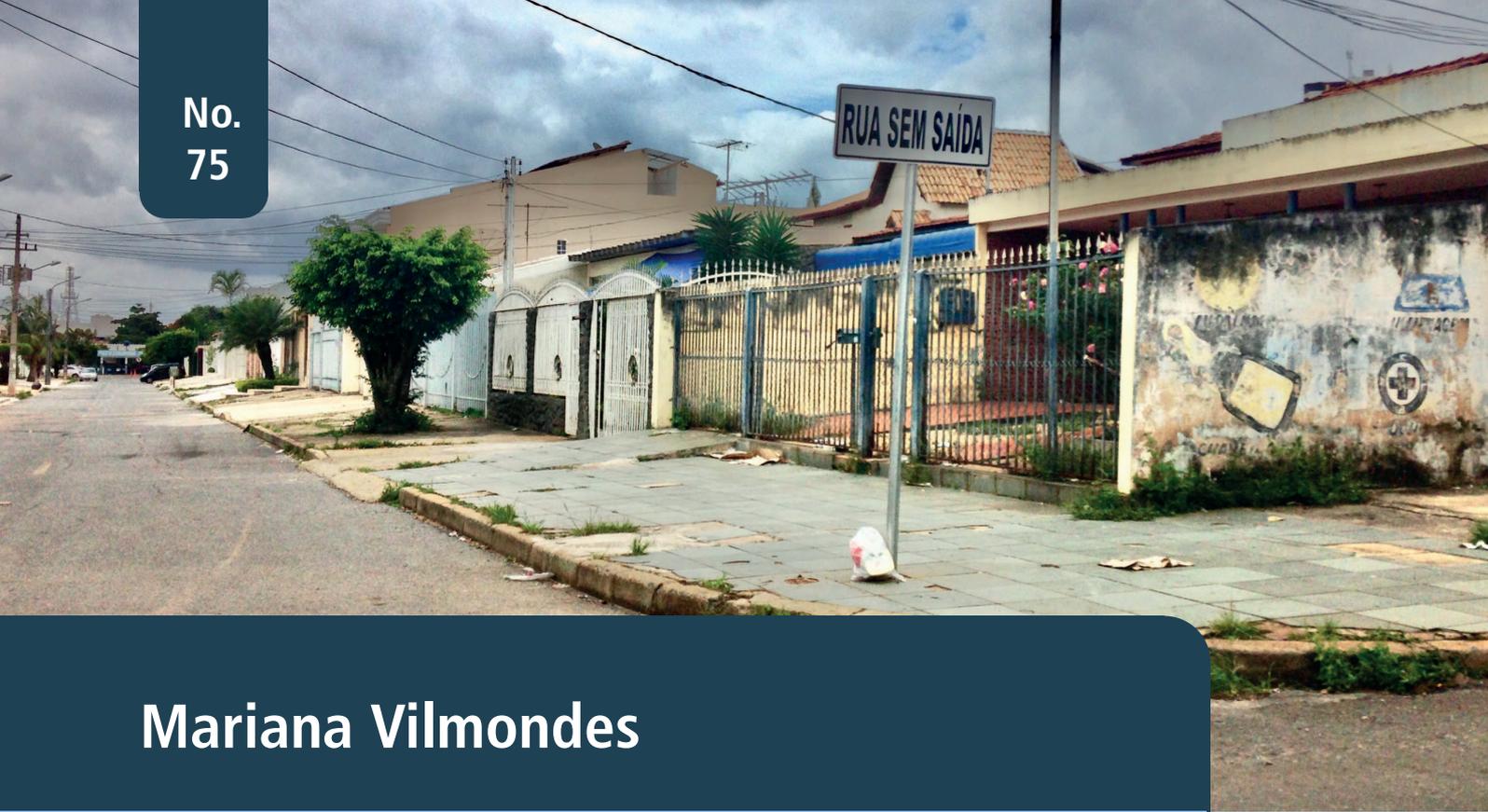


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Mariana Vilmondes

UA Ruhr Studies on Development and Global Governance

Accountability Relations in Social Housing Programs:

a comparative legal analysis of Brazilian and Chilean case studies



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Prof. Dr. Wilhelm Löwenstein

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Dedication

First and foremost, I must thank my supervisor, Prof. Markus Kaltenborn, who took the word *Doktorvater* to his heart. Thank you for all your patience, understanding and academic support. I am as well thankful for my colleagues of the IEE, Amr Khafagy, Hari Tripura, Britta Holzberg, Zena Mahmoud, Jurek Seifert, who have accompanied me closely during this most memorable journey. Thank you Dr. Jeff Garmany for the great discussions in King's College.

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Along the past years, although I did not lose faith in humanity, it has been close enough. But there should always be hope for justice.

One encounters endless challenges as a woman, a single-mother, a migrant. At the same time I was writing about housing rights, I ended up struggling in the provision of the existential minimum to my son and myself. I have been dealing with a structurally discriminatory society, that does not give the same value to my word as to the word of others, that fundamentally hindered me from finding a stable job for a long time, and that, until the publication of this book, still limits my motherhood.

As a naturalized citizen with a high level of education and several other privileges, I had the opportunity to integrate and, via social programs, to have access to adequate housing. By the end of my Ph.D., I was able to find an amazing job (*danke für die Unterstützung, Herr Pistel*), which enabled me to afford a home for my family (from a social housing project – thank you, karma). Therefore, publishing this book is both a personal victory and a responsibility I have towards others. In a world with countless other people still living under cruel conditions, I feel the weight on my shoulders to use the privileges given to me for echoing their human rights.

*“I’m going away,
somewhere without gravity
to take away that weigh of responsibility
of living in this sick planet
and trying to find a cure for the head and
for the heart of people
stop the craziness!
stop torture!
maybe there in space
I find an intelligent creature
there is too many people here,
but I only find loneliness
hate, lies, ambition
you have enough stars there, Astronaut
the Earth is a planet in extinction.”*

Gabriel, o Pensador and Lulu Santos
Astronauta (Author’s translation)

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List of Abbreviations and Translation

ABNT	<i>Associação Brasileira de Normas Técnicas</i> (Brazilian Association of Technical Norms)
CASEN	<i>Encuesta de Categorización Socioeconómica Nacional</i> (Chilean Instrument of Socioeconomic Categorization)
CGU	<i>Controladoria-Geral da União</i> (Comptroller General of Brazil)
Con-Cidades	<i>Conselho Nacional de Cidades</i> (Brazilian National Council of Cities)
Controlaría	<i>Controlaría General de la República</i> (Comptroller General of Chile)
D.S. 1	<i>Sistema Integrado de Subsidio Habitacional</i> (Integrated System for Housing Subsidy)
D.S. 19	<i>Programa de Integración social y territorial</i> (Program for Social-Spatial Integration)
D.S. 49	<i>Programa Fondo Solidario de Elección de Vivienda</i> (Program Solidary Fund for Housing Choice)
FAR	<i>Fundo de Arrendamento Residencial</i> (Brazilian Residential Leasing Fund)
FDS	<i>Fundo de Desenvolvimento Social</i> (Brazilian Social Development Fund)
FGTS	<i>Fundo de Garantia por Tempo de Serviço</i> (Brazilian Worker's Severance Fund)
GMHI	Gross Monthly Household Income
MCidades	<i>Ministério das Cidades</i> (Brazilian Ministry of Cities)
MCMV	<i>Programa Minha Casa, Minha Vida</i> (My House, My Life)
MINVU	<i>Ministerio de Vivienda y Urbanismo</i> (Chilean Ministry of Housing and Urbanism)
OGU	<i>Orçamento Geral da União</i> (Brazilian Federal General Budget)
PBQP-H	<i>Programa Brasileiro da Qualidade e Produtividade do Habitat</i> (Brazilian Program on Habitat Productivity and Quality)
PNHU	<i>Política Nacional de Habitação Urbana</i> (Brazilian National Urban Housing Policy)
RSH	<i>Registro Social de Hogares</i> (Chilean National Household Registry)
SEREMI	<i>Secretaría Regional Ministerial</i> (Chilean Ministerial Regional Secretariat, offices at regional level)
SERVIU	<i>Servicios de Vivienda y Urbanismo</i> (Chilean Housing and Urban Development Agency)
SNCH	<i>Sistema Nacional de Cadastro Habitacional</i> (Brazilian National System of Housing Registry)

SNH	<i>Secretaria Nacional de Habitação</i> (Brazilian National Housing Secretariat)
SNHIS	<i>Sistema Nacional de Habitação de Interesse Social</i> (Brazilian National System for Social Housing)
STF	<i>Supremo Tribunal Federal</i> (Brazilian Constitutional Court)
STJ	<i>Superior Tribunal de Justiça</i> (Brazilian High Court)
TCU	<i>Tribunal de Contas da União</i> (Brazilian Federal Court of Accounts)

Abstract

The biggest crises in developing democracies like Brazil and Chile are rooted in the never fulfilled promise of accountability. This problematic contributes to violations to human rights, as observed in the context of housing. Although supported by governments and by the international community, adequate housing is not guaranteed to the most vulnerable population. And, where social programs exist to target that issue, their legal structures perpetrate weak accountability relations. Thus, in order to contribute to the current research on human rights and to understand accountability in the context of social programs, this study compared the legal accountability relations the urban social housing ownership models Minha Casa, Minha Vida, from Brazil, and D.S. 49, D.S. 1, and D.S. 19, from Chile. This dissertation critically assessed their comparative differences and similarities based on the understanding of the rights-based approach. As a result, this work identified that those contributory mega-housing programs have not been able to fully guarantee that the right to an adequate standard of living, because of, among others, three main reasons. One, because they lacked transparency, clarity and consistency, simplicity, objectivity, coordination, participation and decentralization among the responsibilities articulated among duty-bearers and the main rules of the programs. Two, because they were not able to materialize critics, concerns, grievance and remediation under such previous conditions, because enforceability was weak. And three, because they have failed to create a rights-based policy, that could guarantee that those who most need may be prioritized and granted access to minimum standards of adequacy, including legal security, health, affordability, social-spatial and cultural adaptation. Yet, accountability relations exercised in each of those similar legal models and their respective programs illustrate particular framings with solutions and vices, that inspire reforms to those countries and to the Global South. The legal framework of both urban social housing ownership models must be urgently adjusted in order to support accountability relations that not only refrain from violating human rights, but also that fulfill the right to housing.

Keywords: accountability, social housing, rights-based approach, right to adequate housing, Brazil, Chile, MCMV, D.S. 1, D.S. 19, D.S. 49.

Zusammenfassung

Die größten Krisen in jungen sich entwickelnden Demokratien wie Brasilien und Chile wurzeln in dem nie eingelösten Versprechen der Accountability. Diese Problematik trägt zu Menschenrechtsverletzungen bei, wie im Zusammenhang mit dem Wohnungswesen zu beobachten ist. Obwohl adäquates Wohnen von Regierungen und der internationalen Gemeinschaft unterstützt wird, ist ein angemessener Wohnraum für die am meist gefährdetste Bevölkerung nicht garantiert, gerade weil soziale Programme, die auf dieses Problem abzielen, ihre rechtlichen und institutionellen Strukturen schwache Accountability-Beziehungen aufweisen. Um einen Beitrag zu der aktuellen Menschenrechtsforschung zu leisten, vergleicht diese Studie daher rechtlichen Accountability-Beziehungen der sozialen Wohnungseigentumsmodelle „Minha Casa, Minha Vida“ aus Brasilien, und D.S. 49, D.S. 1, und D.S. 19, aus Chile. Daher wurde in dieser Dissertation diese vergleichenden Unterschiede und Ähnlichkeiten auf der Grundlage des Verständnisses des Menschenrechtsansatzes kritisch bewertet. Diese Arbeit hat festgestellt, dass diese Mega-Wohnungsbauprogramme das Recht auf einen angemessenen Wohnraum aus drei spezifischen Hauptgründen nicht vollständig garantieren können. Zum einen, weil es den Programmen fehlt den gesetzlichen Hauptzielen zu artikulieren. Zweitens, weil sie unter diesen früheren Bedingungen nicht in der Lage waren, Beschwerden umzusetzen, weil die Durchsetzbarkeit schwach ist. Und drittens, weil die Politik es versäumt hat, eine auf Menschenrechtsansatz zu schaffen, die eine Anpassung garantieren könnte, sodass diejenigen, die es am nötigsten hätten, vorrangig behandelt würden und Zugang zu grundlegenden angemessenen Existenzminimum erhielten, einschließlich Rechtssicherheit, Gesundheit, Bezahlbarkeit. Die Accountability-Beziehungen, die in jedem eines ähnlichen Rechtsmodelles und ihren jeweiligen Programmen praktiziert werden, veranschaulichen jedoch besondere Rahmen mit Lösungen und Bedingungen, die diesen Ländern und dem globalen Süden Reformen nahelegen. Der rechtliche Rahmen beider sozialer Wohnungseigentumsmodellen muss dringend angepasst werden, um Accountability-Beziehungen zu unterstützen und zu verstärken, damit nicht nur die Verletzung von Menschenrechten verhindert werden kann, sondern auch das Recht auf Wohnraum erfüllt werden kann.

Resumo

As maiores crises de democracias jovens, como Brasil e Chile, estão enraizadas na utópica promessa da accountability. Essa problemática contribui para a violação de direitos humanos, como observado nos temas relacionados à habitação. Apesar de ser reconhecida por governos e pela comunidade internacional, o direito à moradia adequada não é garantido à população mais vulnerável. E ainda, quando programas sociais são criados para atacar esse tema, as estruturas legais perpetuam fracas relações de accountability. Dessa maneira, com o intuito de contribuir para com as atuais pesquisas em direitos humanos e de compreender accountability em programas sociais, o presente estudo comparou a relação legal de accountability em programas de habitação social urbana existentes em Minha Casa, Minha Vida (Brasil), e em D.S. 49, D.S. 1 e D.S. 19 (Chile). Dessa maneira, este livro concretizou a análise crítica- e comparada daquelas diferenças e semelhanças pela ótica dos direitos humanos (rights-based approach). Este trabalho identificou que esses mega-programas de habitação não foram capazes de garantir o direito à moradia adequada por conta de, entre outras, três razões principais. Primeiro, porque falta transparência, clareza e consistência, simplicidade, coordenação, participação e descentralização nas responsabilidades articuladas pelos programas. Segundo, porque os programas não foram capazes de materializar processos de crítica, reclamação e remediação, já que a perspectiva do cumprimento (enforcement) é fraco. E terceiro, porque os programas fracassaram na criação de uma política baseada em direitos humanos (rights-based), a qual pudesse garantir que aqueles mais vulneráveis fossem priorizados no acesso à moradia adequada a critérios mínimos, incluindo seguridade legal, saúde, preço acessível e adaptação socioespacial e cultural. Por fim, relações de accountability exercidas naqueles modelos e seus respectivos programas ilustraram soluções e erros, os quais inspiram reformas tanto naqueles casos estudados, quanto em outros países do Global South. Como resultado, a estrutura legal dos programas de habitação social urbana devem ser urgentemente reformados com o intuito de fortalecer relações de accountability influenciando na contenção de violações aos direitos humanos e na materialização do direito à moradia.

Resumen

Las principales crisis de las democracias jóvenes, como Brasil y Chile, tienen su origen en la promesa utópica de la accountability. Eso contribuye a la violación de los derechos humanos, como se observa en cuestiones relacionadas con la vivienda. A pesar de reconocido por los gobiernos y la comunidad internacional, el derecho a la vivienda adecuada no está garantizado para la población más vulnerable. Además, cuando se crean programas sociales para abordar esta cuestión, los marcos legales perpetúan las débiles relaciones de responsabilidad. Así, con el fin de contribuir a la investigación actual sobre derechos humanos y a la comprensión de la rendición de cuentas en los programas sociales, esta pesquisa comparó la relación jurídica de la rendición de cuentas en los programas de vivienda social urbana en Minha Casa, Minha Vida (de Brasil), y en el D.S. 49, D.S. 1 y D.S. 19 (de Chile). De este modo, este libro materializa el análisis crítico y comparativo de esas diferencias y similitudes desde un enfoque basado en los derechos humanos (rights-based approach). Este trabajo ha identificado que estos mega-programas de vivienda no han podido garantizar el derecho a una vivienda adecuada debido, entre otras, a tres razones principales. En primer lugar, porque hay una falta de transparencia, claridad y coherencia, simplicidad, coordinación, participación y descentralización en las responsabilidades articuladas por los programas. En segundo lugar, porque los programas no han sido capaces de materializar procesos de crítica, denuncia y recurso, ya que la perspectiva de aplicación (enforcement) es frágil. Y, en tercer lugar, porque los programas no crearon una política basada en los derechos humanos (rights-based) que pudiera garantizar que los más vulnerables tuvieran prioridad en el acceso a una vivienda adecuada a criterios mínimos, como seguridad jurídica, salud, asequibilidad financiera y adaptación socioespacial y cultural. Por último, las relaciones de responsabilidad ejercidas en esos modelos y sus respectivos programas ilustran soluciones y errores, los cuáles inspiran reformas tanto en los casos estudiados como en otros países del Global South. En consecuencia, el marco legal de los programas de vivienda social urbana debe ser reformado urgentemente con el objetivo de fortalecer las relaciones de responsabilidad que influyen en la contención de las violaciones de los derechos humanos y la materialización del derecho a la vivienda.

1 Introduction

Socio-political crises have roots in the deterioration of accountability structures, particularly in the global South.¹ Despite the acknowledgment of constitutions or international treaties, limited and unequal access to the most basic human rights, such as housing, is expected to constrain at least 1.6 billion people by 2025.² That puts the legitimacy of democracy and governance in check.³

In the 2010s, Brazilian and Chilean governments created similar social housing programs that came to be reference world-wide. In Brazil, *Minha Casa, Minha Vida* was launched in 2009 and delivered 4,1 million units, according to government data.⁴ Chilean programs continued the national history of social housing strategies with “Programa Fondo Solidario de Elección de Vivienda D.S. 49” (D.S. 49 henceforth) and “Sistema Integrado de Subsidio Habitacional D.S. 1” (D.S. 1), both created in 2011, and “Programa de Integración social y territorial D.S. 19” (D.S. 19), in 2016.⁵

However, in Brazil, it is estimated that 50 million individuals still live under inadequate housing conditions.⁶ In absolute numbers, 1.2 million houses require to be repaired and 390,000 new households should yet be constructed in Chile.⁷ Proportional to the population, residents of both countries deal with a similar housing gap and social issues that include overcrowding, unaffordability, and the lack of access to basic services, such as potable water, sanitation, security, electricity.⁸

Where demand-based social housing strategies have been created, their vices tend to blur positive outcomes: financing home-ownership programs have cre-

¹ Anne Marie Goetz and Rob Jenkins, *Reinventing Accountability: Making Democracy Work for Human Development* (Basingstoke: Palgrave Macmillan, 2007), 2.

² Jonathan Woetzel et al, “A Blueprint for Addressing the Global Affordable Housing Challenge,” McKinsey Global Institute (October 2014).

³ Goetz and Jenkins.

⁴ Brasil, Lei 11.977, de 7 de julho de 2009, L. 11.977 (2009); Instituto de Pesquisa Econômica Aplicada and Conselho das Cidades (Brazil), *National Report for Habitat III*. Eds. Renato Balbim and Roberta Amanajás Monteiro, IPEA/CONCIDADES, 2016, 10.

⁵ Chile, Decreto Supremo 1, (V. y U.), de 6 de junio de 2011, D.S. 1 (2011) [Sistema Integrado de Subsidio Habitacional]; Chile, Decreto Supremo 19, (V. y U.), de 17 de mayo de 2016, D.S. 19 (2016)[Programa de Integración social y territorial]; Chile, Decreto Supremo 49, (V. y U.), de 13 septiembre de 2011, D.S. 49 (2011) [Programa Fondo Solidario de Elección de Vivienda].

⁶ See Habitat for Humanity, “Country Profile. Brazil,” Habitat for Humanity, 2019. <https://www.habitat.org/where-we-build/brazil>.

⁷ HRC, A/HRC/37/53/Add.1, para 18.

⁸ McTarnaghan et al; Robin King et al, “Confronting the Urban Housing Crisis in the Global South: Adequate, Secure, and Affordable Housing.” *World Resources Institute*, Working Paper, July 12, 2017. www.citiesforall.org;

ated unsustainable, inadequate methods, better known for forced relocation, illegal evictions and corruption scandals.⁹ A weak implementation of a human rights-based approach highly challenges the right to adequate housing the global South. In addition, fragile answerability, responsibility and enforcement dimensions perpetuate the vulnerability of the most-poor.

Discussions over the use of human rights to transform social change have been long connected to legal debates.¹⁰ To combat social issues, accountability has been pointed out as a key policy tool for the materialization of human rights. Its relationship framework can ensure that norms undertake human rights as goals and means of targeting the most-vulnerable members of society and to revert structural problems.¹¹

In that sense, accountability can play a fundamental role to minimize legal difficulties, because it can create a system of values, norms and procedures bound

⁹ Brasil, Tribunal de Contas da Uniao. Acórdão 2.456/2016, TC: 016.801/2015-6, Min.-Substituto Augusto Sherman. RA, at 36/2016, SeinfraUrb (Plenário Sep 21, 2016); Brasil, Tribunal de Contas da Uniao. Acórdão 1.836/2017, TC 014.728/2017-6, Min. José Múcio Moreira. RA, at 33/2017, Se-cexAL (Plenário Aug 23, 2017); HRC, A/HRC/37/53/Add.1; UN Human Rights Council (HRC), “Compilation on Brazil. Report of the Office of the High Commissioner for Human Rights,” A/HRC/WG.6/27/BRA/2, Working Group on the Universal Periodic Review (Feb 24, 2017), para 84; Sarah McTarnaghan et al, “Literature Review On Housing in Latin America and the Caribbean. Phase I: Global Housing Research Initiative,” Habitat for Humanity, Oct 2016.

¹⁰ Magdalena Sepulveda Carmona, Carly Nyst and Heidi Hautala, “The Human Rights Approach to Social Protection,” SSRN Scholarly Paper, (Rochester, NY: Social Science Research Network, Jun 1, 2012), <https://papers.ssrn.com/abstract=2114384>; Simone Cecchini and Rodrigo Martínez, eds. *Inclusive Social Protection in Latin America: A Comprehensive, Rights-Based Approach*, Libros de La CEPAL 111 (Santiago, Chile: Economic Commission for Latin America and the Caribbean (ECLAC), 2012); United Nations Development Group, “The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies” (UNDG, 2003), <https://undg.org/document/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies/>; Markus Kaltenborn, “The Human Rights-Based Approach to Social Protection,” in *Social Protection in Developing Countries: Reforming Systems*, eds. Bender, Pfleiderer, and Kaltenborn, Routledge Explorations in Development Studies 2, Abingdon, Oxon, (New York: Routledge, 2013); Diana Mitlin and Sheela Patel, “Reinterpreting the Rights-Based Approach: A Grassroots Perspective on Rights and Development,” In *Rights-Based Approaches to Development: Exploring the Potential and Pitfalls*, eds. Samuel Hickey and Diana Mitlin (Kumarian Press, 2009); Samuel Hickey and Diana Mitlin, “Introduction: Rights-Based Approaches to Development.” In *Rights-Based Approaches to Development*, eds. Hickey and Mitlin; Thomas Silberhorn, “Germany’s Experience in Supporting and Implementing Human Rights-Based Approaches to Health, plus Challenges and Successes in Demonstrating Impact on Health Outcomes,” *Health and Human Rights Journal* 17, n. 2 (Dec 2015); United Nations Office of the High Commissioner, “Frequently Asked Questions on a Human Rights-Based Approach to Development Cooperation” (OHCHR, 2006); Wouter Vandenhoe and Paul Gready, “Failures and Successes of Human Rights-Based Approaches to Development: Towards a Change Perspective,” *Nordic Journal of Human Rights* 32, n. 4 (2014) <http://dx.doi.org/10.1080/18918131.2015.957458>.

¹¹ UN Human Rights Committee, 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, on Her Mission to Chile, A/HRC/37/53/Add.1 (HRC, Jan 17, 2018), para 84; UN Economic and Social Council, “Concluding Observations on the Fourth Periodic Report of Chile,” E/C.12/CHL/CO/4 (ECOSOC, Dec 1, 2004).

to ground and guide under the rule of law and principles of democracy. Fundamentally based on a social dilemma, in which two or more actors must be bound to clear, structured rules, accountability also brings a democratic perspective,¹² reversing the relationships between powerless and powerful, by “making the powerful answer to the stifled majority in whose name they act, under threat of sanction.”¹³ Substantiated on equality and non-discrimination, accountability can particularly challenge the status quo on behalf of the world’s most poor.

The adjustment of roles, norms and controls in the context of social housing programs can provide three main solutions in the social housing context. One, it can improve general performance by providing more clear processes, standards and mechanisms. That is essential for duty-bearers, especially public servants and politicians, in order to conduct their operations properly without failing into “error, fraud, and corruption”.¹⁴ Two, that should lead to the empowerment of marginalized persons, who, although legally right-holders, are existentially vulnerable and many times unable to advocate for themselves.¹⁵ Three, it can particularly support business enterprises not only to avoid adverse human rights impacts but also to positively contribute to the respect of human rights.¹⁶

Thus, underpinned by the advocacy of human rights, this comparative legal case study will enlighten the academic research in an assessment of accountability in the context of Brazilian and Chilean social housing ownership programs. The ultimate goal of this work aims at the progressive realization of the right to adequate housing through enhanced accountability relations, that observe human rights as both goals and processes. In the specific context of Brazil and Chile, social housing strategies ought to provide beneficiaries with adequate minimum standards, and ensure grievance and redress via an answerable and responsible legal design.

1.1 The State of the Research

Humanity is by nature affected by unequal institutions. However, in this work’s best understanding, that does not mean that human beings must endure human rights violations due to extreme inequality. The principles of social justice,

¹² Michael Goodhart, “Accountable international relations”. In *The Oxford Handbook of Public Accountability*, Mark Bovens, Robert E. Goodin, and Thomas Schillemans, ed (Oxford: Oxford University Press, 2016), 355-57.

¹³ Goetz and Jenkins, 31.

¹⁴ Lucy Basset et al, “Rules, Roles, and Controls: Governance in Social Protection with an Application to Social Assistance,” *Social Protection & Labor Discussion Papers*, no. 1206 (World Bank: 2012), 11.

¹⁵ Tamsin Ayliffe, Ghazia Aslam and Rasmus Schjodt. “Social Accountability in the Delivery of Social Protection: Literature Review” (*Orpington*, Development Pathways, 2017), 8.

¹⁶ United Nations and Office of the High Commissioner, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, HR/PUB/11/04 (OHCHR, 2011).

along the years translated into human rights laws and principles, “must [...] in the first instance apply [...] and regulate the choice of a political constitution and the main elements of the economic and social system.”¹⁷ And also in projection to housing rights, the means of supporting those unequal parties is to create a system that provides equal forms of treatment depending on their inequality. That can be achieved with accountability.

Inspired by a rights-based perspective, accountability can, alongside with the support for more transparency and citizen engagement, directly impact democratic institutions.¹⁸ The adjustment of accountability relations should conduct to better communication methods and demand clarity in policies.¹⁹ In the context of social housing programs, that translates into access to information to all citizens, especially the most vulnerable ones. And, if necessary, better accountability relations should be secured to grievance and redress, specially the most excluded members of society.²⁰

Furthermore, a clear and consistent system of norms can strongly hinder errors and impact on service delivery.²¹ It can also ensure the enforcement of sanctions to duty-bearers. Control mechanisms can support rights-holders not only in the revision of errors, but also in the monitoring and evaluation of performances²² conducted by duty-bearers. Linked to the social housing context, such an accountability approach can enforce that housing rights are protected, respected and fulfilled.

Several studies have already conducted theoretical discussions upon the concept, structures and standards that adjustments to accountability may take.²³ Other authors tested accountability in the context of social programs from legal,

¹⁷ John Rawls, *A Theory of Justice*, 22. print. (Cambridge: Mass. Harvard Univ. Press, 1997), 7; UN Committee on Economic, Social and Cultural Rights, General Comment No. 4 on the right to adequate housing, E/1992/23, GC4 (CESCR, 1991), para 6.

¹⁸ Shantanu Dixit, Subodh Wagle and Girish Sant, “The Real Challenge in Power Sector Restructuring: Instilling Public Control through Transparency, Accountability and Public Participation (TAP),” *Energy for Sustainable Development V*, n. 3 (Sept 2001), 95–102.

¹⁹ Basset et al.

²⁰ UN Office of the High Commissioner, “Who Will Be Accountable? Human Rights and the Post-2015 Development Agenda,” HR/PUB/13/1 (New York and Geneva: OHCHR, 2013), <https://www.ohchr.org/Documents/Publications/WhoWillBeAccountable.pdf>, xi.

²¹ Basset et al, 2.

²² Ernesto Isunza Vera, “Para analizar los procesos de democratización.” In *Democratización, rendición de cuentas y sociedad civil: participación ciudadana y control social*, edited by Ernesto Isunza Vera and Alberto Olvera Rivera, 1 ed. (México, D.F: Miguel Ángel Porrúa, 2006), 283-287.

²³ Goetz and Jenkins; Andreas Schedler, “Conceptualizing Accountability.” in *The Self-Restraining State: Power and Accountability in New Democracies*, ed. by Andreas Schedler, Diamond, Larry, and Marc F. Plattner, (Boulder, Colo.: Lynne Rienner Publ, 1999); Mark Bovens, Robert E. Goodin, and Thomas Schillemans, ed. *The Oxford Handbook of Public Accountability*, (Oxford: Oxford University Press, 2016); Richard Mulgan, “Holding power to account : accountability in modern democracies”, (Houndmills, Basingstoke, Hampshire ; New York : Palgrave Macmillan, 2003).

public, political, social perspectives.²⁴ Legal scholars have developed intrinsic methods of analysis, which will also be integrated in the background framework of this discussion.²⁵

This research found a gap in the literature that is both academically and socially relevant. Most of the previous legal studies and reports on the case studies failed to introduce accountability in a clear connection to human rights, and none has up to now referred to the case studies in a comparative analysis of the social housing context, as traced by this study.²⁶ Yet, this research follows the hint of previous legal and public policy scholars that have generated positive outcomes

²⁴ Ayliffe et al; Mainwaring; Brian Wampler, *Participatory Budgeting in Brazil: Contestation, Cooperation, and Accountability* (Pennsylvania State University Press, 2010); Basset et al; Mark Bovens, “Analysing and Assessing Public Accountability. A Conceptual Framework,” European Governance Papers (EUROGOV) (CONNEX and EUROGOV networks, Jan 16, 2006), <https://ideas.repec.org/p/erp/eurogo/p0005.html>; World Bank, *From Shouting to Counting: A New Frontier in Social Development*, (2004); UN Department of Economic and Social Affairs, “SAIs, Parliaments & Citizens,” In *Citizen Engagement Practices by Supreme Audit Institutions: Compendium of Innovative Practices of Citizen Engagement by Supreme Audit Institutions for Public Accountability*, ch 6 (New York: UNDSA, 2013); John M. Ackerman, “Social Accountability in the Public Sector: A Conceptual Discussion.” *Social Development Papers*, Participation and civic engagement, no. 82 (Mar 2005). <https://www.scribd.com/document/134370806/Ackerman-Social-Accountability>; Carmen Malena, Reiner Forster and Janmejay Singh, “Social Accountability: An Introduction to the Concept and Emerging Practice” (World Bank, December 1, 2004), <http://documents.worldbank.org/curated/en/327691468779445304/Social-accountability-an-introduction-to-the-concept-and-emerging-practice>; UN-Habitat. *Urbanization and Development: Emerging Futures*. World Cities Report 2016, (Nairobi, Kenya: UN-Habitat, 2016).

²⁵ Merlijn van Hulst and Dvora Yanow, “From Policy ‘Frames’ to ‘Framing’: Theorizing a More Dynamic, Political Approach,” *American Review of Public Administration*, 46, n 1 (SAGE, 2014), <https://doi.org/10.1177/0275074014533142>; Geoffrey Wilson, “Comparative Legal Scholarship,” in *Research Methods for Law*, ed. Michael McConville and Wing Hong Chui, 2ed. Research Methods for the Arts and Humanities (Edinburgh: Edinburgh University Press, 2017); Ian Dobinson and Francis Johns, “Legal Research as Qualitative Research,” in *Research Methods for Law*, edited by Michael McConville and Wing Hong Chui, Second edition., 16–45. Research Methods for the Arts and Humanities (Edinburgh: Edinburgh University Press, 2017); Ian Dobinson and Francis Johns, “Qualitative Legal Research.” In *Research Methods for Law*, edited by Wing Hong Chui and Michael McConville (Edinburgh University Press, 2007); Kerry Rittich, “The Future of Law and Development: Second Generation Reforms and the Incorporation of the Social,” *Michigan Journal of International Law* 26 (2005 2004); David M. Trubek, “Toward a Social Theory of Law: An Essay on the Study of Law and Development,” *The Yale Law Journal* 82, no. 1 (Nov 1972); J.E. Côté and D.J. MacGregor, “Practical Legal Research.” *Alberta Law Review* 52, no. 1 (2014); Yong-Shik Lee, “Call for a New Analytical Model for Law and Development,” *Law and Development Review* 8, n. 1 (2015).

²⁶ McTarnaghan et al, 7-8; Ana Sugranyes and Fernando Jiménez Cavieres, “El derecho humano a una vivienda adecuada en Chile,” in *Con subsidio, sin derecho: la situación del derecho a una vivienda adecuada en Chile*, eds. Alfredo Rodríguez, Paula Rodríguez and Ana Sugranyes (Santiago: SUR, 2018); Ana Sugranyes and Alfredo Rodríguez, “El Traje Nuevo Del Emperador. Las Políticas de Financiamiento de Vivienda Social En Santiago de Chile,” In *Políticas de Empleo y Vivienda En Sudamérica*, ed. Instituto de la Ciudad, FLACSO (Quito: CLACSO, 2012), <http://bibliotecavirtual.clacso.org.ar/clacso/gt/20120413123620/gthi1-2.pdf>.

in the context of housing and social programs in South America, some by aiming at the adjustment of certain accountability aspects.²⁷ In general, studies have already pointed out for different models and for adjustments of accountability in Brazil and Chile, including the World Bank and the OECD.²⁸ However, no studies referred to the use of a rights-based approach in a framework of legal accountability in a comparative legal research of those respective countries. The two theories attached, accountability and the human rights-based perspective, are the solution found by this study to support the most-vulnerable in their access to adequate housing rights.

A concrete debate about accountability in Latin America started in the late 1980's, a time of legal transition to a democratic rule of law.²⁹ In that context, accountability “emerged as one of the key issues in the post-transition period.”³⁰ Domestic theoretical debates led to a better understanding of administrative law,

²⁷ Nelson Saulo Junio, and Maria Elena Rodriguez, “Housing Rights in Brazil,” in *National Perspectives on Housing Rights*, Scott Leckie, ed, (The Hague, London, New York: Kluwer Law International, 2003); Kira Somers and Isa Baud, “My House, My Life: Decision-Making Processes and Local Citizen Participation in Housing Project Minha Casa, Minha Vida in Salvador Da Bahia,” in *Network-Association of European Researchers on Urbanisation in the South* (Enschede, 2014); Deutscher Entwicklungsdienst, “Adequate Housing: Urban Development Planning in Brazil & Participation, Habitability and Accessibility,” *Governance and Democracy: Promising Practices On the Human Rights-Based Approach in German Development Cooperation* (Bonn & Eschborn: DED, 2010); Roberto Pires, Gabriela Lotta and Vanessa Elias de Oliveira, eds, *Burocracia e Políticas Públicas No Brasil: Interseções Analíticas* (Brasília: IPEA, 2018); Enrique Peruzzotti and Catalina Smulovitz, “Held to Account: Experiences of Social Accountability in Latin America,” *Journal of Human Development* 3, no. 2 (July 2002), <https://doi.org/10.1080/14649880220147310>, 209–30; Caio Santo Amore, Lúcia Zanin Shimbo, and Maria Beatriz Cruz Rufino, eds, *Minha casa... e a cidade?* Observatório das Metrôpoles (Rio de Janeiro: Letra Capital, 2015).

²⁸ Basset et al; Samuel Paul, *Accountability in Public Services : Exit, Voice and Capture. Policy, Research, and External Affairs* working papers, WPS614 (World Bank, Mar 31, 1991). <http://documents.worldbank.org/curated/en/408071468739164508/Accountability-in-public-services-exit-voice-and-capture>; World Bank, *A Fair Adjustment: Efficiency and Equity of Public Spending in Brazil*, Brazil Public Expenditure Review (Washington DC: World Bank Group, Nov 2017). <https://www.worldbank.org/en/results/2018/10/01/world-bank-group-support-brazil-2011-2018>; OECD, *Public Procurement in Chile: Policy Options for Efficient and Inclusive Framework Agreements*, OECD Public Governance Reviews (Paris: OECD, 2017). <https://www.oecd-ilibrary.org/content/publication/9789264275188-en>; Cássio Garcia Ribeiro et al, “Unveiling the Public Procurement Market in Brazil: A Methodological Tool to Measure Its Size and Potential,” *Development Policy Review* 36, no. S1 (2018), <https://doi.org/10.1111/dpr.12301>.

²⁹ Scott Mainwaring, “Introduction: Democratic Accountability in Latin America.” In *Democratic Accountability in Latin America*, ed. Christopher Welna and Scott Mainwaring (Oxford: Oxford University Press, 2003), <https://doi.org/10.1093/0199256373.003.0001>.

³⁰ Mainwaring, para 4.

though with no express mention to accountability relations.³¹ Therefore, international organizations and scholars networked with locals to provide detailed understanding of those institutional frameworks.³²

Latin American challenges of accountability are fundamented on inefficiency inasmuch as in means to legitimize democracy in the region.³³ Creating effective mechanisms that may control and enforce involved stakeholders can solve those both issues, though only partially. It is also necessary to make duty-bearers responsible and answerable to their actions, which should target the materializing human rights.³⁴ That requires too, an operationalized change of behavior, where legal mechanisms and tools enable such goal.³⁵ Hence, reforms can only be comprehensive, if based on human rights and if devoted to provide social justice.³⁶

Accordingly, the literature reveals positive outcomes as for the use of a rights-based approach in different contexts and national perspectives, including in the use of legislative measures.³⁷ Legal studies and reports³⁸ have advocated for its

³¹ Gabriel Celis Danziger, *Curso de Derecho Administrativo*. Vol. Tomo I & II, (Chile: Thomson Reuters, 2010); Eduardo Soto Kloss, *Derecho administrativo : bases fundamentales*. (Editorial Jurídica de Chile, 1996); Eduardo Soto Kloss, *Derecho administrativo: temas fundamentales* (Santiago: Abeledo Perrot, 2012); Lucas Rocha Furtado, *Curso de Direito Administrativo*, 5 ed, (Belo Horizonte: Fórum, 2016); Celso Antônio Bandeira de Melo, *Curso de direito administrativo* (São Paulo: Malheiros, 2001).

³² Simone Cecchini and Rodrigo Martínez, eds. *Inclusive Social Protection in Latin America: A Comprehensive, Rights-Based Approach*. Libros de La CEPAL 111. Santiago, Chile: Economic Commission for Latin America and the Caribbean (ECLAC), 2012; OECD, *OECD Reviews of Regulatory Reform: Brazil 2008* (Paris: OECD Publishing, 2008). <https://doi.org/10.1787/9789264042940-en>; OECD, *OECD Reviews of Regulatory Reform Regulatory Policy in Chile Government Capacity to Ensure High-Quality Regulation: Government Capacity to Ensure High-Quality Regulation* (Paris: OECD Publishing, 2016). <https://doi.org/10.1787/9789264254596-en>; OECD, *Public Procurement in Chile*; Ribeiro et al. “Unveiling the Public Procurement Market in Brazil: A Methodological Tool to Measure Its Size and Potential.” *Development Policy Review* 36, no. S1 (2018). <https://doi.org/10.1111/dpr.12301>.

³³ Mainwaring, para 5.

³⁴ Mainwaring, para 6.

³⁵ Hannah Miller and Robin Redhead, “Beyond ‘Rights-Based Approaches’? Employing a Process and Outcomes Framework,” *The International Journal of Human Rights* 23 (2019), <https://doi.org/10.1080/13642987.2019.1607210>, 705-706.

³⁶ See more on social justice in Rawls.

³⁷ Silberhorn.

³⁸ See more Kaltenborn; Samuel Hickey and Diana Mitlin, “Introduction: Rights-Based Approaches to Development,” In *Rights-Based Approaches to Development*, eds. Hickey and Mitlin, 3–19; Sepulveda Carmona, Nyst and Hautala; OHCHR, HR/PUB/13/1.

application in social programs, because it “is more transparent and accountable.”³⁹ It contributes to cost reductions, for which accountability is, again, a key tool.⁴⁰

Regarding the right to adequate housing, literature, policy reports, and even international norms have convened them to be “central to the combating of social exclusion” and to be “speak(ing) to every dimension of personal development.”⁴¹ Based on the axiom that States endure the obligation to support the progressive realization of human rights and business enterprises, to respect them, access to housing has been articulated by several international documents.⁴² The most influential documents include the Universal Declaration of Human Rights,⁴³ the International Covenant on Economic, Social and Cultural Rights⁴⁴ and its General Comment n. 4.⁴⁵ Other international human rights treaties that have also acknowledged the right to housing comprehend the UN international conventions Relating to the Status of Refugees, on the Elimination of All Forms of Racial Discrimination, on the Elimination of All Forms of Discrimination against Women, on the Rights of the Child, on the Rights of Persons

³⁹ Robert Archer, “Linking Rights and Development: Some Critical Challenges.” In *Rights-Based Approaches to Development: Exploring the Potential and Pitfalls*, eds. Hickey and Mitlin, 28.

⁴⁰ UNDG, “The Human Rights Based Approach to Development Cooperation Towards a Common Understanding Among UN Agencies”; John M. Ackerman, “Human Rights and Social Accountability,” (World Bank May 1, 2005), <http://documents.worldbank.org/curated/en/250451468048914790/Human-rights-and-social-accountability>; OHCHR, HR/PUB/13/1; World Bank, *World Development Report 2004 : Making Services Work for Poor People* (World Bank Group, 2003), <https://openknowledge.worldbank.org/handle/10986/5986>; Mitlin Diana and Sheela Patel, “Reinterpreting the Rights-Based Approach: A Grassroots Perspective on Rights and Development,” In *Rights-Based Approaches to Development: Exploring the Potential and Pitfalls*, ed. Samuel Hickey and Diana Mitlin (Kumarian Press, 2009), 118.

⁴¹ Peter Lee, “Housing Policy, Citizenship and Social Exclusion,” In *Housing and Public Policy. Citizenship, Choice and Control*, ed A. Marsh and D. Mullins, 57–78 (Buckingham: Open University Press, 1998), 76; UN Human Settlements Program, “Urbanization and Development: Emerging Futures,” *World Cities Report 2016* (Nairobi: UN-Habitat, 2016), 52. See more UN General Assembly, New Urban Agenda, A/RES/71/256 (UNGA, 2016); UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1 (UNGA, 2015).

⁴² UN General Assembly, International Covenant on Economic, Social and Cultural Rights, ICESCR, 993 Treaty Series 3 (UNGA, 1966), art. 2(1); Jerome J. Shestack, “The Jurisprudence of Human Rights,” in *Human Rights in International Law: Legal and Polity Issues*, ed Theodor Meron, (Oxford University Press, 1984). On the State’s obligations regarding housing rights, see: UN Human Settlements Programme and Office of the High Commissioner for Human Rights, “Housing Rights Legislation”, United Nations Housing Rights Programme, Global Campaign for Secure Tenure n 5. (Nairobi: UN-Habitat/OHCHR, 2002). See also: UN Human Rights Committee, General Comment No. 6, HRI/GEN/1/Rev.1 (HRC, 1982); M. Magdalena Sepúlveda, “The Typologies of State Duties Imposed by the Covenant,” in *The Nature of the Obligations Under the International Covenant on Economic, Social and Cultural Rights*, 209–47 (Intersentia, 2003). See on the obligations of firms see HRC, HR/PUB/11/04.

⁴³ UN General Assembly, Universal Declaration of Human Rights, A/RES/217, 217 A (III) (UNGA, 1948), art. 25.

⁴⁴ UNGA, ICESCR, art. 11.

⁴⁵ UN CESCR, GC4.

with Disabilities, as well as ILO's Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.⁴⁶ The critique exercised by the Special Rapporteur in their country-visits and reports is as well of vital control and influence.⁴⁷

The international agenda has been too guiding to a social, sustainable, resilient, inclusive, and democratic future. For example, the New Urban Agenda, discussed for Habitat III, in 2016, and the Sustainable Development Goals for 2030, in 2015, portray those efforts.⁴⁸ Among their aims is the creation of national gradual support to strategies in the promotion of housing rights. States should respect, protect and fulfill those rights, which particularly involve adequacy in matters of security of tenure, availability of services, affordability, habitability, accessibility equal and non-discriminatory, participation, social-spatial integration and culture adaptation.⁴⁹

There is no universal solution for social housing⁵⁰. However, solutions can be found by comparing and allocating specific legal, cultural, historical, language, economical traits (just as examples). Therefore, the importance and necessity of

⁴⁶ UN General Assembly, Convention relating to the Status of Refugees, Resolution 429 (V) (UNGA, 1954), art. 21; UN General Assembly, International Convention on the Elimination of All Forms of Racial Discrimination, A/RES/2106, 660 § (UNGA, 1965), art. 5.e.iii; UN General Assembly, Convention on the Elimination of All Forms of Discrimination against Women (UNGA, 1979), art. 14.2, 15.2; UN General Assembly, Convention on the Rights of the Child, Resolution 44/25 (UNGA, 1990), art. 16.1, 27.3; UN General Assembly, Convention on Rights of Persons with Disabilities, A/RES/61/106 (UNGA, 2006), art. 9, 28; International Labor Organization, Indigenous and Tribal Peoples Convention, C169 (ILO, Jun 27, 1989), art. 14, 16-17.

⁴⁷ For example UN 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 in This Context, Leilani Farha, Agenda Item 3, A/HRC/28/62 (HRC, Dec 22, 2014); UN General Assembly, 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, A/73/310/Rev.1 (UNGA, 2018); UN 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 in this context, A/HRC/37/53 (HRC, Jan 17, 2018).

⁴⁸ UNGA, New Urban Agenda; UNGA, A/RES/70/1; UN Human Rights Council (HRC), Access to Justice for the Right to Housing: 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, A/HRC/40/61 (HRC, Jan 15, 2019); HRC, A/HRC/37/53/Add.1; UN Commission on Human Rights, E/CN.4/2005/48/Add.3.

⁴⁹ UN CESCR, GC4; Economic Commission for Europe, "Guidelines on Social Housing: Principles and Examples," ECE/HBP/137, New York and Geneva: United Nations, 2006; UN Human Settlements Programme, *Habitat III Issue Papers – 20 Housing*, United Nations Conference on Housing and Sustainable Development – Habitat III (UN-Habitat, May 31, 2015).

⁵⁰ Duni et al "Exploring a Political Approach to Rights-Based Development in North West Cameroon" In: Hickey, Samuel, and Diana Mitlin. "Introduction: Rights-Based Approaches to Development." In *Rights-Based Approaches to Development: Exploring the Potential and Pitfalls*, 3–19. Kumarian Press, 2009, 13. That is, for example, the case of the Mbororo'en in Cameroon, an ethnic minority that secured the improvement of legal processes, though still lacked attention to gender questions and had limited improvement in horizontal relations.

this present legal research. Although housing in Brazil and housing in Chile have been extensively researched, especially since the beginning of the XXI century⁵¹, this work for the first time compares those national experiences in respect to accountability and the materialization of human rights in social housing programs.

Indeed, there is plenty of domestic literature criticizing different aspects of those national housing strategies, including architectural and urban designs, implementation of sustainable technologies, as well as sociological, economical and political factors, which should have been better observed by legislators.⁵² According to the Special Rapporteur, Chile fails to provide urban planning strategies based on human rights.⁵³ They⁵⁴ also refer to various violations to the right to housing in Brazil, which, praised for the constitutionalization of that same human right, fails in adequacy and enforcement.⁵⁵

⁵¹ Günther Held, *Políticas de viviendas de interés social orientadas al mercado: experiencias recientes con subsidios a la demanda en Chile, Costa Rica y Colombia*. S 96 (Santiago de Chile: Naciones Unidas, CEPAL, 2000); Diego Gil Mc Cawley, “The Political Economy of Land Use Governance in Santiago, Chile and Its Implications for Class-Based Segregation,” *The Urban Lawyer* 47, no. 1 (2015), <https://www.jstor.org/stable/26424252>; Luz María Vergara, Vincent Gruis, and Kees van der Flier, “The Role of Third Sector Organisations in the Management of Social Condominiums in Chile: The Case of Proyecto Propio,” *International Journal of Housing Policy* (Jun 18, 2019), <https://doi.org/10.1080/19491247.2019.1613871>.

⁵² Amore, Shimbo and Rufino; Paulo Somlanyi Romeiro and Henrique Botelho Frota, eds. *Mega-projetos de impacto urbano e ambiental: violação de direitos, resistência e possibilidades de defesa das comunidades impactadas*. Instituto Brasileiro de Direito Urbanístico (Sao Paulo: IBDU, 2015); João Sette Whitaker Ferreira, “Produzir casas ou construir cidades? Desafios para um novo Brasil urbano Parâmetros de qualidade para a implementação de projetos habitacionais e urbanos”, São Paulo: FUPAM-LABHAB, 2012); Nabil Georges Bonduki, “Política habitacional e inclusão social no Brasil: revisão histórica e novas perspectivas no governo Lula,” *Arq.urb Revista Eletrônica de Arquitetura e Urbanismo* 1 (2008), http://www.usjt.br/arq.urb/numero_01.html; Claudia D. Chamorro, “Política habitacional en Chile: Historia, resultados y desafíos.” *Camara Chilena de la Construcción*, Documentos de Trabajo Camara Chilena de la Construcción, 72 (Apr 2013); Sebastian Smart and Vicente Burgos, “Chilean Housing Policy: A Pendant Human Rights Perspective,” *Journal of Property, Planning and Environmental Law*, 10, n 3 (Emerald Publishing Limited, 2018).

⁵³ HRC, A/HRC/37/53/Add.1, para 34-39.

⁵⁴ Levi Hord, “Bucking the Linguistic Binary: Gender Neutral Language in English, Swedish, French, and German.” *Western Papers in Linguistics / Cahiers Linguistiques de Western* 3, n 1 (July 21, 2016). https://ir.lib.uwo.ca/wpl_clw/vol3/iss1/4. The expression “they” was used through out this work, because masculine and female nouns are not enough to qualify all possible gender classifications, including non-binary people, for which this author has favored the most neutral solution available in the formal academic English.

⁵⁵ HRC, A/HRC/WG.6/27/BRA/2, 48-55; Tribunal de Contas da Uniao, “Relatório de Auditoria Operacional no Programa Minha Casa Minha Vida”.(Ato originário Acórdão 2431/2012-Plenário, TC 033.568/2012-0, Fiscalis 1073/2012, Min-Substituto Weder de Oliveira, Sep 5, 2012), TCU, SE-CEX, Oct 2013; Ministerio da Transparencia, Fiscalizacao, and Controladoria Geral da Uniao. “Relatório de Avaliacao Da Execucao de Programa de Governo: Programa Minha Casa, Minha Vida-FGTS,” (Brasília: CGU, April 2017).

1.2 The Analytical Framework

The presented legal framework will serve to analyze two national social housing ownership strategies, namely the Chilean and the Brazilian models. Underpinned by the human rights-based approach, this legal research will identify and compare constitutive elements of chosen case studies' accountability relationships.

First, the existent legal accountability roles will be evaluated through the identification of directly involved actors and their established ties. Influential stakeholders will be as well identified. Under the umbrella of the responsibility dimension, accountability should outline clear, transparent, consistent, coordinated, decentralized and participatory roles.

Second, operational norms will also be under scrutiny. Particularly explored will be the obligations of directly involved stakeholders to inform, justify or respond in reference to the contextual phases of eligibility, application and selection. This answerability dimension will be examined in regard to those same previous standards in addition to international adequacy housing standards.

Third, control mechanisms and tools, as well as possible exit conditions and sanctions, will be analyzed from a rights-based perspective. This investigation of the enforcement dimension will assess justiciability, accessibility, consistency, transparency and participation. The legal framework of this research is illustrated on Table 1.

In both models, different obligations and contract arrangements were created for most-vulnerable and emergent households in different urban programs or program tracks. These emergent households are financially better, who in theory would have the capacity to create debt.⁵⁶ Framed in two sub-categories, they will be highlighted in this work as:

1. *categories for the most-vulnerable*: FAR-funded MCMV (track 1) and FDS-funded (MCMV-E), D.S. 49 and the respective D.S. 19 categories, comprehending households with the highest vulnerability condition;
2. *categories for emergent households*: FGTS-funded MCMV categories 1.5, 2 and 3, D.S. 1 and its respective D.S. 19 categories, contemplating households with more income than the previous category, and yet living above the line of poverty, though who are per se vulnerable, due to their inability to secure adequate housing.

⁵⁶ Chamorro.

Decree D.S. 49, the Housing Program Fund for Housing Choice, finances households in vulnerable situation in the construction or acquisition of a dwelling.⁵⁷ That subsidy can be used for construction on new lands, to build on lands with pre-existing structure (so-called “vertical densification” projects), or to build on lands owned by the beneficiary.⁵⁸ Chile’s D.S. 1 has an analogous spectrum, which regards the acquisition of new or used dwellings, the acquisition of a dwelling as part of a project, of self-construction construction or of vertical densification, in rural or urban locations.⁵⁹ D.S. 19 also targets both vulnerable and emergent categories because, fundamentally, it aims at the integration of families from different social and economic backgrounds in the same housing complexes.⁶⁰ Created in 2016, it comes in response to critics of marginalization and exclusion provided to mega housing projects. Territorial localization of projects is an important matter in D.S. 19, as it will be observed later, since geographical exclusion and its consequences to low-income households has been one of the critics to Chilean, Brazilian and other mega housing programs.⁶¹ In a synergetic model, beneficiaries with a granted certificate of D.S. 1 and 49 are also allowed to apply to D.S. 19.⁶²

Rules defining MCMV’s urban strategy were created under the *Programa Nacional de Habitação Urbana* – PNHU, but suffered variations particularly impacted by each fund’s answerability model. FAR (*Fundo de Arrendamento Residencial*) subsidizes the homonymous category of most-vulnerable individual applicants of *faixa 1* (category 1) in the acquisition of new dwellings.⁶³ FDS (*Fundo de Desenvolvimento Social*) subsidizes MCMV-Entidades (MCMV-E) and enables collective applications for vulnerable households. Designed under two main tracks, one for individual (*FGTS-Individual*) and another for collective applications (*FGTS-Associativo*), FGTS funds better-off households in the purchase of new or used housing units, lands, construction material, or in the construction, improvement or refurbishment of dwellings.⁶⁴

⁵⁷ Chile, D.S. 49, art. 1.

⁵⁸ Angelica Salvi del Pero, “Housing Policy in Chile: A Case Study on Two Housing Programmes for Low-Income Households,” *OECD Working Papers*, OECD Social, Employment and Migration Working Papers 173, DELSA/ELSA/WD/SEM(2015)10 (2016), <https://doi.org/10.1787/5jm2hzbnnq33-en>, ch. 2, 18.

⁵⁹ Chile, D.S. 1, art. 2, 51.

⁶⁰ Chile, D.S. 19.

⁶¹ Chile, D.S. 19, art. 10, 4 (a, c). For instance, project applications must obey certain conditions, such as that of being located not further than 1,000 m from school and health centers.

⁶² Other beneficiaries with a granted certificate of other projects, such as D.S. 1 or D.S. 174 may also apply.

⁶³ Brasil, Ministerio das Cidades, Portaria 114, de 9 de fevereiro de 2018, P. 114 (2018), Annex I, 1.

⁶⁴ Nevertheless, this research has been limited to assess questions regarding the purchase of new dwellings. See Brasil, Ministério das Cidades, Instrução Normativa 42, de 22 de dezembro de 2018, I.N. 42 (2018), 2, 2.1.1-2.1.2.

Dimension	Analytical Criteria	Description	Questions	Lens
Responsibility	Clarity Transparency Consistency Coordination Decentralization Participation	Refers to roles of the involved actors of an accountability relationship.	Who are the main actors involved? What are their respective roles and responsibilities? In the case studies, how do they differ among themselves?	Beneficiaries Service Providers Government Other influential actors
Answerability	Clarity Transparency Simplicity/Objectivity Participation Accessibility Inclusion/Targeting Security of Tenure Health standards Habitability Availability of Resources/Spatial Distribution Sustainability	Refers to the obligations to perform, justify, communicate, and inform a conduct.	How are involved actors supposed to justify, communicate, inform? What is the difference across the case studies?	Beneficiaries Service Providers Government
Enforcement	Transparency Consistency Participation Accessibility Justiciability	Refers to the means and mechanisms used to control, monitor, evaluate, enforce, award, sanction or redress involved stakeholders.	Which means and mechanisms are used to control, monitor, and evaluate involved actors? Which sanctions and awards can be enforced? How can they have access to grievance mechanisms?	Beneficiaries Service Providers Government

Source: Author, based on the literature, including Schedler, Goetz and Jenkins, and Sepulveda et al.

Table 1: The Analytical Framework

1.3 The Aims, Methods and Justification

This study will endeavor in a comparative, legal analysis of accountability relations of Brazilian and Chilean social housing ownership programs.⁶⁵ The specific aim of this research is to articulate a rights-based comparison of accountability relations between the selected case studies. Also underlining this research is the advocacy for adequate housing rights, particularly for the most-vulnerable. In order to achieve that, this research is influenced by the rights-based approach.

In the long-term, consequences of this work should lead to a positive impact in democratic institutions as a source of reference. Operational tasks of this dissertation entail:

1. a review of Brazilian and Chilean policy and legislation regarding housing rights, as well as of applicable norms;
2. an analysis and comparison of the three main factors of accountability (responsibility, answerability and enforcement) from a rights-based perspective in the context of the case studies;
3. an evaluation of findings by framing the existent triangular accountability relations;
4. the determination of adjustments, if necessary.

Adjustments should be conducted in the context of housing, because statistical numbers do not show the real violation to human rights that comes along with poverty and inadequate housing conditions. As observed by the United Nations Special Rapporteur on a speech about adequate housing, the sorrows of people in poor and rich countries reverberate to the extreme that individuals feel they have been “abandoned” by their governments, which had the first and basic duty to provide adequate living conditions to their residents.⁶⁶ The invisibility of the world’s most poor is evident: housing is still mainly seen as a commodity in most countries, as in the case studies.

In fact, in the context of housing, a “fresh architecture is urgently needed” in both rich and poor countries.⁶⁷ Findings evidenced in the Global North provide

⁶⁵ David W. Kennedy, “New Approaches to Comparative Law: Comparativism and International Governance,” *Utah Law Review*, 1997, 545–629. <http://nrs.harvard.edu/urn-3:HUL.InstRepos:34320047>.

⁶⁶ Leilani Fahra, “Housing for All–Keynote, Leilani Farha, UN Special Rapporteur on Adequate Housing”, in *International Conference Housing for All–Affordable Housing in Growing Cities in Europe*, produced by social housing vienna on Dec 7, 2018, Online Youtube Video, Accessed Jul 19, 2019, <https://www.youtube.com/watch?v=GkxNwyGOZts>, 03:06-03:17.

⁶⁷ “Home Ownership Is the West’s Biggest Economic-Policy Mistake, Home Ownership Is the West’s Biggest Economic-Policy Mistake,” *Economist*, Accessed Jan 27, 2020. <https://www.economist.com/leaders/2020/01/16/home-ownership-is-the-wests-biggest-economic-policy-mistake>.

hints on best practices or even on mistakes to be avoided.⁶⁸ Nevertheless, despite their common failure, those Global North and South models and their causes of weaknesses are not always relatable: the limited performance of social housing programs in the Global South is highly connected to their domestic causes.⁶⁹

By the same token, those case studies were selected, because they bring attention to the violations of human rights in the global South. Overcoming the language barrier is a means to increase the exchange of South-South and South-North experiences. Finally, by creating more discussion at the international level about current systems of accountability from a rights-based perspective, this dissertation targets positive impacts.

Chile, as a precursor of the Latin American social housing model, and Brazil, as a designer of a mega social housing programs, have much to learn from each other's experience. Both countries share similar historical, cultural, economical, political, legal backgrounds that have developed in parallel through out the years. The Brazilian *Minha Casa Minha Vida* and the Chilean D.S. 1, D.S. 19 and D.S. 49 were created with the same singular aim, which is, to subsidize social housing construction and other related services in those South-Cone countries. Involving both collective and individual applicants, including those in urban areas, those programs were integrated in the national social policies. They possess a correspondent structure, expected to be formed by three basic stakeholders.

Therefore, although internationally acclaimed, the chosen case studies have been limited by deficient performance outcomes, including error and fraud. Those failures lead to or perpetuate violations to human rights. Hence, the use of a human rights-based approach is imperative to acknowledge the entitlements of those socially excluded or marginalized.

⁶⁸ John Hills, "Inclusion or Exclusion? The Role of Housing Subsidies and Benefits," *Urban Studies* 38, no. 11 (October 1, 2001): 1887–1902, <https://doi.org/10.1080/00420980120080835>, 2, 6, 8. For example, in 1991, when social housing models were still starting to expand in the Global South, Hills had already evidenced problems in Britain's social housing model. In that social renting model, his findings showed polarization and low quality negatively affecting performance. Hills had also pointed to social-spatial exclusion and limited choices in different aspects: dwellers did not have the ability to move; neither were there significant price or quality variations. According to him, the poor reputation of social housing followed a "low quality of housing and environment."

⁶⁹ Indeed, "the outcome everywhere is the reassertion of housing privatization policies alongside welfare state retrenchment, producing greater precariousness of work, income, and shelter, while boosting the power of rentiers to extract unearned income from property and land ownership (Desiree J. Fields and Stuart N. Hodkinson, "Housing Policy in Crisis: An International Perspective," *Housing Policy Debate* 28, n. 1 (2018). <https://doi.org/10.1080/10511482.2018.1395988>, 3)". But the different historical institutions and legal frameworks of the Global South have been influencing to that housing crises, in a different manner.

Furthermore, due to Brazilian and Chilean analogous history, institutional socio-economical and legal developments, this dissertation can articulate on comparative solutions for accountability relations in social housing programs. Influenced by a similar legal accountability framework but portraying different organizational behaviors, their similarities and differences serve for the purpose of this comparative legal analysis. In this sense, much can be done to adjust those national legal frameworks for better accountability relations. Their relevant differences also make them one of the best cases for a regional comparative to outline overall recommendations for the Global-South.

In sum, this structural level of accountability has never been empirically assessed in relation to the selected case studies in the social housing context. The novelty of this research lays also on the fact that, for the first time, this theory of accountability is applied in a comparative legal assessment that pushes for adjustments backing a rights-based perspective.

Accordingly, this documental analysis assesses the accountability relations of those two national social housing ownership strategies because they share a greater political, financial, economical, and consequently social relevance in both cases.⁷⁰ Based on legal doctrine, legislation, jurisprudence, governmental and policy reports, and the most relevant academic research, this qualitative legal study enables the assessment of doctrinal, policy and law reform components, key for understanding the complexity of the phenomena analyzed.⁷¹ Additionally, statements from the press and social media, as well as public information provided by independent watchdogs, by international organizations, as well as by enterprises will be taken into consideration. The comparative aspect of this work ensures the legitimacy of its final recommendations.⁷² This work also entails explorative and evaluative aspects, richly detailed through out the legal assessment.⁷³

For the reported countries, adjustments to the social programs may be conducted in the short- and mid-term. Information only available in Portuguese and Spanish has been often used, since these are the primary languages of local communities. This method is in accordance to one of the aims of this work: to shed light over Latin American matters. Through the translation of material into English literature, this research supports further studies.

⁷⁰ More on rental models see Andrés G. Blanco, Vicente Fretes Cibils and Andrés F. Muñoz. “Rental Housing Wanted: Policy Options for Latin America and the Caribbean” (Washington: Inter-American Development Bank, 2014). <https://publications.iadb.org/publications/english/document/Rental-Housing-Wanted-Policy-Options-for-Latin-America-and-the-Caribbean.pdf>.

⁷¹ Kaifeng Yang, “Qualitative analysis,” in *The Oxford Handbook of Public Accountability*, Mark Bovens, Robert E. Goodin, and Thomas Schillemans ed., (Oxford: Oxford University Press, 2016), 208-210.

⁷² Id, 208-209.

⁷³ Dobinson and Johns.

Interviews received the consent of all participants in their native Spanish or Portuguese languages during the years of 2019 and 2020. In total, nine people agreed to contribute to the research. Mr. Alberto Silva, MsC in Urban Development by the London School of Economics, works as an independent consultant, who has also supported Rio de Janeiro's *Companhia de Desenvolvimento Urbano da Região do Porto – CEDURP*, also known as *Rio Maravilha*, in the development of a housing project in the region. Ms. Inês Magalhes is a senior consultant in housing and urban development for the World Bank. Previously, she built her career as a public servant for the Brazilian Ministry of Cities, taking office as Minister from April to May, 2016. Ricardo Toro, chief of the Department of Plans and Programs, and Alejandro Huincahue, engineer, are both public servants at the SEREMI in the region of *Araucanía*, in Chile, sharing years of experience in the public housing sector. Those previous responders were respectively interviewed via web conference on March 19th, 23rd and on June 7th, 2019.

Thanks to the funds of the International Realization Budget, several interviews were conducted *in loco*.⁷⁴ Ms. Rhaiana Santana was interviewed at the National Housing Secretariat – SNH on August 19th, 2019. She is a substitute advisor at the SNH since 2019, and a public servant since 2014. Mr. Bruno Lima, public servant and advisor at the Brazilian Supreme Audit Court's Department of Urban Infrastructure Monitoring – TCU/SeinfraUrb, was interviewed on August 20th, 2019. Federal prosecutor Paulo Sérgio Ferreira Filho was interviewed via telephone call, due to his location at the city of Resende – RJ. He is a coordinator of the Working Group of the Federal Prosecutor's Department on the right to the city and to adequate housing. A beneficiary, whose name will remain anonymous, was interviewed on the August 27th, 2019, at their own dwelling situated in the great region of Brasilia, in *Águas Lindas, Goiás*. On the 16th of April, 2020, Techo's *Fiscal Imobiliário Social*, Mr. Ignacio Silva Didier, was interviewed via virtual conference. Several other actors were contacted in both countries, including NGOs and firms of the private sector, but they either ignored or declined the request.

1.4 The Research Questions

Brazil and Chile created social housing programs under similar structures, and yet, both failed to provide access to adequate housing to their most vulnerable residents. Therefore, taking from example the urban strategies of *Minha Casa, Minha Vida* in comparison with the Chilean strategies D.S. 1, D.S. 19 and D.S. 49, this study aims first at exploring: what is the difference in accountability

⁷⁴ Ruhr University Research School PLUS, International Realization Budget, Germany's Excellence Initiative [DFG GSC 98/3].

relations between the selected Brazilian and Chilean social housing programs, looking from a rights-based perspective?

From a general perspective, accountability can be analyzed based on three factors: responsibility, answerability and enforcement. From the perspective of this work, the recognition and implementation of human rights and human rights principles and standards is an imperative for good accountability relations. Hence, aspects of transparency, clarity, simplicity, objectivity, participation and consistency will also be taken into consideration.

In social housing case studies, at least three main actors should participate in accountability relations: beneficiaries, government and service providers. The legal accountability relation is observed formally in contracts or informally as the triangular network of duty-bearers and right-holders. In this context, the responsibility of actors requires legal adjustments for clear and transparent roles in Brazilian and Chilean legal systems. In the context of social housing, that means: a clear recognition of duties; the specification of time-frames for the conduction of tasks; networked decentralization and coordination among governmental actors; transparent processes; public and participatory methods, especially in phases of policy-making, but also in evaluation and monitoring. In respect to the most-vulnerable and emergent categories, this work will seek to observe the most evident related to inclusion in the context of social housing programs, targeting: women, disabled persons, migrants, afro-descendent persons, indigenous persons, and the elderly.⁷⁵ However, that does not exclude other vulnerable persons or vulnerable risks, only sets limits to the research.

Furthermore, the first *responsibility dimension* will seek to *inquire who are the main actors and what are their respective roles and responsibilities in the accountability relationships, and how do they differ among each other in the respective case studies from a rights-based perspective*. The aim is to identify and compare the roles of all directly involved actors of the selected social housing programs. Most importantly, this first dimension examines comparatively how is the definition of roles structured under the aspects of transparency, clarity, simplicity, objectivity, consistency, decentralization, coordination and participation. Additionally, this research searches for the existence of other actors may also exercise influence to that basic triangle, despite not being directly bound to the accountability relation.

In a second phase, this work examines how justification and the provision of information is conducted in the respective case studies. It follows to explore the answerability dimension in the legal framework of Brazilian and Chilean case

⁷⁵ Martínez, Rodrigo, ed. *Institutional Frameworks for Social Policy in Latin America and the Caribbean*. ECLAC Books 146. Santiago: Economic Commission for Latin America and the Caribbean (ECLAC), 2018, 53.

studies by asking: how do stakeholders respond, inform or justify to their obligations, and to what extent do they differ from each other from a rights-based perspective. This includes an assessment of mechanisms of dialogue and monitoring in how information is required, inquired and provided.⁷⁶ A comparative observation of the case studies in respect to transparency, clarity, simplicity, objectivity, consistency, and participation sheds light on the obligation to answer (to respond, inform, or justify what and why something was done). Additionally, this dimension must be scrutinized through rights-based lens. It is crucial to observe that dimension from the rights-based perspective of affordability, security of tenure, accessibility (to housing and to justice), targeting and inclusion (the right to equality and non-discrimination: women, migrants, afro-descendants, indigenous persons, homeless), health standards, habitability, availability of resources, sustainability, social-spatial distribution.

And finally, the enforcement dimension ensures the correct exercise of stakeholders' roles and their obligation to respond, inform or justify. Therefore, this research inquires the difference in accountability mechanisms used for enforcement in the context of the selected social housing strategies, and to what extent they follow a rights-based approach. It follows to assess exit and sanction conditions enforceable under different forms of control, including judicial, quasi-judicial, administrative, operational-level and social mechanisms. For that, the enforcement dimension must evidence justiciability, transparency and participation. Also, access of the most-vulnerable to grievance and redress are a special milestone in the materialization of human rights, as it will be discussed in this work.

Since there is no universal solution, this research will not describe a formula for accountability in social housing. On the other way around, the aim is to bring attention, discuss, and provide sufficient comparative data and solutions, that could be also of support for further research and public policy development in the case studies and in other national programs.

1.5 Limitations to this Research

Due to limited capacities and resources, this study has a limited scope, which is to assess legal accountability relations in the context of social housing ownership in both Brazil and Chile in order to branch and catalyze solutions. This shall provide grounds for future interdisciplinary research, more comprehensive to other policy studies in the Global South.

In possession of the final results, this work will be a relevant legal and public policy source for about social housing programs. However, it can not present

⁷⁶ Derick W Brinkerhoff, "Accountability and health systems: toward conceptual clarity and policy relevance," *Health Policy Plan*, 2004 Nov, 19(6):371-9, doi: 10.1093/heapol/czh052, Accessed Jul 15, 2019 (2004).

the cure for housing rights violations. In addition, it must be considered that a post-Covid-19 world may require new lens to housing adequacy.

Using this study as a unique source for housing reforms would be the wrong decision because it is limited to the legal perspective and therefore unable to set public policy targets single-handed. What the legal system and this research can do, however, is improve the legal settings of an accountability structure. As well, it can identify what aspects have been violating human rights. Therefore, the most various fields of policy-makers can include this study in their projects covering social housing demands, including social and political scientists, economists, social and health workers, psychologists, anthropologists. The perspectives other field specialists can differ, depending on their field-area of research, but they should obey to the maxima of respecting, protecting and fulfilling human rights.

It must be acknowledged that national Chilean and Brazilian housing strategies also comprehend other strategies than only urban housing ownership. For example, Brazilian PNHR focuses on rural areas. However, since rural and urban strategies tend to have different targets and standards and since urban issues more strongly pressure the global agenda, this research was limited to the assessment of urban questions.⁷⁷ In Chile, other housing programs also include leasing or rental programs. However, some of those strategies used in Chile find no parallel example in Brazil, reason why it was not possible to use them in this comparative work.

In sum, this work had to limit its analysis to urban social housing ownership programs that solely involved the improvement or acquisition of dwellings. This research has limited its assessment to the urban related categories MCMV and MCMV-Entidades and to Chile's D.S. 1, Title I, Tramo 1 and 2, as well as Title II, D.S. 49, and their respective application in D.S. 19. The mentioned case studies target similar group ranges, have analogous objectives and make use of similar accountability mechanisms and structures, yet they present rich and useful differences when looking in detail at their accountability relations⁷⁸. From those differences, comparative solutions were successfully drawn.

⁷⁷ In Brazil, families living in rural areas also have access to the *Minha Casa, Minha Vida*, though as part of the division strategy National Rural Housing Program (PNHR, *Programa Nacional de Habitacao Rural*), part of the National Housing System (SNH). MCMV category for municipalities with less than 50,000 inhabitants was also excluded due to a strategic decision to address the most relevant programs.

⁷⁸ In addition, this research will exclude any mentions to the Brazilian Federal District, unless they become legally relevant. With no comparative example in Chile, Brazil's Distrito Federal, where the capital Brasilia is situated, has a unique hybrid design, that condenses competencies of members-states and municipalities. To illustrate, the federal district does not have a mayor, but a governor (like a member-state) and directly appointed representatives for its 33 administrative-areas or "satellite-cities" (as they are traditionally known). Brazilian norms often refer to the Federal District when describing its functions. Unless legally relevant, that federal member will not be mentioned in this work, because it is most important is to observe the local, regional and

This work set a time limit for legal data collection, as of December, 2018. As a rule, legal modifications conducted after that milestone have been disregarded. Since then, the *Minha Casa, Minha Vida* was discontinued and named differently (“*Casa Verde Amarela*”⁷⁹). However, name-changing was not the issue: the rights-based structure of the program had already suffered fatal negative impacts during the Temer and Bolsonaro administrations, particularly in the program’s participatory and democratic structure.

In sum, it would not have been possible, in the given time and space, to have presented a full comparative analysis of all Brazilian and Chilean social housing strategies. Hence, a complete study of Latin American housing strategies with an eye on accountability is welcome as a subject of future research. Yet, the current comparison of those social housing strategies already provides enough answers on how to better tackle issues in accountability relations and related violations to human rights.

Only if necessary, informal rules influencing the case studies will be referenced, because, better observed at the local level, informal norms can boost accountability only limitedly. But, most importantly, since they are not created by a legal system based on the rule of law, object of this research, but on traditions and customs⁸⁰, they will not be analyzed at this moment due to space and time limitations. However, the challenge of harmonically structuring formal and informal rules is recognized for future developments of this research.

1.6 Overview of the Structure

This dissertation is constructed in eight parts. The following chapters 2 and 3 delve into the theoretical background. Chapter 2 observes the general theoretical framework on accountability (2.1). It develops on the context of accountability (Accountability as a Concept), about its three dimensions (Understanding accountability), the subjects of the relation (Subjects of the relation) and issues of Portuguese and Spanish translations (Issues with translation). In the following, the rights-based approach is introduced (The Rights-Based Approach, Understanding this rights-based perspective) with a detailed exploration on goals and processes (Goals and operations) before moving on to depicting on the right to adequate housing (The Right to Adequate Housing, Understanding the right to adequate housing). This section highlights on legal guarantees to the most marginalized groups (Legal guarantees to the most marginalized groups), the use of social housing as a policy strategy to tackle housing rights violations

federal differences: those hybrid constellations, rather rare, can be analyzed in a special comparative analysis of their own.

⁷⁹ Brasil, Ministerio do Desenvolvimento Regional. Portaria 959, de 18 de maio de 2021, P. 959 (MDR, 2021); Brasil, Ministerio do Desenvolvimento Regional. Portaria 3.261, de 20 de dezembro de 2021 P. 3.261 (MDR, 2021); Brasil, Ministerio do Desenvolvimento Regional. “O Programa.” MDR. Website. Accessed Feb 2, 2022. <https://www.gov.br/mdr/pt-br/assuntos/habitacao/casa-verde-e-amarela/o-programa>

⁸⁰ Basset et al, 25-26.

(Social housing programs as a mechanism to combat human rights violations) and the questionable debate over economic growth and the costs restraining the use of the rights-based approach for the materialization of the right to adequate housing (Economic growth and costs). A final section states on the theoretical framework of accountability relations in social housing programs (Accountability Relations in Social Housing Programs). It observes the best conditions of responsibility (Responsibility), answerability (Answerability) and enforcement (Enforcement), right-holders and duty-bearers in social housing (Mechanisms of control, Temporal functions).

Chapter 3 reviews the specific background of the case studies (3). A first section (A Review: historical, political, socio-economic, legal and policy backgrounds Historical, Political and Socio-economic Background) correlates the historical (A historical look), political (Latest political developments) and social-economical development (Socio-economic trends) affecting Brazil and Chile. Then, it follows to review their administrative legal systems (Administrative Law Review) with an introduction to administrative and public procurement procedures (Administrative and public procurement procedures), their general principles (Principles of Administrative Law in Brazil and Chile), specific rights-based principles (Rights-based principles) and compared theories of responsibility of the State (Theories of responsibility of the State). Moreover, a policy review (Housing Policy Review) closes up on justiciability (Justiciability in Chile, Justiciability in Brazil). It also continues with historical housing policies (Before D.S. 1, D.S. 19, and D.S. 49, Before Minha Casa, Minha Vida) and with developments that culminated on the creation of MCMV, D.S. 1, D.S. 19 and D.S. 49 (D.S. 1, D.S. 19 and D.S. 49, Minha Casa, Minha Vida).

Chapters 4 to 6 empirically depict the case studies based on the presented framework, investigating the three accountability dimensions separately: responsibility, answerability and enforcement. They advance on the perspectives of beneficiaries, service providers and governmental actors and, when necessary, from the perspective of other influential actors to the accountability relation. Chapter 4 conducts the investigation of the responsibility dimension by introducing and critically analyzing the role of beneficiaries, the right-holders in question (Beneficiaries). It introduces legal definitions (

Legal definitions) and classifications of vulnerable and emergent beneficiaries (Vulnerable categories: FAR, FDS, D.S. 19 and D.S. 49, Emergent categories: FGTS (1.5, 2 and 3), D.S. 1 and D.S. 19). The chapter moves on to identify and analyze the role of several service providers (Service Providers), including financial institutions (Financial institutions), construction firms and other business enterprises (Firms and business enterprises of the private construction sector), supporting entities (Supporting entities), other influential agents (Other supporting agents), and those at the local level, such as frontline professionals

(Frontline professionals). Furthermore, it reviews and debates the role of governmental actors (Government), including ministries (Ministries), funds (or their management bodies, 4.3.2) and coordination bodies (4.3.3). This analysis should also shed light over the role of other actors that, despite unbound to the basic accountability relation, have certain leverage (4.4). Those are namely courts (4.4.1), internal control (4.4.2), participatory control (4.4.3) and external control organs (4.4.4), quasi-judicial agencies (4.4.5), financial councils (4.4.6), ombudspersons (4.4.7), superintendencies (4.4.8), national participatory councils (4.4.9), local and consultative bodies, (4.4.10), grass-root movements (4.4.11) academy and research institutes (4.4.12), and the media (4.4.13).

Chapter 5 delves into the second accountability dimension: answerability. At this point, the research scrutinizes and compares each relational context for most-vulnerable and emergent categories. From the perspective of beneficiaries, a first section (5.1) classifies, comparatively evaluates and diagnoses eligibility (5.1.1), application (5.1.2) and selection criteria (5.1.3), as well as rights-based critics to those criteria and processes (5.1.4). Particularly the perspectives of homeless persons (Discrimination against homeless persons., indigenous peoples and afro-descendants (Discrimination against indigenous peoples and afro-descendants), migrants (Discrimination against migrants), women (Gender-inequality), the elderly, disabled persons and victims of dictatorships (Targeting the elderly, disabled persons and victims of the dictatorships) are disclosed. Moreover, the lack of legal justification (5.1.4.6), the institution of fiduciary alienation (5.1.4.7) and conditions of unaffordability will be object of evaluation (5.1.4.8).

Moreover, this work sheds light on service providers (5.2) and their applicable eligibility, application, and selection criteria (5.2.1). They must too follow specific criteria depending on the categories and programs applied, for which vulnerable (5.2.1.1-4) and emergent categories (5.2.1.10-11) will be analyzed. Additionally, they must conform to specific technical criteria, thus specific requirements for vulnerable and emergent projects (5.2.2) will be object of assessment based on housing adequacy standards. A solid legal investigation will be conducted upon on technical criteria (5.2.2.1), sustainability (5.2.2.2), social assistance (5.2.2.3) and of overall volatility of the legal system (5.2.2.4). A final section explores the obligations to inform, respond and justify afflicting governmental actors (5.3). A critique offers an observation to issues of decentralization (5.3.1).

Finally, the enforcement dimension is discussed in chapter 6. From the perspective of beneficiaries (6.1), service providers (6.2), governmental actors (6.3) and other influential actors (6.4), this work sheds light on legal sanctions and exits, mechanisms of control, redress and grievance. First, it delves into possible exit and sanctions affecting beneficiaries concerning contract breach (6.1.1.1) and

cancellation (6.1.1.2), including unaffordability (6.1.1.3), wrong information (6.1.1.4), and the illegal use of property (6.1.1.5). A rights-based critique follows (6.1.1.6-7). Moreover, this section identifies limitations to the access to grievance and redress by vulnerable groups (6.1.2), most specifically women (6.1.2.1), migrants (6.1.2.2), the elderly and disabled persons (6.1.2.3), homeless persons (6.1.2.4) indigenous persons and afro-descendants (6.1.2.5).

Furthermore, the strong role played by remediation is observed closely (6.1.3.1). That section sheds light particularly on to *recurso de protección* (6.1.3.1.1), *habeas data*, *habeas corpus*, and *amparo* (6.1.3.1.2), *mandado de segurança* (6.1.3.1.3), *ação de usucapião* and ZEIS (6.1.3.1.4), *mandado de injunção* (6.1.3.1.5), *ação popular* (6.1.3.1.6) *ação civil pública* (6.1.3.1.7), *ação de improbidade administrativa* (6.1.3.1.8). Competence and justiciability also are subject of comparative analysis (6.1.3.1.9), as well as the jurisprudential understanding of courts in relation to the use of those legal and constitutional mechanisms (6.1.3.1.10). Another form of redress includes international mechanisms (6.1.3.2). The use of mechanisms by ombudspersons for the interests of beneficiaries are also subject of analytical evaluation (6.1.3.3). Social accountability instruments are illustrated furthermore (6.1.3.4), with remarks to participatory mechanisms and to the local-level example of the city of Goiânia.

The examination of enforceability from the perspective service providers (6.2) examines possible exits and sanctions (6.2.1), as well as illustrates remedies (6.2.2) to be introduced by supporting entities (6.2.2.1), financial institutions (6.2.2.2) and construction firms (6.2.2.3), such as operational-level grievance mechanisms. Finally, from the governmental point of view (6.3), this works explains about exit and sanctions (6.3.1) to public servants (6.3.1.1) and public entities (6.3.1.2). It also argues for the creation of National Action Plans (6.3.2.1), which should guide enterprises in rights-based practices. The governmental agenda on enforcement is significant: several diffuse mechanisms of external (6.3.2.2) and internal control (6.3.2.3) can be used in the social housing case studies. This section introduces *toma de razón*, *dictámenes* and *juice de cuentas* (Toma de razón, dictámenes and juicio de cuentas), audits (Audits), financial investigations (Financial investigations), quasi-judicial mechanisms (Quasi-judicial mechanisms), local-level mechanisms (Local-level mechanisms), grievance mechanisms (Grievance mechanisms: D.S. 1 and D.S. 49). The constraints suffered by the media and grass-root movements is also articulated in this section (Media and grass-root movements). The use of internal communication, monitoring and evaluation mechanisms is debated (Communication, monitoring and evaluation mechanisms), highlighting the special procedures of the *processo administrativo de responsabilização* (PAR) and the *processo administrativo disciplinar* (PAD, Administrative process of responsibility).

Finally, chapter 7 concludes this work by debating the findings provided by this research. After a synopsis, this chapter intersects the findings catalogued in all three accountability dimensions (7.1-3), followed by a conclusion of this study and by final recommendations for the future (8). After a full list of references (9), the annexes (10) resume a total of eight documents from the case studies, among which contracts, certificates and sworn statements translated from Portuguese and Spanish to English (Annex I-VI). Annex VII is a pager developed based on the findings of this work with the best recommendations on Accountability in Social Housing Programs.

2 Theoretical Framework

Rapid expansions in social programs during the past decades have been requiring governments to improve accountability relations. In the design of social housing strategies, accountability is vital for controlling involved stakeholders as well as to enabling efficient access to the most poor. It is seen as “a fundamental principle of democracy,”⁸¹ as it provides means to ensure that human rights will be respected, protected and fulfilled during the process of delivery of social services. Better relations are expected to impact results positively, for example in performance, legitimacy, and delivery efficiency.⁸²

In the following chapter, this work will follow to introduce the concept of accountability (2.1) and of the rights-based approach (2.2). It then proceeds to explore the right to adequate housing (2.3) and to summarize the theoretical debate about accountability in social housing programs (2.4).

2.1 Accountability as a Concept

Accountability has been treated as both “cause and cure” to various social, political, market problems.⁸³ Used in a variety of field areas,⁸⁴ the meaning of accountability has been compromised by its use in wrong contexts.⁸⁵ It has been often misused as a synonym to other terms, such as good governance, responsibility, transparency, justiciability, participation, answerability, that the Oxford English Dictionary remarks accountability as a “modifying word”.⁸⁶

Overall, a sole definition for accountability is far from being settled: a variety of authors have incorporated matters and principles of different areas, employing different frames and designs.⁸⁷ Hence, this confusion requires a clearer and narrower explanation of the concept in this section and an exploration of the

⁸¹ Malena, Forster and Singh, 2.

⁸² Basset et al, 1-2; Ackerman, “Social Accountability in the Public Sector”, 3.

⁸³ Melvin J. Dubnick and Frederickson, George H., “Introduction: the promises of accountability research,” in *Accountable Governance: problems and promises*, Dubnick, Melvin J. and Frederickson, George H. ed. (London, New York: Taylor and Francis, 2015), xiv.

⁸⁴ See more Thomas Schillemans, “The Public Accountability Review: a meta-analysis of public accountability research in six academic disciplines,” Working Paper (Utrecht: Utrecht University School of Governance, 2013).

⁸⁵ Bovens, 7.

⁸⁶ Bovens, 8-9; Melvin J. Dubnick, “Accountability as a Cultural Keyword,” in *The Oxford Handbook of Public Accountability*, Mark Bovens, Robert E. Goodin, and Thomas Schillemans ed., (Oxford: Oxford University Press, 2016), 41.

⁸⁷ Mark Bovens, Robert E. Goodin, and Thomas Schillemans, “Public Accountability”, in *The Oxford Handbook of Public Accountability*, Mark Bovens, Robert E. Goodin, and Thomas Schillemans ed.,(Oxford: Oxford University Press, 2016), ch. 1. As an example of a different framework, see Carolyn Moser, “Accountability in EU Security and Defence: The Law and Practice of Peacebuilding”, (Oxford: Oxford University Press, Oxford, 2020).

three analytical dimensions used (2.1.1), a discussion about the subjects of accountability relations (2.1.2), and a final introduction to influences led by translation of the term (2.1.3).

2.1.1 Understanding accountability

Accountability can be simply explained as the capacity of one to be accounted for their actions. Rooted in the tradition of bookkeeping, accountability fundamentally concerns a power-based relationship based, structured and limited by pre-defined principles and rules.⁸⁸ And, for that matter, using clear and consistent standards, based on human rights-principles, is an imperative.⁸⁹

Furthermore, the nature of accountability concern various approaches, such as legal, political, fiscal, financial, and managerial.⁹⁰ Relevant to this work are particularly legal and public accountability, for the case studies are rooted in legal relationships⁹¹ using public funds and/or held based on public interest.⁹² Put in focus, the “public domain”⁹³ is analyzed under the “spectrum of approaches, mechanisms and practices used by stakeholders concerned with public services to ensure a desired level and type of performance.”⁹⁴

Also in this fashion, Dubnick and Frederickson assembled a general, basic definition for accountability as “a set of governance mechanisms that encompasses the propensity of individuals to act in accordance with what they perceive to be legitimate expectations of others (or the expectations of others whose claims are

⁸⁸ Ackerman, “Social Accountability in the public sector”, 5; Goetz and Jenkins, 8; World Bank, “World Development Report 2004,” 47; Bovens, Schillemans and Goodin, ch. 1. Bovens, Schillemans and Goodin share a detailed description of the historical development of accountability.

⁸⁹ “Accountable management means holding individuals and organizations responsible for performance [are] measured as objectively as possible. Its achievement depends upon identifying or establishing accountable units within government department units where output can be measured against costs or other criteria, and where individuals can be held personally responsible for their performance” (Fulton Committee 68 in Paul, *Accountability in Public Services : Exit, Voice and Capture*, 10).

⁹⁰ Richard Mulgan, “Holding power to account : accountability in modern democracies,” (Houndmills, Basingstoke, Hampshire ; New York : Palgrave Macmillan, 2003), 30-35.

⁹¹ World Bank, “World Development Report 2004 ”, 47; Goetz and Jenkins, 4. Indeed, other relationships in different contexts may be understood in terms of accountability. Examples go from classic ones, such as of internal accountability measures of enterprises, more specific to accounting and finance, to the act of purchasing a sandwich. Yet, the case studies share a more limited legal and public accountability perspective. In all of those situations, questions should be raised upon the concept, the nature, the time and space, the conditions and involved actors and procedures regarding accountability.

