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COVID–19, Housing and Evictions: A Comparative Case Study of Housing Law and Policy in the United States and Argentina through an International Human Rights Lens

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COVID–19, Housing and Evictions: A Comparative Case Study of Housing Law and Policy in the United States and Argentina through an International Human Rights Lens

Lily Frances Fontenot*

This Note seeks to address the impact of international human rights obligations on domestic housing laws and policies through a comparative case study of Argentina and the United States. Specifically, it will discuss each country’s response to the COVID-19 pandemic, their housing obligations under international human rights law, and how each country is addressing their own unique housing and eviction crises. Finally, this Note will offer recommendations on how each country should modify their housing policies in light of the pandemic in order to comply with international human rights standards.

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I. INTRODUCTION

In March 2020, countries around the world faced an unprecedented challenge: responding to the wide-spread emergence of the novel coronavirus, COVID-19.¹ After watching the virus devastate China and Italy, governments around the world began implementing restrictions, such as banning mass gatherings, closing businesses, and sealing borders.² Eventually, with stay-at-home orders in place virtually everywhere, people around the world were confined to their homes to curb the spread of the viral disease.³ However, with record numbers of individuals being laid off from work due to the economic shutdown, many tenants struggled to pay rent.⁴ Both members of the general public and decision makers consequently turned their attention to the problem of housing insecurity.⁵ In response to the ongoing housing crisis that was exacerbated by the pandemic, countries across the globe implemented temporary eviction moratoriums, providing necessary, short-term financial relief.⁶

In the United States, Congress signed the \$2 trillion CARES Act into law on March 27, 2020, which included a ban on evictions from federally financed properties.⁷ However, the 120-day moratorium covered only about 28 percent of the country's rental units, applying to roughly 12.3 million of the 43.8 million U.S. rental

¹ See Michael Safi, *Coronavirus: the week the world shut down*, GUARDIAN (Mar. 20, 2020), <https://www.theguardian.com/world/2020/mar/20/coronavirus-the-week-the-world-shut-down>.

² See *id.*

³ See *id.*

⁴ Conor Dougherty, *31% Can't Pay the Rent: 'It's Only Going to Get Worse,'* N.Y. TIMES (Apr. 8, 2020), <https://www.nytimes.com/2020/04/08/business/economy/coronavirus-rent.html> (last updated Oct. 6, 2021).

⁵ Sarah Schindler & Kellen Zale, *How the Law Fails Tenants (and Not Just During A Pandemic)*, 68 UCLA L. REV. DISCOURSE 146, 148 (2020).

⁶ See Catherine Thorbecke, *What to know about the Trump administration's temporary eviction halt and who's covered*, ABC NEWS (Sept. 2, 2020, 1:00 PM), <https://abcnews.go.com/US/trump-administrations-temporary-eviction-halt-covered/story?id=72769863>.

⁷ Annie Nova, *How the CARES Act failed to protect tenants from eviction*, CNBC (Aug. 29, 2020), <https://www.cnbc.com/2020/08/29/how-the-cares-act-failed-to-protect-tenants-from-eviction.html> (last updated Sept. 2, 2020, 9:56 AM).

units.⁸ Furthermore, the moratorium expired on July 24, 2020, allowing landlords to issue a 30 days' notice for tenants to vacate properties.⁹ Shortly after the July expiration date, the Centers for Disease Control and Prevention (CDC) issued an agency order on September 4, 2020, to temporarily halt residential evictions in order to prevent the spread of the coronavirus by helping struggling tenants until December 31, 2020.¹⁰

Notably, the CDC order recognized the intersection between housing and public health amidst the pandemic.¹¹ For example, the order explained the following:

In the context of a pandemic, eviction moratoria—like quarantine, isolation, and social distancing—can be an effective public health measure utilized to prevent the spread of communicable disease. Eviction moratoria facilitate self-isolation by people who become ill or who are at risk for severe illness from COVID-19 due to an underlying medical condition. They also allow State and local authorities to more easily implement stay-at-home and social distancing directives to mitigate the community spread of COVID-19. Furthermore, housing stability helps protect public health because homelessness increases the likelihood of individuals moving into close quarters in congregate settings, such as homeless shelters, which then puts individuals at higher risk to COVID-19.¹²

⁸ Laurie Goodman et al., *The CARES Act Eviction Moratorium Covers All Federally Financed Rentals—That's One in Four US Rental Units*, URBAN INST. (April 2, 2020), <https://www.urban.org/urban-wire/cares-act-eviction-moratorium-covers-all-federally-financed-rentals-thats-one-four-us-rental-units>.

⁹ Sonya Acosta et al., *Extend CARES Act Eviction Moratorium, Combine With Rental Assistance to Promote Housing Stability*, CTR. ON BUDGET AND POLICY PRIORITIES (last updated July 27, 2020), <https://www.cbpp.org/research/housing/extend-cares-act-eviction-moratorium-combine-with-rental-assistance-to-promote>.

¹⁰ Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 FED. REG. 55,292 (Sept. 4, 2020).

¹¹ *Id.*

¹² *Id.* at 55,294.

Nonetheless, the CDC's eviction moratorium, while necessary and beneficial, is limited in scope, only applying to those who fall under the "covered person" definition.¹³ In order to qualify as a "covered person" for this eviction freeze, the "tenant, lessee, or resident of a residential property" must provide to their landlord a declaration under penalty of perjury indicating the following:¹⁴

(1) The individual has used best efforts to obtain all available government assistance for rent or housing;

(2) The individual either (i) expects to earn no more than \$99,000 in annual income for Calendar Year 2020 (or no more than \$198,000 if filing a joint tax return), (ii) was not required to report any income in 2019 to the U.S. Internal Revenue Service, or (iii) received an Economic Impact Payment (stimulus check) pursuant to Section 2201 of the CARES Act;

(3) the individual is unable to pay the full rent or make a full housing payment due to substantial loss of household income, loss of compensable hours of work or wages, a lay-off, or extraordinary out-of-pocket medical expenses;

(4) the individual is using best efforts to make timely partial payments that are as close to the full payment as the individual's circumstances may permit, taking into account other nondiscretionary expenses; and

(5) eviction would likely render the individual homeless—or force the individual to move into and live in close quarters in a new congregate or shared living setting—because the individual has no other available housing options.¹⁵

Fortunately, the Consolidated Appropriations Act passed by Congress in December 2020 extended the CDC's eviction morato-

¹³ *Id.* at 55,293.

¹⁴ *Id.*

¹⁵ *Id.*

rium for renters through January 31, 2021.¹⁶ This second new stimulus package also provided \$25 billion in financial assistance that “households [would] be able to use to pay past-due rent, future rent, and utility bills, or other housing expenses incurred by the pandemic.”¹⁷ With an estimated 30 to 40 million people in America at risk of eviction by the end of 2020, these short-term U.S. measures were certainly necessary.¹⁸ In fact, nearly one in five households were behind on rent in December 2020.¹⁹

With mass evictions looming, President Joe Biden signed an executive order on his first day in office that asked the CDC to extend the federal eviction moratorium through at least March 31, 2021.²⁰ President Biden further extended the moratorium a few more times through June and July, with it ultimately lapsing on July 31, 2021.²¹ Three days after its expiration, in response to delta variant, the CDC issued another eviction moratorium that applied only in U.S. counties experiencing substantial and high levels of community transmission, which was originally set to expire on October 3, 2021.²² However, the Alabama Association of Realtors,

¹⁶ Kelly Anne Smith & Lisa Rowan, *\$25B In Rent Relief Included in New Stimulus Package. Is It Enough To Help Renters At Risk Of Eviction?*, FORBES, <https://www.forbes.com/advisor/personal-finance/second-stimulus-rent-relief-eviction-moratorium/> (last updated Dec. 21, 2020, 6:05 PM).

¹⁷ *Id.*

¹⁸ Emily Benfer et. al, *The COVID-19 Eviction Crisis: an Estimated 30-40 Million People in America Are at Risk*, ASPEN INST. (Aug. 7, 2020), <https://www.aspeninstitute.org/blog-posts/the-covid-19-eviction-crisis-an-estimated-30-40-million-people-in-america-are-at-risk/>.

¹⁹ Lisa Rowan, *CDC Extends Renters' Eviction Moratorium Through March. Is More Rent Relief Next?*, FORBES, <https://www.forbes.com/advisor/personal-finance/biden-plan-eviction-moratorium-rent-relief/> (last updated Feb. 3, 2021, 12:54 PM).

²⁰ *Id.*

²¹ NAT'L HOUS. LAW PROJECT & NAT'L LOW INCOME HOUS. COAL., *Federal Moratorium on Evictions for Nonpayment of Rent* (Aug. 2021), <https://nlihc.org/sites/default/files/Overview-of-National-Eviction-Moratorium.pdf>.

