate measures to ensure that alternative housing, resettlement or access to productive land is available. The Special Rapporteur has noted in this regard the

<sup>51</sup> See, inter alia, Ombudsman's Office of the Autonomous City of Buenos Aires, "Los desalojos y la emergencia habitacional ..." (footnote 44 above); Universidad Nacional de General Sarmiento, Instituto del Conurbano, Info-Habitat Metropolitano, Movimiento por la Reforma Urbana en la Argentina and COHRE, "Conclusiones del seminario ..." (footnote 35 above); CELS, "Déficit habitacional y desalojos forzosos en la Ciudad de Buenos Aires: apuntes sobre una política de expulsión y desresponsabilización", in the annual report *Derechos Humanos en Argentina, 2009*, at [www.cels.org.ar](http://www.cels.org.ar); Advisory Group on Forced Evictions (AGFE), "Report, Mission to Argentina, 2–9 August 2009, Provisional draft for revision by AGFE Secretariat", at: [www.unhabitat.org/downloads/docs/10007\\_1\\_593993.pdf](http://www.unhabitat.org/downloads/docs/10007_1_593993.pdf).

<sup>52</sup> See Zayat and Ricciardi, "El derecho a la defensa ..." (footnote 7 above).

<sup>53</sup> CELS, "La problemática de los desalojos en CABA ..." (see footnote 17 above), p. 1.

<sup>54</sup> COHRE, "Informe preparado por COHRE ..." (footnote 6 above), p. 11.

<sup>55</sup> See paragraph 18 above.

<sup>56</sup> See, inter alia, Universidad Nacional de General Sarmiento, Instituto del Conurbano, Info-Habitat Metropolitano, Movimiento por la Reforma Urbana en la Argentina and COHRE, "Conclusiones del seminario ..." (footnote 35 above), p. 6.

<sup>57</sup> CELS, "La problemática de los desalojos en CABA ..." (footnote 17 above), p. 11.

shortcomings and inconsistencies in the eviction policies pursued at the national, provincial and local levels and the lack of inter-institutional coordination in their implementation.<sup>58</sup>

48. Lastly, the Special Rapporteur is concerned about the excessive use of force by State agents and private security personnel during evictions, in particular against vulnerable groups and those who have difficulty in accessing justice, such as migrants and members of indigenous communities. The Special Rapporteur also notes with concern that government officials are not present during many evictions, which is contrary to international standards,<sup>59</sup> and that judges fail to provide for measures to control the execution of the eviction orders they issue. In this regard, the Special Rapporteur received alarming information about the events that occurred in the city of Buenos Aires in December 2010 during the eviction of the occupants of the Parque Indoamericano, when three people were allegedly killed by State agents. The Special Rapporteur also notes with deep concern the situation of the “La Primavera” community (Formosa province), which is made up of members of the Qom Navogoh people. During clashes in the context of a land conflict between the community and the province of Formosa in November 2010, a community member and a police officer were killed, the community was evicted from its ancestral lands and their homes were burned along with all their property. The Special Rapporteur also notes with great concern the violence used by private cooperatives employed by the municipality of Ushuaia to halt irregular settlements.<sup>60</sup>

## VI. Specific situations

### A. Indigenous peoples

49. The Special Rapporteur is particularly concerned about reports that indigenous peoples are discriminated against with regard to housing, that they do not have secure title to traditionally occupied community lands and that they are the victims of particularly violent forced evictions related to oil, mining and agricultural projects, which are carried out without prior consultation with the affected communities and without their participation.

50. The Special Rapporteur recalls that under article 75, paragraph 17, of the National Constitution, Congress is required to “recognize the ... community possession and ownership of the lands that [the indigenous peoples of Argentina] traditionally occupy; and to regulate the granting of other lands that are adequate and sufficient for human development; none of [these lands] shall be sold, transmitted or subject to liens or attachments”. In this regard, the Special Rapporteur welcomes the adoption in 2006 of Act No. 26160, which suspends for four years<sup>61</sup> the execution of any ruling or procedural or administrative act involving the eviction of an indigenous community and which also establishes a programme providing for a legal cadastral survey with a view to regularizing indigenous community property.

51. Despite the adoption of this law, the Special Rapporteur notes with concern that indigenous communities in several of the country’s provinces are still being evicted (at times very violently), facing eviction orders or being threatened with the sale of part of

<sup>58</sup> Ibid., p. 12, and Ombudsman’s Office of the Autonomous City of Buenos Aires, “Informe de situación ...” (footnote 44 above), pp. 23–24.

<sup>59</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 7, paragraph 15.

<sup>60</sup> See AGFE, “Report, Mission to Argentina” (footnote 51 above), pp. 44–45.

<sup>61</sup> Act No. 26554 has extended this suspension until 23 November 2013.



their territory.<sup>62</sup> In addition, the regularization programme has been implemented only to a very limited extent, since to date very few communities have completed the land survey process;<sup>63</sup> in most provinces only the survey itself has been carried out and in others the process has not even started.