⁹² For instance, administrative procedures, such as the selection of beneficiaries or programs, but also contracts with service providers and beneficiaries. *See also* Bovens, 11-12; Bovens, Schillemans and Goodin, 20. Bovens also describes those relationships to be characterized by transparency (Bovens, 11-12). However, this element is here understood more of a goal or a value (Bovens, 11-12).

⁹³ Bovens, Schillemans and Goodin, 20.

⁹⁴ Paul, 1047.

regarded as legitimate).”⁹⁵ Mulgan claims it as an “unequal” [...] “relationship of social interaction and exchanged involving complementary rights on the part of the account-holder and obligations on the part of the accountant.”⁹⁶ That relationship is considered unequal, because it creates “obligations of accountability” from one party to another. However, all stakeholders are to be held accountable to one another – even right-holders, whose obligation derives from their rights of holding another stakeholder accountable.

Bovens produced a narrower concept of accountability, to be followed by this research, defining it as a:

relationship between an actor and a forum, in which the actor has an obligation to explain and to justify his or her conduct, the forum can pose questions and pass judgment, and the actor may face consequences.⁹⁷

That means, first, that one should be defined responsible to specific tasks or sets of duties. *Responsibility* refers to a proper design of responsibilities that identifies and entitles involved agents, for example, as right-holders and duty-bearers.⁹⁸ In such sense, a clear and transparent definition of roles should enable the identification of agents tied up by a relation.⁹⁹

Second, it additionally means that stakeholders should bear that responsibility based on an obligation to respond, justify or inform.¹⁰⁰ Upon predetermined

⁹⁵ Dubnick and Frederickson, “Introduction: the promises of accountability research,” xvii.

⁹⁶ Mulgan, 11.

⁹⁷ Bovens, 9.

⁹⁸ Basset et al, 7, 41-53; Unesco, “Global Education Monitoring Report 2017/18: Accountability in Education : Meeting Our Commitments” (2017), 6-7.

⁹⁹ Bovens, Schillemans and Goodin, 19.

¹⁰⁰ According to Richard, specifically “*stricto sensu* legal responsibility” refers to “relevant standards[, that] are substantive legal norms, the relationship between accountable entities and account holders are legal (on the basis of rights and obligations) and delineated by applicable law, and the consequences are liability and the compensation means the law provides for”. For example, a regulatory framework or a contract should suffice the clarification of such rules. Yet, a general interpretation of the legal nature of accountability is based on compliance, and it could be applied to various possible contexts. For instance, even lacking a formal legal contract, a factual consumer relation should be enough to qualify its own legal nature, which should anyhow be led by pre-set standards. For that scholar, “accountability can be considered as legal accountability not only when there is a clear and positive legal relationship between accountable entities and account-holders (because a contract binds both parties, or a treaty provides for the obligations or the firsts vis-à-vis others etc.), but also generally when the behavior of an entity can be assessed in the eyes of standards that have legal dimensions”. See Vanessa Richard, “Mind the (Justiciability) Gap: Non-Judicial Remedies and International Legal Accountability for Environmental Damages,” (September 16, 2013), Jiunn-Rong YEH ed., *Climate Change Liability and Beyond*, Taiwan, National Taiwan University Press (2017), 113-114, <https://papers.ssrn.com/abstract=2326422>. See also OHCHR, HR/PUB/13/1, 10; Schedler, 15-16.

rules, *answerability* requires a stakeholder to “provide an account”¹⁰¹ whenever deemed necessary.¹⁰² Therefore, the singularities of those two first dimensions are distinguished, on the one hand, by a sole understanding of “who” is supposed to (or not) for “what” and, on the other hand, by “how” and “why” the exercise of that obligation was administered.¹⁰³ In other words, the element of justification creates a clearer division between responsibility and answerability.

Yet, just providing roles and justifying based on them is not sufficient. Stakeholders must be aware that, in a legal, political and democratic accountability system, it is part of the job to “suffer penalties from those dissatisfied either with the actions themselves or with the rationale evoked to justify them”.¹⁰⁴ This third dimension of accountability enables system control.¹⁰⁵ *Enforcement* addresses the “potential application of sanctions if the performance or justifications are found lacking”.¹⁰⁶

Both the abilities to punish or reward¹⁰⁷ can derive from controlling, often led by a neutral party, also called forum.¹⁰⁸ Nevertheless, punishment is not the aim of the enforcement dimension, but control and the guarantee of remediation decided via fair and predictable procedures.¹⁰⁹ Since one of the main goals of accountability is to induce harmony in relations, agents that positively impact their relationships may be rewarded, as a form of support to good practices.

This way, this work defines accountability

1. accountability originates from the responsibilities of actors involved in a relation;
2. it summons an involved actor to answer, inform, justify, whenever necessary;
3. that the outcome of that control may require enforcement, which may be either the ability to punish or to reward, classically conducted by a forum, such as a bureaucratic judiciary or administrative organ.

¹⁰¹ Mark E. Warren, “Accountability and Democracy,” in *The Oxford Handbook of Public Accountability*, Mark Bovens, Robert E. Goodin, and Thomas Schillemans ed., (Oxford: Oxford University Press, 2016), 59-61.

¹⁰² “It (...) is about answerability towards others with a legitimate claim to demand an account” (Bovens, Schillemans and Goodin, 19).

¹⁰³ See also Brinkerhoff, 372.

¹⁰⁴ Goetz and Jenkins, 9.

¹⁰⁵ Ackerman, “Social Accountability in the public sector”, 3.

¹⁰⁶ Siri Gloppen, “Litigation as a strategy to hold governments accountable for implementing the right to health,” *Health and Human Rights Journal* (HHR, Dec 2008), Accessed 31 Aug 2021, <https://www.hhrjournal.org/2013/09/litigation-as-a-strategy-to-hold-governments-accountable-for-implementing-the-right-to-health/>.

¹⁰⁷ Bovens, Schillemans and Goodin, 19; Bovens, 11.

¹⁰⁸ A more progressive agenda also views e.g. operational-level mechanisms or social accountability as efficient alternatives to traditional forums.

¹⁰⁹ OHCHR, HR/PUB/13/1, 15.

Based on that definition, it could also be argued that the accountability process is doomed to failure due to its natural social character. However, that exact aspect makes accountability fundamental for democratic systems.¹¹⁰ The legal guarantee that governments (and their delegated actors) are to be held into account by their people “encourages public deliberation and participation.”¹¹¹ In this fashion, accountability relations permeate a dialogue of “society and accounting agencies to improve government honesty and performance instead of doing one’s best to hide from scrutiny”, based on a “pro-active process by which public officials inform about and justify their plans of action, their behavior and results and are sanctioned accordingly.”¹¹² That also implies creating mechanisms that both restrain illegal conducts and reaffirm democratic decision-making.¹¹³

Those dimensions must work symbiotically. For example, in practice, the control of final outcomes of projects should not be linked to the responsibility of single agents, but their responsibility should be linked to the decision they have taken aggregated to the final outcome. Inasmuch as anonymity can hinder accountability, so can the psychological and bureaucratic pressure over specific individuals. Therefore, duty-bearers should answer within the limits of their responsibilities¹¹⁴ and be enabled with all means for justification and information.

That all said, the added value of the aftermath of accountability relations ensures its importance in the human-rights agenda. Excellent performances and suitable, standardized processes and procedures, as well as the needs and expectations of right-holders should be targeted under a critical analysis.¹¹⁵ This way, in its best articulation, accountability, a “relationship of [...] duty bearers to the rights holders affected by their decisions and actions”¹¹⁶, could be used as a means of achieving the realization of human rights¹¹⁷.

2.1.2 Subjects of the relation

Accountability relationships are often pictured in the economic theory as a principal-agent model. The World Bank defines accountability as a service delivered

¹¹⁰ Warren, 59.

¹¹¹ Mulgan, 12. Goetz and Jenkins claim that “the accountability drama, between the target of accountability, the one obliged to account for his or her actions and to face sanction, and the seeker of accountability, the one entitled to insist on explanations or to impose punishments” is a “key conceptual distinction” of the term (Goetz and Jenkins, 9).

¹¹² Ackerman, “Social Accountability in the Public Sector”, 5-6.

¹¹³ Ackerman, “Social Accountability in the Public Sector”, 5.

¹¹⁴ Unesco, “Global Education Monitoring Report 2017/18”, 6-7.

¹¹⁵ Ackerman, “Social Accountability in the Public Sector”, 5.

¹¹⁶ OHCHR, HR/PUB/13/1, 10.

¹¹⁷ Kaltenborn.

by actors engaged in a set of relationships featuring in delegation, finance, performance, information (upon performance) and enforceability tasks.¹¹⁸ From this perspective, it is easier to understand the concrete relationships of stakeholders in the context of housing. For example, together, beneficiaries and enterprises, represented by their managers and front-line agents, assume a “client-power” relationship.¹¹⁹

Beneficiaries can be empowered with mechanisms in order to demand and monitor that relation.¹²⁰ Service providers and the government undertake “compacts”, which are nothing more than contracts in a general sense.¹²¹ Within the perspective of providers, business enterprises, managers and their frontline professionals experience themselves in management relationships. Lastly, government and citizens are represented in “voice and politics” relationships.¹²² These are clear in the example of democratic elections, or as in the example of demonstrations or advocacy by watchdogs.

Using a human rights-based perspective in the context of social housing programs, that will be soon discussed in the following section; this study finds it proper to see agents as right-holders and duty-bearers. Those stakeholders face different challenges, so they must also obey to obligations and have different rights to be respected, protected and fulfilled.

2.1.2.1 Right-holders

On the one side, playing the role of a seeker or of a right-holder is an individual, at first an applicant, then candidate and later a *beneficiary* of a social housing program, set in the upper corner of the triangular relationship (see Figure 1).¹²³ Furnished with constitutional and legal statements on their human rights, they should be able to hold duty-bearers accountable.¹²⁴

Defining the right-holder is a difficult task, because those entitled to a social housing program are so – at least in the case studies – due to their condition of poverty and vulnerability, about which neither practitioners nor the literature

¹¹⁸ World Bank, “World Development Report 2004”, 47. Delegation refers to one actor joining another with the obligation to provide a service. Available resources should finance for that service provided. While the performance is awaited, actors expect to be informed about its evaluation. Finally, in case of positive performances or violations to laws and standards, rewards or sanctions may be enforced.

¹¹⁹ *Id.*, 48.

¹²⁰ *Ib.*

¹²¹ In the Brazilian example, compacts may be take forms of contracts or, for instance, of a publication at an Official Gazette. See more World Bank, “World Development Report 2004”, 8; 47.

¹²² *Id.*, 8-9.

¹²³ It must be remarked that collective groups, such as unions and associations, also fit to that role as representatives of right-holders.

¹²⁴ UN-Habitat and OHCHR, “Housing Rights Legislation”, 27-30.

have been able to create a consensus.¹²⁵ There are different standards of classification, based, for example, on income, indexes, division of population socio-economic groups.¹²⁶ However, under the evidenced circumstances, a mistaken definition, categorization or selection of beneficiaries directly impacts society and the entitlement to social rights.

Vulnerability can be defined as the “probability of being poor in the future or of being harmed by a specific harm or threat.”¹²⁷ According to the World Food Program, it is the relation between an individual’s exposure to risk and their ability to cope.¹²⁸ This ability can be assessed in terms of resources of social, human and financial capital, but, independent of the theory used to define the concept, most important is that legislators back standards based on data and realistic conditions. A unified, non-discretionary, realistic definition of vulnerability is essential for social housing and other rights, at least in a national context. In any case, a public justification of policies and of legal choices, for instance over vulnerability, could enable eventual redress by members of the civil society. If based on scientific work and certified data, governmental agents would be as well backed in their decisions, if eventually held into account.

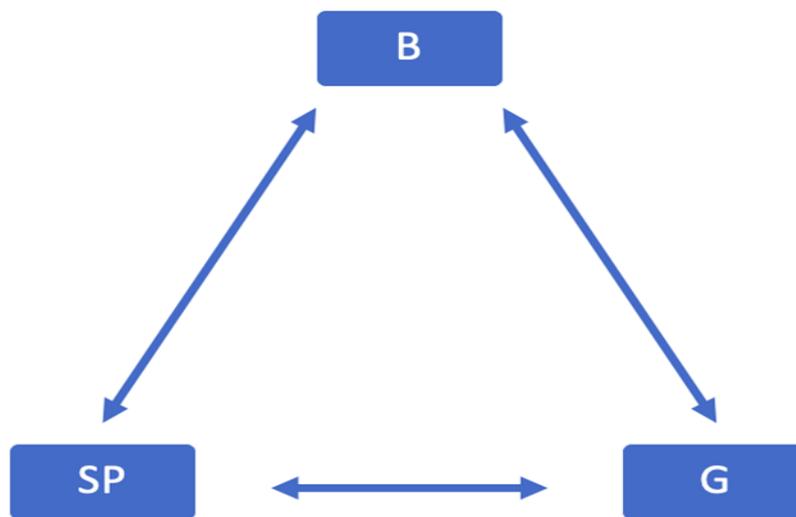


Figure 1: The accountability triangular relationship of social housing programs

¹²⁵ World Bank, “World Development Report 2004”, 20, box 1.1.

¹²⁶ Id.

¹²⁷ Barrientos and Hulme, 2008 in Cecchini and Martínez, 37.

¹²⁸ World Food Program, “VAM Standard Analytical Framework: Role and Objectives to Support WFP Food-Oriented Interventions,” (WFP, Jun 2002) 4.

2.1.2.2 Duty-bearers

On the down side of the triangular accountability relation, duty-bearers are shown in the left side, as *provider*, in the right-side, as *government*. Both an enterprise, their frontline professionals, politicians and a public servant may be described as duty-bearer, though the object and perspective of the obligation hold vary.¹²⁹ Any duty-bearer can strongly impact accountability by ensuring control with audits, monitoring and verification, cross-checks, or by enabling grievance and redress with their own developed mechanisms and widespread access to information.¹³⁰

The state has an obligation to undertake the gradual realization of human rights.¹³¹ In light of the International Covenant on Economic, Social and Cultural Rights, states share the obligation to respect, protect and fulfill human rights.¹³² It is the state's primary concern to progressively realize access to adequate housing in convergence with the "supreme right" to life.¹³³ According to Brazil's Supreme Court, the principle of prohibition of social regression is the constitutional guarantee of the individual against the state and public authorities, which granted rights and positive actions shall not be under threat.¹³⁴ Thus, the delivery of the "minimum essential" shall be progressively materialized and, as a rule, shall not suffer regressions.

In the context of social housing programs, states should care for the quality of housing conditions.¹³⁵ That responsibility of the state, as a bureaucratic institution, may be delegated to its branches, organs and actors, such as politicians or civil servants.¹³⁶ As duty-bearers, politicians and public servants, as well as or-

¹²⁹ Bovens, 9.

¹³⁰ Basset et al, 56-62.

¹³¹ UNGA, ICESCR, art. 2(1); United Nations Human Settlements Programme and Office of the High Commissioner for Human Rights, "Housing Rights Legislation," 13; See more Sepúlveda, "The Typologies of State Duties Imposed by the Covenant." This understanding refers to all human rights. However, it was created in the context of economic, social and cultural rights.

¹³² UNGA, ICESCR; M. Magdalena Sepúlveda Carmona, "General Introduction," in *The Nature of the Obligations under the International Covenant on Economic, Social, and Cultural Rights*, School of Human Rights Research Series, v. 18. (Antwerpen ; New York: Intersentia, 2003), 16. According to Carmona, procedural obligations are those included in Part IV of the Covenant regarding required procedures. For instance, the obligation to submit reports on the progress development made. General or basic obligations refer to those establishing an expected behavior or strategy of States, but not directly the positive realization of an economic, social or cultural human right. That includes, for example, equal treatment. They are based on the duty to respect, protect and fulfill and derive from art. 6-15 and Part I of the Covenant. Hence, they have been also named "correlative obligations" and "specific legal obligations".

¹³³ UNHCR, GC6.

¹³⁴ Brasil, Supremo Tribunal Federal, ARE 639.337 AgR, Rel. Min. Celso de Mello, At DJe 177 Sep 15, 2011 vol. 02587-01 p. 125 (2T Aug 23, 2011).

¹³⁵ UN CESCR, GC4, para 8, d.

¹³⁶ OHCHR, HR/PUB/13/1, 24.

gans within the bureaucratic structure are accountable for different responsibilities towards such goals, as those capable of “engag(ing) in and evaluate the entire planning and evaluation process from beginning to end.”¹³⁷ Additionally, governments are also expected to provide guidance for enterprises in the respect to human rights.¹³⁸

Moreover, according to international guidelines, business enterprises mainly share an expectation of conduct to operate respecting all recognized human rights.¹³⁹ This responsibility exists independent of a state’s means to fulfill its obligations, and it is “over and above compliance with national laws and regulations protecting human rights.”¹⁴⁰ Those international norms should be nationally implemented focusing on the risks and rights faced by those most vulnerable members of society.¹⁴¹

The UNGP requires that enterprises “avoid causing or contributing”, “prevent” and “mitigate” adverse human rights impacts.¹⁴² Even if indirectly involved in operations, in case of omission or of relationships to third business partners, it is expected that actors address situations to which they are connected.¹⁴³ Business enterprises can aim at the respect to human rights by advancing their own standards of answerability and justification, and by cooperating in grievance and remediation.¹⁴⁴

Duty-bearers should be routinely overseen by a forum,¹⁴⁵ an institution that demands information and explanations, and, if necessary, imposes sanctions. Goetz and Jenkins note that “governments constrain themselves, at least in theory, through a complex web of accountability relationships in which the right of seekers to demand information and explanations is matched by the obligation of target to provide them, under the threat of sanction.”¹⁴⁶ In sum, duty-bearers must care for their obligations as expected, for which they shall be held into account.

2.1.3 Issues with translation

In different countries, there is no direct translation for the word accountability. That is not different in the case studies, which have Portuguese and Spanish as

¹³⁷ Ackerman, “Human Rights and Social Accountability”, 7.

¹³⁸ OHCHR, HR/PUB/11/04, I.B, 3, c-d.

¹³⁹ OHCHR, HR/PUB/11/04, II.A, 11-12.

¹⁴⁰ OHCHR, HR/PUB/11/04, II.A, 11, Commentary. In 2011, the UN Guiding Principles on Business and Human Rights (UNGP) were firmied to clarify on how States and enterprises may succeed in respecting human rights.

¹⁴¹ OHCHR, HR/PUB/11/04, General Principles.

¹⁴² OHCHR, HR/PUB/11/04, II, A.13.

¹⁴³ OHCHR, HR/PUB/11/04, II, A.13.

¹⁴⁴ UNDG, “The Human Rights Based Approach to Development Cooperation”, Annex, 3.

¹⁴⁵ Bovens, 9-10.

¹⁴⁶ Goetz and Jenkins, 12; See also OHCHR, HR/PUB/13/1, para 16.

official national languages. Campos claims this translation issue lays on historical developments.¹⁴⁷ She argues that dictatorships and populist regimes limited the development of democratic governance in Brazil until 1988 and, therefore, delayed the institutionalization of accountability.¹⁴⁸ That parallel could have been used for the Chilean perspective. However, it is not sufficient to fundament this absence of the term because there is neither record of a literal translation of accountability into other Romance languages.¹⁴⁹

In the end, the translation of accountability has been based on a the gradual construction of the concept, what drives scholars and public agents into legal confusion. The EU Terminology Database – IATE conceives accountability in Portuguese as *responsabilidade* and *responsabilidade de prestar contas*.¹⁵⁰ In Spanish, it is translated as *rendición de cuentas*, *obligación de redir cuentas*, *responsabilidad*.¹⁵¹ But those translations leave space for erroneous interpretations, as already observed previously, because they are too simplistic and dismiss parts of the whole concept. Responsibility is just one factor of a concept that also involves the matters of *resposta* or *respuesta* (answerability), *controle* (control), *reparação* or *reparación* (remediation), *cumprimento da lei* or *cumplimiento legal* (legal enforcement).

At last, Brazilian Courts have come to the solution of using the English word or translating case-specifically the concepts they exactly mean.¹⁵² The Federal Courts of Accounts has already translated accountability as *prestacao de contas*

¹⁴⁷ Anna Maria Campos, “Accountability: Quando Poderemos Traduzi-La Para o Português?” *Revista de Administração Pública* 24, no. 2 (1990).

¹⁴⁸ Id.

¹⁴⁹ Bovens, 6; Carol Harlow, “Accountability and Constitutional Law,” in *The Oxford Handbook of Public Accountability*, Mark Bovens, Robert E. Goodin, and Thomas Schillemans ed., (Oxford: Oxford University Press, 2016), 244. Harlow observes that parallel in the French literature, that at times see *responsabilité* as a synonym to accountability. Romanian and Italian also refer to *responsibilitate* or *responsabilità* (*Interactive Terminology Europe – IATE*, s.v. “Accountability,” Website, Accessed Aug 3, 2019, <https://iate.europa.eu/>).

¹⁵⁰ Definition in Portuguese: “*Obrigaç o que incumbe a algu m (pessoa ou organiza o) investida de um poder ou compet ncia e encarregue de uma miss o ou tarefa, de prestar contas, de responder perante a entidade investidora (que pode ser a pr pria sociedade e os seus  rg os representativos) pelo exerc cio da sua fun o. Esta no o, mais do que o simples p r a t nica numa das vertentes da no o geral de responsabilidade, que engloba o poder e a obriga o de executar uma tarefa ou miss o e a obriga o de responder pela sua execu o, representa de algum modo uma cis o (um pouco for ada) dessa no o geral.*” See *Interactive Terminology Europe – IATE*, s.v. “Accountability,” En-Pt. Website. Accessed Jan 13, 2019. <https://iate.europa.eu/search/standard/result/1552399598195/1>.

¹⁵¹ *Interactive Terminology Europe – IATE*, s.v. “Accountability,” En-Es. Website. Accessed Aug 3, 2019. <https://iate.europa.eu/search/standard/result/1564821096358/1>.

¹⁵² Brasil, Tribunal de Contas da Uniao. Ac rdao 2.621/2018, TC 026.069/2008-4, Rel. Min. Aroldo Cedraz. ACOM, at 45/2018, SEMAG (Plen rio Nov 11, 2018); Brasil, Tribunal de Contas da Uniao. Ac rdao 2.901/2018, TC 027.831/2017-5, Rel. Min. Walter Alencar Rodrigues. RA, at 50/2018, SecexPrevi (Plen rio Dec 12, 2018).

and *responsabilizacão*.¹⁵³ This translation gap must be fixed, but that would require first that scholars settle on a concept for accountability¹⁵⁴.

2.2 The Rights-Based Approach

This section introduces this work's understanding of the rights-based approach (2.2.1), developed over the theory that it requires both legal goals and operations (2.2.2).

2.2.1 Understanding this rights-based perspective

From an accountability perspective, citizen engagement provides access to extensive and unpredictable information, crucial for democratic policy performance.¹⁵⁵ Concerning accountability relations should be therefore adjusted because social housing is supposed to fulfill human rights and, because it is the understanding of this research that policies and norms should look with care at the most vulnerable and aim at “expanding the real freedoms that people enjoy.”¹⁵⁶ For that, the rights-based approach brings important solutions.

For example, the RBA impacts by changing the public policy perspective from quantitative to qualitative (results). The expectation is that rights-based mechanisms use accountability to create performances that materialize human rights.¹⁵⁷ By aiming at *how* development is to be conducted, it tries to secure that the realization of human rights is being progressively implemented. This way, human rights and principles can be applied in a range of bureaucratic strategies, mechanisms and procedures, including social housing.¹⁵⁸

However, there is no model “fit for all”.¹⁵⁹ Depending on the context, different solutions may apply, depending on local conditions.¹⁶⁰ A more practical perspective should mirror the fundamentals of this approach, which is the respect, protection and fulfillment of human rights, the focus on people and/or the most-poor and excluded (“people-centered” view), as well as participatory, equal and non-discriminatory, accountable processes and outcomes.¹⁶¹

¹⁵³ “Bases Jurisprudenciales,” Chile, Poder Judicial, Official website, Accessed September 28, 2019. <http://basejurisprudencial.poderjudicial.cl/#>. No references were found on the English term (accountability) in the Jurisprudential Online Database of Chile's Supreme Court, but only to Spanish-translated words.

¹⁵⁴ See section 2.1.

¹⁵⁵ Ackerman, “Social Accountability in the Public Sector”, 22.

¹⁵⁶ Amartya Sen, *Development as Freedom* (Oxford: Univ. Press, 2001), 1.

¹⁵⁷ Ayliffe et al, 21.

¹⁵⁸ See Kaltenborn.

¹⁵⁹ Different agencies, academics and sectors have their own interpretations, often influenced by local level experiences. HRC, A/HRC/37/53, note by the Secretariat.

¹⁶⁰ Cecchini and Martínez, 39-40.

¹⁶¹ Miller and Readhead; UNDG, “The Human Rights Based Approach to Development Cooperation.”

Another significant step towards the realization of human rights would require private actors understanding their responsibility to act in accordance to rules, to which they should be held accountable.¹⁶² For that, an active role of private actors in acknowledging and guaranteeing their responsibility towards human rights is a basic requirement of RBA.¹⁶³ But overall, a reduction in adverse human rights impacts should be expected if duty-bearers use rights-based approaches, for instance, by enabling operational-level grievance mechanisms.

In sum, the rights-based approach (RBA) is a distinct response to those old critical nuances of law and policy. It is hence relevant for making human rights the primary means and goals of policies, guiding “all phases of the programming process [...] in all sectors.”¹⁶⁴ From making-of to implementation and evaluation of policies, a rights-based approach looks after the interests of the most excluded persons of society.¹⁶⁵ It strives to empower marginalized members of society, also by making it possible to hold duty-bearers accountable.¹⁶⁶

2.2.2 Goals and operations

The rights-based approach is constituted of two parts: on the one hand, its goals, outcomes, performance expectations that all relate to the materialization of human rights; and on the other hand, its processes, and operations.¹⁶⁷ The legally codified goals serve as guides for implementation. The processes and operations set the way for the implementation of the codified virtues. A system cannot be efficient with weaknesses in one or another.

Under this perspective, states must clearly state their obligations and goals on human rights to all human beings, equally and intrinsically. The constitutional acknowledgment of human rights as goals of policies illustrate the start. But right-holders also require remedies, through grievance and redress mechanisms, that can enable their exercise of voice, transparency, participation, accessibility, equality, non-discrimination and inclusiveness, as well as “universality and inalienability; indivisibility; interdependence and inter-relatedness; [...] and the rule of law.”¹⁶⁸ As Archer recalls, the rights-based approach

¹⁶² George G Brenkert, “Business Ethics and Human Rights: An Overview,” *Business and Human Rights Journal*, Cambridge University Press, 1 (2016).

¹⁶³ OHCHR, HR/PUB/11/04 (2011).

¹⁶⁴ UNDG, “The Human Rights Based Approach to Development Cooperation”, Annex, 2, 3; Ackerman, “Human Rights and Social Accountability”, 2; See Philipp Dann, *Entwicklungsverwaltungsrecht : Theorie und Dogmatik des Rechts der Entwicklungszusammenarbeit, untersucht am Beispiel der Weltbank, der EU und der Bundesrepublik Deutschland*. Tübingen: Mohr Siebeck, 2012, 237; and also Sen, *Development as Freedom*.

¹⁶⁵ UNDG, “The Human Rights Based Approach to Development Cooperation;” Sepulveda Carmona, Nyst and Hautala, 18.

¹⁶⁶ Sepulveda, “General Introduction”, in *The Nature of the Obligations Under the International Covenant on Economic, Social and Cultural Rights*, (Intersentia, Apr 2003), 16.

¹⁶⁷ Miller and Readhead.

¹⁶⁸ UNDG, “The Human Rights Based Approach to Development Cooperation”, Annex, 3; Basset

puts in place a range of mechanisms and tests that oblige governments to be more transparent and accountable than they would normally wish to be. [...] those whom institutions affect have access to information about the institutions' policies, are able to make their views known, and can see the institutions concerned obliged to report upon and justify their conduct. In addition, the system has a legal foundation, with the additional precision and legitimacy that this implies.¹⁶⁹

However, creating guidelines is not sufficient if states fail to use all available capacities for the progressive realization of human rights.¹⁷⁰ A rights-based perspective expects states to take deliberate, concrete and clear steps towards those goals, using all appropriate means to do so, including legal, administrative, and social measures.¹⁷¹

et al, 5; World Bank, "World Development Report 2004", 8-9, 11.

¹⁶⁹ Archer, 28.

¹⁷⁰ UN Committee on Economic, Social and Cultural Rights, General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant), E/1991/23, GC3 (CESCR, Dec 14, 1990), para 10; See more on the Latin American context, access to political, civil, social, cultural and economic human rights, the domestic and international decisions, and compared legal Latin American studies on Christian Curtis, ed. "Apuntes introductorios." in *Ni un paso atrás: la prohibición de regresividad en materia de derechos sociales*, 1 ed., 4–51, Buenos Aires: Del Puerto, 2006; Mary Beloff and Laura Clérico, "Derecho a Condiciones de Existencia Digna y Situación de Vulnerabilidad En La Jurisprudencia de La Corte Interamericana," *SELA (Seminario En Latinoamérica de Teoría Constitucional y Política) Papers*, 145 (Yale Law School Legal Scholarship Repository, 2014); Laura Clérico, "Derechos Constitucionales y Humanos, Control de Razonabilidad (Control de Proporcionalidad) En El Derecho Argentino e Interamericano." Ch 4 in *Derechos y Proporcionalidad: Violaciones Por Acción, Por Insuficiencia y Por Regresión. Miradas Locales, Interamericanas y Comparadas* (Mexico: Instituto de Estudios Constitucionales del Estado de Querétaro, 2018).

¹⁷¹ Details on the theory of the existential minimum, see Robert Alexy. *Theorie der Grundrechte*. 1st ed. *Studien und Materialien zur Verfassungsgerichtsbarkeit* 28. Baden-Baden Nomos-Verl.-Ges. 1985, 1945. See also UN CESCR, GC3, para 2-7; Sepúlveda, "The Typologies of State Duties Imposed by the Covenant", 209–47; UN Committee on Economic, Social and Cultural Rights, "General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)" (CESCR, May 12, 1999); UN Committee on Economic, Social and Cultural Rights, "General Comment No. 13: The Right to Education (Art. 13 of the Covenant)," E/C.12/1999/10 (CESCR, Dec 8, 1999); UN Committee on Economic, Social and Cultural Rights, "General Comment No. 14: The Right to the Highest Attainable Standards of Health (Art. 12 of the Covenant)" (CESCR, Aug 11, 2000); UN Committee on Economic, Social and Cultural Rights, "General Comment No. 19: The Right to Social Security (Art. 9)," (CESCR, February 4, 2008); UN Human Rights Committee, "General Comment No. 31 (80): The Nature of the General Legal Obligation Imposed on States Parties to the Covenant," CCPR/C/21/Rev.1/Add.13, GC31 (HRC, May 26, 2004); UNGA, ICESCR; It is also taken into consideration, that States have limited resources, which hinder an immediate fulfillment of human rights: "[...]it must be noted that any assessment as to whether a State has discharged its minimum core obligation must also take account of resource constraints applying within the country concerned" (UN CESCR, GC3, para 10).

Miller argues that this approach “necessitates a behavioural change in the ‘duty-bearer’ to protect, respect and fulfil such rights.”¹⁷² That means that formal processes must implement human rights as part of their operations. In the context of social housing, that refers to the implementation of policies that engineer accountable, inclusive and non-discriminatory processes, transparency and the right to political participation.¹⁷³

Nevertheless, changing behavior requires engaging and “putting (the most-poor) at the center of service provision: by enabling them to monitor and discipline service providers, by amplifying their voice in policymaking, and by strengthening the incentives for providers to serve the poor.”¹⁷⁴ In the context of social housing, a rights-based approach is translated into the need of public policies that engage individuals “not only as passive beneficiaries, but as rights holders that can exercise their entitlements by holding responsible those behind such policies.”¹⁷⁵ Beneficiaries have the right to be included in decision-making and their eventual claims must be object of redress and grievance.¹⁷⁶

At this point of the theoretical debate, theories intersect. Bovens, Schillemans and Goodin, guiding public accountability theories, claim accountability’s nature to be differentiated as a virtue and as a mechanism,¹⁷⁷ which complements and makes parallels to that differentiation of goals and processes brought by Miller and Redhead for the rights-based approach.¹⁷⁸

2.3 The Right to Adequate Housing

Underpinned by the rights-based approach, this section discusses the right to adequate housing (2.3.1), the legal guarantees of the most-poor (2.3.2) and the use of social housing as a mechanism to combat human rights violations (2.3.2). As well, it reviews the economic costs related to the materialization of human rights and, particularly, of social housing programs (2.3.4).

¹⁷² Hannah Miller and Robin Redhead, “Beyond ‘Rights-Based Approaches’? Employing a Process and Outcomes Framework,” *The International Journal of Human Rights* 23 (2019), <https://doi.org/10.1080/13642987.2019.1607210>, 706.

¹⁷³ UNDG, “The Human Rights Based Approach to Development Cooperation.”

¹⁷⁴ World Bank, “World Development Report 2004”, 1.

¹⁷⁵ Sepulveda, Nyst and Hautala, 18.

¹⁷⁶ Ackerman, “Social Accountability in the Public Sector”, 22-23.

¹⁷⁷ Bovens, Schillemans and Goodin, 21.

¹⁷⁸ Accountability as a mechanism points directly to a process’ operational tools or institutions that enable and legitimate the process of holding into account (Bovens, Schillemans and Goodin, 21). Accountability as a virtue poses the need to control an outcome, or “undesirable behavior” (Id., 21). Thus, both rights-based and accountability theories find a common ground, as they require values (be it goals or virtues) to be translated into an instrumental application (mechanisms, process, operational behavior). That theoretical parallel enables the hybrid use of the rights-based approach in accountability relations of social housing policies.

2.3.1 Understanding the right to adequate housing

In the global South, millions of new dwellings were subsidized or financed in the past years and even decades through national policies. However, the housing gap and housing inadequacy conditions in developing countries is not solved. The timid positive impact of those policies has been neutralized by their own quantitative policy goals. In other words, policies have not tackled housing inadequacy, so a great part of individuals amid subsidies and grants has remained victims of human rights violations.

Neither have programs successfully tackled different urgent human rights issues, such as increased qualitative deficits, socio-spatial segregation, and unhealthy environments.¹⁷⁹ Discriminatory norms, forced evictions and the lack of secure tenure contribute to vulnerability, especially to those families who already live in informality or for those communities who depend on the significance of their lands.¹⁸⁰ Chilean *campamentos*, characterized by insecure tenure and unhealthy conditions, have increased 41% since 2017.¹⁸¹ Causes to all those violations are often related to administrative inefficiency, corruption and wrong targeting, matters that directly regard accountability relations.¹⁸²

However, meeting the materialization of human rights should be the focus and the means of policy strategies.¹⁸³ In 1966, the International Covenant on Economic, Social and Cultural rights had already recognized the right to “an adequate standard of living [...] including adequate food, clothing and housing, and to the continuous improvement of living conditions.”¹⁸⁴ From that perspective,

the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity.¹⁸⁵

Yet, adequacy is an abstract concept, with no universal solution or model. Defining what it means in a policy context is difficult, because it must consider all possible dimensions of human rights.¹⁸⁶ According to the Economic Commis-

¹⁷⁹ IPEA and ConCidades, *National Report for Habitat III*, 23-27; Chamorro, 25-30. D.S. 19, created with the exceptional aim of tackling socio-spatial segregation was target of criticism.

¹⁸⁰ HRC, A/HRC/37/53, para 1.

¹⁸¹ HRC, A/HRC/37/53/Add.1, para 45-53; Cawley, 121. *Campamentos*, informal urban settlements in Chile, are characterized as those with more than eight households, contiguous, without secure tenure lacking at least one public service.

¹⁸² HRC, A/HRC/37/53, para 83, 124.

¹⁸³ HRC, A/HRC/37/53, para 97.

¹⁸⁴ UNGA, ICESCR, art. 11.1.

¹⁸⁵ UN CESCR, GC4, para 7.

¹⁸⁶ HRC, A/HRC/37/53, para 48.

sion for Europe several social issues cause governments to address housing, including homelessness and social segregation.¹⁸⁷ A housing strategy must be as comprehensive as possible, attributed to “social, economic, cultural, climatic, ecological and other factors.”¹⁸⁸ International instruments have settled on “minimum core obligations”¹⁸⁹ to be progressively fulfilled: legal security, availability of resources, affordability, habitability, accessibility, location, and cultural adequacy.¹⁹⁰ Leckie includes other objective aspects, including the prevention of: illegal forced evictions, regressive measures, all forms of discrimination, homelessness.¹⁹¹ As active measures of the state, he supports access to information, the “increase and proper target [in] public expenditure,” the creation of domestic remedies and comprehensive access to vulnerable groups.¹⁹²

National housing policies must be adapted,¹⁹³ as well as the legal system. In practice, that means too improving accountability relations by creating (legal) means to materialize access to housing. For example, the French national law (*Droit au Logement Opposable*) entitled individuals to take legal action when lacking access to housing.¹⁹⁴ Even though that right was only extended to nationals or residents with a permanent resident permit and reforms should consider the vulnerable condition of all migrants¹⁹⁵, this enforceability mechanism empowered some of the most vulnerable with a means of remediation.¹⁹⁶

Moreover, individuals should too be provided with legal guarantees to secure tenure.¹⁹⁷ That depends on legal instruments safeguarding individuals against

¹⁸⁷ Hills in: Economic Commission for Europe, ECE/HBP/137, 2.

¹⁸⁸ The Commission adopted, in General Comment 4, the concept that the adequate standard of living depends on “adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities – all at a reasonable cost”. See UN Committee on Economic, Social and Cultural Rights, General comment No. 4 on the right to adequate housing, E/1992/23 (CESCR, 1991), para 7; UN Human Settlements Program, *The Global Strategy for Shelter to the Year 2000: As Adopted by the General Assembly of the United Nations at Its Forty-Third Session in Resolution 43/181 on 20 December 1988*, HS/185/90E (Nairobi, Kenya: UN-Habitat, 1990) 13; UN CESCR, GC4, para 8; HRC, A/HRC/37/53, para C.

¹⁸⁹ Scott Leckie, “Housing Rights at the National Level.” Leckie, Scott. ed. *National Perspectives on Housing Rights*, (The Hague, London, New York: Kluwer Law International, 2003), 12; Kaltenborn.

¹⁹⁰ UN CESCR, GC4, para 8.

¹⁹¹ Leckie, “Housing Rights at the National Level, 15.

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ HRC, A/HRC/37/53, para 57; See Clauzier, Julie. “The DALO Law: A Step towards Making the Right to Housing a Reality.” Housing Rights Watch. Website. Accessed July 6, 2017. <http://www.housingrightswatch.org/content/dalo-law-step-towards-making-right-housing-reality>.

¹⁹⁵ That must be considered under revision, because it discriminates a parcel of the population.

¹⁹⁶ See Jean Michel David, “The DALO Law Is 10 Years Old,” Housing Rights Watch, Website, Accessed Jun 26, 2017, <http://www.housingrightswatch.org/content/dalo-law-10-years-old>. Even though 100,000 households were benefited from the law, at least 3.8 mi do not have access to adequate housing in France.

¹⁹⁷ UN CESCR, GC4, para 8, a.

“forced evictions, harassment or threats.”¹⁹⁸ Laws can take a stronger role in this aspect, again by, for example, providing legal remedies.

Making housing affordable is another essential question to the most-excluded members of society.¹⁹⁹ For example, “housing stress” can be caused by high costs and consequent unaffordability.²⁰⁰ It should be clear that under no circumstances may living costs threaten or compromise access to other basic human rights.²⁰¹

A housing environment must too be adequate. That regards not only a clean, healthy, sustainable space, but also that families have a minimum necessary for their human dignity.²⁰² In the context of social housing projects, that requires additional services and infrastructure, materials and facilities, such as sewerage systems and access to clean water, because individuals should be protected through adequate housing conditions against communicable diseases and other possible injuries.²⁰³ Individuals should have access to basic services, such as emergency and security, as well as to transport, to cultural and education services.²⁰⁴ Thus, healthy housing impacts not only in physical, but also in psychological spheres.²⁰⁵

The design of projects must too consider adequate to local settings, because they directly impact habitability conditions. Materials and services for facilities and infrastructures can may differ on forms, but they must keep on with health standards.²⁰⁶ But adequate housing is also dependent on cultural matters.²⁰⁷ At the same time that projects should create a resourceful and healthy environment for families, they should also take into consideration the original, local cultural

¹⁹⁸ UN CESCR, GC4, para 8.a.

¹⁹⁹ UN CESCR, GC4, para 8, c.

²⁰⁰ Catherine Gilbert and David Rosen, Dr., “Can You Afford to Live Where You Choose? Local Approaches to Making It Affordable for People to Live in Their Communities,” The Future Cities Collaborative. Sidney: United States Studies Centre at the University of Sydney, 2007.

²⁰¹ Generally costs of a dwelling should not exceed thirty per cent of a households’ monthly income. However, this researcher sees this as just an statistical limit, which should be relativized depending on the case. See UN CESCR, GC4, para 8.c; Gilbert and Rosen, “Can You Afford to Live Where You Choose?”, 6,17.

²⁰² “An adequate house must contain certain facilities essential for health, security, comfort and nutrition. All beneficiaries of the right to adequate housing should have sustainable access to natural and common resources, safe drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, means of food storage, refuse disposal, site drainage and emergency service” (UN CESCR, GC4, para 8.b).

²⁰³ UN CESCR, GC4, para 8.b, 8.d; More on the matter see WHO, *Health Principles of Housing*.

²⁰⁴ WHO, *Health Principles of Housing*, 16-17.

²⁰⁵ World Health Organization, *Health Principles of Housing*, WHO (Geneva: Albany, NY: WHO Publications Center USA, 1989), viii.

²⁰⁶ WHO, *Health Principles of Housing*, viii.

²⁰⁷ UN CESCR, GC4, para 8.f-g.

identities of communities.²⁰⁸ For instance, depending on the culture and tradition, wood and earth are expected materials, instead of usual concrete and bricks, though the use of alternative materials should not be allowed to be poisonous or to cause health risks.

Location must also be taken into special consideration. In conditions of socio-spatial exclusion, families face expensive means of transportation in order to reach out of their condition of geographical isolation, what only worsens conditions of unaffordability and social alienation. Hence, if socio-spatial inclusion is not ensured by policies, geographic polarization leads to a persistent social exclusion of households.²⁰⁹ Hence, “adequate housing must be in a location which allows access to employment options, health-care services, schools, childcare centres and other social facilities.”²¹⁰

Not always the usual western model is the best one to be implemented: traditional, religious, cultural, geographical, environmental factors may require different facilities, such as canoes instead of subways, or increased natural light and ventilation instead of heating. The most important – and the aim of all, is that individuals are satisfied with their habitat conditions. Yet, that can only be achieved with a successful engagement of dwellers.

That means, in other words, that the most vulnerable groups to physical and psychological hazards should be targeted and have enabled participation as well as supported access.²¹¹ Policies should guarantee their access by, first, recognizing the vulnerability of women and children, minorities, refugees, the elderly and disabled. That can be done with the use of “carefully-designed, targeted social housing systems and portable rent allowances to ensure housing for low-income households. Social housing systems which are directed to those most in need seem able to achieve their goals at a lower cost than less targeted systems.”²¹²

However, many policies tend to discriminate inasmuch as they do not prioritize those who most need.²¹³ Or else, they let more marginalized and excluded members of society compete with the same chances with other, more privileged ones. Hence, adjustments are urgently necessary, because, as already observed by the Inter-American Court, its

²⁰⁸ UN CESCR, GC4, para 8, f-g.

²⁰⁹ Lee, Peter, “Housing Policy, Citizenship and Social Exclusion”; Raffael Beier and Mariana Vilmondes, “Die Dominanz Des Quantitativen: Das Dilemma Des Rechts Auf Angemessenen Wohnraum in Brasilien, Marokko Und Südafrika,” *Raumplanung* 182, no. 6 (2015).

²¹⁰ UN CESCR, GC4, para 8.f.

²¹¹ UN CESCR, GC4, para 8.e; WHO, *Health Principles of Housing*, 20-22.

²¹² OECD, “Housing and the Economy: Policies for Renovation,” *Economic Policy Reforms 2011: Going for Growth* (Paris: OECD Publishing, 2011), <https://dx.doi.org/10.1787/growth-2011-en>, 186.

²¹³ HRC, A/HRC/37/53, para 41.

case law has also indicated that [...] the fundamental principle of equality and non-discrimination has entered the realm of jus cogent. The juridical framework of national and international public order rests on this principle and permeates the entire legal system.²¹⁴

Accessibility should be observed not only from the perspective of ensuring the possibility of application. In a broader sense, it also concerns support to community engagement and methods of communication and interaction, as well as access to justice, remedies, grievance and redress.²¹⁵ For example, Thailand's housing upgrading program provided financial and technical capacities to communities, so that they could manage their own aspects of housing development.²¹⁶ The South African Human Rights Commission investigated housing rights in that country, with procedures that evaluated access, governance and delivery.²¹⁷

Furthermore, decentralization is another key aspect for a more democratic division of roles and their responsibilities across institutions and stakeholders.²¹⁸ This way, it is possible to boost performance within a democratic manner.²¹⁹ Nevertheless, decentralization also requires enhanced coordination. Partial shifts in planning, implementation and monitoring to the local level already support accountability, in addition to "an effective regulatory system and penalties for non-compliance by service providers."²²⁰ An example of decentralization that will be seen is the separation of responsibilities of unit delivery from those

²¹⁴ See *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03, Series A N. 18 (Sep 17, 2003) para 101; *Indigenous Community Xákmok Kásek v. Paraguay*, Reparations and Costs. August 24, 2010. Series C No. 214, para 268 in: *Atala Riffo and daughters v. Chile*, N. 239 Series C (Inter-American Court of Human Rights February 24, 2012), para 79.

²¹⁵ HRC, A/HRC/37/53, para 63, 109-114. For instance, in Peru, the national Ombudsman can intervene against violations to right to housing. According to the Special Rapporteur, it did so by recommending a relocation plan for the indigenous people of Shipibo-Conibo, that at the time were living in a dump at Cantagallo, in Lima.

²¹⁶ See Nausica Castanas, Ploy Kasama Yamtree, Batan Yoswadee Sonthichai, and Quentin Battréau, "Leave No One behind: Community-Driven Urban Development in Thailand," *IIED Working Paper*, 2016.

²¹⁷ South African Human Rights Commission, "The South African Human Rights Commission Investigative Hearing Report: Access to Housing, Local Governance and Service Delivery" (SAHRC, February 23, 2015), 99. The report showed how "weak and irregular policy implementation has resulted in an irregular formal housing environment where poor people are vulnerable to exploitation on a daily basis."

²¹⁸ United Nations Human Settlements Programme, *International Guidelines on Decentralisation and Access to Basic Services for All* (Nairobi: UN-Habitat, 2009), 3.C.1.

²¹⁹ Basset et al, 42-44.

²²⁰ UN-Habitat, *International Guidelines on Decentralisation*, 3.A.14(b); Basset et al, 42-44.

of beneficiary registration.²²¹ While it increments clarity, it also prevents conflicts of interests among bodies and stakeholders.²²² And, although such a reform may generate initial higher costs, institutional coordination and decentralization are expected to promote efficient outcomes in the long term.²²³

Moreover, decentralization not only supports the discharge of tasks to local level bureaucrats, but also citizen empowerment.²²⁴ Via mechanisms of control, right-holders engage in means to verify and claim for sanctions. Governments profit from the better use of budgets, with a more social and participative control, monitoring and evaluating scenarios.

Social accountability provides a variety of examples where participation boosts the effects of accountability, while empowering beneficiaries and other members of civil society.²²⁵ For instance, evaluation mechanisms and social audits following standardized, transparent guidelines should increase governance and promote accountability. There are several aspects that civic influence can be exercised, such as via participatory budgeting and citizen report cards are also tools that enable citizens, via democratic and civic forms of engagement, to hold governmental and private actors accountable. Yet, it is the involvement of citizens at local level managerial decision-making that drastically impacts power relations.²²⁶

2.3.2 Legal guarantees to the most marginalized groups

Certain groups are more prone to be subject to violations to the right to adequate housing. Those include women, migrants, indigenous peoples, African descendants, the elderly, disabled persons.²²⁷ The most marginalized groups of societies

²²¹ Basset et al, 47-51.

²²² Basset et al, 47-51.

²²³ Cecchini and Martínez, 143-145.

²²⁴ UN-Habitat, *International Guidelines on Decentralisation*, 3.A.1-2.

²²⁵ See Ackerman, "Social Accountability in the Public Sector". Social accountability is an "an approach toward(s) building accountability that relies on civic engagement, i.e., in which it is ordinary citizens and/or civil society organizations who participate directly or indirectly in exacting accountability" (Malena, Forster and Singh, 3).

²²⁶ Sherry R. Arnstein, "A Ladder Of Citizen Participation." *Journal of the American Institute of Planners* (1969), 217; Bodil Damsgard and Jenny M. Lewis, "Accountability and Citizen Participation," in *The Oxford Handbook of Public Accountability*, Mark Bovens, Robert E. Goodin, and Thomas Schillemans ed., (Oxford: Oxford University Press, 2016), 320-324.

²²⁷ HRC, A/HRC/40/61, 45-54. Children and youngsters are not directly a target of social housing ownership programs, but they are extremely vulnerable to housing inadequacy of their families. Thus, ensuring access for vulnerable parents and particularly single mothers, who tend to suffer of intersectional and compound discrimination, is vital for children. The Brazilian Constitution sets as a duty of the family, State and society to ensure for the protection and social assistance of children and youngsters (Brasil Constitution, art. 203, I-II). Although the right to adequate housing is not directly related in this article, it can be inferred from the list of constitutionally guaranteed rights ("It is the duty of the family, society, and the State to ensure children, adolescents, and young people, with absolute priority, the right to life, health, nourishment, education, leisure, professional training, culture, dignity, respect, freedom, and family and community life, as well as to guard them from all forms

should be particularly addressed, since they have been guaranteed protection under international laws and Brazilian and Chilean domestic norms.

Women have been constitutionally acknowledged equal to men by both Brazilian and Chilean Constitutions.²²⁸ Those states have also ratified the Convention on the Elimination of All forms of Discrimination against Women and constitutionally recognized equality among men and women.²²⁹ No infra-constitutional norm, especially in the context of social housing, can undermine those legal statements. Nevertheless, social housing programs should be used to empower women through gender-responsive strategies, due to the structural social barriers they endure, depending on the context.

Persons with disabilities have been guaranteed the enjoyment of all human rights, including the right to adequate housing, also by international law ratified by both states.²³⁰ Since the publication of Legislative Decree 186, of 2008, Brazil expressly accepts the ratified rights-based content of that Convention and of its optional protocol.²³¹ Despite the lack of constitutional mention, Chile also ratified the Convention in 2008.²³²

The rights of migrants are mentioned in international and inter-American declarations signed by Brazilian and Chilean states.²³³ The Declarations of Durban and Santiago recognize the obstacles of people of African descent, also in the inter-American contexts.²³⁴ The later expressly acknowledges racism, racial discrimination and slavery, and recognizes poverty and vulnerability as a consequence of those historical violations.²³⁵ The Santiago Declaration also

of negligence, discrimination, exploitation, violence, cruelty, and oppression.” Brasil, Constitution, art. 227, caput).

²²⁸ Chile, Political Constitution of the Chilean Republic, amended by Decreto 100, de 22 de septiembre de 2005 (1980) [Constitución Política de la República de Chile], art. 2; Brasil, *Constitution of the Federative Republic of Brazil, Amend. 72/2013*, transl. Istvan Vajda, Patrícia de Queiroz Carvalho Zimbres and Vanira Tavares de Souza, 6/2013, (Brasília: The Federal Senate, Special Secretariat for Printing and Publishing Undersecretariat of Technical Publications, 1988), <http://www2.senado.leg.br/bdsf/item/id/243334>, art. 5, I.

²²⁹ UNGA, Convention on the Elimination of All Forms of Discrimination against Women.

²³⁰ UNGA, Convention on Rights of Persons with Disabilities.

²³¹ Brasil, Constitution, amended by Legislative Decree 186, July 9, 2008, 327-351.

²³² UN Office of the High Commissioner, “Status of Ratification – Country Profile for Chile,” Interactive Dashboard, Online Database (OHCHR, 2019), <http://indicators.ohchr.org/>.

²³³ UN General Assembly, Global call for concrete action for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action, A/RES/73/262 (UNGA, 2019), 2; Organization of American States, Declaration of Santiago, WCR/RCONF/SANT/2000/L.1/Rev.4, Proyecto de Declaración y Plan de Acción (OAS, 2000), http://www.oas.org/en/sla/dil/inter_american_treaties_A-70_human_rights_older_persons_signatories.asp#Chile, para 33-40; Organization of American States, Inter-American Democratic Charter (Lima: OAS, 2011), art. 9.

²³⁴ OAS, Declaration of Santiago.

²³⁵ UN General Assembly, Durban Declaration and Plan of Action. Adopted at the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Violence (UNGA, Sep 8 2001); UNGA, A/RES/73/262, p. 2; OAS, Declaration of Santiago, para 27, 32.

acknowledges historical violations perpetrated against indigenous populations, who have a special relation to traditional lands in Latin America.²³⁶ The Inter-American Democratic Charter and the Pact of San Jose annotated on the elimination of all forms of discrimination, but they timidly refer to structurally discriminated groups.²³⁷

According to the Brazilian Constitution, indigenous persons “shall have their social organization, customs, languages, creeds and traditions recognized, as well as their original rights to the lands they traditionally occupy.”²³⁸ Even though the Chilean Constitution lacks recognition of indigenous peoples rights, just like Brazil, that state signed the UN Declaration on the Rights of Indigenous Peoples.²³⁹ Hence, those states acknowledge the rights to indigenous peoples, as they are encouraged to “comply with and effectively implement all their obligations [...] to indigenous peoples under international instruments.”²⁴⁰

The elderly are protected by the Inter-American Convention on Protecting the Human Rights of Older Persons, a treaty signed by both countries and ratified by Chile.²⁴¹ Moreover, in Brazil, the elderly are constitutionally protected: they have the right to social assistance to be preferably carried out in their homes.²⁴² Family, society and the state share the duty to assist them to defend their dignity and well-being, and their right to life, which is interdependent with the right to housing.²⁴³

²³⁶ OAS, Declaration of Santiago, para 20, 22. Other international treaties apply too *See* ILO, C169; UN General Assembly (UNGA), United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295 (2007). An inter-American treaty is being drafted upon the rights of indigenous persons. *See* “Supporting Preparation of a Draft American Declaration on the Rights of Indigenous Peoples,” Organization of American States, OAS, on Aug 1, 2009, Official website, Accessed 24 Mar, 2020. http://www.oas.org/en/sla/dil/indigenous_peoples_supporting_draft_american_declaration.asp.

²³⁷ Organization of American States, American Convention on Human Rights, “Pact of San Jose” (Costa Rica: OAS, 1969). <https://www.refworld.org/docid/3ae6b36510.html>; OAS, Inter-American Democratic Charter. “The elimination of all forms of discrimination, especially gender, ethnic and race discrimination, as well as diverse forms of intolerance, the promotion and protection of human rights of indigenous peoples and migrants, and respect for ethnic, cultural and religious diversity in the Americas contribute to strengthening democracy and citizen participation” (OAS, Inter-American Democratic Charter, art. 9).

²³⁸ Brasil, Constitution, art. 231, caput.

²³⁹ UNGA, United Nations Declaration on the Rights of Indigenous Peoples.

²⁴⁰ UNGA, United Nations Declaration on the Rights of Indigenous Peoples, 3.

²⁴¹ Organization of American States, Inter-American Convention on Protecting the Human Rights of Older Persons, A-70 (OAS, 2015), http://www.oas.org/en/sla/dil/inter_american_treaties_A-70_human_rights_older_persons_signatories.asp#Chile, art. 6, 8, 10, 12.

²⁴² Brasil, Constitution, art. 203, V, 230, para I.

²⁴³ Brasil, Constitution, art. 230, caput.

2.3.3 Social housing programs as a mechanism to combat human rights violations

Latin-American countries have used the last decades to develop several social programs to comply with their obligations to progressively materialize human rights. Particularly Brazil and Chile have in common that they created schemes harmonizing contributory and non-contributory policies.²⁴⁴ Social policies in those countries aim at ensuring a minimum existential for all, in a perspective of “citizen guarantee”.²⁴⁵

The United Nations Commission for Social Development observed the nature of social protection to be a non-exhaustive set of policies, both public and private, that respond to the lack of social rights, expressly including housing.²⁴⁶ Social protection should target both the most-vulnerable and the non-poor universally, referring to circumstantial vulnerability.²⁴⁷ Such “collective intervention of society to protect citizens from risks and vulnerabilities, sustain their well-being and enhance their capability in managing risks” also requires members of the private sector to engage.²⁴⁸ Hence, social housing programs should guarantee individuals of a minimum existential by giving them access to adequate housing and should enable families to cope with risks, despite their income.

Programs should aim for partnerships and, particularly in the Brazilian and Chilean social housing contexts, engage in bringing decision-making and management closer to the local level.²⁴⁹ Participatory mechanisms are therefore crucial, not only for they can improve performance, but also because they also create effective support networks.²⁵⁰ In that case, non-profit and community-based organizations play a key role in supporting “social mobilization and effective delivery of social protection schemes”.²⁵¹ Supporting entities in those both models

²⁴⁴ Cecchini and Martínez, 74. In Brazil, for instance, social assistance and social security are even regarded as synonyms.

²⁴⁵ Cecchini and Martínez, 74-85. As claimed by Cecchini and Martínez, they have created a structure based on coordination, decentralization and control mechanisms. This is not the case in all Latin-American countries, where the dynamic of the region is proven to be diverse. Countries like Jamaica, Ecuador and Trinidad and Tobago refer mainly to non-contributory social protection programs targeting the most-poor. At the same time, Mexico and Colombia use social protection in an “intermediate position” between those two other models.

²⁴⁶ “[...]social protection is broadly understood as a set of public and private policies and programmes undertaken by societies in response to various contingencies in order to offset the absence or substantial reduction of income from work; provide assistance for families with children; and provide people with health care and housing” (UN Economic and Social Council, “Report of the Secretary-General on Enhancing Social Protection and Reducing Vulnerability in a Globalizing World,” E/CN.5/2001/2 (ECOSOC, Dec 8, 2000), para 6).

²⁴⁷ *Id.*, para 7.c.

²⁴⁸ *Id.*, para 12.

²⁴⁹ *Id.*, para 15, 74.

²⁵⁰ *Id.*, para 14, 52.

²⁵¹ *Id.*, para 74.

can illustrate a special role by integrating with beneficiaries and representing them in their relations with governmental actors and construction firms.

2.3.4 Economic growth and costs

The respect, protection and fulfillment of human rights endures relevant costs. Even when taking the example of political and civil rights such as suffrage, those require extensive resources, including paper, bullets, energy, personnel. At first, Leckie's claim that it would not be possible to construct housing for every and each person in need seems too plausible.²⁵² Social housing costs are particularly exorbitant, drastically affecting a state economically and thus, universal endeavors would be utopian.²⁵³ In the end, there is a strong call for economic growth to fulfill states' resources²⁵⁴ also because a bankrupted state could not finance its own social policies.

Additionally, although accountability can increase efficiency, it itself has its own cost-efficiency paradigm, and so it could be claimed that it could solve the housing financial burden. Costs must be constantly taken into consideration or else, the calibration of the inherent discretion to the stakeholder with "overzealous assessments"²⁵⁵ increases risks over integrity and the market.²⁵⁶

However, the responsibility of states to use all necessary means to the realization of the right to adequate housing cannot be excluded as challenging as it may appear.²⁵⁷ All human rights are entitled to a life with dignity and so should this be the goal of all society. Correspondingly, Brazilian Min. Carmen Lucia explained in a Supreme Court decision that private actors cannot refrain from applying social strategies because they are morally bound to them.²⁵⁸ And, as Hartman remembers, "the costs of providing everyone with decent, affordable housing are greatly affected by the ways in which such a programme would be carried."²⁵⁹ In this fashion, even enduring its own efficiency limitations, accountability can directly impact on the reduction of costs and maximize performance for programs that will ensure a generalized division of costs.

²⁵² Leckie, 22.

²⁵³ Id.

²⁵⁴ Siddiq Osmani, "The human rights-based approach to development in the era of globalization", in *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development*, (New York: UN, 2013), <https://doi.org/10.18356/a7878a2e-en>, 121.

²⁵⁵ Mulgan, 237.

²⁵⁶ Mulgan, 236-37.

²⁵⁷ UNCSR, GC4, para 14.

²⁵⁸ Brasil, Supremo Tribunal Federal, ADI 2649, Rel. Min. Carmen Lucia. At DJ Oct 17, 2008 DJe-197 vol. 2337-01 p. 29 (Pleno, May 8, 2008). According to her, the costs of social policies in free market economies are held comprehensively by the whole society because consumers take on the final financial burden, who nevertheless are granted support by the state.

²⁵⁹ Chester Hartman, "The Case for a Right to Housing in the United States," in *National Perspectives on Housing Rights*, Leckie, ed. 154-155.

Additionally, social housing programs can be also justified as a market policy because they can induce increased profits in the private construction sector.²⁶⁰ When compared, states spend similar budgets on different strategies that do not directly tackle the fulfillment of human rights, but that envisage economic sole outcomes.²⁶¹ States should however choose human-rights oriented policies because “a strategy for promoting economic growth must [...] constitute an integral part of the human rights-based approach to development.”²⁶²

Finally, economic growth is necessary for the materialization of human rights. However, economic growth that leads to violations of human rights cannot be tolerated. Inequality and discrimination, illegal evictions or relocations must be prohibited and sanctioned, in despite of any positive economic performance effects. According to Brazil’s Supreme Court, the state is constitutionally allowed to regulate the free market based on the principle of collective and public interest.²⁶³ Following that line of reasoning, the state does not have to limit interventions in extreme situations.²⁶⁴ It may, for example, regulate prices of goods and services, in case they are found to be abusive.²⁶⁵ Although the fixation of prices must not be in disconformity with the reality nor with the laws applying to the economic activity, an existential minimum must be secured for the main collective interest.²⁶⁶ Applying that understating to the case studies, it means too that access to housing and housing affordability must be guaranteed based on the principle of collective and public interest. The previous Brazilian precedent that defined enterprises to be morally bound to their social policies²⁶⁷ shows that there is a sound jurisprudential basis making lower courts create a (novel) understanding that includes the right to housing as part of the minimum existential.

²⁶⁰ Whitaker Ferreira; Amore, Caio Santo. “Minha Casa Minha Vida” para iniciantes”, in *Minha casa... e a cidade? Observatório das Metrôpoles*, Amore et al eds (Rio de Janeiro: Letra Capital, 2015), 15; Chile, D.S. 19, Preamble. The analyzed case studies were reported to be used as a strategic market policy to boost the construction sector.

²⁶¹ Chester Hartman, “The Case for a Right to Housing in the United States,” in *National Perspectives on Housing Rights*, Leckie, ed. 154-155. Hartman observed that over an analysis of U.S. federal expenditures.

²⁶² Siddiq Osmani, “The human rights-based approach to development in the era of globalization”, in *Realizing the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development*, (New York: UN, 2013), <https://doi.org/10.18356/a7878a2e-en>, 121.

²⁶³ Brasil, Supremo Tribunal Federal, ADI 1950-3/SP, Rel. Min. Eros Grau. AT DJ Jun 2, 2006 (Pleno, Nov 3, 2005). According to the Brazilian Constitution, “the economic order (is) founded on the appreciation of the value of human work and on free enterprise (and) is intended to ensure everyone a life with dignity, in accordance with the dictates of social justice” (Brasil, Constitution, art. 170).

²⁶⁴ Brasil, STF, ADI 1950.

²⁶⁵ Brasil, Supremo Tribunal Federal. ADI 319-4 QO/DF, Rel. Min. Moreira Alves. At DJ Abr 30, 1993 (Pleno, Mar 3, 1993).

²⁶⁶ Brasil, Supremo Tribunal Federal. RE 422941, Rel. Min. Carlos Velloso. At DJ p. 55 vol. 2226-04 p. 654 Mar 24, 2006 (2T Dec 12, 2005); Brasil, Supremo Tribunal Federal. AI 754769 AgR, Rel. Min. Carmen Lucia. At DJe 195 Oct 4, 2012 (2T Sep 18, 2012).

²⁶⁷ Brasil, STF, ADI 2649.

Besides sanctions, rewarding providers that have been complying with their moral and legal duties could too support more accountability.

Neither is under compromise the protection of human rights of future generations. The Paris Agreement assured on the development of a green, resilient, sustainable agenda²⁶⁸, which, nonetheless, also understood and “emphasized the intrinsic relationship that climate change actions, responses and impacts have with equitable access to sustainable development and eradication of poverty.”²⁶⁹ Therefore, economic growth must be taken into consideration with the development of an economic agenda based on values of climate and social justice. Particularly social housing must be prepared to focus on sustainable projects.

2.4 Accountability Relations in Social Housing Programs

Accountability endures various limits:²⁷⁰ a degree of discretion is unavoidable as it must be accepted that not every single task can be possibly controlled.²⁷¹ However, those limitations can be improved into acceptable efficiency levels.²⁷² Such a performance requires an improved legal structure, to be assessed as of responsibility, answerability and enforcement dimensions applying to the relationships of right-holders and duty-bearers.

Thus, this section provides the theoretical background specialized on the housing context needed for the following assessment of the case studies. First, it delves into the responsibility (2.4.1), answerability (2.4.2) and enforcement dimensions (2.4.3) of accountability relations, as well as on instruments of control (2.4.3.1) and their temporal functions (2.4.3.2).

2.4.1 Responsibility

In the context of social housing programs, the design of the legal framework affects directly and indirectly the relations among all stakeholders involved.²⁷³ Looking at the responsibility dimension of accountability relations, stakeholders will be directly affected by a definition of roles, which should be as clear and transparent as possible, based on a predictable, consistent, decentralized norms. In such a scenario, right-holders should be able to recognize responsible

²⁶⁸ UN Framework Convention on Climate Change, Paris Agreement, 7.d (Paris: UNFCCC, Dec 12, 2015).

²⁶⁹ UNFCCC, Paris agreement, Preamble.

²⁷⁰ It must be highlighted that accountability is not the necessary answer for good programming. The example of Cuba and its efficient health system delivery is one that shows how non-western models may too succeed. Yet, an accountability framework has shown to generally provide best results in traditional western models, as supported by the literature and international organizations. See also Sepulveda Carmona, Nyst and Hautala, 18.

²⁷¹ Mulgan, 236-240.

²⁷² Basset et al, 26, 43.

²⁷³ See also section 2.1.1.

agents and their respective duties. As well, duty-bearers could rely on guidance, under precise indications of their respective responsibilities.

Under such standards, norms tend to mitigate risks and vulnerability. As well, they support eventual redress and grievance.²⁷⁴ If norms do not clearly define responsibilities of all stakeholders, if they are too complex or if they change too often, confusion may install, leading to inefficiency or also, to human rights violations.

2.4.2 Answerability

The questions of “how” and “why” the obligations to inform, respond and justify are (to be) conducted’ should confine answers to standards of clarity, transparency predictability, consistency, decentralization, simplicity.²⁷⁵ In practice, answerability takes an overall normative context set as responsibility of a defined stakeholder and applies it to the obligation of that same stakeholder to respond, inform, justify upon the obligations arising from that same responsibility. Thus, it can enable access to housing rights by inquiring duty-bearers upon how they are introducing inclusive measures in housing policies, demanding information upon strategical project results, or else ask for justification upon why certain measures are used in despite of others.

This way, answerability guides stakeholders in their actions. For instance, norms may not directly require duty-bearers to inform or justify upon how they secure tenure rights and provide access to spatial-distribution, or to provide answers on how they guarantee housing affordability, habitability, and a healthy environment. Yet, those principles are there to guide duty-bearers in practical tasks, such as in how they plan eligibility criteria, application and selection standards and procedures of social housing programs. Based on presented information, forums can better instruct actors who demonstrate unsatisfying performances, learn of new good practices from successful stakeholders, and, hence, improve targeting of those living in vulnerability.

As a means of backing accountability and its most welcome efficient outcomes, incrementing answerability tends to lower risks and costs for service providers.²⁷⁶ In a scenario of weak answerability, duty-bearers suffer from limited information, making them unable to comply with norms and deliver efficiently.

²⁷⁴ Basset et al, 26.

²⁷⁵ According to Basset et al, “good” accountability relations are based on consistent “coordination” and “institutional incentive structure” in which responsibilities and roles are clear, consistent and predictable (Basset et al, 43). Operational guidelines must be clear, so that they can be translated into practice, particularly by public agents. They must be consistent, so that they can be adopted across “in content and application” through all service levels (Basset et al, 26-27, 29). The process of standardizing concepts, procedures and processes also reduces the risk of discretionary acts (Basset et al, 27-29). Operational and organizational norms consistent with guidelines highly contribute to the integration and coordination of social programs (Basset et al, 74-75).

²⁷⁶ OHCHR, HR/PUB/11/04, para 28; Basset et al, 28.

Confusing rules – as well as roles – can easily lead to wrongdoings, so there should be no space for dual interpretation in a legal framework.²⁷⁷

2.4.3 Enforcement

A legal framework, supported by control mechanisms, should be enforceable. In other words, it should enable stakeholders to be held accountable for their actions. Accessible through judicial and non-judicial means, enforcement is to be structured in non-discriminatory, “accessible, affordable, timely and effective” procedures²⁷⁸ at international, national, regional and local levels. This dimension also requires strong answerability and responsibility structures, in an efficient legal framework that must ensure transparent²⁷⁹ and effective access to justice.²⁸⁰

In the context of social housing programs, “people need to know how to seek information and ask questions”.²⁸¹ According to the Special Rapporteur, states are supposed to ensure that “the right to housing is afforded fair hearings and effective remedies, ‘by all appropriate means’, through courts, tribunals, rights-based strategies, human rights institutions, and community-based and informal justice systems.”²⁸² As well, she sustains that “access to justice for the right to housing is inseparable from the right itself. [...] Rights must have remedies, and Governments must be held accountable to right holders.”²⁸³ By providing access to justice for the right to housing to the most vulnerable and excluded members of society, states combat discrimination and inequality.²⁸⁴

For that matter, mechanisms of grievance and redress are key tools that hold agents accountable for their performance. Those accountability mechanisms should primarily, from a right-based perspective, enable beneficiaries to receive necessary remediation. Nevertheless, they should too look at necessary sanctions as well as to supportive rewards to duty-bearers.

Finally, for a great part of accountability mechanisms, documental proofs are required. Nevertheless, it is necessary to address the vulnerability in context

²⁷⁷ Basset et al, 30, 37-41.

²⁷⁸ UN CESCR, G9, para 9.

²⁷⁹ In practice, transparent public scrutiny can alleviate inconsistencies of a legal framework, for what “accountability agencies need to monitor processes and enforce compliance with agreed procedures” (Mulgan, 235). As Mulgan claims, “procedural requirements themselves need to be clearly specified and readily enforced” and so “clarity of process [...] can [...] help compensate for imprecision of objectives and the relative difficulty of accounting for objectives” (Mulgan, 235).

²⁸⁰ Basset et al, 7, 28; United Nations Committee on Economic, Social and Cultural Rights, General Comment No. 9: The domestic application of the Covenant 3, GC9, E/C.12/1998/24 (CESCR, 1998); HRC, A/HRC/40/61, para 18.

²⁸¹ Mulgan, 235.

²⁸² HRC, A/HRC/40/61, para 6.

²⁸³ HRC, A/HRC/40/61, para 69-70.

²⁸⁴ This way, redress and grievance mechanisms are the available mechanisms to ensure right-holders hold duty-bearers accountable. See OHCHR, HR/PUB/13/1, 12.

and, if necessary, to relativize the principle of veracity of information.²⁸⁵ Specially when looking that the most vulnerable members of society, who often are illiterate²⁸⁶ or possess extremely limited social and financial resources²⁸⁷, it is obvious to conclude that access to grievance and redress becomes impractical if lawmakers disregard their existential condition of vulnerability. In such cases, the role of social workers for multi-dimensional interpretations and analysis of poverty is again of high importance, because they can bridge the communication. Governments must also be prepared to assess information, in such cases, with flexibility.

2.4.3.1 Mechanisms of control

Particularly in the context of social programs, stakeholders can be subject to responding, informing, and justifying to a forum, as observed previously. If stakeholders do not abide to rules or break them, a forum may uphold sanctions, such as exclusion from a social program. As well, stakeholders should be able to seek remediation and grievance, in case any of their rights is violated.

Non-judicial mechanisms do not necessarily depend on the existence of a forum, a judge or a court, as judicial mechanisms *per nature* do.²⁸⁸ Taking one of the most important roles in the case studies, forums support the power relationship between duty-bearers and right-holders by enforcing rules based on the responsibility and obligations of each involved stakeholder.²⁸⁹

Those forums operate in administrative, political or judicial contexts, by an external organ independent from the governmental structure as well as by an internal controlling organ.²⁹⁰ External control is based on the exercise of enforcement by an independent institution²⁹¹ and it may be of different natures, such as judicial, quasi-judicial, administrative, political, operational-level, social.²⁹² The internal dimension of control, on the other way around, is conducted within the structure of a governmental agency with “heads of service tak[ing] part as

²⁸⁵ In the case of homelessness or traditional indigenous populations, for example, domicile and residency evidence is/should be extremely weak.

²⁸⁶ Or else can limitedly speak/read/write in their residency country. Poor migrants are, for that matter, a highly vulnerable group.

²⁸⁷ Sepulveda Carmona, Nyst and Hautala.

²⁸⁸ UN Human Settlements Programme, “Habitat III Issue Papers – 5 Urban Rules and Legislation,” United Nations Conference on Housing and Sustainable Development – Habitat III (UN Habitat, May 31, 2015).

²⁸⁹ Basset et al, 7.

²⁹⁰ Those may too be used in hybrid or single forms, as long as they can ensure efficient accountability relations.

²⁹¹ Danziger, 536; Furtado, 915.

²⁹² Danziger, 536; Furtado, 915.

senior officers, as well as legal, personnel, administration and finance, internal control and audit divisions”, following the principle of hierarchy.²⁹³

Furthermore, judicial review is a traditional setting, which renders extensive but limited powers to courts.²⁹⁴ The judiciary supports verticality, meaning a “forum has the formal authority to compel the actor to give account.”²⁹⁵ However, different matters can affect the efficiency of judicial mechanisms, among which a confusing or inadequate legal system, or else procedural rules limiting the application of substantive norms, or the lack of human capacity to solve cases in the time and complexity they arrive.²⁹⁶ Right-holders seeking redress tend to feel limited by that uncertainty and inefficiency.²⁹⁷ In addition, in the context of social housing for the most-vulnerable, the most practical barrier is their constrained access to justice.²⁹⁸ Therefore, a trained and well-structured judiciary, that understands comprehensive social issues and has mechanisms to reach out for communities, makes itself necessary for enabling housing rights to the most marginalized members of society.²⁹⁹

Furthermore, when national courts fail by even actively neglecting remediation, other mechanisms can be approached. International judicial mechanisms may find competence to play an important role and hold responsible states into account. Yet, international accountability plays a supervisory and oversight function, limiting enforcement.³⁰⁰ Nevertheless, it provides alternative means of communication for negotiation and justification, often involving the responsibility of the government in itself and its public image. Usual sanctions, such as

²⁹³ An agent with a higher hierarchical position is expected to take charge and lead disciplinary procedures. This obligation of self-correction may be exercised *ex officio* (Chile, Ley 19.880, de 29 de mayo 2003, L. 19.880 (2003), art. 59.3; Danziger, 536-37; Furtado, 915, 930). According with Brazilian jurisprudence, powers have to emanate explicitly from the legal text (Brasil, Supremo Tribunal Federal. Súmula 473, “a administração pode anular seus próprios atos, quando eivados de vícios que os tornam ilegais, porque deles não se originam direitos; ou revogá-los, por motivo de conveniência ou oportunidade, respeitados os direitos adquiridos, e ressalvada, em todos os casos, a apreciação judicial,” at DJ Dec 10, 1969 p. 5929 S. 473). See also Chile, Ministerio de Relaciones Exteriores, “Answers by the State of Chile to the Questionnaire on the Follow-up Mechanisms for Implementation of the Inter-American Convention against Corruption,” Prepared by the National Group of Experts, August 2003, 6; Chile, Organic Constitutional Law of the General Administration of the State, L. 18.575, de 5 de diciembre de 1986, amended last in Jun 22, 2000 (1986) [Lei Organica Constitucional de Bases Generales de la Administración del Estado], art. 10.

²⁹⁴ Mulgan, 75-78.

²⁹⁵ “Although this is not based on a principal-agent relationship, but on laws and regulations” (Bovens, 20).

²⁹⁶ OHCHR, HR/PUB/13/1, 40.

²⁹⁷ Id.

²⁹⁸ OHCHR, HR/PUB/13/1, 41.

²⁹⁹ HRC, A/HRC/40/61, 45.

³⁰⁰ OHCHR, HR/PUB/13/1, 32.

the public and widespread recognition by an international court of violations to human rights, is considered a form of remediation to right-holders.³⁰¹

Furthermore, other non-judicial mechanisms exist based on a softer enforcement, on dialogue and compromise among stakeholders, as they supply democratic governments with accountability tools. Quasi-judicial and administrative mechanisms often operate in synergy and with a parallel structure to judicial instruments. Right-holders have access to justice and participatory instruments increased particularly through social accountability mechanisms, instrumented via e.g. social audits, based on interviews and reports of beneficiaries, report cards, or social control committees.³⁰²

Quasi-judicial mechanisms refer to those platforms that share a similar judicial structure or procedure, but, lacking the judicial power, use mechanisms created or based on human rights institutions or treaties. In this sense, ombudspersons provide a good example, which can be both nationally or internationally enacted. They represent organs with the responsibility not only to advocate, but also to ensure the interdependence and indivisibility of human rights. They have the responsibility to independently gather information, monitor and evaluate, to conduct specific procedures and hearings, and even to represent collective interests before court.³⁰³

According to the Special Rapporteur:

a designated monitoring body should be mandated to assess the ongoing effectiveness of the housing strategy, identify failures or shortcomings, recommend necessary changes and hold Governments and other actors accountable. Whether it is a commission, a housing ombudsperson, a housing advocate or a national or regional human rights institution, the designated body must be independent of Government, provided with adequate financial resources and free to express opinions and make recommendations on policy and legislation.³⁰⁴

³⁰¹ OHCHR, HR/PUB/13/1, 45.

³⁰² Basset et al, 62-66.

³⁰³ UN CESCR, General Comment No. 10: The role of national human rights institutions in the protection of economic, social and cultural rights, E/C.12/1998/25, GC10 (1998), para 2-3.

³⁰⁴ UN CESCR, GC10, para 3 in: HRC, A/HRC/37/53, para 102.

Furthermore, administrative mechanisms operate in parallel to the judicial structure, either as a component of the judiciary³⁰⁵ or independent from the judiciary.³⁰⁶ In both cases, accountability relationships ensure actors are controlled by forums besides traditional courts.

However, in the end, grievance and redress mechanisms can increase accountability as well as “citizens’ trust and involvement”.³⁰⁷ For that, the local, direct involvement of civil society in accountability is vital for the success of social housing. It can be observed in many examples of social accountability mechanisms, from participatory budgeting to social centre monitoring, which should be structured under horizontal relationships, characterized by their deliberate and moral-based nature.³⁰⁸ Those mechanisms are intrinsic to democratic states, as they can empower the most excluded members of society.³⁰⁹

According to Malena et al, social accountability creates and supports vertical and horizontal mechanisms of accountability, resulting “in better governance, improved public service delivery and enhanced development effectiveness.”³¹⁰ In this fashion, that engagement enables that different stakeholders use their “social distrust” to legitimate and support the “vigilant observation” of duty-bearers.³¹¹ Therefore, although social accountability is not the sole factor that influences positive performance in social housing programs, it is a valuable key instrument.

In this sense, especially new information and communication technologies (ICTs) can strongly support social accountability with transparency.³¹² Granting access to such informational technologies cannot only ensure access to information, but also to means of participation (such as participatory decision-making), and finally enable eventual grievance and redress. For example, right-holders can have increased access to information with their online publication³¹³, because only-printed publications are not sufficient to achieve the whole population of countries, especially those with large geographic dimensions. Or else, eased access to television, newspapers, radio or internet, can allow beneficiaries to have access to crucial information in remote and poorer regions.³¹⁴

³⁰⁵ As in the Chilean case.

³⁰⁶ In the Brazilian case.

³⁰⁷ Barca.

³⁰⁸ Bovens, 20.

³⁰⁹ OHCHR, HR/PUB/13/1, 44.

³¹⁰ Malena, Forster and Singh, 14.

³¹¹ Ackerman, “Social Accountability in the Public Sector”, 22-23.

³¹² Malena, Forster and Singh.

³¹³ Basset et al, 34.

³¹⁴ That is the case, for instance, of lists of successful enterprises delivering projects or of contemplated beneficiaries.

However, as much as ICT's can strengthen accountability relations in the context of social housing, making ICTs accessible to the most marginalized members of society is another problem to be solved. Poverty is, in such cases, the first limitation to be overcome, attached to lacking infrastructure (such as internet) or capacities (e.g. literacy). Yet, in such cases where ICTs are not accessible, social workers can be a fundamental tool to provide access to information about and to the most excluded members of society.³¹⁵

Operational-level grievance mechanisms exemplify mechanisms to be developed by an enterprise itself, in order to guarantee redress at the local level. As internal due diligence models, their two main functions resume to: (i) identify issues via accessible communication channels; (ii) enable grievance and remediation.³¹⁶ They are key instruments for service providers, as a means of redress and grievance, "accessible directly to individuals and communities who may be adversely impacted by a business enterprise"³¹⁷, "speeding access and remediation",³¹⁸ lowering costs, and increasing reach. This kind of accountability, although legally voluntary, supports the respect to human rights and the long-term performance of enterprises.³¹⁹ They affect performance, in as much as they are able to assess risks directly.³²⁰ They also limit costs, insofar they find solutions e.g. before an expensive litigation in the judiciary starts.³²¹

In practice, operational-level grievance mechanisms should make use of information provided by beneficiaries via hotlines, e-mails, letters, personal statements, interviews and at various phases of a program (from eligibility to post-delivery). Enterprises can receive complaints from beneficiaries and depict solutions for housing issues in order to mitigate risks.³²² Firms can support monitoring and evaluation with such information with ICT databases, limiting their costs.³²³

Yet, mechanisms at the operational and local level require engagement and dialogue, in which stakeholders may be able to place their concerns regarding any genuine issues, especially those regarding human rights impacts, and to seek the necessary remediation with the respective business enterprise.³²⁴ Hence, they

³¹⁵ Basset et al, 36.

³¹⁶ OHCHR, HR/PUB/11/04, 32. *See also* Vilmondes.

³¹⁷ OHCHR, HR/PUB/11/04, 31, principle 29, p. 31.

³¹⁸ OHCHR, HR/PUB/11/04, 31, principle 28, p. 31.

³¹⁹ Vilmondes T., Mariana A., "Business and Human Rights in Brazil: Exploring Human Rights Due Diligence and Operational-Level Grievance Mechanisms in the Case of Kinross Paracatu Gold Mine," *Revista de Direito Internacional* 15 (2018), <https://doi.org/10.5102/rdi.v15i2.5357>.

³²⁰ Vilmondes.

³²¹ Vilmondes.

³²² Basset et al, 59.

³²³ Barca.

³²⁴ *See* Vilmondes.

can be a legitimate means of grievance and redress if seeking for the respect of human rights.³²⁵

Attention must be given to the matter that housing delivery refers to transaction-intensive and discretionary services, which are more difficult to evaluate and control than other services.³²⁶ Agents have a relatively wide range of decision-making power on the delivery phase against a relative low informational access of the beneficiary, although it is their respective governments that hold the financial and decision powers of planning phases.³²⁷ Thus, the complexity of the nature of services in the case studies is a strong factor challenging accountability.³²⁸

2.4.3.2 Temporal functions

Temporal functions of control are relevant for this understanding, for they strongly influence in the design of procedures and that choice influences socio-democratic outcomes.³²⁹ In sum, control can be conducted before (*ex ante*) or after (*ex post*) actions take place.³³⁰ When answering and enforcement happens after a decision or action occurred, then the literature refers to *ex post* accountability. This corrective function requires a more active approach from right-holders, in which they inquire for grievance and remedies.³³¹ The use of either judicial or non-judicial grievance mechanisms is necessary in such active *ex post* undertakings.³³² Traditional *ex post* tools (or generally, mechanisms) in the context of social housing refer to evaluation and monitoring reports, that for instance, in the Brazilian context, could evidence similar issues on the quality and adequacy of the MCMV housing projects.³³³

³²⁵ OHCHR, HR/PUB/11/04, GP 29.

³²⁶ As it is in the case of social housing programs. Locally produced services of MCMV, D.S. 1, D.S. 19, and D.S. 49 require frontline professionals in contact with beneficiaries. See World Bank, “World Development Report 2004”, 47-48.

³²⁷ World Bank, “World Development Report 2004”, 52-53.

³²⁸ World Bank, “World Development Report 2004”, 52-53.

³²⁹ OHCHR, HR/PUB/13/1, ix,10; Furtado, 914.

³³⁰ Goetz and Jenkins, 12; Isunza Vera. The literature diverges on the concomitant function of accountability. Goetz and Jenkins, for instance, do not mention on-going accountability, though recognize the importance of *ex-ante* mechanisms. Part of the literature engages in describing the concomitant function, by defining them as mechanisms of accountability that take place while acts or activities are being executed. In the end, the usual example of audits, that happen during the making of e.g. housing projects, assist anyhow correctively and subsequently: although a full task (e.g. a project) has not been finished, audits check on already executed tasks. Hence, it is *per se* an *ex post* mechanism.

³³¹ OHCHR, HR/PUB/13/1, 10.

³³² OHCHR, HR/PUB/13/1, 10.

³³³ TCU, “Relatório de Auditoria no Programa Minha Casa Minha Vida”; CGU, “Relatório de Avaliação da Execução de Program de Governo”.

In its preventive function, *ex ante* accountability can “identify systemic failures” before mistakes are done.³³⁴ From a rights-based perspective, when control takes place before projects have started, it also facilitates later control by preventing them in early stages.³³⁵ A preventive function of accountability mechanisms is evident when e.g. beneficiaries engage in policy-making.³³⁶ It can ensure that States meet necessary standards in service delivery, such as performance quality³³⁷. Additionally, accountability’s preventive function can serve for avoiding inequality and discrimination, within a legal framework that ensures inclusion, accessibility, equal treatment.³³⁸

The use of *ex ante* tools can be observed under monitoring and evaluation procedures, in the cross-examination of information, in participative processes of formulation or in review of norms. Whereas the nature of procedures in *ex ante* accountability is mostly political and administrative, formal (administrative, legal and constitutional) procedures take place during projects or in an *ex post* phase.³³⁹ And, however *ex ante facto* accountability is criticized for compromising the speed of efficiency in policies and governmental projects, it can guarantee democratic legitimacy to processes.³⁴⁰ For example, participatory budgeting is a well-known example of *ex ante* accountability, for which the Brazilian city of Porto Alegre takes credit for creating a bottom-up political procedure that also empowered local voices through community councils.³⁴¹

The choice of a control tool also depends on the type of social service and local context.³⁴² This are far from free of error, certain solutions,³⁴³ but tools of control can efficiently assist in more transparent, clear and consistent monitoring.³⁴⁴ They can as well enhance equity and awareness among stakeholders, whereas they tend to reduce risks of fraud and corruption.³⁴⁵ Yet, it is essential to calibrate those tools because duty-bearers have their performance capacity reduced

³³⁴ OHCHR, HR/PUB/13/1, X; Goetz and Jenkins, 12.

³³⁵ Isunza Vera, 283-287.

³³⁶ OHCHR, HR/PUB/13/1, 10;

³³⁷ OHCHR, HR/PUB/13/1, 13.

³³⁸ OHCHR, HR/PUB/13/1, 13.

³³⁹ Isunza Vera, 286.

³⁴⁰ Ackerman, “Social Accountability in the Public Sector”, 5; Bovens, 31.

³⁴¹ Wampler, 45-70.

³⁴² Targeting systems, proxy-means tests, community-based or geographic targeting, community-validation, are a few examples of tools that can strongly support accountability. See also Valentina Barca, “Grievance Mechanisms for Social Protection Programmes: Stumbling Blocks and Best Practice,” *International Policy Centre for Inclusive Growth*, One Pager 320, ISSN 2318-9118 (Brasília: IPC-IG, Apr 2015).

³⁴³ Accountability tools can turn to be inefficient due to different reasons; for example, due to an inconsistent legal design to a rights-based approach. Barca also argues that, at times, citizens also fear feedback and power relations (Barca). Also, citizens have limited access to such mechanisms due to different reasons, including, due to time limitations, short financial resources, limitations on information transparency, their own stigma or the lack of trust (Barca).

³⁴⁴ Basset et al, 30-31.

³⁴⁵ Id.

when inadequate grievance mechanisms lack bottom-up monitoring and standardized processes.

2.5 Summary

This chapter presented a general theoretical background for the analysis of accountability relationships in the context of housing programs. It first produced a critical debate over concepts and theories on accountability, it introduced the theoretical debate over the three accountability dimensions that will be set the outline for examination of this research (2.1.1) and introduced an understanding of who are the subjects of the accountability relation. In the sequence, it was necessary to dive into the problem of translation (2.1.2).

This chapter moved on to anchor its advocacy for human rights by introducing the rights-based perspective (2.2-2.2.1) and its analytical framework, based on goals and operations (2.2.2). It led then to the exploration of the human right to adequate housing (2.3-2.3.1) and legal guarantees that are crucial for vulnerable persons (2.3.2). This chapter also asserted on the importance of social housing policies in the materialization of human rights (2.3.3), and positioned this work by criticizing an equivocal paradox between economic growth and the materialization of human rights (2.3.4). Finally, this chapter united and illustrated theories of accountability and of human rights to the context of social housing (2.4) by contextually exploring the three dimensions (2.4.1-3). Before entering the empirical work, it is necessary to understand the socio-political conditions, as well as the legal and policy contexts of Brazil and Chile in the next chapter.