²² CTR FOR DISEASE CONTROL & PREVENTION, *CDC Issues Eviction Moratorium Order in Areas of Substantial and High Transmission* (Aug. 3, 2021), <https://www.cdc.gov/media/releases/2021/s0803-cdc-eviction-order.html>; Barbara Sprunt, *The Biden Administration Issues a New Eviction Moratorium After a Federal Ban Lapsed*, NPR (Aug. 3, 2021), <https://www.npr.org/2021/08/03>

along with other plaintiffs, challenged the validity of the CDC's August 3rd order.²³ Ultimately, the Supreme Court found that the CDC order was unlawful, causing the eviction moratorium to end in the U.S. on August 26, 2021.²⁴

In Argentina, a similar course of action took place. On March 29, 2020, a public emergency decree (Decreto 320/2020) called for a temporary suspension of evictions, a temporary extension of lease contracts with the agreement of the tenant, and a temporary freezing of rental prices for qualified properties until September 30, 2020.²⁵ Then, on September 24, 2020, the Argentinian government passed another decree (Decreto 766/2020), extending the deadlines until January 31, 2021.²⁶ Subsequently, on January 22, 2021, the government announced that it would extend the validity of these decrees, freezing rents and suspending evictions, until March 31, 2021.²⁷ Interestingly, in all of these decrees, the government mentions that "the legal safeguard of the right to housing is protected by various norms contained in the Human Rights treaties ratified by our country," specifically citing Article 11 of the International Covenant on Economic, Social and Cultural Rights.²⁸ It is the language of these orders that exemplifies the differences between Argentinian and American housing policies: Argentina

/1024345276/the-biden-administration-plans-a-new-eviction-moratorium-after-a-federal-ban-lap.

²³ Ann O'Connell, *Emergency Bans on Evictions and Other Tenant Protections Related to Coronavirus*, NOLO, <https://www.nolo.com/evictions-ban> (last updated Nov. 1, 2021).

²⁴ Ala. Ass'n of Realtors, et al v. Dep't of Health & Human Serv., et al, 594 U. S. __ (2021).

²⁵ Decreto No. 320/2020, 29 de marzo de 2020, B.O. (34.342) (Arg.), available at <https://www.boletinoficial.gob.ar/detalleAviso/primera/227247/20200329> [hereinafter Decreto No. 320/2020].

²⁶ Decreto No. 766/2020, 24 de septiembre de 2020, B.O. (34.483) (Arg.), available at <https://www.boletinoficial.gob.ar/detalleAviso/primera/235338/20200925> [hereinafter Decreto No. 766/2020].

²⁷ Decreto No. 66/2021, 29 de enero de 2021, B.O. (34.574) (Arg.), available at <https://www.boletinoficial.gob.ar/detalleAviso/primera/240234/20210130> [hereinafter Decreto No. 66/2021]; see also Diego Flores, *Alquileres. Se extendió el congelamiento hasta fines de marzo*, LA NACIÓN (Arg.), Jan. 22, 2021, <https://www.lanacion.com.ar/propiedades/alquileres-seguirian-congelados-hasta-fines-de-marzo-nid22012021/>.

²⁸ Decreto No. 320/2020, *supra* note 25; Decreto No. 766/2020, *supra* note 26; Decreto No. 66/2021, *supra* note 27.

recognizes an affirmative right to housing²⁹ and the United States does not.³⁰

By conducting a thorough analysis of the differing laws and policies in the United States and Argentina, this case note seeks to highlight the benefits of governments using an international human rights framework when analyzing housing issues. Even though Argentina formally recognizes a right to adequate housing under international human rights law—a seemingly beneficial notion for housing policies—the country still faces significant housing instability. Such instability is also found in the U.S., even though it does not recognize an affirmative right to adequate housing. Ultimately, the COVID-19 pandemic has demonstrated the dire need for every country, regardless of whether it has established an affirmative right to housing, to reform its housing laws and policies to protect both tenants and landlords in the event of another global crisis.

Therefore, this case note will serve as a comparative analysis of the U.S.'s and Argentina's housing policies by exploring the two countries' responses to the eviction crisis resulting from the COVID-19 pandemic. Part II of this note will provide background by explaining the right to adequate housing using the international human rights law framework. Next, Part III will analyze the U.S.'s and Argentina's housing obligations, provide examples of how each country is struggling to implement the right to housing, and discuss the inherent tension between landlord and tenant rights. Part IV of this note will then discuss the looming uncertainty of what will happen once the temporary eviction moratoria end, and will provide recommendations on how to best move forward, ending with a conclusion in Part V.

²⁹ See CONSTITUCIÓN DE LA NACIÓN ARGENTINA 1994, art. 14; Decreto No. 320/2020, *supra* note 25; Decreto No. 766/2020, *supra* note 26.

³⁰ See *Right to Housing Factsheet: In the United States*, NAT'L LAW CTR. ON HOMELESSNESS & POVERTY (Aug. 2009), [https://nhlp.org/files/\(2\)%20Right%20to%20Housing%20-%20in%20the%20U.S.pdf](https://nhlp.org/files/(2)%20Right%20to%20Housing%20-%20in%20the%20U.S.pdf).

II. BACKGROUND ON THE RIGHT TO ADEQUATE HOUSING

“The human right to adequate housing is more than just four walls and a roof. It is the right of every woman, man, youth and child to gain and sustain a safe and secure home and community in which to live in peace and dignity.”³¹

a. *The Right to Adequate Housing as Defined in Core Human Rights Instruments*

i. The Universal Declaration of Human Rights (UDHR)

As the fundamental human rights instrument, the Universal Declaration of Human Rights (UDHR) provides the basis for the affirmative right to housing.³² Specifically, Article 17 of the UDHR provides the following: “(1) Everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property.”³³ The UDHR is considered a “milestone document in the history of human rights” because it was the first document to set out “fundamental human rights to be universally protected.”³⁴ In December 1948, the United Nations General Assembly proclaimed the UDHR “as a common standard of achievements for all peoples and all nations.”³⁵ Thus, the right to housing in international human rights law stems from the UDHR.³⁶

Furthermore, “on the same day that it adopted the Universal Declaration, the General Assembly requested the Commission on Human Rights to prepare, as a matter of priority, a draft covenant

³¹ U.N. Office of the High Commissioner for Human Rights, *The Right to Adequate Housing Toolkit*, <https://www.ohchr.org/EN/Issues/Housing/toolkit/Pages/RighttoAdequateHousingToolkit.aspx> (last visited Mar. 6, 2021).

³² See G.A. RES. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948) [hereinafter UDHR].

³³ *Id.* at art. 17.

³⁴ *Universal Declaration of Human Rights*, UNITED NATIONS, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited Nov. 21, 2021).

³⁵ *Id.*

³⁶ See *id.*

on human rights and draft measures of implementation.”³⁷ After years of drafting, the General Assembly adopted two international covenants on December 16, 1966: the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR).³⁸ Accordingly, these documents, along with the UDHR, were named the International Bill of Human Rights and now serve as the main international human rights treaties.³⁹

ii. International Covenant on Economic, Social and Cultural Rights (ICESCR)

Expanding on the UDHR, the International Covenant on Economic, Social and Cultural Rights (ICESCR) explicitly identifies the right to adequate housing.⁴⁰ In Article 11, ICESCR recognizes “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.”⁴¹ Furthermore, the covenant requires that the “States Parties will take appropriate steps to ensure the realization of this right.”⁴² Thus, although it was not elaborated on in more detail, ICESCR established the right to adequate housing as a part of the right to an adequate standard of living.⁴³

iii. International Covenant on Civil and Political Rights (ICCPR)

On the other hand, the International Covenant on Civil and Political Rights (ICCPR) does not explicitly establish the right to adequate housing.⁴⁴ Instead, this covenant focuses on civil and politi-

³⁷ U.N. Office of the High Commissioner for Human Rights, Fact Sheet No.2 (Rev.1), The International Bill of Human Rights (June 1996), <https://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ See International Covenant of Economic, Social and Cultural Rights, Oct. 5, 1977, 993 U.N.T.S. 3 [hereinafter ICESCR].

⁴¹ *Id.*

⁴² *Id.*

⁴³ *See id.*

⁴⁴ See International Convention of Civil and Political Rights, June 8, 1996, 999 U.N.T.S. 171 [hereinafter ICCPR].

cal rights, such as the following: the right to life and human dignity; equality before the law; freedom of speech, assembly, and association; religious freedom and privacy; freedom from torture, ill-treatment, and arbitrary detention; gender equality; the right to a fair trial; right family life and family unity; and minority rights.⁴⁵ Thus, the ICCPR does not provide for any affirmative obligations on its member States to ensure the right to adequate housing.⁴⁶

iv. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

Furthermore, another core international human rights treaty that incorporates the right to adequate housing is the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which was adopted in 1965.⁴⁷ Specifically, Article 5 of the treaty mandates that States prohibit and eliminate racial discrimination in all its forms and guarantee equality before the law to ensure the enjoyment of human rights including “the right to housing.”⁴⁸ Article 5 also refers to the “right to own property alone as well as in association with others” without distinction as to race, color, or ethnicity.⁴⁹ Through these provisions, ICERD reaffirms a State’s obligation to ensure that everyone, regardless of race, has the right to adequate housing.⁵⁰

v. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Finally, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is a core human rights instrument that connects housing with gender issues.⁵¹ For exam-

⁴⁵ See *id.*; see also *FAQ: The Covenant on Civil & Political Rights (ICCPR)*, AM. C.L. UNION, <https://www.aclu.org/other/faq-covenant-civil-political-rights-iccpr> (last visited Mar. 6, 2021).