52. Lastly, the Special Rapporteur notes with concern that, although the State has invested in the construction of housing for the indigenous population, that housing is reportedly socially and culturally inadequate and in many instances of poor quality and without access to services.<sup>64</sup>

## B. Migrant population

53. The Special Rapporteur notes the progress made in terms of legislation concerning the recognition of rights for the migrant population. Article 14 bis of the Constitution recognizes the right to adequate housing for all “inhabitants” of the Argentine Nation, in other words all persons residing in Argentine territory with the intention of remaining there, even though they may not have established full legal domicile. Act No. 25871 of 2004 also explicitly states that the rights recognized to the migrant population are not linked to their migratory status.

54. Despite these developments, the migrant population reportedly faces specific barriers to accessing adequate housing; this is reflected in the large percentage of migrants living in slums.<sup>65</sup> The Special Rapporteur notes with particular concern that migrants suffer from discrimination in the allocation of social housing. For example, Act No. 1118/1999 of the city of Ushuaia, in the context of a demographic explosion caused by migration, establishes a points system for the allocation of housing based on length of residence in the city and civic conduct, which is defined on the basis of the irregular occupation of State land in the city.

55. The Special Rapporteur also notes with concern that the rule requiring applicants to hold an Argentine national identity document in order to be eligible for the National Housing Fund programme not only fails to comply with Act No. 25871, but is also a major barrier to migrants’ access to housing, since the time required to obtain an identity document can be very long.<sup>66</sup>

56. The Special Rapporteur has also noted the growing tendency to stigmatize migrants living in irregular settlements; this leads to their being associated with drug trafficking and crime and to growing tension between “*okupas*” (migrants) and “*vecinos*” (Argentines).<sup>67</sup>

<sup>62</sup> Equipo Nacional de Pastoral Indígena, “Advertencia sobre la inejecución de las leyes nacionales N.º 26160 y 26554: Emergencia de la posesión y propiedad comunitaria indígena”, May 2011, p. 47.

<sup>63</sup> According to information provided by the State, in April 2009 only seven communities had completed the legal and technical cadastral survey.

<sup>64</sup> Instituto Internacional María Auxiliadora (IIMA) Argentina, “Informe alternativo para el Comité de derechos económicos, sociales y culturales – 46º período de sesiones: La vivienda adecuada como elemento integrante del derecho a un nivel de vida adecuado y sobre el derecho de no discriminación en este aspecto en Argentina”, April 2011, at: [www2.ohchr.org/english/bodies/cescr/docs/ngos/IIMA\\_ArgentinaWG46.pdf](http://www2.ohchr.org/english/bodies/cescr/docs/ngos/IIMA_ArgentinaWG46.pdf).

<sup>65</sup> By way of example, according to official sources, approximately half of those living in slums in the Autonomous City of Buenos Aires were born abroad. ACIJ and COHRE, “El IVC ...” (footnote 42 above), p. 35.

<sup>66</sup> *Ibid.*, pp. 35–36.

<sup>67</sup> See, for example, the speech and press conference on the occupation of the Parque Indoamericano given by the head of the City Government of Buenos Aires on 9 December 2010, at: <http://es.paperblog.com/discurso-y-conferencia-de-prensa-ante-la-ocupacion-del->

Lastly, the Special Rapporteur has noted how, under the *Patria Grande* programme, which promotes the regularization of migrants from member States and associate States of the Southern Common Market (MERCOSUR), an even more vulnerable category of migrants is being created, namely, those from countries not covered by the programme.

## VII. Conclusions and recommendations

57. In conclusion, the Special Rapporteur believes that a number of factors currently impede the realization of the right to adequate housing in Argentina, including: the lack of market regulation for land transactions; real estate speculation; the lack of federal coordination in the formulation and implementation of housing policies; a legal framework for evictions that fails to guarantee due process; and a lack of comprehensive housing policies that are sufficiently diverse to provide long-term solutions to the various housing needs. The Special Rapporteur considers that, given the progress made in terms of legislation and investment in housing and the economic growth of recent years, Argentina is in a position to draw up and implement a social pact on land use to ensure the implementation of the right to adequate housing for all its inhabitants.

58. The Special Rapporteur reiterates her readiness to cooperate in this effort and, in this regard, makes the following recommendations.

### A. Legal framework

59. The Special Rapporteur recommends the adoption at the national level of a framework law on the right to adequate housing that incorporates existing international standards on the right to adequate housing and sets out the budgets and basic criteria for all housing policies at the national, provincial and local levels. The Special Rapporteur recommends the drafting and enactment of a law that recognizes the public function of land-use planning and modifies the general principles that form part of the current definition of the right to private property as regulated in the Civil Code so as to include the concept of the social function of property.

### B. Public policies

60. The Special Rapporteur recommends that a survey be carried out, on the basis of the 2010 census results and with the active participation of the municipalities and provinces, to map the various settlements and the housing demand created by economic investment plans. A national plan on urban land and urban and rural housing should also be prepared in line with the Strategic Land-use Plan to develop a range of housing programmes and policies and clear allocation criteria.