3 A Review: historical, political, socio-economic, legal and policy backgrounds

Brazil and Chile are both countries of the Latin American South Cone that share similar legal structures of civil law regimes, equivalent political structures (e.g. presidential republics with tripartite power branches), analogous historical contexts (from colonization to military dictatorships and democracy turnouts), and corresponding social issues in the twenty first century. In order to explore the crucial role of accountability relationships in the delivery of social housing services, this chapter creates a common ground for understanding the upcoming case studies (analyzed in ch. 4, 5 and 6). It will clarify about the historical, political and socio-economical similarities and paradoxes of Brazil and Chile (3.1). In the following, it introduces a basic overview of Brazilian and Chilean administrative law (3.2), reporting on administrative and public procurement procedures (3.2.1), and principles of administrative law (3.2.2), rights-based principles (3.2.3) and theories of responsibility of the state (3.2.4). At last, two final sections delve into the specific legal-historical policy development of the studied social housing ownership policies (3.3).

3.1 Historical, Political and Socio-economic Background

This section will provide a background on historical (3.1.1), political (3.1.2) and socio-economic trends (3.1.3) evidenced in both Brazil and Chile that have influenced both the creation and the development of the analyzed case studies.

3.1.1 A historical look

Brazil and Chile share a colonial past, of which remnants are deeply impregnated in legal, social and cultural modern lives.³⁴⁶ Both countries turned into independent republics in the 19th century, both began a heavy industrialization process and labor movement in the 1930's, failed into military dictatorships in the second half of the 20th century and opened to democracy around the 1990's.³⁴⁷ In 1964, a military coup installed a dictatorship in Brazil, which would formally last until 1985 with the elaboration of democratic, direct elections.³⁴⁸ In Chile, the chief of the military overthrew the democratically elected president Salvador Allende in 1973 with a *coup d'état* that would last until

³⁴⁶ Brazil from 1500 to 1889; Chile, from 1540 to 1830. The legal-administrative structure of municipalities, found in both countries, is an example of legal colonial vestiges. José Luis Cea Egaña, "Administración Comunal," Ch VIII in *Derecho Constitucional Chileno: Tomo IV*, 210–26. Ediciones UC, 2008.

³⁴⁷ See Ronald M. Schneider, *Latin American Political History*, (New York: Routledge, 2007), <https://doi.org/10.4324/9780429499340>; Salvatore Bizzarro, *Historical Dictionary of Chile*, 2nd ed., rev.enl.and Updated. Latin American Historical Dictionaries, no. 7 (Metuchen, N.J: Scarecrow Press, 1987).

³⁴⁸ See Manuel A. Garretón Merino, Fagen, Patricia Weiss, and Corradi, Juan E. eds., *Fear at the Edge : State Terror and Resistance in Latin America* (Berkeley, Los Angeles: University of California Press, 1992).

1990.³⁴⁹ The official Chilean Truth and Reconciliation Report of 1991 reported at least 3,428 cases of disappearance, killing, torture and kidnapping during the Pinochet dictatorship³⁵⁰. An international independent watchdog refers to at least 17,000 Brazilian victims of the dictatorship.³⁵¹

In the beginning of the twenty-first century, Brazilians and Chileans experienced the resurgence of democracy.³⁵² In both countries, policies started to surge in large scale aiming for the realization of human rights, with examples ranging from cash-transfer and anti-poverty policies. During this time, that region enjoyed a phase of high rates of economic growth, capital that was used to subsidize, for example, the mega-housing projects in analysis³⁵³. Although economically similar, Brazil has been observing worsened economic conditions since 2015. Criticisms to socioeconomic and political issues in the South Cone nations are, to an extent, analogous, as it will be clarified furthermore.

3.1.2 Latest political developments

Part of the literature wishes to regard the advance of housing policies in both countries during their military dictatorships.³⁵⁴ Nonetheless, it was with the support of international agencies that housing policies started to be developed, such as USAID, the World Bank and the Inter-American Development Bank.³⁵⁵ It can be said that it was Washington's neo-liberal ideology of financial development cooperation that materialized substantial changes in Chile, Brazil and to other countries.³⁵⁶ The use of those policies for the materialization of human

³⁴⁹ Alan Gilbert, "Power, Ideology and the Washington Consensus: The Development and Spread of Chilean Housing Policy," *Housing Studies* 17, no. 2 (Mar 1, 2002): 305–24, <https://doi.org/10.1080/02673030220123243>, 309.

³⁵⁰ "Truth Commission: Chile 90," Chile: National Commission for Truth and Reconciliation, Supreme Decree 355, Website, Accessed Apr 8, 2019, <https://www.usip.org/publications/1990/05/truth-commission-chile-90>.

³⁵¹ "Commission of Inquiry: Brazil," United States Institute of Peace, Website, Accessed Apr 8, 2019, <https://www.usip.org/publications/1979/01/commission-inquiry-brazil>.

³⁵² Jorge Castañeda, "Latin America's Turn Left," *Foreign Affairs* 85, no. 3 (2006), 35. Governments that Castañeda respectively names "tenuously reconstructed left" and "reconstructed left".

³⁵³ Castañeda, Jorge, 36.

³⁵⁴ Gilbert, "Power, Ideology and the Washington Consensus", 309. For example, it has been claimed that that during the military dictatorship "the outlines of a new housing model were taking shape."

³⁵⁵ See Gilbert, "Power, Ideology and the Washington Consensus".

³⁵⁶ See also Claudia Murray and David Clapham, "Housing Policies in Latin America: Overview of the Four Largest Economies," *International Journal of Housing Policy* 15, n. 3 (2015); World Bank, Assessment of the Procurement Systems of the Brazilian Federal Government and the Brazilian State of São Paulo: In Support of a Use of Country Systems Pilot Project in Procurement in São Paulo State, (World Bank Group: Latin America and the Caribbean Region, Dec 2010); OECD, *Public Procurement in Chile*; OECD, *Making Decentralisation Work in Chile: Towards Stronger Municipalities*, OECD Multi-Level Governance Studies (Paris: OECD Publishing, 2017). <https://doi.org/10.1787/9789264279049-en>; OECD, *Progress in Chile's Supreme Audit Institution Reforms, Outreach and Impact: Reforms, Outreach and Impact*, OECD Public Governance Reviews

rights was first adapted later (at least to an extent, as this work will find out), during the democratic years.

In 1977, still under the military dictatorship, Chile created a highly criticized capital subsidy approach³⁵⁷, which also affected other countries, such as South Africa and Colombia.³⁵⁸ From 2000 to 2010 and from 2014 to 2018, Ricardo Lagos and Michelle Bachelet, both members of the national socialist party, occupied the Chilean presidency and, although the primary skeleton of the first policies remains in their current design, the Chilean social housing model has been radically modified through out the years.³⁵⁹

There is also evidence that Brazil was inspired by other national urban housing policies.³⁶⁰ Though social security policies were already discussed during Brazil 1930's Vargas era, mega-housing projects started to be developed in the beginning of the 2000's.³⁶¹ At the same time, the national Labor Party³⁶² led the country, creating several urban and housing organs that supported rights-based goals.³⁶³ However, as much as democratic institutions and the realization of human rights were improved during those years, Latin America's "old vices" continued to limit performance outcomes.³⁶⁴

In Chile, the centre-right Sebastian Piñera became president in 2018, after serving until 2014. Yet, the social upheaval that started in September 2019, showed

(Paris: OECD Publishing, 2016). <https://doi.org/10.1787/9789264250635-en>; OECD, *OECD Reviews of Regulatory Reform: Brazil 2008*; World Bank, *Efficiency and Equity of Public Spending in Brazil*. It must be remarked that, during the past decades, different projects aimed at supporting multi-sector development solutions and shed light at national governance structures.

³⁵⁷ Gilbert, "Power, Ideology and the Washington Consensus", 310.

³⁵⁸ Alan Gilbert, "Helping the Poor through Housing Subsidies: Lessons from Chile, Colombia and South Africa," *Habitat International* 28 (2004), 17.

³⁵⁹ Gilbert, "Helping the poor through housing subsidies", 17.

³⁶⁰ César Simoni Santos, "The Geographic Nature of Financial Dominance in the Brazilian Real Estate Market," *Journal of the Geographical Society of Berlin – DIE ERDE* 149, n. 4 (2018).

³⁶¹ See also Hugo Priemus Bent Flyvbjerg, and Bert van Wee, ed. *Decision-Making on Mega-Projects: Cost-Benefit Analysis, Planning and Innovation*. Transport Economics, Management and Policy (Cheltenham, UK ; Northampton, MA: Edward Elgar, 2008), Introduction.

³⁶² In Brazil, from 2003 to 2016, the Labour Party ruled the country led by Lula da Silva and his successor Dilma Rouseff.

³⁶³ Milko Matijascic and Stephen J. Kay, "Understanding the Brazilian Social Policy Model: Myths, Milestones and Dynamic Social Security." *International Social Security Review* 67, no. 3–4 (2014); Bruno Silva Quirino et al, "Análise Do Programa Habitacional Minha Casa, Minha Vida Nas Perspectivas Da Inovacao Social Dos Negocios Sociais." *Revista de Gestao Social e Ambiental* 9, n 3 (Sao Paulo: Sep-Dec, 2015), 97.

³⁶⁴ Castañeda, 35. Castañeda names those vices as corruption and institutional hierarchies, to what legal loopholes, obscurities, and problematic designs can be added.

that nationals remain highly unsatisfied.³⁶⁵ In Brazil, diverse corruption scandals have induced distrust both on the political system and social policies.³⁶⁶ Roussef was impeached on August 31, 2016,³⁶⁷ while Lula was sentenced to nearly thirteen years in prison,³⁶⁸ based on claims of corruption and money laundry.³⁶⁹ In this turmoil, the far-right Jair Bolsonaro came to Presidency in January, 2019, for which he became better known for his open support to violations against human rights and to military dictatorship.³⁷⁰ As already forecasted by

³⁶⁵ Jonathan Franklin, “Chile Protesters: ‘We Are Subjugated by the Rich. It’s Time for That to End,’” *Guardian* on Oct 30, 2019, sec. World news. <https://www.theguardian.com/world/2019/oct/30/chile-protests-portraits-protesters-sebastian-pinera>; Pascale Bonnefoy, “‘Chile Woke Up’: Dictatorship’s Legacy of Inequality Triggers Mass Protests.” In World, *New York Times*. Website. Accessed Nov 3, 2019. <https://www.nytimes.com/2019/11/03/world/americas/chile-protests.html>; “Crisis in Chile: Zero Tolerance for Corruption Is at Centre of the Solution,” Transparency International, Website, Accessed Dec 5, 2019. <https://cutt.ly/lyMphd3>.

³⁶⁶ See also Flavia Bedicks, “How Have Corruption Scandals and President Roussef’s Impeachment in Brazil Impacted Its Economy?” *Clocks and Clouds* 7, 2 (2017). <http://www.inquiriesjournal.com/a?id=1633>; Glenn Greenwald, Leandro Demori and Betsy Reed, “How and Why The Intercept Is Reporting on a Vast Trove of Materials About Brazil’s Operation Car Wash and Justice Minister Sergio Moro.” *Intercept*, Website, Jun 9, 2019. <https://theintercept.com/2019/06/09/brazil-archive-operation-car-wash/>; “Caixa diz que fraude no Minha Casa foi descoberta pelo próprio banco,” *Revista Valor Economico*, Website, Accessed Apr 28, 2016. <https://www.valor.com.br/politica/4542475/caixa-diz-que-fraude-no-minha-casa-foi-descoberta-pelo-proprio-banco>; “PF combate fraudes de mais de R\$ 200 mi em financiamentos imobiliários da Caixa,” Agência Polícia Federal, Official Website. Accessed Apr 2, 2019. <http://www.pf.gov.br/agencia/noticias/2016/04/pf-combate-fraudes-de-mais-de-r-200-mi-no-programa-minha-casa-minha-vida>.

³⁶⁷ Jonathan Watts, “Brazil’s Dilma Rousseff Impeached by Senate in Crushing Defeat,” *World news in Guardian*, Website, Accessed Sep 1, 2016, <https://www.theguardian.com/world/2016/aug/31/dilma-rousseff-impeached-president-brazilian-senate-michel-temer>. Roussef was first took out of power on May 12, 2016.

³⁶⁸ Vanessa Barbara, “Where Do You Turn When the Anti-Corruption Crusaders Are Dirty?” In *Opinion*, *New York Times*. Website. Accessed Jul 10, 2019. <https://tinyurl.com/y9lvkyex>; Glenn Greenwald, and Victor Pougy, “Scandal for Bolsonaro’s Justice Minister Sergio Moro Grows as The Intercept Partners With Brazil’s Largest Magazine for New Exposé,” *Intercept*. Website. Accessed Jul 5, 2019. <https://theintercept.com/2019/07/05/scandal-for-bolsonaros-justice-minister-sergio-moro-grows-as-the-intercept-partners-with-brazils-largest-magazine-for-new-expose/>. Strong evidence from watchdogs and independent organizations support that legislative, ombudspersons, the judiciary and the media conspired against the former presidents. Although not a direct topic in this dissertation, this reflects a philosophical dimension of accountability, in the necessity of ethic and integrity of forums in enforcing clear and transparent rules and roles.

³⁶⁹ “Ex-President Lula Sentenced to Another 12 Years in Jail,” *Agência Brasil*, Website, Accessed Feb 6, 2019. <https://cutt.ly/0yMpdWG>; Ricardo Brito and Jamie McGeever, ed. Lisa Schumaker, “Back to Jail, or Run for President: The Legal Maze Facing Brazil’s Lula,” *Reuters*, Website, Accessed Nov 11, 2019. <https://www.reuters.com/article/us-brazil-corruption-lula-idUSKBN1XL2FO>. Lula was freed from prison on November, 2019, after a decision of the Supreme Court that favored his case.

³⁷⁰ Anthony Faiola and Marina Lopes, “LGBT Rights Threatened in Brazil under New Far-Right President,” *Washington Post*, Website, Accessed April 10, 2019. <https://cutt.ly/yyMpprR>; “Jair Bolsonaro, Latin America’s Latest Menace”, *Economist*, Website, Accessed Sept 20, 2018. <https://www.economist.com/leaders/2018/09/20/jair-bolsonaro-latin-americas-latest-menace>; “Why Is Jair Bolsonaro Commemorating a Coup That Happened 55 Years Ago?,” *Economist*, Website, Accessed Apr 5, 2019. <https://www.economist.com/the-economist-explains/2019/04/05/why-is-jair-bolsonaro-commemorating-a-coup-that-happened-55-years-ago>.

Goetz and Jenkins, because accountability has partially failed in the new democracies of the global South, it has made “democracy face [... one of] its most serious crises”, which would be the reason why “people turn away from democracy most quickly.”³⁷¹

3.1.3 Socio-economic trends

In comparison to other countries, Brazilians face a greater deal of corruption, for the country is listed n. 105 in the Transparency International Corruption Perception Index.³⁷² Chile is placed n. 27 in that same index, and even considered one of the least corrupt countries in Latin America.³⁷³ Yet, although those social inequalities involve issues in governance and accountability that can be solved, they also share deep historical roots. According to the United Nations,

the root causes for (...) acts of violence and natural disasters can often be traced, at least in part, to an accumulated and unresolved backlog of social problems. Conflicts that appear to be ethnically based may in fact have their roots in poverty and lack of employment opportunities. The impact of natural disasters, such as earthquakes or hurricanes, may also be aggravated by inadequate housing conditions, or by poor environmental conditions caused by overcrowding or intensification of agriculture as people living in poverty attempt to increase incomes.³⁷⁴

Thus, social, economic, political, environmental issues affected Latin America as a whole and have contributed to modern crises.

Brazil and Chile have shared similar GDP per capita values until 2014, at that time respectively 12,112USD and 14,670 USD per capita³⁷⁵. Nevertheless, an antagonist economic development led to very different GDP per capita in 2018, respectively 8,920USD and 15,923USD in Brazil and Chile.³⁷⁶ In Brazil, at least 40 million people face the issues of poverty daily.³⁷⁷ With a Gini coefficient at

³⁷¹ Goetz and Jenkins, 2.

³⁷² “Corruption Perceptions Index 2018,” Transparency International, Online Database Platform, Accessed Jul 18, 2019, <https://www.transparency.org/cpi2018>.

³⁷³ “Chile Corruption Report,” GAN Integrity, Business Anti-Corruption Portal, Website, Accessed July 21, 2019. <https://www.ganintegrity.com/portal/country-profiles/chile/>.

³⁷⁴ UN General Assembly (UNGA), “Comprehensive Report on the Implementation of the Outcome of the World Summit for Social Development: Report of the Secretary-General,” E/CN.5/2000/2 (Apr 3, 2000), para 877.

³⁷⁵ World Bank, “GDP per Capita (Current US\$) – Data 2017,” Online Database Platform, Accessed Apr 15, 2019, <https://data.worldbank.org/>.

³⁷⁶ World Bank, “GDP per Capita (Current US\$) – Data 2017.”

³⁷⁷ World Bank, *Poverty & Equity Brief: Latin America & the Caribbean: Brazil*, (World Bank

0.533, statistics identify higher inequality level in Brazil in comparison to Chile (0.466).³⁷⁸

As one of the richest Latin-American countries, Chile has 33% of its wealth concentrated in one per cent of the population, a social gap that only worsens exclusion³⁷⁹: 3.5 million people or ca. 20.9% of the national population lives in conditions of poverty, according to a multidimensional poverty measure developed by Chile's National Ministry of Social Development.³⁸⁰ In general, 20,6% of Brazilians population live with less than 5,50 USD a day (in PPP terms), but that statistic raises up to almost half of the population in some states.³⁸¹

In 2012, Brazil's urban housing gap amounted the number of 4.6mi units,³⁸² mostly concentrated among low-income urban households, and a total demand that could reach over 9mi units.³⁸³ The Chilean housing gap dropped from ca. 1mi to ca. 390,000 units, from 1990 to 2017, though that is yet an expressive amount if calculated proportional to the population.³⁸⁴ In both countries, housing inadequacy has been related to unaffordability, overcrowding, cohabitation and precarity.³⁸⁵ The lack of sewerage and scarcity of potable water – as well as their consequences, such as flooding and concerning diseases – add to the housing concerns in both countries. More than 1.2mi dwellings require some kind of maintenance, expansion, or related infra-structure in Chile.³⁸⁶ Almost 10% of Chilean dwellings lack private access to an indoor flushing toilet.³⁸⁷ In Brazil, 78 million already live deprived from access to sewage, water supply and garbage collection.³⁸⁸ And, although the number of informal settlements in Chile is

Group, Oct 2018). Taking into consideration that Brazil has a population of ca. 200mi people, that would mean that an equivalent proportion of persons live under the line of poverty in Brazil and Chile, ca. 20% of their both national population.

³⁷⁸ World Bank, "GINI Index (World Bank Estimate) – Data 2017," Online Database Platform, Accessed April 15, 2019. <https://data.worldbank.org/>.

³⁷⁹ Franklin, Jonathan. "Chile Protesters: 'We Are Subjugated by the Rich. It's Time for That to End.'" *The Guardian*, October 30, 2019, sec. World news. <https://www.theguardian.com/world/2019/oct/30/chile-protests-portraits-protesters-sebastian-pinera>.

³⁸⁰ Chile, "Informe de Desarrollo Social 2016," 2016, 12-13, table 2.1; United Nations, A/HRC/37/53/Add.1.

³⁸¹ World Bank, *Poverty & Equity Brief*.

³⁸² Fundacao Joao Pinheiro, Centro de Estatística e Informações, "Déficit Habitacional No Brasil 2011-2012" (Belo Horizonte: FJP, 2015), <https://tinyurl.com/yb9hzo2f>, 31, 39, table 3.3.

³⁸³ Caixa Econômica Federal, "Demanda Habitacional No Brasil" (Brasília: CEF, 2011), 31.

³⁸⁴ United Nations, A/HRC/37/53/Add.1, para 18.

³⁸⁵ Fundacao Joao Pinheiro, Centro de Estatística e Informações, "Déficit Habitacional No Brasil 2013-2014," (Belo Horizonte: FJP, 2016), <https://tinyurl.com/ybwgpugu>, 45-51; Pero, "Housing Policy in Chile."

³⁸⁶ United Nations, A/HRC/37/53/Add.1, para 18.

³⁸⁷ "OECD Better Life Index." OECD, On line Interactive Platform, Accessed Apr 5, 2019. <http://www.oecdbetterlifeindex.org/topics/housing/>; United Nations. "Report of the Special Rap, A/HRC/37/53/Add.1, para 7; Chile, "Informe de Desarrollo Social 2016," 12.

³⁸⁸ World Bank Group, *Poverty & Equity Brief: Brazil*; Ministério das Cidades, "Sistema Nacional de Informacoes sobre Saneamento: Diagnóstico dos Servicos de Água e Esgotos – 2016" (Brasília:

not as high as in its South-Cone neighbor, there has been an increase in that number in the past years.³⁸⁹

Although the construction of an extreme quantity of new low-price units in a short period of time is necessary, this has led to cases of extreme low quality that did not satisfy housing adequacy.³⁹⁰ According to the Special Rapporteur, this system, highly influenced by financial institutions, created discrimination upon new neighborhoods relating social housing to the image of “cheap constructions” in “urban guettos.”³⁹¹ As well, “security of tenure in those cases had come at the expense of housing as a human right, such as location, quality and habitability, access to transportation and employment opportunities.”³⁹² And, just alike, the human right to housing remains inaccessible to many city dwellers who are victims of an unjust system.

The conclusion is that “these assaults on dignity and life are being accepted as fixed features of a new global economic order.”³⁹³ That must be changed because inadequate housing conditions develop into homelessness, insecurity, risk of evictions and displacement, informality and unaffordability constraining the lives of millions in the South Cone.³⁹⁴

SNSA/MCIDADES, 2018), 8. According to this report of the Ministry of Cities, in 2016, municipalities with access to water and sewage sanitation respectively amounted only 92,7% and 44,8% respectively.

³⁸⁹ United Nations, A/HRC/37/53/Add.1, 11; “Monitor de Campamentos: Centro de Investigación Social – CIS,” TECHO, Online Database Platform, Accessed July 21, 2019, <http://chile.techo.org/cis/monitor/>. The social monitor developed by Techo, a non-profit foundation, provides statistical and geographical information about existent housing projects and *campamentos* in Chile. *Campamentos* are comparable to the Brazilian *favelas*: informal settlements with inadequate housing conditions. In 2017, more than 40,000 households were identified in *campamentos* in Chile.

³⁹⁰ For more insight on the matter of quantitative performance in social housing projects, see Beier, Raffael, and Mariana Vilmondes, “Die Dominanz Des Quantitativen: Das Dilemma Des Rechts Auf Angemessenen Wohnraum in Brasilien, Marokko Und Südafrika,” *Raumplanung* 182, 6 (2015).

³⁹¹ UN 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 in This Context, Raquel Rolnik,” A/HRC/10/7, (HRC, 2009), para 47.

³⁹² UN Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/WG.6/32/CHL/2 (HRC, Nov 16, 2018), para 53.

³⁹³ United Nations, A/HRC/37/53/Add.1, para 1.

³⁹⁴ “Search Earthquake Catalog,” Earthquake USGS, Accessed Jul 5, 2019, <https://earthquake.usgs.gov/earthquakes/search/>. Historical issues, such as inequality and discrimination, are complemented by new challenges, including new challenges with the wave of immigrants especially from Venezuela, a water crisis and environmental disasters also due to tailing dams. “OAS Commission Warns about Human Rights in Brazil,” Agência Brasil, Accessed Nov 13, 2018, <http://agencia-brasil.etc.com.br/en/direitos-humanos/noticia/2018-11/oas-commission-warns-about-human-rights-brazil>; “Water in Brazil: From Abundance to Scarcity,” Agência Brasil, Website, Accessed April 10, 2019. <http://agenciabrasil.etc.com.br/en/geral/noticia/2018-10/water-brazil-abundance-scarcity>; “Brasília Welcomes Another 46 Venezuelans under Resettlement Initiative,” Agência Brasil, Website, Accessed Dec 21, 2018. <https://tinyurl.com/y8pe97dk>; “Brazil’s Worst Ever Dam Disaster Follows Years of Regulatory Capture.” *The Americas*, Economist, Website, Accessed January 31, 2019. <https://www.economist.com/the-americas/2019/02/02/brazils-worst-ever-dam-disaster-follows>

3.2 Administrative Law Review

Brazil and Chile have civil law regimes, based on continental European law, mainly inspired by Portuguese and Spanish systems, but also by French and German theories.³⁹⁵ Basically, they share a similar tripartite structure of separation of powers, led by a constitution based on democracy and on the rule of law. Administrative principles are analogous and, although their legal systems do not directly refer to accountability, they indirectly construct responsibility, answerability and enforcement structures. However, differences must be highlighted.

Overall, Chile and Brazil showed different performances in the enforcement of norms. According to WJP's 2020 Rule of Law Index Report in reference to measures and "constraints" against the government and its officials, Chile lays on position n. 20, in contrast to Brazil, n. 64.³⁹⁶ Regarding openness, information sharing and different accountability mechanisms for empowerment, countries are respectively placed n. 18 and n. 31.³⁹⁷ The same ranking defined Chile on position n. 26, against Brazil, n. 60 upon the extent "regulations are fairly and effectively implemented and enforced."³⁹⁸ It is expected that this difference between Chilean and Brazilian accountability indexes resemble similarly furthermore in the social housing scenario. This section will prepare the specific legal background of this research in respect to administrative and public procurement procedures (3.2.1), principles of administrative law (3.2.2), rights-based principles (3.2.3) and theories of responsibility of the state (3.2.4).

3.2.1 Administrative and public procurement procedures

Whereas national Constitutions dictate general guidelines, infra-constitutional norms are supposed to be adapted and followed. In Chile, for instance, that follows to ordinary or common laws, organic constitutional laws, of qualified forum and different forms of decrees³⁹⁹. Internal and external administrative acts (*reglamento*, in Chile, *portaria* in Brazil) and as well as *erga omnes* Court decisions are also part of those legal systems.

Since 1988, the Brazilian public administration has been divided in categories of direct and indirect organs, for which the direct administration comprehends

[years-of-regulatory-capture](#). Since 1919, at least 66 earthquakes with magnitude 7 or more (Richter scale) have been recorded in Chile, at times followed by tsunamis. Brazilians do not usually face those same natural disasters, although urban centers urge for sustainable resilience.

³⁹⁵ For instance, in matters that have touched this study, the theory of *cláusula da reserva do possível* has its origins from the German theory of *Vorbehalt des Möglichen*; the theory of the objective liability of the State has its origins on the French administrative law.

³⁹⁶ WJP, 22.

³⁹⁷ WJP, 24.

³⁹⁸ WJP, 27.

³⁹⁹ Just to mention, *decretos con fuerza de ley*, *decretos leyes*, *decretos supremos*. For more details, see Danziger, 73-94;99-142.

the Presidency and its ministries.⁴⁰⁰ Other bodies that are indirectly part of that structure comprehend public enterprises, superintendencies and agencies. Basically, the Public Administration is divided in three levels, namely the Federal Union, states and municipalities, all with directly elected representatives for a four-year mandate.⁴⁰¹ Norms of federal members are complementary in setting the agenda of the public administration, in which they have common powers to promote housing programs and programs for the improvement of sanitation conditions, as well as to fight poverty and other causes of inadequate standards of living. They shall concurrently legislate on i.a. urbanistic law, social security and protection, as well as on legal assistance and public defense.⁴⁰²

Chile's division, on the other hand, recognizes regions, provinces, and communes. Intendants (*intendentes*) and governors, respectively chefs of regional governments and provinces, are directly appointed by the President.⁴⁰³ A regional council is elected via direct elections, to engage with normative, resolute and monitoring tasks aiming at the regional development.⁴⁰⁴ A governor "supermonitors" the province's public services.⁴⁰⁵ Local administrations, also called the communes, are headed by *alcades* and a local council, directly elected by locals for a four-year mandate.⁴⁰⁶ In what regards the public administration, organs of the Chilean Administration should strengthen i.a. the equal and solidarity development of regions, provinces and communes.⁴⁰⁷

A word on public procurement procedures

Public procurement procedures are inherent to service delivery in Brazil and Chile. At this point, however, stronger disparities can be observed between both administrative legal systems because, though growing from a very similar background, the respective analyzed systems have developed differently. In Brazil, public contracts should be preceded by public bids, as regulated by i.a. the Public Procurement Law.⁴⁰⁸ It refers to all levels and organs of the administration,

⁴⁰⁰ Brasil, Decreto-Lei 200, de 25 de fevereiro de 1967, D.L. 200 (1967).

⁴⁰¹ The Federal District is from here on left unmentioned, but it is so structured to possess the same powers as states and municipalities. See Brasil, Constitution, art. 23, IX-X.

⁴⁰² Concurrent legislation means that the Union provides a general norm, with guidelines, that shall be specified locally. Brasil. Constitution, art. 24, I, XII-XIII, p. 1.

⁴⁰³ Chile, Constitution, art. 111; Danziger, Gabriel Celis. *Curso de Derecho Administrativo*. Chile: Thomson Reuters, 2010, 273-76.

⁴⁰⁴ Chile, Constitution, art. 116-117; Danziger, 276.

⁴⁰⁵ Chile, Constitution, art. 116; Danziger, 282.

⁴⁰⁶ Chile, Constitution, art. 118, Danziger, 290-305.

⁴⁰⁷ Chile, Constitution, art. 1.

⁴⁰⁸ Brasil, Lei 8.666, de 21 de junho de 1993, L. 8.666 (1993). Public procurement laws envisage contracts conducted by the anyone governmental institution. In Brazil, that also includes contracts conducted by the government with municipalities or state funds. See more about the Brazilian public procurement system in Cássio Garcia Ribeiro et al, "Unveiling the Public Procurement Market in Brazil: A Methodological Tool to Measure Its Size and Potential," *Development Policy Review* 36, no. S1 (2018), online, <https://doi.org/10.1111/dpr.12301>.

as well as entities directly or indirectly controlled by them though, exceptionally, other rules may apply, if regulated by specific norms or, in special cases, if complemented by state or municipal legislation. For instance, L. 13.303 subjects public companies, mixed-capital firms and those subsidiary firms to different public procurement rules.⁴⁰⁹

Generally, the Chilean system foresees comparatively less exceptions than the Brazilian legal system. There are mainly four models of public bidding processes, according to Danziger.⁴¹⁰ This compact, more simplified system follows the principle that the state has a contractual privileged condition in detriment of a private party, also recognized in the Brazilian model.⁴¹¹ That privileged condition foresees the capacity to unilaterally change contractual clauses, or *jus variandi*, and the discretionary faculties to manage, monitor, interpret and sanction.⁴¹² For example, ChileCompra and ChileCompra Express are platforms that enable the purchase of goods and services by public actors.⁴¹³

3.2.2 Principles of Administrative Law in Brazil and Chile

Brazilian and Chilean legal systems share similarities on principles and guidelines of administrative law, as it can be observed on table 2. In both legal systems, infra-constitutional laws set guidelines and design enforcement procedures in administrative instances.⁴¹⁴

According to the principle of efficiency, the Brazilian public administration procedure shall respect cost, quality and time-constraining factors.⁴¹⁵ That means, for instance, that in a public bid, a procedure shall decide for the cheapest price, the best quality and the fastest available choice. This choice shall too be plausible and be itself constituted of plausible procedures: according to Brazil's Constitutional Court, even time periods for responding citizens should not extend a plausibility.⁴¹⁶

⁴⁰⁹ Brasil, Lei 13.303, de 30 de junho de 2016, L. 13.303 (2016).

⁴¹⁰ Danziger, 470-74. *Licitación pública, licitación privada, convenio marco and contratación directa*.

⁴¹¹ Danziger, 470-75; Joel de Menezes Niebuhr, *Licitação Pública e Contrato Administrativo*, 2 ed, Coleção Fórum Menezes Niebuhr (Belo Horizonte: Editora Fórum, 2011).

⁴¹² Danziger, 474-75.

⁴¹³ OECD, *Public Procurement in Chile: Policy Options for Efficient and Inclusive Framework Agreements*, 15-18; "Información Del Proveedor," ChileCompra MercadoPublico.cl, Official website, Accessed Dec 1, 2019, <https://tinyurl.com/ybhvg19n>.

⁴¹⁴ Chile, L. 19.880, art. 4; Danziger, 365-80; Brasil, Constitution, art. 37; Brasil, Lei 9.784, de 29 de janeiro de 1999, L. 9.784 (1999), art. 2; See Júlio César Bueno, "Brazil," in *Construction Law & Practice: Jurisdictional Comparisons*, ed. Lovatt, Clive, and Smith, Edward Banyard, European Lawyer Reference Series, 1 ed. (London: Sweet & Maxwell, 2012), 26-27.

⁴¹⁵ Niebuhr, 43.

⁴¹⁶ Brasil, Supremo Tribunal Federal, AR 1244 EI, Rel. Min. Cármen Lúcia, At DJe 63 Mar 30, 2017 (Pleno Sep 22, 2016).

Efficiency resonates to Chile's economy and celerity principles.⁴¹⁷ The principle of *economía procedimental* aims at achieving the best performance with the available performances and celerity prohibits unjustified delays.⁴¹⁸ For example, as of 2008, the Contraloría ruled a violation the delay of ca. 1,5 years for the edition of an administrative act that published a contract.⁴¹⁹ But also, the principle of *celeridade* comprehends the grounding motivation of the public administration to install a process by its own initiative under a rigorous due process.⁴²⁰

Moreover, *escrituración* and non-formalization are two complementary principles in the Chilean context. This principle is analogue to the ideals of legality and legal certainty observed in the Brazilian context. On the one hand, *escrituración* requires administrative acts to be expressed in written form, even if in electronic means.⁴²¹ On the other hand, it contrasts to the non-formalization principle, which suggests that a procedure may dispense formalities, if that is necessary e.g. to avoid damages.⁴²² In Brazil, non-formalization is analogue to celerity and economy principles (which are again relativized by the necessity of a written proof).

Brazilian principles of duty of motivation and right to access to information, convey the obligation of the Administration to respond by explicitly providing a decision in administrative processes, and the right to receive an information claimed.⁴²³ Those also find a parallel to the Chilean administrative principles of inexcusability, conclusiveness and *impugnabilidad*.⁴²⁴ They are essential for the enforcement of the public administration (in reference to the factor answerability). In this sense, a public servant or policy-maker is accountable for their own acts and for what they have been delegated.

Particularly to what regards the agent, the Chilean bill provides that they shall act *sua sponte*.⁴²⁵ That same theory is extended in the Brazilian law, which requires that administrative decisions must be justified.⁴²⁶ Overall, administrative decisions must be based on rational reasoning. This ground idea follows to the principles of purpose limitation, plausibility and proportionality, that cover an

⁴¹⁷ Chile, L. 19.880, art. 4.

⁴¹⁸ Danziger, 370.

⁴¹⁹ Chile, Contraloría General de la República, Dictámen 26.305 (Jun 6, 2008).

⁴²⁰ Danziger, 368.

⁴²¹ Chile, L. 19.880, art. 5; Danziger, 366-367.

⁴²² Danziger, 366-367.

⁴²³ Brasil, L. 9.784, art. 48; Brasil, Constitution, art. 5, XXXIII, XXXIV, LIV e LV; Chile, L. 19.880, art. 8, 14, 15.

⁴²⁴ In Spanish, *impugnabilidad* can be literally translated as contestability, or a right to challenge an administrative act. See Chile, L.19.880, art. 15.

⁴²⁵ Chile, L. 19.880, art. 7.

⁴²⁶ Although this is not named as a principle, but as a rule, the Brazilian law also safeguards this same matter as the Chilean law. The expression "*de oficio*" has a similar meaning in both Portuguese and Spanish languages. See Brasil, L. 9.784, art. 2, p.u., XII, 50.

agent's discretion in service delivery.⁴²⁷ Both legal systems also assign principles of publicity, transparency, gratuity and *audi alteram partem* or the faculty of a person to be heard before they are sentenced.⁴²⁸

Furthermore, the principle of legality resonates in the Brazilian system with demands to organs of the public administration and public agents to observe the law as a guide and limit to their actions, that they shall not extrapolate.⁴²⁹ Legal certainty is also explained as the necessity to “protect the trust” of citizens in the State.⁴³⁰ Also backed by the Brazilian principles of morality, public interest, legal certainty, and impersonality and by the Chilean impartiality and abstention principles, public agents should remain neutral and abstain from interfering in case of bias, e.g. due to personal interests, to which they also have the duty to act under standards of morality and ethics.⁴³¹ For example, violations related to nepotism and cronyism would impact all the referred principles.⁴³² Morality also stands for acting in “harmony with the public interest”, conveying the responsibility to act in compliance to the legal system.⁴³³

In sum, it can be inferred that an agent acting in good-faith and probity must be able to provide answers when requested, to which they may be sanctioned if incurring in violations.⁴³⁴ And, although not clearly stated in Brazilian and Chilean laws, it can be inferred from the above mentioned principles that agents will too be guided by accountability in their relationships.

⁴²⁷ Brasil, L. 9.784, art. 2; Niebuhr, *Licitação Pública e Contrato Administrativo*, 2011, 46-47.

⁴²⁸ Chile, Ley 20.922, de 25 de mayo de 2016, L. 20.922 (2016); Chile, L. 19.880, art. 6, 16; Brasil, Access to Information Bill, L. 12.527, de 18 de novembro de 2011, L. 12.257 (2011) [Lei de Acesso à Informação]; Brasil, L. 9.784, art. 2, p.u., X, XI. In Brazil's L. 9.784, transparency and gratuity are not named as principles, but as criteria to be observed. Nevertheless, the constitution already “the right to petition the Government in defense of rights or against illegal acts or abuse of power” without the payment of any fees (Brasil, Constitution, art. 5, XXXIV).

⁴²⁹ Brasil, L. 9.784, art. 2.

⁴³⁰ Brasil, L. 9.784, art. 2; Brasil, Supremo Tribunal Federal, RE 598099, Rel. Min. Gilmar Mendes, At DJe 189 vol. 2599-03 p. 314 Oct 3, 2011 (Pleno Aug 10, 2011).

⁴³¹ Brasil, L. 9.784, art. 2; Chile, L. 19.880, art. 11-12.

⁴³² Brasil, Supremo Tribunal Federal. Súmula Vinculante 13, “a nomeação de cônjuge, companheiro ou parente em linha reta, colateral ou por afinidade, até o terceiro grau, inclusive, da autoridade nomeante ou de servidor da mesma pessoa jurídica investido em cargo de direção, chefia ou assessoramento, para o exercício de cargo em comissão ou de confiança ou, ainda, de função gratificada na administração pública direta e indireta em qualquer dos poderes da União, dos Estados, do Distrito Federal e dos Municípios, compreendido o ajuste mediante designações recíprocas, viola a Constituição Federal.” At DJe 162 p. 1 Aug 29, 2008 SV13 (2008). According to Brazilian Constitutional Court's Biding Precedent n. 13, the nomination of a spouse, partner or relative up to third degree violates the Constitution.

⁴³³ Brasil, L. 9.784, art. 2, caput, p.u, IV. Author's own translation. See Niebuhr, *Licitação Pública e Contrato Administrativo*, 45.

⁴³⁴ Brasil, L. 9.784, art. 2, caput, p.u, IV.

Brazil	Chile
efficiency, plausibility	economy, celerity, non-formalization
legality, legal certainty	escrituración
motivation, right to access information	inexcusability, conclusiveness, impugnabilidad
publicity, transparency, gratuity	publicity, transparency, gratuity
<i>audi alteram partem</i>	<i>audi alteram partem</i>
morality, public interest, impersonality, purpose limitation, proportionality, plausibility	abstention, impartiality

Table 2: Principles of the public administration(s): Brazil and Chile in comparison

3.2.3 Rights-based principles

Transparency has been constitutionally safeguarded by the Brazilian Constitution, as for the right to receive information.⁴³⁵ That includes requests to any public agency upon one's personal, collective or general interest.⁴³⁶ But that same right can suffer exceptional limitations in case the publicity of facts impacts in other rights, such as intimacy, social interest, or national security.⁴³⁷

⁴³⁵ Brasil, Constitution, art. 5, LXXIV, LX.

⁴³⁶ Id.

⁴³⁷ Ib.

In Chile, however, the right to access to information and the principle of transparency have not been constitutionally safe-guarded. Although they are based on the constitutional principle of publicity and the literature has created a framework that recognizes transparency and access to information, the lack of formal constitutional recognition limits its justiciability.⁴³⁸ Transparency and access to information appear in infra-constitutional terms and, very importantly from a rights-based perspective, have been materialized via grievance mechanisms.⁴³⁹

For example, Chile provides a model of active transparency with the obligation of monthly updates of information on official websites.⁴⁴⁰ Any person can present a complaint if that duty is not followed.⁴⁴¹ Additionally, even if not naming so, the law creates the dimensions of responsibility, answerability, enforcement as part of the right to access to information.⁴⁴² First, the Public Administration imposes obligations to provide free access to the maximum information as possible (in other words, responsibility).⁴⁴³ Second, it expects efficient response to any requests (answerability), which face permanent control (enforcement).⁴⁴⁴ Hence, the concept of accountability is recognized in the Chilean legal framework as the guarantee for transparency.

Moving closer to a rights-based perspective, the Brazilian norm created the administrative process, but in a not as extensive or detailed law as the Chilean bill.⁴⁴⁵ It created the subject of the “administrated”, which is any citizen in the category of a right-holder and counter-part in a public accountability relationship with the government that may be directly or indirectly affected by it.⁴⁴⁶ And, as an interested party, anyone affected by an administrative process is legitimate to take part on it. Those can be, for instance, citizens or legal persons, entitled to individual, diffuse or collective rights. They are granted the right to have to access to any administrative act in which one might be interested.⁴⁴⁷

Brazilian actors are expected to expose facts with veracity, to avoid temerarious actions and not only provide informations when required, but also collaborate to the clarification of facts.⁴⁴⁸ In convergence with the stablished in international norms and in the literature, the agent is expected put to public interest before

⁴³⁸ Chile, Constitution, art. 8, 1; Danziger, 203-215.

⁴³⁹ Chile, Ley 20.285, de 11 de agosto de 2008, L. 20.285 (1980), art. 24. For example, a special administrative dispute may be installed before the *Consejo para la Transparencia*, in order to guarantee access to public information.

⁴⁴⁰ Chile, L. 20.285, art. 7.

⁴⁴¹ *Ib.*, art. 8.

⁴⁴² *Ib.*, art. 11, j, i, h.

⁴⁴³ *Ib.*, art. 11, j.

⁴⁴⁴ *Ib.*, art. 11, h-i. Named by the law as principle of “opportunity”, but defined categorically as answerability.

⁴⁴⁵ Brasil, L. 9.784; Brasil, Access to Information Bill.

⁴⁴⁶ Brasil, L. 9.784, art. 3, II.

⁴⁴⁷ *Id.*, art. 3, II; 9-10.

⁴⁴⁸ *Ib.*, art. 4.

their own.⁴⁴⁹ That leads to a less evident but yet present understanding of answerability operated in the Brazilian system: the duty to formulate allegations and present them as documents before a decision of a competent authority takes place.⁴⁵⁰

Albeit it can be inferred that answerability, responsibility and enforcement are backed by the frameworks through the proffered principles, there is an urgency to adjust norms. Administrative laws, meant to design the actions of civil servants on behalf of the public administration in the studied countries, should explicitly name accountability as a principle and materialize answerability, responsibility and enforcement factors.

3.2.4 Theories of responsibility of the State

Whereas Chilean Courts have not yet settled an understanding, the objective civil liability of the state and of legal persons is accepted by the Brazilian jurisprudence.⁴⁵¹ In what regards duty-bearers, L. 12.846 aimed exactly at increasing control of legal persons in public procurement procedures, after the jurisprudence had already observed that only legal persons can objectively respond in case of damage compensation.⁴⁵² Literature and jurisprudence are generally clear in Brazil, accepting that the state takes on a risk for its activity and a responsibility towards damages caused to third parties.⁴⁵³ The Brazilian Supreme Court has been consistently understanding that civil liability is an objective responsibility⁴⁵⁴ based on an administrative risk of damage, administrative action and causality.⁴⁵⁵

⁴⁴⁹ Nevertheless, an agent that has actively engaged in violations has already failed to put public interest first. So, the aim of the legislator here is to remind the agent that their responsibility is not resolved.

⁴⁵⁰ Brasil, L. 9.784, art. 3, III-IV.

⁴⁵¹ The French term inspired both Chilean and Brazilian jurisprudence, though the different development of both legal systems. See French Civil Code (1803), art. 1.382: “*Tout fait quelconque de l’homme, qui cause à auteur un dommage, oblige celui par la faute duquel il es arrived à le réparer*”. See Furtado, ch. 17; Melo, ch. XIX; Brasil, Lei 12.846, de 1 de agosto de 2013, L 12.846 (2013); Chile, Corte Suprema. Fallo 2.732-2015 (3S Sep 1, 2015);

⁴⁵² Brasil, Supremo Tribunal Federal, RE 470996 AgR/RO, Rel. Min. Eros Grau. At DJe171 vol. 2373-02 p. 444 Sep 11, 2009 (2T Aug 18, 2009); Brasil, L. 12.846.

⁴⁵³ Furtado, 869; Melo, 805.

⁴⁵⁴ The vocabulary used in both Spanish and Portuguese is the same: “responsabilidad” or “responsabilidade”; which are also used as a translation for liability. Therefore, the use of the wording.

⁴⁵⁵ According to the Brazilian Constitutional Court, “Civil liability of legal entities of public law and of legal entities of private law providing public services, strict liability, based on administrative risk, occurs in face of the following requirements: a) of the damage; b) of the administrative action; c) and provided that there is a causal link between the damage and the administrative action. (...) This objective responsibility, based on the administrative risk, admits research around the guilt of the victim, in order to mitigate or even exclude the responsibility of the legal entity of private law providing public service” (Brasil, Supremo Tribunal Federal. RE 217389, Min. Néri da Silveira. At DJ p. 69

According to the literature, the claim against the state is based on two main elements: a damage and the causal nexus bringing up that damage related to the conduct of the state.⁴⁵⁶ Moreover, it is not necessary to prove that the state's deliberate conduct did "not act or acted insufficiently" to prevent the perpetrated damage.⁴⁵⁷ In the end, both jurisprudence and literature have the same understanding, only that Courts expressly observe the administrative element as an independent one.

The Brazilian objective responsibility of the state is also dependent on the notion of the "existential minimum". Constitutional prerogatives set ground for materializing "positive original services of the State" and "prohibit retrocessions in matters of fundamental social rights", what also includes the right to housing upon the Brazilian Constitution.⁴⁵⁸ To this matter, the Brazilian Supreme Court demonstrated its position supporting the guarantee of an existential minimum, to which the State may not evoke limitations in order to excuse itself from the implementation of public policies specified as social rights by the Constitution.⁴⁵⁹ In the concrete case, the Supreme Court found legitimate the application of sanctions to the State of São Paulo with the so-called *astreintes*, which are daily fines for non-compliance.⁴⁶⁰

Differently, the Chilean jurisprudence accepts the application of three different lines: classic, objective and subjective liability.⁴⁶¹ However, the use of the French theory of *faute du service* by the Supreme Court is considered erroneous and outdated.⁴⁶² According to Kloss, the Chilean norm actually only observes the regime of the objective liability of the State.⁴⁶³ In fact, he vows that Chile's

vol. 2070-03 p. 606 May 24, 2002 (2T Apr 2, 2002), ementa. Author's translation.)

⁴⁵⁶ Furtado, 874; Melo, 811.

⁴⁵⁷ Melo, 811.

⁴⁵⁸ See Brasil, STF, ARE 639337 AgR; Brasil, Constitution, art. 1.III, 3.III, ch 2. Author's translation.

⁴⁵⁹ Although the *cláusula da reserva do possível* has its origins on German concept of *Vorbehalt des Möglichen*, its introduction in the Brazilian has developed through out the years. Ingo Wolfgang Sarlet, and Mariana Filchtiner Figueiredo, "Reserva do Possível, Mínimo Existencial e direito à saúde: algumas aproximacoes," *Revista Brasileira de Direitos Fundamentais & Justiça* 1, n 1 (2007); See Brasil, STF, ARE 639337 AgR.

⁴⁶⁰ See Brasil, STF, ARE 639337 AgR.

⁴⁶¹ See Danziger, 1014; Chile, Constitution, art. 38. According to the Chilean jurisprudence, the sole production of a damage by the Administration is not sufficient to create the obligation to compensate: "*no basta la producción de un daño causado por la Administración para que nazca la obligación de indemnizar. (...) que, como corolario de lo anterior, constituye una condición necesaria para la procedencia de la responsabilidad extracontractual de los órganos de la Administración, el que exista una falta de servicio, la que debe ser judicialmente declarada, la cual unida a la existencia de un daño en virtud de una relación causal autoriza a la indemnización de los perjuicios derivados de ella*" (Corte Supremo, Fallo 2.732-2015, para *Septimo, Noveno*). When a necessary condition for the responsibility of State is the lack of a service, which must be judicially recognized, as well as the causal nexus.

⁴⁶² Kloss, *Temas fundamentales*, 853-54.

⁴⁶³ Kloss, *Temas fundamentales*, 852-53.

Constitution foresees the damage of a third party independent of the responsibility of a public servant that has committed an action, meaning that the French-based theory should be excluded from application in Chile.⁴⁶⁴

Although exceptional, the following decision of Chile's Supreme Court is in consonance with Soto Kloss' understanding, meaning that:

the obligation to make reparation is an obligation that weighs on the state that has violated the human rights of its citizens, an obligation that is part of Chile's legal status, as has been pointed out. [...] the state has the obligation to provide reparation to the victim's family members, as enshrined in international human rights law, [and] domestic law does not become a sustainable argument for exempting it from compliance. [...] but also because the liability of the state is also enshrined in domestic law. In fact, the system of state responsibility arises from art. 3 of Law No. 18.575, *Orgánica Constitucional de Bases Generales de la Administración del Estado*, which provides that the administration of the state is at the service of the human person, that its purpose is to promote the common good, and that one of the principles to which its action must be subject is that of responsibility; and, consequently, in its article 4 it provides that "the state shall be liable for damages caused by the organs of the administration in the exercise of their functions, without prejudice to the responsibilities that may affect the official who may have caused them". Thus, it can only be concluded that the moral damage caused by the unlawful conduct of officials or agents of the state who are perpetrators of the unlawful acts against humanity on which this law suit is based must be compensated by the state.⁴⁶⁵

Therefore, the decision identifies the objective liability theory as the responsibility of the state to indemnify violations to human rights, clearly stated as such on international treaties and on domestic norms.⁴⁶⁶

Once again, the need of constitutional recognition of the right to adequate housing makes itself clear. Although that previous decision accepts the use of international human rights norms in that particular context, that construction is not always a natural conclusion of domestic Courts. The lack of constitutional review of a human right may affect a Court's judgement and its consequent enforcement. Hence, a constitutional guarantee must be pathed, in order to ensure

⁴⁶⁴ Chile, Constitution, art. 6.3, 7.3, 38.2; Kloss, 851-52.

⁴⁶⁵ Chile, Corte Suprema. Fallo 31.766-2018 (2S May 28, 2018), Author's translation.

⁴⁶⁶ Chile, Fallo 31.766-2018.

accountability and the use of all measures for the materialization of human rights.

3.3 Housing Policy Review

It took years and other previous housing policies, but finally, in 2009, Minha Casa, Minha Vida was created to combat the Brazilian housing shortage by supporting the construction, acquisition or reparation of urban and rural housing units for low-income families.⁴⁶⁷ Similarly in Chile, policies D.S. 1 and D.S. 49, in 2011, later complemented by D.S. 19, in 2015, as well aim at providing access to social housing, as a result of years of attempts through other housing policies.⁴⁶⁸

Those programs similarly see a dwelling with the status of a commodity, instead of that of a human right necessary to a life with dignity.⁴⁶⁹ Although with differences that will be highlighted later on, those systems are similarly structured as demand-based homeownership models: possible candidates apply for a unit according to their income, who contribute proportionally to their income; the rest of the difference is payed by the State.⁴⁷⁰

The case studies were also policies created as national economic responses against the subprime crises.⁴⁷¹ MCMV is criticized as for being a strategy used by the government against the subprime crisis, for which a substantial investment was made to the real estate construction sector.⁴⁷² For example, in Colombia, Spain and Ireland, it is claimed that housing programs served for the same purpose.⁴⁷³ And, although the Chilean housing policy has a longer history in housing projects, the projects subsequent to the 2008 were clearly a governmental response to international economic crises, as D.S. 19 even legally states in its preamble.⁴⁷⁴

⁴⁶⁷ Brasil, L. 11.977.

⁴⁶⁸ Other national programs could not be chosen for the comparative analysis, because they entail different aims (e.g. renting) or structures (e.g. leasing *See* Chile, Decreto 120, (V. y U.) de 15 de diciembre de 1995, D. 120 (1995).

⁴⁶⁹ HRC, A/HRC/37/53/Add.1, para 24-26.

⁴⁷⁰ HRC, A/HRC/37/53/Add.1, para 24-26.

⁴⁷¹ Whitaker Ferreira; Amore, 15.

⁴⁷² Renato Balbim, Cleandro Krause, and Vicente Correia Lima Neto. "Para Além Do Minha Casa Minha Vida: Uma Política de Habitacao de Interesse Social?" *Textos Para Discussao*. Rio de Janeiro: IPEA (2015), 8-9; Inê Magalhaes, Researcher's Interview 2, Skype, March 23, 2019.

⁴⁷³ Ivan Turok, *The Evolution of National Urban Policies: A Global Overview* (Nairobi: UN-Habitat, 2014), 25, 42-45.

⁴⁷⁴ Chile, D.S. 19, preamble 3. D.S. 19 set among its preamble guidelines the "necessity" to boost the construction sector.

The Special Rapporteur, Ms. Fahra, calls on the Chilean legal system being historically led by the leverage of private actors, including real-estate builders, developers and financial institutions.⁴⁷⁵ That same claim can be applied to the Brazilian context, because social housing strategies, including MCMV, were conceived to treat economic issues. As observed by Ms. Fahra, “the right to adequate housing is too frequently disconnected from the human rights values which form its core, and is treated more as a socioeconomic policy aspiration than as a fundamental right which demands effective, rights-based responses and timely access to justice.”⁴⁷⁶

From political, economical, social or legal lens, making housing accessible, technically adequate and affordable is fundamental⁴⁷⁷, for only so can individuals and society be liberated from vulnerability.⁴⁷⁸ Underpinned by that understanding, SDG 11 cemented that governments should provide affordable housing for all by 2030.⁴⁷⁹ The most crucial change for the legal system, in order to promote change, is to qualify beneficiaries as right-holders. Beneficiaries should be distanced from the figure of consumers of the private market, which per se should anyhow have their human right taken into consideration when purchasing their home.⁴⁸⁰

This section highlights the creation and development of the social housing policies of both case studies (3.3.1-3.3.2). The legal developments and public policies that preceded MCMV, D.S. 1, D.S. 19 and D.S. 49 are also observed looking at justiciability is one fundamental matter (3.3.1.1, 3.3.2.1). In this context, justiciability can be defined as the ability to guarantee the right to housing⁴⁸¹,

⁴⁷⁵ HRC, A/HRC/37/53/Add.1, para 24-25.

⁴⁷⁶ UN General Assembly, Adequate housing as a component of the right to an adequate standard of living, A/71/310, (UNGA, 2016), para 5.

⁴⁷⁷ According to the Special Rapporteur, “strategies must prevent housing systems themselves from sustaining and increasing socioeconomic inequality and exclusion. They must recognize and address the close association between laws and government policies that position housing as a commodity, and the unaffordability of housing for those in the lowest income brackets, leading to growing homelessness and displacement and increased concentration of wealth” (HRC, A/HRC/37/53, para 33).

⁴⁷⁸ UN CESCR, GC4, para 7, 8.c.

⁴⁷⁹ UN General Assembly, Global indicator framework for the Sustainable Development Goals and targets of the 2030 Agenda for Sustainable Development, A/RES/71/313, Resolution 68/261 (UNGA, 2018), 11.1.

⁴⁸⁰ Although this does not come to discussion at this point, it is the understanding of this work that the perspective of house as a right should be shed at *all* individuals, including those who have acquired it in the free market.

⁴⁸¹ Without at least the constitutional recognition of the right to housing, there may be insufficient means to enforce the obligation of the State to respect, protect, promote and fulfill that human right. *See* more Budlender, Geoff, “Justiciability of the Right to Housing – The South African Experience,” in *National Perspectives on Housing Rights*, edited by Leckie, Scott, (The Hague, London, New York: Kluwer Law International, 2003); UN Human Settlements Programme and Office of the High Commissioner for Human Rights, “Housing Rights Legislation,” *United Nations Housing Rights Programme, Global Campaign for Secure Tenure* n 5, (Nairobi: UN-Habitat/OHCHR, 2002), 30.

for which constitutional remedies can ensure a “solid basis upon which to construct implementing legislation concerning the bundle of entitlements and obligations arising from the right to adequate housing.”⁴⁸²

3.3.1 Chilean Housing Policy Review

This section will review the latest developments of the Chilean social housing policy (3.3.1.1) until the creation of D.S. 1, D.S. 19 and D.S. 49 (3.3.1.2).

3.3.1.1 Justiciability in Chile

The right to adequate housing has not been explicitly recognized in the Chilean Constitution⁴⁸³, which also fails to recognize other complementary rights, such as the right to the city.⁴⁸⁴ That 1980 “Political Constitution” defined the country as a unitary, decentralized, democratic republic⁴⁸⁵, although it was “drafted for the purpose of institutionalizing the military regime.”⁴⁸⁶ Although it has been consistently changed since the end of the Pinochet’s dictatorship, Chile’s Constitution has not yet been able to “encompass contemporary human rights issues.”⁴⁸⁷

Although a list of constitutional rights is presented in art. 19, it does not explicitly include the right to adequate housing. In parallel with the Brazilian constitution, Chile secures to all persons the right to be born free and equal in dignity and rights, recognizing the respect to essential rights that emanate from human nature.⁴⁸⁸ Moreover, it is provided that the state shall be “at service of the human person”, based on the aim to “promote the common well-being of all”, in its possible maximum material and spiritual realization, by respecting all rights and guarantees granted in the Constitution and by securing the right of all persons to live with equal opportunities.⁴⁸⁹ The lack of constitutional recognition weakens implementation and advocacy because it shows low political commitment and weakens the entitlement to that right.⁴⁹⁰

Yet, legal inferences can create the understanding that Chile indeed recognizes housing rights. First because that country has historically developed policies

⁴⁸² UN-Habitat and OHCHR, “Housing Rights Legislation,” 30, III.B.

⁴⁸³ UN Economic and Social Council, “Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant. Concluding Observations of the Committee on Economic, Social and Cultural Rights,” E/C.12/1/Add.105 (ECOSOC, Dec 1, 2004), para 12; Sugranyes and Cavieres, 37-39; Chile, Constitution.

⁴⁸⁴ See Sugranyes and Cavieres, “El derecho humano a una vivienda adecuada en Chile.”

⁴⁸⁵ Chile, Constitution, art. 3-4.

⁴⁸⁶ Salvatore Bizzarro, *Historical Dictionary of Chile*, 2nd ed., Latin American Historical Dictionaries, no. 7 (Metuchen, N.J: Scarecrow Press, 1987) 132. As a consequence, it conceived extraordinary powers to the President, that included dissolving the legislature.

⁴⁸⁷ HRC, A/HRC/37/53/Add.1, para 5.

⁴⁸⁸ Chile, Constitution, art. 1, 3-4.

⁴⁸⁹ Chile, Constitution, art. 1. Author’s translation.

⁴⁹⁰ OHCHR, “Status of Ratification – Country Profile for Chile;” HRC, HRC/37/53/Add.1, 4.

aiming at the provision of social housing. Despite controversial aspects of the policies, it must be acknowledged that Chile started with housing programs already in the seventies. Second, its constitutional text acknowledges other human rights that are interdependent to the right to housing. For example, the right to access to health, to live in an environment free of contamination and the right to social security cannot be guaranteed without adequate housing.⁴⁹¹ Third, an extended interpretation of art. 5.2 of the Constitution foresees that administrative organs have the duty to respect and promote human rights, including those that came into force by international treaties.⁴⁹² Since the country has ratified several international human rights treaties that recognized the right to adequate housing, it can be inferred that Chile also recognizes its duty.⁴⁹³

Fourth, national courts have precedents understanding that the country indirectly recognizes the right to adequate housing as a human right.⁴⁹⁴ Despite being a civil law country, those are positive examples that can lead the understanding of the whole judiciary. In 2016, the Under-Secretary for Human Rights within the Ministry of Justice and Human Rights was created with the main purpose to articulate public institutions in the development of public policies for the protection and promotion of human rights.⁴⁹⁵ Court decisions have also been taken based on the understanding that human rights are interdependent and that the realization of the right to adequate housing is necessary in order to provide other Constitutional guarantees.⁴⁹⁶

Most lately, a National Urban Development Policy – CNDU was published in 2014 backing the well-being of individuals by providing tools and actions for the sustainable development of cities.⁴⁹⁷ Other types of plans also complete ur-

⁴⁹¹ Chile, Constitution, art. 19, p. 3, 8, 18.

⁴⁹² Chile, Constitution, art. 5.2.

⁴⁹³ OHCHR, “View the Ratification Status by Country or by Treaty;” “Department of International Law (DIL) B-58 Signatories and Ratifications,” Organization of American States, OAS, Website, Accessed Jun 8, 2020. http://www.oas.org/en/sla/dil/inter_american_treaties_B-58_against_Corruption_signatories.asp. Ratified treaties include the International Covenant on Economic, Social and Cultural Rights – ICESCR and the International Covenant on Civil and Political Rights – ICCPR, the Convention on the Elimination of All Forms of Discrimination against Women – ICEDAW, the Inter-American Convention against Corruption, and the International Convention on the Elimination of All Forms of Racial Discrimination – ICERD.

⁴⁹⁴ José Luis Cea, “Segunda Parte: Dignad y Derechos Humanos. Sentencia Rol 1.710-2010, fechada el 6 de agosto de 2010” in *Derecho constitucional chileno: Tomo II* (Ediciones UC, 2012), 341–44.

⁴⁹⁵ “Subsecretaría de Derechos Humanos,” Ministerio de Justicia y Derechos Humanos, Subsecretaría de Derechos Humanos, Official website, Accessed Apr 17, 2019. <https://ddhh.minjusticia.gob.cl/>; Chile, Ley 20.885, de 5 de enero de 2016, L. 20.885 (2016).

⁴⁹⁶ United Nations Human Settlements Programme and Office of the High Commissioner for Human Rights, “Housing Rights Legislation;” HRC, A/HRC/37/53/Add.1, para 80; Chile, Corte de Apelaciones de Temuco, Rol N° 253-2014 (May 24, 2014).

⁴⁹⁷ Chile, Decreto 78, de 4 de marzo de 2013, D. 78 (2014), I.

ban strategies in Chile, such as *Planos de desarrollo urbano – PRDU*, *Estrategia Regional de Desarrollo – ERD*, as well as *Plan Regional de Ordenamiento Territorial – PROT*.

In Chile, the maxim “*muy rico para SERVIU, muy pobre para el banco*” trended among the 2019 wave of protests, where many claimed for the constitutional recognition and materialization of the right to adequate housing.⁴⁹⁸ The explicit statement of the right to housing alongside other social, economic and cultural rights on the Chilean Constitution is still an imperative⁴⁹⁹. As already observed, a normative recognition of rights is an important legal guarantee for the most marginalized people that have their housing rights violated because should enable the holding of individuals or any actor accountable for their actions.⁵⁰⁰ Without constitutional reservation, concerned housing rights may eventually not be justiciable in national courts, depending on the progressive understanding of courts.⁵⁰¹ Hence, the necessity of constitutional acknowledgment of the right to adequate housing.⁵⁰²

Nonetheless, only the recognition that an individual has access to housing is not sufficient to guarantee that right. The creation of redress mechanisms that can enable enforcement is as well crucial. Brazil and its acknowledgment to the *direito à moradia*, or right to housing, are the best example for that failed justiciability, which did not create effective constitutional means for redress and grievance.⁵⁰³

⁴⁹⁸ Ignacio Silva Didier, Researcher’s Interview 8, Skype, Apr 16, 2020. “Too rich for SERVIU, too poor for the bank” translates the dissatisfaction of Chileans that were better-off than SERVIU’s social housing eligibility thresholds, but that, at the same time, had such a low-income that private banks would not finance them. They resented to a limbo.

⁴⁹⁹ ECOSOC, E/C.12/1/Add.105, para 12; HRC, A/HRC/37/53/Add.1, para 13; Claudio Nash and Constanza Núñez Donald, “Los usos del Derecho Internacional de los Derechos Humanos en la jurisprudencia de los tribunales superiores de justicia en Chile,” *Estudios Constitucionales* 15, n. 1 (Jan 1, 2017), <https://doi.org/10.4067/S0718-52002017000100002>; Chile, Cámara de Diputadas y Diputados de Chile, Boletín 11333-07: Modifica la Carta Fundamental con el propósito de garantizar el derecho a una vivienda digna, Primer Trámite Constitucional, Moción, L 365 (Jul 20, 2017). https://www.camara.cl/pley/pley_detalle.aspx?prmID=11849&prmBoletin=11333-07. In July 2017, an amendment to the Constitution was proposed to include the right to “dignified” housing.

⁵⁰⁰ United Nations Human Settlements Programme (UN-Habitat), and Office of the High Commissioner for Human Rights (OHCHR), “Housing Rights Legislation”, 28-33.

⁵⁰¹ Techo-Chile, “La Urgencia de la Vivienda Digna En Tiempo de Pandemia”, *Interview with the Special Rapporteur on the Right to Adequate Housing, Leilani Fahra*, On line streamed, Facebook, on Apr 16, 2020, <https://www.facebook.com/TECHOchile/videos/583890312214716/>.

⁵⁰² United Nations Human Settlements Programme and Office of the High Commissioner for Human Rights (OHCHR), “Housing Rights Legislation.”

⁵⁰³ Nelson Saulo Junio and Maria Elena Rodriguez, “Housing Rights in Brazil,” in *National Perspectives on Housing Rights*, Scott Leckie ed. (The Hague, London, New York: Kluwer Law International, 2003).

Therefore, the operationalization of the right to housing is vital. For instance, the South African Constitution⁵⁰⁴ created inspiring legal mechanisms of protection for the right to adequate housing.⁵⁰⁵ Such a model that forbids evictions and enables redress should inspire the new Chilean constitution as well as reforms in the Brazilian text.

3.3.1.2 Before D.S. 1, D.S. 19, and D.S. 49

Chile is, just like Brazil, a country of paradoxes. It has been supporting housing financing since the 1970's through out different models, most lately aiming at a rights-based approach. However, those policies have in fact generated collateral segregation and marginalization.⁵⁰⁶ In 1978, the kern of the Chilean model of housing policy was introduced, though the modern model started in the 1990's.⁵⁰⁷ The country's housing policy is defined as a demand-based, "capital housing policy model."⁵⁰⁸ It is formed by different programs and strategies, but where mainly the State elects beneficiaries to subsidies, but the private sector has substantial power, particularly over spatial distribution.⁵⁰⁹

At first, individuals were able to finance a housing unit through their savings and, eventually, had access to credit and firms would provide their construction service.⁵¹⁰ However, those first policies led by the Pinochet regime did not foresee a rights-based perspective. They evicted many illegal settlements, *campamentos*, using this violation of human rights as a tool of development.⁵¹¹ As a consequence, those policies also failed to tackle an increasing qualitative housing shortage.⁵¹² Low-income households remained without access to adequate housing standards, facing e.g. overcrowding conditions and segregation.⁵¹³

⁵⁰⁴ South African Government, The Constitution of the Republic of South Africa, C n. 108 of 1996 (1996), <https://www.gov.za/documents/constitution/constitution-republic-south-africa-1996-1>, art. 26; Budlender, 210-212. For example, the right to housing is justiciable in South Africa via e.g. constitutional injunction.

⁵⁰⁵ "Housing (1) Everyone has the right to have access to adequate housing. (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right. (3) No one may be evicted from their home, or have their home demolished, without an order of court made after considering all of the relevant circumstances. No legislation may permit arbitrary evictions" (South African Government, The Constitution of South Africa, art. 26).

⁵⁰⁶ HRC, A/HRC/37/53/Add.1, para 83.

⁵⁰⁷ HRC, A/HRC/37/53/Add.1, para 23-25.

⁵⁰⁸ Gilbert, "Power, Ideology and the Washington Consensus."

⁵⁰⁹ Smart and Burgos.

⁵¹⁰ Gilbert, "Power, Ideology and the Washington Consensus".

⁵¹¹ A.M. Sugranyes Bickel, "Social Housing Policy in Chile since 1980 Actors and Products," (Phd Diss., TUDelft, 2007), <http://resolver.tudelft.nl/uuid:9ce48f58-84f4-48d1-928e-49e50f1a34b7>, 49-54.

⁵¹² Id.

⁵¹³ See more Claudio A Agostini, Daniel Hojman, Alonso Román, and Luis Valenzuela. "Segregación Residencial de Ingresos En El Gran Santiago, 1992-2002: Una Estimación Robusta." *EURE*

Before the creation of D.S. 1, D.S. 19 and D.S. 49, other programs had been providing access to housing, among which, in the 1980's, *Vivienda Básica* – PVB and a general housing subsidy system were created.⁵¹⁴ The *Programa Especial para Trabajadores* – PET was added to PVB and, from 1989 to 2005, strongly contributed to the quantitative performance of housing in the pre-democratic era.⁵¹⁵ Later on, one of the first programs after the democratic transition was *Programa de Vivienda Progressiva* – PVP. Adopted during Aylwin's Presidency in 1993, it facilitated access to adequate housing by fostering the potential of households to support the construction process via extensions and upgrading.⁵¹⁶ However, performance results showed to be much lower than those expected. The program *pavimentos participativos* (participatory pavements) was created in 1994 to support the engagement between communities, municipalities and the government for more accessibility and reduced air pollution, which impacted in the creation of more than one thousand kilometers of streets and walking paths.⁵¹⁷

In 2002, a New Housing Policy was launched in Chile. It differentiated groups of beneficiaries in three income ranges and comprehended different programs for each group. For instance, *Fondo Concursable para Proyectos Habitacionales Solidarios* – FCVS, *Vivienda Social Dinámica sin Deuda* – VSDsD and *Chile Barrio* were part of that policy, set for the most-vulnerable households.⁵¹⁸ According to Smart and Burgos, since 2004, legal and technical-based changes have been operated in the Chilean housing policy, aiming at a more efficient

(Santiago) 42 (2016): 159–84; Villa Francisco Coloane case study, in Alfredo Rodríguez, Paola Rodríguez and Ana Sugranyes, eds., *Con Subsidio, Sin Derecho: La Situación del Derecho a una Vivienda Adecuada en Chile*, (Santiago, Ediciones Sur, 2015), pp. 77–94; HRC, A/HRC/37/53/Add.1, para 19; Aida Caldera Sánchez, “Building Blocks for a Better Functioning Housing Market in Chile.” *OECD Economics Department Working Papers* ECO/WKP(2012)20, no. 943 (Feb 8, 2012), <https://doi.org/10.1787/5k9fj3hgsnvh-en>, 15; María Elena Ducci, “Chile: el lado oscuro de una política de vivienda exitosa,” *Revista eure* XXIII, no. 69 (July 1997): 99–115; Andrea Tokman, “El MINVU, La Política Habitacional y La Expansión Excesiva de Santiago” in *Santiago. Donde Estamos y Hacia Donde Vamos?* (Centro de Estudios Públicos 2006).

⁵¹⁴ The *Sistema General Unificado de Subsidio Habitacional* – SGU was composed by different programs. See Ana María Rugiero Pérez, “*Experiencia chilena en vivienda social. 1980-1995*,” *Revista INVI* (Nov 1998).

⁵¹⁵ Chile, Decreto Supremo 235, (V. y U.), D.O. de 6 de junio de 1986 (Derogado a partir del 31/12/2005, por Art. 47 D.S. N° 40 (V. y U.), de 2004), D.S. 235 [Programa especial para trabajadores – PET] (1985); Rugiero Pérez; Sugranyes Bickel, A.M. “Social Housing Policy in Chile since 1980 Actors and Products.” Doctoral thesis, TUDelft, 2007. <http://resolver.tudelft.nl/uuid:9ce48f58-84f4-48d1-928e-49e50f1a34b7>.

⁵¹⁶ Smart and Burgos; Margarita Greene Z., *El programa de vivienda progresiva. Chile 1990-2002*, Estudio de Buenas Praticas en Vivienda Economica, Santiago, 2004; Margarita Greene and Eduardo Rojas, “Incremental Construction: A Strategy to Facilitate Access to Housing,” *Environment and Urbanization – ENVIRON URBAN* 20 (2008), <https://doi.org/10.1177/0956247808089150>.

⁵¹⁷ Chile, Decreto Supremo 114, (V. y U.), de 11 de agosto de 1994, D.S. 114 (1994).

⁵¹⁸ Greene Z., *El programa de vivienda progresiva. Chile 1990-2002*, 51.

design⁵¹⁹, for instance, by encouraging better geographic location and architectural plans for housing projects. Created in 2006 under those perspectives during the Lagos administration, *Fondo Solidario de Vivienda* (FSV)⁵²⁰ was a predecessor of D.S. 1, D.S. 19 and D.S. 49. They share a similar legal structure.⁵²¹

3.3.1.3 D.S. 1, D.S. 19 and D.S. 49

Although Chile started with supporting programs enabling access to homeownership long before than Brazil, the legal structure under analysis has been more influenced by late 2000's⁵²² and 2010's programs.⁵²³ In this sense, service providers were given the role of delivery, whereas governmental agents maintained their regulatory and managing roles.⁵²⁴ The milestones, in 2011, convey the enactment of two policies: “*Programa Fondo Solidario de Elección de Vivienda D.S. 49*” and “*Sistema Integrado de Subsidio Habitacional D.S. 1.*”⁵²⁵ Later in 2016, “*Programa de Integración social y territorial D.S. 19*” created another umbrella of chances for vulnerable, emergent and middle sector households.⁵²⁶

D.S. 49 covers the most vulnerable Chilean families, pertaining to the lowest quintile, and who should be granted (almost) all costs for dwelling.⁵²⁷ D.S. 1 targets emergent and medium-income households, covering less of the dwelling's purchase value.⁵²⁸ President Sebastián Pinera created those policies, particularly observing “housing as a process” and supporting architectural designs of gradual incrementation in D.S. 1.⁵²⁹ Selected beneficiaries of D.S. 1 and D.S. 49 or candidates without any granted subsidy could apply to D.S. 19, created in 2016 by President Michelle Bachelet.⁵³⁰ In brief, this last program aims at integrating families of different socio-economic backgrounds through their incorporation in preferred location neighborhoods with high quality standards of construction.

⁵¹⁹ Smart and Burgos, 190.

⁵²⁰ Chile, Decreto Supremo 174, de 9 de febrero de 2006, D.S. 174 (2006).

⁵²¹ Greene Z., *El programa de vivienda progresiva. Chile 1990-2002*, 51-56; More on FSV see Sánchez.

⁵²² See section 3.4.1.

⁵²³ Pero, “Housing Policy in Chile,” 11.

⁵²⁴ Pero, “Housing Policy in Chile,” 11.

⁵²⁵ The decrees repealed a former policy on housing, namely DS 174, of 2005, DS 40, of 2004, which respectively regulated the *Programa Fondo Solidario de Vivienda II* and *Sistema de Subsidio Habitacional*. See Chile, D.S. 1; Chile, D.S. 49.

⁵²⁶ Chile, D.S. 19.

⁵²⁷ Pero, “Housing Policy in Chile,” 11.

⁵²⁸ Chamorro, 14.

⁵²⁹ Chile, D.S. 1, art. 42.1.a; Goran Marinovic and Jin Baek, “Lessons of Incremental Housing Two Chilean Case Studies: Elemental Lo Espejo and Las Higuera.” *Architectural Research* 18 (2016). <https://doi.org/10.5659/AIKAR.2016.18.4.121>.

⁵³⁰ Beneficiaries of other programs may also apply to D.S. 19, but since they are not object of this review, they are not relevant at this moment of the research. Those include, for instance, beneficiaries of D.S. 174, Title XV, of 2005, and R. Exentas 262 and 8.761, of 2013. See Chile, D.S. 19.

From 2014 to 2018, billions of dollars were invested by the Chilean federal government in housing and social inclusion strategies, following the international Agenda.⁵³¹ However, as Smart and Burgos point out, even though “the number of public subsidies has increased, [...] the provision of housing is still in private hands and the location problems have not been overcome.”⁵³² So adjustments in accountability relationships are still necessary to transform the old structures of social housing policies in Chile.

It is worth mentioning that, in Chile, other programs that will not be object of this study also enable access to more adequate standards of living. In Latin American vanguard, a social rental program supports low- and middle-income households, whose “person-in-charge” (*jefe de familia*) is younger than 30-years-old.⁵³³ A rent-to-buy “leasing” subsidies grants beneficiaries access to a dwelling, for which they monthly contribute with rent and have the right to buy.⁵³⁴ A benefit for tax deductions is provided to those who wish to deduct costs on mortgage interests related to their own dwelling.⁵³⁵ D.S. 255, the *Programa de Protección del Patrimonio Familiar (PPPF)*, subsidizes the improvement of surroundings or the improvement or expansion of dwellings belonging to vulnerable and emergent households.⁵³⁶

Hence, individuals have more alternatives to choose from in Chile, including forms that not necessarily require purchasing a dwelling.⁵³⁷ This gives beneficiaries more chances to have access to adequate housing. However, adequacy and the respect to human rights are clearly issues that more accountable relations can support in Chilean social housing ownership programs.

3.3.2 Brazilian Housing Policy Review

This section will suffice this study with a policy review of the Brazilian social housing context, with insights on the developments (3.3.2.1) that led to the creation of MCMV (3.3.2.2).

3.3.2.1 Justiciability in Brazil

Written by a legislative assembly after years of military dictatorship, the 1988 Brazilian Constitution instituted a democratic state based on the rule of law. It enlists at least 78 social rights, among which the right to “education, health,

⁵³¹ HRC, A/HRC/37/53/Add.1, para 18.

⁵³² Smart and Burgos, 190.

⁵³³ Chile, Decreto 52, (V. y U.), de 22 de Noviembre de 2013, D. 52 (2013).

⁵³⁴ Chile, Decreto 120, (V. y U.), de 15 de diciembre de 1995, D. 120 (1995).

⁵³⁵ Chile, Decreto Ley 824, de 31 de diciembre de 1974, DL 824 (1974).

⁵³⁶ Chile, Decreto 255, (V. y U.), de 25 de enero de 2007, D. 255(2007).

⁵³⁷ Pero, “Housing Policy in Chile.”

(access to) food, work, leisure, safety, rent, maternity and child protection, assistance⁵³⁸” to persons in vulnerability. Since the year 2000, it guarantees housing as a social right.⁵³⁹

That article is another consequence of temporal democratic changes⁵⁴⁰ that pushed for the realization of human rights, having roots i.a. on the principle of the dignity of the human person, designing the property and the city with a social function.⁵⁴¹ According to ch. II (art. 182 and 183), the city should observe the well being of its inhabitants in the articulation local policies, including of Master Plans, a planning tool compulsory for municipalities with more than 20.000 inhabitants, setting fundamental requirements in the use of urban property.⁵⁴²

The Constitution ensured the exercise of its enrolled values, based on the legal principle of solidarity⁵⁴³, further on listed as a fundamental goal.⁵⁴⁴ Its preamble observed several principles and values, among which of equality, justice, pluralism and the exercise of social and individual rights.⁵⁴⁵ And, although the Preamble does not have normative force, values described there should be used as guideline for the correct interpretation and application of constitutional and infra-constitutional norms.⁵⁴⁶

Therefore, Brazil’s Constitution of 1988 acknowledged several rights and principles that the Chilean text refrained from mentioning, what directly affects justiciability. Those progressive guidelines recognize different dimensions of hu-

⁵³⁸ Brasil, Constitution, art. 6. *Desamparado* was translated in a Constitution’s official English translation as “destitute”, although this work judges that translation improper. The best matching expression would be “persons in vulnerability,” to which alternatives could vary to vulnerable persons, most-poor, marginalized persons.

⁵³⁹ Brasil, Constitution, art. 6, Constitutional Amendment 26.

⁵⁴⁰ See sections 3.1 and 3.3.

⁵⁴¹ Brasil, Constitution, art. 5, XXIII. More on the right to the city in Edésio Fernandes, “Constructing the ‘Right To the City’ in Brazil.” *Social & Legal Studies* 16, no. 2 (Jun 2007): 201–19. <https://doi.org/10.1177/0964663907076529>. According to him, “the effective materialization of the City’s Statute in policies and programs[...] depend on the reform of the local legal-urban orders by the municipalities (Fernandes, Edésio, 215). In other words, the enjoyment of social and civil rights related to the urban life depend directly on the efficient implementation of a city’s master plan.

⁵⁴² Brasil, Constitution, art. 182, XXIII, 183. Art. 182 sets the guidelines of the national urban policy, which shall “ordain [...] the full development of the social function of the city and ensur(e) the well-being of its inhabitants”. If not in conformity with the requirements of the social function of the property, property owners may be confronted with sanctions, including expropriation.

⁵⁴³ Brasil, STF, ADI 2649.

⁵⁴⁴ Brasil, Constitution, art. 3, I.

⁵⁴⁵ The Constitutional Preamble annotated to “[...] ensure the exercise of social and individual rights, liberty, security, well-being, development, equality and justice as supreme values of a fraternal, pluralist and unprejudiced society, founded on social harmony and committed, in the internal and international orders, to the peaceful settlement of disputes”. (Brasil, Constitution, Preamble).

⁵⁴⁶ Brasil, ADI 2649, p. 29; Brasil, Supremo Tribunal Federal, ADI 2076/AC, Min. Rel. Carlos Velloso. At DJ Aug 8, 2003 (Pleno Aug 15, 2002).

man rights, to which the State has become responsible for setting strategies towards a progressive realization of a life with dignity.⁵⁴⁷ That constitutional protection, codified by the State in constitutional texts is crucial. Because it “[...] may be the only manner of ensuring equitable access to adequate housing resources by disadvantaged groups and protecting the rights of the economically marginalized populations.”⁵⁴⁸

In this context, the City’s Statute was created in 2001 to regulate that urban policy chapter of the Brazilian Constitution, which is known for pioneering a framework for urban development based on a human-rights approach.⁵⁴⁹ The City’s Statute not only aims at tackling urban issues, but also at social exclusion, spatial segregation, environmental sustainability. It establishes norms of public order and social interest in regard to the use of the urban property towards the well-being of citizens and of the collectivity, safety and environmental equilibrium.⁵⁵⁰ According to it, the social function of the city and of the urban property shall be guided to guarantee the right to sustainable cities, with access to urban lands, housing, environmental sanitation, urban infrastructure and public services, work and leisure, as well as to the participative management of urban development plans.⁵⁵¹ Urban planning shall too avoid and correct distortions provoked by uncontrolled growth and negative effects to the environment.⁵⁵² Urban property shall not expose communities to risks, nor be inadequately used, object of financial speculation, damage or pollution.⁵⁵³ The Statute also looks at the protection, maintenance and recovery of the natural environment and of cultural, historical, artistic, scenic and archeologic heritage.⁵⁵⁴ Urban and rural activities should be integrated, looking at production and consumption patterns against environmental, social and economical sustainability⁵⁵⁵ limits. Energy, telecommunications, water and sewage infrastructure construction plans should be prioritized.⁵⁵⁶ There is a rights-based value inherent to those values that, if implemented, would bring dignity to the life of millions.

Furthermore, the City’s Statute provides instruments for the urban policy, such as a multiannual budget plan and an environmental zoning plan.⁵⁵⁷ On the issue of governance, the City’s Statute regulated the figure of a *Plano Diretor*, the

⁵⁴⁷ HRC, HRC/37/53/Add.1, p. 5.

⁵⁴⁸ United Nations Human Settlements Programme and Office of the High Commissioner for Human Rights, “Housing Rights Legislation,” 33.

⁵⁴⁹ Brasil, Constitution, art. 182-183; Brasil, City’s Statute, L. 10.257, de 10 de julho de 2001, L. 10.257 (2001) [Estatuto das Cidades].

⁵⁵⁰ Brasil, City’s Statute, art. 1.

⁵⁵¹ Brasil, City’s Statute, art. 2, I-II.

⁵⁵² Brasil, City’s Statute, art. 2, III.

⁵⁵³ Brasil, City’s Statute, art. 2, VI.

⁵⁵⁴ Brasil, City’s Statute, art. 2, XII.

⁵⁵⁵ Brasil, City’s Statute, art. 2, VII-VIII.

⁵⁵⁶ Brasil, City’s Statute, art. 2, XVIII.

⁵⁵⁷ Brasil, City’s Statute, art. 4. *Plano plurianual* and *Plano de zoneamento ambiental*.

City's Master Plan, as the basic instrument for urban policy development in Brazil.⁵⁵⁸ Basically, the city and the private property can only contribute to their social function, when in compliance to the Master Plan.⁵⁵⁹ Among the different legal and technical rules that the Master Plan should provide, it should also clarify in detail about governance principles and instruments, e.g. transparency and local participation.⁵⁶⁰ Thus, social housing projects, including MCMV, should theoretically too be included in a Master Plan.

In order to guarantee a “democratic management of the city”, collegiate bodies, public debates, hearings and consultations, national, state and municipal conferences on topics of urban interest, urban development plans and projects of popular initiative are listed as possible instruments of management by the law.⁵⁶¹ Public hearings are mandatory in budget proposals. Manager entities in metropolitan areas and urban agglomerations are bound to support the participation of a significative part of the population and representative associations.⁵⁶² They should aim at guaranteeing accountability and citizenship. Without comparatives in Chile, that country fails to provide a national legal framework on urban rights.⁵⁶³

The City's Statute was complemented and amended in 2015 by the Metropole Charter, during Pres. Roussef's mandate.⁵⁶⁴ This norm targeted the creation of several instruments and mechanisms for a more efficient coordination and integration of big urban centers. That included, for example, the creation of integrated urban development plans within the period of three years and their implementation in the period of five years, imposing public agents penalties for administrative improbity crimes in the case of non-compliance.⁵⁶⁵ Such a consistent responsibility, answerability and enforcement scheme would have enabled right-holders to hold duty-bearers accountable. However, those deadlines and sanctions were revoked in 2018 by Mr. Temer, hindering effective accountability.⁵⁶⁶

⁵⁵⁸ Brasil, City's Statute, art. 39, para 1.

⁵⁵⁹ It is mandatory for cities with specific characteristics, e.g. with more than 20 thousand inhabitants or of those with special touristic interest. In case cities have more than 500 thousand inhabitants, an integrated urban transportation plan shall be elaborated, compatible at least with the Master Plan. Participation and transparency on planning, implementation and monitoring phases of the plan shall be guaranteed: public debates shall be promoted, access to information shall be granted to any interested citizen. *See* Brasil, City's Statute.

⁵⁶⁰ Brasil, City's Statute, art. 40;43-45.

⁵⁶¹ Brasil, City's Statute, art. 43.

⁵⁶² Brasil, City's Statute, art. 45.

⁵⁶³ Sugranyes and Cavieres, 34-35.

⁵⁶⁴ Brasil. Metropole Charter, Lei 13.089, de 12 de janeiro de 2015, L. 13.089 (2015) [Estatuto da Metr pole].

⁵⁶⁵ Brasil, Metropole Charter, art. 10, 21.

⁵⁶⁶ Brasil, Metropole Charter, art. 21, amended by M.P. 818, 2018.

Anyhow, amid political instabilities, not all the same performance results could have been expected from all the 5,561 Brazilian municipalities.⁵⁶⁷ They are too diverse in financial, human, cultural, geographical capacities. Local policies have been negatively impacted by old power structures that do not respond to people's needs.⁵⁶⁸ Therefore, the need to strengthen accountability particularly at the local level.

3.3.2.2 Before Minha Casa, Minha Vida

Although some authors try to comment on housing policies during the military dictatorship, it was during democratic times that the right to housing was finally acknowledged and used within strategical policies of the Brazilian state.⁵⁶⁹ At least in the beginning, Lula's government was strongly linked to social movements, what strongly positively impacted democratic spaces of participation.⁵⁷⁰ This also pushed to the creation of the Ministry of Cities, ConCidades, the SNHIS, as well as other organs and consequent policies has come from a history of democratic development and slow integration of bottom-up movements into diverse areas of government.

Indeed, corruption scandals damaged the image of the Labor Party's administrations along the years, but that is also why accountability has come to be so important in this particular social housing context. Yet, in a manner that had never been seen before in that country, it was during the Labor Party's mandates that the political will started to look at the needs of the most-poor. Fraud, corruption and errors must be controlled and sanctioned, though social policies must remain.

Before launching MCMV, the democratic federal and local governments tried to attack specific matters related to land and urban housing. Although not as extensive as MCMV, these programs made path to the future social housing program that has broken barriers in encompassing the country's most poor and their human right to housing. For example, the national program *Papel Passado*

⁵⁶⁷ "Número de Municípios, População Residente, Por Situação Do Domicílio, Taxa de Crescimento e Razão de Dependência, Segundo as Unidades Da Federação e Classes de Tamanho Da População Dos Municípios – Brasil 2000," Instituto Brasileiro de Geografia e Estatística, IBGE, Website, Accessed April 17, 2019. https://ww2.ibge.gov.br/home/estatistica/populacao/indicadores_sociais_municipais/tabela1a.shtm, Tabela 1.

⁵⁶⁸ Marinella Machado Araújo and Gabriela Mansur Soares, and Mariano Henrique Maurício de Campos, "Gestão Democrática Das Cidades: A Constituição de 1988 é Efetiva?" In *Anais Do V Congresso Brasileiro de Direito Urbanístico*, 1st ed., (Porto Alegre: Instituto Brasileiro de Direito Urbanístico – IBDU, 2009), 103–13; Castaneda, 35.