⁴⁶ See ICCPR, *supra* note 44.

⁴⁷ See International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195 [hereinafter ICERD].

⁴⁸ *Id.* at art. 5.

⁴⁹ *Id.*

⁵⁰ See *id.*

⁵¹ See Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13 [hereinafter CEDAW].

ple, in Article 14, CEDAW calls on States to take appropriate measures to ensure that women, specifically rural women, “enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”⁵² Additionally, Article 15 mandates that States accord “women equal rights to conclude contracts and to administer property” as well as the “freedom to choose their residence and domicile.”⁵³ Therefore, multiple human rights instruments recognize the importance of the right to adequate housing and its connection to other human rights, such as racial and gender equality.⁵⁴

Furthermore, under international human rights law, countries that are parties to human rights treaties have obligations to respect, protect, and fulfill the rights listed in the treaty provisions.⁵⁵ First, States have the basic obligation to *respect* human rights.⁵⁶ This obligation to respect means that “States must refrain from interfering with or curtailing the enjoyment of human rights.”⁵⁷ Additionally, States must *protect* human rights, which requires “States to protect individuals and groups against human rights abuses.”⁵⁸ Finally, States must *fulfill* their obligations by taking “positive action to facilitate the enjoyment of basic human rights.”⁵⁹ Accordingly, under the aforementioned human rights instruments, States have an obligation to respect, protect, and fulfill the right to adequate housing.⁶⁰

b. Key Aspects of the Right to Adequate Housing

Moreover, the United Nations Committee on Economic, Social and Cultural Rights, the treaty body that monitors the implementation of ICESCR, has clarified the characteristics of the right to ad-

⁵² *Id.* at art. 14.

⁵³ *Id.* at art. 15.

⁵⁴ See ICERD, *supra* note 47; CEDAW, *supra* note 51.

⁵⁵ U.N. Office of the High Commissioner for Human Rights, What are human rights?, <https://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx> (last visited Mar. 6, 2021) [hereinafter Human Rights].

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ See UDHR, *supra* note 32; ICESCR, *supra* note 40; ICCPR, *supra* note 44; ICERD, *supra* note 47; CEDAW, *supra* note 51.

equate housing.⁶¹ In General Comment No. 4 (1991) on the right to adequate housing and General Comment No. 7 (1997) on forced evictions, the Committee emphasizes that the right to adequate housing should be seen broadly as “the right to live somewhere in security, peace and dignity.”⁶² For example, the Committee identified the following freedoms as essential to the right to adequate housing: (i) protection against forced evictions and the arbitrary destruction and demolition of one’s home; (ii) the right to be free from arbitrary interference with one’s home, privacy and family; and (iii) the right to choose one’s residence.⁶³ In addition to these freedoms, the right to adequate housing also includes the following entitlements: (i) security of tenure; (ii) housing, land and property restitution; (iii) equal and non-discriminatory access to adequate housing; and (iv) participation in housing-related decision-making at the national and community levels.⁶⁴ Moreover, the Committee explained that adequate housing “must provide more than four walls and a roof.”⁶⁵ Specifically, criteria for an adequate house includes security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.⁶⁶

Furthermore, protection against forced evictions is an essential element of the right to adequate housing.⁶⁷ Forced evictions are defined as the “permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”⁶⁸ Forced evictions

⁶¹ U.N. Office of the High Commissioner for Human Rights, The Right to Adequate Housing: Fact Sheet No. 21/Rev.1, at 3, https://www.ohchr.org/documents/publications/fs21_rev_1_housing_en.pdf (last visited Mar. 6, 2021) [hereinafter Fact Sheet No. 21].

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.* at 4.

⁶⁷ See U.N. Committee on Economic, Social, and Cultural Rights, General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions, ¶ 5, U.N. Doc. CESCR/E/1998/22 (May 20, 1997), <https://www.refworld.org/docid/47a70799d.html> [hereinafter CESCR].

⁶⁸ *Id.* at ¶ 3.

can lead to human rights violations due to (i) the absence of justification or legality for the eviction and (ii) the manner in which the eviction is carried out.⁶⁹ Even “if eviction may be justifiable because the tenant persistently fails to pay rent or damages the property without reasonable cause, the State must ensure that it is carried out in a lawful, reasonable and proportional manner, and in accordance with international law.”⁷⁰ For example, a person facing eviction should have adequate notification, due process, effective and legal recourse.⁷¹ Thus, States that recognize the right to adequate housing are obligated to prevent unlawful evictions and to ensure reasonable manners of removal.⁷²

III. ANALYSIS

a. Increasing Evictions & The Causes of Housing Issues in the U.S.

The threat of eviction is nothing new for low-income renters in the United States. An estimated 2.3 million evictions were filed in the U.S. in 2016—a rate of four every minute, according to sociologist Matthew Desmond.⁷³ In his Pulitzer Prize winning novel *Evicted*, which follows eight families struggling to pay rent in Milwaukee, Wisconsin during the financial crisis of 2007 and 2008, Desmond explained that “eviction is a cause, not just a condition, of poverty.”⁷⁴ Although the COVID-19 pandemic has exacerbated the current housing crisis, this crisis has been steadily growing throughout the years.⁷⁵ Over the last two decades, housing

⁶⁹ U.N. Office of the High Commissioner for Human Rights, Indicator: Forced Evictions, <https://www.ohchr.org/Documents/Issues/Housing/Evictions.pdf> (last visited Mar. 6, 2021).

⁷⁰ Fact Sheet No. 21, *supra* note 61 at 5.

⁷¹ *Id.* at 5-6.

⁷² *See id.*

⁷³ Terry Gross, *First-Ever Evictions Database Shows: ‘We’re In the Middle Of A Housing Crisis,’* NPR (Apr. 12, 2018, 1:07 PM), <https://www.npr.org/2018/04/12/601783346/first-ever-evictions-database-shows-were-in-the-middle-of-a-housing-crisis>.

⁷⁴ MATTHEW DESMOND, *EVICTED: POVERTY & PROFIT IN THE AMERICAN CITY* 298 (1st ed. 2016).

⁷⁵ *See* Jen Kirby, *America’s looming housing catastrophe, explained*, VOX (July 8, 2020, 10:00 AM), <https://www.vox.com/21301823/rent-coronavirus->

costs have increased dramatically while many incomes have stayed flat, causing eviction rates to increase.⁷⁶ For example, between 1995 and 2018, “median asking rents have increased by 70 percent, adjusting for inflation.”⁷⁷ This trend of rising housing costs has significantly impacted the American population, both physically and emotionally. Tragically, “suicides attributed to evictions and foreclosures doubled between 2005 and 2010, years when housing costs soared.”⁷⁸ Thus, it is clear that the growing U.S. housing crisis affected millions of Americans even before the pandemic.⁷⁹

But what caused this housing crisis in the U.S.? As with any major societal issue, not one, but a combination of many factors leads to housing instability and homelessness—the lack of income, health problems, domestic violence, and racial disparities, to name a few.⁸⁰ Notably, the “financialization of housing” is one cause that has led to a lack of affordable housing in the U.S.⁸¹ This term refers to the “expanding role and unprecedented dominance of financial markets and corporations in the housing sector.”⁸² Financialization and the accompanying “expanded credit and debt taken on by individual households” has led to unprecedented housing precarity as well as displacement and evictions at an unparalleled scale.⁸³ In the U.S. specifically, “over the course of 5 years, over 13 million foreclosures resulted in more than 9 million households

covid-19-housing-eviction-crisis (“Before the pandemic, of America’s nearly 43 million renters, about 20.8 million — almost half — were ‘cost-burdened,’ meaning more than 30 percent of their income went to housing costs, according to the Joint Center for Housing Studies of Harvard University. Of those, about 10.9 million renter households were ‘severely burdened,’ spending more than 50 percent of their income on rent.”).

⁷⁶ Gross, *supra* note 73.

⁷⁷ *Id.*

⁷⁸ Desmond, *supra* note 74, at 298.

⁷⁹ See Gross, *supra* note 73; Desmond, *supra* note 74; Kirby, *supra* note 75.

⁸⁰ See *What Causes Homelessness?*, NAT’L ALL. TO END HOMELESSNESS, <https://endhomelessness.org/homelessness-in-america/what-causes-homelessness/> (last visited Mar. 6, 2021).