61. In this regard, the Special Rapporteur calls for greater coordination (of programmes and available resources), with the greatest possible degree of decentralization, in national and provincial public housing and urbanization policies.

62. The Special Rapporteur calls for greater diversity and flexibility in housing programmes, to match funds with existing needs and to strengthen programmes aimed at improving, completing and extending inadequate housing, regularizing land

title, promoting access to land and supporting self-build housing, services and equipment. The Special Rapporteur also recommends the introduction of a rent control policy and the establishment of a rental subsidy programme.

63. The Special Rapporteur urges the competent authorities to implement existing land management policies effectively, to adopt relevant draft legislation as soon as possible and to promptly introduce implementing regulations for Decree No. 835/2004 in order to establish the Social Land Bank.

64. The Special Rapporteur urges the competent authorities to introduce transparent housing allocation mechanisms, paying particular attention to the needs of the most vulnerable groups, ensuring adequate consultation with the target population and establishing social control mechanisms. The Special Rapporteur recommends the repeal of all discriminatory regulations related to the allocation of social housing, including those that discriminate on the ground of irregular occupation of housing.

65. Lastly, the Special Rapporteur urges the Government to strengthen and promote participation and consultation mechanisms covering all stages and aspects of housing policies, and to strengthen support for cooperatives, mutual societies and grass-roots organizations.

66. With regard to informal settlements, in view of the lack of an adequate, standardized regularization policy, the Special Rapporteur recommends the establishment of a general framework for the recognition of rights and clear criteria for consolidating settlements and the promotion by the competent authorities of a comprehensive regularization policy (via a process of urbanization and administrative and land-title regularization and shorter periods for adverse possession of land for social housing purposes), definitively integrating these settlements into cities and towns, and offering alternatives that comply with international standards on adequate housing to the inhabitants of settlements that are not to be regularized.

### C. Evictions

67. The Special Rapporteur recalls that where eviction is considered to be justified, Argentina has an obligation to ensure that it is carried out in strict compliance with the relevant provisions of international human rights law and in accordance with the general principles of reasonableness and proportionality. Furthermore, it is obliged to provide legal remedies or procedures to those who are affected by eviction orders and to see to it that all the individuals concerned have a right to adequate compensation.

68. The Special Rapporteur urges the Government to guarantee the right to an effective defence in eviction proceedings and recommends that the courts recognize persons threatened with eviction as parties to the proceedings. In this context, the Special Rapporteur strongly recommends that free legal aid be guaranteed to those who cannot afford a lawyer and that the relevant competent institutions, particularly the Public Defence Service, be strengthened and given the resources they need to address the claims of vulnerable groups. The Special Rapporteur also urges the full application of resolution No. 1190/08 of the Chief Public Defender's Office, so that public defenders for minors and incompetents intervene in all eviction proceedings affecting minors.

69. The Special Rapporteur urges the alignment of national legislation with international standards on evictions and in this regard recommends in particular the repeal of articles 680 bis and 684 bis of the Code of Civil and Commercial Procedure, article 238 of the Code of Criminal Procedure and Title V of Act No. 24441, and the

amendment of article 181 of the Criminal Code to prevent it from being used to criminalize homeless people. The Special Rapporteur urges judges and prosecutors to base eviction decisions on the relevant international standards and, in this regard, recommends the adoption of a procedural protocol for judges and prosecutors that incorporates the relevant international standards.

70. The Special Rapporteur recommends the adoption and implementation of a comprehensive social policy to provide long-term housing solutions for people made homeless as a result of an eviction. Lastly, the Special Rapporteur urges the competent State authorities to be present during evictions and recommends the adoption of a procedural protocol for the security forces in such cases.

#### **D. Indigenous peoples**

71. The Special Rapporteur urges all the competent institutions to implement, in the shortest possible time, the programmes provided for under Act No. 26160 concerning the regularization of the property of indigenous communities, while respecting the right of the affected communities to consultation and participation.

72. Likewise, the Special Rapporteur urges the Government to observe the order suspending any ruling or procedural or administrative act involving the eviction of an indigenous community (Act No. 26160 and Act No. 26554) and recommends that the duration of the suspension be extended pending the regularization of indigenous community property throughout the country, with full respect for the rights of indigenous peoples.

73. The Special Rapporteur also urges the Government to further incorporate the aspect of cultural adequacy in its housing programmes and to ensure that the quality of housing, including access to services, is guaranteed in housing programmes for the indigenous population.

#### **E. Situation of the migrant population**

74. The Special Rapporteur urges the competent authorities to repeal all criteria that discriminate against the migrant population in the allocation of social housing and to take any other measure necessary to ensure that the right to adequate housing is guaranteed to the migrant population, in full compliance with Act No. 25871.

75. The Special Rapporteur also urges the authorities to refrain from using any stigmatizing language in reference to the migrant population, in particular migrants living in irregular settlements.

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