⁵⁶⁹ Cláudio H. M. Santos, "Políticas Federais de Habitação No Brasil: 1964/1998," *Coordenacao Da Política Urbana Do IPEA* 654 (1999); Roberto Pires, Gabriela Lotta and Vanessa Elias de Oliveira, eds. *Burocracia e Políticas Públicas No Brasil: Interseções Analíticas* (Brasília: IPEA, 2018), 114–119.

⁵⁷⁰ Pires, Lotta, and Oliveira, 117.

(in English, Clean Papers) started the regularization of 3,000 informal settlements in the country, in 2003.⁵⁷¹ By improving relations between local and federal government levels, until 2012, 26.194 households have been supported by the program.⁵⁷² In 2004, *Programa Especial de Habitacao Popular – PEHP* (Special Program of Popular Housing) supported housing construction for low-income families (with a monthly income of max. 3 minimum wages).⁵⁷³

But it was after 2005, with the creation of the National System of Social Housing – SNHIS, that the first milestones started to be achieved. SNHIS aimed at “securing access to housing to [its] beneficiaries [...] through the articulation of all three governmental spheres, and to guarantee priority to low-income families.”⁵⁷⁴ By adopting policies of subsidies with resources of its fund, FNHIS, this system that preceded MCMV envisioned more participatory tools. According to Krause et al, the main difference of those social housing strategies lays on the fact that MCMV relies to a much greater extent on service providers and in a quantitative approach of housing production.⁵⁷⁵ In opposition, they mention that SNHIS pointed at symbiotic relationship non-governmental organizations, public organs or private enterprises, in self-production and self-construction models.⁵⁷⁶

Since infrastructure and housing policies are highly interconnected, services such as of energy, sewage, transportation have been developed in parallel to housing programs because the quality of one service depends on another. SNHIS created in parallel PLANSAB and PlanHab. The National Plan for Basic Sanitation – PLANSAB aimed at universalizing access to basic sanitation and water until 2030.⁵⁷⁷ The goal of the National Housing Plan – PlanHab was to provide universal and “dignified” access to housing to every Brazilian citizen.⁵⁷⁸ Complementary to it, the creation of a basic sanitation policy was envisaged by the Basic Sanitation Bill, but only came into materialization six years later with the publication of PNSB, a national plan and working group for the implementation national basic sanitation.⁵⁷⁹ PNSB aimed at universalizing access to basic sanitation and water until 2030, complementing public policies of sustainable

⁵⁷¹ OECD, *OECD Territorial Reviews: Brazil 2013*, OECD Territorial Reviews, (Paris: OECD Publishing, 2013), <https://doi.org/10.1787/9789264123229-en>, 203-204.

⁵⁷² “Programa Papel Passado do Ministério das Cidades já beneficiou 26.194 famílias com registro da casa própria,” Portal Federativo, Ministerio das Cidades on Feb 1, 2015, Accessed May 2, 2019. <https://tinyurl.com/y89bpcr4>.

⁵⁷³ Brasil, Lei 10.840, de 11 de fevereiro de 2004, L. 10.840 (2004).

⁵⁷⁴ Brasil, L. 11.124, art. 22. Author’s translation.

⁵⁷⁵ Cleandro Krause, Renato Balbim, and Vicente Correia Lima Neto, “Minha Casa Minha Vida, Nosso Crescimento: Onde Fica a Política Habitacional?” *Texto Para Discussao*, Brasilia: Rio de Janeiro: IPEA, Nov 2013, 14.

⁵⁷⁶ Id.

⁵⁷⁷ Brasil, Lei 11.445, de 5 de janeiro de 2007, L. 11.445 (2007).

⁵⁷⁸ Brasil, Lei 11.445; Brasil, L. 11.124.

⁵⁷⁹ Brasil, Decreto 8.141, de 20 de novembro de 2013, D. 8.141 (2013).

urbanization.⁵⁸⁰ The clear overlap and confusion of those policies show that they were neither consistently integrated or planned.

The national Program for Growth Acceleration – PAC was created in 2007 by former President Lula da Silva and continued by his successor Dilma Rousseff. The program looked not only at housing, but also at a variety of different infrastructure projects.⁵⁸¹ Locally, member-states and municipalities created regional systems of social rental, but the overall range of those policies was expressively limited when compared to MCMV.⁵⁸²

3.3.2.3 Minha Casa, Minha Vida

Minha Casa, Minha Vida – MCMV, literally translated as “my house, my life”, innovated for bringing up a social aim and a rights-based approach to development in Brazil. Originally published by law 11.977/09, this main norm has been many times amended through out the years.⁵⁸³ The strategy states rights-based guidelines and promotes a basic legal accountability structure. Even though not perfect, *Minha Casa, Minha Vida* broke with previous national patterns.

This contributory demand-based housing program was financed by the Federal Union in a decentralized and coordinated action with states and municipalities. Its objective has been to support housing production and acquisition or the restoration of urban properties and the production or reform of rural dwellings, comprehending rural (*Programa Nacional de Habitacao Rural* – PNRH) and urban fractions *Programa Nacional de Habitacao Urbana* – PNHU).⁵⁸⁴ The urban program developed to include four individual categories (1, 1.5, 2 and 3), two collective modalities, MCMV-E and FGTS-Associativo, as well as a track for municipalities with up to 50,000 inhabitants.⁵⁸⁵

At the time of launching, a study conducted by Fundação Joao Pinheiro pointed out a demand for 4.6 million unities, of which 81% of the national housing deficit was concentrated among the lowest-income households, with a GMHI lower than three minimum wages.⁵⁸⁶ *Minha Casa*'s housing strategy has had three

⁵⁸⁰ Id.

⁵⁸¹ Brasil, Lei 11.578, de 26 de novembro de 2007, L. 11.578 (2007).

⁵⁸² Camila D'Ottaviano, “Política Habitacional No Brasil e Programa de Locação Social Paulistano.” *Caderno CRH* 27, n. 71 (Aug 2014). <https://doi.org/10.1590/S0103-49792014000200003>. For example, the *Programa de Locação Social*, led by the municipality of São Paulo, provided social rental housing for ca. 800 families, in comparison to the at least 6 million targeted units of MCMV.

⁵⁸³ Brasil, L. 11.977; Brasil, Decreto 7.499, de 16 de junho de 2011, D. 7.499 (2011).

⁵⁸⁴ Brasil, L.11.977, art. 1, 4.

⁵⁸⁵ Brasil, L. 11.977, art. 2.

⁵⁸⁶ Pesquisa Nacional por Amostra de Domicílios. Rio de Janeiro: IBGE, v. 31, 2011; v. 32, 2012, in Fundação João Pinheiro, “Déficit Habitacional no Brasil 2011-2012”, 31, 39, table 3.3. Three years later, in 2014, over 73% of the housing deficit was still concentrated among households earning less than 3 minimum salaries a month (Furtado, Lima Neto and Krause, 2013 in IPEA and CON-CIDADES, *National Report for Habitat III*, 24).

main phases targeting specific quantitative outcomes. After the first milestone, the quantitative goal of 1 million constructed units was achieved.⁵⁸⁷ Phase 2 took place from June 2011, to December, 2014, and aimed at 2 million units. Income ceiling for households was revised in all categories through out the years.⁵⁸⁸ Latest available numbers calculate that 225 bi BRL (around 57 bi USD) have been targeted in the production of 2,8 million housing units from 2009 to 2014.⁵⁸⁹ Final phase 3 of MCMV targeted the total construction of more than 6 million units.⁵⁹⁰

Historically, relevant investments in social housing mainly took place during the Labour Party's government. In 2002, the last year of the Cardoso's mandate, ca. 41mi USD were invested in social housing what culminated in the production of 25 thousand units.⁵⁹¹ In 2008, during the Labour Party administration and one year before the creation of MCMV, the budget had already expanded to ca. 15bi USD.⁵⁹² By 2017, more than 3,5 million units had already been delivered, according to governmental sources.⁵⁹³ However, since current right wing Jair Bolsonaro took over the presidency of the country, the program's budget has been reduced to pre-reform stages, ca. 43 mi USD.⁵⁹⁴ Moreover, due to the political agenda, much is still unknown about the future of MCMV.⁵⁹⁵

3.4 Summary

This chapter introduced the legal background of the case studies. A first section (3.1) reviewed key information of their historical (3.1.1), political (3.1.2) and socio-economical development (3.1.3) connected to housing rights. Then, it reviewed the administrative sphere of both countries (3.2), in order to provide a

⁵⁸⁷ Category 1 equivalent to 1,395BRL; and up to 4,650BRL for category 3. Among only three original categories of beneficiaries, income ranged from ca. 800USD to 2,688USD (CUEX, exchange rate on the basis of Dec 31, 2009).

⁵⁸⁸ Brasil, L. 11.977; Amore, 20. Phase 2 welcomed beneficiaries with a gross monthly income ranging from ca. 857USD (1,600 BRL) to 2,680USD (5,000.00 BRL) (CUEX, exchange rate on the basis of Dec 31, 2011).

⁵⁸⁹ CGU, "Relatório de Avaliacao Da Execucao: Programa Minha Casa Minha Vida- FGTS," 3.

⁵⁹⁰ Balbim et al, "Para Além Do Minha Casa Minha Vida," 9.

⁵⁹¹ Equivalent to 1,4bi BRL at the exchange rate of July, 2002 (CUEX, "US-Dollar Umrechnung," Online Database, <https://cuex.com/de/>); Luciana de Oliveira Royer, *Financeirização Da Política Habitacional: Limites e Perspectivas*, 1st ed (São Paulo: Annablume, 2014).

⁵⁹² Equivalent to 25bi BRL at the exchange rate of July, 2008 (CUEX).

⁵⁹³ Marcelo de Rezende Macedo, Paulo Roberto Simao Bijos and Rita de Cássia Leal Fonseca dos Santos "Programa Minha Casa, Minha Vida: Subsídios Para Avaliacao Dos Planos e Orcamentos Da Política Pública." Estudo Técnico Conjunto n 1/2017. Consultoria de Orcamento e Fiscalizacao Financeira – CONOF (CD) and Consultoria de Orcamentos e Controle (SF) (Brasilia: Câmara dos Deputados, 2017), 30.

⁵⁹⁴ Brasil, Decreto 9.741, de 29 de março de 2019, D. 9.741 (2019). Equivalent to 1,6bi BRL at the exchange rate of July, 2018 (CUEX).

⁵⁹⁵ On January 2019, the Ministry of Cities was extinguished, alongside with its constitutive participative organ ConCidades. The Ministry's core competencies were transferred to the new Ministry of Regional Development, created by D. 9.666/19. In 2021, the program was restructured and re-launched under a different name (Casa Verde Amarela).

basic understanding of procedures (3.2.1), principles (3.2.2-3) and theories of responsibility (3.2.4) of those Latin-American systems. It was observed that Brazil and Chile counted on analogous legal regimes, what enabled the following comparative research.

Moreover, a third section described the development of housing policies (3.3). It was evidenced that housing programs have been practiced for a longer time and in wider variety in Chile than in Brazil (3.3.1.2-3;3.3.2.2-3). Additionally, an exploration of justiciability (3.3.1.1;3.3.2.1) showed that the Chilean Constitution has not yet recognized the human right to housing and that, despite the Chilean constitutional silence, the construction of a “pro-housing-rights” interpretation could be possible, though unstable and insecure. In Brazil, constitutional and infra-constitutional rights-based goals accommodated the acknowledgment of the human right to housing in that country. However, references also provided in this section challenge those guidelines, showing that the constitutional and legal guidelines for adequate housing have not been efficiently implemented in that country.

In sum, neither of the case studies have been fulfilling the right to adequate housing. And fact is that numbers show a cruel reality: a great parcel of Brazilian and Chilean populations have been living under inadequate housing conditions. Therefore, in the following chapters, this study will search for answers to the challenges of accountability relations that, if reformed, could corroborate in the materialization of the right to adequate housing.

4 Dimension 1: Responsibility in social housing programs

Responsibility is the first of the three analyzed accountability dimensions because it stands for the consistent design of roles of duty-bearers⁵⁹⁶ as well as of right-holders, which should be clearly identifiable,⁵⁹⁷ transparently linked to obligations and to enforcing mechanisms. Therefore, the roles and responsibilities of involved stakeholders can be identified, compared and assessed based on the premises of this first accountability dimension.

Who are the main actors of the selected social housing programs? What are their respective roles in the accountability relationships? How do their responsibilities and obligations differ among each other in the respective case studies? Are those actors responding to a rights-based understanding? In other words, is the legal framework clear, transparent, simple, and consistent, coordinated, decentralized enough to empower the right-holders, as well as to enable duty-bearers to understand and comply with their roles? This chapter answers those questions by assessing and comparing the role of beneficiaries (4.1), service providers (4.2) and government (4.3) in the contexts of MCMV, D.S. 1, D.S. 19 and D.S. 49. Not legally bound to the accountability relation, but impacting in the rights-based perspective, the roles and responsibilities of other actors will too be discussed (4.4). Examples from the local level finally illustrate those findings.

4.1 Beneficiaries

In the case studies, a beneficiary is that individual who was granted a subsidy in a social housing program. Beneficiaries may be representing themselves and other household members, applying individually or in groups.⁵⁹⁸ In order to become eligible for application, a household must fit to certain standards and should not fall into conditions of exclusion.

Table 3 sums up the relevant urban categories evidenced in the comparative case studies. In its third phase, which started in 2015, MCMV counted with seven subcategories of urban housing projects, while Chilean D.S. 1, D.S. 19 and D.S. 49, with ten in total.⁵⁹⁹ This section will provide a comparative assessment of

⁵⁹⁶ Basset et al, 7, 41-53.

⁵⁹⁷ Unesco, “Global Education Monitoring Report 2017/18”, 6-7.

⁵⁹⁸ See Brasil, Ministério das Cidades, Instrução Normativa 12, de 7 de junho de 2018, I.N. 12 (2018); Chile, D.S. 49, art. 7; Chile, D.S. 1, art. 19. Group applications are regulated by I.N. 12, as part of another program within the context of MCMV. In the case of D.S. 1, D.S. 19, and D.S. 49, special procedures take place.

⁵⁹⁹ Brasil, Ministério das Cidades, Ministério do Planejamento, Orçamento e Gestão and Ministério da Fazenda, Portaria Interministerial 99, de 30 de março de 2016, P.I. 99 (2016); Brasil, Ministério das Cidades, Ministério do Planejamento, Orçamento e Gestão and Ministério da Fazenda, Portaria Interministerial 96, de 30 de março de 2016, P.I. 96 (2016).

the legal definition of beneficiaries. It will then move on to categorize beneficiaries as in vulnerable (4.1.2) or emergent categories (4.1.3).

4.1.1 Legal definitions

It is a critical milestone to define “who” is eligible to become a beneficiary of social housing programs. Be it too loose or too narrow, a wrong definition will end up either way excluding those who most need it. Unfair competition among households of highly distinct leverage as well as unachievable eligibility standards produce the same outcome.

D.S. 1, FDS- and FAR-funded project regulations created legal definitions for the concept of beneficiary. D.S. 49 and D.S. 19 presented various definitions, which however, did not include that term.⁶⁰⁰ In sum, regulations did not seek to present a clear, objective and consistent understanding for which exact requirements must an individual fulfill in order to be identified as a beneficiary.

D.S. 1 defines beneficiary as the “applicant assigned to a housing subsidy.”⁶⁰¹ FDS/MCMV-E observed them to be “individuals acquiring housing units that fit the conditions established in the Program, previously indicated by the [supporting entity] and later inserted in a register that allows” control by Caixa.⁶⁰² In the context of FAR-funded MCMV, beneficiaries are those candidates: (i) registered by a state or municipality; (ii) certified by the national system of housing registry – SNCH (MCMV’s national registry); (iii) who have signed a contract with a financial institution.⁶⁰³

There is an urgent need for a unison definition of beneficiary, at first at a domestic level, which expressly applies to all social housing programs. More urgent, however, is the matter that neither of the normative definitions refer to beneficiaries as right-holders. This is one of the crucial aspects that should be adjusted for an eventual behavioral change (to a rights-based approach to social housing).

Whereas the Chilean definition is focused on the final, consummated relation, the Brazilian legislation gives margin for interpretation of at least three criteria. Yet, despite the exception in MCMV-E, none of the definitions reflects the fact that individuals must suffice certain eligibility criteria. This is essential, because it is under those rules that answerability and enforcement can flourish.

⁶⁰⁰ Chile, D.S. 49, art. 72; Chile, D.S. 19, art. 2.

⁶⁰¹ Chile, D.S. 1, art. 1. Author’s translation.

⁶⁰² Brasil, I.N. 12, Annex I, art. 1.1.d. Author’s translation.

⁶⁰³ Brasil, Ministerio das Cidades, Portaria 163, de 6 de maio de 2016, P. 163 (2016) ch III, 3.

A more practical definition of beneficiary engages in observing individuals who can apply to the terms of a social program. In those cases, they must meet economic or multidimensional thresholds⁶⁰⁴ and they may not meet pre-defined exclusion criteria. Eligibility is certified in both countries via national registries, such as SNCH, noticed by the Brazilian definition.⁶⁰⁵ However, particularly in Brazil, where the norm expressly states that registration as a condition defining a beneficiary, that requirement is flawed, because there is evidence that SNCH has never been in function.⁶⁰⁶ Thus, no beneficiary can formally comply with that requirement. Corrections must be specifically taken in the MCMV context to accuse an active registry.

A multidimensional index created by CASEN, a national registry, categorizes households upon their socioeconomic conditions.⁶⁰⁷ But, different from the Brazilian model, other factors rather than only household income is taken into account for that assessment, e.g. the number of people in the household or educational levels. Hence, even if a household projects a higher gross monthly income, an overall condition of vulnerability could lead it to the category of most-vulnerable.

In the case of D.S. 19, Chile's 50% most-poor may also apply to the most-vulnerable category.⁶⁰⁸ Yet, this legal vacuum of 10% of beneficiaries creates legal issues. The lack of justification for that threshold discrepancy must be corrected because there is a significant economic difference when referring to low-income households. When referring to those living under vulnerable conditions, a small decrease in income can mean that, the existence of a family is endangered. Indeed, there is a factual economic difference between those categories: Chilean's 41% to 50% most-vulnerable households live with at least twice as much income as the most-vulnerable 40% population.⁶⁰⁹

In addition, from a legal perspective, the mere creation of two different socioeconomic limits creates confusion and inconsistency to the legal framework upon what would be the exact vulnerability line. Although D.S. 49 beneficiaries

⁶⁰⁴ Ministerio de Desarrollo Social, "Registro Social de Hogares de Chile," Santiago: MDS, Feb 2018, 46-47. The Chilean classification is based not only on income, but also on other vulnerability factors, such as educational level, the number of individuals in a household or those members incapable of contributing to income.

⁶⁰⁵ See section 5.1.2.

⁶⁰⁶ Rhaiana Santana, Researcher's Interview 4, In person, August 19, 2019.

⁶⁰⁷ The Instrument of Socioeconomic Categorization (CASEN) provides that information, according to the law. See also Chile, D.S. 49, art. 1.

⁶⁰⁸ Chile, D.S. 19, art. 2, c. It must be remarked that beneficiaries from other programs may also apply to D.S. 19, among others, from D.S. 49 and D.S. 1, what may be the reason for the expanded 10% of the category. Nevertheless, the legal issue remains. Alternatively, those who have been granted a subsidy since 2014 may again apply, if due to earthquake or natural catastrophes.

⁶⁰⁹ Chile, ORD. DAF 2822, 2, e. According to governmental data, household income of the 40% refers to 85,634CLP or ca. 134USD; whereas income of the 41-50% most-poor population refers to 189,073CL or ca. 296USD (CUEX).

would not be excluded from applying to D.S. 19 because they would not cross this program's socioeconomic threshold, the legal inconsistency puts better-off households in equal competition with more-vulnerable ones. This decreases the chances of Chile's most-poor, and creates unequal standards. Therefore, the need of urgent change in D.S. 19 and of correctly targeting the most-vulnerable first.

Furthermore, other legal definitions also play a role from a rights-based perspective. That includes the definition of household, which is in both national regulations repeatedly used as a synonym to "familiar group" and "family." However, although the same words are used, and even share a very similar dictionary definition, the perception of the legal concept by both legal systems is different.⁶¹⁰

At first, the legal definition of *família* of the studied housing programs did not expressively include same-sex unions in the definition of eligible households. The Chilean legislator characterized *núcleo familiar* as the group of people declared by an applicant, who complies with the portrayed eligibility standards, and is included in the databank of Socioeconomic Characterization.⁶¹¹ In Brazil, the expression *família* is defined as a "group of persons united by blood, affective or solidarity ties, living under the same roof and sharing the same income and expenses".⁶¹² Finally, in December 2018, a FGTS-Individual track regulation was reformed to refer to the acceptance of all forms of family, including that composed by one single person.⁶¹³

Since single-persons are ineligible in Chile, save exceptional cases provided by law. Therefore, same-sex couples had to endure exclusion from programs, for law neither acknowledged same-sex unions until 2015.⁶¹⁴ Since then, led by the recognition of same-sex civil unions, it was reported that Chile's national registry expressed its acknowledgment to same-sex families, by accepting the registration of those partners in the registry.⁶¹⁵ In contrast, in Brazil, same-sex marriage has been recognized since 2013 and single-person households are also

⁶¹⁰ *Familia*, in Spanish, is defined as "grupo de personas emparentadas entre sí que viven juntas", and in Portuguese, "conjunto de todos os parentes de uma pessoa, e, principalmente, dos que moram com ela". See "familia." In «Diccionario de la lengua española» – Edición del Tricentenario. Real Academia Española. Accessed May 8, 2019. <http://dle.rae.es/>; "família." In priberam Dicionário. Accessed May 8, 2019. <https://dicionario.priberam.org/familia>.

⁶¹¹ Chile, D.S. 49, art. 72, 1.9-1.10.

⁶¹² Brasil, Ministerio das Cidades, Portaria 464, de 25 de julho de 2018, P. 464 (2018), Annex VI.

⁶¹³ Brasil, Ministerio das Cidades, I.N. 42, art. 1.1.1.

⁶¹⁴ Exceptions consist of widows, persons older than 60 years old, those officially characterized as indigenous, those recognized as victims of the dictatorship, or of those officially recognized disabled persons.

⁶¹⁵ "Explican cómo actualizar parentesco de los integrantes del hogar tras denuncia de pareja del AUC," Publimetro Chile on Jan 26, 2016, Website, Accessed Jun 20, 2018. <https://cutt.ly/AyMpajm>. However, LGBTQ+ persons are still target of discrimination and violence in both countries. See more UN Human Rights Council, Discrimination and violence against individuals based on their sexual

qualified to apply to MCMV. Nonetheless, a universal approach welcoming all households' configurations, such as the one the Brazilian norm undertook by the end of 2018, is recommended.

Expressly defining a household upon solidarity and economic ties is a recommendable solution, because a strict definition of "family" negatively influences households that are not formed by traditionally married male and female partners. Consequently, the inclusion of single-person households particularly impacts non-married and separated persons, LGBTQ+ families, single-parents (specially single-mothers), as well as other diverse forms of families, in the definition of family is necessary, because it positively influences their eligibility to social housing programs. Norms should clarify that sexual orientation or gender identity are irrelevant to their concept of household. In fact, that should be based on the concept of individuals contributing to a household's expenses and that declare themselves as part of a family nucleus. The OECD presents the most up-to-date definition of household, which recognizes both single- and multi-person households, referring them as to persons that "pool their incomes"⁶¹⁶ and share the same living space, even if they are homeless.

4.1.2 Vulnerable categories: FAR, FDS, D.S. 19 and D.S. 49

In order to settle the incongruence created by the law, this study identifies the existence of two main groups of families struggling with inadequate housing standards. They can be defined as vulnerable and emergent categories. Vulnerable families are those living closer to the poverty line, in absolute numbers expected to be the largest housing gap. As a rule, in Chile among they fit to the 40% most vulnerable households, as so defined by RSH, or living with less than 481USD in Brazil; programs or program tracks include MCMV-E (FDS-funded) and urban category 1 (FAR-funded), D.S. 49 and its respective D.S. 19 category.

4.1.2.1 Vulnerable categories: FAR and FDS

In the Brazilian context, beneficiaries with an income of up to ca. 481USD⁶¹⁷ can apply to low-income categories: FAR-funded category 1, which receives

orientation and gender identity, A/HRC/29/23 (HRC, May 4, 2015); UN Committee on the Rights of the Child, UN Committee on the Rights of the Child: Concluding Observations, Chile, CRC/C/CHL/CO/3 (CRC, Apr 23, 2007).

⁶¹⁶ OECD, s.v. "Household," *Glossary of Statistical Terms* on Jul 29, 2002, Online Interactive Database, Accessed Apr 15, 2020. <https://stats.oecd.org/glossary/detail.asp?ID=1255>.

⁶¹⁷ Brasil, P.I. 99, art. 2, 6, para 1; Brasil, I.N. 12, annex I, 2.1; Amore, 20. Equivalent to 1,800 BRL (CUEX). It should be remarked that, at the time of enactment of the program, in 2009, the most-vulnerable categories in Brazil were categorized by households with a max. monthly gross income of ca. 641USD (CUEX). That same category was limited to households earning up to 1,022USD, in 2011 (CUEX). However, due to economic crises and oscillations of the Real, latest values from 2018 accepted households with a monthly gross income of max. ca. 481USD (1,800BRL, CUEX). In Brazilian Reais, the category's income limit has been increasing through the years, though in fact, it

individual applications, or FDS-funded MCMV-E, for collective group applications.⁶¹⁸ According to the Federal Public Prosecution Office, FAR subsidizes ca. 98% of those low-income beneficiaries.⁶¹⁹ That means, in other words, that individual applications and their respective model structure refer to the greatest part of subsidized projects for the most-vulnerable categories. Negative impacts of this radical investment setting is that the majority of low-income beneficiaries lack the use of participatory mechanisms, created (though with limitations) in FDS/MCMV-E track, a model more prone to engagement.⁶²⁰

For the different income thresholds, different contributory amounts are defined by the norm.⁶²¹ For example, a household with a GMHI 213USD shall pay a minimum of ca. 21USD or 5% of their monthly income.⁶²² Similar to the Chilean model, a dwelling valued in max. ca. 23,096USD can be purchased in up to 120 monthly contributions.⁶²³

4.1.2.2 Vulnerable categories: D.S. 19 and D.S. 49

The most-vulnerable Chilean beneficiaries refer to the country's 40% most poor.⁶²⁴ The smallest contribution accepted is an *ahorro* (or deposit) of ca. 430USD.⁶²⁵ Against it, eligible candidates may apply through D.S. 49 for a basic subsidy of min. ca. 13,525USD, for a dwelling valued in max. ca. 40,921USD.⁶²⁶ D.S. 19 facilitates vulnerable households with subsidies of min. ca. 34,459USD in purchasing a dwelling of respectively max. ca. 51,689USD,

included even more vulnerable households. The decrease may be another reason why there has been less investment of the private sector in this category.

⁶¹⁸ There are other options for the most-poor out of the scope of this research, such as projects created by municipalities with less than 50,000 inhabitants.

⁶¹⁹ MPF, *Roteiro de Atuacao: Sistema Financeiro Nacional*, 17.

⁶²⁰ See more ch. 5. In Chile, there are no different application tracks for collective or individual applicants. In other words, as a rule, programs accept individual applicants, who can decide later on if they want to join a collective group.

⁶²¹ See table 3.

⁶²² Brasil, P.I. 99, art. 3; Brasil, P.I. 96, art. 3. Equivalent to 800BRL and 80BRL, respectively, (CUEX). Households exceeding that limit up to 320USD shall contribute with 10% of their gross monthly income; and households who exceed that track shall contribute with 25% of their gross monthly income, up to a maximum of 48USD (equivalent to 1,200BRL, and 270BRL, respectively, CUEX).

⁶²³ Brasil, P.I. 99, art. 4; Brasil, P.I. 96, art. 8; see CUEX. Equivalent to 86,400BRL (CUEX).

⁶²⁴ CASEN, 2015 in: Chile, Ministerio de Desarrollo Social, ORD. DAF 2822, *tabla 3*; Chile, D.S. 49, art. 1. Exceptions are made to group applications. Those applying for “*Construcción in Sitio Propio*” may be among the 50% most vulnerable.

⁶²⁵ Chile, D.S. 49, art. 37. Equivalent to 10UF (CUEX). See Table 3.

⁶²⁶ See Table 3. Chile, D.S. 49, art. 2; “Subsidio Fondo Solidario de Elección de Vivienda, D.S.N°49,” Chileatiende, Website, Accessed May 2, 2019, <https://www.chileatiende.gob.cl/fichas/37960-subsidio-fondo-solidario-de-eleccion-de-vivienda-d-s-n-49>. Equivalent to 314UF and 950UF, respectively (CUEX). The law previously observed up a basic sum of 260 UF, in 2017, but changes have been undertaken (CUEX).

depending on the region and on their vulnerability.⁶²⁷ That basic subsidy is provided against an *ahorro* of at least ca. 861USD.⁶²⁸ In comparable economic terms, households would have a monthly income of ca. 300USD.⁶²⁹ That figure includes over seven million individuals, respective to 41% of the overall national population.⁶³⁰

Additional grants are not awarded in the Brazilian case study. However, the basic subsidy in D.S. 49 and D.S. 19 can be increased via additional grants, depending on the characteristics of the dwelling or on the socio-economic characteristics of the household. D.S. 49 awards alternative grants based on location (urban areas, ca. 8,614USD), vertical densification (more than three floors, ca. 4,738USD), and additional surface (homes built on 37.5 m², up to 2,153USD).⁶³¹ Those who provide additional savings are awarded with extra ca. 1,292USD.⁶³²

For instance, a so-called feasibility subsidy supplies families living in rural areas with extra ca. 5,168USD and with e.g. up to 7,322USD for those living in rural regions of the *Antartica Chilena*. Another D.S. 49 grant awards ca. 861USD to those households with disabled members in projects that envisage an inclusionary plan and design.⁶³³ In the example of the certificate in Annex II, the beneficiary was granted a basic housing subsidy, to whom a location subsidy and a bonus for additional savings have been awarded.⁶³⁴

In the case of D.S. 19, most-vulnerable families can receive a “social integration” grant, an amount that however should not extrapolate ca. 10,337USD per dwelling.⁶³⁵ The calculation formula is based on the difference between the price of dwelling added to the savings and the amount of the subsidy added to the acquisition bonus.⁶³⁶ In addition, an amount of ca. 2,153USD is entitled to most-vulnerable households in the form of an acquisition bonus, depending on the percentage of low-income beneficiaries in a project.⁶³⁷ However, this grant is transferred to the responsible development entity, accountable for the subsidy and, if necessary, of its restitution.⁶³⁸

⁶²⁷ See Table 3. Chile, D.S. 19, art. 3, a (a). Equivalent to 800UF and 1,200 UF, respectively (CUEX).

⁶²⁸ See Table 3. Chile, D.S. 19, art. 3, a (a). Equivalent to 20UF (CUEX).

⁶²⁹ Chile, Ministerio de Desarrollo Social, ORD DAF 2822, de 30 de julio de 2018, Ley de Presupuestos año 2018, ORD DAF 2822 (2018), 2, e-f. Equivalent to 191,987CLP (CUEX).

⁶³⁰ CASEN, 2015 in: Chile, ORD DAF 2822, *tabla 3*.

⁶³¹ Chile, D.S. 49, art. 35. Equivalent to 200UF, 110UF, 50UF (CUEX).

⁶³² Id. Equivalent to 30UF (CUEX).

⁶³³ Chile, D.S. 49, art. 35.f. Equivalent to 20UF (CUEX).

⁶³⁴ See Annex II, Second clause, b.

⁶³⁵ Chile, D.S. 19, art. 4. Equivalent to 240UF (CUEX).

⁶³⁶ Chile, D.S. 19, art. 4.

⁶³⁷ Chile, D.S. 19, art. 5. Equivalent to 50UF (CUEX).

⁶³⁸ Chile, D.S. 19, art. 5-6.

4.1.3 Emergent categories: FGTS (1.5, 2 and 3), D.S. 1 and D.S. 19

Those entitled to role of beneficiaries in emergent categories of Brazilian and Chilean social housing programs are better-off households. They tend to be favored with more housing supply from the private sector when applying for emergent categories in Brazil and Chile, even if under less favorable financial conditions.⁶³⁹ Emergent families refer to 41% to 90% of Chile's most-poor; or those living with more than 481USD and less than 1,871USD in Brazil⁶⁴⁰. Their economic characteristics suggest their eligibility to categories 1.5, 2 and 3 and their FGTS-funded tracks, D.S. 1 and its respective D.S. 19 projects.

4.1.3.1 Emergent categories: FGTS

MCMV defines three main collective and individual categories for emergent households distinguished by their different income thresholds: category 1.5, up to 695USD; category 2, up to 1,069USD; category 3, up to 1,871USD.⁶⁴¹ With an added interest rate of 1.66% a year, category 1.5 can be financed for dwellings valued in up to ca. 64,154USD.⁶⁴² Category 2 households can receive up to 7,752USD in subsidies in order to purchase a dwelling worth from 25,395USD to 64,154USD.⁶⁴³ Those with an income higher than 1,069USD to the principal limit of 1,871USD and consequently, applying to category 3, do not have access to subsidies, only to lower income rates than those offered by private market.⁶⁴⁴

As a rule, categories 1.5, 2 and 3 are substantially funded by the Worker's Severance Fund – FGTS.⁶⁴⁵ Different to the most-vulnerable FDS- and FAR-funded categories, contributions can be installed in up to 30 years, if added to low interest rates.⁶⁴⁶ Subsidies depend upon the location of the dwelling, which is

⁶³⁹ In D.S. 1 and D.S. 19, both individual and collective applications are allowed, as well as in the FGTS-funded model, though in different tracks.

⁶⁴⁰ Equivalent to 1800BRL and 7,000BRL, respectively (CUEX).

⁶⁴¹ Caixa Econômica Federal, "Minha Casa Minha Vida – Habitacao Urbana," Accessed Mar 8, 2019, <http://www.caixa.gov.br/voce/habitacao/minha-casa-minha-vida/urbana/Paginas/default.aspx>. Equivalent to 2,600BRL, 4,000BRL and 7,000BRL on the 31st of July 2018 (CUEX). See table 3.

⁶⁴² Brasil, I.N. 42, Annex I, 6.2, 8.2.2.b. Equivalent to 240,000BRL (CUEX). So-called "financial discounts", which are additional subsidies designated to reduce monthly installments, may reach up to 75% of the initial debit or the max. of 5,613USD for category 1.5 (equivalent to 47,500BRL, CUEX).

⁶⁴³ Brasil, I.N. 42, Annex I, 6.2, 6.5, 6.5.2, 8.2.d; Brasil, I.N. 43, Annex II. Equivalent to 4,000BRL, 29,000BRL, 95,000 and 240,000BRL, respectively (CUEX). Better interest rates will be given to category 2 as well. In their case, rates shall be set under 5% a year, in contrast to a 6% rate of MCMV category 3. In addition, an interest rate differential of up to 2,16% a year may be added in favor of financial agents.

⁶⁴⁴ Brasil, I.N. 42, 6.2, 8.2.2; Brasil, I.N. 43, Annex I 1.3, 6.5.b. Equivalent to 4,000BRL and 7,000BRL, respectively (CUEX).

⁶⁴⁵ Brasil, L. 11.977.

⁶⁴⁶ Brasil, I.N. 42.

taken in guarantee in all categories, based on the institution of fiduciary alienation.⁶⁴⁷ For example, up to ca. 38,494USD may be granted for a dwelling located in one of the metropolitan capitals of Rio de Janeiro, Sao Paulo or Brasilia.⁶⁴⁸ Comparable to the Chilean *ahorro*, a deposit of 20% of the purchase value is required for the application of Brazilian emergent households.⁶⁴⁹

4.1.3.2 Emergent categories: D.S. 1 and D.S. 19

In turn, Chilean emergent and middle-sector households refer to the 90-50% most-poor population of the country, or over 5.8mi individuals over 2.2 mi households living with at least twice as much income than vulnerable categories. Those 50% most-poor live with an average GMHI of more than ca. 705USD.⁶⁵⁰ Those comprehending the categories of the top 90% most-poor have an average GMHI ranging from 1,577USD and 2,662USD.⁶⁵¹

D.S. 1 creates three categories. It foresees that the 60% most-poor households may apply for the emergent category under the conditions of Title I, track 1 establishes.⁶⁵² Title I, track 2 designs conditions for the 80% most-poor,⁶⁵³ and Title II, for the 90%. Exceptionally, for construction in own lands and vertical densification, no deposit is required for Title 1, track 1, and a lower deposit of 1,292USD is demanded for Title I, track 2.⁶⁵⁴

Under the condition of a deposit or *ahorro*, Chilean emergent beneficiaries may have access to a subsidy that also varies depending on the region.⁶⁵⁵ However, in contrary to most-vulnerable categories, middle-income households are allowed to take extra loans, the so called *credit hipotecario complementario*.⁶⁵⁶ In this case, the dwelling is taken in guarantee for the debit, in a similar condition to the Brazilian model.

But, once again, the legislator created confusion when defining the eligibility conditions of D.S. 19, in the situation of beneficiaries of D.S. 1 applying to that program. According to D.S. 19, families of the “middle-sector” would be those

⁶⁴⁷ Brasil, I.N. 42; Brasil, I.N. 43.

⁶⁴⁸ Brasil, I.N. 42, 6.2.b, 8.2.2. Equivalent to 144,000BRL (CUEX). But, for those families applying for dwellings at municipalities with less than 20,000 inhabitants, grants shall not exceed ca. 19,782USD (equivalent to 74,000BRL, CUEX). More on the discussion about justification, *see* section 5.1.1.8.

⁶⁴⁹ Brasil, I.N. 42, 6.4. That percentage may be reduced to 10%, for contracts using a Constant Amortization System – SAC.

⁶⁵⁰ Chile, ORD DAF 2822, 2, e-f. Equivalent to 450,297CLP (CUEX).

⁶⁵¹ Chile, ORD DAF 2822, 2, e. Equivalent to 1,006,746CLP and 1,699,604CLP (CUEX).

⁶⁵² The 60% most poor Chileans must contribute with at least 1,292USD in order to apply to Title I, track 1 of D.S. 1. *See* Chile, D.S. 1, art. 23, a.1, 63, 64.a.a.1; CUEX. Equivalent to 30UF.

⁶⁵³ Title I, track 2 subsidizes the 80% most vulnerable Chileans, who must contribute with an initial deposit of ca. 1,722USD. *See* Chile, D.S. 1, art. 23, a.1, 64.a.a.2; CUEX. Equivalent to 40UF.

⁶⁵⁴ Chile, D.S. 1, art. 64.b, 66; CUEX. Equivalent to 30UF.

⁶⁵⁵ Chile, D.S. 1, art. 66. *See* table 3.

⁶⁵⁶ Chile, D.S. 1, art. 69.

among the 51% and 90% most vulnerable nationals, which should have been eligible to Title I, Category 2 and Title II of D.S. 1.⁶⁵⁷ Once again, socio-economic thresholds are ill defined, because they can not settle on the exact nature of vulnerability. The legal inconsistency narrows the chances of more vulnerable households, which compete against other better-off ones.

As a rule, the granted amount shall not be higher than a third of the price of the dwelling.⁶⁵⁸ The final subsidy is calculated based on a formula that changes depending on geographical conditions and purchase price of the dwellings, but shall not exceed ca. 60,304USD.⁶⁵⁹ For instance, in the case of a dwelling to be purchased in the province of the Chilean Antartica, the subsidy may achieve the max. ceiling of ca. 27,567USD.⁶⁶⁰ That amount is higher than the one of classic locations, for which the subsidy should not exceed ca. 22,226USD.⁶⁶¹ In the case of vertical densification or of construction in own lands, higher subsidies may be granted against lower contributions.⁶⁶²

Following the same indirect pattern, households pertaining to the 90% most poor can have access to lower subsidies, but they may also purchase more expensive dwellings in the case of D.S. 1, Title II.⁶⁶³ The maximum purchase price may achieve 94,764USD per unit, for which beneficiaries may be granted a subsidy between 5,384USD and 15,076USD.⁶⁶⁴ Those applying for Title II, are required to deposit an *ahorro* of ca. 3,445USD.⁶⁶⁵ Exceptional cases, just like D.S. 19 via Title II, may finance up to 22,614USD for units worth more than 103,379USD.⁶⁶⁶

Moreover, D.S. 19 designed similar basic subsidies, added to bonuses for projects that integrate certain amounts of different-sector families. The amount of required deposit depends on the purchased price of the dwelling and the respective socio-economic category:⁶⁶⁷ between ca.1,722USD and 3,445USD are to

⁶⁵⁷ Chile, D.S. 19, art. 2, d.

⁶⁵⁸ Chile, D.S. 1, art. 64, a.2.

⁶⁵⁹ Chile, D.S. 1, art. 64, a.2.1; CUEX. Equivalent to 1,400 UF.

⁶⁶⁰ Chile, D.S. 1, art. 64, a.2.4.

⁶⁶¹ Chile, D.S. 1, art. 64, a.2.1.

⁶⁶² Chile, D.S. 1, art. 64, b.2.

⁶⁶³ Chile, D.S. 1, art. 67.

⁶⁶⁴ Chile, D.S. 1, art. 67, a.1; CUEX. Equivalent to respectively 2,200UF, 125UF and 350UF.

⁶⁶⁵ Chile, D.S. 1, art. 67.a, 67.b; CUEX. Equivalent to 80UF. Or exceptionally, in cases of construction in own lands and vertical densification, 50UF.

⁶⁶⁶ Chile, D.S. 1, art. 67, a.4; CUEX. Equivalent to respectively 2,400UF and 525UF.

⁶⁶⁷ Chile, D.S. 19, art. 2, d. See table 3. As previously observed, the definition of vulnerability provided by the Chilean law differs among programs. Moreover, families of the “middle-sector” would be those among the 51% and 90% most vulnerable nationals as characterized by RSH, that shall be eligible to Title I, Category 2 and Title II of D.S. 1. But D.S. 1, Title I, Category 2 observes the 80% most vulnerable and only exceptionally eligible the elderly, as part of the 90% most vulnerable. Once again, the divergent definitions for eligibility factors brings inconsistency to legal framework.

be granted for a dwelling price in up to 60,304USD.⁶⁶⁸ For a dwelling's purchase price of 94,764USD, a beneficiary should be granted up to ca. 11,845USD.⁶⁶⁹ As in the cases before, the amount of the granted subsidy will be calculated based on the purchase price of the unit.⁶⁷⁰

⁶⁶⁸ Named by the norm as *sector-medio*; amounts equivalent to 40UF, 80UF and 1,400UF respectively. Chile, D.S. 19, art. 3, b; CUEX.

⁶⁶⁹ CUEX; Chile, D.S. 19, art. 3, b. Equivalent to respectively 2,200UF and 275UF.

⁶⁷⁰ Chile, D.S. 19, art. 3, b. Additional integration bonuses shall be granted to projects that incorporate at least 20% of middle-sector households, as well as *captación* subsidies, to projects with more than 5% of vulnerable and middle-sector families.

Table 3: Beneficiaries and their categories in MCMV/PNHU, phase 3; D.S. 49; D.S. 1; and D.S. 19.

Programs/Categories	Vulnerability Standards				Characteristics		
	Gross Monthly Household Income***	RSH	Required Deposit/Installments	Max. Purchase Price of the Dwelling	Max. Subsidy	Max. Additional Bonus	
MCMV-I/MCMV-F	— up to ca. 213USD — between	—	120 x 21USD	23,096USD	Contracted budget subtracted from 120 installments	—	
MCMV-Entidades	ca. 213USD-320USD	—	120 x 10% GMHI				
.....	— between 320-481USD	—	120 x 25% GMHI, max. 48USD	19,782USD-38,494USD	12,697USD (i.r. 5%)	5,613USD	
MCMV-E	— up to ca. 628USD	—	120 x 36% GMHI, max. 101USD				
MCMV 1,5	— up to ca. 695USD	—	—	25,395USD-64,157USD	7,752USD (i.r. 5%)	4,009USD-5,079USD	
MCMV 2	— up to ca. 1,069USD	—	10-20% of the dwellings's price	25,395USD-64,157USD	6% (+ 2,16%)	—	
MCMV 3	— up to ca. 1,871USD	—	—	40,921USD	13,525USD-34,201USD	—	
D.S. 49	— up to ca. 300USD	40 %	430USD	43,074USD	21,537USD	—	
D.S. 1, Title I, <i>Tramo 1</i>	— up to ca. 880USD	60 %	1,292USD	60,304USD	22,226USD	5,341USD*	
D.S. 1, Title I, <i>Tramo 2</i>	— up to ca. 1,259USD	80 %	1,722USD	94,764USD	15,076USD	7,538USD*	
D.S. 1, Title II	— up to ca. 1,577USD	90 %	3,445USD	47,382USD	34,459USD	—	
D.S. 19, Art. 17: National	— up to ca. 300USD	40 %	861USD	51,689USD	38,767USD	—	
D.S. 19, Art. 3, <i>letra a, b-c</i>	— ca. 715 USD	40-50 %	1,292USD	94,764USD	5,384USD-11,845USD	5,901USD; 8,614USD,	
D.S. 19, Art. 3, <i>letra b, a: National</i>	— between ca.	50 - 90%	1,722USD-3,445USD	103,379USD	6,030USD-12,362USD	6,030USD-14,516USD	
D.S. 19, Art. 3, <i>letra b, b</i>	880-1,577USD						
D.S. 19, Art. 3, <i>letra b, c</i>	—						
D.S. 19, Art. 3, <i>letra b, c</i>	—	—	—	—	6,030USD-17,746USD	12,922USD**	

Source: Author, Jan/2019. Approximate values. Conversion CUJEX, based on values of July 31st, 2018. Based on Law 11,977/09; D.S. 49; D.S. 1; D.S. 19; and on information published on the Ministry's official website. i.r stands for interest rate per year. GMHI for gross monthly income. *Ceiling achieved on exceptional conditions. **And beneficiaries of D.S. 1, T1, T2 and T11. ***Non-binding values, only for comparison, average gross monthly household income, Chile, ORD, DAF 2822, table 2; P. 99/16; P. 96/16; I.N. 42/18; I.N. 43/18.

Table 3: Beneficiaries and their categories in MCMV, D.S.49, D.S.19, D.S. 1.

4.2 Service Providers

Service providers refer to actors delivering services in an accountability relation. According to the World Bank, they can be “public, private nonprofit, and private for-profit entities,” as so identified in all analyzed cases of MCMV, D.S. 1, D.S. 19, and D.S. 49.⁶⁷¹ As well, the presence of credit institutions, supporting entities, frontline professionals and construction firms was observed in the following analysis.

Particularly the agency of Chilean and MCMV’s supporting entities is basically analogous: they share direct in contact with beneficiaries at the local level; they are advised to use a development plan; they monitor, implement and/or plan the work. However, operational settings differ, for a vaguer and less engaging environment is shown in MCMV, despite the significant rights-based guidelines this program offers.

This section follows the previous explorations on the responsibility dimension and delves into the perspective of service providers as financial institutions in D.S. 1, D.S. 19, D.S. 49 (4.2.1.1) and MCMV (4.2.1.2), finally providing a critical analysis to Caixa’s role in the Brazilian context (4.2.1.3). Moreover, this section investigates the role of business enterprises of the private construction sector (4.2.2) and challenges the exclusion of firms from FAR contracts (4.2.2.1). In addition, this section sheds light over the role of supporting entities (4.2.3), as well of other agents (4.2.4) and frontline professionals (4.2.5).

4.2.1 Financial institutions

Credit institutions in Brazilian and Chilean case studies serve for the same sake of subsidizing construction, though they have different natures. In Brazil, official governmental financial institutions take that role, making Caixa the most important actor in FAR-, FDS- and FGTS-funded categories. In Chile, private banks take a relevant lead in addressing the social housing demand.⁶⁷²

⁶⁷¹ World Bank, “World Development Report 2004”, 48. In the case of MCMV, municipalities must also provide services and even set bidding agreements with the central government in order to participate in the social housing program. However, they are not categorized in this section, because they have the nature of a federal member given by the Brazilian Constitution and, as such, they do not incur in the same answerability and enforcement rules as other service providers, as it will be observed in the next sections and chapter.

⁶⁷² Alejandro Alarcón, Edgardo Demaestri and Bernardita Piedrabuena, “*Financiamiento de La Vivienda En Chile*,” *Inter-American Development Bank*, IDB-TN-693 (Sep 2014), <https://publications.iadb.org/publications/english/document/Financiamiento-de-la-vivienda-en-Chile.pdf>; Alejandro Micco et al, “Housing Finance in Chile: Instruments, Actors, and Policies.” *Inter-American Development Bank*, IDB Working Paper Series, IDB-WP-312 (May 2012), <https://publications.iadb.org/publications/>.

4.2.1.1 Financial institutions in D.S. 1, D.S. 19 and D.S. 49

D.S. 1, D.S. 19 and D.S. 49 designed financial agents with the role to subsidize projects. D.S. 1 is the only program that defines those agents, describing financial institutions as “banks, financial societies, mortgage and fund-managing agencies (and) cooperatives (...) that grant loans with housing purposes.”⁶⁷³ From the responsibility dimension, this is an illustration of a transparent, simple and clear definition of a financial agent. That model has also openly accepted private financial institutions to engage in the national housing program, in contrast to MCMV, that was originally designed to be led by state-owned banks.

Chilean case studies foresee the participation of a credit institution to become the recipient of an *ahorro*, a deposit, comparable to a downpayment, sent to a saving account.⁶⁷⁴ Yet, wording is once again an issue: D.S. 1 and D.S. 49 name credit institutions differently. In the context of D.S. 1, it is called *entidad crediticia*, in reference to i.a. a bank, a cooperative, a financial society.⁶⁷⁵ In contrast, in D.S. 49, an *entidad captadora de ahorro* is defined as the bank or financial institution receiving a required conditional saving, depending on the project conditions.⁶⁷⁶

The difference lays fundamentally on the activity they are operating: if only holding a saving account for beneficiaries, as in D.S. 49, it will be named as an *entidad captadora*; whereas, in D.S. 1, under the possibility of granting direct loans to beneficiaries, it will be defined as a credit institution. Even though there is a slight difference among the obligations of the credit institutions (one shall only receive the deposit, the other shall as well give a loan), in fact, the same institutions may be joining all programs, taking on responsibilities that only financial institutions may take. Hence, it does not look reasonable to provide different nominations for the same actor, because that can create legal confusion. Regarding Chilean programs, it is advised to present a consistent, clear, simple and objective concept for financial institutions.

Banco del Estado⁶⁷⁷, Santander⁶⁷⁸ and Scotia Bank⁶⁷⁹ are examples of banks active in that Chilean context. Led by Santander, the virtual platform Toctoc.com

⁶⁷³ Chile, D.S. 1, art. 1.

⁶⁷⁴ Chile, D.S. 1, art. 1.

⁶⁷⁵ Chile, D.S. 1, art. 1.

⁶⁷⁶ Chile, D.S. 49, art. 39.

⁶⁷⁷ “BancoEstado Personas: Cuenta Ahorro Vivienda,” BancoEstado, Official Website, Accessed Jun 4, 2020, https://www.bancoestado.cl/imagenes/_personas/productos/ahorro-e-inversiones/cuenta-ahorro/vivienda.asp.

⁶⁷⁸ “Crédito Hipotecario,” Banco Santander, Website, Accessed Jul 4, 2020, <https://banco.santander.cl/personas/credito-hipotecario>.

⁶⁷⁹ “Cuenta de Ahorro Para La Vivienda,” Scotiabank, Website, Accessed Jul 4, 2020, <https://www.scotiabankchile.cl/Personas/Inversiones/Productos/ahorro-vivienda>.

was created to enable the search for dwellings, with the possibility to look only for subsidized housing too.⁶⁸⁰

4.2.1.2 Financial institutions in MCMV

MCMV's greater financier is the Brazilian state through its own funds and national banks, a case in which the private financial sector did not play an expressive role as credit entities. Private financial institutions have not been significantly addressed to join MCMV, in a contrast to Chile.⁶⁸¹ One of the problems envisaged in this *responsibility* dimension refer to the overlap of roles set to Caixa because Caixa, MCMV's single official operational agent,⁶⁸² also takes the role of financial (or executor) agent in a great margin of subsidies.

FDS's financial agent was officially noted to be Caixa.⁶⁸³ Particularly in the FAR-funded context, MCMV set up the figure of an executor agent (*agente executor*), in which federal official financial institutions, Caixa or Banco do Brasil, should not only subsidize, but also approach technical and legal matters.⁶⁸⁴ But responsibilities of a Brazilian executor agent include much more than financial tasks. Overall, FAR financial agents are responsible for monitoring the execution of all work and services until after conclusion, including the tracking of demand indicators, making them more than mere subsidizers.⁶⁸⁵ For instance, the operational agent should provide financial institutions with guidelines for procedural operations, set them with operational conditions for the execution of programs, provide them with a binding agreement, and finally remunerate them for completed tasks. In the case of FAR-funded projects, financial agents should, among other tasks:⁶⁸⁶

1. update national registries of beneficiaries;
2. provide energy distributors with a list of beneficiaries;
3. transfer energy, water and sewage titles to the new household owners or condominium;

⁶⁸⁰ "TOCTOC.com: sitio obligatorio antes de comprar, vender o arrendar una propiedad en Chile," TOCTOC.com, Website, Accessed Jun 4, 2020, https://www.tococ.com/subsidios?o=subsidios_ds1

⁶⁸¹ MPF, *Roteiro de Atuacao: Sistema Financeiro Nacional*; Brasil, L. 11.977, art. 2, III, 7, p.u., II-III; Brasil, Ministerio das Cidades, P. 163, ch III, 31; Brasil, Banco Central do Brasil, Resolução 4.676, de 31 de julho de 2018, R. 4.676 (2018). MCMV's general law had already suffered amendments in 2011 to introduce private banks as financiers for operations in municipalities with up to 50,000 inhabitants. Overall, the engagement of private financial actors reportedly sought expansion by 2018, but the role has been mostly performed by Caixa and Banco do Brasil in the previous years.

⁶⁸² See more in section 4.3.

⁶⁸³ Brasil, P. 464, Annex IV, 2.2-2.3. In the FDS-funded context, Caixa also plays both roles of financial and operational agent.

⁶⁸⁴ Brasil, P. 114, Annex I, 2.3; Brasil, P. 464, Annex III, 2.3.

⁶⁸⁵ Brasil, P. 114, Annex I, 2.3, c-e.

⁶⁸⁶ Brasil, P. 114, Annex I, 2.3, a-b, e-h, k, l, n.

4. contract the execution of works and services, to be previously approved in technical and legal aspects;
5. alienate and yield houses to beneficiaries;
6. define technical standards for project acquisition;
7. approve projects of social work and plans of condominium management presented by public entities, as well as manage project execution;
8. analyze the technical and legal viability of proposals and projects in their contracting phase.

However, as manager of various funds (including FDS, FAR and FGTS, that subsidize investments in all mentioned MCMV categories), Caixa will be at times financing, operating, monitoring projects, all at the same time. Therefore, Caixa will be setting its own rules and acting on behalf of itself as a financial and operational agent, without the checks and balances of a compounded accountability structure.⁶⁸⁷ Such overlapping roles hinder double-checks, leaving space for fraud, error and corruption.⁶⁸⁸

In another example, Caixa should supply the operational agent with necessary information for monitoring and evaluation.⁶⁸⁹ That means that financial institution actually promotes an internal control with the information gathered. Instead of an external control, as the legislator could have predicted, when two different agents control each other (an operational agent versus a financial agent), Caixa taking the role of both agents limits accountability.

In FGTS projects, nevertheless, financial agents may refer to “financial or non-financial, public or private institutions, responsible for the correct application and return of loans” given by that fund.⁶⁹⁰ The concept substantiates the role of a controller or monitoring figure for FGTS⁶⁹¹, such as of a financial institution, or else non-financial, public or private institution, as long as authorized by the operational agent under the conditions established by L. 4.380.⁶⁹² This legal definition challenges the natural concept of a financial actor, because of the ac-

⁶⁸⁷ *See more* on compounded accountability in Mulgan, 229-232.

⁶⁸⁸ *See* Basset et al.

⁶⁸⁹ Brasil, P. 114, Annex I, 2.3, o.

⁶⁹⁰ Brasil, I.N. 42, Annex I, 6.1.d.

⁶⁹¹ Brasil, I.N. 42, 6.c; Brasil, Lei 4.380, 21 de agosto de 1964, L. 4.380 (1964). In fact, financial agents with executive functions can be financial or non-financial institutions, public or private, to be previously authorized by the operational agent. Financial agents are defined as such by law. L. 4.380 lists all possible types of financial institutions, including banks, mortgage companies or even non-profit cooperatives or associations, that can facilitate and promote home ownership. However, most of the contracts have been led by Caixa and Banco do Brasil, state banks.

⁶⁹² Brasil, L. 4.380, art. 8; Brasil, Conselho Curador do Fundo de Garantia de Tempo de Servico, Resolucao 702, de 4 de outubro de 2012, R. 702 (2012).

ceptance of a non-financial institution in that role. And, yet, it presents the essence of the role of a financial institution in the FGTS context is not exactly to finance, but to monitor and control.

This MCMV structure, where financial agents take (even if only partly) the role of implementation, should be reconsidered. First, because in regards to social housing, the private hand of the market is expected to be more strongly regulated by the government, in order to guarantee that every individual is provided access to adequate living standards. Second, because, according to Basset et al, the separation of responsibilities, and more specifically the “separation of functions between payment and processing has been noted in many countries to reduce[...]” error, fraud and corruption levels.⁶⁹³ In this case, Caixa’s cumulation of both operational and financial roles must be reconsidered. There is an urgent need for more transparency and clarity in the responsibility dimension, particularly in regards to financial agents in MCMV.

4.2.1.3 Unclear roles and Caixa’s liability

That legal confusion upon Caixa’s operational and financial roles has been evoked on Brazilian Courts, which understood that the nature of Caixa’s liability depends fundamentally on the extent of obligations it is responsible in each single case. Courts have come to conclusion that Caixa may take two main roles: that of a performer of public policies (an operational agent) and that of a financial agent.⁶⁹⁴ Caixa's joint and several liability (*responsabilidade solidária*) on construction damages depends on the actual role conducted.⁶⁹⁵ Therefore, according to Brazil’s Superior Court, if Caixa is responsible for the selection and contract of construction firms, for the conception and execution of projects, for the delivery of houses, as well as for providing resources for the program, it acts as a performer of public policies.⁶⁹⁶ This way, Caixa becomes jointly and severally liable. On the other way around, Caixa takes the role of a financial agent when it solely transfers budgets, be it for the buyer or for a construction firm.⁶⁹⁷ In a concrete example from a decision that analyzed a contract signed before 2012, STJ found that Caixa shares joint and several liability because i.a. the contract clearly stated it would “provide an engineer/architect to monitor the work execution”, who would also evaluate if all milestones of the project had

⁶⁹³ Basset et al, 19, 44.

⁶⁹⁴ Although the Jurisprudence has tried to clarify by categorizing Caixa’s roles, it created confusion by not using the same names given by the law. From now on, the categorization of Courts will be used in this work, not only because it makes more sense, but also because it was so created to avoid further confusion with the interpretation of the law. See Brasil, Superior Tribunal de Justica, RESP 1534952/SC, 2015/0125072-8, Rel. Min. Ricardo V. B. Cueva. At DJe 14/02/2017, IP vol. 102 p. 223, RB vol. 640 p. 41 (3T Feb 7, 2017).

⁶⁹⁵ Id.

⁶⁹⁶ Brasil, Superior Tribunal de Justica, RESP 1163228/AM, 200902048149, Rel. Min. Maria Isabel Galotti. At DJe Oct 31, 2012 (4T Oct 9, 2012); Brasil, STJ, RESP 1534952/SC.

⁶⁹⁷ Id.

been effectively executed.⁶⁹⁸ This extends the role of a mere financial agent to the one of a performer of public policy, according to the Courts.

New contracts do not have such a statement anymore.⁶⁹⁹ As observed in annex I, Caixa advertises in a Manual for Rights and Obligations, that it takes no responsibility for the dwelling, for which only the construction firm would be responsible.⁷⁰⁰ The contract model annexed only observes in clause eighteen that FAR bears the expenses of physical hazards that damage the dwelling, namely fire, explosion, flood or inundation, crumble (or the threat of it), and roof covering damages.⁷⁰¹

4.2.2 Firms and business enterprises of the private construction sector

The liability of firms involved in social housing projects is an absolute axiom: those actors shall be held accountable for any defects of the work or service they provided. Open questions remain however on the extension to which firms and their representatives are answerable.

L. 11.977 only sets three obligations to construction firms. According to the norm, they should present a proposal to the financial institution, execute the contracted projects and, finally, care for the real estate property for a period of up to 60 days after the conclusion and legalization of the housing units.⁷⁰² That, however, does not exclude them from other responsibilities diffusely spread in that legal system.⁷⁰³

Overall, firms taking on housing projects must, as duty-bearers, guarantee the “solidity and security of the work [conducted, as well as for] the materials [and] the land [used]” for a period of at least five years.⁷⁰⁴ The main requirement is that a claim must be installed within 180 days of awareness of the problem, a right that, as general rule, prescribes in ten years.⁷⁰⁵ In any case, the factual consumer relation between beneficiary and provider will be the same for all categories of MCMV. Hence, regardless if it has been a FAR- or FGTS-funded program, or that beneficiaries are vulnerable or extremely vulnerable, or if the

⁶⁹⁸ Brasil, Tribunal Regional Federal 3 Região, APC0001482-21.2015.4.03.6116/SP, Acórdão 2273155, Des. Fed. Cotrim Guimaraes. At e-DJF3 Judicial 1, Jul 12, 2018 (2T Jul 3, 2018); See also Brasil, STJ, RESP 1534952/SC.

⁶⁹⁹ Annex I.

⁷⁰⁰ Caixa Econômica Federal, “Cartilha Minha Casa Minha Vida: Conheça os Direitos e Deveres do seu contrato,” (Brasília: CEF, 20AD), <http://www.caixa.gov.br/voce/habitacao/minha-casa-minha-vida/urbana/Paginas/default.aspx>, 2.

⁷⁰¹ Annex I, 18.

⁷⁰² Brasil, P. 114, Annex I, 2.5, a,b,c.

⁷⁰³ Brasil, P. 114, Annex I, 2.5, a,b,c.

⁷⁰⁴ Brasil, Civil Code, L. 10.406, de 10 de janeiro de 2002, L. 10.406 (2002) [Código Civil], art. 618.

⁷⁰⁵ Brasil, Civil Code, art. 205, 618, para *See* more Bueno, 8. In the case of the institute of prescription or *prescrição*, the State loses the right to punish.

provider has or not signed the main loan contract, the responsibility (or liability) of construction firms has been consequently recognized by Courts in regards to contractual violations or misconducts.⁷⁰⁶

Legal liability of service providers is analogous in Chile. The General Bill on Constructions and Urbanization gives the seller the primary responsibility to all defects that the real estate property may have.⁷⁰⁷ Service providers may be held accountable for up to ten years, depending on the matter.⁷⁰⁸ Counting from the material delivery of the real estate property, they shall be held accountable for three years, in case of defects in trim; or up to five years, in case of defects of construction elements and installations.⁷⁰⁹ In case of defects of the structure of the property, they may be held accountable for up to 10 years.⁷¹⁰

4.2.2.1 Exclusion of service providers from FAR contracts

Despite a clear involvement of service providers in the construction and their responsibility upon construction vices, only two main figures appear in FAR-funded contracts: beneficiary and the government. The contract completely excludes the private provider of construction works. In addition, it contemplates Caixa in the position of a financial and operational agent.⁷¹¹ In this case, Brazil's legal relationship presents only a *formal* bipartisan treat because, although the service provider is not shown as part of the contract in the FAR-funded category 1, it is unquestionably part of the accountability relationship. Hence, indirectly, the accountability relationship continues to exist, because contractors will still be liable for the service delivered.

That liability should be generally accepted by courts, since it is legally observed.⁷¹² However, in order to hold a duty-bearer into account, all rules and responsibilities must be detailed preferably in a contract, which could enable the use not only of judicial but also of non-judicial mechanisms. This objectivity impacts vulnerable families, which should be the direct target of FAR projects. The confusion and obscurity created by this track hinders beneficiaries in even-

⁷⁰⁶ See Brasil, Tribunal de Justica do Distrito Federal e Territorios, Acórdão 1092553, 20161310020955APC, Des. Teófilo Caetano. At DJE 124-140, May 3, 2018 (1TC 2018); Brasil, Tribunal Regional Federal 3 Região, APC 0001482-21.2015.4.03.6116/SP, Acórdão 2273155, Des. Fed. Cotrim Guimaraes. At e-DJF3 Judicial 1, Jul 12, 2018 (2T Jul 3, 2018); Brasil, Superior Tribunal de Justica. EDcl no RESP 1534831/DF, 2015/0124428-0, Rel. Min. Nancy Andrichi (3T Aug 28, 2018); Brasil, Superior Tribunal de Justica. RESP 1534831/DF, 2015/0124428-0, Rel. Min. Ricardo Villas Boas Cuevas. At DJe 02/03/2018 (3T Aug 28, 2018).

⁷⁰⁷ Chile, Bill on Urbanismo and Construction Works, art. 18.

⁷⁰⁸ Id.

⁷⁰⁹ Ib.

⁷¹⁰ Ib.

⁷¹¹ See Annex I, A.

⁷¹² As for example, in the Chilean General Bill of Constructions or Brazil's Civil Code.

tual claims against a service provider, against which they have no formal information or means to prove such information. Therefore, the urgent need of revision.

4.2.3 Supporting entities

Through “supporting entities”, beneficiaries receive strong social and administrative assistance. They are brought to engage in different occasions, including during the phases of project planning, implementation and delivery. As a rule, both systems exclude social assistance from emergent households, though the operationalization of social assistance is more comprehensive in Chile.⁷¹³ Yet, even though supporting entities have been operating as key actors in the realization of housing rights in Chile, the lack of rights-based goals should also be reformed in order to ensure justiciability.

Overall, responsibilities of D.S. 49 supporting entities are the most comprehensive. Responsibilities of supporting entities have been similarly designed in MCMV-E, D.S. 1, Title I, D.S. 19, FGTS-Asociativo. In such cases, a participatory planning phase was excluded. The FAR system, although counting with social assistance at the local level, designed that role to be fulfilled by a local public entity – thus, the private nature of a service provider was withdrawn from that program. Supporting entities were excluded from the design of FGTS-Individual and D.S. 1, Title II accountability relations, both targeting emergent categories.

D.S. 19 particularly observes the figure of a “development entity”, an *entidad desarrolladora*.⁷¹⁴ In D.S. 49, they are named *entidad patrocinante*, or sponsor entity, whose role is also to provide technical, legal and social assistance in construction projects.⁷¹⁵ In D.S. 49 and D.S. 19,⁷¹⁶ the responsibilities of supporting entities may be incorporated by public entities, in those cases, e.g. municipalities or SERVIU.⁷¹⁷ Yet, it is clear that the nature of supporting entities comprehends legal or natural persons, public or private actors, such as cooperatives,

⁷¹³ Chile, Resolución 620, (V. y U.), de 24 de agosto de 2011, R. 620 (2011); Chile, Resolución Exenta 1.875 (V. y U.) de 23 de mayo de 2015, R.E. 1.875 (2015). This generates positive impacts, which are however minimized by the lack of rights-based legal acknowledgment, as it will be observed in detail in section 5.2.

⁷¹⁴ Chile, D.S. 19, art. 2, b; Chile, R.E. 6.509, art. 1.

⁷¹⁵ Chile, D.S. 49, art. 52-53. Other responsibilities are given to entities assisting in the refurbish or reform already constructed dwellings, but they are out of the scope of this research.

⁷¹⁶ Chile, D.S. 49, art. 52; Chile, D.S. 19, art. 2, b. There is no legal provision that SERVIU can act as a supporting entity in the D.S. 19 context.

⁷¹⁷ Brasil, P. 464, Annex III, 2.5; Annex IV, 2.5; Chile, D.S. 49, art. 56. Since FAR-funded projects are reserved for individual applications and, as a rule, they do not count with supporting entities backing the collective application process, public entities are expected to integrate the social assistance plan and, for instance, a municipality or one of its departments, can be defined for that task.

foundations, construction firms, real estate investors, whose aim is to develop housing projects for dwellers in accordance to specific strategy plans.⁷¹⁸

Another crucial characteristic is their role as mediators of locals with governmental actors and, if necessary, with construction firms. Supporting entities assist in the planing of urban and housing projects with local families by monitoring and implementing contracts, providing legal assistance and social assistance from application until post-delivery phases.⁷¹⁹ Among their responsibilities, D.S. 49 foresees their role of informing and involving families in the design of mega- or new-land housing projects.⁷²⁰ Up to two months after the delivery of dwellings, a capacitation course about best-use practices and maintenance is to be conducted with beneficiaries.⁷²¹ In the case of D.S. 1, only beneficiaries of Title I may be assisted by a supporting entity⁷²², for which they are expressly responsible for elaborating or delegating the making-of architecture and engineering services.⁷²³ Those services have been noted to include urbanization and environmental projects, as well as for informing and training families, for instance, in legal education.⁷²⁴

In the Brazilian context, MCMV-E denominated supporting entities as *agentes executores locais* (local executor agents), alongside with local public entities, which portray the role of local supportive agents.⁷²⁵ In FGTS-Associativo, supporting entities were distinguished as *agentes promotores gerenciadores*. Both cases also name *entidades organizadoras*, literally “organizing entities”, as those entities, which could be cooperatives, associations or non-profit private entities assisting beneficiaries through the project at the local level.⁷²⁶

⁷¹⁸ Chile, D.S. 49, art. 52; Chile, R.E. 6.509, art. 1; Chile, R.E. 1.875, art. 2. *Plan de integración social* is set in D.S. 19, and *Plan de Acompañamiento Social*, in D.S. 49.

⁷¹⁹ Chile, R.E. 1.875, art. 2.10; Ricardo Toro and Alejandro Huincahue, Researcher’s Interview 3, Skype, June 7, 2019; “Entidades de Asistencia Técnica: Minvu Proveedores Técnicos,” Ministerio de Vivienda y Urbanismo, MINVU, Official website, Accessed Jun 28, 2019. <https://proveedorestecnicos.minvu.gob.cl/entidades-patrocinantes/>.

⁷²⁰ Chile, D.S. 49.

⁷²¹ Chile, D.S. 49, art. 51, 1.1.a, 1.2.e.

⁷²² Chile, D.S. 1, art. 62.

⁷²³ Chile, Resolución 620, (V. y U.), de 24 de agosto de 2011, R. 620 (2011).

⁷²⁴ Id.

⁷²⁵ Brasil, P. 464, Annex II, 2.5. In the case of FAR-funded projects, both roles will be executed by local public entities.

⁷²⁶ Brasil, I.N. 12, Annex I, 1.1.g; Brasil, P. 464, Annex III, 2.5; Brasil, P. 464, Annex IV, 2.5; Brasil, I.N. 43, 1.2; Ministerio das Cidades, R. 723, Annex I, 3.1; “Financiamentos: Carta de Crédito Associativo,” FGTS.gov.br, Official website, Accessed Mar 27, 2020. <http://www.fgts.gov.br/Pages/fgts-social/financiamento.aspx#section4>. FGTS-funded *carta de crédito associativo* enable non-profit organizations, municipalities or organs of the direct and indirect administration to take a similar role. In essence, the same kind of organizations can join that program, even labor unions, in the condition of *entidade organizadora*. Both I.N. 43 and R. 723 were not clear about that matter, but a governmental official website hints that those persons organized in forms of “condominium, unions, cooperatives, associations, Housing Companies or private entities focused on housing production” shall join the program as *entidades organizadoras*. Author’s translation.

In analogy to the Chilean supporting entities, they develop project plans and proposals, provide the legal and documental material for project approval, they select beneficiaries, promote their registration and informational assistance, monitor and evaluate construction works.⁷²⁷ In FGTS-Associativo, supporting entities are responsible for the creation and organization of the applicant group, requiring a prior socio-economic analysis of the applicants, as well as a prior feasibility study about the project.⁷²⁸ Furthermore, they monitor project implementation and engage with beneficiaries.⁷²⁹

However, although Brazilian supporting entities share fundamentally analogous roles to provide social assistance and articulate local issues with their Chilean pairs, their responsibilities are more limited.⁷³⁰ For example, in D.S. 49, supporting entities should inform about and monitor the housing demand. They should also identify alternative solutions for occasional issues occurring during the different project phases.⁷³¹ They should care for the legal support of families, related to the development and implementation of projects, as well as of the registration of property.⁷³² D.S. 49 also requires the existence of a Social Monitoring Plan (*plan de acompañamiento social*) to be developed by a sponsor entity or SERVIU, depending on the project's stage.⁷³³ The first stage includes the development and making of a Milestone for Organization of Demand, Design and Execution of the Project.⁷³⁴ Thus, the law drives families to engagement through the use supporting entities for informing and involving families in project development.⁷³⁵

In contrast, for example, Brazilian entities do not have technical or legal responsibilities for legal contracts or events, as the general guidelines of MCMV are not comprehensively supported by their own operational guidelines.⁷³⁶ For FAR projects, (local executor) public agents have the role to ensure technical quality and to create, under a participative framework, a Plan for Social Assistance – PTTS (*projeto de trabalho técnico e social*) with tasks to be developed in pre- and post-occupation phases.⁷³⁷ In a pre-occupation phase, social assistance

⁷²⁷ Caixa Econômica Federal, “Manual Programa Minha Casa Minha Vida. Entidades. Recursos FDS,” Brasília: CEF, 20AD, www.caixa.gov.br/Downloads/MANUAL_MCMV_ENTIDADES.pdf, 7.

⁷²⁸ Brasil, CCFGTS, R. 723, Annex I, 3.2.

⁷²⁹ Brasil, CCFGTS, R. 723, Annex I, 3.2.

⁷³⁰ Brasil, P. 464, Annex III, 2.4; Chile, D.S. 19; Chile, D.S. 49.

⁷³¹ Chile, RE 1.875, 4, *Información y Gestión Territorial de la Demanda*.

⁷³² Under specific request, the construction firm may take on this task. See Chile, R.E. 1.875, 2.3.

⁷³³ Chile, D.S. 49, art. 50.

⁷³⁴ Chile, D.S. 49, art. 51. *Etapa de Organización de la Demanda, Diseño y Ejecución del Proyecto*.

⁷³⁵ Chile, D.S. 49, art. 51,1.1, c.2, 1.2, a.

⁷³⁶ Brasil, Ministerio das Cidades, P. 464, Annex I, 2.1; Annex III, 6.5-6.6.

⁷³⁷ Brasil, P. 464, Annex III, 2.5, 6.3.

should articulate local demands into and within different policy fields, e.g. education, health, transportation, work, with the creation of a collaborative group – GIPP (*grupo institucional do poder público*).⁷³⁸ Their task also includes the provision of the necessary public service equipment and infrastructure for the new project.⁷³⁹ A post-occupation phase, in turn, arranges technical and social support. The top-down approach is clear: those legal settings did not create participatory decision-making mechanisms, specially not in planning phases; and the obligations and exact terms are open, to be clarified in a fidelity agreement following instructions of the PTTS, which is based on ministerial regulations and recommendations.⁷⁴⁰

Another difference is that, whereas supporting entities are blended as part of the Chilean program structure and excluded exceptionally; in the Brazilian context, the norm discriminated their participation only to specific tracks. FGTS-Individual avoids any engagement of supporting entities, only in similarity to Chile's D.S. 1, Title II. In FAR-funded projects, the responsibilities of supporting entities were designed to be incorporated by local public entities.⁷⁴¹ Thus, excluded from the categories that receive expressive investments, namely FAR and FGTS-Individual, supporting entities find only a peripheral role in social housing policies and lack leverage in MCMV.⁷⁴² MCMV-E only counts for 3% of project investments. As a consequence, the Brazilian social housing model has been targeting program tracks that fundamentally disengage supporting entities from projects.⁷⁴³

A series of problems follow. This misuse of financial resources impacts in low performance and satisfaction levels led by those most invested programs that fail to operationalize participation and engagement mechanisms for involved entities or simply exclude social assistance.⁷⁴⁴ Indeed the sole exclusion of supporting entities from accountability relations is not an issue, but the operationalization of policies that excluded the essential participatory mechanisms those exact actors can intrinsically enable.

⁷³⁸ Brasil, P. 464, Annex III, 2.4, 6.2.3.

⁷³⁹ Brasil, P. 464, Annex III, 2.4.c.

⁷⁴⁰ Brasil, P. 464, Annex III; Brasil, L. 11.977, art. 3, para 5; Ministerio das Cidades and Secretaria Nacional de Habitacao, “Minha Casa +Sustentável. Caderno 3: Diretrizes e Recomendacoes. Qualificacao Do Projeto Urbano” (Brasília: MCIDADES/SNH, May 2018).

⁷⁴¹ Brasil, P. 464, Annex III, 2.5.

⁷⁴² Ministério das Cidades, SNH e SIAFI/SIGA Brasil in: Congresso Nacional, CONOF, CONORF, 2; MTE, “Relatório de Gestao Do Exercício de 2014”, 70, 76. From 2009 to 2017, FAR invested the equivalent to 20,4bi USD (76.3bi BRL) and, MCMV-E, 67mi USD (2.5bi BRL); whereas FGTS Individual invested 9biUSD (26bi BRL), in comparison to, FGTS-Associativo, 100mi USD (267mi BRL, CUEX).

⁷⁴³ Ministério das Cidades e Cunha, 2014 in: Amore, 22. See more details in sections 3.3 and 5.2.

⁷⁴⁴ See more details in section 5.2.

Finally, the law has not given emergent families of FGTS-funded projects, D.S. 1, Title II and their related D.S. 19 categories the right to receive assistance of those supporting entities.⁷⁴⁵ However, even though these dwellers present an income above the poverty line, they too evidence vulnerability and poverty – or otherwise their eligibility to social housing would be after all questionable, since programs do not yet tackle universality. So, due to those families' overall vulnerable status, support should be granted to better-off families.

The fourth actor

The described roles of supporting entities can be vital for social housing. This analysis evidenced that they do not take the traditional role of a service provider, but in fact, they play a central role bound to the accountability relation as mediators of beneficiaries in several of the analyzed case studies. Figure 2 shows their dynamic in the analyzed case studies, evidenced in MCMV-E, D.S. 1 Title I, D.S. 19, D.S. 49 and FGTS-Asociativo.

In essence, it was identified that their role is directly related to the assistance of the most-vulnerable. Though their roles varied from project to project and ranged from mediation, through project-planning and management to monitoring, their activity was identified to serve as a communication partner at the local level, that could engage with both governmental and private actors on behalf of the most-vulnerable. In sum, they were expected to engage directly with the most-poor. Their impact improves performance and supports the materialization the right to adequate housing.

This distinguished nature of supporting entities cannot be compared to that of other service providers because financial actors or construction firms aim at profit over their services for which they engage in lucrative entrepreneurship.⁷⁴⁶ Therefore, bound to the accountability structure, supporting entities produced a new type of agency. This changed the traditional figure of the hypothetical triangular accountability relationship, now counting with four actors in at least five programs.⁷⁴⁷

In most of those cases, supporting entities were supposed to inform and coach beneficiaries on how to occupy and use their new habitat, as diagnosed in MCMV-E.⁷⁴⁸ Particularly the Chilean model D.S. 49 designed a more comprehensive strategy than that observed in all others. In D.S. 49, some of their main

⁷⁴⁵ Chile, D.S. 1, art. 62.

⁷⁴⁶ This does not exclude the responsibility that construction firms or financial entities have in social housing because: i) business enterprises have the responsibility settled to respect human rights; ii) according to Brazilian guidelines and as advocated by this work, their agency is also underpinned by the right to the city, the democratic management of the city and, the social function of the property (OHCHR, HR/PUB/11/04, II.A, 11-12; Brasil, City's Statute. *See* sections 2.4.4.2 and 3.4.2).

⁷⁴⁷ *See* figure 1.

⁷⁴⁸ Brasil, I.N. 12.

responsibilities also concerned different aspects of social, economical and legal assistance.⁷⁴⁹ Additionally, it required those agents to support not only in communication and training tasks, but it also created participatory mechanisms of project-planning.

Yet, the work provided by supporting entities was very restricted in most of their applicable programs. MCMV-E architected their role as mainly supportive and informational.⁷⁵⁰ Its commissions, composed by a minimum of one member of the supporting entity and elected beneficiaries, should participate in those project commissions. However, those commissions were not sufficed with participatory decision-making mechanisms, nor were they capable of conducting their own project planning.

FGTS-Asociativo enabled a mixed system, where organized groups could apply.⁷⁵¹ Those agencies were not necessarily the classical figure of a supporting entity, but they were closer to the nature of cooperatives. Yet, the norm neither installed participatory and decision-making procedures. D.S. 1, Title I, and D.S. 19 did neither extend as many assistance mechanisms and obligations to supporting entities as those observed in D.S. 49.⁷⁵²

FAR-funded projects had local public entities taking on the role of supporting entities, as part of the governmental structure, but without the function of mediating or engaging. Although the program had in its skeleton the role set for supporting entities, it designed it for a different actor and excluded mechanisms of participation. Their sole purpose was to establish a more direct communication to the local level, which evidenced to perform in low levels of efficiency.

Moreover, supporting entities were also excluded assistance from better-off households. The most drastic scenario was evidenced in Brazil, where all FGTS-Individual categories were left unassisted. As a consequence, one of the issues in the Brazilian model is the lack of investments in collective application tracks, the only ones that fundamentally include supporting entities and participatory instruments. MCMV-E and FGTS-Asociativo received expressively less funds than FAR and FGTS-Individual, what negatively impacted the Brazilian model.

In comparison, in Chile, only D.S. 1, Title II, that targeted the 80%-90% most vulnerable banned social assistance. In those cases, beneficiaries related directly

⁷⁴⁹ Chile, D.S. 49, art. 51, 1.1.a, 1.2.e; Chile, R.E. 1.875, art. 2.10; Ricardo Toro and Alejandro Huincahue, Researcher's Interview 3, Skype, June 7, 2019; "Entidades de Asistencia Técnica: Minvu Proveedores Técnicos," Ministerio de Vivienda y Urbanismo, MINVU, Official website, Accessed Jun 28, 2019. <https://proveedorestecnicos.minvu.gob.cl/entidades-patrocinantes/>.

⁷⁵⁰ Brasil, I.N. 12.

⁷⁵¹ Brasil, CCFGTS, R. 723, Annex I, 3.2.

⁷⁵² Chile, D.S. 1, art. 62; Chile, R. 620; Chile, D.S. 19, art. 2, b; Chile, R.E. 6.509, art. 1.

to both service providers (construction firms and financial agents) and governmental actors. All other categories envisaged some kind of assistance and participatory mechanisms in their design.

D.S. 19 mentions the existence of an evaluation commission, which should be in charge of assessing housing projects and their compliance to the standards set by the norm.⁷⁵³ However, that commission is only composed by members of SERVIU, SEREMI and MINVU, for which no mention of participation is given to members of civil society organizations, of the academia or of the private sector. In such examples, it is clear how top-down decision-making in Chile is not only centralized in matters of structure of the public administration, but also in matters of openness for a public, democratic debate. Thus, participation and transparency are questionable in that model because key decisions are still taken by members of the government behind closed doors.

However, neither does the selection and evaluation of projects in the context of MCMV fully respect those values of participation and decentralization. Led and operated by Caixa, the process also lacks transparency. There is neither public formal description of an internal procedure or an internal designation of roles or responsibilities.

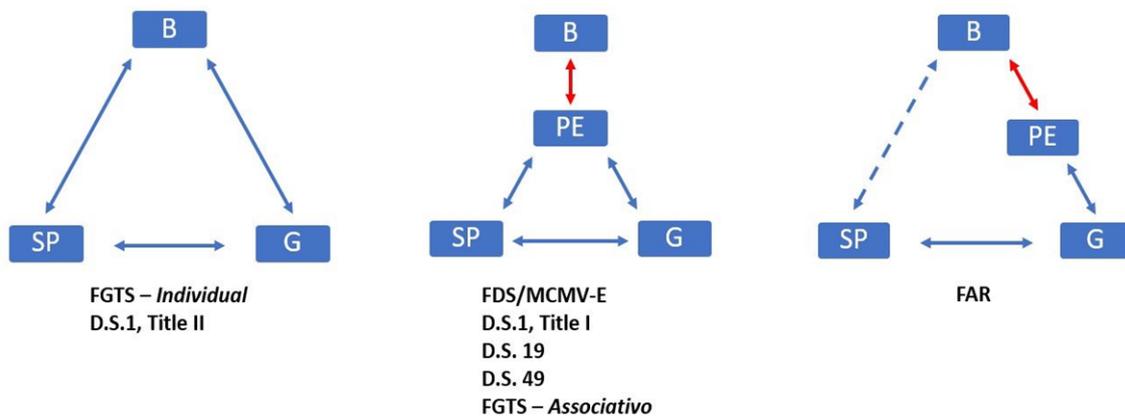


Figure 2: Legal accountability relationships in Brazilian and Chilean models

4.2.4 Other supporting agents

Other agents also advance the respect to human rights at the local level. However, other than construction firms, financial agents or supporting entities, those specialized agents are delegated to develop or monitor technical standards. Their operation drives into fundamental impact on the quality outcome of dwellings. D.S. 19, D.S. 49 and MCMV-E expressly designed such roles.⁷⁵⁴

⁷⁵³ Chile, D.S. 19, art. 2.a.

⁷⁵⁴ Brasil, I.N. 43; Brasil, CCFGTS, R. 723, Annex I, 3; Chile, R.E. 6.509, art. 1; Chile, R.E. 1.875,

In Chile, supporting entities can delegate some activities to habilitated technical service providers.⁷⁵⁵ In the D.S. 49 context, SERVIU can delegate technical monitoring and evaluation tasks to specialized professionals, a technical monitoring team – FTO (*fiscalización técnica de obras*).⁷⁵⁶ SERVIU, liberal professionals or legal persons may be delegated those tasks.

In D.S. 1, SERVIU and SEREMI overlap in monitoring and evaluation responsibilities,⁷⁵⁷ but no clear mention is given to an agent solely responsible for monitoring the technical implementation of the project, such as the FTO. Similarly, D.S. 19 overlaps roles by delegating SEREMI to monitor SERVIU's tasks of monitoring the implementation of the social integration plan.⁷⁵⁸

Particularly to the context of MCMV-E, technical assistance teams or organs (*equipe ou órgão de assessoria técnica*) may be delegated by supporting entities to elaborate on technical parts of projects.⁷⁵⁹ In sum, they can have a more expanded role than Chilean FTOs. Those technical assistance teams are responsible for local housing intervention in the development of architecture, engineering and social assistance projects, as well as in the selection, engagement, organization and assistance of beneficiaries.⁷⁶⁰ Hence, whereas the role of MCMV's technical assistance teams includes the elaboration, licensing approval of projects, the follow-up, monitoring and management of implementation, Chilean FTOs will fundamentally focus on supervising project execution.⁷⁶¹

Even if partially or exceptionally, beneficiaries also take the lead in different project phases. Exceptionally, MCMV-E designed two management commissions composed in majority by beneficiaries to induce local engagement. The *Comissão de Representantes do Empreendimento* – CRE is fundamentally responsible for financial management, whereas the *Comissão de Acompanhamento da Obra* – CAO, was created to monitor and evaluate project implementation and for decision-management in the construction modalities of direct administration and co-management.⁷⁶² They are formed by at least one member of the responsible supporting entity and at least two beneficiaries.⁷⁶³

artículo preliminar; Chile, R. 620, *artículo preliminar. Prestador de servicios de asistencia técnica* or else, *PSAT*.

⁷⁵⁵ Chile, R.E. 6.509, art. 1; Chile, R.E. 1.875, *artículo preliminar*; Chile, R. 620, *artículo preliminar. Prestador de servicios de asistencia técnica* or else, *PSAT*.

⁷⁵⁶ Chile, D.S. 49, art. 56; Chile, R.E. 1.875, art. 4.

⁷⁵⁷ Chile, R. 620, art. 5.

⁷⁵⁸ Chile, R.E. 6.509, art. 7.

⁷⁵⁹ Brasil, I.N. 12, Annex I, 1.1.h.

⁷⁶⁰ Brasil, I.N. 12, Annex I, 1.1.g.

⁷⁶¹ Brasil, I.N. 12, Annex I, 1.1.h; Chile, R.E. 1.875, art. 4; Chile, D.S. 49, art. 56.

⁷⁶² Brasil, I.N. 12, Annex I, 1.1.e-f. See Annex V, f.1, f.2.

⁷⁶³ Brasil, I.N. 12, Annex I, 1.1.e-h.

4.2.5 Frontline professionals

Agents, civil servants and parliamentarians act in delegation of the State's responsibility. In the case studies, those working "in the name of the public administration", even if hired by a private firm, find themselves responding as public agents⁷⁶⁴ and a public official is anyone who holds a position in the public administration, even if not remunerated.⁷⁶⁵ Therefore, anyone acting on behalf of the public administration is administrative, civil, and even criminally liable. In other words, public agents are accountable based on their role and responsibilities.

The civil liability of public servants may be addressed by national Audit Court of the Comptroller General's Office or via ordinary civil courts.⁷⁶⁶ But, however essential to the operation of housing programs, those individuals are seldom referred to, with their respective tasks, in the main regulations of the case studies.⁷⁶⁷

Disperse norms regulate the activity of those frontline professionals in Brazil and Chile, though specific responsibilities and obligations are also set by manuals and technical guidelines.⁷⁶⁸ For example, "engineers and architects" monitoring and evaluating in the context of FAR-funded categories should follow the instruction of a technical manual.⁷⁶⁹ COTS guides those agents of supporting entities.⁷⁷⁰

But, in contrast, the Chilean model annotated on its social housing legal framework about the eligibility conditions and some responsibilities of those agents. That enables a more objective and consistent system. For example, natural or legal persons selected by SERVIU to monitor construction works must be listed in MINVU's registry of consultants.⁷⁷¹ Monitoring activities are furthermore detailed, which include the verification of applied materials and if its progress is in conformity with the budget.⁷⁷² Notwithstanding, architects, builders, technical inspectors, as well as the legal persons behind those professionals, will be

⁷⁶⁴ According to Furtado, public agent is the natural person acting in the name of the Public Administration (Furtado, 762).