⁸¹ See U.N. Human Rights Council, 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, ¶ 5, U.N. Doc. A/HRC/35/51, (Jan. 18, 2017), <http://undocs.org/A/HRC/34/51>.

⁸² *Id.* at ¶ 1.

⁸³ *Id.* at ¶ 5.

being evicted.”⁸⁴ As former Special Rapporteur Leliani Farha pointed out in her thematic report to the Human Rights Council, foreclosures, evictions, and displacements signal “the failure of States and of the international community to manage the interaction between financial actors and housing systems in accordance with the right to adequate housing.”⁸⁵ Thus, increased control of the housing market by corporate financial actors has led to a lack of affordable housing in the U.S.⁸⁶

Another significant cause of housing instability is racial inequality and discrimination, which has plagued the U.S.’s housing market and policies for years.⁸⁷ Following the abolition of slavery, “federal, state, and local governments sanctioned a wide range of racist housing policies—including discriminatory zoning, restrictive covenants, and redlining—designed to enforce residential segregation.”⁸⁸ Due to these policies, Black Americans have been systematically disadvantaged in the U.S. housing market. Black families today remain “significantly more likely than their white counterparts to endure housing cost burdens that exceed 30 percent of their income.”⁸⁹ Notably, the COVID-19 pandemic has also disproportionately impacted the Black community, causing an increase in housing instability.⁹⁰ For example, “only 26 percent of Black renters say they are highly confident they can continue to pay their rent, compared to nearly 50 percent of white renters.”⁹¹ Thus, the contributing role of racial disparities and discrimination to the U.S. housing crisis cannot be denied.⁹²

⁸⁴ *Id.*

⁸⁵ *Id.* at ¶ 12.

⁸⁶ *See id.*

⁸⁷ *See* Julia Kirschenbaum, *Covid-19 Housing Crisis Highlights Racial Inequity of Campaign Finance System*, BRENNAN CTR. FOR JUSTICE (Oct. 14, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/covid-19-housing-crisis-highlights-racial-inequity-campaign-finance>.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *See id.*

⁹¹ *Id.*

⁹² *See id.*

b. Inflation, Evictions & Housing Issues in Argentina

In Argentina, housing issues and evictions are directly impacted by the country's struggling economy and inflation rates, which have been growing steadily over recent years.⁹³ Even before the outset of the pandemic, Argentina's economic situation was already fairly dire with a national debt of \$323 billion, one of the largest in the world.⁹⁴ Argentina ended 2019 with an inflation rate of 53.8 percent, the second highest in Latin America after Venezuela.⁹⁵ This 53.8 percent increase was the country's most significant increase in consumer prices in 28 years.⁹⁶ Furthermore, the price of rent in Argentina dramatically increased in 2020 with an annual increase of 61.7 percent, 25 points above the 2020 inflation rate of 36 percent.⁹⁷ Shockingly, in 85 percent of Buenos Aires' neighborhoods, the price increase of rent in 2020 was higher than 50 percent.⁹⁸ Additionally, as of December 2020, 39.9 percent of the tenant households accumulate debts in the payment of rent, equivalent to a total of 1,400,000 families throughout Argentina, according to *La Federación de Inquilinos Nacionla* (Federation of

⁹³ See Aaron O'Neill, *Argentina: Inflation rate from 2004 to 2020*, STATISTA (June 20, 2021), <https://www.statista.com/statistics/316750/inflation-rate-in-argentina/>.

⁹⁴ Milagros Costabel, *Argentina's Economy Crumbles as Buenos Aires Lockdown Continues*, FOREIGN POLICY (Aug. 27, 2020, 4:35 PM), <https://foreignpolicy.com/2020/08/27/argentina-economy-crumbles-buenos-aires-lockdown-continues/>.

⁹⁵ *Id.*

⁹⁶ Reuters Staff, *Argentina 2019 inflation was 53.8%, highest in 28 years*, REUTERS (Jan. 15, 2020, 2:56 PM), <https://www.reuters.com/article/us-argentina-inflation/argentina-2019-inflation-was-53-8-highest-in-28-years-idUSKBN1ZE2P0>.

⁹⁷ Diego Flores, *Suba histórica: el mercado inmobiliario superó a la inflación con un 62% de aumento en alquileres [Historic high: the real estate market beat inflation with a 62% increase in rents]*, LA NACIÓN (Jan. 7, 2021, 9:42 AM), <https://www.lanacion.com.ar/propiedades/suba-historica-el-mercado-inmobiliario-supero-a-la-inflacion-con-un-62-de-aumento-en-alquileres-nid07012021/>.

⁹⁸ Natalia Muscatelli, *En el año de la ley, los alquileres acumulan un alza del 57% y superan en 25 puntos a la inflación [In the year of the law, rents accumulate a rise of 57% and exceed inflation by 25 points]*, CLARIN (Dec. 9, 2020, 12:55 PM), https://www.clarin.com/economia/ano-ley-alquileres-acumul-an-alza-57-superan-25-puntos-inflacion_0_UnCT8S3iL.html.

National Tenants).⁹⁹ Thus, both Argentina and the U.S. face a housing crisis—the Argentinian crisis being attributable to inflation and the increased cost of rent.¹⁰⁰

c. U.S. Housing Obligations under International Human Rights Law

In order for a treaty to become ratified in the United States, the Senate must provide its advice and consent by a two-thirds majority.¹⁰¹ However, in recent years, U.S. courts have limited the enforceability of international treaties in domestic law, viewing these agreements as “contracts between nations” to be enforced on “the honor of the parties” rather than a cognizable aspect of federal law.¹⁰² It is also important to note that many treaties are not self-executing, meaning that “implementing legislation is required to render the agreement’s provisions judicially enforceable in the United States.”¹⁰³ Accordingly, provisions in treaties and other international agreements are only given effect as law in domestic courts of the United States “if they are ‘self-executing’ or if they have been implemented by an act (such as an act of Congress) having the effect of federal law.”¹⁰⁴ Therefore, these international hu-

⁹⁹ Melisa Reinhold, *Alquileres: preparan demandas anticipadas de desalojo para tener la propiedad vacía cuando venza el decreto* [Rentals: prepare advance eviction lawsuits to have the property vacant when the decree expires], LA NACIÓN (Dec. 9, 2020, 9:25 AM), <https://www.lanacion.com.ar/propiedades/casas-y-departamentos/alquileres-preparan-demandas-anticipadas-de-desalojo-para-tener-la-propiedad-vacia-cuando-venza-el-nid09122020/>.

¹⁰⁰ See Flores, *supra* note 97.

¹⁰¹ CONG. RSCH. SERV., RL32528, INTERNATIONAL LAW AND AGREEMENTS: THEIR EFFECT UPON U.S. LAW 1 (2018), https://www.everycrsreport.com/files/20180919_RL32528_68dd97124b9040bdfef5f2875d1142c515c7c19db.pdf.

¹⁰² Vincent Halloran, Note, *Solving the Housing Crisis Half-a-House at a Time: Incremental Housing as a Means to Fulfilling the Human Right to Housing*, 52 U. MIAMI INTER-AM. L. REV. 95, 109 (2021) (citing Carlos Manuel Vázquez, *Treaties as the Law of the Land: The Supremacy Clause and the Judicial Enforcement of Treaties*, 122 HARV. L. REV. 599, 600 (2008)).

¹⁰³ CONG. RSCH. SERV., RL32528, INTERNATIONAL LAW AND AGREEMENTS: THEIR EFFECT UPON U.S. LAW (2018).

¹⁰⁴ Frederic L. Kirgis, *International Agreements & U.S. Law*, 2 AM. SOC’Y OF INT’L L. (May 27, 1997), <https://www.asil.org/insights/volume/2/issue/5/international-agreements-and-us-law>.

man rights instruments face challenges of enforceability in U.S. domestic law and courts.¹⁰⁵

Of the core human rights covenants that have been discussed above, the first one that the United States ratified was the International Covenant on Civil and Political Rights (ICCPR).¹⁰⁶ The U.S. signed the covenant on October 5, 1977, and later ratified it on June 8, 1992.¹⁰⁷ Because the U.S. is a treaty party, it must uphold all of the ICCPR's obligations including the "inherent right to life,"¹⁰⁸ "right to liberty of movement and freedom to choose his residence"¹⁰⁹ and right to "equal protection of the law" without any discrimination.¹¹⁰ Though the ICCPR does not include an affirmative right to adequate housing, these rights to life, liberty, and equal protection are all complementary to the right to housing because all human rights are indivisible and interdependent, meaning rights cannot be enjoyed fully without the other.¹¹¹

Another significant international human rights treaty that the U.S. has adopted is the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD).¹¹² ICERD was one of the first human rights instruments for the U.S. to sign onto on September 28, 1966, but it was not fully ratified until October 21, 1994.¹¹³ As previously mentioned, Article 5 of ICERD explicitly mentions States' obligations to ensure racial equality in the realization of the "right to housing" and "the right to own property."¹¹⁴ Thus, the United States as a treaty party has an obligation to respect, protect, and fulfill these rights.¹¹⁵

¹⁰⁵ *See id.*

¹⁰⁶ *See* ICCPR, *supra* note 44.

¹⁰⁷ U.N. Office of the High Commissioner for Human Rights, Ratification Status for United States of America, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=187&Lang=EN (last visited Jan. 27, 2021) [hereinafter Ratification Status for U.S.].

¹⁰⁸ ICCPR, *supra* note 44, at art. 6.

¹⁰⁹ *Id.* at art. 12.

¹¹⁰ *Id.* at art. 26.

¹¹¹ *See id.* at art. 6, 12, 26; Human Rights, *supra* note 55.

¹¹² *See* ICERD, *supra* note 47.

¹¹³ Ratification Status for U.S., *supra* note 107.

¹¹⁴ ICERD, *supra* note 47, at art. 5.

¹¹⁵ *See id.*

Disappointingly, the United States has not ratified the core human rights instrument that provides for the right to adequate housing—the International Covenant on Economic, Social, and Cultural Rights (ICESCR).¹¹⁶ Likewise, the U.S. has not ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which guarantees adequate living conditions and housing for women.¹¹⁷ However, the U.S. is a signatory on both of these instruments, having signed ICESCR on October 5, 1977, and CEDAW on July 17, 1980.¹¹⁸ As a signatory, the U.S. must refrain in good faith from acts that would “defeat the object and purpose of the treaty.”¹¹⁹ Nevertheless, these covenants are unenforceable domestically as they have not been fully ratified.¹²⁰ In order, therefore, to truly protect the right to housing for its citizens, the United States should ratify the core human rights treaties, most notably ICESCR, and make them binding domestic law.

d. U.S. Domestic Laws Relating to Housing Policy & Evictions

Despite the lack of an universal affirmative right to housing, the U.S. has domestic laws and policies that regulate housing and make housing discrimination unlawful.¹²¹ The most notable U.S. law regarding housing is Title VIII of the Civil Rights Act of 1968, better known as the Fair Housing Act of 1968.¹²² In the wake of the civil rights movement and social turmoil of the 1960s, the Fair Housing Act was enacted in 1968 to combat racial discrimination related to housing.¹²³ The Act, as amended, “prohibits discrimination in the sale, rental, and financing of dwellings, and in other housing-related transactions, because of race, color, religion, sex,

¹¹⁶ Ratification Status for U.S., *supra* note 107.

¹¹⁷ *See id.*

¹¹⁸ *Id.*

¹¹⁹ Vienna Convention on the Law of Treaties art. 18, May 23, 1969, 1155 U.N.T.S. 331.

¹²⁰ *See* Halloran, *supra* note 102, at 110.

¹²¹ *See* 42 U.S.C. §§ 3601-3619 (2021).

¹²² *See id.*

¹²³ Kerri Thompson, *Fair Housing's Trap Door: Fixing the Broken Disparate Impact Doctrine Under the Fair Housing Act*, 25 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 435, 441-42 (2017).

familial status, national origin, and disability.”¹²⁴ Under the Act, a person who was denied housing for one of these reasons is afforded “a private right of action and access to remedies like injunctions and damages,” which “[is] enforceable against private parties, rather than just government entities.”¹²⁵ The Fair Housing Act also requires that all federal programs relating to housing and urban development be administered in a manner that affirmatively furthers fair housing.¹²⁶

Initially, early Fair Housing Act discrimination cases demonstrated a “consistency with the broad congressional intent to remedy segregation” and racial inequality in housing practices.¹²⁷ However, courts today are not interpreting the Fair Housing Act in accordance with the original congressional intent because (i) courts are reading the statute narrowly, instead of broadly and inclusively; and (ii) they are applying a burden-shifting model of a prima facie case, resulting in plaintiffs’ cases being dismissed on summary judgment.¹²⁸ These recent narrow interpretations of the Fair Housing Act have resulted in higher burdens for plaintiffs and, consequently, more negative outcomes for the people whom the Act was meant to protect.¹²⁹ Therefore, even though the Fair Housing Act is commendable in theory, the Act, in its current application, does not

¹²⁴ 42 U.S.C. § 3604(a) (2021); see also *Fair Housing and Related Laws*, DEP’T OF HOUSING AND URB. DEV., https://www.hud.gov/program_offices/fair_housing_equal_opp/fair_housing_and_related_law (last visited Mar. 7, 2021) [hereinafter *Fair Housing and Related Laws*].

¹²⁵ Halloran, *supra* note 102, at 112 (citing Wyatt G. Sassman, *Environmental Justice As Civil Rights*, 18 RICH. J.L. & PUB. INT. 441, 455 (2015)); see also 42 U.S.C. § 3613(a) (2021).

¹²⁶ *Fair Housing and Related Laws*, *supra* note 124.

¹²⁷ Thompson, *supra* note 123, at 445 (“Some courts developed a burden-shifting model, testing for a ‘prima facie’ case of housing discrimination before shifting the burden to the defendant to justify the practice that led to discrimination. Some courts followed a balancing test model, weighing the strength of the plaintiff’s claim and the strength of the defendant’s defense at the same time to reach a decision on the merits of the case. But in the early years, both models followed the congressional intent for the Fair Housing Act to have broad reach, and both models combined intent and impact tests to reach a positive result for plaintiffs.”).

¹²⁸ See *id.* at 455.

¹²⁹ See *id.* at 456.

successfully accomplish its goal of creating more “integrated and balanced communities.”¹³⁰

Moreover, the United States Constitution, the supreme law of the land, does not expressly mention a right to housing.¹³¹ However, the Fifth and Fourteenth Amendments do introduce an important concept in regard to housing: due process.¹³² Specifically, the Fifth Amendment states that no person should be “deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”¹³³ Procedural due process generally requires that a person must be given notice, the opportunity to be heard, and a decision by a neutral decisionmaker.¹³⁴

Similarly, the U.S. Department of Housing and Urban Development (HUD) requires the following regulatory “elements of due process” in eviction proceedings: (1) adequate notice to the tenant of the grounds for terminating the tenancy and for eviction; (2) right of the tenant to be represented by counsel; (3) opportunity for the tenant to refute the evidence presented by the public housing agency, including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have; and (4) a decision on the merits.¹³⁵ Notably, in *Lindsey v. Normet*, the Supreme Court in 1972 upheld the basic parameters of state summary eviction proceedings against a facial due process challenge, holding tenants receiving as little as four days’ notice did not offend due process.¹³⁶ Therefore, tenants fac-

¹³⁰ *Id.*

¹³¹ *See* U.S. CONST.

¹³² *See* U.S. CONST. amend. V; *see also* U.S. CONST. amend. XIV, § 1.

¹³³ U.S. CONST. amend. V.

¹³⁴ *See Procedural due process*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/procedural_due_process (last visited Oct. 4, 2021).

¹³⁵ 24 C.F.R. § 966.53(c) (2021). It is worth noting that these regulations are entirely under executive control, so the policy can change with each administration.

¹³⁶ *See Lindsey v. Normet*, 405 U.S. 56 (1972); *see also Procedural Due Process Challenges to Evictions during the Covid-19 Pandemic*, NAT’L HOUSING LAW PROJECT, <https://www.nhlp.org/wp-content/uploads/procedural-due-process-covid-evictions.pdf> (last updated May 22, 2020).

ing eviction in the U.S. are afforded “adequate notice” before eviction proceedings, but this notice can be as short as four days.¹³⁷

e. Argentina’s Housing Obligations under International Human Rights Law

Unlike the United States, Argentina has adopted all of the core international human rights instruments, including ICESCR, ICCPR, ICERD, and CEDAW.¹³⁸ More specifically, Argentina ratified both ICESCR and ICCPR on August 8, 1986; ICERD on October 2, 1968; and CEDAW on July 15, 1985.¹³⁹ By adopting these instruments and becoming a State Party, Argentina has significant obligations to respect, protect, and fulfill human rights, including the right to adequate housing.¹⁴⁰

Because Argentina is a State Party to ICESCR, it partakes in periodic reviews conducted by the Committee on Economic, Social and Cultural Rights (CESCR), a body of 18 independent experts, that evaluate the country’s implementation of covenant.¹⁴¹ In Argentina’s fourth periodic review conducted in 2018, regarding housing, the CESCR expressed concerns about an increase in informal settlements without access to basic services and documented allegations of evictions enforced with violence.¹⁴² In response, the Committee recommended that Argentina “adopt a regulatory and institutional framework concerning evictions, including protocols for public intervention” and “implement solutions that are commensurate with the magnitude of the country’s housing problem, while scaling up and improving the evaluation of public policies, including the production of complete and up-to-date public

¹³⁷ See 24 C.F.R. § 966.53(c) (2021).