⁷⁶⁵ Chile, Criminal Code, *Código Penal, de 12 de noviembre de 1874* (1874)[*Código Penal*], art. 260; Brasil, Criminal Code, D.L. 2.848, de 7 de dezembro de 1940, D.L. 2.848 (1940) [*Código Penal*], art. 327.

⁷⁶⁶ Danziger, 34.

⁷⁶⁷ Chief directors are expressly quoted in Chilean housing regulations, for example, but that is rather a seldom encounter.

⁷⁶⁸ Brasil, Administrative Improbability Act, Lei 8.429, de 2 de junho de 1992, L. 8.429 (1992) [Lei da Improbidade Administrativa]. The Brazilian Administrative Improbability Act, L. 8.429, provides on obligations of public agents.

⁷⁶⁹ Caixa Econômica Federal, "Caderno de Orientações Técnicas – Acompanhamento de Obras – FAR e Mercado," 2015, www.caixa.gov.br/downloads, 5.7.

⁷⁷⁰ Caixa Econômica Federal, "COTS: Caderno de Orientação Técnico Social," May 2013.

⁷⁷¹ Chile, R.E. 1.875, art. 4.3.

⁷⁷² Chile, R.E. 1.875, art. 4.5.

held accountable for any vices in the construction.⁷⁷³ Hence, the seller must include those professionals in the purchase and sale contract, and also individually name the representatives of legal persons.⁷⁷⁴

Such clarity and transparency is welcome because it impacts on eventual enforcement. Transparent information provided in Chilean documents enables beneficiaries to direct their claims against known and nominated actors. However, the same structure is rarely possible within the Brazilian legal array.

FAR-contracts do not even name the responsible construction firm or related service providers.⁷⁷⁵ Yet, they are supposedly responsible and liable. This context generates legal insecurity for right-holders, who are recognizedly poor and have extremely limited resources available to hold agents accountable. Thus, Brazilian contracts require urgently more transparency and clarity.

4.3 Government

The government, in its role of primary duty-bearer, has various obligations towards its citizens. In the international sphere, national governments may be sanctioned for violating human rights treaties. But, as a domestic institution, those fictional figures act via delegation: to their public servants, officials and parliamentarians; and also to public entities, such as municipalities, organs, public companies. Important is that duty-bearers can be defined with responsibilities, so that they may be eventually held into account.

In sum, Chilean programs did not construct all the same governmental actors that are seen in the Brazilian model, such as the operational agents. Yet, analogous responsibilities are distributed to other actors, in a different model. Roles and responsibilities of agents involved in D.S. 49 and D.S. 1 are specifically defined along those main norms, whereas the Brazilian Ministry of Cities edited in diffuse regulations the roles of involved actors. In both cases, however, suggestions point for reforms that can issue transparency, clarity, simplicity, objectivity, decentralization and coordination.

This section explores accountability from the perspective of the government. First, it elucidates on the respective federal ministries (4.3.1), namely the Chilean Ministry of Housing and Urbanism – MINVU (4.3.1.1) and the Ministry of Cities (4.3.1.2), including a summary on funds significantly financing MCMV, and direct councils and commissions involved in both domestic policies (4.3.1.3). Moreover, this section dives into the role of public entities (4.3.2) and of the accessorial organs SERVIU, SEREMI and Caixa (4.3.3-5).

⁷⁷³ Chile, Bill on Urbanism and Construction Works, L. 458, de 18 de diciembre de 1975 (1975) [Ley General de Urbanismo y Construcciones], art. 18.

⁷⁷⁴ Chile, Bill on Urbanism and Construction Works, art. 18.

⁷⁷⁵ See Annex I, p. 1 and section 4.2.5.

4.3.1 Ministries

Federal ministries orchestrate decision-making in both models. Despite the influence of diverse participatory approaches and from actors of all governmental spheres, planning and investment are still concentrated on the hands of the Executive government in both models.

4.3.1.1 MINVU

The Ministry of Housing and Urbanism – MINVU leads the Chilean analyzed social housing programs as a body of the Executive responsible for policy-making in housing and urban contexts. MINVU was created in 1965, alongside with other subsidiary organs for urban and housing development, namely CORMU, COU, CORHABIT and CORVI. In 1976, MINVU was restructured and regionalized, leading to a merger of those agencies into regional *Servicios de Vivienda y Urbanización* – SERVIUs.⁷⁷⁶ Other ministries and organs are also involved in matters of regional or urban development, including the *Subsecretaria de Desarrollo Regional y Administrativo* – SUBDERE, the Ministry of Transports and Telecommunications – MTT and of Public Works – MOP.

In the housing context, whereas policy making is conducted by SEREMIs in direct contact with regional municipalities and governments, following the instructions of the federal government, the SERVIUs offer different roles on implementation.⁷⁷⁷ But overall, low levels of civic engagement are observed in Chile's housing policy-making.⁷⁷⁸ Although gathering subnational competencies, the Chilean structure is comparably more centralized than the one presented by Brazil.

4.3.1.2 Ministerio das Cidades

The Brazilian federal government delegates the administration of MCMV to the Ministry of Cities, which is legally defined as “manager” or managing agent of the program, meaning it has the role to lead the diffuse relations of MCMV.⁷⁷⁹ Responsibilities defined to the Ministry are inscribed in the norm and include: i) managing budget application; ii) internal monitoring and evaluation; iii) establishment of entry and selection criteria of beneficiaries, as well as of rules and conditions for project implementation; iv) definition of housing standards

⁷⁷⁶ Chile, Decreto Ley 1.305, (V. y U.) , de 19 de febrero de 1976, D.L. 1.305 (1976); Chile, Decreto 355, (V. y U.) de 28 de octubre de 1976, D. 355 (1976); Chile, Decreto 397, (V. y U.) de 24 de noviembre de 1976, D. 397 (1976); OECD, *OECD Urban Policy Reviews, Chile 2013*, (Paris: OECD, 2013). <https://www.oecd-ilibrary.org/content/publication/9789264191808-en>, 161.

⁷⁷⁷ See OECD, *OECD Urban Policy Reviews, Chile 2013*.

⁷⁷⁸ Smart and Burgos, 193.

⁷⁷⁹ Brasil, P. 114, Annex I, 2.1; Amore, 18, 245.

and (in cooperation with the Ministry of Treasury) of the contribution of beneficiaries.⁷⁸⁰ The Ministry of Cities is likewise responsible for regulating the participation of the Federal District, states and municipalities in MCMV.⁷⁸¹

One of the first moves of the Lula administration was to create the Ministry of Cities and later to annex the Cities' Council – ConCidades to it.⁷⁸² Both organs aimed at developing urban policies and supporting the constitutional social function of the city. The Ministry enabled the unification of the three levels of government and various public policies, including of housing, basic sanitation, and mobility.⁷⁸³ Its mission was to “improve cities, making them more human, economically and socially just and environmentally sustainable, through democratic and integrative public policies.”⁷⁸⁴

In 2005, the National Urban System of Social Housing – SNHIS (*Sistema Nacional de Habitacao de Interesse Social*) was added to the housing system. It was launched to centralize all policies in the context of social housing led by the National Housing Secretariat – SNH.⁷⁸⁵ Additionally, a Fund (*Fundo Nacional de Habitação de Interesse Social* – FNHIS) and a respective Management Council were created to support those programs and policies aimed at low-income households developed by SNHIS.⁷⁸⁶ Through the integration of governmental levels and decentralized, transparent, democratic decision-making procedures using social control, SNHIS aimed at using housing as a mechanism for social inclusion.⁷⁸⁷ That system also established economic, financial and social sustainability as key standards for the national housing policy.⁷⁸⁸

4.3.2 Funds

Not only the executive government regulates programs, but also the financial investment of each program or program track. In Chile, both private banks and state funds play a role and, in Brazil, governmental funds impact in social housing. For example, the latest Chilean budgetary law on housing programs for the

⁷⁸⁰ Brasil, P. 114, Annex I, 2.1, a-c, f; Brasil, Lei 8.036, de 11 de maio de 1990, L. 8.036 (1990), art. 6, I, III.

⁷⁸¹ Brasil, P. 114, Annex I, 2.1, g.

⁷⁸² In 2019, the Ministry of Cities was dissolved and its core competencies were given to the new Ministry of Regional Development, created by D. 9.666/19. See Brasil, Lei 10.683, de 28 de maio de 2003, L. 10.683 (2003); Brasil, Medida Provisória 103, de 1 de janeiro de 2003, M.P. 103 (2003); Brasil, Lei 11.124, de 16 de junho de 2005, L. 11.124 (2005); Brasil, Decreto 5.790, de 25 de maio 2006, D. 5.790 (2006).

⁷⁸³ Brasil, L. 10.683.

⁷⁸⁴ “O Ministério,” Ministério das Cidades, Official website, Accessed Dec 17, 2018. <http://www.cidades.gov.br/index.php/institucional/o-ministerio>. Author's translation

⁷⁸⁵ Brasil, L. 11.124, art. 3.

⁷⁸⁶ Brasil, L. 11.124, art. 7.

⁷⁸⁷ Brasil, L. 11.124, art. 4, I; Pires, Lotta, and Oliveira, 117.

⁷⁸⁸ Brasil, L. 11.124, art. 4, II, f.

year 2020 asserted the amount of ca. 632mi USD for D.S. 49.⁷⁸⁹ In Brazil, pluri- and single-annual plans define the amount spent on social housing.⁷⁹⁰

Yet, in regard to MCMV, it is essential to identify the origin of resources because different funds implicate on different duty-bearers, responsibilities and rules for each program. Therefore, the accountability relation structure changes depending on the funding model. In contrast, in the Chilean model, the origin of resources does not directly impact on the accountability structure.⁷⁹¹

FDS (MCMV-E's fund) and FAR, financiers of category 1 for the most-vulnerable, will often be referred in one regulation. Both are fundamentally financed by the Brazilian Federal National Budget (*Orcamento Geral da Uniao – OGU*),⁷⁹² that supplies the Residential Leasing Fund (*Fundo de Arrendamento Residencial – FAR*, for individual applications) and the Social Development Fund (*Fundo de Desenvolvimento Social – FDS*, for MCMV-E collective applications). That category is also partially financed by the Workers' Severance Fund (*Fundo de Garantia por Tempo de Serviço – FGTS*), derived from paychecks of formal workers.⁷⁹³

FGTS-Associativo achieved the investment mark of ca. 100mi USD, in comparison to 9bi USD transferred to its individual-application category, *FGTS-Individual*.⁷⁹⁴ Similarly, from 2009 to 2017, expressive investments were con-

⁷⁸⁹ Chile, Circular 3, Programa Habitacional 2020 (2020) [Ley de Presupuestos 2020], 2. Equivalent to 18.109.274 UF (CUEX).

⁷⁹⁰ Brasil, Constitution, art. 165.

⁷⁹¹ The only express legal mention on funds and resources was found in D.S. 1, in which case resources originate from the budget of the Ministry of Housing and Urbanism and of Economy (Chile, D.S. 1, art. 6).

⁷⁹² Brasil, Lei 6.168, de 9 de dezembro de 1974, L. 6.168 (1974); Brasil, Decreto-Lei 1.940, de 25 de maio de 1982, D.L. 1.940 (1982); Brasil, Decreto 103, de 22 de abril de 1991, D. 103 (1991); Brasil, Decreto de 28 de julho de 1993 (1993); Ministerio das Cidades, “Fundo de Arrendamento Residencial (FAR): Relatório de Gestao Do Exercício de 2015” (Mar 2016), 15; Brasil, P.114, Annex I, 1; Brasil, L. 11.977. FAR funds were originally created support PAR, the Program for Residential Leasing. PAR's resources originate not only from FAR, but from from the Worker's Severance Fund – FGTS, a Fund for Social Development Support – FAS, a Fund for Social Investment – FINSOCIAL, the Social Development Fund – FDS, and the Program for Technological Diffusion in low-cost Housing Construction – PROTECH.

⁷⁹³ Created in 1966, FGTS is in fact mainly constituted by a monthly compulsory contribution paid by employers, equivalent to ca. 8% of an employee's gross monthly wage, in which all Brazilian formal workers are supposed to have an account. Access to that contribution used to be limited to specific cases, such as in situations of unjustified dismissal or retirement. However, since the creation of MCMV, access to FGTS' funds has been also granted to finance social housing. See Brasil, Ministerio das Cidades, Portaria 570, de 29 de novembro de 2016, P. 570 (2016); Brasil, L. 11.977, art. 2; Brasil, Lei 5.107, de 13 de setembro de 1966, L. 5.107 (1966); Ministério do Trabalho e Emprego, “Relatório de Gestao Do Exercício de 2014.” Unidade Jurisdicionada: FGTS (Brasília: MTE, 2015).

⁷⁹⁴ MTE, “Relatório de Gestao Do Exercício de 2014”, 70, 76. Respectively 267mi BRL and 26 bi BRL (CUEX).

ducted to FAR-funded programs, in despite of FDS-funded MCMV-E, respectively ca. 20,4bi USD and 67mi USD.⁷⁹⁵ A mixed fund, FAR's 2014 budget welcomed ca. 27biUSD from OGU and almost 20biUSD, from FGTS⁷⁹⁶. However, the consistent differences in financial investment received by individual categories in despite of collective ones challenges program outcomes negatively impacts beneficiaries. Under certain fund's rules, beneficiaries will encounter worsened accountability, more limited participatory mechanisms or will be even more prone to inadequate housing conditions.⁷⁹⁷

FAR is managed by CAIXA.⁷⁹⁸ Particularly FGTS and FDS were set to be managed by special commissions. Similarly, FDS and FGTS' trustee councils – *Conselho Curador* had among their roles to establish and allocate those fund's resources in accordance with the national urban development, sectoral social housing, basic sanitation and infra-structure policies and to conduct monitoring and evaluation procedures.⁷⁹⁹ This structure envisaged a certain level of participation of the civil society in the directives of MCMV.

However, latest legal changes reduced the number of unions, employer's associations, governmental organs and agencies joining the composition of that council and even excluded Caixa from FGTS's trustees council. Moreover, a law published in 2020 excluded representatives of civil society organizations, such as of labor unions, from FDS' trustees council.⁸⁰⁰

Such changes directly impact on civil participation in public policy making. They should be interpreted as retrogressive change in the law, which nevertheless represent a human right violation.⁸⁰¹ In sum, the volatility of the law, that

⁷⁹⁵ Ministério das Cidades, Secretaria Nacional de Habitação – SNH e SIAFI/SIGA Brasil (valores pagos mais restos a pagar pagos, atualizados pelo IPCA de agosto de 2017) in: Congresso Nacional, Consultoria de Orcamento e Fiscalizacao Financeira – CONOF (CD), and Consultoria de Orcamentos, Fiscalizacao e Controle – CONORF (SF), “Informativo Avaliacao de Políticas Públicas Programa Minha Casa, Minha Vida,” Estudo Técnico Conjunto, (Brasilia: CN, Oct 2017), 2. Equivalent to 76,3bi BRL and 2,5bi BRL (CUEX).

⁷⁹⁶ However, FGTS is mainly focused on emergent households (1.5, 2 and 3, individual and collective). See Ministério Público Federal, *Roteiro de Atuacao: Sistema Financeiro Nacional*, Câmara de Coordenacao e Revisao, v. 2 (Brasilia: MPF, 2019), 9; CUEX.

⁷⁹⁷ See ch. 5.

⁷⁹⁸ Brasil, Lei 10.188, de 12 de fevereiro de 2001, L. 10.188 (2001), art. 1, para 1.

⁷⁹⁹ Brasil, L. 8.036, art. 5, I-II; Brasil, Decreto 1.081, de 8 de marco de 1994, D. 1.081 (1994), annex I, ch. III.

⁸⁰⁰ Instead, only representatives of ministries and of employers' organizations were included in FDS's trustee committee. See Brasil, Decreto 10.333, de 20 de abril de 2020, D. 10.333 (2020), annex I, ch. III.

⁸⁰¹ In an update upon the latest Brazilian political scenario, since 2019, not only Caixa, but also several participatory institutions and Ministries have been excluded from FGTS' Trustee Council. Since the latest D. 9.737/19, the number of members has also been reduced to the half. Previously, the Council counted with six representatives of the biggest workers' unions, six of the different employers' associations, with a total of twenty-four members, including two Ministers of State. It used to be headed by the Minister of Labour, but now a representative of the Treasury Office shall conduct it. Brasil, L. 8.036, art. 3; Brasil, L. 5.107.

mainly depended on formal aspects to be changed, enabled a human right violation.

4.3.3 Coordination bodies

Overall, the nature of SERVIU and SEREMI is different than that of Caixa, but their roles and their respective weaknesses portray similarities. The dependency of those organs on the central government and their overlapped competencies are points of criticism.⁸⁰² In Chile, the official manager of the studied social housing programs is MINVU, the federal ministry of housing and urbanism. According to the OECD, “[the Chilean] institutional structure limits the capacity to take an integrated approach to regional or local concerns with urban implications”, because “responsibilities and lines of accountability of these institutions can be unclear.”⁸⁰³

In contrast, in Brazil, Caixa is the official manager of MCMV. However, Caixa’s accumulation of responsibilities, of both management and financial agents, affects the kern of accountability of that social program. In other words, original systems of checks and balances are endangered in such a scheme.

Recommendations against the overlapping and cumulative schemes create real challenges to policy makers.⁸⁰⁴ Yet, critical changes can be done to integrate policy-making through out sector levels, as well as to coordinate implementation.⁸⁰⁵ But, reforms can only be based on a clear definition of roles and responsibilities. Therefore, the first step should be to create more consistency and clarity in the accountability relations of both models.⁸⁰⁶

4.3.3.1 SERVIU and SEREMI

The Chilean central government delegates SERVIUs – Housing and Urban Development Agencies and SEREMIs – Regional Ministerial Offices to act as local intermediators of policy-making and implementation, coordination, and planing of D.S. 1, D.S. 19 and D.S. 49. But a simple differentiation of roles operated by SERVIU and SEREMI in the programs is not possible. Their structure is ambiguous and overlapping as already observed by the OECD.⁸⁰⁷

In sum, SERVIUs are responsible for urban development, “delivery, control and inspection of subsidies and construction.”⁸⁰⁸ They take on a major responsibility of implementation, tasks which include the granting of the subsidy allowance,

⁸⁰² OECD, *Gaps and Governance Standards of Public Infrastructure in Chile*, 106-108.

⁸⁰³ OECD, *OECD Urban Policy Reviews, Chile 2013*, 24.

⁸⁰⁴ OECD, *Gaps and Governance Standards of Public Infrastructure in Chile*, 27.

⁸⁰⁵ OECD, *Gaps and Governance Standards of Public Infrastructure in Chile*, 154, table 3.2.

⁸⁰⁶ OECD, *OECD Urban Policy Reviews, Chile 2013*, 24.

⁸⁰⁷ OECD, *Gaps and Governance Standards of Public Infrastructure in Chile* (Paris: OECD Publishing, 2017), <https://www.oecd-ilibrary.org/content/publication/9789264278875-en>, 106-108.

⁸⁰⁸ Smart and Burgos, 192.

the creation of databases, crosschecks, and the evaluation of social assistance services conducted by supporting entities.⁸⁰⁹

SEREMIs attached to the Ministry of Housing are expected to develop national urban policies for their respective region, such as municipal, inter-municipal and metropolitan regulatory plans.⁸¹⁰ At the same time, they should too monitor SERVIU to ensure they conduct the published program.⁸¹¹ Policy planning is to be led by SEREMIs regional offices, in cooperation with regional *Intendentes*, the head of the regional governments. They should follow instructions of implementation given by Regional Councils – COREs (*Consejos Regionales*) and apply the budget given by MINVU.⁸¹²

For example, it is MINVU that creates open calls for applicants and creates a platform for registration, but it is SERVIU that uses an integrated ICT system for the registration of candidates' information of D.S. 49 and D.S. 1.⁸¹³ SERVIU uses an ICT System for Territorial Demand Planning (*Sistema de Información Territorial de la Demanda*), to be provided by MINVU, whose reports shall provide SEREMI with quantitative data about candidates for the maximum of 12 months after registration.⁸¹⁴

Moreover, SEREMI and SERVIU may have an active role in signing regional agreements with supporting entities and in deciding upon the further implementation of social services in D.S. 49 and in D.S. 1, Title I.⁸¹⁵ In D.S. 19, only SERVIU is appointed to that role.

Other municipal bodies also support those offices. An urban consultancy department, *Asesoría Urbana*, supports planning at the local level and the *Dirección de Obras Municipales* – DOM, in the implementation of PRC. Though, in the end, both agencies are tied to the government will. Such a scenario lacks

⁸⁰⁹ Chile, D.S. 19, art. 12; Chile, D.S. 49, art. 52.

⁸¹⁰ OECD, *OECD Urban Policy Reviews, Chile 2013*, 161. Plan Regulator Comunal – PRC, Plan Regulator Inter-Communal – PRI, Plan Regulator Metropolitano – PRM.

⁸¹¹ OECD, *OECD Urban Policy Reviews, Chile 2013*, 161.

⁸¹² OECD, *OECD Reviews of Regulatory Reform Regulatory Policy in Chile Government Capacity*, 177.

⁸¹³ Chile, D.S. 49, art. 11; Chile, D.S. 1, art. 1.

⁸¹⁴ Chile, D.S. 49, art. 45.

⁸¹⁵ Chile, D.S. 49, art. 52; Chile, R.E. 1.875, art. 2.3; Chile, D.S. 1, art. 50; Chile, R.E. 6.509, art. 2.2; Chile, Resolución Exenta 3.805, de 21 de junio de 2016, R.E. 3.805 (2016). R.E. 3.805 created a unique template for those bidding agreements, to be followed in the context of those respective programs.

clarity in the assignment of roles and responsibilities, a visible issue in the accountability structure, according to the OECD.⁸¹⁶ Additionally, concurrent topics to housing, such as environment and transportation, are also regarded to other offices, although such policies should be integrated with social housing.⁸¹⁷

The overlapping functions of those governmental bodies negatively impacts accountability because of the obscurity in the definition of roles and responsibilities. A new role is assigned with new responsibilities in each program. And final political decisions depend anyhow on MINVU's approval, an organ directly conducted by the federal government. This responsibility dimension requires more decentralization, clarity and objectivity.⁸¹⁸ Reforms for a more a simplified, coordinated, and clear system are as well necessary.

4.3.3.2 Caixa

In the Brazilian context, MCMV created the exceptional figure of an *agente operador*. Lacking an analogous match in Chile, *Caixa Econômica Federal* (or Caixa) is a state-owned financial institution, appointed to take the role as the only official operational agent of MCMV.⁸¹⁹ Many times, Caixa cumulates the two roles of governmental and financial institution.⁸²⁰ In the role of an operational agent, Caixa should define execution procedures of social housing, as well as of basic sanitation and infra-structure programs.⁸²¹ Under special conditions, such as when lands have been donated by Federal Assets Office – SPU to the Residential Leasing Fund – FAR, this operator agent is also expected to take on the responsibility to conduct the selection process of construction firms.⁸²²

Caixa is also supposed to supply the Ministry of Cities with information for monitoring and evaluation.⁸²³ In that role, the operational agent is expected to monitor and evaluate the operations of local executor agents (in their *Projeto de Trabalho Técnico Social* – PTS), under instructions of the Ministry of Cities.⁸²⁴ This responsibility is seen with critique by the literature because of how it is conducted. According to Pimentel, in a top-down approach, “frontline professionals ‘must’ conduct the social work (project), ‘applying the model’” foreseen

⁸¹⁶ OECD, *OECD Urban Policy Reviews, Chile 2013*, 161-163.

⁸¹⁷ OECD, *OECD Urban Policy Reviews, Chile 2013*, 161-163.

⁸¹⁸ Smart and Burgos, 193; *See also* Basset et al.

⁸¹⁹ Brasil, L. 11.977, art. 9.

⁸²⁰ *See more on* section 4.2.2-3.

⁸²¹ Brasil, L. 8.036, art. 7, III.

⁸²² Brasil, P. 114, Annex I, 2.2, f. Or if so specified by a donor, in case of land donation to FAR.

⁸²³ Brasil, P. 114, Annex I, 2.2, d, 10.1.1-10.1.6. *See also* section 4.2.

⁸²⁴ Aduino Lucio Cardoso, Irene de Queiroz e Mello and Samuel Thomas Jaenisch, “A Implementação do Programa Minha Casa Minha Vida na região metropolitana do Rio de Janeiro: agentes, processos e contradições,” In *Minha casa... e a cidade?*, eds. Amore et al, 97; Juliana Rosa Pimentel, “O trabalho social no contexto da atual política nacional de habitação: a difusão de um modelo e as implicações para o exercício profissional do assistente social,” *Revista Convergência Crítica*, 2012; *See more on* section 5.2.

by Caixa and the Ministry of Cities.⁸²⁵ In this sense, adjustments should lead to the support of social accountability mechanisms.

MINVU, SERVIU and SEREMI cumulate responsibilities similar to the ones of the operational agent, but those Chilean organs are part of the central government structure, whereas private financial institutions are expected to partially finance, for example, emergent Chilean households. In comparison, the overlap of functions by Caixa endangers accountability.

4.3.4 Local public entities

In the analyzed social housing contexts, municipalities and state-members play an important role.⁸²⁶ Particularly in MCMV, they are invited to co-manage, co-finance and cooperate with the social housing program. In order to join MCMV, they are required to sign a general bidding agreement with the Federal Government.⁸²⁷ In addition, for each project construction a new “commitment agreement” must be achieved, in which the public entity commits to install or extend necessary equipments and services for the new project.⁸²⁸ In contrast, main Chilean social housing norms do not highlight any particular agreement that should be conducted among the central government and participant states and municipalities.

In both FAR and FDS-funded projects, they exercise the role of local supportive agents (*agente apoiador do empreendimento*).⁸²⁹ They should provide basic

⁸²⁵ Pimentel, 28.

⁸²⁶ Brasil, P. 114, Annex I, art. 2.4; See OECD, *OECD Urban Policy Reviews, Chile 2013*, 145-47; “Secretaria Municipal de Habitação e Integração Fundiária,” Prefeitura de Águas Lindas de Goiás, Official website, Accessed Oct 21, 2019, <https://aguaslindasdegoias.go.gov.br/secretarias/sec-reta-ria-municipal-de-habitacao/>; “Secretaría Comunal de Planificación (Secpla),” Ilustre Municipalidad de Valparaíso, Official website, Accessed Oct 3, 2019, <https://www.municipalidaddevalparaíso.cl/Municipio/secpla.aspx>. In general, both countries are set under similar federation models, but their agents and organs are given slightly different responsibilities. State-members or *provincias* are led by an *intendente*, who are directly appointed by the central government, and a regional council, elected by direct vote since 2014. Provincial governors, also appointed by the governor, also support the *intendente*. Municipalities are led by a mayor (*alcalde*) and a local council, in this case, all elected by popular vote. Councils have a normative, resolute and monitoring nature, respectively composed by local and regional representatives of different political parties. However, municipal autonomy is still financially dependent on the central government. In Brazil, in fact, not only states, but also municipalities are members of the federation. And, although in both countries executive powers face other forms of control, in Brazil, directly elected mayors (*prefeito*) and state-governors (*governador*) do not have direct influence from existent councils. But, in both cases, planing and coordination units, also called *Secretarias*, can be responsible for different theme areas, including housing and urban planning. For instance, in Valparaíso, Chile, the *Secretaría Comunal de Planificación (Secpla)* has an specialized unit for urban support; and in *Águas Lindas de Goiás*, Brazil, the municipality has a unity established to housing and land integration.

⁸²⁷ Brasil, P. 114, Annex I, 2.4.a. Termo de adesao ao PMCMV.

⁸²⁸ Brasil, P. 114, Annex I, 2.4.e. “*Instrumento de compromisso de instalacao ou ampliacao dos equipamentos e servicos necessários*”.

⁸²⁹ Brasil, P. 114, Annex I, 2.4, b-c, d.7.1, g; Brasil, Ministerio das Cidades, P. 464, Annex III, 2.4.e, Annex IV, 2.4.d.

public services and infra-structure, ensure an efficient social work and articulate sectoral policies.⁸³⁰ Exceptionally, they are also given the role of local executor agents (*agente executor do trabalho social*) in FAR-funded projects, in which case they will respond for the execution of social assistance services⁸³¹, and responsible for the registration of beneficiaries and for the selection of construction firms.⁸³²

For example, in Rio de Janeiro and Sao Paulo, those respective municipalities were reported to be directly involved in supporting different aspects of the program.⁸³³ They issued territorial plans, which authorized construction in previously forbidden areas.⁸³⁴ Rufino also mentions the state of Ceará proposing complementary subsidies to firms.⁸³⁵

In FGTS-funded projects, public entities play a less significant role because organizing entities and financial actors take over some of their substantial responsibilities, including registration, selection and contracting.⁸³⁶ The decreased intervention of municipalities and member-states in that model is more analogous to the Chilean case. Chilean municipalities have the role to manage the municipal and national patrimony of public use, including the underground and the commune, with exception to those under control of the central government.⁸³⁷

Regional and local executive governments do not play active roles in D.S. 1, D.S. 19 and D.S. 49 when compared to the direct responsibilities of state members and municipalities e.g. in the FAR-context. In those cases, SERVIU and SEREMI overtake many of those responsibilities at the local level.⁸³⁸ Adjustments should be made to support a more decentralized scheme in Chile by elaborating more responsibilities through local governments and communities. For that performance of decentralized tasks, coordination is essential.

4.3.5 Decentralization and coordination

Decentralization includes a managerial aspect that strongly impacts social housing programs. Particularly in Brazil, a special sort of decentralization can be evidenced. MCMV investment funds bring decentralized structures, as projects

⁸³⁰ Id.

⁸³¹ Brasil, P. 464, Annex II, 2.5. As already discussed in section 4.2.6.

⁸³² Brasil, P. 163, Ch I, 1.1-1.5; Brasil, P. 114, Annex I, 2.4, b-c, d.7.1, g; Brasil, P. 464, Annex II, 2.5.

⁸³³ Rufino, 56-57.

⁸³⁴ Id.

⁸³⁵ Id.

⁸³⁶ Brasil, I.N. 42, Annex I, 6.1.d; Brasil, I.N. 14, Annex I.

⁸³⁷ Chile, Organic Constitutional Law of Municipalities, L. 18.695, de 31 de marzo de 1988, amended last in Nov 16, 2007 (1988) [Ley Organica Constitucional de Municipalidades].

⁸³⁸ See more Soto Kloss, *Temas fundamentales*, ch. V. Anyhow, public entities take on the risk of their activity in both legal systems and, hence, are theoretically objectively liable to damages cause to third parties.

are follow different rules and are subject to different organs under the umbrella of FAR, FDS and FGTS. In contrast, the Chilean government asserted a federally centralized structure, leaving no questions on responsibilities and control. On the one hand, this negatively impacts decentralization. On the other hand, this outlined a more clear and coordinated structure than MCMV.

Caixa directly controls the operation and execution of FAR funds, which the Ministry of Cities must again manage and regulate in the MCMV context.⁸³⁹ That state-owned bank is the only one in charge of its operational role as the official operational agent in MCMV. And, even as a financial institution, it does not evidence strong competition to participate in MCMV⁸⁴⁰, even though this is a role traditionally expected to be played by a private institution.

In the context of FGTS and FDS, investments to those funds are controlled by their respective Boards of Trustees, that fundamentally enable a conversation among different members of the civil society. FDS' management is regulated by the Ministry of Cities and finally operated by Caixa.⁸⁴¹

Exceptionally, the Board of Trustees CCFGTS guides the use of FGTS' funds and investments also in the context of categories 1.5, 2 and 3.⁸⁴² Presided by the Minister of Labour and Social Security and composed by representatives of workers unions and employers, as well as organs and governmental entities, CCFGTS must respect the national allocation of FGTS investments in relation to the housing deficit and households with a GMHI higher than 3 minimum salaries.⁸⁴³

Those financial decisions taken by CCFGTS are theoretically unattached from the guidelines of the Ministry of Cities. Yet, they directly impact investments on MCMV. The slight difference is that the Ministry only recalls the competence of regulating (not deciding) those financial investments conducted by the Board of Trustees. As observed, in categories 1.5, 2 and 3, funded by FGTS, decisions and plans of the board influence directly on the program, challenging governmental single views.⁸⁴⁴ Yet, in the end, the Brazilian federal government retains a significant parcel of decision-making power over FGTS and FDS Boards of Trustees, because part of those boards' selected representatives are originally

⁸³⁹ Brasil, L. 10.188.

⁸⁴⁰ Only Banco do Brasil, another public financial institution is present in that context.

⁸⁴¹ Brasil, Lei 8.677, de 13 de julho de 1993, L. 8.677 (1993).

⁸⁴² FGTS is the substantial and official donor of those categories, what makes CCFGTS the financial decision-maker of those tracks. The national federal budget – OGU also contributes to the overall budget of all those program tracks.

⁸⁴³ Brasil, R. 702; CGU, “Relatório de Avaliacao Da Execucao: Programa Minha Casa, Minha Vida- FGTS”; Brasil, L. 8.036, art. 3.

⁸⁴⁴ Traditionally, the Board of Trustees does not influence in the context of FAR because this fund is controlled by the Ministry of Cities and operated by Caixa.

political actors from organs of the public administration, such as Ministers.⁸⁴⁵ Therefore, the decentralized structure is faked: those managerial entities that are, after all, controlled or substantially influenced by the central government.

In Chile, in contrast, roles of coordination and management are delegated by the Ministry of Housing and Urbanism to SERVIU and SEREMI. There is seldom reference to local governments, and there is no reference to the eligibility or necessity of application of regions or municipalities.⁸⁴⁶ Thus, in the context of D.S. 1, D.S. 19 and D.S. 49, the interference of the central government is substantially stronger in managing and operating localities than in MCMV.

Attesting that decentralization contrast, the Brazilian scheme requires the application of member states and municipalities for Minha Casa, Minha Vida projects. Exceptionally, public entities must ensure that they are in fiscal good standing in order to join MCMV.⁸⁴⁷ In addition, Brazilian municipalities and states are required to sign a bidding agreement, in order to join the social housing program.⁸⁴⁸ Particularly in the FAR context, financial institutions are forbidden to contract with those public entities that do not sign or do not comply with the bidding agreement or with those that do not have a social assistance contract.⁸⁴⁹ This model could only ensure better support and enforcement mechanisms, for it is criticized due to inefficient results that arise from the unequal capacity of municipalities.⁸⁵⁰

The Chilean social housing model also needs as much adjustments as MCMV in the development of capacity resources of all its regions. Not all municipalities have been ensured with the capacity to implement projects equally. For example, in a final statement, the Chilean Contraloría suggested changes to the municipality of Los Vilos, for its department did not even possess a secure physical registry, what influenced the development of fraud schemes in the context of D.S. 1.⁸⁵¹ So, even if the Chilean government has been taking progressive steps in the use of ICT tools, due to domestic inequalities, operational settings must expand to accommodate the diversity of national communes.

⁸⁴⁵ Brasil, L. 8.036; Brasil, Lei 8.677.

⁸⁴⁶ OECD, *OECD Urban Policy Reviews, Chile 2013*; OECD, *Gaps and Governance Standards of Public Infrastructure in Chile*, 2017. <https://www.oecd-ilibrary.org/content/publication/9789264278875-en>.

⁸⁴⁷ For example, see Brasil, Ministerio das Cidades, Extratos de Adesao, 2 de Julio de 2013, D.O.U. N125 S3 136 (2013); Brasil, L. 11.124. *Cadastro do Fundo Nacional de Habitação de Interesse Social – CADFNHIS*, the National Fund for Social Housing, issues such a certificate of proof of regular registry at that databank.

⁸⁴⁸ For example, see Brasil, Extratos de Adesao.

⁸⁴⁹ Brasil, P. 114, Annex I, 11.1.

⁸⁵⁰ See TCU, “Relatório de Auditoria no Programa Minha Casa Minha Vida.”

⁸⁵¹ Chile, Contraloría General de la República, Informe Final de Auditoria 13 (Dec 25, 2013).

In sum, the equal treatment given the municipalities and regions of different capacities has been hindering performance in both Brazil and Chile.⁸⁵² Legislation can and should attempt to eliminate its own weaknesses by identifying, evaluating and addressing those disparate realities. Like that, both social housing models could create a more decentralized accountability framework, coordinated and clear, as well as adaptable to their different local realities.

4.4 Others

Besides the traditional triangle or four-legged relationship, there are also other actors that contribute to the stability of accountability relations in social housing programs. Even though they do not directly take part in legal agreements or instructions, their accessorial functions are valuable for a rights-based, efficient performance. They include NGOs, civic-based organizations, watchdogs, academic institutions, deliberative, participative, consultive and control organs linked to the public administration.

The section will observe the responsibility dimension in respect to courts (4.4.1), internal, participatory, and external control organs (4.4.2-4), quasi-judicial agencies (4.4.5), financial councils (4.4.6), ombudspersons (4.4.7), superintendencies (4.4.8), national participatory councils (4.4.9), local and regional actors (4.4.10), grass-root movements and civil society organizations (4.4.11), the academy and research institutions (4.4.12) and the media (4.4.13).

4.4.1 Courts

The Chilean Supreme Court is an independent branch competent to ensure the supremacy of the national constitution and to review the constitutionality of laws.⁸⁵³ The Brazilian Supreme Court is responsible for “safeguarding the constitution”, for example, in matters that defy its foundational norms.⁸⁵⁴ Therefore, since its constitutional recognition in 2010, it is the Brazilian Supreme Court’s competence to decide upon matters referring to the right to housing.⁸⁵⁵ Therefore, the need of constitutionalization of the right to adequate housing in Chile. The Brazilian case may be taken as an example for the Chilean constitution.

4.4.2 Internal control organs

Control organs from the executive branch are involved in the studied accounta-

⁸⁵² See more on the the discrepant capacity of all 5,070 municipalities on section 5.2.2.4.

⁸⁵³ Danziger, 586; OECD, *OECD Reviews of Regulatory Reform Regulatory Policy in Chile*, p. 68; Chile, Constitution, art. 93. It is composed by ten members indicated by the different powers.

⁸⁵⁴ Brasil, Constitution, art. 102, caput, III.

⁸⁵⁵ Brasil, Constitution, art. 6.

bility relations. They can also take automatic roles of control, depending on legal mechanisms used.⁸⁵⁶ In Chile, the Contraloría has a dual function and exercises both internal and external control functions. Internal control is in Brazil exercised only by the Comptroller's General Office (Controladoria Geral da União – CGU), created in 2003, as a ministry with diverse responsibilities of control.⁸⁵⁷

4.4.3 Internal participatory mechanisms

In both models, service delegation by supporting entities must be pre-approved by competent authorities. In Chile, delegation must be preceded by a public bidding procedure of selection to be monitored by a SERVIU supervisor.⁸⁵⁸ In MCMV-E, CAO and CRE must approve that service delegation.⁸⁵⁹ In the context of D.S. 19 and D.S. 1, SERVIU must be informed about any eventual delegation defined by the supporting entity before the final establishment of their own agreement, who should be registered as consultants by MINVU.⁸⁶⁰ The delegation does not exclude the liability of supporting entities.⁸⁶¹ In D.S. 49 in the context of new-land projects, however, delegation substantially limited: the norm⁸⁶² expressly limits the delegation from supporting entities to the legal and technical assistance of construction firms.

In comparison, CAO also was designed with similar responsibilities to Chilean FTOs⁸⁶³. Regarding monitoring and evaluation, the main difference between those two bodies is that CAO invests in the engagement and social accountability of beneficiaries, whereas FTOs is composed of specialized professionals. However, the FDS-funded MCMV-E limits engagement by only requiring a selected number of beneficiaries in decision-making in its CAO and CRE committees. A reform in MCMV-E should create a more participative footprint for all beneficiaries. Yet, more urgent, is the reform in FAR- and FGTS-funded projects that must urgently find means of efficiently engaging with beneficiaries from project planning early on.

Diffused beneficiary engagement was only identified in D.S. 49. In the modalities of construction in new lands and mega-projects, D.S. 49 foresees the existence of *Comité de Administración*, an administration committee. Their approval

⁸⁵⁶ See section 6.3. These actors are not directly bound to the accountability relation, so their correct location here, as other influential actors. Because they will serve as forums, if necessary. However, as it will be observed later in section 6.3, they will be directly involved in the governmental side of relation, if inquired or demanded through the use of control, grievance and redress mechanisms.

⁸⁵⁷ Brasil, Lei 10.683.

⁸⁵⁸ Chile, R.E. 1.875, art. 4.2, 4.7.

⁸⁵⁹ Brasil, I.N. 12, Annex I, 1.1.e-h.

⁸⁶⁰ Chile, R.E. 6.509, art. 2.1; Chile, R. 620, art. 1.3.

⁸⁶¹ Chile, R.E. 6.509, art. 2.1; Chile, R. 620, art. 1.3; Chile, D.S. 49, art. 53.

⁸⁶² Chile, D.S. 49, art. 53.

⁸⁶³ Chile, D.S. 49, art. 56; Chile, R.E. 1.875, art. 4. See 4.2.7, *Fiscalización Técnica de Obras – FTO*.

is required for most of the project decisions as well, including for the approval of a project plan. And, in contrast to MCMV-E, it is formed by all applicant families. The legal expectation is that a majority of families participate in official meetings for the required approval of certain project aspects.⁸⁶⁴

That kind of participatory approach is limited.⁸⁶⁵ However, committees have not been observed in the design of D.S. 1 and D.S. 19. Therefore, the need of reform in those programs to expand decision-making at the local level.

4.4.4 External control

In the Brazilian legal system, external control is conducted by the Federal Court of Accounts (*Tribunal de Contas da União – TCU*), that has the constitutional responsibility to support the Congress in overseeing the conducts of the Public Administration.⁸⁶⁶ In Chile, once again the *Contraloría* appears in its dual function, but for this matter, as an external controller.⁸⁶⁷ Chile's Public Prosecution office, named *Fiscalía Nacional*, is also part of the national external control and counts with different units at the federal level, of which two are competent for investigating delicts concerning public expenditures.⁸⁶⁸

4.4.5 Quasi-judicial agencies

PROCON is a decentralized organ that enables grievance and redress mechanisms based on mediation and conciliation (differently to the Court of Accounts).⁸⁶⁹ Although it has already been discussed that beneficiaries should in fact be seen as right-holders, that organ uses its leverage to protect beneficiaries under their current circumstance of consumers. In Chile, SERNAC offers equivalent solutions.⁸⁷⁰

Those organs enable access to redress and grievance in two countries where operational-level grievance mechanisms and due diligence are not efficiently implemented. Thus, even though the status of beneficiary should be changed to that of a right-holder and distanced from the figure of a consumer, a social housing beneficiary can at least use those available mechanisms offered by PROCON and SERNAC to communicate their grievances to service providers.

⁸⁶⁴ Chile, Resolución Exenta 6.509, (V. Y U.), de 6 de octubre de 2016, R.E. 6.509 (2016); Chile, R. 620.

⁸⁶⁵ See Arnstein.

⁸⁶⁶ Brasil, Constitution, art. 33, para 2, art. 70-72, para 1, art. 74, para 2, art. 161.

⁸⁶⁷ Chile, Constitution, art. 98; Danziger, 17, 536.

⁸⁶⁸ Danziger, 536; Chile, Ley 19.640, de 15 de octubre de 1999, L. 19.640 (1999); "Quiénes Somos: La Fiscalía," Fiscalía, Official website, Accessed Jun 5, 2019, <http://www.fiscaliadechile.cl/Fiscalia/quienes/index.jsp>.

⁸⁶⁹ Igor Rodrigues Brito and Ricardo Goretti Santos, "O Papel Do Procon Na Defesa Qualificada Dos Consumidores: O Acesso à Justiça e Os Métodos Alternativos de Resolução de Conflitos de Consumo," *Revista Eletrônica de Direito Processual* 4, n. 4 (2009).

⁸⁷⁰ Chile, Ley 19.496, de 7 de marzo de 1997, L. 19.946 (1997).

4.4.6 Financial Councils

Chile and Brazil possess national financial councils. The Chilean Commission for the Financial Market was designed with one investigative auditor⁸⁷¹, who has sanctioning powers.⁸⁷² In Brazil, the Council of Control of Financial Activities – COAF, composed by public servants of diverse institutions of the direct and indirect administration, was designed to receive claims, investigate, identify and inform competent authorities on cases of money laundering or related criminal illicit.⁸⁷³ However, since July 2019, in a controversial decision, Supreme Court Judge Dias Toffoli suspended the sharing of information between COAF and any other monitoring institutions without previous judicial authorization.⁸⁷⁴ That directly affects investigations of e.g. public prosecutors and the Supreme Audit Court. Until then, investigations could be initiated without the interference of the judiciary.⁸⁷⁵

4.4.7 Ombudspersons

In neither models is there an institution of an Ombudsperson specialized in the advocacy for the right to adequate (social) housing. Yet, various governmental organs or independent organizations commit into supplying that deficiency in both contexts. As long as voice and participation are evidenced, the lack of Ombudspersons should not be an issue; however, as this is not the case, institutions specifically created for the advocacy of adequate housing could ensure better control and enforcement in Brazil and Chile.

First in 2009, a national institute was created in Chile with the aim to generally protect human rights.⁸⁷⁶ *Instituto Nacional de Derechos Humanos* – INDH takes that role in of ombudsperson since then. However, the creation of an institutionalized figure for an Ombudsperson, a *defensor del pueblo*, was hindered diverse times by the Parliament. Constitutional amendments proposed in the years

⁸⁷¹ Chile, Ley 21.000, de 23 de febrero de 2017, L. 21.000 (2017), art. 5.4-5, 5.7, 5.16, 5.21, 5.22, 5.27, Title IV, para 4.

⁸⁷² Chile, L. 21.000, art. 36; Comisión para el Mercado Financiero, “Etapas del Procedimiento Sancionatorio Simplificado de la CMF,” CMF, Official Website, Accessed Jun 8, 2020. <http://www.cmfchile.cl/portal/principal/605/w3-article-26414.html>.

⁸⁷³ The expressions “terrorism” and “terrorism financing” have been excluded from the norm, and since 2012 any kind of use of of money that is involved in illicit resources. See Brasil, Lei 9.613, de 3 de marco de 1998, L. 9.613 (1998), art. 1, 14-16.

⁸⁷⁴ Brasil, Supremo Tribunal Federal. RE 1055941 RG/SP, Min. Dias Toffoli. At DJe 83 Apr 30, 2018 (Pleno Apr 12, 2019).

⁸⁷⁵ See also Glenn Greenwald and Victor Poug, “‘It’s Obvious What Happened’: In Secret Chats, Brazil’s Chief Corruption Prosecutor Worried That Bolsonaro’s Justice Minister Would Protect Bolsonaro’s Senator-Son Flávio From Scandals,” *Intercept*, Website, Accessed Jul 21, 2019, <https://the-intercept.com/2019/07/21/in-secret-chats-brazils-chief-corruption-prosecutor-worried-that-bolsonaros-justice-minister-would-protect-bolsonaros-senator-son-flavio-from-scandals/>.

⁸⁷⁶ Chile, Ley 20.405, de 10 de diciembre de 2009, L. 20.405 (2009).

1991, 2000 and 2003 were either rejected or archived.⁸⁷⁷ No legislative procedures have been shared upon the latest proposal to create a national ombudsperson since 2010.⁸⁷⁸ Fiscalía, Chile's public prosecution office has an investigative role related to criminal law, but not to the protection of human rights. Therefore, INDH and the public prosecution office in a way share and complement each other on that role of Ombudspersons in Chile.

In Brazil, public prosecutors and public defenders operate diffusely, taking, among others, the duty to advocate for human rights.⁸⁷⁹ In fact, the Brazilian Constitution ensures social and individual rights, including the provision of "free and full legal aid" to those living under vulnerable conditions.⁸⁸⁰ Both ombudspersons have been constitutionally created as essential institutions of the state and based on the responsibilities of that premise.⁸⁸¹

Brazilian public prosecutors cooperate internationally as part of the *Federación Iberoamericana de Ombudsman*.⁸⁸² In addition, the Brazilian *Defensoria Pública*'s, public defender's offices, provide full and free legal advice and assistance for those considered poor in the form of the law.⁸⁸³ Its role is to promote and protect individual and collective rights, but particularly to provide poor persons with legal assistance.⁸⁸⁴

4.4.8 Superintendencias

Superintendencias can also play a crucial role to influential issues of the social housing programs, such as environmental causes. In the case of Chile, the Su-

⁸⁷⁷ Chile, Camara de Diputadas y Diputados de Chile, Boletín 332-07: Proyecto de Reforma Constitucional sobre Poder Judicial, Consejo Nacional de la Justicia y Defensor del Pueblo, Archivado, Mensaje, L. 321 (Apr 9, 1991), <https://www.camara.cl/legislacion/ProyectosDeLey/tramitacion.aspx?prmID=1270&prmBOLETIN=332-07>; Chile, Camara de Diputadas y Diputados de Chile, Boletín 333-07: Ley Organica Constitucional sobre el Defensor del Pueblo. Archivado, Mensaje, L. 321 (Apr 9, 1991), <https://www.camara.cl/legislacion/ProyectosDeLey/tramitacion.aspx?prmID=2477&prmBOLETIN=333-07>; Chile, Camara de Diputadas y Diputados de Chile, Boletín 2605-07: Crea el Defensor del Ciudadano, Archivado, Mensaje, L. 343 (Oct 18, 2000); Chile, Camara de Diputadas y Diputados de Chile, Boletín 3429-07: Crea el Defensor del Ciudadano, Tramitación Terminada, Mensaje, L. 350 (Dec 4, 2003), <https://www.camara.cl/legislacion/ProyectosDeLey/tramitacion.aspx?prmID=3748&prmBOLETIN=3429-07>.

⁸⁷⁸ Chile, Camara de Diputadas y Diputados de Chile, Boletín 6232-07: Reforma constitucional que crea la Defensoría de las Personas, Segundo Trámite Constitucional, Mensaje, L. 356 (Dec 4, 2008), <https://www.camara.cl/legislacion/ProyectosDeLey/tramitacion.aspx?prmID=6630&prmBOLETIN=6232-07>

⁸⁷⁹ See more Saule Junior and Rodriguez, 190.

⁸⁸⁰ Brasil, Constitution, art. 5, LXXIV, 6-11.

⁸⁸¹ Brasil, Constitution, art. 127, 134.

⁸⁸² Paulo Sergio Ferreira Filho, Researcher's Interview 6, Via telephone call, Aug 27, 2019.

⁸⁸³ Brasil, Constitution, art. 134.

⁸⁸⁴ Brasil, Lei 1.060, de 5 de fevereiro de 1950. L. 1.060 (1950), art. 1; Brasil, Civil Code of Procedures, Lei 13.105, de 16 de marco de 2015, L. 13.105 (2015) [Código de Processo Civil], art. 185.

perintendence for Environment – SMA can sanction enterprises for environmental damages with written reprimands, fines and a temporary or permanent prohibition of activities. Since 2003, real estate enterprises have been the third most sanctioned sector by SMA.⁸⁸⁵

In Brazil, regional and local superintendencies support the national foundations and executive ministries in control and monitoring tasks. Nevertheless, their creation and activity is defined by local political will. For example, the municipality and capital of the state of Bahia, Salvador, with over 6 mi inhabitants counted with a superintendency from 2004 to 2012; the municipality of Gaspar, in Santa Catarina, with 70 thousand inhabitants, still counts on one.⁸⁸⁶

4.4.9 National participatory councils

Participatory councils also play a key role in social housing. Yet, their influence may be limited, if councils become part of top-down structures. In Chile, the *Consejo Nacional de Desarrollo Urbano* – CNDU, and in Brazil, *Conselho Nacional das Cidades* – ConCidades, are both organs composed by representatives of the government, civil society, NGOs and private actors that have aimed at guiding urban law and policy-making on national levels.

ConCidades used to integrate the structure of the Ministry of Cities as a supportive collegiate body of deliberative and consultive natures. And, although it was not able to issue norms, the Council innovated for creating a platform of communications between government and members of civil society, including of historical minorities.⁸⁸⁷ However, the council is inactive since 2016, despite the requirement of the General Comptroller’s Office for its reinstallation.⁸⁸⁸

Previously constituted by diverse civil society sectors, the participative and consultative natures of the collegiate body ConCidades made it key for accountability and good governance because it focused on the development of macro-level policies.⁸⁸⁹ The organ innovated by involving from academic and research institutions to corporate bodies, from governmental branches to social movements, from business enterprises to unions, government and the private sector

⁸⁸⁵ See Superintendencia del Medio Ambiente, “SNIFA – Sistema Nacional de Información de Fiscalización Ambiental,” SMA-SNIFA, Official website, Accessed Dec 4, 2019, <http://snifa.sma.gob.cl/v2/Estadisticas/Resultado/3>. With 8,81% of cases.

⁸⁸⁶ “Superintendência de Meio Ambiente e Desenvolvimento Sustentável,” Município de Gaspar, Official website, Accessed Jan 30, 2020, <https://www.gaspar.sc.gov.br/estruturaorganizational/hotsite/index/codHotsite/1229>; Prefeitura Municipal do Salvador, Lei 8.376, de 20 de dezembro de 2012, L. 8.376 (2012).

⁸⁸⁷ Mateos Simone Biehler, “Participação Popular – A construção da democracia participativa,” *Revista Desafios do Desenvolvimento*, Ano 8, ed 65 (IPEA, May 5, 2011), http://www.ipea.gov.br/desafios/index.php?option=com_content&id=2493:catid=28&Itemid=23.

⁸⁸⁸ Ferreira Filho, Researcher’s Interview 6.

⁸⁸⁹ Brasil, D. 5.790, art. 19.

in national urban policies.⁸⁹⁰ In this sense, ConCidades portrayed a democratic support to the right to adequate housing in Brazil.

Chile's CNDU was created as a consultive and accessory organ in 2014.⁸⁹¹ Its constitution is similar to the Brazilian ConCidades, aiming at the establishment of proposals, in this case, to the Chilean National Urban Development Policy – CNDU.⁸⁹² For example, it includes the participation of members of the civil society, of the private sector, as well as ministers, including of the Ministry of Housing and Urbanism – MINVU. However, from all its original 26 members, only two were to be members of civil society organizations.⁸⁹³ In addition, in contrast to ConCidades, CNDU had only consultive and advisory natures, mainly to assist the President in the implementation of policies.⁸⁹⁴

The National Urban System of Social Housing – SNHIS and its respective Fund – FNHIS not only had in their agendas to articulate for matters, institutions and organs in the housing sector, but also to support, harmonize and monitor their performances.⁸⁹⁵ The structure, organization and performance of SNHIS was based among the principles of compatibility and integration of norms, in federal, state or municipal levels. Although it is not clear how that was supposed to be conducted, the directive is in line with international recommendations, which advises the use of harmonized standards in and among organs.⁸⁹⁶

Although coordinated by and part of the Ministry of Cities, stakeholders of civil, private and governmental sectors also compose SNHIS. According to the law, SNHIS may only establish public policies after consulting the Cities' Council, what also means that policies must go through participative and democratic procedures.⁸⁹⁷ The guidelines also envisage the implementation of judicial control mechanisms and the adoption of monitoring and evaluation mechanisms for policies, plans and programs.⁸⁹⁸ However, that legal system has weak enforceability because neither the federal government or the Ministry of Cities are legally bound to follow the democratic decision-making procedures of the previously described organs in the policy-making of MCMV.

⁸⁹⁰ Pires, Lotta, and Oliveira, 117; “Entidades 5a Gestão.” Ministério das Cidades, Conselho das Cidades, on Feb 24, 2014, Official website, Accessed 28 May 2018, <http://www.cidades.gov.br/conselho-das-cidades/entidades-5-gestao/114-conselho-das-cidades/inicio/2711-5-gestao>.

⁸⁹¹ “Consejo Nacional de Desarrollo Urbano,” Consejo Nacional de Desarrollo Urbano, CNDU, Official website, Accessed August 5, 2019, <https://cndu.gob.cl/>.

⁸⁹² Chile, D. 78, I.

⁸⁹³ Chile, D. 78, art. 2.

⁸⁹⁴ “Consejo Nacional de Desarrollo Urbano,” CNDU.

⁸⁹⁵ Brasil, L. 11.124, art. 2.

⁸⁹⁶ Basset et al, 43.

⁸⁹⁷ Brasil, L. 11.124, art. 5;14, II.

⁸⁹⁸ Brasil, L. 11.124, art. 4, II, e, g.

4.4.10 Local consultative bodies

Regionally and locally, participatory councils play a vital role in social housing policies and programs. As a social accountability mechanism, those councils try to ensure that democratic solutions are achieved. For example, in the state of Bahia, municipal and regional Cities' Councils integrated the regional and municipal structure. Academics, NGO members, public servants, representations of social movements of different cities, and representations of business enterprises compose the Conselho Estadual das Cidades da Bahia.⁸⁹⁹ The institution supports Bahia's Regional Department for Urban Development – SEDUR.⁹⁰⁰ At the local level, the capital's state of Salvador counts with a Municipal Department for Urbanism – SUCOM and a Civil Security Department – CODESAL.⁹⁰¹

That state's capital, Salvador, counts with a Municipal Council, composed by forty-one members of the public administration and of the civil society.⁹⁰² They are responsible for establishing additional selection criteria for MCMV in that municipality.⁹⁰³ Also composing the structure of the Salvador's Department for Urban Development, Housing and Environment is a Trustee Board for Municipal Housing Funds – CFMH, which brings members of the civil society closer to the local chief executive.⁹⁰⁴ Composed by sixteen members of civil society, expressly including one of quilombola communities, as well as by other sixteen representatives of municipal departments⁹⁰⁵, CFMH establishes the directives and programs for the allocation of resources of the Municipal Housing Fund, based on the municipal housing policy of social interest.⁹⁰⁶

⁸⁹⁹ “Apresentação/Composição ConCidades/Ba,” Conselho Estadual das Cidades da Bahia, ConCidades/BA, Website, Accessed July 15, 2019, <http://concidadesba.blogspot.com/p/quem-somos.html>.

⁹⁰⁰ Governo do Estado da Bahia, Lei 8.538, de 20 de dezembro de 2002, L. 8.538 (2002). *Secretaria de Desenvolvimento Urbano do Estado da Bahia* – Sedur was created in 2002 with the aim of formulating and executing the state's urban development and housing policy and to providing assistance to municipalities. It had the support of the Bahia State Company for Urban Development – CONDER, but which was on the verge to be extinct by the end of 2018.

⁹⁰¹ Prefeitura Municipal do Salvador, Decreto 25.860, de 10 de março de 2015, D 25.860; “Missão: CODESAL,” Prefeitura Municipal do Salvador, Official Website, Accessed Mar 30, 2019, <http://www.codesal.salvador.ba.gov.br/index.php/11-defesa-civil/22-missao>; “Plano Estratégico: Salvador,” Prefeitura Municipal do Salvador, Secretaria Municipal de Desenvolvimento e Urbanismo, SEDUR, Official website, Accessed Mar 30, 2019, <http://www.sucom.ba.gov.br/>.

⁹⁰² More on Salvador and its housing context, see Somers and Baud; Eberhard Rothfuß, *Exklusion Im Zentrum: Die Brasilianische Favela Zwischen Stigmatisierung Und Widerständigkeit*, Urban Studies (transcript Verlag, 2014), ISBN 9783839420164.

⁹⁰³ Prefeitura Municipal do Salvador, Decreto 27.090, de 11 de março de 2016, D. 27.090.

⁹⁰⁴ Prefeitura Municipal do Salvador, Lei Ordinária 7.610, de 13 de fevereiro de 2009, L.O. 7.610, art. 39.

⁹⁰⁵ Prefeitura Municipal do Salvador, Conselho Gestor do Fundo Municipal de Habitação – CFMH, Resolução 1, de 3 de maio de 2007, R. 1/CFMH (2007).

⁹⁰⁶ CMCB – Conselho de Moradores de Castelo Branco (@CmcbConselhoDeMora-

In Chile, municipal councils are bureaucratically organized in every municipality to advise the mayor in different aspects, including social housing. However, they are composed by directly elected politicians.⁹⁰⁷ Their nature is different from the mentioned Brazilian councils because of the lack of engagement of social actors. Even though in 2011 the Chilean government backed the establishment of different mechanisms to be adopted by MINVU or SEREMI in order to support social accountability and the right to participation, these have not been seen implemented in the figure of participatory councils.⁹⁰⁸

The engagement of civic-based organizations can guarantee neither a rights-based approach, nor better accountability. Yet, it can consolidate democratic governance, inasmuch as those actors “increase accountability, citizens' participation, pluralism in the distribution of power, and administrative performance.”⁹⁰⁹ Thus, with their engagement and articulation of issues, beneficiaries and organizations representing them and their communities can positively impact in the materialization of human rights and in accountability relations.

4.4.11 Grass-root movements

National independent actors strongly contribute for the housing rights debate. Social accountability relies on the civic engagement of local and community organizations and associations.⁹¹⁰ Civil-society organizations are often linked to one another in supportive networks of local, regional and national levels. Often bigger entities are fairly organized and they can make use of internet to reach larger groups.⁹¹¹ Depending on their visibility, organizations have an official spokesperson representing their group decisions in participatory councils.

Grass root movements organize themselves in different forms to revoke citizen participation. According to Peruzzoti and Smulovitz, civil society organizations have highly influenced the democratic transition⁹¹² and they have been making

doresDeCasteloBranco), Facebook, Dec 12, 2019, <https://www.facebook.com/CmcbConselhoDeMoradoresDeCasteloBranco/>. Different communities are organized in their own neighborhood councils, which usually non-profit legal persons, as declared by Castelo Branco Council, located in the outskirts of the city.

⁹⁰⁷ Chile, Organic Constitutional Law of Municipalities; Organisation for Economic Co-operation and Development. *Gaps and Governance Standards of Public Infrastructure in Chile*, 2017. <https://www.oecd-ilibrary.org/content/publication/9789264278875-en>, 111.

⁹⁰⁸ Chile, Ministerio de Relaciones Exteriores, “Answers by the State of Chile,” 5; Chile, Resolución Exenta 4.864 (V. y U.) de 16 de agosto de 2011, R.E. 4.864 (2011).

⁹⁰⁹ Kees Koonings, “Strengthening Citizenship in Brazil’s Democracy: Local Participatory Governance in Porto Alegre,” *Bulletin of Latin American Research* 23, n 1 (2004). <http://www.jstor.org/stable/27733620>, 82.

⁹¹⁰ Malena, Forster and Singh; Ayliffe et al.

⁹¹¹ Somers and Baud, 12. According to Somers and Baud, Salvador’s MTST “tries to improve the living conditions of an estimated 4500 families living in abandoned buildings. Every occupying group has a coordinator, who organizes meetings to exchange information and prepare city council meetings.”

⁹¹² Murilo de Cavalho, 1995, Avritzer, 1997 and Taylor, 1998 In: Peruzzotti and Smulovitz, 219.

use of legal instruments to “demand the application of the rule of law.”⁹¹³ They also take practical actions, as Ocupacao Chico Prego illustrates the example of a group occupying an abandoned building.⁹¹⁴

In Chile, the highest amount of civil society organizations are active in the field of development and housing civil society organizations (32.1%).⁹¹⁵ Even business associations take part in the policy debate, such as the *Asociación de Desarrolladores Inmobiliarios – ADI*⁹¹⁶. In contrast, from ca. 400 thousand civil societies in Brazil, only 3 are officially listed active in the housing context.⁹¹⁷ Currently, in Brazil, grass-root movements engaged directly with the right to housing include e.g. the *Movimento dos Trabalhadores Sem Teto* (literally translated as “the no-roof workers’ movement”), the *Movimento Popular por Moradia*, the *Movimento Nacional de Luta pela Moradia – MNLM*.⁹¹⁸ Other non-listed organizations are certainly active in Brazil, but this difference certainly impacts the final contribution of civil society.

Other entities that provide social assistance are active in research and in the translation of local demands. *Fundación Multitudes* was created in 2014 to sup-

“[In Brazil] the awakening and diversification of the civil society gave rise to different associative forms that included changes in union organizations, the activation of grass-roots church movements, the emergence of new urban social movements such as the ‘favelado’ movement or the association of urban renters, and the activation of some professional associations such as the Orden de Abogados [bar association] and the Associação Brasileira de Imprensa (journalists associations) (Murilo de Cavalho, 1995; Avritzer, 1997). (...In Chile,) the fear of a breakdown of the political coalition that led the democratic transition and the existence of certain legal restrictions from the authoritarian period, [...] the persistence of the neo-liberal policies has resulted in an increase in the fragmentation of different social actors. Movements of settlers, women, and human rights that in former years had achieved high visibility and political clout were weakened, some disappeared, and others lost activists (Taylor, 1998). In Chile, as is the case in Argentina and Brazil, new movements have emerged and others were transformed after transition took place.”

⁹¹³ More on Peruzzotti and Smulovitz, 217, 219. Especially in Chile, organizations not only influenced accountability of urban development, but also in the context of police violence and corruption.

⁹¹⁴ Resistência Urbana Capixaba (@resistenciaurbanacapixaba). “Ocupação Chico Prego.” facebook. Social media content, 2019. <https://www.facebook.com/resistenciaurbanacapixaba/>.

⁹¹⁵ OECD, *Making Decentralization Work in Chile*, p. 374.

⁹¹⁶ “La Asociación: ADI,” Asociación de Desarrolladores Inmobiliarios, Official website, Accessed Jul 24, 2019, <http://adi-ag.cl/la-asociacion/>.

⁹¹⁷ *Representante de OSC, Censo SUAS 08/2017, LIE/MESP 2017, RAIS/MTE, CNEAS/MDS, OSCIP/MJ, CNEAS/MDS 2017, CADSOL/MTE, CNPJ/SRF/MF 2016, CEBAS/MDS 2017, CNES/MS 2017, CADSOL/MTE 2017, CEBAS/MS 2017, CEBAS/MEC 10/2017* in: Instituto de Pesquisa Econômica Aplicada – IPEA, “Dados e Indicadores: 4- Distribuição de OSCs por área de atuação, Brasil – 2016 em tabela,” Mapa das Organizações da Sociedade Civil, 2016, Official Website, Accessed 15 Aug 2018. <https://mapaosc.ipea.gov.br/dados-indicadores.html>.

⁹¹⁸ “Quem Somos,” Movimento dos Trabalhadores Sem Teto, Brigada de Comunicação do MTST, Website, Accessed July 15, 2019. <https://mtst.org/quem-somos/>; Brian Mier, “Inside the MNLM Squatters Movement,” Brasil Wire, Website, Dec 11, 2017. <http://www.brasilwire.com/mnlm-housing-movement-miguel-lobato/>; “Quem Somos,” Movimento Popular por Moradia, MPM, Website, Accessed Jul 15, 2019, <https://mpmcuritiba.wordpress.com/>.

port social accountability through mechanisms of citizen participation in decision-making.⁹¹⁹ In addition, *Fundación Vivienda* is a non-profit organization constituted as a supporting entity. They assist families in the application and of social housing projects in Chile since 1983.⁹²⁰ According to the foundation, it has supported the construction of seven thousand dwellings with the use of governmental subsidies since its creation.⁹²¹ Families joined in the organization, participation and coordination of networks, as they were trained for the maintenance of their units.⁹²² The non-profit foundation Techo, active not only in Chile but also in Brazil and other Latin American countries, provides solutions for more inclusive and sustainable cities.⁹²³ It has even created research center that produces an interactive database and a map on Chilean *campamentos* and social housing units.⁹²⁴

4.4.12 Academy and research institutes

Academics and research institutes also take part in social housing discussions, sometimes partially or completely funded by the government. In Brazil, some of those include the Brazilian Institute of Geography and Statistics – IBGE, Joao Pinheiro Foundation – FJP and Institute of Applied Economic Research – IPEA.⁹²⁵ LabCidade is coordinated by Mrs Rolnik, a former UN Rapporteur for Adequate Housing, and *Observatório das Metrôpoles* is an independent network consistent of researchers from sixty different institutions.⁹²⁶ In Chile, the

⁹¹⁹ “Fundación Multitudes,” Fundación Multitudes, Website, Accessed Jul 23, 2019, <https://www.fundacionmultitudes.org>.

⁹²⁰ “Viviendas definitivas con subsidio estatal.” Fundación Vivienda, Website, Accessed Jul 23, 2019, <https://www.fundacionvivienda.cl/project/viviendas-definitivas-con-subsidio-estatal/>.

⁹²¹ Id.

⁹²² Ib.

⁹²³ “Qué Es TECHO,” Techo-Chile, Official website, Accessed Jul 15, 2019, <https://www.techo.org/chile/que-es-techo/>.

⁹²⁴ “Centro de Investigación Social,” Techo-Chile, Online Database Platform, Accessed Mar 6, 2019, <https://www.techo.org/chile/centro-de-investigacion-social/>; “Monitor de Campamentos: Centro de Investigación Social – CIS,” Techo-Chile, Online Database Platform, Accessed Jul 21, 2019, <http://chile.techo.org/cis/monitor/>.

⁹²⁵ “Quem Somos,” Fundacao Joao Pinheiro, FJP, Website, Accessed Jun 16, 2020, <http://novo-site.fjp.mg.gov.br/a-fjp/>; “IBGE: Instituto Brasileiro de Geografia e Estatística,” Instituto Brasileiro de Geografia e Estatística, IBGE, Official website, Accessed Mar 13, 2019, <https://ww2.ibge.gov.br/english/>; “Ipea,” Instituto de Pesquisa Econômica Aplicada, IPEA, Official website, Accessed Jul 15, 2019, http://www.ipea.gov.br/portal/index.php?option=com_content&view=frontpage&Itemid=61.

⁹²⁶ “Entenda o LabCidade,” LabCidade, Website, Accessed Jul 15, 2019, <http://www.labcidade.fau.usp.br/entenda-o-labcidade/>; Tuanni Rachel Borba, Samuel Thomas Jaenisch, and Juciano Martins Rodrigues, “Apresentação,” Observatório das Metrôpoles, Website, Accessed Jul 15, 2019, <http://observatoriodasmetrolopes.net.br/wp/apresentacao/>.

academic research groups for sustainable urban development CEDEUS, REDEUSLAC and *Centro UC Políticas Públicas* of the Catholic University in Chile are national references in the field for urban solutions.⁹²⁷

4.4.13 Media

Not directly involved in the triangle, media and press created strong mechanisms of enforcement. It led the Organization of American States' Declaration of Principles on Freedom of Expression to define "murder, kidnapping, intimidation of and/or threats to social communicators" as a violation to "fundamental rights of individuals (...) [and] a duty of the state to prevent and investigate such occurrences."⁹²⁸ The article is inspired on the principle of freedom of thought and expression, on the protection of political rights, on the rights to personal integrity and to the protection of the family, which are all covered by the American Convention on Human Rights.⁹²⁹

Until 2016, Chile had relative significant "reduction in the levels of violence and harassment received by journalists while covering protests and demonstrations."⁹³⁰ However, according to a report from Freedom House, media and press still encounter limits in freedom of expression.⁹³¹ Another report on Brazil evidenced that at least one journalist was murdered and 161 were verbally or physically attacked in that country in 2016.⁹³² It denounces crimes of defamation and insult trying to silence journalists' opinions, as well as the influence of the economic control of 90% of national mainstream medias by two economic groups that drive to self-censorship and political bias.⁹³³

4.5 Summary

This section sought to identify, compare and assess the roles and responsibilities of the most significant stakeholders present in the accountability relations of the

⁹²⁷ "Líneas de Acción," REDEUSLAC, Website, Accessed Jul 15, 2019, <https://redeuslac.org/lineas-de-accion/>; "El Centro," CEDEUS, Official website, Accessed Jul 24, 2019, <https://www.cedeus.cl/sobre-nosotros/el-centro/>; "Qué hacemos," Centro UC Políticas Públicas, Official website, Accessed Jul 24, 2019, <https://politicaspublicas.uc.cl/nosotros/que-hacemos/>.

⁹²⁸ Organization of American States, Declaration of Principles on Freedom of Expression (OAS, 2000), <https://www.cidh.oas.org/declaration.htm>, 9.

⁹²⁹ OAS, "Pact of San Jose", art. 5.1, 13, 17, 23.

⁹³⁰ Freedom House, "Freedom of Press 2017: Chile" (Apr 26, 2016). <https://freedomhouse.org/report/freedom-press/2016/chile>; Increased violence rates can be expected due to the 2019-20 political changes in the next Freedom House report.

⁹³¹ Id.

⁹³² Freedom House, "Freedom of Press 2017: Brazil" (Apr 26, 2017). <https://freedomhouse.org/report/freedom-press/2017/brazil>. Despite the freer press activity, journalists also face limitations to their activities in Brazil. Freedom of press is a dangerous accountability mechanism in Latin America: according to the watchdog International Press Institute (IPI), Latin America was the deadliest world's region for journalists in 2017 (Steven M Ellis, "Mexico Most Deadly Country for Journalists in 2017," *International Press Institute* on Dec 19, 2017. <https://ipi.media/mexico-most-deadly-country-for-journalists-in-2017/>).

⁹³³ Freedom House, "Freedom of Press 2017: Chile."

case studies. Section 4.1 compared the role of beneficiaries and their respective responsibilities in Brazilian and Chilean contexts. A comparable legal structure was found in the case studies, as well as similar rights-based concerns. First, this work assessed related concepts for beneficiary (4.1.1) and discussed about a general categorization of vulnerable and emergent households (4.1.2-3). Issues in the concept of beneficiary were critically analyzed in both schemes, stating that legal definitions must ensure clarity and a rights-based approach (4.1.4). It also analyzed the lack of recognition of beneficiaries as right-holders and the need of revision of the understanding that they are mere consumers.

The second section (4.2) introduced service providers, their different roles and responsibilities in the case studies. They ranged from financial, private and non-profit actors. Financial agents (*entidades crediticias*, *entidades captadoras de ahorro* and *agente executor*) shared the same natural function to subsidize or finance housing construction (4.2.1). Construction firms had the common nature of providing the essential service, which is, the construction of a dwelling (4.2.2). As a rule, they are liable for their service provided.

Moreover, supporting entities were identified to be bound to the accountability relation (4.2.3). In those scenarios of FAR-, FDS- projects, as well as of FGTS- Asociativo, D.S. 1, Title I, D.S. 19 and D.S. 49, supporting entities exercise a natural role of assisting families in projects and they are directly connected to the local level of implementation. Yet, different designs, concepts and responsibilities were created for each of the programs, leading to legal confusion.

This work also evaluated the existence of a different nature in assistance entities connected to technical capacities, such as FTOs and *equipas/órgaos de assessoria técnica*. It was observed that they differ from supporting entities because they are focused on technical questions, rather than on social assistance. Finally, this section examined the figure of frontline professionals, whose information should be available in clear and transparent sources (4.2.8).

Section 4.3 moved on to assess the roles and responsibilities of the government side of the accountability relationship. It concluded that both schemes present their federal Ministries with major guidance functions, namely Ministério de Vivienda y Urbanismo – MINVU (4.3.1.1) and Ministério das Cidades (4.3.1.2), driving policy-making in a centralized top-down approach. In Brazil, alongside the ministries, direct councils and commissions strongly impact on decentralization (4.3.1.4-5). Although they must first thrive in Chile, this work evaluated that particularly civil-society participation suffered from retrogressive measures in Brazil. Participatory organs have been more recently limited through legal amendments that extinguished or changed the composition of participatory organs, e.g. with reforms in FGTS Trustee Board or the extinction of ConCidades. Differences in the role of public entities proved that each national model used their federal members (e.g. municipalities) with a different role. In sum, the

Chilean model must reconsider its level of centralization. Yet, at the same time that the Brazilian social housing model portrayed more decentralization, it also required more coordination.

Moreover, a different design of public entities and accessorial organs illustrated one of the biggest comparative differences of this chapter (4.3.3-5). In Chile, SERVIU and SEREMI, and in Brazil, Caixa, under the role of the operational agent, were delegated with program's operational tasks. Those entities have completely different natures, the first two are direct organs of the administration, whereas Caixa is a state-owned bank that also often takes a role of a MCMV financier. And yet, both schemes presented the same issue corroborated by a poor division of governmental roles: their overlapping or cumulative functions negatively impact accountability.

Other actors were identified to influence social housing accountability relations, even though they were not directly bound to the legal relations (4.4). Their greatest impact was the support to a rights-based approach. Those comprehended courts (4.4.1), internal participatory and external control organs (4.4.2-3), quasi-judicial agencies (4.4.4), financial councils (4.4.5), ombudspersons (4.4.6), superintendencies (4.4.7), national participatory councils (4.4.8), local and regional actors (4.4.9), grass-root movements and civil society organizations (4.4.10), the academy and research institutions (4.4.11) and the media (4.4.12). This section particularly observed the exceptional existence of CAO and CRE commissions, which were diagnosed to portray a key impact on a participation (4.4.3).

In the following chapter, regulatory frameworks of the case studies will be assessed based on the answerability dimension. It will lead to an analysis of specific parameters that stakeholders identified to be bound to the accountability relations must comply.

5 Dimension 2: Answerability in social housing programs

As observed in the introductory chapters, answerability regards an obligation in which involved agents may have to perform, justify, communicate, and inform upon their conduct. Therefore, it is essential that those rules are designed with transparency, clarity, objectivity, simplicity, and consistency.⁹³⁴ That also means that rules should be both predictable and dynamic, in order to guarantee stability as well as adaptation to risks and failures.⁹³⁵ A decentralized, coordinated and participatory context is also expected to strongly support democratic, rights-based outcomes in the social housing context.⁹³⁶ Those conditions of answerability are vital for holding duty-bearers accountable. If lacking those characteristics, a social program is “vulnerable to political interference, inequities, political economy risks, elite capture, and corruption.”⁹³⁷

Moreover, in order to address the question pointed by this chapter, this study must once again remark its stand that housing is not a commodity, but a human right. Therefore, the existence of legal grounds for program exit that generate illegal evictions and relocations and create inadequate, unaffordable and insecure conditions for the most-vulnerable can not be accepted. Policies should ensure the respect to minimum human rights as the analytical framework indicates.⁹³⁸ Defined in the context of Habitat III, both Brazilian and Chilean states supported the creation of laws to:

fulfill their key role in strengthening the interface among all relevant stakeholders, offering opportunities for dialogue, including through age- and gender-responsive approaches, and with particular attention to potential contributions from all segments of society, including men and women, children and youth, older persons and persons with disabilities, indigenous peoples and local communities, refugees, internally displaced persons and migrants, regardless of their migration status, without discrimination based on race, religion, ethnicity or socioeconomic status.⁹³⁹

⁹³⁴ Basset et al, 26.

⁹³⁵ Musalem.

⁹³⁶ See more ch. 1 on the analytical framework.

⁹³⁷ Basset et al, 26.

⁹³⁸ UN CESCR, GC 4.

⁹³⁹ UNGA, New Urban Agenda, para 42.

Based on that expectation to fulfill human rights, they too have committed to promote mechanisms for participatory decision-making, planning and follow-up processes. They recognized sustainable forms of growth and ensured to work for a new urban agenda based on accountability and transparency.⁹⁴⁰

In sum, FAR-, FDS-, FGTS-funded MCMV, D.S. 1, D.S. 19 and D.S. 49 share similar roots: to target the most-poor in the provision of housing. Despite differences in the implementation of those ideas, programs share an analogous structure and design of policies that subsidize the construction of dwellings. Therefore, this chapter aims at understanding the difference in the answerability dimension of the case studies. Looking at vulnerable and emergent urban households⁹⁴¹, is answerability determined by clear, transparent, simple, consistent rules and to what extent do the case studies follow a rights-based approach? Do those rules generally enable accountability?

In conformity with the analytical framework, policies will be assessed upon standards of transparency, clarity, simplicity, predictability and consistency, decentralization and participation. From a rights-based perspective, this chapter will analyze adequacy aspects of security of tenure, minimum health standards, habitability, affordability, socio-spatial distribution and an efficient access and target of the most-vulnerable, tracing the inclusion of minorities and with gender-responsive strategies based on accessibility and participation.

The first section analyzes beneficiaries (5.1) by outlining eligibility criteria (5.1.1), application (5.1.2) and selection procedures (5.1.3), and by finally providing a rights-based evaluation to the case studies (5.1.4). In the following, it sheds light on the accountability relations concerning service providers (5.2). It discusses the design affecting eligibility, application and selection (5.2.1) and their rights-based approach (5.2.2). This part of the comparative analysis is divided in vulnerable (FAR, FDS/MCMV-E, D.S. 49 and respective D.S. 19 categories) and emergent categories (FGTS-Individual, FGTS-Associativo, D.S. 1 and D.S. 19).

A final section reports on the governmental side of the accountability relation (5.3) and diagnoses on the rules to inform, respond and justify affecting public servants and entities (5.3.1).⁹⁴²

⁹⁴⁰ UNGA, New Urban Agenda, para 14.c, 15.b.

⁹⁴¹ See Chamorro, 14. Other categories, including those of group applications or individuals living in rural areas or social rental beneficiaries were also integrated to those programs, although not part of this project analysis.

⁹⁴² Basset et al, 6. A section on other indirect actors was left out of this chapter because only those essentially part of the accountability relation can be legally bound and accountable to the “rules of the game”.

5.1 Beneficiaries

Focusing on beneficiaries, structural parallels and distinctions of the case studies will be assessed in this section. In reference to eligibility criteria (5.2.1), in respect to vulnerable (5.1.1.1-2) and emergent categories (5.1.1.4-5). It includes a word on the key role given to national registries (5.1.1.3), for they consolidate information that will be crucial for the accountability structure during application (5.2.2) and selection procedures (5.2.3), as well as for eventual control and enforcement. Rights-based critics to the design of FAR-, FDS-, and FGTS-funded MCMV, D.S. 1, D.S. 19, D.S. 49 will assess discrimination towards the most-vulnerable (5.1.4). For that analysis, this work had to be limited to a few groups, including namely homeless persons (5.1.4.1), indigenous peoples and afro-descendants (5.1.4.2), migrants (5.1.4.3), women (5.1.4.4), the elderly, disabled, and victims of the dictatorship (5.1.4.5). This does not exclude the vulnerability of other individuals or communities. Finally, this work observes the use of housing policies disguising forced evictions, as well as unaffordable standards used in the case studies.

5.1.1 Eligibility

Brazilian and Chilean case studies share a similar eligibility structure. Defined by their respective executive Ministries, they include an economic or socioeconomic threshold for applicants, who can not be owners of another real estate property. In the case of emergent categories, Chileans and Brazilians must consider that contributions will take longer (up to thirty years of monthly contributions in Brazil and the ahorro must be deposited twelve months before the certification in Chile) and that they will dispense more capital (the higher the income or social index, the higher the contribution and proportionally lower subsidy).

In MCMV, eligibility is mainly based on a household's gross monthly income, whereas in Chile, it is based on a socioeconomic index. The process of beneficiary selection presents a milestone of the accountability relation. From eligibility through categorization, selection and publication phase, any stakeholder involved answers upon pre-defined legal and contractual standards. In sum, individuals can apply as part of a familiar group in all case studies and, depending on their social and/or economic characteristics, they shall be granted benefits against the contributions described in this section.

Policies should actually pursue a universalist approach, but, due to resource limitations, the focus on the most-vulnerable population must at least be accomplished through efficient targeting mechanisms. In practice, that translates into on-going calibrations of eligibility criteria, into making efficient investments, and into targeting the most urgent housing gaps. For that, governments must engage in participatory processes and search for solutions that best fit affected individuals.

However, even the most-vulnerable Brazilians and Chileans must perform a pecuniary contribution in order to join the assessed social housing programs. In general, evictions are used as a form of penalization of families, a strategy that drives to violations to human rights. This section will assess how beneficiaries are expected to respond, inform and justify upon benefit and contribution levels.

5.1.1.1 Vulnerable categories: D.S. 19 and D.S. 49

As observed in the previous chapter, Chile makes use of a socioeconomic vulnerability index to define eligibility categories of social housing beneficiaries.⁹⁴³ A required registration and categorization is conducted via RSH, the national registry.⁹⁴⁴ However, that eligibility requirement is cumulated to a list of 14 items and respective subitems, despite a socioeconomic qualification.

Primarily, applicants should be at least 18 years old, do not possess a dwelling nor have had benefited before from a governmental housing subsidy.⁹⁴⁵ Chilean D.S. 19 and D.S. 49 also demand the previously explained “*ahorro*”, a saving account, which can be opened at a bank or a financial entity⁹⁴⁶. In addition, probably because a saving account may be opened by minors, the legislator expressed their will against underages participating in the social housing program. Minors are expected to be as well be excluded from applying to Minha Casa, Minha Vida, even though there is no clear statement against it on the main regulations. Since the program involves contributory installments and only those of legal age could conduct a legal business, such a contract (conducted by a minor) would be in general invalid.

The fact that minors do not possess the legal capacity to engage in particular contracts (*negócios jurídicos*) does not change the conditions of children living in street situation in none of the countries. However, it must be remarked that children with denied access to adequate housing are violated in the kern of their

⁹⁴³ In order to be eligible, a household must be among those 40% with lowest-income in order to join the Chilean categories of the most-vulnerable. Yet, D.S. 19 accepts the application of the 41% and 50% poorest, creating a different standard for the same concept of vulnerability. This legal confusion needs to be tackled. See section 4.1. Chile, D.S. 49, art. 1.

⁹⁴⁴ MDS, “Registro Social de Hogares de Chile.”

⁹⁴⁵ Chile, D.S. 49, art. 3a-4.

⁹⁴⁶ For D.S. 49, a minimum of 430USD is required, and for D.S. 19, 861USD or 1,292USD, depending on the socioeconomic category (CUEX).

basic human right to have a life with dignity.⁹⁴⁷ The challenge here is that children are not capable to support themselves.⁹⁴⁸ This way, homeless families with children should be prioritized in the presented social housing context.

Furthermore, just like in the Brazilian model, owners or partners of real estate properties are ineligible.⁹⁴⁹ Moreover, those holding a certificate of subsidy or who have already benefited from a housing program will not be allowed to apply.⁹⁵⁰ This way, right-holders must also inform, respond or justify upon those legal standards.

Moreover, different to Brazil, concurrent applications are not allowed in D.S. 49 and D.S. 19: neither spouses or same-household members are able to apply concurrently for a housing subsidy.⁹⁵¹ It is also recent that same-sex unions have been recognized by Chilean norms, making them eligible as a household for social programs.⁹⁵² And yet, cases of discrimination have been reported, in which partners must publicly reclaim or prove their family condition.⁹⁵³ Discrimination against LGBTQ+ persons in Brazil and Chile is a motive of great concern.⁹⁵⁴

Moreover, benefit and contribution levels are generally set by norms. Yet, they will be individualized to each and every beneficiary in legal contracts. Annex II

⁹⁴⁷ Valenzuela Vergara et al, “Metropolitan Observatory for Street Children and Youngsters: A Chilean Experience of an Innovative Model.” *Journal of Applied Research on Children: Informing Policy for Children at Risk*, New Morbidities 2.0, v 4, n 1, art 10 (Mar 27, 2013); Karinna Soto and Alejandra Stevenson, eds. *En Chile todos contamos: segundo catastro nacional de personas en situación de calle*. Colección Observatorio Social (Santiago de Chile: Ministerio de Desarrollo Social, 2012), 49; UN Committee on the Rights of the Child, General Comment No. 21 (2017) on Children in Street Situations (UN Convention on the Rights of the Child), CRC/C/GC/21, GC21 (CRC, 2017), para 5-8. In 2011, almost 24,000 children and youngsters were homeless in Brazil, according to the last demographic data. In Chile, 742 were catalogued in 2012. However, data is often not systematically aggregated, as the United Nations points out.

⁹⁴⁸ Homeless minors must have priority support in accessing adequate housing and other human rights. For example, emergency shelter or social rent could be alternatives depending on age and other conditions. Alternatives to housing ownership must be sought to the numerous homeless minors living in the streets of Brazil and Chile.

⁹⁴⁹ Chile, D.S. 49, art. 4.b. Exceptionally, those who apply for a self-construction category are of course eligible.

⁹⁵⁰ Chile, D.S. 49, art. 4.c-d.

⁹⁵¹ Chile, D.S. 49, art. 3, h; Chile, D.S. 19, art. 16, b.1.

⁹⁵² “Nuevo Registro Social de Hogares reconoce a parejas convivientes del mismo sexo,” Registro Social, Official website, Accessed April 23, 2019, http://www.registrosocial.gob.cl/public_noticias/nuevo-registro-social-de-hogares-reconoce-a-parejas-convivientes-del-mismo-sexo/; “Familias creadas bajo el amparo de la Ley de Unión Civil podrán optar a subsidios para vivienda en igualdad de condiciones,” Maule Chile, Portales Regionales on Oct 22, 2015, Official website, Accessed Apr 23, 2019, <https://tinyurl.com/ya32n6nt>.

⁹⁵³ “Convivientes Civiles Denuncian Que Ficha de Protección Social No Los Reconoce Como Parientes,” Movilh, Website, Accessed Jan 25, 2016. <https://cutt.ly/TyMiUEB>; “Explican cómo actualizar parentesco de los integrantes del hogar tras denuncia de pareja del AUC,” Publímetro Chile.

⁹⁵⁴ See details HRC, A/HRC/29/23; CRC, CRC/C/CHL/CO/3.

translated a D.S. 49 certificate, a document of contractual nature, which formally sets an accountability legal relation between government, service provider and beneficiary.

A clear triangular accountability relation is portrayed in that example, with an express mention of the project's service provider. Yet, indirect parties, such as the supporting entity, were not addressed.⁹⁵⁵ This specific condition is fundamental, because it can directly impact on the obligation to respond, inform and justify upon general and individualized standards.⁹⁵⁶ Therefore, it should be as transparent as possible.