¹³⁸ See U.N. Office of the High Commissioner for Human Rights, Ratification Status for Argentina, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=187&Lang=EN (last visited Mar. 7, 2021).

¹³⁹ See *id.*

¹⁴⁰ See Human Rights, *supra* note 55.

¹⁴¹ U.N. Office of the High Commissioner for Human Rights, Committee on Economic, Social and Cultural Rights, <https://www.ohchr.org/en/hrbodies/cescr/pages/cescrindex.aspx> (last visited Mar. 6, 2021).

¹⁴² U.N. Committee on Economic, Social and Cultural Rights, Concluding observations of the Committee on Economic, Social, and Cultural Rights: Argentina, ¶ 47, U.N. Doc. CESCR/C/ARG/CO/4 (Nov. 1, 2018).

information on access to housing and data on evictions.”¹⁴³ Thus, as a State Party to the core international human rights treaties, Argentina receives recommendations on how to better its housing policies through period reviews.¹⁴⁴

f. Argentine Laws Relating to Adequate Housing

Argentina not only acknowledges the right to adequate housing at an international level but also at a domestic level.¹⁴⁵ Specifically, Argentina’s Constitution provides that the State shall establish by law “*el acceso a una vivienda digna*” (“access to decent housing”) in Article 14.¹⁴⁶ This article refers to the right to housing in accordance with a reasonable standard of living as it relates to “*la protección integral de la familia*” (“full protection of the family”).¹⁴⁷ Similar to the U.S., Article 17 of the Argentine Constitution states that “*la propiedad es inviolable*” (“property is inviolable”) and no inhabitant of the Nation can be deprived thereof except by virtue of a judgment supported by law.¹⁴⁸ Thus, both the right to property and the right to housing are recognized in Argentina’s Constitution.¹⁴⁹

Additionally, the Argentine Constitution expressly addresses the domestic implementation of international human rights instruments.¹⁵⁰ Article 75 grants Congress the power to approve or reject international treaties, including human rights treaties.¹⁵¹ Specifically, paragraph 22 of Article 75 states the following:

The following [international instruments], under the conditions under which they are in force, stand on the same level as the Constitution, [but] do not repeal any article in the First Part of this Constitution, and must be understood as complementary of the rights and guarantees recognized therein: The

¹⁴³ *Id.* at ¶ 48.

¹⁴⁴ *See id.*

¹⁴⁵ *See* CONSTITUCIÓN DE LA NACIÓN ARGENTINA 1994.

¹⁴⁶ *Id.* at art. 14.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at art. 17.

¹⁴⁹ *See id.* at art. 14, 17.

¹⁵⁰ *See id.* at art. 75.

¹⁵¹ CONSTITUCIÓN DE LA NACIÓN ARGENTINA 1994, art. 75.

American Declaration of the Rights and Duties of Man; the Universal Declaration of Human Rights [. . .] the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights and its Optional Protocol [. . .] the International Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women [. . .] They may only be denounced, if such is to be the case, by the National Executive Power, after prior approval by two-thirds of the totality of the members of each Chamber.

Other treaties and conventions on human rights, after being approved by Congress, shall require the vote of two-thirds of the totality of the members of each Chamber in order to enjoy standing on the same level as the Constitution.¹⁵²

By directly acknowledging the government's responsibility to enforce the rights provided by international human rights instruments, the Argentine Constitution guarantees the domestic implementation of affirmative human rights, such as the right to adequate housing—a recognition missing in the U.S. Constitution.

Another substantial difference between U.S. and Argentine law is that Argentina has a civil law legal system, as opposed to the U.S.'s common law system.¹⁵³ As a civil law country, the Civil and Commercial Code (*Código Civil y Comercial de la Nación*) governs real estate and private property in Argentina.¹⁵⁴ Recently, the Argentine Congress passed Law N ° 27,551 in June 2020, which modified provisions of the Civil and Commercial Code related to rental property and evictions.¹⁵⁵ Specifically, Article 1,222 provides that prior to the demand for eviction due to non-payment of rents, the landlord must reliably notify the tenant to

¹⁵² *Id.* at art. 75, ¶ 22.

¹⁵³ *See* CÓDIGO CIVIL Y COMERCIAL DE LA NACIÓN [CIVIL CODE] (Arg.).

¹⁵⁴ *See id.*

¹⁵⁵ CÓD. CIV. Y COM. Ley 27551 [Law No. 27,551] (June 30, 2020) (Arg.), <https://www.argentina.gob.ar/normativa/nacional/ley-27551-339378/texto>.

pay the amount due, granting for this a period that should never be less than ten (10) calendar days counted from the receipt of the summons, specifying the place of payment.¹⁵⁶ Notably, this notice period of ten days, while still relatively short, is more reasonable than the four-day notice period that the U.S. Supreme Court upheld in *Lindsey v. Normet*.¹⁵⁷

Additionally, Title III of Law N ° 27,551 also established a National Social Rental Program (“*Programa Nacional de Alquiler Social*”) in Argentina to be governed by the Ministry of Housing.¹⁵⁸ This program was created in order to facilitate access to decent rental housing through a formal contract.¹⁵⁹ To implement this program, the law calls upon the Ministry of Housing to do the following:

- (a) Take special consideration of people who are in a situation of gender violence[. . .]and for the elderly, ensuring their non-discrimination;
- (b) Promote, through the competent bodies, the regulation of the actions of entities that grant surety guarantees or surety insurance for housing rental contracts;
- (c) Promote the creation of lines of subsidies or soft loans to facilitate access to the rental of homes;
- (d) Design and implement mechanisms aimed at expanding the supply of rental properties for housing;
- (e) Promote, together with the National Social Security Administration, the adoption of measures that facilitate access to rent for retirees, pensioners and holders of unemployment benefits;
- (f) Adopt any other measure in its capacity as governing body that aims to facilitate access to decent housing for rent for all those who are in a situation of vulnerability;
- (g) Encourage the creation of mechanisms to ensure effective compliance by the landlord and the tenant

¹⁵⁶ Cód. Civ. Y Com. § 7 art. 1222 (Arg.).

¹⁵⁷ See *Lindsey v. Normet*, 405 U.S. 56 (1972); but see *Ramsey v. Citibank, N.A.*, No. 10-cv-02653-WYD-CBS, 2011 U.S. Dist. LEXIS 110957 (D. Colo. Sept. 28, 2011) (criticizing the earlier decision in *Lindsey v. Normet*).

¹⁵⁸ Law No. 27,551, *supra* note 155, at art. 17–20.

¹⁵⁹ *Id.* at art. 17.

with the obligations under their charge; (h) Support those who have difficulties to comply with the requirements of guarantee, deposit and other necessary expenses to obtain a rental home, provided that the destination of the location is that of a single family home in the terms and with the scope established by the regulation; (i) Promote, through the competent bodies, the creation of compulsory insurance that covers non-payment of rents and compensation for damage and undue occupation of the property; and (j) Generate alternatives for the resolution of conflicts between landlord and tenant, in general dictate or promote all kinds of measures aimed at favoring and expanding the supply of rental properties for housing and facilitating access to said contractual modality.¹⁶⁰

Thus, the Civil and Commercial Code, specifically Law N ° 27,551, regulates housing law and policy in Argentina.¹⁶¹

g. Social & Public Housing: An Example of the U.S.'s Struggle to Domestically Implement the Right to Housing

In order to remedy the housing shortage and ease the rent burden in the U.S., the government has implemented housing subsidy programs.¹⁶² The nation's main housing program is the Section 8 voucher program (better known as the Housing Choice Voucher Program) administered by HUD, which assists about 2.5 million extremely low-income (ELI) renter households (defined as those making less than 30 percent of the median income in their area) by subsidizing a portion of their market-rate rents.¹⁶³ While this program is certainly beneficial in ensuring Americans' right to housing, the voucher program only covers about 22 percent of the 11.8

¹⁶⁰ *Id.* at art. 19.

¹⁶¹ *See id.*

¹⁶² Peter Gowan & Ryan Cooper, *Social Housing in the United States*, PEOPLE'S POLICY PROJECT 7, <https://www.peoplespolicyproject.org/wp-content/uploads/2018/04/SocialHousing.pdf> (last visited Mar. 7, 2021).

¹⁶³ *Id.* at 8.

million ELI households who are eligible.¹⁶⁴ Another program is the United States Department of Agriculture (USDA) Section 515 Rural Rental Housing Loan program, as provided for by the Housing Act of 1949, the principal source of financing for rental housing in rural areas.¹⁶⁵ Section 515 loans are mortgages made by USDA to provide affordable rental housing for very low-, low-, and moderate-income families as well as elderly persons and persons with disabilities.¹⁶⁶ In an Urban Institute study, however, even when accounting for both USDA Section 515 and HUD Section 8 subsidy programs, adequate and affordable housing was only available for 46 percent of the 11.8 million people who qualified as ELI renter households.¹⁶⁷

Moreover, the United States is also pushing to create more affordable housing units by coaxing the private market using tax incentives and zoning rules.¹⁶⁸ The largest such program is the federal Low-Income Housing Tax Credit (LIHTC), under which some 90 percent of new affordable housing is built.¹⁶⁹ This program provides a tax credit to developers for building low-income housing.¹⁷⁰ However, like the Housing Choice Voucher Program, the LIHTC program is not efficient. Specifically, crime undermines the LIHTC program.¹⁷¹ For example, a “Frontline investigation discovered substantial corruption in the LIHTC process, helping to account for the fact that while the cost of the credit has increased by 66 percent from 1997–2014 the number of units created under the credit has actually fallen from over 70,000 per year to less than 60,000.”¹⁷²

¹⁶⁴ *Id.*

¹⁶⁵ *Section 515 Rural Rental Housing Loans*, NAT’L RURAL HOUS. COAL. (Feb. 2011), <https://ruralhousingcoalition.org/section-515-rural-rental-housing-loans/> (last visited Mar. 7, 2021).

¹⁶⁶ *Rural Rental Housing (Section 515)*, HOUS. ASSISTANCE COUNCIL, <http://www.ruralhome.org/sct-information/mn-hac-research/mn-rrg/115-rural-rental-housing-section-515> (last visited Mar. 7, 2021).

¹⁶⁷ Gowan, *supra* note 162, at 7.

¹⁶⁸ *Id.* at 8.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

Another substantial part of U.S. housing strategy is public housing.¹⁷³ According to HUD, public housing was established to provide decent and safe rental housing for eligible low-income families, the elderly, and persons with disabilities.¹⁷⁴ HUD administers federal aid to local housing agencies, which manage housing for low-income residents at rents they can afford, and furnishes technical and professional assistance in planning, developing and managing these developments.¹⁷⁵ Public housing units currently house approximately 1.2 million households throughout the United States.¹⁷⁶ Furthermore, “despite over 40 years of disinvestment—the nationwide backlog of maintenance in such projects amounts to over \$26 billion as of 2010—public housing is virtually the only available housing for poor people in many cities.”¹⁷⁷ Poor-only public housing, moreover, concentrates poverty in particular locations, thus leading to higher crime, racial segregation, poor educational outcomes, drug abuse, gang violence, and a host of other problems.¹⁷⁸ Due to their poor reputation, efforts to eliminate public housing such as the Hope IV and Rental Assistance Demonstration programs have led to a decrease in available public units, falling by 60,000 between 2006 and 2016.¹⁷⁹

Additionally, the COVID-19 pandemic has further strained public housing authorities (PHAs) that were already under significant financial pressure due to lack of adequate funding.¹⁸⁰ Throughout the pandemic, these PHAs have remained diligent in helping families obtain access to safe, sanitary, and decent hous-

¹⁷³ Gowan, *supra* note 162, at 12.

¹⁷⁴ *HUD’S Public Housing Program*, U.S. DEP’T OF HOUS. & URBAN DEV., https://www.hud.gov/topics/rental_assistance/phprog (last visited Mar. 7, 2021).

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ Gowan, *supra* note 162, at 12.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 13 (“The Hope IV program helps demolish severely dilapidated units and replaces them with mixed-income lower-density ones, while the Rental Assistance Demonstration (RAD) program sells them to private developers outright.”).

¹⁸⁰ *The impact of COVID-19 on public housing authorities: Reinventing as digital organizations to meet the challenges ahead*, CGI 2 (2020), https://www.cgi.com/sites/default/files/2020-09/covid-19_impact_on_the_affordable_housing_industry_2.pdf

ing.¹⁸¹ In response to the unprecedented need of these PHAs, HUD has released “over \$400 billion to assist communities and public housing authorities in responding to the crisis.”¹⁸² More specifically, “PHAs are authorized to use those funds to cover items including, but not limited to, overtime pay to carry out program operations, costs related to the retention and support of participating Housing Choice Voucher Program owners, and necessary upgrades to information technology (IT) and computer systems to support telework.”¹⁸³ Thus, even though there are current policies in place to address the housing crisis in the U.S., these approaches are inadequate, exemplifying the country’s struggles to operationalize a right to housing, especially in light of the COVID-19 pandemic.¹⁸⁴

h. Squatter Settlements: An Example of Argentina’s Struggle to Domestically Implement the Right to Housing

Although Argentina formally recognizes an affirmative right to housing, the country has likewise struggled to implement this right for all its citizens, as seen during the recent controversy over squatters’ rights.¹⁸⁵ During the coronavirus pandemic, land occupation by squatters has increased in Argentina due to the deterioration of the economy.¹⁸⁶ Occupations of land by squatters in Argentina started in 1981, during the last military dictatorship when around 211 hectares were occupied.¹⁸⁷ Almost ten years later, in 1990, there were over 100 settlements in the Province of Buenos

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ See Gowan, *supra* note 162, at 13.

¹⁸⁵ See *Court in La Plata orders eviction of Guernica encampment*, BUENOS AIRES TIMES (Sept. 09, 2020, 5:48 PM), <https://www.batimes.com.ar/news/argentina/court-orders-eviction-of-guernica-encampment.phtml> [hereinafter *Court Orders Eviction*].

¹⁸⁶ Martha Pskowski, *Homeless evicted from Buenos Aires encampment*, TABLET (Nov. 03, 2020), <https://www.thetablet.co.uk/news/13536/homeless-evicted-from-buenos-aires-encampment> (In 2020, the poverty rate in Argentina hit 40.9 percent, as the gap between the rich and the poor widened during the pandemic, causing widespread unemployment and housing instability.).

¹⁸⁷ Lucía Cholakian Herrera, *Demands for Land and Housing Continue After Guernica Eviction*, N. AM. CONG. ON LATIN AM. (Nov. 16, 2020), <https://nacla.org/news/2020/11/16/demands-land-and-housing-continue-after-guernica-eviction>.

Aires.¹⁸⁸ There were at least 1,800 new occupations in the province in 2020, as the housing deficit grew with the COVID-19 crisis and rental prices continued to increase.¹⁸⁹ According to reports of the Buenos Aires Province Security Ministry, during the coronavirus pandemic, the police evicted 868 squatter settlements, arresting 524 people throughout the province.¹⁹⁰

For example, in the town of Guernica, located 23 miles south of the city of Buenos Aires, around 2,500 families took over a 100-hectare (250-acre) unused parcel of land and created an informal squatter settlement beginning in July 2020.¹⁹¹ After losing their jobs because of the economic crisis caused by the pandemic, families and individuals moved to this settlement because they could no longer afford to pay the rent for their prior homes and apartments.¹⁹² Nelson Falcón, a 39-year-old building worker who lost his job when coronavirus halted construction in Buenos Aires, moved to the settlement after he was left penniless out on the street together with his wife and his 12-year-old son.¹⁹³

*“We had a better life but unfortunately the pandemic evicted us all,” lamented Falcón. “We do not feel 100 percent homeless. Most of us here voted for the government. We want to buy the land but that doesn’t exist here. The only way to have a house is to seize the land.”*¹⁹⁴

Similar to Falcón, many of the settlers in Guernica demanded state support so that they could eventually purchase the land and slowly build their own houses.¹⁹⁵ However, the alleged owners of the land filed police and judicial reports, claiming that their consti-

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ Debora Rey, *Land occupations and rising poverty pose problems for Peronism*, BUENOS AIRES TIMES (Sept. 26, 2020, 8:53 AM), <https://www.batimes.com.ar/news/argentina/land-occupations-and-rising-poverty-pose-problems-for-peronism.phtml>.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ Herrera, *supra* note 187.

tutional right to private property was being violated.¹⁹⁶ The alleged owners also argued that the land was not appropriate housing for the squatters because it did not have a sustainable power line or water pipe system.¹⁹⁷

Amid growing concern over the safety of the residents and complaints by the purported landowners, the La Plata Court of Appeals ordered the clearance and eviction of the encampment in September 2020.¹⁹⁸ After the government urged people to leave the site on their own, local police came in and violently evicted hundreds of families experiencing homelessness who remained at the encampment on October 29, 2020.¹⁹⁹ Around 4,000 provincial police officers entered the Guernica encampment in the early hours of the morning, tearing down the shacks of wood and plastic that were then “set ablaze in scenes that sparked panic and fury among the temporary residents.”²⁰⁰ The violent eviction lasted several hours as some squatters “resisted the raid with stones and other projectiles while the police fired back with rubber bullets and tear gas.”²⁰¹ By the end of the police raid, the encampment had been burned down and bulldozed, and the evicted residents were left with nothing but the clothes on their backs.²⁰²

Because of its violent nature, the eviction of Guernica garnered international attention, drawing criticism of how the government handled the situation.²⁰³ Housing advocates condemned the forced

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ Court Orders Eviction, *supra* note 185.