5.1.1.2 Vulnerable categories: FAR and FDS

Delegated by the Federal Union, the Brazilian Ministry of Cities defined a main economical eligibility criteria and other exclusion factors for applicants. Generally, candidates of MCMV-E and FAR-funded category 1 must have a compatible monthly income with the category applied.⁹⁵⁷ Another criteria requires applicants to be registered by a public entity, certified by SNCH and, eventually, to sign contract with a financial institution.⁹⁵⁸ Yet, applicants will not be eligible if they already own real estate properties, are about to become owners or have already financed a real estate property in that country.⁹⁵⁹ Neither shall be eligible those who have already been contemplated by a governmental social housing program.⁹⁶⁰

However, there is a misconception between the norm and the contracts. The FDS contract evidences an eased conditioned: the beneficiary can not be an owner of an active housing loan, which in this case could be understood to be public or private, nor an "owner(s), promising buyer, usufructuary, lessee" of PAR.⁹⁶¹ That prohibition is extended countrywide, but it does not cover the

⁹⁵⁵ A possible reason may be because the beneficiary received the grant individually and did not request to join a project developed by such entities, although the assistance of a supporting entity could be theoretically possible.

⁹⁵⁶ Depending on the legal context and on the ability of the judiciary to inquire upon facts, the lack of direct mention of involved stakeholders and of their respective responsibilities may prevent controlling or sanctioning.

⁹⁵⁷ Which in this case refers to a maximum gross monthly income of max. ca. 481USD. (Equivalent to ca. 1,800BRL. See CUEX). However, Exceptions may be allowed. Families with an income up to 962USD may apply via category 1 under special conditions, such as emergency situations or public calamities (Equivalent to ca. 3,600BRL. See CUEX). Also exceptionally, up to 10% of families chosen for a MCMV-E project may extrapolate that income threshold, who may earn up to ca. 628USD (Equivalent to ca. 2,350BRL. See CUEX). See also Brasil, I.N. 12, annex I, 2.1, 2.2; Brasil, P.I. 99; Brasil, P. 163, 3.1, 3.1.a; Brasil, L. 11.977, art. 3, II.

⁹⁵⁸ Brasil, P. 163, ch III, 3.

⁹⁵⁹ Brasil, P. 163, 3.1.b-c; Brasil, L. 11.977, art. 3, II.

⁹⁶⁰ Brasil, P.I. 99, art 2; Brasil, P. 163, Annex I, 3.1.c. Exceptions refer to cases of emergency state, calamities, as well as to previous subventions or discounts used for purchasing construction material for specific refurbishing purposes are excused from this rule as well.

⁹⁶¹ See Annex V, Clause 17.6.

spectrum of art. 3.1.b, of P. 163, which expressed restrictions upon any kind of property.

Similarly, FAR's contract also misguided the interpretation of the regulation.⁹⁶² It set as an eligibility requirement that a beneficiary could not have received any benefit from the federal union, FAR, FDS or FGTS, or else that they would not neither be linked to PAR. Yet, once again, the same lack of prohibition to property, assignments or promised purchase of a housing unit pursuant to art. 3.1.b, of P. 163. Such loopholes must be corrected; otherwise, they could be used in court to claim for eligibility.

Exceptionally, applicants of MCMV-E must show to be pursuant to the project proposal and to have participated with the activities of the supporting entity, as well as in planing and contracting.⁹⁶³ Such eligibility criteria were not observed in any Chilean program. However, although it is crucial that beneficiaries engage in projects, they should not be conditioned to prove participation, because vulnerability may negatively impact their chances of participation and, in such a conditional context, hinder access to housing. A solution should be to delegate supporting entities with the role to ensure engagement as well as communication with the local level. Thus, those entities should be held accountable for the responsibility to engage beneficiaries.

In the case of FAR, Annex I shows Caixa and a beneficiary signing a contract, a "private instrument of purchase and sale of property, with an installment plan and fiduciary alienation in guarantee."⁹⁶⁴ Only a bipartisan structure between government and beneficiary is expressly found in this contract, subjecting in three figures: a vendor, a consenting party and a purchaser.

The dwelling, object of the contract, is a fiduciary property of CAIXA, that is to be transferred to the beneficiary as soon as the debt is paid.⁹⁶⁵ Caixa cumulated the two roles of vendor and consenting party (officially as the financial agent and also as the operational agent).⁹⁶⁶ The vendor and fiduciary lender,

⁹⁶² See Annex I, 22.1.b.

⁹⁶³ Brasil, P. 163, ch II, 4.1.2.

⁹⁶⁴ Brasil, Lei 9.514, de 20 de novembro de 1997, L. 9.514 (1997), art. 22-23; Brasil, Civil Code, art. 1.361 a 1.368-B. Author's translation. See Annex I. Fiduciary alienation is a legal institution in Brazilian law that allows the debtor to transfer the financed property to the lender as a guarantee of payment for the full debt. It transfers temporarily to the creditor the resolvable property, until contract resolution. It must be remarked that it is a unique institution in Brazilian law, different to e.g. trust, leasing or mortgage.

⁹⁶⁵ The contract goes on to define the conditions of the installment plan, including the origin of resources, the total debit, the net worth of the property in case of public auction, the monthly charges and the respective FAR subsidy, the calculation of the family income, and initial due date for payments (See Annex I, B, C, C2, C4, C5, C7, D).

⁹⁶⁶ Annex I, A1-A2.

FAR, managed by CAIXA, delegates a legal representative to sign the contract.⁹⁶⁷ The consenting party, once again CAIXA, delegates a representative and presents its condition of fiduciary owner.⁹⁶⁸

The construction firm finds no reference in this model contract, whereas Caixa takes both roles as vendor and consenting party. For that matter, the exclusion of the service provider creates insecurity in the legal relation. In addition to an unclear division of roles to CAIXA, as observed previously, issues of transparency weaken the accountability relation. Thus, this contractual form must be reviewed.

The beneficiary was also referred as to purchaser, debtor, and *fiduciante* (translated as “trustor”).⁹⁶⁹ In contrast to the Chilean certificate, this nomination affects the interpretation of rights given to beneficiary. It can be easily claimed that, due to the contractual nature of the contracts ensure by MCMV, the beneficiary is better observed as a consumer than as a right-holder. Nevertheless, this goes against the best rights-based understanding.⁹⁷⁰

Similarly, there are several possible contract forms for a FDS-based contract, for example, that of a “private instrument of purchase and sale, with loan for the construction of a dwelling in fiduciary alienation.”⁹⁷¹ In this MCMV-E context, main structural differences derive from the existence of the supporting entity and their respective support-management commissions.⁹⁷² But again, the service construction provider is not outlined in those contracts, what creates an unclear legal scheme.

5.1.1.3 National registries

In both countries, national registries play an important role in the process of selection in social housing programs because they identify and classify categories. As a consequence of that process, households will endure from better or worse financial or supply conditions. Thus, the process of categorization is mandatory for candidates, as a preliminary stage to application and selection phases. This is generally based on a household’s gross monthly income – GMHI, though in Chile other social aspects also apply.

⁹⁶⁷ Annex I, A1.

⁹⁶⁸ Annex I, A2.

⁹⁶⁹ Annex I, A3. *Fiduciante* has been translated as trustor, due to the lack of English expressions for the term. Beware, the institution of trust in other legal systems is different to the Brazilian fiduciary.

⁹⁷⁰ UNGA, A/71/310, para 5.

⁹⁷¹ See Annex V. *Instrumento particular de compra e venda, mútuo para construçao de imóvel residencial e alienaçao fiduciária em garantia*. Author’s Translation.

⁹⁷² See Annex V, 17.5.

In the MCMV context, that is defined as a formal eligibility condition, which supports the definition of beneficiary as concept.⁹⁷³ In Chile, nevertheless, a socioeconomic qualification method is conducted, led by the Social Household Registry (*Registro Social de Hogares* – RSH). Basically, RSH calculates the difference between income and the means that a family provides for its monthly expenses.⁹⁷⁴ That includes educational levels, working reference of the last 12 months, as well as questions on domicile and household, such as the number of people (which may be economically dependent or not), the conditions of tenure, accessibility to water and sanitation, and even the kind of material used for walls, floors and ceilings.⁹⁷⁵ Based on such factors, RSH stipulates the vulnerability of the household into a percentage that corresponds to scores on the application process to be used in diverse social programs, including the case studies.⁹⁷⁶

Another legal difference between Brazilian and Chilean models is that MCMV stratified the registration procedures through different program tracks. FDS-funded MCMV-E requires supporting entities to insert all applicants in a registry to be forwarded to SNCH, in contrary to individual applicants of FAR-funded projects, which shall be registered by public entities.⁹⁷⁷ Overall, all catalogued information should be sent to *Sistema Nacional de Cadastro Habitacional* – SNCH and updated at least every 24 months, which should be available for public consultation.⁹⁷⁸

SNCH is a national databank with free registering costs just like RSH. In Chile, the national database RSH is responsible for cataloguing all households that eventually wish to apply for a social service. Individuals are able to apply in person at municipal offices, as well as via 430 post-boxes installed in official locations, and also via a toll-free number.⁹⁷⁹ For those with virtual access, RSH innovated with the creation of ICT platforms, that can be done either via the official website or via a smartphone application.⁹⁸⁰

SNCH tracks and crosschecks data of diverse registry banks containing financial and economic information, namely FGTS, RAIS, CADMUT, CADIN and SIACI databanks.⁹⁸¹ In sum, beneficiaries must prove that they are not in debt.

⁹⁷³ Brasil, P. 163, ch III, 3.

⁹⁷⁴ MDS, “Registro Social de Hogares de Chile”, Anexo 1.

⁹⁷⁵ MDS, “Registro Social de Hogares de Chile,” 46-47.

⁹⁷⁶ “Registro Social de Hogares,” Ministerio de Desarrollo Social y Familia, MDS, Website, Accessed April 23, 2019, <http://www.registrosocial.gob.cl/>.

⁹⁷⁷ Brasil, I.N. 12, Annex I, art. 1.1.d; Brasil, P. 163, ch III, 3.

⁹⁷⁸ Brasil, P. 163, ch 1, 1.2, 1.4, 1.3, 1.4.1; ch 2, 2.

⁹⁷⁹ “Registro Social de Hogares,” MDS.

⁹⁸⁰ Id.

⁹⁸¹ Brasil, P. 163, 2.4, 2.4.2; Brasil. Decreto 76.900, de 23 de dezembro de 1975, D. 76.900 (1975); Brasil, Lei 10.150, de 21 de dezembro de 2000, L. 10.150 (2000); Brasil, Lei 10.522, de 19 de julho de 2002, L. 10.522 (2002). RAIS is an annual report of socioeconomic information required by the

The result of the information crosscheck will typify candidates as: compatible, pending or non-compatible.⁹⁸² A compatible candidate fits to the eligibility conditions and is able to participate in the selection procedure.⁹⁸³ Candidates classified with a pending status can as well participate in selection, though they must prove the regularization of their situation with CADIN, CAMUT or SIACI before the final signature of the contract.⁹⁸⁴ According to the norm, non-compatible are those households that extrapolate a category's GMHI threshold or that are evidencing judicial restrictions.⁹⁸⁵ However, the norm is unclear about what kind of judicial restrictions can hinder the application, nor is there mention to eventual remedies against such a decision.

Clearly, the use of ICTs by those databases is expected by the legislator to be key for an objective selection of beneficiaries. However, choosing the rights-based theoretical understanding behind those tools is what defines their level of success and leads to an equal, non-discriminatory access to all participants. Hence, translating those ideals into clear, consistent, transparent rules is still imperative in Brazilian and Chilean contexts, as the analysis shows.⁹⁸⁶

Furthermore, in 2016, SNCH was defined MCMV's official cataloguing registry for all concerning financial and economical beneficiary information.⁹⁸⁷ However, according to an interview with an employee of the Ministry of Cities, SNCH is "still under construction."⁹⁸⁸ As a unofficial alternative, at least until 2019, the Ministry had still been using Caixa's databank CADMUT for eligibility checks.⁹⁸⁹

SNCH was created to take a role of internal control for the Ministry of Cities.⁹⁹⁰ But, instead, it more strongly impacts on beneficiaries with an obligation to inform and justify on their economical conditions. Nevertheless, the reason why MCMV depends on such a financial crosscheck is linked to the financial stability of beneficiaries, who are required to contribute with monthly installments.

Ministry of Labour to legal persons, and presents data about e.g. unemployment insurance. *Cadastro Nacional de Mutuários* – CADMUT is a national registry for borrowers: anyone who has borrowed in order to finance the alienation of a house shall be registered until full redemption. *Cadastro Informativo de créditos não quitados do setor público federal* – CADIN is a databank managed by the Brazilian Central Bank that lists all natural and legal persons in debts (*obrigações pecuniárias vencidas e não pagas*) with organs or entities of the Federal Public Administration. *Sistema Integrado de Administração de Carteiras Imobiliárias* – SIACI is a databank on real state portfolio.

⁹⁸² Brasil, P. 163, ch I, 2.4.2.

⁹⁸³ Brasil, P. 163, ch I, 2.4.2.a.

⁹⁸⁴ Brasil, P. 163, ch I, 2.4.2.b.

⁹⁸⁵ Brasil, P. 163, ch I, 2.4.2.c.

⁹⁸⁶ Basset et al, 30-31.

⁹⁸⁷ Brasil, P. 163.

⁹⁸⁸ Santana, Researcher's Interview 4; Brasil, P. 464, Annex III, 2.4.b; Brasil, P. 163.

⁹⁸⁹ Santana, Researcher's Interview 4.

⁹⁹⁰ If SNCH had effectively entered in operation, that had been its role.

The fear of default determines this assessment of financial and economic stability, under the consideration that social housing beneficiaries are general consumers. From a rights-based perspective, MCMV's approach is not consistent, because it neither recognizes the fundamentals of the right to housing nor vulnerability as a factor impacting on affordability.

In Brazil, an existent database cataloguing information on the multi-dimensions of poverty, CadUnico, used to be the official targeting tool in the assessment of eligibility of households.⁹⁹¹ If the database and the technology already exist, it is hence a matter of legal adjustment to enable the identification of the multi-dimensions of poverty in MCMV.

In Chile, as observed previously, RSH's registry itself is a requisite of application, but it is not particularly the responsibility of a supporting entity⁹⁹². In fact, it is SERVIU's role to identify a local demand through a correct registration of eventual applicants and their demands.⁹⁹³ Chile's RSH, in contrast to SNCH, has been implemented to directly gather information, register and categorize candidates upon their social and economic status. It does not expressly involve this financial rhetoric used in MCMV because contributions of vulnerable categories are payed up front with the *ahorro*.

But, from a rights-based perspective, MCMV's employed approach is unacceptable. Based on the maxim that housing is a human right and understanding that vulnerable persons include those who are indebted and suffer from unaffordability, those should not have their access to adequate housing limited. Although the Chilean solution shows a path that can develop into adequate solutions, it provides nonetheless a critical design because it will financially affect families that suffer from unaffordable conditions when saving for the *ahorro* (as well as those emergent families, who take loans and higher interest rates).⁹⁹⁴

⁹⁹¹ Tarsicio Castaneda et al, "Designing and Implementing Household Targeting Systems : Lessons from Latin American and The United States," WP 32756, SP 526 (Washington, DC: World Bank, Jun 1, 2005), <http://documents.worldbank.org/curated/en/566041468770480720/Designing-and-implementing-household-targeting-systems-lessons-from-Latin-American-and-The-United-States>; Brasil, Decreto 6.135, de 26 de junho de 2007, D. 6.135 (2007), art. 6, IV, a-c; Ministério da Transparência, Fiscalização e Controladoria-Geral da União, and Controladoria Geral da União, "Relatório de Avaliação Da Execução de Programa de Governo n 75: Programa Bolsa Família," n75 (Brasília: CGU, 2017); Brasil, P. 163. CadUnico used to be the official database for MCMV until P. 163 created SNCH. CadUnico is an "instrument of identification and socio-economic characterization of low-income [...] families". It is mandatory for beneficiaries of many social programs, such as *Bolsa Família*, for which it gathers information on income, education and housing characteristics regarding all household members. Later, registered information can enable internal and external cross-checks, as well as random-sample spot checks, as for example, those conducted by CGU.

⁹⁹² Chile, D.S. 49, art. 3, g.

⁹⁹³ Chile, R.E. 1.875, art. 2.1: *De las actividades vinculadas a asistencia técnica de responsabilidad de SERVIU*.

⁹⁹⁴ See also section 5.1.1.

5.1.1.4 Emergent categories: D.S. 1 and D.S. 19

Socioeconomic thresholds and exit factors again shape Chile's eligibility criteria for D.S. 1 and D.S. 19.⁹⁹⁵ If a beneficiary has been found to be eligible and selected by D.S. 1, then it may be eligible to apply to D.S. 19 as well.⁹⁹⁶ All case studies exclude an already benefited individual from application.⁹⁹⁷ For example, those members of households in possession of a social housing certificate or who have been granted any kind of social housing subsidies, as well as tax mechanisms or aiming sanitary infrastructure, shall not be able to apply.⁹⁹⁸ Adult family members declaring themselves as such in favor of a beneficiary application will be hindered from their own application for a period of three years after the selection.⁹⁹⁹

Moreover, in both models, candidates that already own a property are not eligible.¹⁰⁰⁰ In Chile, that rule extends to partners or other households members. However, this seems to be a counter-productive policy, considering that overcrowding¹⁰⁰¹ is one of the most usual issues the most-poor face in Chile.¹⁰⁰²

⁹⁹⁵ Information is checked by *Registro Social de Hogares* – RSH, a registry that should comprehend all national databases. As explained previously, D.S. 1 produces almost the same requisites as vulnerable categories, such as being of age and either being a national or having a permanent residency status (Chile, D.S. 1, art. 16, a-b). The socioeconomic threshold limits differ: Chile's 90% poor may apply for D.S. 1, Title II; the poorest 80%, for D.S. 1, Title I, track 2; and the most-vulnerable 60%, for Title I, track 1 (Chile, D.S. 1, art. 63; Chile, D.S. 19, art. 3). Exceptionally the elderly 90% most poor may belong to Title I (Chile, D.S. 1, art. 63).

⁹⁹⁶ And, although D.S. 19 does not deeply details on eligibility factors, it borrows minimum standards given by other programs it comprehends, including D.S. 1.

⁹⁹⁷ There are, nevertheless, exceptions to those same exit factors. See Chile, D.S. 1, art. 17-18; and section 5.1.2.1.8.

⁹⁹⁸ Chile, D.S. 1, art. 17.b, 17.d.

⁹⁹⁹ Chile, D.S. 1, art. 17.c.

¹⁰⁰⁰ Chile, D.S. 1, art. 17; Brasil, I.N. 42, 1.1. Exceptions refer to categories of refurbishment or acquisition of construction material.

¹⁰⁰¹ National data suggests that, although a decrease in the number of *allegados* has been evidenced since 2002, in various regions, more than fifty per cent of the 40% most vulnerable Chileans have to live under overcrowding conditions. In Santiago, that number amounts almost 70% of the vulnerable population. See Chile, CEHU, "Resultados Déficit Habitacional Cuantitativo – Censo 2017". In the metropolitan region of Santiago, up to 44% of D.S. 49 applicants were living as *allegados*, showing that those figures are regionally different depending on the income level. See Reporte de caracterización sociodemográfica D.S.49, División de Informática, Ministerio de Vivienda y Urbanismo, in Observatorio Urbano and Centro de Estudios Ciudad y Territorio, "Informe de Caracterización Sociodemográfica. Beneficiarios Del Programa Fondo Solidario de Vivienda DS 49" (Dec 2019), Graph 23.

¹⁰⁰² See Chile, Comisión de Estudios Habitacionales y Urbanos, "Resultados Déficit Habitacional Cuantitativo – Censo 2017," CEHU, Jul 2018, 3; Salvi del Pero et al, 2016 in: del Pero, "Housing Policy in Chile", 9. In Chile, *allegados* are considered to be economic independent families that live in the same dwelling. However, the OECD concept is slightly different, referring to "a household is counted as living in an overcrowded dwelling if there is not at least one room for the household, one room per couple in the household, one room per each person aged 18 or more, one room per pair of people of the same gender aged under 18, one room per child aged between 12 and 17 with no siblings of the same gender and one room per pair of children aged under 12."

Although showing better figures than the OECD average, the incidence of overcrowding in Chile is high and to be combated with policies that enable especially those vulnerable families.¹⁰⁰³

Moreover, candidates of Title I, category 2 and Title II must provide a certificate of credit approval for a complementary subsidy not older than 60 days.¹⁰⁰⁴ That is because they also take an extra loan, to which they must prove to be financially able to pay. This is a control procedure based on the same concept as the crosscheck of information conducted over Brazilian beneficiaries debt registries, such as CADIN or SIACI. Exceptionally, those victims of events of *force majeure* or under special separation or divorce are exempted from such rule.¹⁰⁰⁵

However, Chileans do not count with the same social funds as Brazilians (e.g. FGTS). Regarding D.S. 1 and D.S. 19, if higher-income categories may respond for an extra-loan (*credito hipotecario*). If beneficiaries take an extra loan from a private bank, the dwelling will be used as a guarantee to payment of the debt.¹⁰⁰⁶ In case those emergent beneficiaries incur in default, the government shall make use of an auction of the dwelling to cover the outstanding balance.¹⁰⁰⁷

However, such a context brings a family only a partial subsidy.¹⁰⁰⁸ More than half of the total purchase price could end up financed via third loans and credits from private institutions. In such conditions, families could endure unaffordability, if they are not supported in financial planning.

A positive remark from Chile is that the certificate of subsidy ensures the identification of stakeholders in diverse documents with a detailed description of the involved parties. The authorization of payment (*autorización de pago*) makes

¹⁰⁰³ Ministerio Desarrollo Social, Informe de Política Social 2013 in Peru, “Housing Policy in Chile”, 9, figure 2.

¹⁰⁰⁴ Chile, D.S. 1, art. 16, d.

¹⁰⁰⁵ Chile, D.S. 1, art. 18.

¹⁰⁰⁶ Chile, D.S. 1, Title III.

¹⁰⁰⁷ Yet, if the product of the auction sale does not cover the amount of the debit, then SERVIU or MINVU remit the outstanding balance for those dwellings valued up to 60,304USD, or a percentage to be calculated based on the price of the purchase, in case of more expensive units (Equivalent to 1,400UF. See CUEX). The amount shall be payed to the financial entity in up to 60 days, although the procedure requires a list of different judicial and financial documents (Chile, D.S. 19, art. 22, 25).

¹⁰⁰⁸ Annex IV, presents one practical example of a beneficiary granted ca. 30,152USD for a dwelling valued up to ca. 68.919USD after providing savings of ca. 1.391USD via D.S. 1, Title I, category 2. Moreover, the beneficiary in annex IV owns the land’s rights and should, in a time-period of 21 months, search for a development entity that will construct the dwelling. Thus, a supporting entity not necessarily takes part in all accountability relation, although an individual beneficiary can choose to join a collective project (led by a supporting entity). See Annex IV, 8; CUEX. Equivalent to 700UF, 1,600 and 32,3UF.

reference to the beneficiary, to the granted provider and to involved governmental agents.¹⁰⁰⁹ The “authorization of payment” confirms the answerability to provide a service (by the construction firm) and to pay for it (by the Chilean government).¹⁰¹⁰ An annexed memorandum shows a lawyer of the province of Puerto Natales communicating a deputy (*delegado*) of the same region about the certificate of subsidy delivery and the construction permit, to be as well distributed to an internal control department.¹⁰¹¹ Such level of transparency in the responsibility dimension can better enable redress and grievance and, thus, should be used as a possible solution for the Brazilian model, which fails to list all involved actors of the accountability relation.

5.1.1.5 Emergent categories: FGTS

The eligibility structure of FGTS, similar to FAR and FDS and mainly based on income and exit factors, suits to both individual and collective tracks.¹⁰¹² As criticized before, only the household income plays a role as a first eligibility factor in MCMV. The difference in FGTS-Associativo¹⁰¹³ is the essential engagement of supporting entities.

In the case of FGTS-funded projects, Caixa is expected to use its own system because SNCH’s regulation does not refer to FGTS beneficiaries. *Sistema Nacional de Cadastro Habitacional* – SNCH was created to register FDS and FAR funded categories and it is not clear if the system should also unify the registry of all beneficiaries.¹⁰¹⁴ In Brazil, a potential applicant shall too be hindered from applying, if having an active debt in the financial system.¹⁰¹⁵ That information should be crosschecked via updated records in the respective national registry systems. According to the Brazilian norm, the aim is to verify the capacity of the borrower to pay for their subsidy.¹⁰¹⁶

¹⁰⁰⁹ See Annex IV, 6.

¹⁰¹⁰ The annexed contract of self-building subsidy allocated 700UF for construction in a pre-defined location for a certain time period, as detailed, from July, 2015 to April, 2017 (See Annex IV, 8, 9). Yet, the final endorsement of the certificate took place on June, 2017, two months after that deadline expired, making it questionable if there was an amendment of rules as well as an extension in deadlines. (See Annex IV, 6; “Información Del Proveedor,” ChileCompra MercadoPublico.cl).

¹⁰¹¹ See Annex IV, 7.

¹⁰¹² The basic condition for the Brazilian category 3 is a GMHI under ca. 1,871 USD (Equivalent to 7,000 BRL. Brasil, I.N. 42, 1.1; CUEX). Categories 2 and 1.5 demand the maximum of, respectively, 1,069USD and 695USD (Equivalent to 4,000BRL and 2,600BRL. Brasil, I.N. 42, Annex II, Annex III; CUEX).

¹⁰¹³ Brasil, Conselho Curador do Fundo de Garantia de Tempo de Serviço, Resolução 723, de 25 de setembro de 2013, R. 723 (2013) Annex I, 3.b; Brasil, Ministério das Cidades, I.N. 43, 1.1.b.

¹⁰¹⁴ However, as already known, this registry is not yet active in Brazil, according to an interview with Ms. Rhaiana Santana (Santana, Researcher’s Interview 4).

¹⁰¹⁵ Brasil, I.N. 42, 4, c; Brasil, P. 163, 2.4.2. Besides CADIN, also FGTS, RAIS, CADMUT and SIACI.

¹⁰¹⁶ Brasil, I.N. 42, 4.b.

According to FGTS' contract for individual applicants, holders of a loan contract are eligible as long as they do not hold an active housing loan in any municipality of the national territory and do not have a contract with PAR, PAIS or any other social federal housing program.¹⁰¹⁷ Yet, an exceptional item challenges eventual exclusions to those who are proprietaries of a dwelling. A beneficiary may not be a "proprietary, assignee or committed purchaser of a housing unit."¹⁰¹⁸ However, that only applies to the beneficiary's domicile or to the municipality object of the contract. Similarly, the same case was observed in the FGTS-Associados contract.¹⁰¹⁹

Consequently, it could be legally acceptable that a social housing beneficiary is already a proprietary of another dwelling, as long as in another jurisdiction. This situation is highly problematic for the answerability dimension, because it limits the control and sanction of beneficiaries who already have their right to housing materialized. This also goes against the FAR/FDS¹⁰²⁰ regulations, that an applicant of social housing should not be a proprietary of an already existent dwelling. Under the drastic socio-economic reality and the need to most-efficiently use economic resources, it should be necessary to restrict the eligibility of beneficiaries that are home-owners, independent of the location of their dwelling.¹⁰²¹

Henceforth, it goes against basic social housing guidelines, since that exception hinders other vulnerable applicants to access adequate housing, when others end up roughly increasing capital and waste public resources. The FGTS program should reconsider this matter in order to observe strict and calibrated targeting to social housing.

FGTS beneficiaries respond to a contract of "particular instrument of purchase and sale of an isolated unit and of loan with obligations and fiduciary alienation."¹⁰²² That contract is based on a "*financiamento*" or loan. Different from the Chilean setting, this ensures that the beneficiary responds to a financial contract as the final borrower¹⁰²³ or else, as expressed, as the purchaser and trustor in guarantee. Other figures also appear in the FGTS contract: the seller, in this case, a private real estate agent; and the fiduciary creditor and financial institution.¹⁰²⁴

¹⁰¹⁷ See Annex III, Clause twenty-sixth.

¹⁰¹⁸ See Annex III, Clause twenty-sixth, b.

¹⁰¹⁹ See Annex VI, clause fortieth, first paragraph, b.

¹⁰²⁰ Brasil, P. 163, 3.1.b-c; Brasil, L. 11.977, art. 3, II.

¹⁰²¹ This should be a temporal solution. The aim should be anyhow to (eventually) provide an universal access to housing.

¹⁰²² See Annex III. In Portuguese, *Contrato for instrumento particular de compra e venda de unidade isolada e mútuo com obrigações e alienação fiduciária*. Author's translation.

¹⁰²³ Brasil, I.N. 42.

¹⁰²⁴ Annex III, A.

The contributory structure developed by MCMV subjects beneficiaries to similar conditions of the private housing market. Although providing better financial conditions to emergent categories than those observed in the private sector (such as lower interest rates), law and jurisprudence enable violations from the moment they avoid to recognize beneficiaries as a right-holders. For example, “tie-in sales” (*venda casada*), a practice in fact forbidden even in the private housing sector by the Brazilian Consumer’s Code, has been often encountered in FGTS contracts.¹⁰²⁵ Therefore, not only the obligation of beneficiaries to endure consumers’ conditions must be reformed, but also duty-bearers should be held accountable for their violations.

Finally, candidates eligible to emergent categories of MCMV can apply collectively to FGTS-Associativo and sign a “particular instrument of purchase and sale of land, for the construction of housing unit, with loan, fiduciary alienation and other obligations”.¹⁰²⁶ The construction firm is expressly mentioned in that contract and made liable for the debt during the construction works and until the legal completion of the project, in contrast to the FAR and FGTS-Individual examples.¹⁰²⁷ The FGTS-Associativo contract stands out for expressing the existence of a supporting entity, and this way, inducing a more participatory and communicative design.¹⁰²⁸ Despite the parallels with the Chilean models, obligations outlined to supporting entities do not equally resemble those observed in other designs.

5.1.2 Application

Application processes are slightly different in the analyzed case studies, particularly due to the assistance provided by supporting entities. Structurally, application procedures of emergent individual applicants of D.S. 1, Title II and FGTS-funded MCMV (categories 1.5, 2 and 3) contrast more to those of their most-vulnerable national counterparts than they do to each other. As a rule, better-off categories will not receive social assistance in contrast to their respective most-vulnerable counterparts.

This section will examine the application procedure from the perspective of vulnerable beneficiaries in D.S. 19 and D.S. 49 (5.1.3.1) compared to FAR and FDS programs (5.1.3.2) and the role of supporting entities (5.1.3.3), as well as

¹⁰²⁵ CGU’s latest report evidenced that 24,1% of beneficiaries had payed non-specific extra-contractual fees to construction firms, and in 39,3% of cases the financial agent required the acquisition of another product as a condition to grant their subsidy (CGU, “Relatório de Avaliação Da Execução: Programa Minha Casa, Minha Vida- FGTS,” 41; Brasil, Consumer’s Code, L. 8.078, de 11 de junho de 1990, L. 8.078 (1990) [*Código de Defesa do Consumidor*], art. 39, I).

¹⁰²⁶ See Annex VI. In Portuguese, *Contrato for instrumento particular de compra e venda de terreno e mútuo para construção de unidade habitacional com fiança, alienação fiduciária e outras obrigações*. Author’s translation.

¹⁰²⁷ See Annex IV, 14. Based on the principle of *garantia fidejussória*.

¹⁰²⁸ See Annex VI, A.IV.

from the perspective of emergent tracks, D.S. 1 and D.S. 19 (5.1.3.4) and FGTS (5.1.3.5).

5.1.2.1 Vulnerable categories: D.S. 19 and D.S. 49

This procedural stage is structurally similar in MCMV, D.S. 19 and D.S. 49, for it aims at crosschecking information provided by applicants. They must endure this process of informing and justifying, in order to apply to the program. Beneficiaries have their personal information cross-checked by the government by, for example, tax offices, the military and financial institutions.¹⁰²⁹

In Chile, the application process requires the deposit-taking entity to inform SERVIU upon the status of the saving account.¹⁰³⁰ In other words, SERVIU must be ensured that the *ahorro* has been payed.¹⁰³¹ That communication is to be accredited via electronic mediae or via a document certification.¹⁰³² The required deposit must be complete and available for issuing the governmental grant. In case accreditation can not be granted due to an irregularity in the deposit, the application will be dismissed.¹⁰³³ If granted as expected, the use of the saving account will be withheld in favor of the deposit entity or the beneficiary.¹⁰³⁴

In the case of an online application (*en línea*), the Chilean norm also prescribes that an specific appointment must be set, for which the original documental proof shall be brought personally to a public servant.¹⁰³⁵ If documents remain

¹⁰²⁹ Chile, Ministerio de Vivienda y Urbanismo, “Manual Del Usuario: Postulacion En Linea Subsidio D.S. 49,” Division de Informatica, Oct 14, 2014, 7, *Contrato de Postulacion*; Brasil, P. 163.

¹⁰³⁰ Chile, D.S. 49, art. 40.

¹⁰³¹ Chile, D.S. 49, art. 40. The aim is to certify that no transfers have been made from the deposit (*ahorro*) from the day before the application to the *Banco de Postulaciones* or until the day of the saving certificate has been emitted by MINVU. The databank *Banco de Postulaciones* is the correspondent means of preparation, evaluation and application of Chilean housing projects. As observed in the previous section, it catalogues information concerning applications and their technical projects. And, although the registry of beneficiaries is a requirement for all programs, in the case of D.S. 19 and MCMV, category 1, not only beneficiaries, but also the project (sometimes under scrutiny during the application process) must take part on an application process. *Clave única* is this individual certificate, that can be required by any individual older than 14-years-old at no costs. See Chile, D.S. 19, art. 7-13; Chile, D.S. 49, art. 11; “Información General de Subsidios,” Ministerio de Vivienda y Urbanismo, MINVU, Official website, Accessed April 23, 2019. http://www.minvu.cl/open-site_20070223152317.aspx; “Claveúnica,” Servicio de Registro Civil e Identificación, Clave Única, Official website, Accessed Jun 30, 2019. <https://claveunica.gob.cl/>; “Obtención de la clave única,” Chileatiende, Official website, Accessed May 2, 2019. <https://www.chileatiende.gob.cl/fichas/11331-obtencion-de-la-clave-unica>; “Subsidio D.S. 49: Postulación En Línea,” Ministerio de Vivienda y Urbanismo, MINVU, Official website, Accessed May 9, 2019. <http://postulacions49.minvu.cl/>.

¹⁰³² Chile, D.S. 49, art. 40.

¹⁰³³ Chile, D.S. 49, art. 40.

¹⁰³⁴ Chile, D.S. 49, art. 41. Exceptions concern i.a. the amount payed for the dwelling and anticipated payments, if so authorized.

¹⁰³⁵ Chile, D.S. 49, art. 8. See “Subsidio D.S. 49: Postulación En Línea,” Chile, MINVU. On line application can be conducted with one of the following banks Banco Estado, Scotiabank, Caja de Compensación los Andes, Copeuch.

in possession of a public servant to be typed, a receipt shall be given to the candidate.¹⁰³⁶ Individuals that finish the online application procedure shall receive a receipt, to be either downloaded or sent per email.¹⁰³⁷

Once again it must be remarked that online procedures should be supported, be it for the internal automatization of data enabling accessibility and information awareness or increased control and monitoring. Yet, virtual access is not the most concrete solution for the most-poor.

As an interviewee also remarks, the most vulnerable tend to avoid online application procedures due to different reasons, for instance, because it is not related to their habits¹⁰³⁸ or due to their obvious financial constrains. In addition, illiteracy also strongly hinders the use of ICTs. But that does not hinder supporting entities and their social workers from using those more efficient tools in favor of vulnerable individuals. Therefore, the use of ICTs should be supported, because they can ease the answerability process of responding, informing and justifying.

5.1.2.2 Vulnerable categories: FAR and FDS

In contrast, online applications are not available in the MCMV context, which should be conducted personally at Caixa agencies.¹⁰³⁹ However, despite social and economic barriers, at least the chance to use virtual platforms should be given. Hence, the particular matter of ICT tools must be improved in Brazil, because, although fundamentally limited in the social housing context at first, their use can highly support accountability in the long-run.¹⁰⁴⁰ Related positive impacts include better communication and efficient access to information and to feedback, expanded access to services, and improved control capacity.¹⁰⁴¹

¹⁰³⁶ Chile, D.S. 49, art. 8.

¹⁰³⁷ Chile, MINVU, “Manual Del Usuario,” 21-22.

¹⁰³⁸ Basset et al, 20-23; Toro and Huincahue, Researcher’s Interview 3. It may be that individuals would rather feel safer holding on to their papers and going to the government offices. There is literature evidence that beneficiaries tend to prefer face-to-face interactions than formal communication mechanisms. See Malini Ranganathan, “Grievance Redressal Processes in Urban Service Delivery: How Effective Are They?” The Governance Brief, Capacity Development and Governance Division, regional and Sustainable Development Department, issue 7 (2008); Caroline Riungu et al, *Special Themes Report: Rights Committees*, Hunger Safety Net Program (HSNP): Phase 2 Evaluations (OPN: Sep 2015); Valentina Barca, “Review of, and recommendations for, grievance mechanisms for social protection programs”, Final Report Summary, Country Indonesia (OPM, Sep 2012).

¹⁰³⁹ Brasil, P. 163. In Brazil, less twenty per cent of the urban population has internet access. However, according to a IBGE study, their main obstacles refer to lack of interest (39,3%), lack of knowledge (30,6%), and unaffordability (26%) (Instituto Brasileiro de Geografia e Estatística, “PNAD Contínua: Acesso à Internet e à televisao e posse de telefone móvel celular para uso pessoal 2017,” IBGE, 2018).

¹⁰⁴⁰ Basset et al, 20-22; UK National Audit Office, *International Benchmark of Fraud and Error in Social Security Systems*, HC 1387, 2005-2006 (London: NAO, 2006).

¹⁰⁴¹ Basset et al 20-22. For example, New Zealand’s Ministry of Social Development has been reported to provide a system where beneficiaries can “access entitlements”, as well as be “reminded”

In contrast to Chile's procedural explanation of the application process, MCMV does not provide comparable details upon how that same procedure is to be conducted. Descriptions help guide service beneficiaries, providers and public servants on daily procedures. Their accuracy can strongly prevent wrongdoings. From a general perspective, Chile chose a fairly objective way to construct the legal framework behind its social housing strategies: each program is regulated by its own decree, and, in case of references to other regulations, they are often clearly mentioned on the legal text. Even though complementary norms are also usual in the Chilean context, this more clear systematic makes it possible for duty-bearers and right-holders to search and find applicable regulations.¹⁰⁴² Thus, another measure to be adjusted in MCMV.

Furthermore, applications should be improved by increasing access to information. One of the issues of MCMV lays on its inaccessibility, derived from the lack of information of the most vulnerable population. For example, in Brazil, legal information on the program is published only in Portuguese language on official websites, what requires not only financial but also literacy capacities.

Chile's virtual legal library must be acknowledged for providing (at least some) norms translated to native languages. The Congress's Library official website translated important norms to easy Spanish, as well as to Quechua, Mapudungun, Aymara, Rapa Nui and Creole languages, and adaptations to visual or hearing impaired persons.¹⁰⁴³ In addition, an integrated online search machine simplified access to a desired regulation.¹⁰⁴⁴ Nonetheless, there were no specific translations on housing strategies nor was it possible to find translations in MINVU's online platform: eligibility standards and other important information regarding the application to social housing programs were only found in Spanish language.¹⁰⁴⁵ Although it is not possible to prove the quantity of access to those websites nor the accessibility of those respective minorities to the internet, Chile's initiatives provide solutions because they generate the information that social workers or involved frontline professionals can present to the most-vulnerable.

A report from the Brazilian Comptroller General found out that the government lacked information on beneficiaries in 16,2% of cases, such as identification or

of their obligations, in which case they can be "assisted with additional services, where required" (NAO, 53). The Swedish government implemented a new IT-system that coordinated the information provided by departments of unemployment insurance, the social insurance agency, the tax office and the agency for student loans, resulting in a reduction of 27% of cases of overpayment (NAO, 58).

¹⁰⁴² Organisation for Economic Co-operation and Development, *OECD Public Governance Reviews Progress in Chile's*, 177.

¹⁰⁴³ "Ley Fácil," Biblioteca del Congreso Nacional de Chile, BCN, Official website, Accessed Apr 27, 2019, <https://www.bcn.cl/leyfacil>.

¹⁰⁴⁴ "Leychile.cl," Biblioteca del Congreso Nacional de Chile, BCN, Official website., Accessed Jul 18, 2019, <https://www.leychile.cl/Consulta/homebasico>.

¹⁰⁴⁵ "Ley Fácil," Biblioteca del Congreso Nacional de Chile.

residency documental proofs.¹⁰⁴⁶ As a consequence, this scenario creates space for fraud and error. The CGU also identified that beneficiaries' income was incompatible (higher than allowed) in at least 1,2% of cases.¹⁰⁴⁷ Yet, due to lack of sufficient information, the report was neither able to assure that all those beneficiaries were uneligible. From the perspective of this work, it is better to have a policy that suffers of inclusion errors, than to leave an individual in need unassisted. However, an increased use of ICTs, as in the example of the Chilean application process, could positively impact control in MCMV.

Thus, information is essential for all stakeholders in the accountability relation. It creates awareness over rights and duties for right-holders, their understanding of eligibility criteria, as well as of all further processes to which the beneficiary turns to be answerable. As well, knowledge empowers beneficiaries to address redress and grievance, if necessary. But it also enables duty-bearers to improve performance and decrease errors. This application phase must ensure that all responsibilities and obligations, as well as rights, are articulated to all involved stakeholders.

Anyhow, the fact is that illiteracy and the lack of material resources (in that case, internet access) fundamentally hinder access to information. So, although MCMV, D.S. 19 and D.S. 49 present information on websites, what creates positive impacts in spreading information and transparency, it is uncertain that the most-vulnerable will have access to it. Particularly in the reality of Brazil and Chile, who have in average the lowest scores in reading literacy among OECD countries, hotlines, television and radio publications can help.¹⁰⁴⁸ Yet, in such contexts, trained frontline professionals and social workers can be key in accessing the the most-poor.

5.1.2.3 Social assistance

In D.S. 49, D.S. 19 and MCMV-E, most-vulnerable beneficiaries must not undertake all applications steps by themselves. Supporting entities assist during the application process in technical, social, and legal matters.¹⁰⁴⁹ In MCMV-E, frontline agents of those supporting entities should be skilled professionals, in the possession of technical capacities and training.¹⁰⁵⁰ That is expected to ensure efficiency, as they can make online applications and help gather documents.

¹⁰⁴⁶ CGU, "Relatório de Avaliacao Da Execucao: Programa Minha Casa, Minha Vida- FGTS," 3-4, 38.

¹⁰⁴⁷ CGU, "Relatório de Avaliacao Da Execucao: Programa Minha Casa, Minha Vida- FGTS", 40.

¹⁰⁴⁸ OECD, "Financial and Human Resources Invested in Education," In *Education at a Glance: OECD Indicators*, (Paris: OECD Publishing, 2011).

¹⁰⁴⁹ Chile, R.E. 1.875.

¹⁰⁵⁰ Brasil, P. 464, Annex IV, 5.2.1. The technical team of a PTS, in MCMV-E, must be multidisciplinary and coordinated by a graduate in Social Sciences or Social Work, with experience in the field.

From a rights-based perspective, that role facilitates accountability for its support in the communication of local demands.¹⁰⁵¹

Supporting entities can also play an important role in enabling participatory mechanisms at this application phase: they can support project planning with beneficiaries, if there is a legal command to do so. D.S. 49's legal structure provokes participation because it commands supporting entities to engage with beneficiaries during the project-planning phase. In this particular Chilean case, the majority of beneficiaries should be "involved" in planning by those entities.¹⁰⁵² It is certainly questionable if the model is efficient, for it depends on the means that beneficiaries will be able to "identify, exercise and demand their rights", as the norm requires. Yet, from the rights-based perspective, this design makes a positive impact for creating a "behavioral change in the duty-bearer".¹⁰⁵³ Yet, D.S. 49 was the only program that established such comprehensive participatory decision-making mechanisms.

For instance, D.S. 19 projects can be presented without the planning support of beneficiaries. As a rule, the incorporation of families starts after supporting entities have signed a contract with SERVIU based on already selected projects and after construction works have started.¹⁰⁵⁴ Similar to the FAR-funded model, this social housing scheme expects beneficiaries to apply to a project they have had no or very restricted influence in planning.

In the FAR-context, the first error was to exclude supporting entities from its design. It is not the natural agency of that service provider that assists the most vulnerable: local public entities have been exclusively designed to take that role.¹⁰⁵⁵ In those cases, a social assistance plan – PTS should guarantee support in a pre-contractual phase, but regulations do not foresee the engagement of beneficiaries in planning and decision-making.¹⁰⁵⁶ In this top-down scenario, the elaboration of a PTS requires only members of local public entities, representatives of construction firms and financial agents, as well as of the team responsible to conduct social assistance.¹⁰⁵⁷

Even though Brazilian guidelines guarantee participation and engagement as a right, they do not find concrete means to materialize it. One of the reasons to it

¹⁰⁵¹ HRC, A/HRC/37/53, para 61-63.

¹⁰⁵² Chile, R.E. 1.875, 9, 2, Tabla área ingreso de la postulación al sistema de postulación MINVU; Silva Didier, Researcher's Interview 8, 14:00-14:30. Original translation of "*involucrar*". According to an interviewee, Mr. Ignacio Silva, from Techo, working for a supporting entity includes, for example, assisting families in the search for land, in the legal analysis of contracts of construction and those tenure rights.

¹⁰⁵³ Miller and Redhead, 706.

¹⁰⁵⁴ Chile, Resolución Exenta 822 (V. y U.) de 29 de marzo de 2019, R.E 822 (2019), 9.

¹⁰⁵⁵ Brasil, P. 464, Annex III, 6.3.

¹⁰⁵⁶ Brasil, P. 464, Annex III, 6.3.

¹⁰⁵⁷ Brasil, P. 464, Annex III, 6.5.3.

is because the activity of supporting entities is excluded from FAR projects (as well as from FGTS-Individual). Those supporting entities can “ensure effective participation, technical support and expertise must be made available drawing on local capacities where possible.”¹⁰⁵⁸

MCMV-E tried to overcome those project vulnerabilities by designing a scheme where supporting entities and commissions formed by beneficiaries could interact, namely CRE and CAO. In this program track, supporting entities increase local engagement via decision-making procedures that require the authorization of CRE or CAO.¹⁰⁵⁹ For example, a supporting entity’s decision to hire a technical assistance team to “elaborate, license and approve a project” must be authorized by those commission of beneficiaries.¹⁰⁶⁰

In comparison, the role to bring forward participation in MCMV-E is more limited than that evidenced in D.S. 49. MCMV-E, that is in fact legally bound to a participatory approach, fails to operationalize participation and engagement because it sets only a group of elected beneficiary-representatives to convene and accept a proposal.¹⁰⁶¹ This context urgently requires reform in the Brazilian system. In Chile, social housing policies should explicitly acknowledge their goals in consistence to human rights, in this case, to the right of participation and decision-making.¹⁰⁶² In sum, housing strategies should be reformed to create means and goals that “firmly commit to ensuring meaningful participation of affected persons at every stage, from design to implementation to monitoring.”¹⁰⁶³

5.1.2.4 Emergent categories: D.S. 1 and D.S. 19

The application process of D.S. 19 has parallels to FGTS-Individual. Beneficiaries should contact a service provider developing a housing project and request to join an undertaking. For that, MINVU provides a list of sales and exhibitions rooms in its website, as for which a sponsor entity could support the networking.¹⁰⁶⁴ The Ministry, via SERVIU, is responsible for the allotment of subsidies.¹⁰⁶⁵

In the case of all D.S. 1 categories, the application process starts either online or on-site at a SERVIU’s office.¹⁰⁶⁶ Exceptionally, in the case of D.S. 1, Title I,

¹⁰⁵⁸ HRC, A/HRC/37/53, para 63.

¹⁰⁵⁹ Brasil, I.N. 12, Annex I, 1.1.g.

¹⁰⁶⁰ Brasil, I.N. 12, Annex I, 1.1.f.

¹⁰⁶¹ Brasil, I.N. 12; Brasil, P. 464, Annex I, 2.1.

¹⁰⁶² Miller and Redhead, 705-706.

¹⁰⁶³ HRC, A/HRC/37/53, para 61.

¹⁰⁶⁴ “Subsidio de Integración Social y Territorial, DS19,” Ministerio de Vivienda y Urbanismo, MINVU, Website, Accessed Jun 28, 2019, <https://www.minvu.cl/beneficio/vivienda/subsidio-de-integracion-social-y-territorial-ds19/>.

¹⁰⁶⁵ Chile, D.S. 19, art. 19.

¹⁰⁶⁶ Chile, D.S. 1, art. 15.

beneficiaries shall be assisted by a supporting entity. The main tasks of supporting entities englobe communicating the construction progress, visits to the construction site (at least once before and once after 50% of the work completed), education on maintenance of the dwelling and of public spaces, as well as on community organization.¹⁰⁶⁷ A legal request is that at least 70% of beneficiaries must be present in such activities, otherwise they must be repeated.¹⁰⁶⁸ Although structural parallels may be observed, this Chilean approach is specially different from Brazil's FGTS-Associativo and MCMV-E guidelines, that also include supporting entities as a fourth actor in the accountability relation. However, the participatory perspective of D.S. 1 is still substantially limited, because families mainly resume to being informed or trained on various aspects, against a more active design.¹⁰⁶⁹ In fact, they should not only be extensively informed, as ensured by D.S. 1, but also be given voice.

D.S. 1, Title II¹⁰⁷⁰ portrays the only Chilean category excluded from access to social assistance through supporting entities.¹⁰⁷¹ Families can apply for a complementary mortgage credit directly at a financial institution, under the condition of providing the required insurance. However, this structural setting should be revised, because it make beneficiaries endure harsher conditions, comparable to those of the free market conditions.¹⁰⁷² Even though emergent households are financially better-off, their housing vulnerability gives grounds for their eligibility to social housing. Thus, they should too have been granted social assistance.

Applications to D.S. 1 can only be conducted if the savings account preserves a 12-month seniority period.¹⁰⁷³ As a consequence, the creation of the account becomes the first preliminary procedure of the application and an eligibility requirement. Only after that latent period, the deposit-taking entity will communicate SERVIU that no charges or remittance have been conducted since the last day of the last month before the day of the emission of that certificate.¹⁰⁷⁴

5.1.2.5 Emergent categories: FGTS

Better-off households find two different forms of application in MCMV's context. They may apply to use their Worker's Severance Fund – FGTS to purchase

¹⁰⁶⁷ See more Chile, R. 620.

¹⁰⁶⁸ MINVU, R. 620, art. 3, h.

¹⁰⁶⁹ MINVU, R. 620, art. 3.

¹⁰⁷⁰ D.S. 1, Title II is economically comparable to Brazil's FGTS category 3, reflecting better-off households with highest income.

¹⁰⁷¹ Chile, D.S. 1, art. 62. Title I comprehends households of lower income than Title II, *see* table 3.

¹⁰⁷² Chile, D.S. 1, art. 69-72; Chile, D.S. 19, art. 22.

¹⁰⁷³ Chile, D.S. 1, art. 10.

¹⁰⁷⁴ Chile, D.S. 1, art. 11. There is no clear expression of D.S. 19 in how the deposit shall be accredited, or if it should have a 12-month latent period. But it should follow the patterns of D.S. 1 in what it regards it.

a new dwelling individually, via FGTS-Individual, or collectively, via FGTS-Associativo. The main difference among those program tracks refers to the existence of a supporting entity in FGTS-Associativo, otherwise their application procedure is substantially similar. Yet, the majority of beneficiaries of categories 1.5, 2 and 3 have not been granted the right to access social assistance. That is a result of the fact that FGTS-Individual, that receives the majority of investments, does not imply that guarantee. FGTS-Individual applicants can refer directly to a service provider, e.g. a construction firm or realtor, or to financial agents, be it CAIXA or Banco do Brasil.¹⁰⁷⁵

Only in the case of FGTS-Associativo applicants should be organized in the form of an entity, which takes the role of a supporting entity during the application process.¹⁰⁷⁶ However, the role of supporting entities in FGTS-Associativo is even more limited than in MCMV-E. Besides setting goals, the respective normative instruction does not indicate the methods and means for the elaboration of projects or of social assistance plan.¹⁰⁷⁷

5.1.3 Selection

Selection criteria set standards that prioritize candidates based on diverse social conditions. Beneficiaries must respond, inform or justify upon legal terms, controlled by several internal and external organs. In practice, a household will be excluded from participating if not complying to eligibility standards, but it will have more chances to be selected if matching one or more selection criteria. But how selection is conducted directly impacts on the choice of beneficiaries and therefore, from the perspective of this work, its criteria must follow the rights-based approach.

This section will analyze selection procedures of beneficiaries. It will first compare most-vulnerable categories of D.S. 19 and D.S. 49 (5.1.4.1), FAR and FDS (5.1.4.2). It will provide critical examination in regards to targeting and the elimination of discrimination and inequality towards women (5.1.4.3). It will delve into issues evidenced in the inclusion of the elderly, disabled persons, and victims of the dictatorships (5.1.4.4), migrants (5.1.4.5), afro-descendants (5.1.4.6), and indigenous peoples (5.1.4.7). Finally, it will critically assess affordability and extra burdens (5.1.4.8). Furthermore, it will shed light over the selection of emergent categories D.S. 1 and D.S. 19 (5.1.4.9) in comparison to FGTS (5.1.4.10), followed by a critical close up on discrimination practices specific to those contexts (5.1.4.11).

Vulnerable categories: D.S. 19 and D.S.49

¹⁰⁷⁵ Brasil, I.N. 42.

¹⁰⁷⁶ Brasil, I.N. 43, 1.3.

¹⁰⁷⁷ Brasil, I.N. 43, 1.2.1.

Overall, the selection procedures of D.S. 49 and D.S. 19 are simpler and more straight-forward than in FAR- and FDS-funded MCMV. The selection process is more dependent on priority criteria, which excludes raffles. In sum, the Chilean selection procedure also allows more independency for beneficiaries, who can search and apply for projects that fit to their wishes and needs. It supports the demand of beneficiaries in opposition to the FAR-funded procedure, which assembles beneficiaries to projects they did not in effect know they were applying to.

D.S. 49 creates *factores de puntaje*, or priority ranking, determining at least eighteen criteria for selection and prioritization, as illustrated on Table 4.¹⁰⁷⁸ The legislator considered adequacy and health standards and correctly opted to prioritize households who have limited access to toilet or water systems, who suffer with overcrowding, who have disabled members, who had victims of the dictatorship, or who are single-parents.¹⁰⁷⁹ In theory, this strategy resembles an interest of applying a rights-based approach: the worse the condition of the beneficiary, the more preference they will be given through ranking points.

However, a comparison among standards shows that the legislator failed for prioritizing other matters that are not directly related to discrimination or housing adequacy.¹⁰⁸⁰ For example, households lacking water and sewerage were given only 30 score points, when voluntary firemen, persons working in penitentiaries received each 40 points.¹⁰⁸¹ For each household member due with their military work, 20 points would be given.¹⁰⁸² Inasmuch as those categories of professionals must be respected and provided access to housing, there is no clear justification why they should have priority access in detriment of socially more vulnerable households. Moreover, the norm clearly failed to address vulnerability, for example, in gender-responsive, intersectional and compound perspectives. Thus, despite advancements, D.S. 49 rating factors still deviate from approaching those living in most inadequate conditions.

After the selection is finished, neither is there a possibility for regularization of applications after the process has started, as there is in MCMV. At that point, SERVIU has fifteen working days after the publication of the official list of beneficiaries to issue the subsidy certificate, which shall not only identify individuals and their spouses, if existent, but also clarify upon the subsidy.¹⁰⁸³ In case a supporting entity takes lead in approving a project, it will be responsible for nominating interested beneficiaries to a specific project, who will have to fit

¹⁰⁷⁸ Chile, D.S. 49, art. 24. See table 4.

¹⁰⁷⁹ Chile, D.S. 49, art. 24. Projects with a septic tank will be given have different scores, whereas those without potable water will be considered as the others.

¹⁰⁸⁰ Chile, D.S. 49, art. 24. See table 4.

¹⁰⁸¹ Id.

¹⁰⁸² Ib.

¹⁰⁸³ Chile, D.S. 49, art. 24-28.

such regulations.¹⁰⁸⁴ The certificate of subsidy should include information on the project and on the endorsing development entity, when existent.¹⁰⁸⁵ If not the case that the beneficiary is already linked to a housing project, during that time, they can search for a project to which their subsidy will be transferred.

Nevertheless, particularly D.S. 49 has been target of critics as numerous beneficiaries, although in the possession of a subsidy certificate, do not find appropriate social housing projects to which they could apply to. According to the Chilean Chamber of Construction, that is because many families must migrate to other regions, what would force them to leave their social networks, a risk they are not willing to take.¹⁰⁸⁶ Another cause evidenced is a reduced supply in the construction sector.¹⁰⁸⁷ Hence, although the Chilean selection procedure is to be praised for a straightforward legal framework, it should also be adjusted to ensure that socio-economic variants do not affect the materialization of the right to housing.

Criteria	Score (p)
For each household member (except applicant)	50
For each child 6-18y	40
For each child under 5y	50
For each member older than 60y	100
For each active voluntary of the Firemen	40
For each member due with military obligations	20
For the applicant or their partner working in penitentiaries	40
Overcrowding index	0-280
Type of household	140
No/Limited access to water	30
No/Limited sewage connected to toilet	30
Each failed application (individual)	40-160
Each failed application (collective)	80-160
For each month of the saving account	1-40
12,5% higher saldo than in 6 months before	10
For each member officially registered with disability	300
If a victim of the dictatorship	600
If a single-parent of children under 24y	150

Source: author, May/2019. Based on D.S. 49, art. 24.

Table 4: D.S. 49 Scores for Households

5.1.3.1 Vulnerable categories: FAR and FDS

Overall, applicants to FDS- and FAR-funded projects endure a two-phased selection process.¹⁰⁸⁸ After providing all necessary information, a first “grouping” phase is conducted with candidates, followed to a raffle procedure. MCMV only

¹⁰⁸⁴ Chile, D.S. 19, art. 14, 16.

¹⁰⁸⁵ See Annex II.

¹⁰⁸⁶ Camara Chilena de Construcción, “Informe,” 43.

¹⁰⁸⁷ Id.

¹⁰⁸⁸ Cardoso et al, 87-89.

determines three basic requisites to rank beneficiaries, so a raffle is necessary to choose between candidates.

Three main criteria define priority ranking: being a female head of household, an elderly or disabled person. At least 3% of units in a project must be reserved for the elderly or disabled persons in the context of MCMV.¹⁰⁸⁹ In case there are more candidates than reserved dwellings, left over households must participate in the general selection procedure.¹⁰⁹⁰ That general procedure only allows the participation of candidates classified as compatible or pending during the previous eligibility phase.¹⁰⁹¹ If candidates do not provide an up-to-date registry (updated or at least checked in the past 24 months), they will be excluded from selection, as well as those classified as incompatible during the eligibility phase.¹⁰⁹²

Passed the eligibility phase, the choice over selected applicants for both FDS- and FAR-funded operations will be issued based on a priority-ranking phase and a raffle procedure. During FAR's first "grouping phase" (*agrupamento*), eligible candidates are divided in three groups after which a raffle will be conducted among the shortlisted candidates in the same group.¹⁰⁹³ Priority is set for families headed by women, disabled or elderly persons.

Local public entities can add up to three additional criteria that, in theory, better resemble local needs. Until 2016, the choice was completely free and local agents were able to target any special local matter, since the only legal demand was that a local housing or a social assistance council should approve these additional criteria.¹⁰⁹⁴ However, that rule was revoked. Since then, public entities may choose three from 14 additional selection criteria, for example, giving priority to homeless families or to families led by a single parent.¹⁰⁹⁵ Households receive one point for each fulfilled criteria.

Nonetheless, municipalities should have the liberty to define their own local issues to be addressed by the housing policy. Local rules can represent a challenge, but they are significant and the legislator should make them based on an objective, clear, and transparent framework under the values of equality and non-discrimination.¹⁰⁹⁶ As a consequence, this framework limits positive outcomes for beneficiaries.

¹⁰⁸⁹ Brasil, P. 163, ch I, 4.10; ch II, 5.7.

¹⁰⁹⁰ Brasil, P. 163, ch I, 4.10.7

¹⁰⁹¹ Brasil, P. 163, ch I, 4.3.1.

¹⁰⁹² Brasil, P. 163, ch I, 4.1.1.

¹⁰⁹³ Brasil, P. 163, ch I, 4.11.

¹⁰⁹⁴ Brasil, Ministerio das Cidades, Portaria 610, de 26 de dezembro de 2011, P. 610 (2011), 4.2.4-5.

¹⁰⁹⁵ Brasil, P. 163, 3.1.3.d-f, n. Other criteria may be created if approved by SNH. *See* table 5.

¹⁰⁹⁶ Basset et al, 25; Sepulveda, Nyst and Hautala, 14, para 17, 32, 37.

In addition, some of the new mandatory criteria cannot be easily substantiated and the lack of definition from the new criteria set by the federal government jeopardize the clarity of the norm.¹⁰⁹⁷ For example, the criteria “distance to work” of families is not defined, so questions are raised if the distance regards the head of household or all the members, if it regards the location of the prospective or of the previous dwelling, or how a comparative approach to the informally employed is measured. Thus, although the intention of the lawmaker must be recognized, which is to compensate families living in detached areas and often with difficult access, that legal guideline lacks clarity.

Independently or using mixed sources of capital, public entities can finance projects, in which case they are subjected to different guidelines of selection procedures too. In concrete cases, they must decide for one guideline, as for example, Goiânia’s housing agency – AGEHAB used the described three main criteria of P. 163 and three criteria that matched their local needs in projects subsidized by FAR and FGTS funds.¹⁰⁹⁸

As a rule, if the sum of the basic eligibility criteria equals to six points, candidates will fit to group I, in which case 60% of available units will be raffled among them.¹⁰⁹⁹ If complying to two or three criteria, group II will have 25% available; and for those with zero or one criteria, 15% of left housing units will be put to group III.¹¹⁰⁰ If there are more units available for a group than candidates applying, raffles shall not take place.¹¹⁰¹ After raffle procedures, declined households are positioned on a waiting list, though they will still be allowed to apply to other projects.¹¹⁰²

Once the selection procedure is over, SNCH sends a list with the selected beneficiaries and the respective waiting list to the corresponding public entity.¹¹⁰³ That official list is disclosed on line via the official website of the Ministry of Cities, containing the group classification and the situation of selected beneficiaries (compatible or pending).¹¹⁰⁴ Selected beneficiaries in pending situation will be given the period of 30 days after that publication to regularize their

¹⁰⁹⁷ Brasil, P. 163, ch I, 3.1.3.

¹⁰⁹⁸ Agência Goiana de Habitacao, “Termo de Referencia Chamamento FAR e FGTS Conj Vera Cruz 2017- R08,” Agehab, 2017, para 3.1; Brasil, Ministerio das Cidades, P. 570, art 4, IV; Brasil, P. 163. They targeted the most-vulnerable category 1.

¹⁰⁹⁹ Brasil, P. 163, ch I, 4.11.a, 4.11.1.a.

¹¹⁰⁰ Brasil, P. 163, ch I, 4.11.10, 4.11.b, 4.11.1.b, 4.11.c, 4.11.1.c. Exceptionally, in case only national criteria are used, 85% of units will be raffled among candidates of group II with 2 or 3 criteria, and 15%, among group III with 1 criteria. There is no mention to a group I.

¹¹⁰¹ Brasil, P. 163, ch I, 5.2.1.

¹¹⁰² Brasil, P. 163, ch I, 4.11, 4.11.3-5. P. 163/16 provides solutions to some exceptional situations. It gives further details, for instance, for the procedure for left over units (how they shall be further raffled), or in the case only three national criteria happen to be used.

¹¹⁰³ Brasil, P. 163, ch I, 5.1.

¹¹⁰⁴ Brasil, P. 163, ch I, 5.1.1, 5.2.

condition. A contract shall be signed between the operational agent and the beneficiary.¹¹⁰⁵

In comparison, FDS operations do not necessarily require the same grouping phase as FAR. In turn, beneficiaries presented by a supporting entity participate, first, in a ranking procedure.¹¹⁰⁶ If the amount to candidates turns to be higher than the amount of available units, then a raffle procedure should select beneficiaries among those that have the same (criteria) points.¹¹⁰⁷

Although similar, there are significant differences between FDS- and FAR-funded projects. Fundamentally, public entities manage FAR operations, whereas supporting entities operate in FDS-funded projects for MCMV-E. In FAR-funded operations, the selection procedure shall start as soon as the project achieves the mark of 50% in its execution plan.¹¹⁰⁸ There is no set deadline for FDS operations, but beneficiary selection should be concluded before “contracting a project.”¹¹⁰⁹

MCMV-E also recommends that supporting entities send the information for selection of at least 30% more candidates than that number of dwellings.¹¹¹⁰ As a consequence, a portion of applicants may eventually not be granted the subsidy. On the contrary, in Chile, all candidates working with their own housing project are expected to be granted a dwelling, though projects should leave open the chance of accepting external individual applicants.¹¹¹¹ In fact, D.S. 19 actively foresees the incorporation of families selected by MINVU through other housing subsidies, joining both emergent and vulnerable sectors.¹¹¹² Naturally, some households may exit due to different reasons, but construction projects should be prepared to adopt individual applications instead of excluding any eligible candidate. This Chilean strategy is more concerned with the inclusion of beneficiaries and hence closer to the rights-based approach, in contrast to the Brazilian strategy, that looks at supplying enough candidates for dwellings.

The same basic and additional selection criteria of FAR apply to FDS projects¹¹¹³ (See Table 5). Those that can attest to be living in risk areas, to have a

¹¹⁰⁵ Brasil, P. 163, ch I, 4.5.

¹¹⁰⁶ Brasil, P. 163, ch II, 4.1.3-5.3.

¹¹⁰⁷ Brasil, P. 163, ch II, 5.7.6.

¹¹⁰⁸ Brasil, P.163, ch II, 4.3.

¹¹⁰⁹ Brasil, P. 163, ch II, 5.3.

¹¹¹⁰ Brasil, P. 163, ch II, 3.1.

¹¹¹¹ Chile, D.S. 49, art. 23.

¹¹¹² Chile, D.S. 19, art. 18.

¹¹¹³ Brasil, P. 163, Ch I, 3.1.2, Ch II, 4.1.3-4.1.4.

woman responsible for the household or to have disabled members shall be prioritized during selection.¹¹¹⁴ The main difference, though, is that MCMV-E participants must agree to join in activities of the supporting entity, as well as in all activities critical to the development of the project, such as project proposal.¹¹¹⁵

If authorized by the financial institution, public entities may exceptionally indicate families to FAR projects and excluding individual applicants from that formal selection procedure.¹¹¹⁶ Up to 50% of contracted units may be allocated that way in selection procedures, as long as they are living under extremely risky conditions, such as living in risk areas, as homeless, or if they are object of relocation, including those declared victims of emergency situation or public calamity.¹¹¹⁷ Yet, this has given margin to illegal and forced evictions.¹¹¹⁸ Those violations to human rights must be hindered because they damage the core legitimacy of social housing.

Criteria	Type
Families living in risk or insalubrious areas	Mandatory/National
Families with women responsible for the households	Mandatory/National
Families with disabled members	Mandatory/National
Distance to city center or work*	Optional/Regional&local
Time of residency in the municipality	Optional/Regional&local
Beneficiaries of Bolsa Familia or BPC**	Optional/Regional&local
Homeless families or under assistance	Optional/Regional&local
Families with children under 18y	Optional/Regional&local
Families led by single parents (or one legal guardian)	Optional/Regional&local
Member being an elderly person	Optional/Regional&local
Member with chronic disease	Optional/Regional&local
Involuntary cohabitation	Optional/Regional&local
Excessive rent burden	Optional/Regional&local
Families recorded in the National Registry (since 2009)	Optional/Regional&local
Families using "social rent"	Optional/Regional&local
Member protected by Maria da Penha Law (Domestic Violence)	Optional/Regional&local

Source: author, Dec/2018. Based on P. 163/16. **BPC (*Benefício de Prestação Continuada*) is a cash-transfer benefit for disabled or elderly persons, created by Law 8742/93.

Table 5: FDS- and FAR-funded MCMV/PNHU Scores for households

¹¹¹⁴ Brasil, P. 163, Ch I, 3.1.2; Ch II, 4.1.3.

¹¹¹⁵ Brasil, P. 163, Ch II, 4.1.2.

¹¹¹⁶ Brasil, P. 163, Ch I, 4.7.3, 4.9, 6.2.d.

¹¹¹⁷ Id.

¹¹¹⁸ See section 5.1.2.1.8.

5.1.3.2 Emergent categories: D.S. 1 and D.S. 19

In D.S. 1, a score system ranks candidates¹¹¹⁹ (see Table 6). With slight differences, factors and scores of the D.S. 1 titles are similar to D.S. 49.¹¹²⁰ Overcrowded families will be prioritized, as well as those with children, elderly or disabled members. Only the rating structure is different: less points are given in D.S. 1 and some of the criteria approach refer to less extreme aspects of vulnerability.¹¹²¹

For instance, whereas one of the score rates for D.S. 49 remarks on lack of access to water or sewerage, this factor is not used in D.S. 1 categories.¹¹²² D.S. 1 beneficiaries, who refer to an emergent sector with more purchase power, are not expected to face such extreme inadequate housing conditions. In the same line of thought, factors referring to the mid-term participation in a rent program and savings higher than 10,337USD are conditions only foreseen to D.S. 1 applicants.¹¹²³ Thus, the differences on the scoring factors among most-vulnerable and emergent categories are most related to their economic power.¹¹²⁴

In case of a tie, those with most points in the categories “family group” or “saving account” of D.S. 1 should be selected. If the tie persists, grants will be disposed to a raffle.¹¹²⁵ In the case of local calls, the Minister of Housing and Urbanism or the regional Secretary of Housing and Urbanism should approve and send a final selection list to publication, for which SERVIU proceeds to issue a certificate of subsidy.¹¹²⁶ The now beneficiary has among its possibilities the use the certificate to purchase a dwelling or to apply with it for D.S. 19.¹¹²⁷

In the case of D.S. 19, the norm only provides on scores for project selection, but not on beneficiary selection because beneficiaries that join that program have already been selected by other ones (such as D.S. 1). But also, in this case, the law foresees that a development entity may fulfill the application of interested, eligible families that have been selected by D.S. 1.¹¹²⁸ Finally, a SERVIU Director issues a resolution granting the subsidy for a D.S. 19 beneficiary.¹¹²⁹

¹¹¹⁹ Chile, D.S. 1, art. 22.

¹¹²⁰ Chile, D.S. 1, art. 65, 67.

¹¹²¹ Chile, D.S. 49, art. 24. See table 7.

¹¹²² Reasons to that, is because the most-vulnerable families are defined as such exactly because they are expected to face the more extreme aspects of poverty and vulnerability, such as lack e.g. access to clean water or sewerage.

¹¹²³ Chile, D.S. 1, art. 65, c. Equivalent to respectively 240UF (CUEX).

¹¹²⁴ Chile, D.S. 1, art. 65, 67.

¹¹²⁵ Chile, D.S. 1, art. 22.

¹¹²⁶ Chile, D.S. 1, art. 23-27.

¹¹²⁷ Chile, D.S. 1, art. 32.

¹¹²⁸ Chile, D.S. 19, art. 2, 16, 18. D.S. 19 does not have itself a scoring rank, but it borrows or adds on the procedural selection rules from other social housing programs.

¹¹²⁹ Chile, D.S. 19, art. 19.

Category	Factor	Score (p)
Family Group	For each member, except the applicant	40
	If a single-parent of children under 24y	35
	For each child under 5y	30
	For each child older than 6y and younger than 18y	20
	For each member officially registered with disability	30
	For each member older than 60y	30
	If the applicant is older than 60y	150
	If a victim of the dictatorship	300
	For each member due with military obligations	20
	For a police officer in the household	40
	If the family's dwelling has been destroyed	50
	For each voluntary of the Firemen	40
	Overcrowding Index	Up to 2
2 to 2,5		45
2,5 to 3		90
3 to 3,5		135
Deposit	More than 3,5	270
	For each UF exceeding the minimum deposit, though no higher than 100UF	4
	For each UF exceeding 100UF, though no higher than 150UF	2
	For each UF exceeding 150UF, though no higher than 200UF	1
	For each UF exceeding 200UF	0,05
Permanence of the Deposit	For each semester that the average balance is equal or higher than 75%, 50%, 25% and 12,5% the one registered at the application	20
Seniority	For each call that the candidate was not selected, up to four	20
Rent Program	For each 12 months as a beneficiary of D.S. 52, max. of 120 p	40

Source: author, May/2019. Based on D.S. 1, art.64. p=points

Table 6: D.S.1 scores for households

5.1.3.3 Emergent categories: FGTS

A scoring procedure equivalent to those conducted for most-vulnerable categories is associated to the selection phase of individual categories 1.5, 2 and 3 (*carta de crédito individual*). In such cases, a project can be contracted by the government via open calls. Yet, taking a straight path to the subsidy, candidates may as well issue their application directly via service providers. After contacting a construction firm or realtor, an applicant is able to choose the unit to be financed and to search for a matching financial institution, which will be entitled to authorize their subsidy.¹¹³⁰

In this context, the norm defines that priority selection should be given to those FGTS account holders with a gross monthly household income limited to 1,069USD and to those who are more able to contribute with their own resources for acquiring a new housing unit.¹¹³¹ However, this double system creates legal confusion, because equal beneficiaries can take different procedures, so eventual advantages create inequality. In addition, it approaches priority on vulnerability from strict economic and financial perspectives, leaving aside

¹¹³⁰ “Perguntas Frequentes – Minha Casa Minha Vida 3,” MRV, Website, Accessed Dec 1, 2019, <https://www.mrv.com.br/minhacasaminhavida/>.

¹¹³¹ Brasil, I.N. 42, 5. Equivalent to 4,000BRL (CUEX).

other essential aspects already related by this work, such as compound and intersectional discrimination.

In FGTS-Associativo, there is no clear normative instruction on the selection of applicants because they are expected to freely organized themselves.¹¹³² In that case, it is not the beneficiary-related but the project application and selection that gains focus by the norm.

5.1.4 Rights-based critics

The OECD claimed the lack of an income threshold as one of the motives for error in Chile, but this work also observed that the existence of those same mechanisms neither guaranteed successful targeting in MCMV.¹¹³³ On the contrary, selection based only on economic thresholds excluded more families that, due to other social vulnerabilities, could not apply to those respective social housing programs.

On the one hand, all individuals should be ensured with access to adequate housing.¹¹³⁴ Emergent markets of the Global South are, as a rule, not financially secure and their households encounter great political, economical and social vulnerabilities, including the lack of formal employment and reliable social security. Thus, from a rights-based perspective, it is justified that better-off households get to be added to social housing programs due to their condition of vulnerability, and so policies should remain in the path of universalization and inclusion in the long-term.¹¹³⁵

On the other hand, socioeconomic risks of emergent categories are relatively less urgent and statistically smaller than that of the most-vulnerable categories. And also, the financial constraints of Global-South countries where resources are limited and demand is high. The unequal treatment identified by this work is a violation to human rights and urgently requires for legal reforms based on a thorough research on social factors impacting vulnerability.

Therefore, by acknowledging the inequality in society, social housing programs should construct an eligibility and targeting model that addresses compound and intersectional discrimination. Targeting must be reformed in order to address most urgent social needs as efficiently as possible.¹¹³⁶ This way, programs should encompass the different dimensions of vulnerability in their targets.

¹¹³² See Brasil, I.N. 43.

¹¹³³ The lack of controls and enforcement (to be observed in the next chapter), cumulated with wrong targeting mechanisms, as analyzed by this sub-section, has led to an environment that also suggests the existence of fraud and error. See OECD, *OECD Economic Surveys: Chile 2012*, 99.

¹¹³⁴ Sepulveda Carmona, Nyst, Hautala, 38-42.

¹¹³⁵ Sepulveda Carmona, Nyst, Hautala, 38-39.

¹¹³⁶ OECD, *OECD Economic Surveys: Chile 2012*, 100.

5.1.4.1 Discrimination against homeless persons

Although a significant social issue in both Chile and Brazil, homelessness was not directly targeted by the case studies. According to the Special Rapporteur, homelessness in Chile is relatively “[...]invisibl(e) in terms of housing and social development policy.”¹¹³⁷ The same can be reported about Brazil: as a rule, only persons with a domicile are addressed in official census and statistics because homeless persons and their urgent demands are excluded from sight of the policy-maker; as a consequence, homeless persons are completely omitted from the legislation.

In 2015, it was estimated that over 101,000 persons were homeless in Brazil, predominantly in big urban centers.¹¹³⁸ In Chile, as of 2017, civil society organizations estimate that ca. 10% of the national population lived in the streets.¹¹³⁹ But neither D.S. 49 or D.S. 19 (programs targeting the most-poor) have targeted those extremely vulnerable persons in their social housing policies and not even fifty per cent of the Brazilian homeless population was registered at CadUnico, at the time the mandatory national registry for MCMV and other social programs.¹¹⁴⁰

In Chile’s Antofagasta, a hostile example illustrates how legal norms sustain a system violating fundamental human rights. That Chilean port city enacted local laws fining persons sleeping in public open spaces.¹¹⁴¹ In other words, it sanctioned homeless persons to more social segregation, when their obligation was to give them access to housing. Thus, those individuals were actively discriminated in their housing rights by Chilean legislators.¹¹⁴² A simple, inclusive and dignified solution had been to target those same individuals in accessing housing through already existent programs.¹¹⁴³

According to Basset et al, it is correct to assume that inconsistent rules targeting poverty construct more inequities.¹¹⁴⁴ In both countries, there is no justification

¹¹³⁷ HRC, A/HRC/37/53/Add.1, para 40.

¹¹³⁸ Marco Antonio Carvalho Natalino, *Estimativa da População em Situação de Rua no Brasil* (Brasília: IPEA, Oct 2016). That would refer to roughly ca. 5% of the Brazilian population. This data is only an estimation, because Brazilian demographic census only aim at stablished households with a domicile, excluding homeless population from official statistics.

¹¹³⁹ “Causas de la situación de calle,” Fundación Gente de la Calle, Official website, Accessed March 9, 2020, <http://www.gentedelacalle.cl/personas-en-situacion-de-calle/>.

¹¹⁴⁰ Id, 10.

¹¹⁴¹ See Felipe Durán Martínez, “Situación de Calle – Año 2017,” Fundación Gente de la Calle, May 2018; Municipalidad de Antofagasta, Ordenanza Municipal N° 03/2017 Sobre Ordenamiento y Uso de los Bienes de Uso Público de la Comuna de Antofagasta, O.M. 3 (2017). <https://cutt.ly/oyMiQ34>.

¹¹⁴² Id.

¹¹⁴³ Once again, housing ownership must not be the first option in such cases. The legislator can be creative and implement e.g. cash-transfer, shelters or social rent.

¹¹⁴⁴ According to Basset et al, “[...]when funds are not allocated based on objective indicators correlated with poverty or financial capacity, poorer localities are likely to be unable to cover all

for why policies designated their resources to certain groups and, at the same time, why the most-vulnerable and marginalized have not been preponderantly targeted. Under this understanding, the economic threshold set by MCMV and the socioeconomic threshold set by D.S. 19 and D.S. 49, have been challenging a rights-based performance because they do not address the main factors of marginalization and exclusion, and hence cannot correctly prioritize households. The best solution, in this case, is to address this incongruence in eligibility criteria and to use methods that can be constantly reviewed based on the principle of non-discrimination.¹¹⁴⁵

According to General Comment n. 4, individuals are “entitled to adequate housing, regardless of their age, economic status, group or other affiliation or status and other such factors.”¹¹⁴⁶ The Human Rights Code of the Canadian Province of Ontario is an example of comprehensive legal framework that protects individuals from discrimination, for:

Services 1 Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability”.¹¹⁴⁷

The Code is clear to point that services should provide equal treatment to all individuals, and goes further to protect equal treatment in the provision of legal capacity for the right to contract and to occupy an accommodation.¹¹⁴⁸

Nevertheless, failures in the operationalization of rights-based laws can also be observed in the Canadian example. Almost nine thousand individuals suffer with homelessness in the province mainly due to migration, unaffordability and eviction.¹¹⁴⁹ From those, 16% declare to have indigenous ancestry (even though they only constitute 2,5% of Toronto’s population).¹¹⁵⁰ Among all homeless population, 52% declare to be a migrant¹¹⁵¹ and at least 19% of all homeless

eligible households” (Basset et al, 29).

¹¹⁴⁵ Sepulveda Carmona, Nyst and Hautala, 38.

¹¹⁴⁶ UN CESCR, GC4, para 6.

¹¹⁴⁷ Canada, Province of Ontario. Human Rights Code, R.S.O. 1990, c. H.19 (2014). <https://www.ontario.ca/laws/view>, 1.

¹¹⁴⁸ Canada, Province of Ontario, R.S.O. 1990, 2-3.

¹¹⁴⁹ Canada and Toronto, “2018 Street Needs Assessment: Results Report.” Toronto, 2018, 6; Canadian Centre of Economic Analysis, Canadian Urban Institute, and Affordable Housing Office. “Toronto Housing Market Analysis: From Insight to Action” (Jan 2019), 3.

¹¹⁵⁰ Canada and Toronto, “2018 Street Needs Assessment”, 14.

¹¹⁵¹ Id., 18

population declared to “feel uncomfortable” speaking English or French languages (official ones, at the city).¹¹⁵² Migration, homelessness and language here find an intersection that must be taken into careful consideration and looked in regard to other factors, such as gender.

Therefore, marginalized groups require not only non-discriminating laws, but also efficient operational measures that ensure equality and access. Policy inconsistencies must be urgently adjusted in all case studies, particularly to operationalize efficient access to housing to those who most urgently need it. In the analyzed contexts, accessibility must be analyzed in terms of intersectional and compound factors, including cultural background, literacy levels, gender perspectives.

5.1.4.2 Discrimination against indigenous peoples and afro-descendants

Poverty and housing inadequacy are understood to be intrinsically related to structural and historical discrimination.¹¹⁵³ In the Brazilian case, afro-descendants face shortages in housing, health, employment, wage. Particularly in Chile, poverty is almost twice as incident over indigenous persons than to the general population.¹¹⁵⁴

From the legal perspective, it is necessary to acknowledge historical damages and to address violations committed, especially through governmental actions to prioritize those most excluded groups to access adequate housing. In a visit in 2010, the Special Rapporteur remarked on intersectional and systemic discrimination against quilombola communities evidenced in their right to access housing.¹¹⁵⁵ MCMV did neither combat that historical exclusion: its approach did not address centuries of segregation; on the contrary, at times, it strengthened exclusion. Therefore, MCMV should urgently adjust its selection criteria

¹¹⁵² *Id.*, 21

¹¹⁵³ HRC, A/HRC/WG.6/27/BRA/2, para 48 – 51.

¹¹⁵⁴ *Encuesta Casen* in: Chile. “Informe de Desarrollo Social 2018,” 2018, 17, graph 2.5. From 2006 to 2017, poverty decreased in Chile, from 44% to 14,5% among indigenous persons, and 28% to 8% among non-indigenous.

¹¹⁵⁵ “Only 62 per cent of the 450,000 indigenous in the country have access to enough and safe water and only 23 per cent have access to sewerage. An investigation conducted in 60 Quilombola communities showed that only 30 per cent of the dwellings were connected to a water supply system and 67 per cent of them were not in proper sanitation conditions, 46 per cent of which were in direct contact with open air sewerage. Furthermore, discrimination in the access to basic sanitation services strongly affects informal or precarious settlements, where the authority's refusal to perform the connection to water supplies and sewerage to families with no property title. In addition, the use of mechanisms such as prepaid meters further restricts the access of informal settlement dwellers to services. Finally, the percentage of unconnected households is far greater for households with income equal to or less than one minimum wage. Indeed, households with income equal to or less than one minimum wage amounted to 56.1 per cent of the water deficit and 51.2 per cent for sewerage, while only 30.1 per cent of the new water connections and 27.8 per cent of sewerage benefitted these households (HRC, A/HRC/13/20/Add.2, para 54)”

for the afro-descendant population in order to address the “intersection of systemic racism and violations to the right to housing.”¹¹⁵⁶

As a matter of fact, 75% of Chile’s indigenous persons have migrated to urban centers.¹¹⁵⁷ That movement has roots on the dispossession of indigenous traditional lands by the forestry industry, acting sponsored by the government.¹¹⁵⁸ However, overall, persons with indigenous background were not targeted by the analyzed case studies.¹¹⁵⁹ Until 2019, over 2% of total applications to D.S. 1 came from candidates defining themselves as part of an original population.¹¹⁶⁰ Of those, less than one per cent was selected.¹¹⁶¹

One of the causes of this mistaken policy is that persons with indigenous background as well as and afro-descendants are not provided with an adapted structure to apply to access their national social housing programs. D.S. 1, D.S. 19 and D.S. 49 set relatively more rigorous eligibility criteria¹¹⁶² to indigenous persons than for other nationals, what directly impacts on their selection. For example, they require a formal proof of identity of candidates with indigenous background as well as a proof of land property titles (to be used for housing projects).¹¹⁶³ However, lands that have been for hundreds or even thousands of years owned by those indigenous communities, often tend lack formal titles, making them unsuitable to the eligibility standards of the case studies.¹¹⁶⁴ This

¹¹⁵⁶ HRC, A/HRC/40/61, para 53.

¹¹⁵⁷ Cecchini and Martínez, 176; HRC, HRC/37/53/Add.1, 73.

¹¹⁵⁸ HRC, HRC/37/53/Add.1, 73.

¹¹⁵⁹ See more United Nations, HRC/37/53/Add.1, para 69; UN Human Rights Council (HRC), Compilation on Chile, A/HRC/WG.6/32/CHL/2 (Nov 16, 2018), para 87-92; UN Human Rights Council (HRC), “National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21,” A/HRC/WG.6/32/CHL/1 (Nov 7, 2018), para 18-59.

¹¹⁶⁰ Ministerio de Vivienda y Urbanismo et al, “Postulaciones, Postulantes, Postulaciones Beneficiadas y Pagados del Programa Integrado de Subsidios (DS01). Por Sexo del postulante, región de postulación y año de postulación” (Jan 2, 2020), table 7, *pueblos originarios*; Chile. L. 19.253. According to L. 19.523, a candidate declaring himself as part of an indigenous, “original population” shall be registered by the National Corporation of Indigenous Development (*Corporación Nacional de Desarrollo Indígena*).

¹¹⁶¹ Id.

¹¹⁶² According with D.S. 49, individuals applying to construct on their original indigenous lands must supply proof of the land title by the time of the delivery of the subsidy certificate, otherwise their application loses validity. See Chile, D.S. 49, art. 3.j.4. Named *Conservador de Bienes Raíces*, this certificate is mandatory.

¹¹⁶³ HRC, A/HRC/37/53/Add.1, para 69-75.

¹¹⁶⁴ In Brazil, similar conditions have been reported by different NGO’s and watchdogs. See UN Human Rights Council, “Summary of Other Stakeholders’ Submissions on Brazil – Report of the Office of the High Commissioner for Human Rights,” A/HRC/WG.6/27/BRA/3 (Feb 24, 2017), para 55, 91-99. More on diverse violations to indigenous rights on *Xucuru Indigenous People v. Brazil*, N. 149 Series C (Inter-American Court of Human Rights Jul 4, 2006); *Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile*, Case Summary (Inter-American Court of Human Rights May 29, 2014); Jessica McCormick, “Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile,” *Loy. L.A. Int’l & Comp. L. Rev.* 38, n. 4 (2016).

type of documentation is “sometimes an impossible criterion for indigenous peoples.”¹¹⁶⁵

And, in the end, that proof-land requirement does not directly impact indigenous urban dwellers as those still available lands tend to be located in rural areas. According to the Special Rapporteur, the used measures are insufficient,¹¹⁶⁶ because those criteria ignore their vulnerability and hinder access to the housing program.¹¹⁶⁷ As a consequence, indigenous persons are violated in their rights to a life to dignity, to non-discrimination and equality, to the right to adequate food and access to clean water. In urban centers, they end up facing i.a. discrimination and poverty, overcrowding dwellings with precarious tenure, under health risks and lack of access to water resources.¹¹⁶⁸ Moreover, the condition of having an indigenous background is not further relevant for beneficiary selection in none of the analyzed programs.¹¹⁶⁹

In 2017, although over two million Chileans declared themselves indigenous, only less than 260,000 had been formally registered as such.¹¹⁷⁰ The disparity between informal declaration and formal registration has effects in the application of social housing, who can not apply due to the lack of formal documentation. That formula of registration challenges the limits that certain mechanisms of accountability can create, such as documental proof. There is also weak evidence on legal support to adequate programs to cultural or linguistic barriers. Illiteracy barriers, that could be overcome by a mandatory engagement of social workers, have not been remarked by the legislator neither.

As applicants heads of the household, even the relatively substantial amount of indigenous persons selected in the extreme areas of the country is not fairly comparable to those regional indigenous populations, as they amount up to 23% in the region of *Arica y Parinacota* and 16% in *Magallanes* though at least over 35% and 23% per cent of the population has openly declared to belong to indigenous or original peoples, respectively.¹¹⁷¹ Moreover, the national selection

¹¹⁶⁵ HRC, A/HRC/37/53/Add.1, para 74.

¹¹⁶⁶ HRC, A/HRC/37/53/Add.1, para 75. Measures are “[...] insufficient to meet the needs of indigenous [...] dwellers. In particular, the dominance and prioritization of the forestry industry has resulted in a severe lack of access to on-site potable water for thousands of rural dwellers, who instead have water brought to them by trucks. [...] in the region of Araucanía, more than 90,000 individuals, close to 10 per cent of the total population receive water via trucks”.

¹¹⁶⁷ HRC, A/HRC/37/53/Add.1, para 69-75.