¹⁹⁹ Sonia Avalos, *Violent eviction of Guernica squatters camp draws criticism*, BUENOS AIRES TIMES (Oct. 29, 2020, 5:34 PM), <https://www.batimes.com.ar/news/argentina/violent-eviction-of-guernica-squatters-camp-draws-criticism.phtml>.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *See* Herrera, *supra* note 187 (“Sergio Berni, the province’s Minister of Security, choreographed and guided the aggressive response to the conflict. Berni is known for zealously implementing zero-tolerance policies and strict punishment. He organized the eviction with pride, vindicating the police force, and claiming responsibility for what he thought was a successful protection of private property rights. While human rights organizations condemned the unnecessary violence used to evict the remaining families, Berni praised his work in a series of tweets in the following days.”).

eviction as “a gross violation of Argentina’s obligations under international human rights law, in particular the right to housing,” calling out the government of the province of Buenos Aires, the national government, and all public authorities involved.²⁰⁴ Furthermore, advocates noted that the forced eviction would lead to significant physical and emotional harm to the families living in the Guernica encampment, as “it has been recognized internationally that setting fire to someone’s home in front of them may constitute inhuman treatment.”²⁰⁵ Additionally, this eviction was a particularly egregious act as it was “carried out without warning, with a disproportionate use of force, in the early hours of the morning and during the middle of a pandemic where housing (even when inadequate) can be a frontline defense against the COVID-19 virus.”²⁰⁶

Therefore, the Guernica encampment and ensuing forced eviction represent the failure of the Argentine government to secure the right to housing for its residents.²⁰⁷ In order to comply with its international human rights obligations, the government has “an obligation to urgently work with those families who have been left homeless to ensure that the gross violations they have experienced are rectified on an urgent basis,” including offering compensation for their loss and alternative housing accommodations.²⁰⁸

i. Tension between Landlord’s Rights & Tenant’s Rights

Furthermore, as a result of the COVID-19 pandemic, the eviction moratoria have exposed the inherent tension between a landlord’s right to property ownership and a tenant’s right to housing.²⁰⁹ As previously mentioned, both the U.S. Constitution and Argentine Constitution guarantee the right to private property

²⁰⁴ Leilani Farha, *Urgent Statement: Forced Eviction of the Guernica Encampment*, SHIFT (Nov. 1, 2020), <http://www.hlrn.org/img/violation/Urgent-Statement-Toma-de-Guernica-BsAs-FINAL.pdf>.

²⁰⁵ *Id.* at ¶ 2.

²⁰⁶ *Id.* at ¶ 5.

²⁰⁷ *Id.* at ¶ 6.

²⁰⁸ *Id.*

²⁰⁹ See Lee Oller, *COVID-19’s Impact on Multifamily and Affordable Housing*, MULTI-HOUSING NEWS (Aug. 7, 2020), <https://www.multihousingnews.com/post/covid-19s-impact-on-multifamily-and-affordable-housing/>.

ownership.²¹⁰ However, tenants also have the right to adequate housing under international human rights law.²¹¹ The governments must consequently find a way to respect the rights of both landlords and tenants when deciding how to move forward from the COVID-19 pandemic.²¹²

Moreover, the eviction freezes, although helpful for tenants, have a wide range of potential negative effects.²¹³ If the eviction freezes continue to stay in place, landlords will become unable to pay their mortgages and, in turn, may lose their property.²¹⁴ Furthermore, the compounding effect of months of unpaid rent creates strains on property owners, which threatens to ripple through the entire financial system.²¹⁵ Because these lost revenues must be made up or partially repaid, there will likely be a rise in evictions and homelessness over the next few years.²¹⁶ Real estate investment trusts could also be damaged by the non-payment of rent for an extended period of time, potentially causing long-term injuries to the real estate market.²¹⁷ Therefore, due to the pandemic's significant impact on the American housing market, there must be a push for more affordable housing in order to prevent a more dire housing crisis.²¹⁸

IV. RECOMMENDATIONS

Now that the eviction moratoria in both the United States and Argentina have expired, the question remains: what will be the ramifications of their expiration? Although tenants were temporari-

²¹⁰ See U.S. CONST.; Art. 17, CONST. NAC. (Arg.).

²¹¹ See Fact Sheet No. 21, *supra* note 61.

²¹² See Kristen E. Broady et al, *An eviction moratorium without rental assistance hurts smaller landlords, too*, BROOKINGS INST. (Sept. 21, 2020), <https://www.brookings.edu/blog/up-front/2020/09/21/an-eviction-moratorium-without-rental-assistance-hurts-smaller-landlords-too/>.

²¹³ See *id.*

²¹⁴ See *id.*

²¹⁵ Oller, *supra* note 209.

²¹⁶ *Id.*

²¹⁷ See Lawrence C. Strauss, *REITS Have Been Hit Hard by COVID-19. Why the Impact Could Last for Years*, BARRON'S (Nov. 28, 2020, 8:30 AM), <https://www.barrons.com/articles/reits-have-been-hit-hard-by-covid-19-why-the-impact-could-last-for-years-51606570203>.

²¹⁸ See Oller, *supra* note 209.

ly protected by local, state, or federal laws, low-income tenants are still at risk of eviction as the pandemic rages on.²¹⁹ To prevent these evictions in the future, both the U.S. and Argentine governments should take the following positive actions:

(1) Both governments should provide emergency rental assistance in the form of government-funded rent subsidies. For most people, “evictions can be mitigated with short- or medium-term help paying their rent.”²²⁰ Emergency rental assistance is also “critical for helping landlords cover their costs.”²²¹ These resources should prioritize those facing the most severe housing challenges, including those experiencing or at high risk of homelessness.²²² More precisely, people experiencing homelessness or at high risk of eviction should receive emergency housing vouchers.²²³ For these people, “long-term rental assistance such as a housing voucher is much more likely than short-term rental assistance to provide the long-term stability that can be essential to reducing hardship and helping people get back on their feet.”²²⁴ Thus, emergency rental assistance and housing vouchers would provide significant relief to those hit hardest by the pandemic.

(2) All tenants facing eviction should have legal representation in eviction proceedings.²²⁵ Studies have shown a civil right to counsel in eviction cases can deliver significant benefits for tenants and landlords. While exact figures vary by jurisdiction, tenants with counsel experience improved housing stability—often by remaining in their home, but alternatively by obtaining additional time to relocate, avoiding a formal eviction on their record, and accessing emergency rental assistance or subsidized housing. Representation also leads to lower default rates and more fairly negotiated resolutions with landlords that limit disruption from displacement and ensure the rights of all parties are exercised.²²⁶

²¹⁹ Schindler & Zale, *supra* note 5, at 150.

²²⁰ Acosta et al., *supra* note 9.

²²¹ *Id.*

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ Benfer et al., *supra* note 18.

²²⁶ *Id.*

(3) The governments could also invest in the development of community land trusts (CLTs).²²⁷ CLTs are entities that “steward real property for the benefit of the surrounding community or a particular population, in order to provide long-term housing security.”²²⁸ Typically, a “CLT for affordable housing creates a ‘dual ownership model,’ whereby an individual or family purchases a house or unit at an affordable price, while leasing the land from the nonprofit trust, with provisions to keep housing units affordable upon resale.”²²⁹ Thus, the expansion of CLTs is a possible solution because it would shift the focus on “community accountability (and thus keeping members of the community safely housed) rather than the need for regular and ever-increasing monthly rents enforced through the threat of eviction.”²³⁰

(4) In addition to the aforementioned recommendations, the U.S. should also confront housing issues by making “significant investments in safety net infrastructure: universal basic income; expanding the federal housing voucher program to all renters who need housing; and thinking about housing as a fundamental human right, rather than an investment vehicle or for-profit enterprise.”²³¹

Because these recommendations provide critical, long-term solutions, they would help combat the housing crises in both the United States and Argentina in a more permanent and impactful way.

V. CONCLUSION

In light of the coronavirus pandemic, countries like the U.S. and Argentina must take affirmative steps to improve access to safe and affordable housing for everyone. As COVID-19 proved to the world, affordable housing should not be a luxury, but a universally-recognized fundamental human right. Even though Argentina formally recognizes this affirmative right to housing through its

²²⁷ Nisha N. Vyas & Matthew Warren, Note, *From Commodities to Communities: Reimagining Housing After the Pandemic*, 68 UCLA L. REV. DISCOURSE 190, 200 (2020).

²²⁸ *Id.*

²²⁹ *Id.* at 201.

²³⁰ *Id.*

²³¹ Schindler & Zale, *supra* note 5, at 157.

obligations under international human rights law, the country still needs to update its policies to more efficiently implement this right. The U.S., on the other hand, should expressly recognize the right to housing both domestically and internationally, and then update its laws accordingly. Ultimately, the COVID-19 pandemic revealed the dire need for every country to reform its housing laws and policies in order to better protect the right to adequate housing for its citizens in the event of another global crisis.