¹¹⁶⁸ “[...] Indigenous people, who are almost twice as likely to be poorer than the average [...], face lower housing standards as a result of long-standing discriminatory policies and practices, the dispossession of their lands and the lack of a rights-based indigenous policy that would begin to address their experiences of inequality” (HRC, A/HRC/37/53/Add.1, para 69, 69-75).

¹¹⁶⁹ Chile, D.S. 49, art. 4, h.

¹¹⁷⁰ Chile, “Informe de Desarrollo Social 2018,” 100; Instituto Nacional de Estadísticas, “Informe de Estadísticas. Síntesis de Resultados. Censo 2017,” (INE, Jun 2018), 17, graph 11.

¹¹⁷¹ Reporte DS 49, Ministerio de Vivienda y Urbanismo in: Observatorio Urbano and Centro de Estudios Ciudad y Territorio, 17-18; INE, “Informe de Estadísticas. Síntesis de Resultados. Censo

average of indigenous persons is as low as 5%, significantly lower than the actual self-declared indigenous population of roughly 13% of the national population.¹¹⁷² In the regions of *Metropolitana (de Santiago)*, *O'Higgins*, *Valparaíso* and *Coquimbo* unexpressive selection results of 1% or 2% show that policies actively discriminate against indigenous peoples, for indigenous persons count for ca. 10%, 6,5%, 7%, 9%, of those respective populations.¹¹⁷³ Since poverty affects twice as much indigenous persons as the general population, they should have received preferred targeting.¹¹⁷⁴

Indeed, along the eight years of social housing program, the number of beneficiaries selected who declared to be part of an original population has increased from 1,7% to 9% in D.S. 49.¹¹⁷⁵ On the one hand, it is positive that such database information is transparent (generating control and enforcement, in contrast to MCMV) and that selection has been increased along the years (increasing accessibility). However, the evident disproportion of indigenous people's in respect to their vulnerability and that of other groups diagnoses a discrimination in the selection phase against indigenous peoples. Thus, the urgent need to create a legal framework that can support inclusion.

Therefore, accountability must as well be relativized in order to ensure access to social housing. In the Chilean context, other kinds of documental proof, fundamentally necessary to enforce control and monitoring, has been limiting access to the most-poor in the case studies. General identification or documental proof hinders the most-vulnerable with strict formalities that decide upon inclusion or exclusion. As observed by Sepulveda et al, they imply in high costs that, added to e.g. language, literacy or physical barriers, hinder access of the most marginalized members of society.¹¹⁷⁶

One exception was observed in the operational rules of D.S. 19, which proposed social integration plans to “consider the characteristics, particularities and re-

2017,” 17, graph 11.

¹¹⁷² Id.

¹¹⁷³ Reporte DS 49, Ministerio de Vivienda y Urbanismo in: Observatorio Urbano and Centro de Estudios Ciudad y Territorio, 17-18.

¹¹⁷⁴ Sepulveda, Nyst and Hautala remark that universal policies should be preferred over targeting methods. However, due to financial constrains, this may not be a possible solution offered by States. Thus, programs need calibrated tools to identify and prioritize those living in higher vulnerability (Sepulveda Carmona, Nyst and Hautala, 39-40).

¹¹⁷⁵ Observatorio Urbano and Centro de Estudios Ciudad y Territorio, 9; Chile, Ley 19.253, de 5 de octubre de 1993, L. 19.253 (1993). According to L. 19.523, part of the “original population” are those who declare to be indigenous and are as such registered by the National Corporation of Indigenous Development (*Corporación Nacional de Desarrollo Indígena*). Statistics from 2011 to 2019.

¹¹⁷⁶ Sepulveda Carmona, Nyst and Hautala, 43. It turns out that “often, such documents are costly, can only be obtained from urban centres, or do not even exist in countries where many people, particularly women, are not registered at birth.”

quirements” presented by original peoples, migrants or other groups with specific ethnical-cultural characteristics.¹¹⁷⁷ However, the Chilean norm failed to translate rights-based guidelines into a general operational behavior.¹¹⁷⁸

Furthermore, particular to the Brazilian context, there is little support to favored eligibility standards for indigenous or afro-descendent peoples.¹¹⁷⁹ Shy reference to *quilombolas* is given in FDS-contracts, where applicant entities and beneficiaries must ensure that lands are not located in those protected areas.¹¹⁸⁰ MCMV tried to simplify access to tenure through the support of land regularization, demarcation and legitimization of property ownership if used for social housing.¹¹⁸¹ Those legal reforms tried to observe traditional communities, as “occupants of lands with no titles or belonging to indigenous and *quilombola* communities.”¹¹⁸² However, those strategies are too limited and no efficient legal measures were identified in the urban MCMV to ensure access to afro-descendants to adequate housing.

Overall, afro-descents amount 32,9% of Brazil’s most-poor and they are twice as likely to be illiterate.¹¹⁸³ From the 16.2 million Brazilians living in extreme

¹¹⁷⁷ Chile, R.E. 6.509, art. 3.5.

¹¹⁷⁸ According to an interview conducted with two public agents of SEREMI *Araucania*, in Chile, since 2010 the government started to engage with different indigenous groups from a more participative and inclusionary perspective. In interview, Mr. Huincahue referenced to their work with a local Mapuche community, that extrapolated any technical requirements of urban or rural plans ever designed. The government planned a house as required by the local *machi*, the traditional Mapuche healer and religious healer only with dirt soil because so demands their tradition. The aim had been to understand the minority leader and to create trust, in order to develop a housing policy in the interest of that community. See Ricardo Toro and Alejandro Huincahue, Researcher’s Interview 3. Skype, June 7, 2019.

¹¹⁷⁹ International Labor Organization, “Report of the Committee of Experts on the Application of Conventions and Recommendations (Articles 19, 22 and 35 of the Constitution) Third Item on the Agenda: Information and Reports on the Application of Conventions and Recommendations” (Geneva: ILO, 2009), 503; See also HRC, HRC/37/53/Add.1, para 73; UN Human Rights Council (HRC), “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, Addendum, Follow-up to Country Recommendations: Brazil, Cambodia, Kenya.” Agenda Item 3, A/HRC/13/20/Add.2, para 12. It must be remarked that, even though *quilombola* and indigenous communities are linked to rural strategies, consisting neglect of those groups by governmental policies leads to increased urban migration (for example, as catalogued in Chile, where 75% of indigenous peoples are now living in urban centers). Hence, urban policies should too pay attention to these most vulnerable groups.

¹¹⁸⁰ Annex V, 17.4.

¹¹⁸¹ HRC, A/HRC/13/20/Add.2; Brasil, L. 11.977.

¹¹⁸² HRC, A/HRC/13/20/Add.2, para 32; Brasil, Lei 11.481, de 31 de maio de 2007, L. 11.481 (2007).

¹¹⁸³ In 2016, illiteracy among Brazilian afro-descendants ranked 9,9%, against 4,2% among white. Also according to IBGE, 15,4% of self-described white Brazilians live under poverty (Instituto Brasileiro de Geografia e Estatística, “Somos Todos Iguais? O que dizem as estatísticas,” *Retratos: A revista do IBGE*, (IBGE, May 2018). <https://agenciadenoticias.ibge.gov.br/agencia-noticias/2012-agencia-de-noticias/noticias/21206-ibge-mostra-as-cores-da-desigualdade>). For a better understanding of affirmative actions, see Sergio da Silva Martins, “*Ação Afirmativa e Desigualdade Racial No*

poverty, 70.8% are afro-descendants.¹¹⁸⁴ A great part of that population will be found living in *favelas*, *periferia* or *quilombos*, under inadequate housing conditions that lack access to health, sanitation, education or transport services.¹¹⁸⁵ Other vulnerable groups, such as the Roma, lack so much visibility that they are not even presented in official demographic studies.¹¹⁸⁶ Social scientists, activists and legal advocates analyze several reasons to have led to such a distorted modern reality¹¹⁸⁷, but the lack of policies efficiently targeting the inclusion of (those) vulnerable individuals is one of the reasons that keeps marginalizing them.

The Covenant on Economical, Social and Cultural rights extends the right to adequate housing to every individual and ensures that all rights are to be exercised without discrimination.¹¹⁸⁸ The UN Declaration on the Rights of Indigenous Peoples recognized their right to housing and to self-determination, in addition to the ILO Convention n. 169, that required governments to not discriminate indigenous peoples in respect to housing.¹¹⁸⁹ Thus, the neglect of the mentioned states over the vulnerable conditions of indigenous, afro-descendant and other minority groups, is a clear violation to human rights.

Underpinning rights-based guidelines is the best possible means to stop violations. In order to supporting access and targeting not only indigenous, but to all most-vulnerable groups, laws will have first to conform to a basic respect to human rights and to adequacy.¹¹⁹⁰ Policies should be adjusted to integrate, include and provide access to those communities, through the “recogn[ition of]

Brasil,” *Revista Estudos Feministas* 4, n. 1 (1996); Instituto Brasileiro de Geografia e Estatística, “Desigualdades Sociais Por Cor Ou Raca No Brasil,” *Estudos e Pesquisas Informacao Demografica e Socioeconomica* (IBGE, 2019), 1.

¹¹⁸⁴ HRC, A/HRC/WG.6/27/BRA/2, 48.

¹¹⁸⁵ See HRC, A/HRC/WG.6/27/BRA/2, 51. *Quilombos* are “communities established by escaped African slaves in diverse and often remote and isolated regions”. *Favelas* are the equivalent to Chilean *campamentos*, and often translated as slum. The urban area is mostly constituted without property titles, but with its own economical and cultural development, historically lacking any formal State interference.

¹¹⁸⁶ HRC, A/HRC/WG.6/27/BRA/2, 87.

¹¹⁸⁷ Anibal Quijano and Michael Ennis, “Coloniality of Power, Eurocentrism, and Latin America,” *Nepantla: Views from South* 1, no. 3 (2000) <https://www.muse.jhu.edu/article/23906>, 534. See Discurso Joice Berth, Comissao de defesa dos direitos da mulher: Audiência pública, § Plenário 14 das Comissoes, Transcription (2018). <https://www.camara.leg.br/internet/sitaqweb/TextoHTML.asp?etapa=11&nuSessao=0572/18>. According to Quijano, “the idea of race was a way of granting legitimacy to the relations of domination imposed by the conquest”. Moreover, Joice Berth denounces that “there's the logic of the big house and the *senzala* in the cities. The noble areas – no wonder they are so called – are white. The *senzalas* are located in the areas furthest from these regions, in the peripheries, in the favela areas, in the *senzalas*” (Author’s translation). For a better understanding of affirmative actions in the Brazilian context, see Silva Martins.

¹¹⁸⁸ UNGA, ICESCR, art. 2.2, 11.1.

¹¹⁸⁹ UNGA, United Nations Declaration on the Rights of Indigenous Peoples, art. 21(1); International Labor Organization, Indigenous and Tribal Peoples Convention, C169 (1989), art. 20.2.c.

¹¹⁹⁰ UNDG, “The Human Rights Based Approach to Development Cooperation”; UN CESCR, GC4.

the contribution of cultures and historical traditions when designing new social policy systems.”¹¹⁹¹ Material and cultural accessibility must be issued via operational settings,¹¹⁹² for instance, through the training of social workers to speak local languages and to respect, understand and adapt strategies to community traditions.

Further clarification should include not only ethnical and cultural contexts, but also social, economic, anthropological, psychological or any other conditions that affect individuals.¹¹⁹³ By giving priority to the most vulnerable and disadvantaged, policies should address intersectional and compound discrimination and target indigenous and afro-descendants e.g. with disabilities, over age, living in the streets, women.¹¹⁹⁴ As a solution to targeting, geographical targeting or proxy-means tests could be suggested, although Sepulveda et al claim that these mechanisms can also face manipulation and fail to grasp vulnerability.¹¹⁹⁵ Until a procedural targeting solution is developed, it is anyhow clear that all studied social housing policies do not substantiate human rights principles of equality and non-discrimination in eligibility measures. That shows a fundamental failure of the right-based approach in both Brazilian and Chilean social housing models in need of urgent adjustment.

And, in the context of nations where poverty is directly connected to a past of historical segregation and discrimination, it is fundamental to revisit targeting from that perspective. However, this work diagnoses a neglect to historical, religious, ethnical minorities in both case studies.¹¹⁹⁶ When excluded from targeting, they must endure worsened eligibility conditions in policies that consider them equal to households that are better-off other than only in the economic sense.

Programs should also be reformed to create adapted methods, languages, communication and implementation to their cultural needs because that can achieve

¹¹⁹¹ Cecchini and Martínez, 176.

¹¹⁹² V. Abramovich (2009), “El rol de la justicia en la articulación de políticas y derechos sociales”, *La revisión judicial de las políticas sociales. Estudio de casos*, V. Abramovich and L. Pautassi (eds.), Buenos Aires, Editores del Puerto, 42 In: Cecchini and Martínez, 149.

¹¹⁹³ See more on HRC, A/HRC/40/61.

¹¹⁹⁴ Sepulveda Carmona, Nyst and Hautala, 40-41. There is no fit-for-all solution. Targeting the most vulnerable is context-related, because in different countries and regions, compound and intersectional discrimination presents itself differently.

¹¹⁹⁵ Sepulveda Carmona, Nyst and Hautala, 40. Basset et al support the use of proxy-means tests, although they also understand it is not a solution fit for all: “the criteria are derived from household survey data by using relatively simple econometric models that identify easy to observe and measure indicators[...] clear and transparent, [...] it is easy to replicate and the criteria used are easy to observe and explain” (Basset et al, 31, ft 30). Important is to remark that it is an efficient quantitative means that must be effectively adapted to each country-case situation.

¹¹⁹⁶ Basset et al.

increased access.¹¹⁹⁷ For example, in Brazil, illiteracy affects indigenous persons significantly more than others and particularly women.¹¹⁹⁸ Of the catalogued 274 different spoken indigenous languages, none was observed to be used in urban MCMV communications.¹¹⁹⁹

5.1.4.3 Discrimination against migrants

An immigrant must hold a permanent residency status in order to be able to join the application process of Brazilian and Chilean social housing programs. Non-nationals are forbidden to apply to housing subsidies, unless they fulfill a minimum amount of years living in the country (from two to five years of legal residency, depending on the case).¹²⁰⁰ In Chile, they are required to present a copy of their respective identification documents.¹²⁰¹ In turn, although MCMV did not expressly exclude migrants without permanent status to apply, a federal court has decided upon denying that subsidy.¹²⁰²

Poor migrants, who consist in a majority of women and children, are being currently discriminated by housing strategies, which limit a significant parcel of the most vulnerable population to have access to adequate housing standards. And, in addition to legal barriers, poverty, illiteracy and language barriers also ensure complementary obstacles that migrants must overcome when applying for social housing. However, that scenario must be urgently reformed, to guarantee all individuals access to housing “independent of their documentation”.¹²⁰³ As the Special Rapporteur observed in Chile, that unequal treatment

¹¹⁹⁷ HRC, A/HRC/37/53/Add.1, para 69-75.

¹¹⁹⁸ Instituto Brasileiro de Geografia e Estatística, “Censo Demográfico 2010: Características Gerais Dos Indígenas. Resultados Do Universo” (Rio de Janeiro: IBGE, 2012) 70, table 8; 102-03, graph 29, table 18. According to the Brazilian 2010 census, 11.9% of the total urban indigenous population and 13.1% of the women were not literate, in comparison to 7.3% and 7.4% of non-indigenous persons. In urban areas, 36.9% of indigenous persons against 35.6% of non-indigenous declared to live without any income. Moreover, respectively 32.1% against 25.2%, declared to earn up to 1 minimum salary. There is a slighter difference in vulnerability between indigenous persons and other groups. But since, factors such as illiteracy and low levels of education drastically impact income, poverty and, consequently, housing conditions, these should be taken into consideration when interpreting those same statistics.

¹¹⁹⁹ IBGE “Censo Demográfico 2010”, 54.

¹²⁰⁰ However, in order to become a legal resident (permanent residency visa), other several criteria apply, depending on the country, a criminal record or household income. HRC, HRC/37/53/Add.1, para 61-64.

¹²⁰¹ Chile, D.S. 49, art. 3, a-b.

¹²⁰² Although no legal exclusion factor was created, the judicial understanding is that those without a permanent status should not be able to apply. See Brasil, Tribunal Regional Federal 4 Região, AP 5003364-97.2011.404.7100/RS, Rel. Des. Fed. Vivian Josete Pantaleao Caminha (4T 16 Mar, 2012).

¹²⁰³ HRC, HRC/37/53, para 40; HRC, A/HRC/40/61, para 54.

is a violation to the human right to housing¹²⁰⁴, because it goes against the understanding that states are supposed to take non-discriminatory measures.¹²⁰⁵

In the MCMV context, from over 43,000 migrants registered to be living only in the state of Sao Paulo, at least 62% could become eligible for MCMV due to their economic vulnerability.¹²⁰⁶ The exclusion of certain vulnerable groups from statistical evaluations,¹²⁰⁷ such as migrants, does not erase their vulnerability, but implicates in less valuable knowledge to combat social demands. In the end, norms should be reformed to create mechanisms that protect individuals from unequal and discriminatory treatment and to ensure their equal access to housing.

According to a research conducted by Techo¹²⁰⁸, the population of Chilean campamentos comprehends ca. 28% of migrants, who in majority suffer from South-South migration movements. Overcrowding affects 19% of the migrant population, though that number raises to over 68,5% among those living in campamentos, hence over-burdening that group.¹²⁰⁹ In the metropolitan region of Santiago, general housing inadequacy among immigrants comprises over 63% of the total quantitative deficit.¹²¹⁰

As Ramos remembers, although D.S. 49 is one of the main strategies that guarantee access to housing to the most vulnerable in Chile, it actively excludes a great

¹²⁰⁴ “Many campamentos, especially in the northern and Valparaíso regions, are made up of migrants who have nowhere else to live in the light of the restrictions they face on receiving housing subsidies until they have become permanent residents. For example, in Antofagasta, 80 per cent of the population of one campamento the Special Rapporteur visited were migrants. [...] Conditions in many of the settlements are characterized by a lack of security of tenure, overcrowding and a lack of basic utilities, including drinking water. [...] Migrants cannot apply for the housing subsidy programme until they have resided in Chile for at best two years and at worst five years, and have become permanent residents. That leaves them no option but to rent in the private market or reside in campamentos or on/in occupied land/buildings. The Special Rapporteur visited a site in Santiago that migrants had occupied. Beyond lacking any security of tenure, it was not fit for living, with sewage backing up into the residence and other health and safety concerns. [...]. Migrants recounted being denied accommodation because of their place of origin, or exploited in the private housing market by landlords who overcharged or who offered costly but precarious living conditions. Even within campamentos, some migrants noted that they had experienced intercultural violence and hostility” (HRC, HRC/37/53/Add.1, para 48, 50, 63).

¹²⁰⁵ UN CESCR, GC4, para 9.

¹²⁰⁶ Núcleo de Estudos de População “Elza Berquó” – NEPO/UNICAMP, *Relação Anual de Informações Sociais – Tabulações Especiais Observatório Das Migrações Em São Paulo* (version 2016) RAIS in “Banco Interativo Observatório Das Migrações Em São Paulo – Inserção Dos Imigrantes Internacionais No Mercado de Trabalho Formal, 2016,” Online, Interactive Data Catalogue, Accessed Mar 9, 2020. <https://cutt.ly/tyMihXJ>. See more on section 5.1.2.6.

¹²⁰⁷ No governmental data was found referring to the amount of migrant beneficiaries of MCMV.

¹²⁰⁸ Techo-Chile, “A Un Paso Del Campamento: Encuesta Techo 2017. Resumen Ejecutivo” (2017), 5.

¹²⁰⁹ Chile, CEHU, “Resultados Déficit Habitacional Cuantitativo – Censo 2017,” table 13; Techo-Chile, “A Un Paso Del Campamento”, 9.

¹²¹⁰ Chile, CEHU, “Resultados Déficit Habitacional Cuantitativo – Censo 2017,” 23, table 14.

parcel of vulnerable individuals based on their nationality.¹²¹¹ The selection rate of immigrants has raised from 0,8%, in 2011, to 4% in 2019, but eligibility targeting must be urgently reformed because it impacts as a source of social exclusion.¹²¹² According to Chilean governmental data, only ca. 1,5% of D.S. 49 beneficiaries and ca. 2% of D.S. 1 beneficiaries are migrants, even though they are known to represent a large parcel of Chile's most poor¹²¹³, suffering with higher levels of vulnerability, overcrowding and inadequate housing conditions in comparison to the rest of the population.¹²¹⁴

5.1.4.4 Gender-inequality

According to Sepulveda, Nyst and Hautala, it is necessary to understand how resources are distributed in households, otherwise women, and especially older women, are put “in a disadvantaged position.”¹²¹⁵ Although women heads of households are given priority in MCMV's selection phase, intra-house vulnerability is neglected in the eligibility criteria. In Chile, none of the case studies show priority or gender-sensitive eligibility conditions.

According to Mayer Gukovas et al, the lack of economic opportunity among Brazilian women is enhanced by factors such as marriage before full majority (younger than 18).¹²¹⁶ Thus, MCMV backed vulnerable women on specific issues related to the legal contract. In the case of a couple, contracts and registrations were designed to be finalized “preferably” using the name of the woman in the household, in which case a married woman can sign a contract without the need of marital allowance.¹²¹⁷ The consequence to that was the empowerment of a significant amount of households through the eligibility of those women.

The Brazilian government also tried to establish a milestone on the materialization of women's right to adequate housing with the inclusion of art. 35-A.¹²¹⁸ It determined that, in case of divorce, separation or dissolution of a stable union,

¹²¹¹ Adam Ramos, “Acceso a La Vivienda e Inmigración En Chile.” ÉnfaCIS. (Santiago de Chile: Centro de Investigación Social – CIS de TECHO-Chile, Dec 2017), 7.

¹²¹² HRC, A/HRC/37/53/Add.1, para 48, 50, 63.

¹²¹³ Observatorio Urbano and Centro de Estudios Ciudad y Territorio, 8.

¹²¹⁴ Ministerio de Vivienda y Urbanismo et al, “Postulaciones, Postulantes, Postulaciones Beneficiadas y Pagados del Programa Integrado de Subsidios (DS01)”, table 1, *nacionalidad*; Techo-Chile, “A Un Paso Del Campamento.”

¹²¹⁵ Sepulveda Carmona, Nyst and Hautala, 35.

¹²¹⁶ Mayer Gukovas et al, “A Snapshot of Gender in Brazil Today : Institutions, Outcomes, and a Closer Look at Racial and Geographic Differences,” (World Bank, Aug 1, 2016), <http://documents.worldbank.org/curated/en/844211485511076362/A-snapshot-of-gender-in-Brazil-today-institutions-outcomes-and-a-closer-look-at-racial-and-geographic-differences>.

¹²¹⁷ Annex I, Clause 1.2; Brasil, L. 11.977, art. 35, 35-A. Author's translation.

¹²¹⁸ Planalto, *Pronunciamento da presidenta Dilma no Dia Internacional da Mulher (Official Speech of President Dilma Roussef on Women's Day)*. Youtube Official Channel, Video (Brasília, Mar 8 2012). <https://www.youtube.com/watch?v=UETz1jGtPA>.

the title of a property acquired by FAR-funded women during the marriage or stable union will be registered in the name of that woman, independent of the couple's property scheme.¹²¹⁹ Making female actors eligible through clear, transparent, consistent laws has created legal security for those vulnerable members of society.

In what concerns the rights-based approach, FGTS-funded categories of MCMV leave women unprotected by excluding them from certain gender-responsive strategies present in projects subsidized by FAR and FDS. For example, better-off women do not have the right to have the real estate property title transferred or registered in their name in case of e.g. divorce¹²²⁰, in contrast to female beneficiaries of most-vulnerable categories. This unjustified exclusion adversely impacts women beneficiaries of FGTS-funded projects.

In effect, those FAR and FDS strategies should be expanded to all MCMV categories. Among the many reasons to that, it has been statistically proven that women are more subject to poverty, they hold more responsibilities than other household members and statistically earn less than men.¹²²¹ Those disparities take an even more extreme proportion when looking at interracial disparities of income.

Nevertheless, those gender-responsive tactics generated quick positive results: until 2015, at least 80% of all low-income MCMV households were headed by women.¹²²² In contrast, D.S. 19 and D.S. 49 programs did not create a similar gender-responsive strategy. Nevertheless, 2011 to 2018, women referred to 81% of all most-vulnerable selections of D.S. 49.¹²²³ That preference over male counterparts seems to follow a general female vulnerability: eighty-two per cent of Chile's 40% most poor persons are women.¹²²⁴ Surprisingly, those Chilean performance results are positive, despite the lack of a rights-based agenda committing to gender-supportive strategies.

¹²¹⁹ Brasil, L. 11.977, art. 35-A.

¹²²⁰ Brasil, L. 11.977, art. 35-A.

¹²²¹ Renata Mayer Gukovas, et al, "A Snapshot of Gender in Brazil Today: Institutions, Outcomes, and a Closer Look at Racial and Geographic Differences" (World Bank, Aug 1, 2016). <http://documents.worldbank.org/curated/en/844211485511076362/A-snapshot-of-gender-in-Brazil-today-institutions-outcomes-and-a-closer-look-at-racial-and-geographic-differences>.

¹²²² ONU Mulheres, Entidade das Nações Unidas para a Igualdade de Gênero e o Empoderamento das Mulheres, "*Mais Igualdade Para as Mulheres Brasileiras: Caminhos de Transformação Econômica e Social*" (Brasília, 2016), 30.

¹²²³ ONU Mulheres, "*Mais Igualdade Para as Mulheres Brasileiras*", 30; Reporte D.S.49, Ministerio de Vivienda y Urbanismo, in Observatorio Urbano and Centro de Estudios Ciudad y Territorio, 15. The Ministry also issued a note remarking that 72% of selected beneficiaries have been declared to be women in most vulnerable categories ("Estudio Minvu Revela Que 72% de Los Beneficiarios de Subsidios Son Mujeres," MINVU, Official website, Accessed Jun 28, 2019).

¹²²⁴ Reporte D.S.49, Ministerio de Vivienda y Urbanismo, in Observatorio Urbano and Centro de Estudios Ciudad y Territorio, 7.

A fine gender-sensitive aspect brought by MCMV and D.S. 1 refers to victims of domestic violence.¹²²⁵ In case of selected beneficiaries that are under protective measures, their names shall not be openly published. The norm protects many female beneficiaries by reserving their privacy against the odds of public transparency. In this case, it is correct to relativize accountability and transparency in favor of safety and the right to life.

Though, exceptionally, an agenda about domestic violence indirectly responded to gender issues for it affects a majority of women: during the selection phase, applicants of D.S. 1 that can prove to be victims of domestic violence may be transferred from the region they are applying to.¹²²⁶ However, that depends on documental proof, such as a judicial decision or a certificate of the Public Prosecutor's Office.¹²²⁷

But, considering vulnerable members of society affected by domestic violence, judicial measures imply high costs and bureaucracies that they can barely afford or understand, which are added to social obstacles they cannot always bear. So, even though documental proof is essential for accountability, in such cases, the principle of veracity should be relativized. For example, a sworn statement, social media evidence, police notices or overall involvement, a letter from a credited solicitor, or even the perpetrator's own conduct and behavior histories are all simpler instruments that should be sufficient evidence in such cases.¹²²⁸

Another efficient adjustment that can be conducted in the Chilean norm refers to the publication of selected beneficiaries. Although beneficiaries can be transferred from the region they apply to if proven victims of domestic violence, as a rule, selected beneficiaries all have their names published along with their identity number in a national newspaper.¹²²⁹ However, it is unclear if persons under protection should be omitted from the publication. Therefore, their names should be withdrawn from public lists.

The Chilean legal system is anyhow highly criticized for fundamental violations to gender equality.¹²³⁰ Women face discriminatory civil and political rights, as

¹²²⁵ Domestic violence is directly related to gender: in Brazil, three times more female victims (than male) have been formally reported; in Chile, 90% of the victims are women. *See* Daniel Cerqueira, Rodrigo Moura, and Wânia Pasinato, "Participacao no Mercado de Trabalho e Violência Doméstica Contra as Mulheres no Brasil," *Text para Discussao*, Instituto de Pesquisa Econômica e Aplicada (Brasilia, Rio de Janeiro: IPEA, 2019); Myrna Villegas Díaz, dir., "Violencia contra la mujer en Chile y derechos humanos," Informe Temático 2017, Lavinia Francesconi coord., Facultad de Derecho, Universidad de Chile (Mar, 2018).

¹²²⁶ Chile, D.S. 1, art. 27, a.

¹²²⁷ Chile, D.S. 1, art. 27, a.

¹²²⁸ Farai Syposz, "Research Investigating the Domestic Violence Evidential Requirements for Legal Aid in Private Family Disputes," UK Ministry of Justice (2017), 3-4.

¹²²⁹ Chile, D.S. 1, art. 22, 27.

¹²³⁰ UNGA, Convention on the Elimination of All Forms of Discrimination against Women. art. 14 (2), 15(2); UN Human Settlements Programme, "The Right to Adequate Housing," Fact Sheet 21

for example the law enables a husband to have power over a wife's properties.¹²³¹ That violation to the civil rights and the right to equality of Chilean women is in direct contradiction to art. 15 and 16 (h) of the Convention on the Elimination of All Forms of Discrimination against Women.¹²³² And it has direct implications on social housing. As it can be observed in Annex II, on the first clause of the Contract of Purchase and Prohibitions, a married woman has her property administered by her husband, unless explicitly stated differently at the time of marriage.¹²³³

Under Chilean civil law, the male partner is considered to be the head (*jefe*) of the household, for which he has full administration of the wife's property.¹²³⁴ Exceptionally, women shall be considered as part of the regime of separation of property, despite any contrary provisions, meaning that, in fact, a wife may independently sign a deed of sale and acquire a dwelling.¹²³⁵ But, in case the wife assigns the certificate of the subsidy to her husband too, that legal presumption shall not be used.¹²³⁶ In case of dissolution of the marital society, the property shall still be considered for the division of assets. Additionally, even under the regime of separation of property, a wife's assets does not receive proper secure tenure. In such a case, creditors of the husband seeking the satisfaction of their debit can achieve to include the wife's property if proven that the established contract has been done in favor of the common family.

Inequalities affect women especially through intersectional and compound discrimination.¹²³⁷ As remembered by the Special Rapporteur, different dimen-

(UN-Habitat, 20??), 16-18; HRC, A/HRC/37/53/Add.1; Organization of American States, "Report on the Rights of Women in Chile: Equality in the Family, Labor and Political Spheres," IV, OAS, 2009. http://www.cidh.oas.org/countryrep/Chilemujer2009eng/Chilewomen2009iv.eng.htm#_ftn57. Based on discrimination against sexual-orientation and on the purpose of excluding plural forms of families, a Chilean court discriminated a mother against the male "chief" of the family, in a decision that was ruled illegal by the IACHR. More on gender discrimination in Chile, see on Atala Riffo and daughters v. Chile; Rosa M Celorio, "The Case of Karen Atala and Daughters: Toward a Better Understanding of Discrimination, Equality, and the Rights of Women," *City University of New York Law Review* 15, no. 2 (2012), 352-53.

¹²³¹ HRC, A/HRC/37/53/Add.1.

¹²³² UNGA, Convention on the Elimination of All Forms of Discrimination against Women.

¹²³³ Annex II, clause 1.

¹²³⁴ Chile, Civil Code, Decreto con Fuerza de Ley 1, de 28 de octubre de 1999, DFL 1 (1999) [*Código Civil*].

¹²³⁵ Chile, Civil Code, art. 150; Chile, D.S. 49, art. 59; Ministerio de Vivienda y Urbanismo, "Preguntas Frecuentes: Orientación Jurídica (Legal)." Official website. Accessed May 10, 2019, http://www.minvu.cl/opensite_20070223152359.aspx;

¹²³⁶ Chile, D.S. 49, art. 59.

¹²³⁷ UN HRC, A/HRC/40/61, para 49; UN General Assembly, General recommendation on women's access to justice, CEDAW/C/GC/33 (UNGA, 2015), para 8-9, 10. Grounds for discrimination comprehend "ethnicity/race, indigenous or minority status, colour, socio-economic status and/or caste, language, religion or belief, political opinion, national origin, marital and/or maternal status, age, urban/rural location, health status, disability, property ownership, and being lesbian, bisexual,

sions of intersectional and compound discrimination should be taken into consideration when targeting and selecting beneficiaries.¹²³⁸ Social housing strategies should respond to cumulative causes of vulnerability, just as examples: women with disabilities, victims of violence, LGBTQ+, HIV positive, afro-descendants, indigenous, Romas or migrants.¹²³⁹

In Chile, immigrant women are expressively affected by consequences of inadequate housing, though that does not exclude the existence of other discriminated groups.¹²⁴⁰ But, according to the Special Rapporteur, this leaves many women, many of which with children, facing poverty and lacking employment, letting them with no other option but to live in *campamentos*, where they face daily violence.¹²⁴¹

Inequalities affect particularly women of color or of migration background in Brazil too. MCMV did not set legal targets backing afro-descendent women, even though they suffer more from the poverty gap than their white female counterparts.¹²⁴² Especially afro-descendent teenagers are in greater risk of an early unwanted pregnancy, to remain unemployed, and to lack access to day-care.¹²⁴³ And, although they statistically have less financial resources to access adequate housing than Brazilian males and white females, no strategic target was set to support more women in the context of MCMV. It is contradictory that a policy that support access to housing in fact worsens exclusion because it neglects its target to support the most vulnerable.

transgender women or intersex persons”. Discriminatory conditions include “illiteracy, trafficking of women, armed conflict, seeking asylum, internal displacement, statelessness, migration, women heading households, widowhood, living with HIV/AIDS, deprivation of liberty, criminalization of prostitution, geographical remoteness, and stigmatization of women fighting for their rights.”

¹²³⁸ HRC, A/HRC/37/53, para 39.

¹²³⁹ HRC, A/HRC/37/53, para 38. “Strategies should address the legacy of colonization and the systemic housing inequality and dispossession experienced by indigenous peoples”.

¹²⁴⁰ Fundamentally, an immigrant is not allowed to apply for Chilean social housing subsidies until after receiving a permanent residency status, what may take two to five years of official residency. See Chile, D.S. 49, art. 3, b; HRC, A/HRC/37/53/Add.1, para 59, 63-66, 76-77.

¹²⁴¹ HRC, A/HRC/37/53/Add.1, para 61-64; See “Sin Lugar: Fin de mes” (#QueNoNosGaneLaIndiferencia), Techo-Chile, Youtube Video, Accessed Aug 20, 2019, <https://www.youtube.com/watch?v=qQ8Zqi01yOg>. This short video produced by Techo-Chile denounces human rights violations faced by migrants in *campamentos* in Chile, based on narratives encountered by that entity.

¹²⁴² ONU Mulheres, “*Mais Igualdade para as Mulheres Brasileiras*”, 30.

¹²⁴³ Mayer Gukovas et al, 27-29, 45. As a mother, they are more vulnerable to remain unemployed and, hence, to depend on their male partner. Women have little perspective in such a context, that does not support their capacity development: only 23.3% of all children aged 0-3 have had access to daycare in 2013, of those 8.5% in rural areas. Generally, in comparison to men, Brazilian women also tend to have less access to education or jobs, and when they do, they remain underpaid. In this case, racial and gender-related vulnerabilities are worse for afro-descendent women. They tend to earn less than a half (7.7 BRL) than a white male (15.6 BRL), and 40% less than their white female counterparts (12.5 BRL) in average per hour.

It is paradoxical, but in Chile, since 2011, twice as many women than men have been selected as beneficiaries of that program.¹²⁴⁴ That may also be influenced by the fact that women have been more prone to pursue social housing support than men: application rates led by declared females has been 2,5 times higher during the past eight years, a statistic that may in fact be related to the higher female vulnerability.¹²⁴⁵ Anyhow, legal guidelines should be reformed to ensure that that strategy is acknowledged on the legal text and expanded to victims of compound and intersectional discrimination.

This critical assessment showed a clear lack of gender-sensitivity in the case studies. Therefore, taking into consideration intersectional and compound discrimination, a clear and strong gender-responsive agenda that empowers women is necessary to substantiate factual changes for Brazilian and Chilean women. Accessible legal assistance, legal education, and general access to grievance and redress mechanisms can also help ensure women of their housing rights.¹²⁴⁶

5.1.4.5 Targeting the elderly, disabled persons and victims of the dictatorships

A positive measure in the context of MCMV is the reservation of units to the elderly and disabled. Even if only in a small amplitude (three per cent of total), this is an operational legal commitment to the inclusion of those groups.¹²⁴⁷ In contrast, in Chile, there is no amount of unities reserved to those groups in D.S. 49 and D.S. 19 most-vulnerable categories. Nevertheless, they are given priority in the selection criteria, what means that those households have more chances of being granted a subsidy in case they have an elderly or disabled member, respectively 100 and 300 points.¹²⁴⁸ And that Chilean strategy presents positive results: along the years, the number of disabled beneficiaries selected for D.S. 49 tripled from 2,2%, in 2011, to 7,3%, in 2019.¹²⁴⁹ The elderly have been selected under a substantially stable rate along the years and they regard a

¹²⁴⁴ Ministerio de Vivienda y Urbanismo et al, “Postulaciones, Postulantes, Postulaciones Beneficiadas y Pagados del Programa Integrado de Subsidios (DS01). Por Sexo del postulante, región de postulación y año de postulación,” (Jan 2, 2020), table 2.

¹²⁴⁵ Ministerio de Vivienda y Urbanismo et al, “Postulaciones, Postulantes, Postulaciones Beneficiadas y Pagados del Programa Integrado de Subsidios (DS01)”, table 2; Observatorio Urbano and Centro de Estudios Ciudad y Territorio, 8. An almost linear indirect relation exists upon vulnerability of both genders. Whereas women correspond to 85% of Chile’s (40%) most-poor, men count only for 15% of that RSH category. Rates follow an indirect pattern for respectively women and men, 77% and 23% among the 50% most-vulnerable; 71% and 29% among the 60% most-vulnerable; 67% and 33% among the 70% most-vulnerable; 64% and 36% among the 80% most-vulnerable; and 62% and 38% among the 90% most-vulnerable. Hence, men are underrepresented among the Chile’s most-poor. That relation only changes when the vulnerability line is overcome (*tramo 100*), shared among 46% and 54% of women and men, respectively.

¹²⁴⁶ HRC, A/HRC/40/61, para 49-50.

¹²⁴⁷ Brasil, P. 163, 8.2.

¹²⁴⁸ See table 4.

¹²⁴⁹ Observatorio Urbano and Centro de Estudios Ciudad y Territorio, 9.

majority of women, in total, 10,7% of all selected beneficiaries since the program was launched.¹²⁵⁰

Priority given to acknowledged victims of the dictatorship must also be remarked. Those should be supported with 600 points during their selection process, the highest individual score given in the D.S. 49 context. This is an urban strategy showing a step towards a reconciliation with the Chilean collective memory.¹²⁵¹ Targeting households of victims of the dictatorship is a means of making the state accountable for its own historical debt. It is remarkable that, even though Brazilians similarly experienced a military dictatorship, the same strategy was not taken into consideration by the government.¹²⁵² Yet, a similar approach should be welcomed by MCMV.

5.1.4.6 Justification on benefit and contribution levels in vulnerable categories

In comparison, most vulnerable Chilean beneficiaries contribute with lower sums than FAR and FDS beneficiaries.¹²⁵³ This legal work can not delve into the economic and financial discussion of those benefits, though the legal perspective can argue on what grounds the determination of contribution and benefit amounts has been defined. There is a similar constant between Brazilian and Chilean thresholds in all categories, but neither legislators provided a legal justification for the predefined financial burden of the most-vulnerable or how is that amount calculated in reference to their social and economic conditions.¹²⁵⁴

¹²⁵⁰ Observatorio Urbano and Centro de Estudios Ciudad y Territorio, 10.

¹²⁵¹ See more Katrien Klep, "Tracing Collective Memory: Chilean Truth Commissions and Memorial Sites," *Memory Studies* 5, n. 3 (Jul 1, 2012): 259–69. <https://doi.org/10.1177/1750698012441299>; Leith Passmore, "Apolitical Memory of Political Conflict: Remembering Compulsory Military Service under Pinochet (1973-1990)," *Nuevo Mundo Mundos Nuevos*, On line (Oct 10, 2016). <https://doi.org/10.4000/nuevomundo.69713>. Violations to human rights during the Latin American dictatorships are of high complexity because they entail different versions and perspectives and, although not focus of this research, its debate is of highest importance.

¹²⁵² See more section 3.1 and on other perspectives in Joao Roberto Martins Filho, "The War of Memory: The Brazilian Military Dictatorship According to Militants and Military Men," Timothy Thompson, transl., *Latin American Perspectives* 168, 36, no. 5 (Sep, 2009); Rebecca J. Atencio, "Conclusion: Memory's Turns and Returns," in *Memory's Turn: Reckoning with Dictatorship in Brazil*, (University of Wisconsin Press: 2014); Nina Schneider, "The Brazilian Truth Commission: Local, National and Global Perspectives" (Berghahn Books: 2019).

¹²⁵³ Brasil, P.I. 99, art. 3; Brasil, P.I. 96, art. 3; Chile, D.S. 49, art. 37. The economic difference of forehand payments in the Chilean model and the risk of a long-term contribution in MCMV impacts those sums. In Brazil, beneficiaries are expected to contribute with a minimum of ca. 2,520USD (CUEX). In sum, 120 monthly installments in rates that, depending on the household's gross monthly income, starting from ca. 21USD to 48USD (equivalent to 80BRL to 180BRL, respectively, CUEX)). This goes in contrast to Chile, where the most-vulnerable beneficiaries only have to deposit an initial financial support (a one-time contribution) that can be as low as ca. 430USD, in the case of D.S. 49 (equivalent to 10UF, CUEX).

¹²⁵⁴ See table 3.

Moreover, neither of those public policy models have been expressly based on academic studies or have they set governmental reports or statistics justifying the financial choices. An exception was though observed in MCMV, that strongly related its creation to FJP's studies on the national housing gap. However, MCMV failed to target accordingly.¹²⁵⁵ This research evidenced a generalized lack of scientific information on decisions over (additional) grants, category thresholds, contributions and other fundamental figures of the programs.

Chilean D.S. 49 households can receive up to ca. 9,476USD in additional grants¹²⁵⁶, if applying for vertical densification grants and complying with various extra standards, such as the construction of three floors in a location up to 1,000m distant from a metro station in metropolitan areas. In turn, households of disabled persons, which fundamentally require more financial means, may be granted a maximum of ca. 4,307USD due to their condition.¹²⁵⁷ Based on the expectation that households of disabled persons have more financial burdens than others, the legal decision of D.S. 49 economically discriminates these families. If there are other reasons for that design, they should be at least justified.

In all case studies, subsidies may be higher depending on the region where a project is located.¹²⁵⁸ However, an opposite approach is given by both countries. MCMV, on the one hand, applies higher subsidies to the metropolises of Brasilia, Rio and Sao Paulo, and decreases subsidies insofar as the amount of inhabitants decreases.¹²⁵⁹ Although the factor of inhabitants per municipality is defining the subsidy, the high living costs of the cities is interpreted to be the reason behind such strategy. On the other hand, in Chile, higher subsidies are granted to low-density regions, such as *Atacama* and *Antartica Chilena*. If, in Brazil, urban migration is indirectly influenced, in Chile, the same has been tried to be contained. But, because there has been no legal justification upon the purpose of

¹²⁵⁵ See more on sections 5.12 and 5.1.4.

¹²⁵⁶ Chile, D.S. 49, art. 35.d. Equivalent to 220UF (CUEX).

¹²⁵⁷ Chile, D.S. 49, art. 35.f. Equivalent to 100UF (CUEX). Households with disabled members are expected to be living under worsened financial circumstances than others, because of extra costs they must endure and an statistical chance that a disabled person will not be employed. Costs include medical bills, infra-structural adaptation, social assistance support.

¹²⁵⁸ Chile, D.S. 1, art. 64, 67; Chile, D.S. 49, art. 34; Brasil, Ministerio das Cidades, I.N. 42, Annex I, 6.2, Annex II, 4.1.1.1; Brasil, Ministerio das Cidades, P. 114, 6.4.

¹²⁵⁹ Programs not only fail to justify, but also to correctly identify and target regional needs. Even though the amount of units planned for different Brazilian regions is legally set based on data provided by IBGE and FJP and published in the budget and multi-annual plan laws, those reports were not correctly applied to targeting. Targets were rather set regionally: for example, each of the five national regions have been set a housing deficit goal to overcome and a respective budget, varying from 8,3% in the center-west, to 44,6% in the south-east. The norm did not set an amount of vulnerable and emergent families proportional to the housing gap, nor referred to concrete aspects of participatory socio-spatial integration, what resulted in the low performance seen. See Brasil, P. 114, Annex I, 5.

those strategies, it is more difficult to find remediation and to refute those norms based on a violation to human rights.¹²⁶⁰

Furthermore, in both models, better-off segments suffer statistically less from the housing gap than vulnerable categories and yet, they enjoy of most financial investments.¹²⁶¹ Investment in better-off segments is claimed to be a political response to the pressure of the construction sector.¹²⁶² The sole guidelines of D.S. 19 clearly address the aim of boosting the construction sector.¹²⁶³ And higher investments on emergent categories were based on the expectation that they will have more chances to honor their proportionally higher debit.

However, the OECD observed that, although the Chilean housing gap is concentrated among the most poor, “a significant proportion of subsidies go to upper-income groups.”¹²⁶⁴ For example, from 2016 to 2018, Chile’s D.S. 19 selected at least twice as many applicants from emergent sectors.¹²⁶⁵ Similarly in Brazil, at the time of release of MCMV, less than 24% of the national housing gap referred to better-off categories (which theoretically fit to FGTS-funded tracks). However, that does not justify the disproportional investment to that category.¹²⁶⁶ Between 2013 and 2014, around 83% of families earning less than 3 minimum wages per month in urban areas lived under precarious housing conditions, as well as under circumstances of excessive family cohabitation or

¹²⁶⁰ The geography of housing affordability is not a factor that this research can decide upon, because it depends on out-of-scope national geographical and economic policies. However, they are of great importance, because they influence back in the development of the social housing system and influence migration. Hence, the missing legal justification is essential.

¹²⁶¹ Amore, “‘Minha Casa Minha Vida’ para iniciantes”.

¹²⁶² Magalhaes, Researcher’s Interview 2; Balbim et al, “Para Além Do Minha Casa Minha Vida,” 8-9; Comitê Técnico da Habitacao do CNC, de 24 de Julio de 2014, in: Balbim et al, “Para Além Do Minha Casa Minha Vida,” 11; Amore, “‘Minha Casa Minha Vida’ para iniciantes’.

¹²⁶³ Chile, D.S. 19, preamble 3.

¹²⁶⁴ OECD, *OECD Economic Surveys: Chile 2012*, 99.

¹²⁶⁵ Camara Chilena de Construcción, “Informe Macroeconomía y Construcción” (MACH, Nov 2018), graph 18.

¹²⁶⁶ Fundacao Joao Pinheiro, “Deficit Habitacional no Brasil 2013-2014,” Belo Horizonte: Centro de Estatistica e Informacoes, 2016, <https://tinyurl.com/yb9hzo2f>, 18, 35; IBGE/PNAD 2007-2012 in: Correia Lima et al, “Estimativas do Déficit Habitacional Brasileiro”, 5, Tabela 2. For divergent data see also CEF, “Demanda Habitacional no Brasil”; Fundacao Joao Pinheiro, Déficit habitacional no Brasil 2013-2014 In: Rezende Macedo et al, “Programa Minha Casa, Minha Vida”, para 21. Numbers slightly diverge due to regional and time spans. In Brazilian medium-size cities, Cuiabá/MS and Ribeirao Preto, ca. 36% of the housing gap is concentrated among high-income households (GMHI higher than 10MS); whereas in Metropoles such as Porto Alegre/RS, ca. 36% of the housing gap is concentrated among those households with less than 3MS GMI. In the states of Acre and Alagoas, that same gap increases to almost 60% and 77% (GEIPA/SUDES/VIGOV/CAIXA 2010 in Caixa Econômica Federal, Demanda Habitacional no Brasil”, Brasília: CEF, 2012, 69, 73, 77, 96). Those regional contrasts probably justify why different sources claim different housing gaps. Caixa Econômica Federal claims that half of the housing gap would be shared among better-off households, with a GMHI of 3-10 minimum wages a report set by the Brazilian Parliament but conducted by independent consultants found out that around 83% of the housing gap is concentrated among those households with an income smaller than than 3 minimum wages. IPEA is an independent research center which used general data from the national census.

excessive financial rent burden.¹²⁶⁷ However, in 2011, from 460.500 delivered units, not 23% have been given to category 1 (households with a GMHI lower than 3 minimum wages).¹²⁶⁸

The lack of justification of the legislator for such legal choices is a problem for the answerability dimension. But, overall, both frameworks must find means to justify their economic choices,¹²⁶⁹ because they are neither meeting the processes or the outcomes of a rights-based approach. Those pillar principles of accountability and of a rights-based approach require urgent adjustment.

Looking only at the need of creating a less discretionary frame, Denmark's experience provides inspiration.¹²⁷⁰ As part of the legal creation procedure, that country's Prime Minister presents a program to the *Folketing* (parliament), which shall be approved based on the respective Ministries' draft bills under the Prime Minister's coordination in a long discussion process (during usually from February to October every year).¹²⁷¹ Draft bills, although not publicly available, must include detailed information, including their relationship to other laws.

5.1.4.7 Exemption from eligibility criteria and forced evictions

Victims of natural disasters are eligible to apply for a housing subsidy of D.S. 49 and D.S. 19, even if they are proprietaries of a dwelling.¹²⁷² MINVU or SEREMI may dispense candidates from eligibility requirements, in case of families or organized groups leaving under extreme vulnerability.¹²⁷³ In such cases, MINVU and the Ministry of Cities have a large room for maneuver when granting a subsidy based on such exceptional conditions.

In the context of MCMV, FAR-funded households that, having lost their only property, and living in emergency situation or in state of public calamity, under

¹²⁶⁷ Fundacao Joao Pinheiro, *Deficit Habitacional no Brasil 2013-2014*, Centro de Estatistica e Informacoes (Belo Horizonte: FJP, 2016), <https://tinyurl.com/yb9hzo2f>, 18, 35. Numbers slightly diverge due to regional and time spans, see ft above.

¹²⁶⁸ Although in 2012 this number grossed to almost 48% of delivered units, the proportion is still low compared to the housing gap.

¹²⁶⁹ It can be interpreted that an economic will has underpinned the legislator to neglect a rights-based targeting.

¹²⁷⁰ OECD, "Chapter 4: The development of new regulations" in *Better Regulation in Europe: Denmark*, Paris: OECD Publishing 2010, <https://www.oecd.org/gov/regulatory-policy/betterregulationineuropedenmark.htm>, 79-80.

¹²⁷¹ Id.

¹²⁷² Chile, D.S. 49, art. 5.a, 6. Applicable to those D.S. 49 projects applying to D.S. 19. In such cases, it is expected that the candidate suffers from housing inadequacy due to those events.

¹²⁷³ See Chile, D.S. 49, art. 6. "(...) *condiciones de extrema marginalidad habitacional, tales como campamentos, conventillos, cités, operaciones sitio o en otras situaciones especiales de urgente necesidad habitacional* (...)".

direct indication of the federal government may as well apply for the program.¹²⁷⁴ Consequently, they are excluded from selection procedures and directly accepted for resettlement, relocation or substitution (of housing units).

In like manner, the law foresaw that families *relocated* due to operations related to the Olympic Games would be exempted from contribution.¹²⁷⁵ In the Chilean case, the law leaves it to the discretion of the executive to decide upon exceptions.¹²⁷⁶ As long as there are arguments for exceptions, families living under extreme poverty or inadequate conditions may be exempted from a few of the eligibility requirements in D.S. 19 and D.S. 49.

Unable to afford formal property, urban dwellers have been living under informal neighborhoods without secure tenure rights and enduring inadequate housing conditions for years. However, under-covered as a supportive strategy of social housing programs, those exceptional measures have been related to economic and exclusionary aims¹²⁷⁷: reports, interviews and studies expose those exceptions to be directly connected to illegal forced evictions and violation to human rights.¹²⁷⁸ According to the Higher Commissioner for Human Rights, over 250,000 people were victims of forced eviction for the sake of infra-structure constructed for the Olympic and World Cup games of 2014 and 2016, e.g. roads, hotels and stadiums in Brazil.¹²⁷⁹

¹²⁷⁴ Brasil, P.I. 99, art. 2, p.u., 6, I-III; Brasil, P. 163, ch I, 4.7.3, 4.9.

¹²⁷⁵ Brasil, P.I. 99, art. 6, para 3, I-IV. In such cases, subsidies shall too be upgraded from 25,663USD to 36,088USD, equivalent to 96,000BRL to 135,000BRL respectively (CUEX).

¹²⁷⁶ Chile, D.S. 49, art. 6. “Based on funded reasons, MINVU or SEREMI ... may exclude requisites or conditions of eligibility of the housing project, of families or organized groups that live under extreme marginalized housing conditions, such as, *campamentos* ... or in other special conditions of urgent housing necessity, for the effects to regularly apply for this program”. Author’s translation.

¹²⁷⁷ James Freeman and Marcos Burgos, “Accumulation by Forced Removal: The Thinning of Rio de Janeiro’s Favelas in Preparation for the Games,” *Journal of Latin American Studies* 49, n. 3 (Aug 2017), <https://doi.org/10.1017/S0022216X16001942>.

¹²⁷⁸ HRC, A/HRC/WG.6/27/BRA/2, para 52; Fernández Arrigoitia, “Unsettling Resettlements”; Bruce Douglas, “Brazil Officials Evict Families from Homes Ahead of 2016 Olympic Games,” *Guardian*, on Oct 28, 2015, sec. World news, Accessed Nov 18, 2019. <https://www.theguardian.com/world/2015/oct/28/brazil-officials-evicting-families-2016-olympic-games>; Maria Eduarda Chagas, “Book Maps Forced Eviction of Residents During Eduardo Paes Administration,” *RioOnWatch*, Website, Accessed Nov 18, 2019. <https://www.rioonwatch.org/?p=21863>; Josefina Salomon, “The Dark Side of Rio 2016: 20 Families Win Fight to Stay in Their Homes, against All Odds,” Website, Amnesty International, Accessed Nov 18, 2019. <https://tinyurl.com/y9r5oo25>.

¹²⁷⁹ Melissa Fernández Arrigoitia, “Unsettling Resettlements: Community, Belonging and Livelihood in Rio de Janeiro’s Minha Casa Minha Vida,” In *Geographies of Forced Eviction: Dispossession, Violence, Resistance*, ed. Katherine Brickell, Melissa Fernández Arrigoitia, and Alexander Vasudevan, 71–96, London: Palgrave Macmillan UK, 2017. https://doi.org/10.1057/978-1-137-51127-0_4; HRC, A/HRC/WG.6/27/BRA/2, para 52. Audefroy also connects evictions in Rio to the consequent existence of “street children”, who are those “sons and daughters of families evicted to beyond the periphery” (Joel Audefroy, “Eviction Trends Worldwide – and the Role of Local Authorities in Implementing the Right to Housing,” *Journal of Environment and Urbanization* 6, no. 1 (Apr 1994), 24).

Based on the guidelines of new housing strategies, that included the respect for environmental safety, families were taken out of their residencies and relocated to other areas. However, specialists claim that those were only masked reasons.¹²⁸⁰ For example, until those global events, housing issues in Rio's favelas were out of focus. But around 2010, right before the construction projects started, 21,000 houses were sentenced to demolition and eviction.¹²⁸¹

Freeman and Burgos claim that, particularly in Rio, the process of choosing families for eviction was reported to be based on the economical decision of the government, operationalized by technical agencies and completely lacking a participatory debate.¹²⁸² Neither were dwellers able to find access to remediation and redress, because, as a rule, they did not possess formal tenure rights.¹²⁸³ Moreover,

all of these removals are further facilitated by the PMCMV programme, which in addition to providing an outlet for over accumulated capital in its own right, offers destinations for removed residents.

This package of measures is part of a neoliberal agenda that aims to open the city to new processes of capital accumulation, particularly through a series of mega-events. International capital requires pacified favelas in the background of television broadcasts that emphasise sponsorship by Visa, McDonalds and Budweiser. Brazilian construction and engineering firms build the PMCMV housing and carry out the public works within and around the chosen favelas. They also build the stadiums and transportation infrastructure required by the mega-event city, that must at least appear to be a pacified city. Tamed favelas valorise neighbouring real estate, from the Porto Maravilha project surrounding Providência to the upscale gated communities neighbouring Laboriaux. Pacified favelas become new markets for the commodities of multinational firms.¹²⁸⁴

MCMV neoliberal nature is inspired in the Chilean historical housing system, that also envisaged government-led evictions.¹²⁸⁵ As Rodriguez and Icaza point out, in the 1970's, low-income inhabitants of the great Santiago, some of the first awarded with Chile's "well known social housing program", were already

¹²⁸⁰ James Freeman and Marcos Burgos, "Accumulation by Forced Removal: The Thinning of Rio de Janeiro's Favelas in Preparation for the Games," *Journal of Latin American Studies* 49, no. 3 (Aug 2017), <https://doi.org/10.1017/S0022216X16001942>.

¹²⁸¹ Id.

¹²⁸² Ib.

¹²⁸³ Ib.

¹²⁸⁴ Freeman and Burgos, Conclusions.

¹²⁸⁵ HRC, A/HRC/37/53/Add.1, para 83; Ducci. See section 3.3.1.1.

victims of eviction.¹²⁸⁶ From 1981 to 1990, over 11,000 persons were evicted from that region.¹²⁸⁷ International watchdogs have been more recently able to report on a focused use of violence against individuals and especially against indigenous minorities.¹²⁸⁸

Indeed, accordance to the understanding of Audefroy, there is a global pattern where states and private actors create a system that formally enables evictions.¹²⁸⁹ The legalization of evictions is a means used for excusing landowners from violating human rights. However, such violations of human rights must be combated with, for example, a legal framework that protects tenure in all its varieties of forms.¹²⁹⁰ Measures should be taken to update planing and zoning laws with the needs of locals and to create accessible redress and grievance mechanisms.¹²⁹¹ Especially “effective and accessible procedures”, such as decision-making procedures, “must be established to ensure that residents can hold governments and other actors accountable for all aspects of the right to housing[...].”¹²⁹² Solutions also involve the publication of international resolutions at the local level in order to raise awareness among locals about their rights. It must be clear for all stakeholders that social housing can not be used as another strategy to mask violations to human rights.

5.1.4.8 (Un)Affordability

Unaffordability is a common issue affecting both Brazilian and Chilean households.¹²⁹³ That can particularly affect emergent categories, for they are confronted with not only governmental contributions and the payment of private loans, but also with shorter subsidies and less tax releases. Indirect costs and extra burdens, which are *prima facie* excluded from an initial idea of a pro-

¹²⁸⁶ Alfredo Rodriguez and Ana Maria Icaza, “The Eviction of Low-Income Residents from Central Santiago de Chile,” in *Evictions and the Right to Housing: Experience from Canada, Chile, the Dominican Republic, South Africa, and South Korea*, ed. Antonio Azuela, Emilio Duhau and Enrique Ortiz (Ottawa: IDRC Books / Les Éditions du CRDI, 2000). <http://qut.ebib.com.au/patron/FullRecord.aspx?p=3261159>.

¹²⁸⁷ Audefroy, 11, 13. Audefroy reports at least 10,000 persons evicted only in the city of Sao Paulo in 1990, as similar situation to Chile.

¹²⁸⁸ “World Report 2013 – Chile,” Human Rights Watch, Jan 31, 2013, Website, Accessed Jun 16, 2020. <https://www.refworld.org/docid/510fb4f069.html>; “Chile: Investigate Police Violence Against Mapuches,” Human Rights Watch, Aug 10, 2012, Website, Accessed Jun 16, 2020. <https://www.refworld.org/docid/502c615497.html>; Inter-American Commission on Human Rights, “Annual Report of the Inter-American Commission on Human Rights 2011,” IACHR, 2012. <https://www.refworld.org/docid/50bc7fbf2.html>, PM 321/10.

¹²⁸⁹ Audefroy, 16.

¹²⁹⁰ UNGA, A/73/310/Rev.1, para 36.

¹²⁹¹ UNGA, A/73/310/Rev.1, para 39-41, 93.

¹²⁹² UNGA, A/73/310/Rev.1, para 17.

¹²⁹³ See more Pero, “Housing Policy in Chile”; Vicente Correia Lima Neto, Bernardo Alves Furtado and Cleandro Krause, “Estimativas do Déficit Habitacional Brasileiro (PNAD 2007-2012).” NT 5 (Brasilia: IPEA, Nov 17, 2013).

gram's basic contributory plan, can develop generalized an unaffordability condition. Faced in addition to the initial deposit or to the monthly installments of the case studies, financial burdens must be altogether transparently communicated, calculated, planned and achieved.

In the FDS-context, MCMV charges interest rates of 5% and 6% to categories 1.5, 2 and 3, to which 2,16% may be added in favor of financial agents.¹²⁹⁴ Additionally, financial agents are allowed to afflict emergent families with charges of 1,5% of the financed figure and 0,2695% for operations that regard acquisition of construction materials.¹²⁹⁵ In the case of the contract presented in annex III, the deposit coming from FGTS concerned only 2% of all the payment¹²⁹⁶, whereas the beneficiary's own private savings came close to 18% of the total purchase price.¹²⁹⁷ Added to an administrative fee and an interest rate over 5%, the remained balance was financed in 360 monthly installments of 152USD, ca. 22% of the beneficiary's whole income.¹²⁹⁸

Even though the offered interest rates are lower than those offered by private banks, this scheme generates extra burdens, such as interest rates, taxes, insurance and fees, to the already vulnerable households. But, in the context of social housing, where goals are to ensure the human right to adequate housing, this scenario must be reviewed. It is contradictory to that maximum goal to operationalize unaffordable social housing.

Indirect costs also adversely affect beneficiaries. In order to complete the legal agreement, a formal registration of the purchase is expected to take place after the selection process is concluded. In both country-models, that should be issued at a local Real Estate Registry.¹²⁹⁹ In this particular context, MCMV has created a better environment for tax-payers than D.S. 19 and D.S. 49 because most-vulnerable beneficiaries have been alleviated with reduced registration fees for respective FAR and FDS contracts.¹³⁰⁰ Overall registry costs related to those funds should be reduced in seventy-five per cent.¹³⁰¹ Significantly, the registration of the purchase contract is also covered by those funds.¹³⁰² In the

¹²⁹⁴ Brasil, I.N. 42, 6.5, 6.5.2.

¹²⁹⁵ Brasil, I.N. 42, 6.6.c.

¹²⁹⁶ Annex III, B.

¹²⁹⁷ Annex III, B.

¹²⁹⁸ Annex III, A, I; C.

¹²⁹⁹ Annex I, 27; Annex II, Contract of Purchase and Prohibitions, 10-14.

¹³⁰⁰ Brasil, L. 11.977, art. 42-44.

¹³⁰¹ Id.

¹³⁰² Annex I, 27.1; Annex V, 38.1.

FGTS context, those notary fees¹³⁰³ should be subsidized up to 50%¹³⁰⁴ for FGTS-funded projects.¹³⁰⁵

In the Chilean case, D.S. 19 grants ca. 430 USD in similar-kind notary fees.¹³⁰⁶ However, beneficiaries must pay the fees beforehand against which, with documental proof of payment, they may be reimbursement with the amount paid.¹³⁰⁷ In contrast to free-of-charge procedures, a reimbursement requires advanced funds. Additionally, informational awareness of beneficiaries is crucial: beneficiaries must be instructed on how to proceed in order to be reimbursed (e.g. the necessary documental proof, the timeline and form of application). In the context of vulnerability and poverty, eventual and usual conditions of lack of information, illiteracy or the lack of forehand financial means can directly impact on the access to such additional grant. Consequently, socio-economic disadvantages can easily hinder compliance to such legal requirements, leaving vulnerable individuals without reimbursement. Therefore, conditioning additional subsidies to documental proof is not a feasible solution for social housing. And so, that described method must be urgently reconsidered.

Moreover, emergent beneficiaries are required in both models to secure life and disability insurances for the borrower and for damages against the real estate property. Particular to Chile's context, a fire and earthquake coverage must be safeguarded.¹³⁰⁸ Selected beneficiaries of all the previously mentioned programs are allowed to apply for a complementary credit.¹³⁰⁹ This is different from the general context of the most-vulnerable beneficiaries in both Brazil and Chile, which do not have that possibility to take extra loans. However, it also increases the chances that families will endure extra financial burdens and living in unaffordable conditions.

Moreover, another example of unaffordability comes from the Brazil. A report of the Brazilian Court of Accounts identified that households were not able to

¹³⁰³ They comprehend for example those spent in the legalization of documents, in insurance and in charges from an eventual grace period. Since 2018, the Brazilian Supreme Court decided PAR beneficiaries and, consequently, those from MCMV whose funds were linked to FAR were tax immune to property tax. Although not the general rule, this could in theory also comprehend beneficiaries that are partly funded by FGTS, if FAR also funds their programs. See Chile, D.S. 19, art. 3.c; Brasil, L. 11.977, art. 43, II; Brasil, I.N. 42, 6.3.2; Annex III, Clause fortieth; *See* Brasil, Supremo Tribunal Federal, RE 928902/SP, Julgado de mérito com repercussão geral 884, Min. Alexandre de Moraes, At DJe 198 Sep 12, 2019 (Pleno, Oct 17, 2018).

¹³⁰⁴ An interviewed beneficiary says they must share 25% of the notary fees upon registration of tenure rights, a high amount to someone living in vulnerability. The interviewee also claims, they have not yet been able to register the contract in their name, because of the high fees they would have to disburse. See also Brasil, L. 11.977, art. 43, I.

¹³⁰⁵ Brasil, L. 11.977, art. 43, I.

¹³⁰⁶ Chile, D.S. 19, art. 3.c; Chile, R.E. 6.509, art. 5. Equivalent to 10UF (CUEX).

¹³⁰⁷ Annex II, Clause Nineth.

¹³⁰⁸ Chile, D.S. 1, art. 70; Chile, D.S. 19, art. 22-23.

¹³⁰⁹ Chile, D.S. 1, art. 69.

afford the real state transfer tax (ITBI)¹³¹⁰ or the formal registration. Not only the lack of awareness plays a strong role, but also the refuse of notary registries to apply the legally defined fees (in some cases, without costs) and the lack of initiative of municipalities to exempt taxes.¹³¹¹ They concluded that households oft compromise their income when trying to comply with the norm.¹³¹² Hence, urgent changes were required to enforce registries to comply and raise awareness among right-holders.

Nevertheless, in a positive interpretation in 2018, after years of judicial dispute, the Brazilian Supreme Court decided that FAR-funded MCMV beneficiaries should enjoy from tax immunity, mainly exempting them from paying a real estate property tax – IPTU.¹³¹³ This was a breakthrough achievement that took away some extra burdens from the most-vulnerable Brazilians. In this fashion, the universal application of tax alleviation and exemption of fees, as observed in MCMV, should be a more suitable approach for Chile, considering that they can make housing affordable and accessible.

In fact, in Brazil, there is an express legal prohibition against other charges and fees besides those created by the FGTS Board of Trustees.¹³¹⁴ However, the Brazilian Superior Court has accepted the existence of extra charges by settling the understanding that “construction interest rates” are not abusive contractual clauses.¹³¹⁵ That was so substantiated to guarantee that the construction of new households would be finished in time and its insertion in the contract should guarantee clarity, as a compensatory interest regulated in accordance with the Consumer’s Code.¹³¹⁶ Minority lines of argumentation in the same Court had actually diverged and evaluated that as an abusive clause, among other reasons, because, during the construction work, the purchaser enjoys neither the property nor the capital of the construction firm.¹³¹⁷ Anyhow, it is once more clear that Courts interpret beneficiaries as consumers and fail to observe affordability as a condition of adequate housing.

¹³¹⁰ TCU, “Relatório de Auditoria no Programa Minha Casa Minha Vida”, para 94; Annex I, 25.

¹³¹¹ TCU, “Relatório de Auditoria no Programa Minha Casa Minha Vida,” para 95.

¹³¹² TCU, “Relatório de Auditoria no Programa Minha Casa Minha Vida,” para 94, 96.

¹³¹³ “The assets and rights that are part of the assets of the fund linked to the Residential Lease Program (PAR) created by Law 10.188/2001, benefit from the tax immunity provided for in article 150, item VI, paragraph 'a' of the Federal Constitution” (Brasil, STF, RE 928902, *Julgado de mérito com repercussão geral* 884, author’s translation). For clarification, PAR is the program that Caixa manages and FAR provides funds.

¹³¹⁴ Brasil, Ministerio das Cidades, I.N. 42, 6.6.2.

¹³¹⁵ Brasil, Superior Tribunal de Justica, EREsp 670117/PB, Minister Sidnei Beneti, at DJe 26/11/2012 RSTJ, vol. 229, p. 283 (S2 Jun 13, 2012). “*Juros no pé*” are “construction interest rates” related to the waiting time of construction projects.

¹³¹⁶ Brasil, Consumer’s Code, art. 6, III.

¹³¹⁷ Brasil, STJ, ERESP 670117/PB, 9.

Beneficiaries also face new fees and taxes e.g. on property, energy, water, to which it is highly possible, they were not expecting nor were concretely informed about before program adherence. It is important to stress that emergent categories are not usually backed by supporting entities, whose task should involve such kind of assistance.¹³¹⁸ Therefore, as a rule, emergent candidates stand alone when calculating their financial conditions to apply. Ultimately, if installments turn to be unaffordable and the beneficiary enters in default, they should be excluded from the program and the property tenure, returned to the government.

The first consequence of default is that families face exit clauses as well as eviction. In sum, by losing their dwelling especially due to unaffordability and high costs, families will continue to be subject to inadequate housing conditions. This logic of the law is self-destructive. A generalized bad financial planning among beneficiaries can drive to a market insolvency, from which government and private enterprises could too endure strong economic crises. In order to avoid a crisis scenario, unaffordability and housing inadequacy must be combated by all involved stakeholders. Governments and the private sector must find effective solutions so that households can meet their ends.

In the end, the contribution and final social housing costs amount two different values. There is a certain level of legal transparency on the costs and rates of installments in both models. However, those systems are rather of complex understanding for a lay audience, and it can not be expected that social housing beneficiaries will be able to understand and discuss eventual inaccuracies. In addition, the judicial understanding of beneficiaries as consumers weakens redress and grievance, as particularly illustrated with the Brazilian example. Therefore, in both MCMV contracts and in Chilean certificates, the calculation of contributions should be simplified, stating a clear amount to be charged.

In order to avert that vicious cycle, it is necessary to provide visibility, transparency and clarity in rules regarding financial costs. Practical examples come from Europe, where instruments were developed to try to combat indebtedness with mortgage tax relief schemes.¹³¹⁹ For example, in the Netherlands, interest payments could be deducted from taxable income.¹³²⁰ However, a study of the European commission found out that “housing allowances reduce inequality,

¹³¹⁸ Although FGTS-Associativo enjoys the existence of a supporting entity, this program entails only a small proportion of MCMV investments. FGTS-Individual, that does not count with the existence of such entities, receives most investments. *See* section 3.3.

¹³¹⁹ Francesco Figari et al, “Recent Changes in Housing Policies and Their Distributional Impact across Europe,” (Brussels: European Commission, Directorate-General for Employment, Social Affairs and Inclusion, Jan 2017), 18-20. Despite critics to those models, it is worth looking at those comparative solutions to mortgage indebtedness.

¹³²⁰ Figari et al, 19, 26. “Housing allowance is shown to have a considerable inequality-reducing effect in Sweden, the UK, the Netherlands and Hungary.”

while mortgage interest tax relief tends to increase it.”¹³²¹ Overall, housing allowances targeted most-vulnerable families, though they suffered cross-country and regional variations.¹³²² In the long term, the aim to achieve social justice and equality should be achieved, so such lessons of should be taken into consideration.

Social housing programs have the purpose to provide adequate housing to those deprived of it. According to GC4,

personal or household financial costs associated with housing should be at such a level that the attainment and satisfaction of other basic needs are not threatened or compromised. Steps should be taken by States parties to ensure that the percentage of housing-related costs is, in general, commensurate with income levels.¹³²³

In that fashion, the Russian constitution presents a legal solution. It guarantees not only the right to housing, but also that “low-income people and other persons mentioned in law and in need of a home shall receive [housing] gratis or for reasonable payment from the state [...]”¹³²⁴ Additionally, communication and long-term planning are essential for affordable housing. In the case of D.S. 1 and D.S. 19, it is possible to create a saving account in any bank, which should further serve as an account for payments.¹³²⁵ Thus, each financial institution can have its own means of communicating beneficiaries about their savings and costs. Caixa created a virtual mechanism for website or smartphone application in which beneficiaries can have access to information concerning their monthly installments.¹³²⁶ Although it is questionable if poor beneficiaries have instrumental access to such technologies, the ICT initiatives are valid because they can drive to more efficient accountability. In such cases, the state must guarantee an inclusive strategy, so that the use of those technologies does not cause the exclusion of those that find difficulty in adapting, e.g. due to financial limitations, age or illiteracy.¹³²⁷

The Brazilian strategy can also be improved via gender-responsive methods, for example, e.g. via tax incentives supporting more inclusive and equal access to female-headed households.¹³²⁸ That can also be extended to other marginalized

¹³²¹ Figari et al, 24.

¹³²² Figari et al, 28, 33.

¹³²³ UN CESCR, GC4, para 8.c.

¹³²⁴ Russian Federation, *The Constitution of the Russian Federation*, Ch. 2, Online, Official translation (1993), <http://www.constitution.ru/en/10003000-03.htm>, art. 40.3. It is important to remark that this text was accepted after the economic regime changed to a market-based system.

¹³²⁵ Chile, D.S. 1, art. 10-11.

¹³²⁶ “Internet Banking Caixa,” Caixa Econômica Federal, Official website, Accessed Sep 5, 2018, <https://internetbanking.caixa.gov.br/sinbc/#!/nb/login>.

¹³²⁷ Sepulveda Carmona, Nyst and Hautala, 45.

¹³²⁸ UN Human Rights Council (HRC), Implementation of General Assembly Resolution 60/251 of 15 March 2006, Entitled ‘Human Rights Council,’ Report of the Special Rapporteur on Adequate

groups, such as afro-descendants and indigenous persons, depending on each country's socioeconomic conditions. In this specific case of tax incentives, participatory budgeting mechanisms can increase participation of all community members, engaging a bottom-up approach and “ensuring the adequate use of resources.”¹³²⁹

Moreover, the creation of tax exemptions for construction materials used in social housing can also boost engagement of service providers.¹³³⁰ According to Gilbert and Rosen, “without public subsidies, the private marketplace will not meet housing affordability gaps.”¹³³¹ Hence, tax and fiscal alleviation should be promptly followed in Chile and expanded in Brazil, looking at (other) taxes and charges that overburden beneficiaries or specific groups.

Finally, particular to the Brazilian model, fiduciary alienation (*alienação fiduciária*) enables a lender to temporarily own the property of a financed object, while the debtor makes use of the purchased object.¹³³² This institution, different from leasing, mortgage or trust, has been borrowed from the practices of the Brazilian private housing market and was adopted by the MCMV in all its categories to secure the government of payment.¹³³³ Its use strongly impacts beneficiaries under the answerability spectrum.

The lender takes the property as a guarantee during the contract's lifetime, whereas the debtor is secured to own the property by contract resolution with the end of the debt.¹³³⁴ However, its use can increase the vulnerability of already vulnerable households, who will be sanctioned with eviction in case of unaffordability. Therefore, fiduciary alienation drastically deviates the aim of the Brazilian social housing policy from a rights-based approach.

Housing as a Component of the Right to an Adequate Standard of Living, Miloon Kothari, Item 2 of the Provisional Agenda, A/HRC/4/18 (Feb 5, 2007), 31, Q. 16; HRC, A/HRC/37/53, para 75.

¹³²⁹ HRC, A/HRC/37/53, para 76.

¹³³⁰ Gilbert and Rosen, “Can You Afford to Live Where You Choose?”, 70.

¹³³¹ Gilbert and Rosen, “Can You Afford to Live Where You Choose?”, 70.

¹³³² See Annex I, Clause 7; Anjali Kumar, “Installing Institutional Infrastructure,” In *Access to financial Services in Brazil*, (Washington, D.C.: The World Bank, 2005), <https://elibrary.worldbank.org/doi/pdf/10.1596/0-8213-5716-6>, 348-349. Brasil, Lei 9.514, de 20 de novembro de 1997, L 9.514 (1997), art. 22-23; Brasil, Civil Code, art. 1.361 a 1.368-B. See Iara Pereira Ribeiro and Maria Paula Costa, “Crise Imobiliária Brasileira: a transferência de renda pelos distratos e créditos podres.” In *Revista Eletrônica Direito e Sociedade – REDES*, v. 7, n. 1, p. 139-157 (Canoas: Unilasalle, 2019); Leandro Moreira Valente Barbas, “Do direito do consumidor à purgação da mora em contratos garantidos por alienação fiduciária,” *Revista Discente DIREITO GV-redGV* 1, no. 1 (2011). Kumar claims that fiduciary alienation was first used in the context of car finance, as chattel mortgage. At the time of the release of the book, it assumed that the construction sector had large concerns over the judiciary's interpretation on the repossession of real estate properties. Yet, fifteen years past that publication, most recent Brazilian literature observe a usual implementation of that institution.

¹³³³ Kumar, 348-349; Ribeiro; Barbas.

¹³³⁴ Id.

In Chile, differently, the use of the dwelling in guarantee is more restricted in the social housing context, achieving only beneficiaries of D.S. 1, Title II.¹³³⁵ Under this category, complementary mortgage credits can be taken and, in the event of default, the sum derived from the sale of the dwelling can be used to pay the debt.¹³³⁶ However, because Chilean applicants are required to contribute before or at the time of application with an *ahorro* (a deposit in a savings account), they fulfill their financial input before or at the beginning of the benefit. Thus, they do not have to guarantee any payments after the dwelling is delivery.¹³³⁷

5.2 Service Providers

Service providers must follow certain specific technical, legal, procedural criteria for project construction. Involved supporting entities must ensure that those criteria are followed or ensure those criteria themselves. As that same international report recommends, targeting must also observe “true housing needs (...) difficult to (...) manipulate and (...) easy (...) to verify,”¹³³⁸ such as access to toilet and crowdedness.

Those non-governmental actors that aspire providing their services to social housing programs must also be eligible to do so. In Chile, cooperatives, NGO’s, financial institutions, construction firms can take that role.¹³³⁹ In Brazil, traditional service providers will mainly refer to construction firms or realtors, but also public enterprises and entities will be observed providing services. Minimum eligibility requisites for applicant enterprises focus on legal, technical, financial, economic and labor matters. Similar to the structure of D.S. 49, its respective D.S. 19, and FDS and FAR-funded MCMV projects, service providers will be subject to diffuse administrative norms when engaging with D.S. 1, its respective D.S. 19, and FGTS-funded projects.

This section will assess the eligibility criteria of applicant providers (5.2.1.1) and of projects for D.S. 19 and D.S. 49 (5.2.1.2), FAR (5.2.1.3), FDS (5.2.1.4), D.S. 1 and D.S. 19 (5.2.1.5), FGTS Individual (5.2.1.6) and FGTS Asociativo (5.2.1.7). A comparative, critical rights-based assessment (5.2.2) will focus on technical criteria (5.2.2.1), sustainability standards (5.2.2.2), social assistance (5.2.2.3) and on the volatility of legal criteria (5.2.2.4).

Eligibility, Application and Selection

¹³³⁵ Chile, D.S. 1, art. 69, 74. And eventually, those D.S. 19 respective categories.

¹³³⁶ *Id.*

¹³³⁷ Chilean beneficiaries may anyhow face extra debts not covered by the program, leading to unaffordability conditions. Or else, if caught violating the contract, beneficiaries may lose their dwelling too. *See* Exit and Sanctions of Beneficiaries on section 5.1.5.

¹³³⁸ OECD, *OECD Economic Surveys: Chile 2012*, 99-100.

¹³³⁹ *See* more section 4.2.

In both Brazil and Chile, procedures differ in the way how service providers apply and get selected. Yet, all case studies set minimum required technical standards for projects as well as legal and fiscal requirements for the applicant provider, that produced a public selection list. This section follows to examine application and selection procedures of service providers (5.2.1.1) in D.S. 19 and D.S. 49 (5.2.1.2), compared to FAR (5.2.1.3) and FDS programs (5.2.1.4), in addition to emergent tracks D.S. 1 and D.S. 19 (5.2.1.5), FGTS Individual (5.2.1.6) and Asociativo (5.2.1.7).

5.2.1.1 General eligibility conditions

The eligibility of a service provider or sponsor entity to D.S. 1 and respective D.S. 19 projects should follow similar requirements as to those of D.S. 49. In sum, interested parties should register with all necessary documentation and get certified.¹³⁴⁰ In both D.S. 19 and D.S. 49, supporting entities may be a natural or a legal person, so their eligibility conditions will vary depending on those pre-conditions.¹³⁴¹ They can register and check their eligibility at any time. Or else, they can do it directly for a call for applications of a specific project, as it was the case in municipality of Maule, in Talca.¹³⁴² This is different to MCMV-E, that requires a call for proposals for their habilitation process (or eligibility check).

MINVU's official website annotates on all necessary documents for application.¹³⁴³ In general, providers should register their consultants, professionals, technicians and administrative workers and present proof on their background, such as criminal and financial history, as well as for partners and for the legal person, in the case of enterprises.¹³⁴⁴ Applicant entities should too present a certificate of experience, or in case they have already had any selected projects with a SERVIU, a certification of compliance to labor and tax obligations.¹³⁴⁵ Exceptionally, in D.S. 19, a proof of professional title and a sworn statement must be presented 60 days before the "first activity" related to projects.¹³⁴⁶

¹³⁴⁰ "Entidades de Asistencia Técnica: Minvu Proveedores Técnicos," MINVU.

¹³⁴¹ Chile, R.E. 1.875, *artículo preliminar: actividade o actividades*; Chile, D.S. 49, art. 54-55; Chile, R.E. 6.509, art. 1.

¹³⁴² "Entidades de Asistencia Técnica: Minvu Proveedores Técnicos", MINVU; "Procedimiento de ingreso proyectos Fondo Solidario de Elección de Vivienda," SERVIU Maule, Official Website, May 19, 2019, <https://cutt.ly/uyMyLUa>.

¹³⁴³ MINVU, "Entidades de Asistencia Técnica: Minvu Proveedores Técnicos."

¹³⁴⁴ Id.

¹³⁴⁵ Ib.

¹³⁴⁶ Chile, R.E. 6.509, art. 2.2; Chile, R.E. 1.875, *artigo preliminar*. Although D.S. 19 and its related regulation R.E. 6.509 do not mention the concept of "activity", that understanding may be borrowed from R.E. 1.875, regulating D.S. 49. According to it, activity refers to "the service of technical, legal or social matter to be conducted by the sponsor entity, the construction company or SERVIU, defined as Technical Assistance Services", as regulated by that resolution. Author's translation.

In Brazil, basic eligibility criteria for firms request, *inter alia*, that they have no paralyzed projects.¹³⁴⁷ For example, FAR also requires projects to undergo an eligibility check from Caixa, in which a construction firm must prove its own legal and fiscal regularity.¹³⁴⁸ However, besides giving the responsibility to Caixa to check legal, fiscal and technical aspects, MCMV's legal text does not depict the exact aspects of eligibility for construction firms.

The only official reference found is a list of required documents in Caixa's website.¹³⁴⁹ That documental proof should be provided from different registries and institutions, some of them having a period of validity and encompassing cross-checks.¹³⁵⁰

In the case of MCMV-E, the financial agent is responsible for the eligibility check or "habilitation process" of supporting entities in the context of MCMV-E, which requires an additional evaluation by the operational agent.¹³⁵¹ The aim of this process is to attest the institutional regularity and the eligibility requisites of the applicant entity.¹³⁵² This part of the procedure is analogous to D.S. 19 and

¹³⁴⁷ Brasil, P. 114, Annex I, 8.1.1.e, 8.1.2, 8.1.2.1. Yet, projects paralyzed by supervenient or unpredictable facts will not be taken into consideration, unless if there has been a deliberate transgression or misconduct. That includes inflation, working costs, typical climate phenomenon and violation of possession rights without surveillance.

¹³⁴⁸ Brasil, P. 114, Annex I, 8.

¹³⁴⁹ Caixa Econômica Federal, "Checklist Construtora." Brasília: CEF, 20AD. <https://tinyurl.com/yco9dfe9>.

¹³⁵⁰ Brasil, Ministério do Planejamento, Desenvolvimento e Gestão, Instrução Normativa 3, de 26 de Abril de 2018, I.N. 3 (2018); Brasil, L. 8.666, art. 29, I; Brasil, L. 12.846, art. 23; "SICAF," Portal de Compras, Official website, Jun 17, 2019. <https://www.comprasgovernamentais.gov.br/index.php/sicaf>; Controladoria Geral da União, "Portal da Transparência – Sanções," Official website, Accessed Jul 30, 2019, <http://www.portaltransparencia.gov.br/sancoes>; Brasil, P. 114, Annex I, art. 1, e. *Junta Comercial* is a regional commercial registry. Caixa's databanks SIPES and CEIS/CONRES check debts under the taxpayer registration of the legal and natural persons involved (Brasil, L. 8.666, art. 29, I, 87-88; Brasil, L. 12.846, art. 23;). That includes a regional commercial registry (*Junta Comercial*), the national architects' and urbanists' council – CREA/CAU, the registry of suspended and disreputable firms – CEIS/CONRES, the Brazilian National Institute for Social Security – INSS, the Unified Registry for Governmental Suppliers – SICAF and the Brazilian program for quality and productivity – PBQP-H. Based on the Anti-corruption Law, those registries are publicly provided by CGU on enterprises that have been sanctioned by the government. A Negative Certificate of Debts (*Certidão Negativa de Débito – CND*) is emitted to legal persons that do not have any debts with INSS. As a general rule, a firm that has payed its employees in accordance to Brazilian labour laws shall be granted the certificate. In case of debit with INSS, the service provider must first regularize its situation, because MCMV protects the paradigms of *trabalho social*, or "social labour". *Sistema de Cadastramento Unificado de Fornecedores – SICAF* is an electronic registry for suppliers of the federal public administration (Brasil, I.N. 3). PBQP-H (*Programa Brasileiro de Qualidade e Produtividade do Habitat*) is a federal program that supports quality control for business enterprises and other development institutions. See section 5.2.1.6.

¹³⁵¹ Brasil, Ministério das Cidades, Portaria 367, de 7 de junho de 2018, P. 367 (2018), art. 2, 7; Brasil, Ministério das Cidades, Portaria 747, de 1 de dezembro de 2014, P. 747 (2014), Annex I, 1.3, 3.1-3.3. In Portuguese, *processo de habilitação*.

¹³⁵² Brasil, P. 367, art. 5; Brasil, P. 747, Annex I, 3.3-3.6. That includes the inspection of social statutes, minutes of election meetings, CNPJ and CPF (legal and natural persons registration).

D.S. 49, where, for most of the cases, the eligibility process can as well be started on line.¹³⁵³

In the MCMV-E context, supporting entities must go through an habilitation process, with the exception of those whose projects assist “refugees, quilombola communities, artisanal fishermen, riverine communities, indigenous people and other socially vulnerable communities located in urban areas”.¹³⁵⁴ In such cases, they will be exempted from habilitation procedures prior to the proposal. Anyhow, they must prove technical capacity, when presenting the proposal and, depending on the construction regime, they shall too hire a construction firm that suits the requirements of the financial agent.¹³⁵⁵ Those conditions slightly resemble the eligibility conditions for construction firms in FAR- or FGTS-funded projects, although they will find their own special procedure. However, exceptionally in the FDS context, selection processes will be regulated separately, where particularly eligibility criteria on technical requirements may be redefined after each call.¹³⁵⁶

But, in order to be eligible, MCMV-E supporting entities must have been established at least three years before the eligibility process starts.¹³⁵⁷ In addition, they must address housing provision as their social aim.¹³⁵⁸ Although there is no public legal justification for this rule, it can be inferred that it is based on the need to guarantee for the work provided. Yet, in comparison to D.S. 1, D.S. 19 or D.S. 49, the Chilean model requires substantial data that can better ensure on specialists responsible for the respective projects, including proof of diplomas and sworn statements.¹³⁵⁹ Thus, the habilitation procedure for Brazilian entities should be reformed in this Chilean fashion, in other words, to propitiate more clarity and transparency of involved professionals.

Eligibility criteria and application and selection procedures for projects run closely together in the FGTS-funded model, because service providers depend on settings given by specific calls for applications. This was the case of *Paraná*’s housing state company – COHAPAR and its 2015 project, in which this

¹³⁵³ “Solicitudes de Inscripción En Línea.” Ministerio de Vivienda y Urbanismo, Minvu Proveedores Técnicos, MINVU, Official website, Accessed Jul 5, 2019. <https://proveedores tecnicos.minvu.gob.cl/solicitudes-de-inscripcion-en-linea/>. Universities, corporations or foundations must refer directly to a SEREMI.

¹³⁵⁴ CEF, “Manual Programa Minha Casa Minha Vida. Entidades. Recursos FDS,” 7. Author’s translation.

¹³⁵⁵ Brasil, I.N. 12, art. 5.2.

¹³⁵⁶ Brasil, I.N. 12, Annex II, 1.2.

¹³⁵⁷ Brasil, P. 747, Annex I, 2.

¹³⁵⁸ Id.

¹³⁵⁹ Chile, D.S. 49, art. 52; Chile, R.E. 1.875, art. 2.3; Chile, D.S. 1, art. 50; Chile, R.E. 6.509, art. 2.2. In D.S. 1, Title I, D.S. 19 and D.S. 49 supporting entities need to fill in different eligibility requirements in order to sign a bidding agreement with the respective SEREMI or SERVIU. In this case, SERVIU and SEREMI share overlapping functions, although in D.S. 19, only SERVIU was designated by the norm to sign those bidding agreements. See more section 4.3 Government.

public entity defined special rules of eligibility, application and selection. Targeting categories 2 and 3, COHAPAR disclosed an open call exclusively for construction firms registered at the national architectural and urbanism bars.¹³⁶⁰ Firms had to belong to the required line of business (e.g. construction services) and they should have been able to contract with the financial agent, in other words, those legal persons could not be under temporary suspension measures from contracting with the public administration.¹³⁶¹ Additionally, COHAPAR set extra eligibility criteria, upon which the enterprise had to be approved by the financial agent and supply all necessary information, documents and certificates, including for credit approval.¹³⁶² Yet, general criteria were also standardized by complementary norms.¹³⁶³

The Chilean system shows clearer directives and a more transparent setting for provider eligibility in comparison to the Brazilian model, where obscurity dominates. Brazilian norms depict unnecessary aspects, at the same that they refrain from making reference to important issues. For example, all work relations, including those in the context of MCMV, should obey the Constitution and general labor laws, independent of express mention. However, normative P. 114 insists in remarking art. 7, XXXIII of the Federal Constitution, that bans night, dangerous or insalubrious work to minors, or any kind of work to those under 16 years of age, with the exception to the work as apprentice.¹³⁶⁴ Such express annotation could create the argument that other norms are not to be necessarily followed. Those remarks should be excluded because they are prolix and can lead to legal confusion.

Another aspect to be highlighted is the obliteration of essential legal requisites by regulations, which are brief and general on service providers.¹³⁶⁵ The omission of D.S. 19 and D.S. 49 upon eligibility standards of service providers shows as well that these programs lack objectivity and clarity on those aspects. A detailed eligibility checklist annotated on Caixa's and the Ministry of Housing and Urbanism's website create certain level of transparency and clarity. However, main social housing legal instruments should have objectively annotated or referred to others where the matter is defined.

¹³⁶⁰ Brasil, P. 570, art. 2, V; "Minha Casa Minha Vida – Faixas 2 e 3," Companhia de Habitacao do Paraná, COHAPAR, Website, Accessed Dec 1, 2019. <http://www.cohapar.pr.gov.br/pagina-324.htm>; Governo do Estado do Paraná, Chamamento Público 01/2015, Período para cadastramento até 31/12/2019 – Selecao de empresas para producao de empreendimento habitacional – Áreas próprias ou de terceiros, CP 1/2015 (2015), 7.5. Since November 2016, only firms instituted as legal persons are eligible to join the MCMV/PNHUs programs. But, previously, natural persons, that regularly exercised their profession, could also join the program.

¹³⁶¹ Governo do Estado do Paraná, CP 1/2015, 7.1-7.3.

¹³⁶² Governo do Estado do Paraná, CP 1/2015 (2015), 7.4.

¹³⁶³ See section 5.2.1.13.

¹³⁶⁴ Brasil, P. 114, Annex I, 7.2.1; Brasil, Constitution, art. 7, XXXIII.

¹³⁶⁵ Brasil, P. 114.

In both cases, diffuse legal systems influence in the eligibility of firms. The positive side of such a structure is that, once failing to comply to norms in any level of public procurement, a sanctioned enterprise should be hindered from contracting in a social housing project. The negative aspect, however, is that roles and rules are inscribed in diverse texts and lack consistency and coordination, making redress inefficient. Hence, the clarification of objective eligibility requisites should be reformed in order to create a more consistent design. It should too find simpler manners to facilitate coordinated control and eventual enforcement.

Another positive solution brought by D.S. 1, Title I was the use the rights-based understanding of “housing as a process”, in which a dwelling or a housing project can receive gradual incrementation.¹³⁶⁶ This could serve as a solution for FGTS’ need of flexibility at the local level. From that perspective, architects and urbanists should create an open model, in which beneficiaries can progressively and independently develop their own units with time. Combined with participatory planning, this model should enable efficient and satisfactory performance results. On the one hand, this study claims that dwellers must enjoy of flexibility when creating their own housing model; on the other hand, progressive socio-sustainable models must be strongly supported by the law and, only exceptionally, for instance, due to local demand, excluded from implementation.

Brazilian beneficiaries of MCMV are, in contrast, strictly forbidden to “open walls, installations and remove or displace of walls.”¹³⁶⁷ This rigidity, particularly within a system that substantially invests in categories where there is no participatory decision-making, can not find success. The need for reform is evident and The architectural design of gradual incrementation or “housing as a process” should inspire such social housing strategies.

5.2.1.2 Application and selection of vulnerable categories: D.S. 19 and D.S.

49

D.S. 19 presents a clearer legal framework for application and selection of the most-vulnerable case studies. Forms and regulations are presented via MINVU’s official website in respect to every application call.¹³⁶⁸ Despite the

¹³⁶⁶ Chile, D.S. 1, art. 42.1.a; Marinovic and Baek.

¹³⁶⁷ Annex I, 8. Author’s translation.

¹³⁶⁸ Chile, R.E. 822; “Llamado Nacional a Concurso Año 2019, Para Proyectos Habitacionales DS 19,” Chile, Ministerio de Vivienda y Urbanismo, MINVU, Official website. Accessed Nov 25, 2019. <https://www.minvu.cl/postulacion/llamado-nacional-a-concurso-ano-2019-para-proyectos-habitacionales-ds-19/>. For example, the application call issued in March, 2019, amended and specified aspects of D.S. 19.

need of participatory and transparency reforms, this system makes it significantly more objective and simple for all involved agents to understand and abide rules.

In sum, basic information about projects shall be shared via electronic means with MINVU.¹³⁶⁹ The respective documental proof is to be applied at SERVIU, that will qualify them based on scores for technical, urban and architectural plans, before they reach a *comisión evaluadora*¹³⁷⁰. For D.S. 19, after eligibility checks and the formal application, an evaluation commission is responsible for project evaluation and selection.¹³⁷¹ MINVU is supposed to publish final results.¹³⁷²

That *comisión* is only integrated by members of MINVU, SERVIU and SEREMI, whose role is mainly to assess and select projects.¹³⁷³ It can place remarks to plans, to which applicants will have a time-period of 10 days to respond, under the penalty of exclusion.¹³⁷⁴

Nevertheless, in this context, transparency and participation are questionable because the evaluation commission lacks influence from members of the civil society. The law only refers to the participation of representatives from the government.¹³⁷⁵ Additionally, there is no clear legal reference if the decision-making process would be open to public scrutiny and revision, or how the due process could take place. In the end, only making results public still hinders social accountability, transparency and access to information.

D.S. 19 more transparently makes reference to forms and indications, as well as scores for the evaluation and selection of projects than other programs.¹³⁷⁶ A similar pattern of transparency is not found in D.S. 49 nor in MCMV. Moreover, D.S. 19 drives firms to extrapolate minimum required standards for projects. For instance, providers will be better qualified in the selection procedure if they propose plans aiming at doing more than the required parameters.¹³⁷⁷

¹³⁶⁹ Chile, D.S. 19, art. 12; Chile, R.E. 822, art. 1.

¹³⁷⁰ Id.

¹³⁷¹ Chile, D.S. 19, art. 13.

¹³⁷² Chile, D.S. 19, art. 12-14.

¹³⁷³ Chile, D.S. 19, art. 2, a.

¹³⁷⁴ Chile, D.S. 19, art. 12.

¹³⁷⁵ Chile, D.S. 19, art. 2, a.

¹³⁷⁶ Chile, D.S. 19, art. 13-14; Chile, R.E. 822.

¹³⁷⁷ Chile, D.S. 19, art. 11; “The Special Rapporteur recognizes that some positive steps have been taken towards addressing social and spatial segregation, notably the programme for social and territorial integration, with the objective of developing 25,000 new housing units to ensure a combination of four key factors: (a) location in urban areas with services and infrastructure; (b) social integration, by ensuring households with different income levels are part of the same project; (c) focalized in cities with higher housing deficits and needs; and (d) a high quality of construction and urban services” (HRC, A/HRC/37/53/Add.1, para 20).

That ranking created a scoring system that classifies projects based on two main standards: basic and complementary. Basic standards are mandatory, in opposition to complementary ones, which are of facultative implementation and of higher weight.¹³⁷⁸ Yet, the more scores achieved, the better chances a project will have to be successful in a final selection.

In case of a draw, preference will be given to projects with the highest scores based on location.¹³⁷⁹ This final selection criteria is in consistency with the program's main objectives, which claims to aim the reversion of socio-spatial segregation.¹³⁸⁰ Consistency along a legal framework impacts overall positively to accountability and should be, therefore, used as a model. If the draw persists, the design of the housing complex and type of dwellings will be used as tie-breakers.¹³⁸¹

In regard to D.S. 49, a project's formal application starts with its deposit at the *Banco de Postulaciones*.¹³⁸² Providers can apply at anytime, although SERVIU and SEREMI may request MINVU to issue a decree interrupting the receipt of project submissions.¹³⁸³ Then, an evaluation of technical, social, economic and legal aspects of projects, will be undergone by SERVIU and by an agent designated by a local director.¹³⁸⁴ That enables a key grievance mechanism, that should take no longer than 30 days, for which subsequent time periods shall be given for response to remarks and corrections.¹³⁸⁵

In general, it is a positive impact to engage a local agent (the local director) during the development and application of projects, although more crucial is the establishment of a grievance platform. There is no reference to further costs to any parts involved. The grievance mechanism speeds the process of communication and feedback between the stakeholders with the presence of deadlines for response.

However, sanctions only appear to service providers, who shall be excluded from the process if not responding in time. It is not clear if public agents can be sanctioned if extrapolating those legal time-periods of response. And if indeed not, this deconstructs the answerability the norm wished to create, which is to bind duty-bearers to timely duties.

¹³⁷⁸ Chile, D.S. 19, art. 11.

¹³⁷⁹ Chile, D.S. 19, art. 11 (1), 13.

¹³⁸⁰ Chile, D.S. 19, art. 1.

¹³⁸¹ Chile, D.S. 19, art. 11 (3-4), 13.

¹³⁸² Chile, D.S. 49, art. 12.

¹³⁸³ Chile, D.S. 49, art. 11.

¹³⁸⁴ Chile, D.S. 49, art. 13.

¹³⁸⁵ Chile, D.S. 49, art. 13.

In fact, overall procedures should be designed with time-limits. As reported by a Chilean project manager, projects can take many years to be completed.¹³⁸⁶ That time span increases costs for low-income families, who remain challenged by inadequate housing conditions as long as dwellings are not delivered. Hence, the need of reform in Chile's application and selection procedures with timely obligations, where responsibility, answerability and enforcement dimensions are designed consistently.

5.2.1.3 Application and selection of vulnerable categories: FAR

The selection of a construction firm depends on applicable regulations for public bids and principles of the public administration¹³⁸⁷, but the Brazilian FAR application and selection procedures for projects carry neither simple or clear designs. It can involve different duty-bearers, who will incorporate different obligations. This leads to confusion and contributing to a weak performance.

First, application starts with the submission of project proposals to FAR at public financial institutions.¹³⁸⁸ This first phase is called "*enquadramento*", literally translated as "framing", where the proposal is sent to a financial agent that, however, only has the responsibility to receive proposals.¹³⁸⁹ An eligibility assessment is then conducted by Caixa, the operational agent.¹³⁹⁰ Then, the Ministry of Cities, provided with the information from Caixa, proceeds with the selection phase.¹³⁹¹ The operational agent, Caixa, is also allowed to conduct the selection if requested by the land donor¹³⁹² or if the land was donated by *Secretaria do Patrimônio da União*.

The Ministry (or Caixa, depending on the case) will select proposals according to its financial resource accommodation and following specific guidelines.¹³⁹³ Every month, Caixa should send a list of eligible projects to the Ministry of Cities.¹³⁹⁴ Those guidelines observe the regionalization of projects (amount of unities that have already been contracted for that municipality in relation to its size and housing deficit), dynamic indicators of the surroundings (e.g. to central

¹³⁸⁶ Silva Didier, Researcher's Interview 8.

¹³⁸⁷ Brasil, P. 114, Annex I, 7.2.1.

¹³⁸⁸ Brasil, P. 114, Annex I, 7.1, 8.

¹³⁸⁹ Brasil, P. 114, Annex I, 8.1.1, 8.1.1.f.1. At the framing stage, legal, technical, architectural requirements are checked. The technical analysis of the project and of the land considers location, urban inclusion, service availability, and land tenure rights. Additionally, a project must be approved or at least submitted at the town hall.

¹³⁹⁰ Brasil, P. 114, Annex I, 8, caput, 8.1.1.

¹³⁹¹ Brasil, P. 114, Annex I, 8.5, Annex V.

¹³⁹² Brasil, P. 114, Annex I, 7.1, 7.1.1.

¹³⁹³ Brasil, P. 114, Annex I, 8.3-8.4; 8.7. The selection phase as proposed by P. 114/18 may be dismissed in particular cases. For example, in those cases targeting families located in risk or insalubrious areas, or that have been homeless, as well as those applying due to emergency situations or public calamities.

¹³⁹⁴ Brasil, P. 114, Annex I, 8.5.

areas, banks and educational centers), local management and basic-infrastructure.¹³⁹⁵

Thereafter, the Ministry of Cities shall publish selected results and move to a “procurement phase”¹³⁹⁶ in which Caixa or the donating entity holds the responsibility to conduct a final selection phase. As it follows, the Ministry of Cities publishes the result of the selection process, carrying on to a contracting phase to be conducted by the respective initial financial agent.¹³⁹⁷

In sum, a cyclical structure pushes obligations to those various duty-bearers: first the financial institution, then Ministry of Cities (or Caixa), Caixa or the donating entity, back to the Ministry of Cities and the financial institution. Although this might look as a decentralized structure at first, it must be remarked that Caixa is reported to often take the financial role and it is legally allowed to assume other positions, as observed previously. Therefore, in several occasions, Caixa can dominate the most part of the selection process, only sharing the publication of results with the Ministry of Cities. This shows that the FAR-funded selection procedure can suffer from strong levels of centralization and lack of checks and balances. And, although it is understandable that a land donors should have influence in the selection procedure they finance, the FAR system – in contrary to the Chilean – leads to confusion. When roles and obligations change too often, under additional circumstances of poorly designed norms and challenged enforcement, that creates instability.

Furthermore, the selection process of enterprises aims at finding the most advantageous proposal.¹³⁹⁸ The selection, besides all regular public procurement norms¹³⁹⁹ that will influence it, will be based on the Ministry’s financial resource accommodation.¹⁴⁰⁰ Based on those settings, a firm will be selected via public bids.¹⁴⁰¹ Selection procedures must follow the principles of public procurement and rules of the public administration¹⁴⁰², which refer e.g. to legality, finality, morality, public interest and efficiency, as well as the principle of abidance to the bid invitation¹⁴⁰³ and of objective judgement.¹⁴⁰⁴

¹³⁹⁵ Brasil, P. 114, Annex I, 8.4. See section 5.2.1.2.

¹³⁹⁶ Brasil, P. 114, Annex I, 9.

¹³⁹⁷ Brasil, P. 114, Annex I, 7.1, 8.5, 9, 9.2, Annex V.

¹³⁹⁸ Brasil, P. 114, Annex I, 7.1.2. See more section 3.2. Other principles that apply to public procurement include the principle of equality, publicity and the formal procedure.

¹³⁹⁹ Bueno, 26-27. Other principles that apply to public procurement include the principle of equality, publicity and the formal procedure.

¹⁴⁰⁰ Brasil, P. 114, Annex I, 8.3 – 8.4.

¹⁴⁰¹ Brasil, P. 114, Annex I, 7.1.2; Furtado, 398.

¹⁴⁰² Brasil, P. 114, Annex I, 7.1.2. See section 3.2.

¹⁴⁰³ Bueno, 27. The principle of abidance to the bid invitation, in Portuguese, *vinculacao ao instrumento convocatório*, means that rules sustained in the bid invitation shall be obeyed by all involved. Changes require the restart of the bid proceedings.

¹⁴⁰⁴ Bueno, 27. Decisions conducted by the Public Administration shall be based on objective

In contrast to the Chilean model, the FAR-funded application and selection procedures is non-linear, involves superfluous agents, lacks time-setting limitations, and does not describe internal mechanisms of redress or grievance nor participatory organs. Reforms should be taken to induce simplicity and objectivity in MCMV. More legal transparency and participation in those procedures can also support performance, for they enable social accountability and the articulation of local level demands.

In addition, the FAR-funded legislation designed an unclear internal selection procedure in comparison to the Chilean case studies. That framework lacks time-period definitions for procedures, deadlines for duty-bearers, and definitions upon information disclosure. It neither creates redress mechanisms for the case of controversial results, leading to the conclusion that general public bid procedures will guide such contexts.¹⁴⁰⁵

Finally, after the Ministry of Cities publicizes selected results, the contract between provider and the financial institution can be signed. As soon as construction achieves 50% of the execution plan, the process of selection of beneficiaries should start.¹⁴⁰⁶ However, according to Amore, due to the involvement of municipalities, lists of selected candidates are usually presented about the end of work completion.¹⁴⁰⁷ Additionally, it must be remarked that beneficiaries have no possible means to participate in planing or selection of their future dwellings as individual applicants for FAR-funded MCMV. This system creates a top-down approach that generates an extra accumulation of infra-structure work and negatively impacts on quality.

5.2.1.4 Application and selection of vulnerable categories: FDS

In the FDS context, selection procedures can be designed separately, where deadlines may be redefined, as well as legal requirements, eligibility and selection criteria.¹⁴⁰⁸ As a rule, service providers can apply with their projects to the programs at any time.¹⁴⁰⁹ SNH should communicate the operational agent, Caixa, of an interruption of the receipt of applications due to budgetary unavailability.¹⁴¹⁰

standards.

¹⁴⁰⁵ Brasil, L. 8.666, art. 109. For example, L. 8,666, art. 109, creates mechanisms of administrative review, although it neither depicts extensive procedural details about them.

¹⁴⁰⁶ Brasil, P. 163, ch I, 4.3.

¹⁴⁰⁷ Cardoso et al, 90.

¹⁴⁰⁸ Brasil, I.N. 12, Annex II, 1.2.

¹⁴⁰⁹ Brasil, Ministerio das Cidades, Portaria 595, de 12 de dezembro de 2013, P. 595 (2013); Brasil, P. 367, art. 2, 15; Brasil, P. 114, Annex I, 8; Chile, D.S. 49, art. 11. Unless due to exceptional reasons, applications may as well be upheld in case of budgetary unavailability. As an example, art. 4, of P. 595, suspended applications.

¹⁴¹⁰ Brasil, P. 114, Annex I, 8, caput.

Yet, at least until the publication of P. 367, in 2018, a public call could be specially conducted for the development of a collective social housing project in a designed location under the MCME-E agenda led by P. 45.¹⁴¹¹ In such cases, the Federal Properties Management Office (*Secretaria do Patrimônio da União – SPU*) could issue call for declaration of interest in public services (PDISP),¹⁴¹² legally set to a 15-day response period. A position of interest is formalized with a *carta-consulta*, or a proposal form, which should be accompanied by legal documentation, including the certificate of habilitation (eligibility) and a copy of the entity’s statute.¹⁴¹³ Non-compliance to those legal requisites excludes applicants from the procedure.¹⁴¹⁴ In another exceptional example, the Brazilian norm sets 30 days for a decision.¹⁴¹⁵

Proposals used to be given priority based on the lowest amount of projects they have conducted with the federal project¹⁴¹⁶ and, if the tie persists, based on a raffle. Those criteria were disconnected from any housing adequacy parameters discussed in this work. If still valid, they should be reformed to prioritize projects that best suit to progressive standards.

However, P. 367/2018 brought new criteria.¹⁴¹⁷ Ranking turns on to find best suitable projects based on criteria: a higher margin of investment from public or private entities; cheapest units (acquisition price); better accessibility solutions to public services; focus on environmental sustainability; solutions against demographic growth; solutions against emergency or calamity situations; better accessibility solutions in respect to disabled persons; in chronological order of project application.¹⁴¹⁸

Furthermore, a grievance mechanism was created by MCMV-E, similar to the one observed in D.S. 49. According to P. 45/2015, a “provisory selection result,” to be published by the regional SPU, could be subject to appeal in a period of 10 days counting from its publication.¹⁴¹⁹ SPU was given 5 days to respond “conclusively and objectively” to the claims.¹⁴²⁰ If not object of reconsideration, the appeal should be forwarded to the federal SPU, which has again 20 days to respond.¹⁴²¹ Those decisions must be informed to a General Coordination of

¹⁴¹¹ Brasil, Ministério do Planejamento, Desenvolvimento e Gestão, Portaria 45, de 6 de abril de 2015, P. 45 (2015).

¹⁴¹² Brasil, P. 45, art. 2. *Declaração de Interesse do Serviço Público*.

¹⁴¹³ Brasil, P. 45, art. 4.

¹⁴¹⁴ Brasil, P. 45, art. 4.

¹⁴¹⁵ Brasil, P. 45, art. 5.

¹⁴¹⁶ Brasil, P. 45, art. 6. Or, for those with no projects and the least amount of units.

¹⁴¹⁷ Brasil, P. 367, art. 3. Brasil, P. 367, art. 7. It created two phases of selection: framing and ranking. The first framing phase, “enquadramento”, observes the eligibility of the project.

¹⁴¹⁸ Brasil, P. 367, art. 8; CEF, “Manual Programa Minha Casa Minha Vida. Entidades. Recursos FDS.”

¹⁴¹⁹ Brasil, P. 45, art. 7, para 1.

¹⁴²⁰ Brasil, P. 45, art. 7, para 2.

¹⁴²¹ Brasil, P. 45, art. 7, para 3.

Housing and Land Regularization – CGREF, which shall publish final results in up to 5 days.¹⁴²² After that, a contract should be installed with the supporting entity for the development of technical studies for the duration of 12 months, extendable once for the same period.¹⁴²³

It is important to remark that such timely obligations are rare in the Brazilian context. They should be supported because they increase efficiency in the delivery. Duty-bearers need time-limits for the delivery of services or overall compliance to obligations. That structure, added to a general grievance mechanism, can drive to better accountability relations. Nonetheless, it is not clear if that mechanism is still valid because P. 45 was not expressly revoked by none of the most modern regulations on FDS selection procedures. Yet, none of them neither replicated that grievance procedure.¹⁴²⁴

Anyhow, practice shows that project delivery take too long. For example, the *Porto Maravilha* project took over four and a half years to be developed with families and, yet, it did not start with construction works.¹⁴²⁵ For once, it is unclear if duty-bearers are sanctioned if failing to comply to those deadlines. It may be inferred that the lack of sanctions over untimely obligations influences in the non-compliance to such strict time-settings.

Additionally, in both countries, certifications have been reported to be extensive and costly.¹⁴²⁶ They require recurrent update, making the application process bureaucratic. Beneficiaries have then to bear multiple times with bureaucratic costs, causing high financial constrains to those low-income households, who already live fundamentally on a limited budget.¹⁴²⁷ In such a context, the simplification of documentation proof can also alleviate beneficiaries from extra burdens and support access to adequate housing.

5.2.1.5 Application and selection of emergent categories: D.S. 1 and D.S. 19

If in compliance with all eligibility requisites, a development entity may apply to SERVIU with its project for D.S. 1 or D.S. 19.¹⁴²⁸ In D.S. 19, procedural settings refer to those reported previously on D.S. 49. In the case of D.S. 1,

¹⁴²² Brasil, P. 45, art. 7-9. *Coordenação-Geral de Habitação e Regularização Fundiária*.

¹⁴²³ Brasil, P. 45, art. 10.

¹⁴²⁴ This is a recurrent issue in the Brazilian framework, where it is not possible to objectively track regulations, their amendments and repeal.

¹⁴²⁵ More on Porto Maravilha's Project see Instituto de Políticas de Transporte e Desenvolvimento, "Análise de Inserção Urbana Dos Empreendimentos 'Silvino Montenegro' e 'Colombo' Parte Do Programa Minha Casa Minha Vida No Porto Maravilha," ITDP Brasil (Apr 2015); Alberto Silva, Researcher's Interview 1, Video Skype, March 19, 2019. In interview, Alberto Silva worked for four and a half years with a community at the *Porto Maravilha* project, and yet he was not able to see the project construction start.

¹⁴²⁶ Silva, Researcher's Interview 1; Silva Didier, Researcher's Interview 8.

¹⁴²⁷ Id.

¹⁴²⁸ Chile, D.S. 1, art. 48; Chile, D.S. 19, art. 12.

SERVIU must issue a receipt of complete application, for which it will have 10 or 15 days to approve or issue any written remarks.¹⁴²⁹ The longer period will be necessary in case the project lacks a supportive report from an independent auditor, as required by the Bill on Urbanism and Constructions.¹⁴³⁰

A sponsor entity bears up to 90 days to correct and resubmit a project, counting from notification if a project receives remarks upon inadequacy.¹⁴³¹ In the case of such a second submission, the project will be either approved or rejected. Also in D.S. 1, deadlines are set for a final decision upon project selection.¹⁴³²

Additionally, on line application platforms¹⁴³³ create reasonable transparency and enable efficiency and better accountability in the Chilean model. Yet, they were not legally mentioned in the Minha Casa context. Thus, even though they could be expanded and improved in the Chilean context, they should strongly inspire MCMV to articulate technological advancements.

5.2.1.6 Application and selection of emergent categories: FGTS-Individual

The procedural application in FGTS-funded projects is defined by one of two main possible tracks, dependent on if applicants choose to apply collectively or individually.¹⁴³⁴ The category for individual applications, *carta de crédito individual*, is formed mainly by construction firms or realtors. It excludes organized associations or developing entities from joining the program. As a rule, Brazilian construction firms must present a project proposal to CAIXA. If eligible and approved, CAIXA should finance up to all production costs and transfer to the provider in installments, depending on the project phase achieved.¹⁴³⁵ During project implementation, CAIXA finds matching beneficiaries, which reduce the firm's debit with their contribution.

In the FGTS context, the application procedure of projects starts with the allocation of governmental budget for loans to service providers among the different national regions.¹⁴³⁶ As soon as financial resources are made available by the financial agent (most of the time, Caixa) and the operational agent (officially, Caixa), projects can be presented by a construction firm, a developer group or an association at Caixa's regional superintendencies.¹⁴³⁷ A project presented by a service provider must fit to specific criteria in order to be granted

¹⁴²⁹ Chile, D.S. 1, art. 49.

¹⁴³⁰ Chile, D.S. 1, art. 50; Chile, Bill on Urbanism and Construction Works, art. 116.

¹⁴³¹ Chile, L. 19.880, art. 46.

¹⁴³² Chile, D.S. 1, art. 50.

¹⁴³³ Chile, D.S. 1, art. 48.

¹⁴³⁴ Brasil, I.N. 42; Brasil, I.N. 43.

¹⁴³⁵ CGU, "Relatório de Avaliação Da Execução: Programa Minha Casa, Minha Vida- FGTS," 8, *Como acontece*.

¹⁴³⁶ CGU, "Relatório de Avaliação Da Execução: Programa Minha Casa, Minha Vida- FGTS," 8.

¹⁴³⁷ Id.

funds from FGTS. In similarity to the FAR-funded “framing phase”, Caixa undertakes an eligibility assessment of the project based on legal, technical, architectural and planning standards.¹⁴³⁸

In case of positive results, the project is sent over to the selection procedure.¹⁴³⁹ FGTS-funded projects should prioritize the selection of projects that: (i) include beneficiaries from categories 1.5 and 2; (ii) include beneficiaries with an FGTS account; (iii) aims at the construction or acquisition of new dwellings; (iv) present proportionally a higher amount of own beneficiary resources in comparison to the investment done.¹⁴⁴⁰ Those criteria are substantiated by a rough financial perspective (e.g. by prioritizing those having beneficiaries with a FGTS account, or that aim of new dwellings, or that acquire more funds from beneficiaries). Nevertheless, that priority ranking should have encompassed matters of housing adequacy. The use of rights-based criteria stated in FDS-funded procedures presents a solution, although there is no clear instrumental use for those standards. In forms of an operational setting, the introduction of a transparent system of points and reward (better chances of selection) for projects planing more progressive measures shows another alternative, as D.S. 19 model fore-saw.¹⁴⁴¹

Furthermore, after succeeding in application and selection phases, projects are authorized to be commercialized. After a minimum number of planned units is sold, the construction firm signs a contract with the government, for which it can receive a loan for the construction works. In such a case, the monthly contributions of the beneficiaries can also serve to pay the loans of those service providers, or at least partially.

5.2.1.7 Application and selection of emergent categories: FGTS-Associativo

Differently from the other FGTS category, FGTS-Associativo enables collective applications for a *carta de credito associativo*. Supporting entities take the lead in the application procedure, which requires non-profit organizations, municipalities or organs of the direct and indirect administration to go through an habilitation process themselves.¹⁴⁴² In the case public entities run the selection process, a construction provider must respect the administrative process.¹⁴⁴³

¹⁴³⁸ Brasil, I.N. 42, 5.3.

¹⁴³⁹ Brasil, I.N. 42, 2.1.1-2.1.2; Brasil, Lei 6.015 de 31 de dezembro de 1973, L. 6.015 (1973), 247-A. Previously, specific documents used to be required, such as *Habite-se*. In such case, local authorities must first verify the dwelling’s conditions. In case they are safe and in accordance to official plans, they issue a certificate of occupancy named *Habite-se*, in English, “To Inhabit”. However, due to a legal amendment that influences projects up to five years before August, 2019, *Habite-se* is not anymore obligatory, putting in risk the lives of millions due to lack of monitoring and control.

¹⁴⁴⁰ Brasil, I.N. 42, 5.1.

¹⁴⁴¹ See also sections 5.2.1.5.

¹⁴⁴² Brasil, I.N. 43, 1.2.

¹⁴⁴³ See Brasil, Conselho Curador to Fundo de Garantia de Tempo de Servico, R. 723; Annex I,

Just like the individual application procedure of the other Brazilian models, framing and procurement phases take place.¹⁴⁴⁴ But, in FGTS-Associativo, the supporting entity must prove its legal aptitude and the project must have its technical, economical, financial and legal viability checked by Caixa.¹⁴⁴⁵ After that phase, the project proposal should be selected over priority criteria that share analogies with the conditions proposed criteria by FGTS-Individual. Projects will be ranked by: (1) those that target families with a GMHI lower than ca. 1,069USD; (2) those with most applicants with FGTS accounts; (3) those that present the greatest financial input of the organized group; (4) those that present the minimum amount of units.¹⁴⁴⁶ Furthermore, in case proposals are presented by public entities, they should be prioritized based on: (1) those that most receive financial investment from the respective municipality or state-member; (2) and those that have been given priority by state or municipal housing or development councils.¹⁴⁴⁷

This scheme of project ranking was as well observed in FDS-funded, FGTS-Associativo procedures and in the Chilean case studies. Mainly FAR selection process aimed at the most advantageous proposal.¹⁴⁴⁸ Yet, the lack of rights-based criteria in that selection rank needs to be reformed. A solution could be to reward projects that are more adequate and the expansion of criteria used by FDS.

5.2.2 Rights-based critics

The used general procedures of selection and of public procurement were inefficient and their quantitative-led performance has presented negative impacts to beneficiaries. Minha Casa, Minha Vida targeted ca. 60% of its national budget of ca. 18 bi USD to finance emergent households, although the national housing gap is strongly concentrated among most-poor families.¹⁴⁴⁹ In Chile, evidenced low quality led to lack of tenure as well as to evictions and demolitions.¹⁴⁵⁰ Evidences of the dominance of a quantitative approach and of processes lacking

4.3.

¹⁴⁴⁴ Brasil, I.N. 43, Annex I, 4-5.

¹⁴⁴⁵ Brasil, I.N. 43, Annex I, 4.c-e. *See* section 5.2.1.13.

¹⁴⁴⁶ Brasil, I.N. 43, Annex I, 5. Equivalent to ca. 4,000BRL (CUEX).

¹⁴⁴⁷ Brasil, I.N. 43, Annex I, 5.1.1. Equivalent to ca. 4,000BRL (CUEX).

¹⁴⁴⁸ Brasil, P. 114, Annex I, 7.1.2. *See* more section 3.2. Other principles that apply to public procurement include the principle of equality, publicity and the formal procedure.

¹⁴⁴⁹ Amore, 17-20. Equivalent to 34 bi BRL (CUEX, on the basis of Jul 31, 2009).

¹⁴⁵⁰ “The quantitative approach has resulted in positive change, with large segments of the population becoming homeowners with security of tenure that can be passed on to their children. However, two negative results have emerged: (a) given the low quality of the construction, particularly in the 1990s, the guarantee of tenure has become obsolete; since 2005 it has led to evictions and the demolition of social housing buildings, which were in a dilapidated condition; (b) it has had deleterious qualitative results for many and it has created a trap as people living in poverty focused their hopes on accessing subsidies which would ensure them a house in the most basic sense, but which often fell short of realizing their right to adequate housing” (HRC, A/HRC/37/53/Add.1, para 19).

not only quality convene the understanding that those strategies also failed in targeting, social engagement and transparency.¹⁴⁵¹

Although numbers show that more Chileans and Brazilians started to have access to housing through the documented policies, this research diagnoses that their human rights have not been respected or fulfilled with dignity. Segregated and unaccountable social housing frameworks require reform of selection procedures for the use of rights-based lens. Project selection should focus on distinguishing upon their quality based on “economic, technical, environmental, social analysis”, as well as cultural, anthropological, sustainability aspects.¹⁴⁵² For a positive outcome, transparent and participatory procedures are vital, as well as control and monitoring that can increase competition among firms.¹⁴⁵³ In the case of emergent programs, the issue of quantity over quality is also evidenced, for which it is imperative to change the focus of housing projects, away from single quantitative goals.¹⁴⁵⁴

For example, FGTS’s socio-environmental policy 2012/2022 set rights-based guidelines. According to it, housing investments led by that fund were designed to “respect indigenous and traditional communities”, protect “human rights and health” standards and prevent adverse environmental impacts.¹⁴⁵⁵ Overall, the policy requires projects to meet the adequate standards of environmental, public health and sanitary, urban and technical, local zoning, accessibility, labor, social participation and human rights regulations.¹⁴⁵⁶

However, a report of Brazil’s Comptroller General evidenced that in 13% of analyzed cases there has been no environmental licensing conducted.¹⁴⁵⁷ Dwellings have shown different vices in 56.4% of cases before the expiration of guarantee.¹⁴⁵⁸ In 9.1% of cases, housing projects presented issues in basic technical items, such as painting or windows. It goes further by observing issues in infrastructure and in public equipment occurred due to their general lack of quality (31.3%), envisaging flooding (18.2%) or deficient public lighting (11.8%).¹⁴⁵⁹

¹⁴⁵¹ Balbim et al, “Para Além Do Minha Casa Minha Vida”; UN Human Rights Council (HRC), “Compilation Prepared by the Office of the High Commissioner for Human Rights in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21,” A/HRC/WG.6/13/BRA/2, Working Group on the Universal Periodic Review (Jun 21, 2012), para 49; HRC, A/HRC/WG.6/27/BRA/2, para 48-55; Beier and Vilmondes.

¹⁴⁵² Charles Kenny, “Construction, Corruption, and Developing Countries,” *World Bank Policy Research Working Paper* 4271 (June 2007): 32, <https://doi.org/WPS4271>, 11.

¹⁴⁵³ Id.

¹⁴⁵⁴ HRC, A/HRC/37/53/Add.1.

¹⁴⁵⁵ Brasil, R. 761, Annex, 2, I, IV, V.

¹⁴⁵⁶ Id.

¹⁴⁵⁷ CGU, “Relatório de Avaliacao Da Execucao: Programa Minha Casa, Minha Vida- FGTS,” 10.

¹⁴⁵⁸ CGU, “Relatório de Avaliacao Da Execucao: Programa Minha Casa, Minha Vida- FGTS,” 3-4.

¹⁴⁵⁹ CGU, “Relatório de Avaliacao Da Execucao: Programa Minha Casa, Minha Vida- FGTS,” 50-51.

In 17.3% of projects, there was no sewage connection to units.¹⁴⁶⁰ In the end, not even the most basic features have been guaranteed.

Service providers must comply to their obligations to inform, respond and justify. Those obligations, nevertheless, must aim at the materialization of human rights. In this section, this work delves into a rights-based assessment of technical criteria (5.2.2.1), sustainability (5.2.2.2) and social assistance (5.2.2.3), as well as to the volatility of legal designs (5.2.2.4).

5.2.2.1 Technical criteria

Regarding architectural and infra-structural settings, programs presented an analogous approach to housing. All vulnerable case studies defined minimum standards that should ensure availability of resources, location adequacy and habitability.¹⁴⁶¹ Standards imposed by the respective national policy construct a basis for the answerability dimension, holding duty-bearers accountable to it, for it uses legal means to hinder the provision of inadequate social housing. However, it is not possible to have a clear overview of all eligibility requirements.¹⁴⁶²

For example, D.S. 1 secures the need of ventilation and natural light, which are essential for a healthy, adequate shelter¹⁴⁶³ and it limits architectural standards.¹⁴⁶⁴ For the acquisition of new dwellings, D.S. 49 dwellings should be at least 42m²¹⁴⁶⁵. If only divided in one or two rooms, projects should foresee the possibility of self-expansion too. D.S. 19 dwellings must ensure at least 47m² and, apartments, 52m², divided in at least four rooms (two rooms, a bathroom and a living-room-kitchen).¹⁴⁶⁶ In the case of FAR- and FDS-funded projects, the smallest dwellings should have at least 36m², composed of a living room, two sleeping rooms, kitchen, service area and bathroom.¹⁴⁶⁷ Similar standards

¹⁴⁶⁰ CGU, “Relatório de Avaliação Da Execução: Programa Minha Casa, Minha Vida- FGTS,” 45, 52.

¹⁴⁶¹ For example *see* Chile, D.S. 1, art. 48; Chile, D.S. 19, art. 9; Chile, Resolución Exenta 4.832 (V. y U.) de 18 de junio de 2012, R.E. 4.832 (2012).

¹⁴⁶² CGU, “Relatório de Avaliação Da Execução: Programa Minha Casa, Minha Vida- FGTS;” Mariana Sanches, “Minha Casa Minha Vida é alvo de mais de 300 inqueritos,” *Globo* on Nov 29, 2015, Website, Accessed Jul 10, 2019. <https://oglobo.globo.com/brasil/minha-casa-minha-vida-alvo-de-mais-de-300-inqueritos-18172897>. This is one of the explanations for corruption and error, as well as a consequent inequality in relation to *Minha Casa, Minha Vida* contracts.

¹⁴⁶³ Chile, D.S. 1, art. 42.1-42.2.

¹⁴⁶⁴ Chile, D.S. 1, art. 46; Chile D.S. 19, art. 10.5-6. Title II dwellings should include the planning of at least three rooms; and Title I dwellings, at least two or three rooms, if with a total area of 50m².

¹⁴⁶⁵ Chile, D.S. 49, art. 43, 48. Exceptionally in constructions in own lands, that may have 45m². In case of purchase of properties in resale, *vivienda usada*, there are different rules: at least 3 rooms for which the sleeping room should fit a 150cmx190cm bed, as well as an integrated living-room and kitchen, and a bathroom with toilette, sink and shower.

¹⁴⁶⁶ Chile, D.S. 19, art. 9.

¹⁴⁶⁷ Brasil, Ministerio das Cidades, Portaria 660, de 14 de novembro de 2018, P. 660 (2018), Annex II.

were also defined in both individual and collective FGTS application tracks, with occasional exceptions.¹⁴⁶⁸

However, D.S. 19's outstanding factor was to involve different economic categories and slightly different dwelling typologies in the same housing project.¹⁴⁶⁹ That policy presented a substantial level of legal transparency, clarity and objectivity in both obligations and processes applying socio-spatial integration.¹⁴⁷⁰ For example, it particularly defined the amount of units for each category, in order to avoid homogenized neighborhoods.¹⁴⁷¹ However, that strategy is limited, because it fails to integrate diverse income levels of society, including those households that are not eligible for social housing.

Differences in procedural and material instructions show how clarity can be achieved by the norm. In all case studies, projects should be located within the urban grid and established in the respective land-use planning instrument.¹⁴⁷² Housing complexes should follow the limit of 300 housing units, a number that would also depend on the amount of inhabitants per municipality.¹⁴⁷³

¹⁴⁶⁸ Diffuse ministerial regulations define FGTS-funded guidelines based on geographical measures, architectural, social, sustainable and urban standards. For example, R. 723 and I.N. 43 refer to the associative track of FGTS.

¹⁴⁶⁹ Table 7: *D.S. 19 Scores for projects* summarizes mandatory and additional standards of a D.S. 19 project, which is aimed to seek socio-spatial integration. Those plans must follow, depending on the amount of city inhabitants, six to five other standards, which are detailed in the same decree. More than 40.000 inhabitants, six standards, less than 40.000 inhabitants, five standards. See Chile, D.S. 19, art. 10-11, amended by R.E. 822, 3.5.

¹⁴⁷⁰ See more Chile, D.S. 19, art. 10; 11.1-5; Chile, D.S. 1, art. 46. In the context of D.S. 19, different ratings are given for the location and urban context of projects, as well as design, type of the housing complex, the price of dwellings. Regulations on public space will be borrowed from D.S. 1 and general urbanism and architectural norms. For instance, a project should care for common areas for social integration, including equipments and green areas adequate to topographic, geographic-climate, surface waters and security conditions, accessibility standards and e.g. a playground, required expressly by art. 46 of D.S. 1, that evokes the General Bill on Urbanism and Constructions. In this case, in order to aggregate 50 points, a project must equip additional infrastructure, such as cycle paths and a multi-sports court. But these are mandatory standards, that do not convey any points. As already observed in the previous section, eligibility processes take place in the different case studies based on different standards. D.S. 19 created a process for project applications with eligibility standards in the forms of scores, in which non-compliance to basic standards leads to exclusion.

¹⁴⁷¹ Chile, D.S. 19, para III, art. 7, b. In that case, at least 20% of all dwellings of a project must be designated to most-vulnerable households, including for instance those beneficiaries of D.S. 49. The norm sets too a maximum of 40% and maximum 60% dwellings for most-vulnerable categories in municipalities with respectively more and less than 40,000 inhabitants.

¹⁴⁷² Chile, D.S. 19, art. 10; Brasil, P. 114, Annex I, 8.4.

¹⁴⁷³ Chile, D.S. 19, art. 10.1; Brasil, P. 660, Annex I, 3.4. In Brazil, despite the limit within isolated projects, the norm has relativized that number of units. Joint projects may achieve up to 2,000 units (Brasil, P. 114, Annex I, 8.1.c). These concern a max. of 4 projects, separated by public roads. In a hypothesis considering a household constituted by 2 persons, a whole new city would be constructed in such an endeavor (Brasil, P. 114, Annex I, 8.1.1.c-d). A more cautious projection of the legislator allows the construction of 50 unities in isolated projects or 200, in joint projects, for municipalities with no more than 20,000 inhabitants. In the particular case of D.S. 49, CNT complexes may achieve 600 units, constructed in stages with 70 to 160 dwellings (Chile, D.S. 49, art. 9, a. *Construcción en*

D.S. 19 operationalized those settings by requesting architecture plans of dwellings, technical specifications of buildings and their urban equipment, including the plan for green areas and common facilities.¹⁴⁷⁴ For example, public green areas, educational establishments, and kindergartens must be located within 1,000m from the housing complex.¹⁴⁷⁵ In order to receive a final approval, projects depend on a contract with a sanitation company.¹⁴⁷⁶ The development entity must provide the exact geo-reference coordinates and a site plan on the urban limits.¹⁴⁷⁷ Those are all evidences that D.S. 19, even if not comprehensively, used an organizational behavior to pursue its main goal of social-spatial integration.

Or else, D.S. 1 projects, for emergent households, must provide a minimum of urban equipment, including playground and sports area.¹⁴⁷⁸ Those with more than 70 units have more specified standards to comply to, but in any case the distance between the equipment and the most distant dwelling of the project must not exceed 250m.¹⁴⁷⁹ If a project is part of a bigger architectural and urbanist project, than it may count with a higher number of dwellings and also involve different the categories.¹⁴⁸⁰

In comparison, according to FAR, social-spatial factors and urban design should be taken into consideration.¹⁴⁸¹ FAR-funded projects should fundamentally observe the dynamics of the surroundings, including the distance of the project to central areas, educational centers, bank agencies, post-offices or bus stations. That includes reporting on the size of the project in relation to the size of the municipality, conditions of local management and basic infra-structure.¹⁴⁸²

nuevos terrenos – CTN). It also allows small complex solutions – PC to have 2 to 9 units (Chile, D.S. 49, art. 9, d. *Pequeno Condominio* – PC). A D.S. 1 integration project must observe that at least 20% of its max. 300 units are designated to the most 50% vulnerable Chileans, and follow the standards of L. 19,537, that regulates a real estate co-ownership regime (Chile, D.S. 1, art. 1; Chile, Ley 19.537, (V. y U.), de 16 de diciembre de 1997, L. 19.537, 1997). If applying for Title I, dwellings must be located within the urban grid set by the respective instrument of territorial planning and within the operational territory of sewage firms or at least be approved by MINVU's regional secretary, in accordance with the Bill on Urbanism and Construction Works (Chile, D.S. 1, art. 47; Chile, Bill on Urbanism and Construction Works).

¹⁴⁷⁴ Chile, D.S. 19, art. 9, c-f.

¹⁴⁷⁵ Chile, D.S. 19, art. 10 (4, a-b). Health, commerce and cultural establishments must respect a distance shorter than 2,500m, and public transportation services must not be located further than 500m (Chile, D.S. 19, art. 10 (4, c-f).

¹⁴⁷⁶ Chile, D.S. 19, art. 10 (3).

¹⁴⁷⁷ Chile, D.S. 19, art. 9, a.

¹⁴⁷⁸ Chile, D.S. 1, art. 46. In case projects plan more than 30 dwellings.

¹⁴⁷⁹ Chile, D.S. 1, art. 46.

¹⁴⁸⁰ Chile, D.S. 1, art. 44.

¹⁴⁸¹ Brasil, P. 114.

¹⁴⁸² Brasil, P. 114, Annex I, 8.7, a-c. Exempted from this assessment and selection process are those projects linked to interventions planned within the PAC program, those targeting housing demands resulting from emergency situations or public calamities, so defined by the Ministry of National Integration (*Ministerio da Integracao Nacional*), those targeting families residing in risk or

However, that respective ministerial regulation did not define or clarify upon all those standards, for the sake of translating them as an operational behavior, as D.S. 19 tried to.

In fact, sensitive information on the matter is found in another normative, P. 660, published first ten years after the creation of MCMV.¹⁴⁸³ That norm outlines, for instance, that educational centers to be settled in max. 1,000m or 1,400m distance to projects, *unless* the respective municipality offers access to public transportation.¹⁴⁸⁴ Those technical criteria are comparably similar to D.S. 19 standards. However, the norm deconstructs the answerability dimension for it creates an exclusion to the obligation of the duty-bearer.

P. 660 literally annotates also that those educational centers “*may*” be located in extension areas, under the condition of access to public transportation. Thus, despite setting the goal to integrate low-income households in the urban grid, the norm accepted the existence of new housing complexes in the outskirts of a city and the generation of spatial segregation. The condition to that exception would be sole public transportation, which anyhow does not suffice housing adequacy in a country with continental geographic dimensions. Particularly for children, long trajectory distances to school challenges access to and quality of education. Financial costs that come with transport should neither be pushed on those most-vulnerable. Such are programmed errors that the legislator must efficiently reform for the sake of answerability and enforcement.¹⁴⁸⁵

Souza and Sugai diagnosed extreme socio-spatial segregation in the context of MCMV social housing programs in a case study developed in Florianópolis.¹⁴⁸⁶ Only 7,75% of all social housing projects were placed in the island, whereas all others were planned in the mainland. Of those in-island projects, none were designed for vulnerable categories.¹⁴⁸⁷ Overall, although the highest housing gap is concentrated among the vulnerable category, only 12% of MCMV programs in the great region of Florianópolis were designated to those families.¹⁴⁸⁸

insalubrious areas, or that have been homeless, according to declaration given by a public entity.

¹⁴⁸³ Brasil, P. 660; Brasil, P. 114, Annex I, 1, f. In turn, another regulation, P. 114, sets the concept of minimum standards to be respected in the context of social housing in MCMV.

¹⁴⁸⁴ Brasil, P. 660, Annex I, 3.6.2.

¹⁴⁸⁵ Id.

¹⁴⁸⁶ Eduardo Leite Souza and Maria Ines Sugai, “Minha Casa Minha Vida: peripheralization, segregation and intra-urban mobility in the Florianópolis conurbation,” *Cadernos Metropole* 20 (2018), http://www.scielo.br/scielo.php?script=sci_arttext&pid=S2236-99962018000100075&nrm=iso. Capital of the state of Santa Catarina, in the south of Brazil, Florianópolis counts with ca. 800,000 inhabitants and with exceptional geographic design: it is partially situated in an island, connected to its continental periphery by one sole bridge. The island concentrates most jobs, increasing real estate prices in the big-Florianópolis and consequently pushing lower-income families to peripheries in the continent.

¹⁴⁸⁷ Id, 88-91.

¹⁴⁸⁸ Souza and Sugai, 88.

Souza and Sugai identified that new housing complexes in the continental peripheries of Florianópolis were identified to lack direct access to education, health and leisure.¹⁴⁸⁹ As those contexts show, the legal design of MCMV was inconsistent to its human-rights guidelines and to its raw technical settings.

Thus, despite legal goals to alleviate spatial segregation and in order to maximize profits, programs of both countries used preponderantly the cheapest available lands for social housing, mainly found in the outskirts of cities.¹⁴⁹⁰ That scenario segregates geographically those persons living in social housing complexes¹⁴⁹¹ by “dislocating them from their communities, their places of employment and their identities as city-dwellers.”¹⁴⁹² Social housing beneficiaries become stigmatized for residing in such peripheral locations.¹⁴⁹³

TCU evidenced an expressive amount of MCMV dwellers lacking access to e.g. transportation, health or education centers¹⁴⁹⁴, showing high levels of dissatisfaction among beneficiaries and an apparent paradoxical understanding of performance satisfaction.¹⁴⁹⁵ Whereas beneficiaries were mostly discontent with access to those essential services, a fair percentage of governmental employees showed to be rather satisfied with project performance¹⁴⁹⁶ and, overall, coordinators or assistants of Caixa’s social projects were more dissatisfied than Caixa

¹⁴⁸⁹ *Ib.*

¹⁴⁹⁰ HRC, A/HRC/37/53/Add.1, para 26; Pero, “Housing Policy in Chile;” Pero et al, “Policies to Promote Access to Good-Quality Affordable Housing in OECD Countries,” *OECD Social, Employment and Migration Working Papers*, N. 176 (Paris: OECD Publishing, 2016), <https://www.oecd-ilibrary.org/content/paper/5jm3p5gl4djd-en>.

¹⁴⁹¹ Silva Didier, Researcher’s Interview 8; *See* Cawley; Raquel Rolnik and Ana Laura Granero, “La guerra de los lugares la colonización de la tierra y la vivienda en la era de las finanzas,” *Chasqui. Revista Latinoamericana de Comunicación*, Jóvenes y Cultura Digital, 137 (2018). <http://dx.doi.org/10.16921/chasqui.v0i137.3659>.

¹⁴⁹² HRC, A/HRC/37/53/Add.1, para 27.

¹⁴⁹³ HRC, A/HRC/37/53/Add.1, para 28-39; *See* Cawley.

¹⁴⁹⁴ “A large part of the projects, due to the amount of residents, constitute real neighborhoods or even small cities, that does not dispose over schools, kindergartens and not even a basic health unit in their surroundings, subjecting the dwellers to travel long distances to access these equipments, most of times entailing in substantial transportation costs. It is not at all rare that residents must face the lack of local commerce or areas of leisure” (TCU, “Relatório de Auditoria no Programa Minha Casa Minha Vida,” para 152, Author’s own translation).

¹⁴⁹⁵ TCU, “Relatório de Auditoria no Programa Minha Casa Minha Vida,” para 156, graph 12. As a TCU report reveals, 70% or more of dwellers were dissatisfied with their projects in almost all of those matters. Education 73,4%, health 70,2%, leisure 79,8%, commerce 68,1%, transportation 46,1%. Exceptionally in regard to transportation, satisfaction was significant.

¹⁴⁹⁶ TCU, “Relatório de Auditoria no Programa Minha Casa Minha Vida,” para 156, graph 12. Dissatisfaction of coordinators or assistants of Caixa’s social assistance projects: education 77,8%; health services 56,9%; commerce 41,5%; transportation 53,8%; leisure 49,2%. As of Caixa managers: education 70,4%; health 51,9%; commerce 44,5%; transport 33,3%; leisure 31,5%. Local technical specialized workers showed dissatisfaction in education 55%, health 45%, leisure 32,5%, commerce 35%, transportation 35% of cases.

managers or technicians.¹⁴⁹⁷ However, looking closer, those statistics are coherent with this study's diagnosed accountability issues observed in MCMV. Front-line professionals are probably satisfied with their own capacity to comply with their obligations and Caixa managers are too distant from the implementation process. In contrast, those who work with social assistance, and therefore, work directly in contact with the local level, have been more dissatisfied with project outcomes probably because of those same factors: they can critically assess local implementation issues. That hints to the crucial need to adapt regulations for a local level operationalization. As a conclusion, not only access to those services should be improved¹⁴⁹⁸ (education, health, leisure, commerce, and transportation), but also answerability should be urgent reformed in the FAR-model.

That same report evidenced "deficiencies in asphalt paving, paving, urban drainage and sanitary or rainwater sewage system" in at least 22% of MCMV projects.¹⁴⁹⁹ Particularly FAR-funded projects must not necessarily provide those systems, in which case municipalities should do it as defined by their binding agreement with the central government.¹⁵⁰⁰ The sole agreement of a municipality to provide the installation of necessary public services should be a guarantee of implemented infrastructure.¹⁵⁰¹ However, according to TCU, most of the times municipalities do not comply with the binding agreement.¹⁵⁰² Yet,

¹⁴⁹⁷ Id.

¹⁴⁹⁸ "Another situation that compromises the effectiveness of the program concerns the production of housing in urban areas that are unconsolidated and have no school, nursery and basic health facilities, lack of local commerce, and lack of recreational and leisure areas in their surroundings. The question of the location of the projects, thus, becomes a critical point of the program. Although the program defines as one of the criteria for prioritizing the provision of services to municipalities, the adoption of instruments for intervention in the use and occupation of urban land and for combating the speculative retention of vacant land, there is in practice no evidence as such among the projects presented. Thus, the mechanism designed to induce good practices in the territorial planning of municipalities ends up having little practical effect" (TCU, "Relatório de Auditoria no Programa Minha Casa Minha Vida," para 7, Author's translation).

¹⁴⁹⁹ TCU, "Relatório de Auditoria no Programa Minha Casa Minha Vida," para 109. Author's translation.

¹⁵⁰⁰ Brasil, P. 114, Annex I, 2.4.

¹⁵⁰¹ In an interview with a MCMV beneficiary, this study found out that infra-structure systems of sewerage had been constructed seven years after their residency started, although they had been living there for the past ten years. And yet, at least until the date of interview, in July, 2019, that sewerage system had never started working. According to their information, reason to that is that the local system was never finally connected to the city's main sewerage collection system. In addition, the previously paved street was destroyed exactly for the creation of that fruitless sewerage system and unfortunately never reconstructed.¹⁵⁰¹ In sum, instead of creating a solution (construction of sewerage systems), the local public authority created another social problem (unpaved street).¹⁵⁰¹ In this case, although responsibility was shifted to the local municipal agent, failed implementation and lack of enforcement worsened the previous housing conditions.

¹⁵⁰² TCU, "Relatório de Auditoria no Programa Minha Casa Minha Vida," para 156, Graph 12, para 179. TCU's report found out different perceptions on the project's deficiencies in interviews conducted with four groups in regards to accessibility to equipments of education, health, leisure and public transportation systems and services revealed divergent results. Overall beneficiaries were over 70% dissatisfied with all factors, with the exception of transportation (only in 46% of cases).

“sustainable and non-discriminatory access to facilities essential for health, security, comfort and nutrition” must be backed by regulations, because an adequate habitat is directly dependent to its surroundings.¹⁵⁰³

In such case, municipalities are bound to comply with all minimum standards for social assistance as required in a specific regulatory act.¹⁵⁰⁴ But, first, the norm does not give any clear reference to which minimum standards it refers. And, second, not all 5,070 Brazilian have the same equal capacity to provide for the required equipments and services so they often fail to comply with their responsibilities equally because of their limitations.¹⁵⁰⁵

Biding agreements have been highly criticized for their inefficacy.¹⁵⁰⁶ If, on the one hand, municipalities have been reported of noncompliance, on the other hand, the sole text of the law is per se neither clear and can not clarify on minimum standards. Once again, this directly deconstructs answerability and, consequently, enforcement.¹⁵⁰⁷

Moreover, particularly MCMV failed to guarantee adequate health standards. FAR and FDS-funded projects are not expressively forbidden in areas known for structural health risks. However, technical settings only require the identification of “the occurrence of risk and unhealthy factors such as zoning industrial, flooding areas, polluting factories, sanitary landfills, treatment ponds, etc.; in the area of influence of the enterprise.”¹⁵⁰⁸ There is a clear difference between the sole identification and a strict prohibition of one matter. The legal texts only annotates on the identification of risks or factors and, consequently, it does not hinder projects from unhealthy conditions. In such fashion, it created a loophole by not creating an obligation nor guaranteeing enforcement. The discretion given by the Brazilian norm, that does not impose itself with strict obligations for housing adequacy to the duty-bearer, has negative and limiting effects to housing rights.

In contrast, Chile’s D.S. 49 and D.S. 19 require not only a plan, but also a certification of feasibility of water supply and sewerage.¹⁵⁰⁹ That is not the full concept of healthy housing. However,, that norm operationalizes a goal, there-

¹⁵⁰³ UN-Habitat, “The Right to Adequate Housing”, 8, 19-20.

¹⁵⁰⁴ Brasil, P. 114, Annex I, 2.4.

¹⁵⁰⁵ TCU, “Relatório de Auditoria no Programa Minha Casa Minha Vida;” Inês Magalhaes, Researcher’s Interview 2.

¹⁵⁰⁶ Id.

¹⁵⁰⁷ Brasil, P. 114, Annex I, 2.4.g. Because FAR executor agents (financial agents), which should adopt all judicial and extrajudicial measures to protect FAR’s assets, are hindered against nonenforceable clauses.

¹⁵⁰⁸ Brasil, P. 660, Annex III, 2.3.j.

¹⁵⁰⁹ Chile, D.S. 49, art. 10, c; Chile, D.S. 19, art. 10.3.

fore changing the behavior of the duty-bearer. A thorough reform of both systems should elaborate extensive operational mechanisms and acknowledge the right to a healthy housing environment.

Furthermore, MCMV instructs public entities to provide a report on urban infrastructure, including on equipment of water supply, sewerage and electricity power, which should meet the demand of the proposed venture.¹⁵¹⁰ Yet, those are mainly recommendations. The norm states that projects should “favor” sewage and waste management, protecting dwellings from possible impacts resulting from the implementation of local treatment systems.¹⁵¹¹ This lack of command and obligation of the law creates, once again, instability in the answerability dimension.

¹⁵¹⁰ Brasil, P. 660, 2.4.1; 3.1.4.

¹⁵¹¹ Brasil, P. 660, 3.1.4.f-g.

Category	Criteria	Score (p)
Project Location	In regions with biggest housing gap	80
	In regional capitals or provincial capitals with more than 150,000 inhabitants	60
	In provincial capitals with less than 150,000 inhabitants	40
	In cities between 20,000 to 40,000 inhabitants	20
Project context, located in consolidated neighborhoods	With 50% of "economic housing" (excluding D.S. 49 and D.S. 174 houses)	Mandatory
	More than 50% of the location in a Priority Development Site	50
	More than 50% of the location in an Urban Upgrading Zone	100
Design of the housing complex and family distribution, promoting social integration	Design in harmony with dwellings, infrastructure, green areas, homogenous urban standards; coherent with urban surroundings.	Mandatory
	Only for houses	25
	For houses and apartments	50
	Only for apartments, construction as such that they avoid the concentration of vulnerable households	25
	In each apartment, a building will be incorporated	50
Types of dwellings	Project with standardized common areas, green areas and equipments, (art. 46, D.S. 1), backing universal accessibility and geographical and topographical solutions	Mandatory
	Inclusion of cycle paths, sport stations, playgrounds, etc	50
	At least 3 harmonic and differentiated typologies of dwellings in the same projects	Mandatory
	More than 3, including houses, representing 10% of the project	50
	In case of only apartments, a third typology may be developed incorporating parking places	Mandatory
Additional attributes for disabled persons	Buildings with 3 to 8 floors	50
	geographical, cultural, climate particularities	10
	energy efficiency: projects are advised to create a plan against houses emissions, with efficient thermic isolation and opaque paint. Projects should at least supply additional items, such as photovoltaic public lights, solar systems or photovoltaic panels, mix ventilation systems.	30
Construction of houses on a surface area bigger than ...	47m2	Mandatory
	50m2	50
	57m2	75
Construction of apartments on a surface area bigger than ...	52m2	Mandatory
	56m2	50
	60m2	75
Projects with houses and apartments	With respectively 47m2 and 52m2	Mandatory
	With respectively 50m2 and 56m2	50
	With respectively 57m2 and 69m2	75
Projects integrating families...	Of at least 3 different dwelling price ranges, considering at least 20% of those to the most-vulnerable families; at least 10% for those comprehended among the most 50% vulnerable Chilean; and at least 10% among those fitting among the under 90% most vulnerable.	Mandatory
	For those applying in the great Santiago, great Valparaiso, great Concepción reserving more than 20% for the 50% most-vulnerable	50

Source: author, May/2019. Summary based on D.S. 19, art. 11; R.E. 822.

Table 7: D.S. 19 Scores for projects

Notably, the deconstruction of answerability, a concrete issue in MCMV, took an ultimate form: legal and technical requirements can have their application excluded by a decision of SNH.¹⁵¹² The norm did not condition those exclusions to specific standards, such as cultural adequacy, or local-decision making, but it left it to the discretion of SNH.

This work supports a flexible technical structure against the model “one-size fits all”, but flexibility cannot be used as an opportunity for lowering standards

¹⁵¹² “Excepcionalmente, nos casos em que não se aplicam os requisitos desta Portaria, é facultado à Secretaria Nacional de Habitação autorizar a não aplicação de itens desta, a partir de solicitação do Gestor Operacional do MCMV, motivada por manifestação conclusiva técnica e jurídica da Instituição Financeira” (Brasil, P. 660, Annex I, 6.1).

of adequacy. Minimum requirements set by law cannot be turned into legal suggestions that should not be misinterpreted without the assessment of beneficiaries.¹⁵¹³ Such exclusion criteria should be limited to e.g. cultural or infrastructural adaptation of projects, which are known matters requiring flexibility of basic criteria, or else a public local-level inquiry could compensate such a limitation.

5.2.2.2 Sustainability in vulnerable categories

This study has diagnosed a consequent deconstruction of the answerability dimension in the MCMV context. Progressive operational mechanisms are nothing more than recommendations, meaning they do not create an enforceable obligation.¹⁵¹⁴ Since they serve only as a suggestion, duty-bearers may choose if they want to follow those adequate recommendations or only the most basic obligations for their low-income projects (which, however, do not arrange adequacy into an operational behavior).

This scenario brings more evidence to the answerability dimension being consequently deteriorated through out the Brazilian social housing model. Particularly in relation to sustainable, cultural, social and spatial standards, regulations do not compel duty-bearers to progressive standards. For example, adherence to the PBQP-H program is mandatory for service providers, particularly construction firms, aiming at joining MCMV.¹⁵¹⁵ However, its guidelines are not

¹⁵¹³ For example, according to regulations, FGTS-projects should be located within the limits of the urban grid (Brasil, P. 570, 2, I). However, the norm did not assign any measures or limits to that definition, leaving that criteria to the judgement of municipal master plans. The decentralized legal structure without an objective adjustment to responsibility, answerability and control dimensions, resulted in failed performances (Brasil, Ministerio das Cidades, P. 570, 2, III; Brasil, L. 11.977, art. 5-A, I; CGU, “Relatório de Avaliacao Da Execucao: Programa Minha Casa, Minha Vida- FGTS,” 49-50). According to a report of the Comptroller’s General Office, only 28% of interviewed beneficiaries evidenced no issues with infra-structure or services in their projects, meaning a high incidence of infra-structure problems (CGU, “Relatório de Avaliacao Da Execucao: Programa Minha Casa, Minha Vida- FGTS,” 49-50. Most common issues evaluated referred to flooding (18%), deficient or inexistent street lighting grids (almost 12%), and paving (10%)).

¹⁵¹⁴ Ministerio das Cidades and SNH, “Minha Casa +Sustentável. Caderno 1;” Ministerio das Cidades, and SNHm “Minha Casa +Sustentável. Caderno 2;” Ministerio das Cidades and Secretaria Nacional de Habitacao, “Minha Casa +Sustentável. Caderno 3”; “Selo Casa Azul,” CEF. The collection is a joint publication supported by several academic institutions and watchdogs and serves to all urban programs. It sheds light on topics such as mobility, diversity, accessibility, sustainability and education, health and social protection equipments.

¹⁵¹⁵ Brasil, P. 114, Annex I, 1, e; “O PBQP-H. Apresentacao,” Ministerio das Cidades, Programa Brasileiro da Qualidade e Produtividade do Habitat, Official website, Accessed Dec 23, 2018, http://pbqp-h.cidades.gov.br/pbqp_apresentacao.php. The federal program on Habitat Productivity and Quality (*Programa Brasileiro da Qualidade e Produtividade do Habitat – PBQP-H*) guides construction firms aiming to provide for the federal government with minimum standards of sustainability, quality and productivity construction. Pioneer to all current housing strategies PBQP-H, was created in 1998 by the Cardoso administration to fill in the gap of communication existent between the private sector and the government. It aimed at modernization, quality and productivity in the housing

adjusted to the international green, social, resilient agenda.¹⁵¹⁶ Other instruments, such as *Selo Casa Azul*, an awarding program for sustainable housing projects,¹⁵¹⁷ and *Cadernos Minha Casa +Sustentável*, a progressive publication series to guide public entities, service providers and financial institutions in sustainable solutions for MCMV, are not mandatory.¹⁵¹⁸ In addition, the exclusion of the obligation of the *Habite-se* certificate substantiates a critical volatility of Brazilian norms.¹⁵¹⁹

In another example, I.N. 42 and I.N. 43 recommend similar legal and technical directives to be followed for the implementation FGTS-funded construction works, respectively in regard to individual and associative applications.¹⁵²⁰ For instance, a service provider must prove its regularity before INSS and FGTS.¹⁵²¹ Materials used in construction works must be certified by PBQP-H¹⁵²² and INMETRO, and as such, they must obey the specific regulations of ABNT, which are nonetheless inconsistent to sustainability standards.¹⁵²³

construction sector, the program become a special tool for MCMV. Currently, it externalizes the concerns of the government in the use of new technologic material and management processes, and shows support to enterprises that want to follow those interests.

¹⁵¹⁶ United Nations, RES/71/256, para 2, 14.c, 51, 58, 63-80.

¹⁵¹⁷ “Selo Casa Azul,” Caixa Econômica Federal, CEF, Official Website, Accessed Nov 15, 2018. <http://www.caixa.gov.br/sustentabilidade/produtos-servicos/selo-casa-azul/Paginas/default.aspx>.

¹⁵¹⁸ Ministerio das Cidades and Secretaria Nacional de Habitacao, “Minha Casa +Sustentável. Caderno 1: Análise Custos Referenciais” (Brasília: MCIDADES/SNH, Dez 2017); Ministerio das Cidades and Secretaria Nacional de Habitacao, “Minha Casa +Sustentável. Caderno 2: Parâmetros Referenciais” (Brasília: MCIDADES/SNH, Dez 2017); Ministerio das Cidades and SNH, “Minha Casa +Sustentável. Caderno 3: Diretrizes.”

¹⁵¹⁹ Brasil, I.N. 42, 5.3.h; Brasil, I.N. 43, 5.4.h; Brasil, L. 6.015, 247-A. That certificate ensures the quality of the construction, then suitable for habitation. But, since August 2019, *Habite-se* is not mandatory for ground floor constructions in “areas occupied by low-income population”. Those changes, which occurred during the Bolsonaro administration, characterize a retrogressive measure to social housing beneficiaries. Once again, the volatility of norms exposes low-income households to violations to their right to adequate housing.

¹⁵²⁰ Brasil, P. 570, art. 2, I; 3, I-IV; Brasil, I.N. 42; Brasil, I.N. 43; Brasil, Conselho Curador do Fundo de Garantia de Tempo de Serviço, Resolução 761, de 9 de dezembro de 2014, R. 761 (2014).

¹⁵²¹ Brasil, I.N. 42, 5.3.a-b, e-f, i; Brasil, I.N. 43, 5.4.a-b, e-f, i. The project itself must have been approved by the local municipality and, having received a building permit, it must also have its construction registered at the real estate notary.

¹⁵²² Associação Brasileira de Normas Técnicas, “NBR 15.575,” ABNT, 2013; Brasil, P. 114, Annex I, 1, d; Brasil, P. 660; Brasil, I.N. 42. PBQB-H certifies firms and their projects based on, for example, the mandatory standards provided by the non-governmental entity *Associação Brasileira de Normas Técnicas* – ABNT. Even some of the Brazilian ministerial norms in effect, such as P. 660 and P. 114, refer to ABNT’s technical norms – NBR as a mandatory requirement to guide firms in project planning or implementation. Among its positive operational settings, this work evidenced the compulsory creation of unities adapted to disabled persons, of reduced mobility and to the elderly is another inclusionary target of the program. For example, NBR 15.220 sets standards on environmental and sustainability matters, such as sets technical norms on construction technical norms for construction thermal performance.

¹⁵²³ Brasil, I.N. 42, 5.3.j,k; Brasil, I.N. 43, 5.4.h, j, j.1, j.2. See also section 5.2.1.6.

However, it was observed that some standards are neither consistent nor transparent, according to a cooperation study published by the Brazilian Ministry of Regional Development (former Ministry of Cities) and the GIZ. It is claimed that projects fail to ascertain on various parameters of energetic efficiency, what highly impacts on the energetic and sustainable performance of millions of new dwellings.¹⁵²⁴ NBR 15575 does not mention minimum natural ventilation for bathrooms and kitchens, which can substantially impact a household's energetic efficiency.¹⁵²⁵ As well, parameters on apertures were evidenced to be smaller than those defined by previous regulations.¹⁵²⁶

That study also supports this same dissertation's claim on the need to strengthen social work. Supporting entities could be redesigned to coach beneficiaries for the sustainable use of resources. For example, they cite that the installation of certified lamps is only legally required in common areas. Yet, supporting entities could impact by instructing dwellers in choice-making: they can coach beneficiaries in the use of more energy-efficient light bulbs.¹⁵²⁷ Those technical reforms for the use of sustainable resources, allied to legal adjustments, impact on more adequacy, decrease direct economic costs (e.g. less energy costs) and indirect costs (e.g. health-related issues, lessen the waste of limited natural resources).

Overall, key matters, such as reducing green gashouse emissions or the adoption of smart-city approaches, must be urgently integrated to social housing policies in both countries.¹⁵²⁸ The continued construction of thousands and even millions of dwellings will corroborate in an environmental catastrophe if policies fail to adapt to a new green future. As remembered by the United Nations New Urban Agenda:

cities and human settlements face unprecedented threats from unsustainable consumption and production patterns, loss of biodiversity, pressure on ecosystems, pollution, natural and human-made disasters, and climate change and its related risks, undermining the efforts to end poverty in all its forms and dimensions and to achieve sustainable development. Given cities' demographic trends and their central role in the global economy, in the mitigation and adaptation efforts related

¹⁵²⁴ Isabela Issa ed., "Evolução Normativa Do Programa Minha Casa, Minha Vida (PMCMV) Relativa a Aspectos de Eficiência Energética," *Relatório Final – Produto 3*, Secretaria Nacional de Habitação (SNH), Ministério do Desenvolvimento Regional (MDR), Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH, Jun 2019, 38-39. Those include: *Percentual de Abertura na Fachada* (PAF), *Fator de Forma* (FF), *Fator solar de vidros*.

¹⁵²⁵ Issa, 38; ABNT, NBR 15.575 (2013).

¹⁵²⁶ Issa, 38.

¹⁵²⁷ Issa, 40. In that case, of 90 lm/W.

¹⁵²⁸ UNGA, New Urban Agenda, para 65-66.

to climate change, and in the use of resources and ecosystems, the way they are planned, financed, developed, built, governed and managed has a direct impact on sustainability and resilience well beyond urban boundaries.¹⁵²⁹

In sum, the most-vulnerable are and will continue to be the most affected by those global impacts. And therefore, a sustainable and resilient policy-approach must be inherent to social housing.

In a slightly different context, in D.S. 49, project applications will not be given better selection chances, though they will receive extra subsidies for introducing efficient sustainable solutions, such as thermic solar systems, photovoltaic panels or thermic isolation.¹⁵³⁰ That is a positive legal though, though, sustainability remains out of the main focus of regulations.¹⁵³¹ This is problematic because not always an economic saving is based on a more sustainable solution.¹⁵³² Whereas high investments in energetic efficiency pay themselves in the long-term, the amount offered by the Chilean norm is fix and does not depend on the investment conducted. Thus, this system hinders applicant entities to increment their projects for long-term efficient and sustainable solutions. The Chilean norm must hence be reformed, in order to consistently apply mandatory sustainable settings.

It is possible to undertake an economic viable and yet sustainable agenda. An initiative study hired by the Federation of German Industries (BDI) observed several adjustments that could enable economic growth in that national industry while achieving 80% to 95% of greenhouse gas emissions by 2050.¹⁵³³ Although those achievements would also depend on the impacts of a global agenda, a sustainable agenda is a matter of political will. A future study in the capacity of change for Brazilian and Chilean economies can also punctuate policy means to efficiently invest in sustainable economic and social growth. Nevertheless,

¹⁵²⁹ UNGA, New Urban Agenda, para 63.

¹⁵³⁰ Chile, R.E. 1.875, p. 31, g.2. A non-inclusive roll leaves to the creativity of the supporting entity to introduce efficient sustainable system. The subsidy formula is rather complex, depending on the amount on units that will refer to an index factor which will be multiplied by the basis extra subsidy of 30UF per mega construction project. Though specificities must be considered, such as hydro solutions. Under other reasons, this specific calculation should be reformed, because all exceptions and singularities were not clearly nor objectively annotated.

¹⁵³¹ Chile, R.E. 1.875, p. 30-31. Equivalent to respectively 10UF and 2UF (CUEX). Only for improving energetic efficiency, despise sustainability standards, projects can be financed with extra ca. 430USD per project or ca. 86USD per dwelling.

¹⁵³² Just as an example, the installation of nuclear, hydroelectric, solar or wind power plants has different economic and sustainable consequences in the short and long-term, that must be taken into consideration.

¹⁵³³ See Philipp Gerbert et al, "Klimapfade Für Deutschland" (The Boston Consulting Group and Prognos, Jan 2018).

the sole acknowledgment and indication to the use of sustainable policies will not generate an organizational change. Countries and their respective policies must invest in enforceable mechanisms to operationalize sustainability.

In sum, those guidelines have not been translated into a legal behavior. There is only very limited record of legal instruments or mechanisms that created obligations to those principles in those housing programs. In other words, those human rights aspects lacked operationalization.

To that matter, an inspiring solution was identified in D.S. 19, in which a procedure was created to reward better projects. In that context, the use of efficient energy solutions increases the chances of project selection: (more) sustainable projects will receive better ranking scores.¹⁵³⁴ However, energetic solutions are not the only factors increasing chances and neither are they decisive. More aspects of resilient and sustainable social housing should be included and eventually better ranked in comparison to other standards.

A reform should first command the necessary use of adequate sustainable solutions and, on top of that, increase chances of selection to projects that exacerbate minimum sustainable standards. This way, this feasible solution also suggests a scheme where developers are encouraged to take progressive steps, to which they could be awarded. However, it is first crucial that those basic project standards adapt to the international sustainable and resilient agenda.

5.2.2.3 Social assistance

Most-vulnerable categories are granted the right to social assistance¹⁵³⁵ in all the case studies and governments delegate that support to third parties, as a rule. Expressly FDS- and FAR-funded projects embraced the legal aim to improve quality of life of its beneficiary families.¹⁵³⁶ The specific goals of those social assistance strategies refer to the promotion of “participation of beneficiaries in the decision-making procedures, implementation and monitoring” [...] “in order to adequate them to local needs and reality and to stimulate their ownership.”¹⁵³⁷ Particularly the FAR-program demonstrates a rights-based perspective, for it includes the promotion of empowerment, inclusion and participation of those households, as well as their autonomy through the creation of new jobs under the value of social work.¹⁵³⁸ It promises to comply with city master plans,

¹⁵³⁴ Chile, R.E. 822, art. 3.5.

¹⁵³⁵ Brasil, P. 464, Annex III, 6.3, Annex IV, 6.3. *Trabalho social*, literally translated as “social work”, is the term used to define social assistance particularly in MCMV.

¹⁵³⁶ Brasil, P. 464, Annex I, 1.1; Brasil, P. 114, Annex I, 1, a.

¹⁵³⁷ Brasil, P. 464, 2.2. Author’s translation.

¹⁵³⁸ Brasil, P. 114, Annex I, 1, c, g.

in order to guarantee social, economic and environmental sustainability to projects through a coordinated work of all government levels, as well as greater access to public areas.¹⁵³⁹

However, those goals have not been extensively integrated as in the operational behavior of MCMV. Only punctual strategies could be examined to have been incorporated to that program, such as certain gender-related protection practices (the formalization of titles and priority ranking) or the prioritization and reservation of units to the elderly and disabled persons.¹⁵⁴⁰ That is a far too limited scenario in contrast to MCMV's own legal guidelines.

But, although an appropriate policy would require local decision-making involving governmental actors and communities, an engagement of beneficiaries in the different phases of a project is mainly exceptional or, when evidenced, often discretionary and limited.¹⁵⁴¹ Critics to MCMV remark a strong top-down approach.¹⁵⁴² Only projects designated to the most-vulnerable households for the purchase of a new household are granted the right to social assistance during occupation phases.¹⁵⁴³ FAR pre- and post-occupation phases guarantee meetings with dwellers as well as actions for sanitary and environmental health and the support of the community networking.¹⁵⁴⁴ MCMV-E distinguishes too an "implementation" phase, happening during construction works, which should "prepare beneficiaries for the new reality."¹⁵⁴⁵

Specifically, a pre-occupation phase is designed to last thirty days and should endure meetings between stakeholders and beneficiaries with the aim of "informing them" about different aspects of the program.¹⁵⁴⁶ Similarly, a post-occupation phase is to last eleven months and *provides* general support and information.¹⁵⁴⁷ The use of feedback mechanisms for planning or social control through those meetings is not advised by the norm. Therefore, that is diagnosed as a one-direction communication channel and requires reform because it hinders efficient relations.

Moreover, supporting entities should install plans for the implementation of their assistance work in both models. In MCMV, an institutional group is responsible for articulating local demands in a PTS (*Plano de Trabalho Social*). That plan identifies the project, its responsible entities, budget, agenda, and

¹⁵³⁹ Brasil, P. 114, Annex I, 1, b, d.

¹⁵⁴⁰ See more details on sections 5.1.4 and 5.2.2.

¹⁵⁴¹ World Bank, *World Development Report 2004*, 13.

¹⁵⁴² See more Cardoso et al, 96-101.

¹⁵⁴³ Brasil, P. 464; Brasil, P. 114.

¹⁵⁴⁴ Brasil, P. 464.

¹⁵⁴⁵ Brasil, P. 464, Annex IV, 6.3.b. Author's translation.

¹⁵⁴⁶ Brasil, P. 114, Annex V, 8.1. See more Amore; Cardoso et al.

¹⁵⁴⁷ Brasil, P. 114, Annex V, 8.2.

other formal matters, as well as its goals and justification.¹⁵⁴⁸ Overall, a PTS has an evaluation and monitoring phase and a social assistance “on standby” mechanism, in which information channels to all dwellers, such as group meetings, should be arranged.¹⁵⁴⁹ In the FDS context, that involved the elaboration of a Mobilization Plan (*Plano de Mobilizacao*) or a PTS, in which the demand is technically identified. That is related to the number of beneficiaries, the type of construction required, and to information about the responsible technical agents.

Differently, Chilean programs provide a more comprehensive support, even though participatory decision-making mechanisms were only illustrated in D.S. 49. That program presents a detailed plan for social assistance in a complementary regulation, R.E. 1.875. The Social Follow-Up Plan is divided in two phases, detailed in the norm as in phases of organization of the demand (*Etapa Organización de la Demanda*) and of project design and execution (*Diseño y Ejecución del Proyecto*). That same regulation states specific obligations on services for elaboration of technical projects and contracting of construction works (*Servicio de Elaboración de Proyectos Técnicos y Contratación de Obras*), legal management (*Gestión Legal*) and technical and social management of projects (*Servicio de Gestión Técnica y Social de Proyectos*).¹⁵⁵⁰

D.S. 49 supporting entities shall hold at least two meetings with candidate families in order to advise them in regard to social housing solutions and on their rights and obligations.¹⁵⁵¹ Supporting entities must also intermediate the elaboration of the social housing project and of a social monitoring plan in accordance with the characteristics and demands of families. They should inform and network with families, so that they may finally approve the respective social housing project with meetings.¹⁵⁵² In the case of mega projects or construction in new lands, supporting entities should even develop a special plan for relocation and verify its performance.¹⁵⁵³ Only after this phase can a project application for D.S. 49 be sent to the *Banco de Postulaciones*.¹⁵⁵⁴

In D.S. 49, a supporting entity also has the responsibility to back integration and education on the maintenance and the use of public spaces.¹⁵⁵⁵ They also engage in scheduled visits to the project and quarterly reunions with families

¹⁵⁴⁸ Id.

¹⁵⁴⁹ Brasil, P. 464.

¹⁵⁵⁰ Chile, R.E. 1.875, art. 2.2-4.

¹⁵⁵¹ Chile, R.E. 1.875, art. 2.2, Table *Plan de Acompañamiento Social Etapa Organización de la Demanda, Diseño, y Ejecución del Proyecto*.

¹⁵⁵² Chile, R.E. 1.875, art. 2.2, Table *Plan de Acompañamiento Social Etapa Organización de la Demanda, Diseño, y Ejecución del Proyecto*, Table *Área de Ingreso de la postulation al Sistema de postulation MINVU*. That also depends on the creation of an assembly.

¹⁵⁵³ Chile, R.E. 1.875, art. 2.2, Table *Área Apoyo a Futuros Proprietarios*.

¹⁵⁵⁴ Chile, D.S. 49, art. 12.

¹⁵⁵⁵ Chile, R.E. 1.875, art. 2.2, Table *Área Apoyo a Futuros Proprietarios*.

during the construction phase.¹⁵⁵⁶ Therefore, after assisting in the application and selection for D.S. 49, entities also take the role of engaging with the training and information of beneficiaries.

From the temporal perspective, social assistance takes place not only during planning, application and implementation, but also in post-delivery phases. Chilean supporting entities intervene for at least 9 months after the delivery of the dwellings.¹⁵⁵⁷ For MCMV, agency support starts with the celebration of the bidding agreement with the municipality and is concluded 12 months after the beneficiary's contract.¹⁵⁵⁸ Therefore, although MCMV strives for a longer post-assistance period than Chile, it must be taken into consideration that the support granted by Chilean programs is significantly more comprehensive than the one offered by MCMV.¹⁵⁵⁹

Finally, one of the most remarkable differences between the case studies is reflected on supporting assistance to emergent categories. D.S. 1 grants beneficiaries of title I to supporting assistance¹⁵⁶⁰, designing support to ensure the materialization of the right to adequate housing through different informational, training, integration and inclusion projects.¹⁵⁶¹ D.S. 19 does not expressly observe the support to vulnerable families in a post-occupation phase, but it accepts beneficiaries of D.S. 1 (and D.S. 49), who are granted that support.¹⁵⁶² Only beneficiaries of D.S. 1, title II are excluded from assistance (consisting of Chile's 80%-90% most-vulnerable index).¹⁵⁶³ Although there is no clear justification for such a strategy, it can be inferred that it is due to the better financial situation of the emergent category. It must be recognized that D.S. 1 is more comprehensive than MCMV. Those better-off families should be assisted by supportive social work, because they are still vulnerable. In Brazil, the right to supportive social assistance excludes beneficiaries of FGTS-funded projects.¹⁵⁶⁴

¹⁵⁵⁶ Chile, R.E. 1.875, art. 2.2, Table *Área Seguimiento del Proyecto Habitacional*.

¹⁵⁵⁷ Chile, D.S. 49, art. 50, a-b. Remarking they start intervening much before, in a planning phase before the presentation of the project to the *Banco de Postulaciones*.

¹⁵⁵⁸ Brasil, P. 464, Annex III, 6.3.

¹⁵⁵⁹ Inês Magalhaes, Researcher's Interview 2, Skype, March 23, 2019. And, according to Inês Magalhaes, a "post-post-occupation" phase could have given even better support to beneficiaries. From her experience, families should have kept on receiving support for the development of their new households for a longer time. Author's translation.

¹⁵⁶⁰ Chile, D.S. 1, art. 62.

¹⁵⁶¹ Chile, D.S. 1, art. 62. They should: (i) communicate the development of the project construction, with at least two meetings with families; (ii) arrange guided visits to the construction site, at least one before and another after 50% of the work done; (iii) provide training for use and maintenance tasks, as well as on rights and duties of neighbors (iv) supporting the strengthening of relationships in the new community through e.g. training and new service or social networks.

¹⁵⁶² See also Chile D.S. 49, art. 50-51.

¹⁵⁶³ Chile, D.S. 1, art. 62-66. The norm does not exclude more vulnerable families to join that category.

¹⁵⁶⁴ Support is only required for the most-vulnerable families applying to projects funded by FAR and FDS. Brasil, P. 464, Annex III, art. 1.

Again, there is no legal justification, but it can be inferred that emergent families are refused those guarantees due to their (relative) better-off conditions. However, categories 1.5, 2 and 3 should too recognize the right to adequate housing to those anyhow vulnerable households.

However, the uniqueness of D.S. 49 it enables supporting entities to undertake planning *with* stakeholders instead of only *for* them. That legal twist must be beared in my by legislators. In contrast, MCMV has been hindering engagement. Adjustments should be conducted to make regulations in conformity with social housing rights-based guidelines. A participatory agenda should be operationalized into mechanisms and instruments and legally translated into a detailed plan of conduct.¹⁵⁶⁵

For example, *Urbanismo Social*, a Chilean sponsor entity,¹⁵⁶⁶ won a prize in the international Architecture and Urbanism Biennale in 2017, with the project they assisted in Punta del Sol, in the city of Rancagua, delivered in 2014.¹⁵⁶⁷ In cooperation with Elemental, they ensured architectural quality of the project with the use of participatory planning methods and sustainable public spaces.¹⁵⁶⁸ As a result, 90% of the dwellers declared to be satisfied with housing conditions, making the project that one with the highest happiness perception among applicants.¹⁵⁶⁹

Official information also shows the positive results of participatory mechanisms experienced in the making of, design and execution of a project in the Region of *Magallanes* with more than 504 involved beneficiaries of *Mapuche-Huilliche* and *Kaweskar-Yagán* ethnicities, from 2016 to 2017.¹⁵⁷⁰ According to the report, families could monitor the development of work and define the place where their dwelling should be found. Even children could show where and how they would like to have their green and common areas, using special methodologies for children, such as drawings.¹⁵⁷¹

Nevertheless, inspiring examples from MCMV show that even in a confusing legal system, positive results may be achieved. Sao Paulo's municipality also showed that a participatory social housing approach can be possible in Brazil. It created and implemented an Intervention Plan on two blocks located in its

¹⁵⁶⁵ Chile, R. 1.875, art. 2.2.

¹⁵⁶⁶ "Quiénes somos: Urbanismo Social," Urbanismo Social, Official website, Accessed Sep 17, 2019, <https://urbanismosocial.cl/quienes-somos/>.

¹⁵⁶⁷ "Punta del Sol: Urbanismo Social," Urbanismo Social, Official website, Accessed Jul 24, 2018, <https://urbanismosocial.cl/puntadelsol/>.

¹⁵⁶⁸ Id.

¹⁵⁶⁹ Domingo Martínez, "Biental Diálogos Impostergables: Muestra Internacional," ArchDaily Colombia, Website, Accessed Oct 4, 2018, <https://www.archdaily.co/co/882948/biental-dialogos-impostergables-muestra-internacional>.

¹⁵⁷⁰ Ministerio de Vivienda y Urbanismo, "Selección de Buenas Prácticas de Participación Ciudadana – Sector de Vivienda y Urbanismo," 201AD.

¹⁵⁷¹ Id.

city center.¹⁵⁷² By acknowledging participation and engagement, the plan aimed at constructing units for low-income families funded by FAR.¹⁵⁷³

The *Companhia Metropolitana de Habitacao de Sao Paulo* – COHAB informed dwellers that they had to be relocated temporarily, for which they would receive social assistance and ca. 106USD as a rent bonus.¹⁵⁷⁴ A technical team – DTS Centro was created by the local Housing Secretary – SEHAB to support the development of social work following those city’s directives, which looked at the pillars of social assistance, such as engagement and social organization, sustainable development and patrimonial education, socio-economic development, as well as social monitoring.¹⁵⁷⁵ Despite the positive impact of engaging with beneficiaries, not only beneficiaries should be served with information. Other stakeholders could have also been able to participate, such as neighboring organizations of dwellers or tradespeople could have joined local discussions of urban reform.¹⁵⁷⁶

Those novel strategies should be integrated and expanded in social housing. A correct approach to citizen participation must ensure the transfer of responsibility closer to the local-level by acknowledging the views of citizens and expand them to full empowerment.¹⁵⁷⁷ Arnstein had already understood that, even if positive scenarios ensure certain level of voice because “citizens may indeed hear and be heard,” if “there is no followthrough, no ‘muscle,’ hence no assurance of changing the status quo”¹⁵⁷⁸ then participation is limited. That speaks once again for the necessity of grievance and redress mechanisms and legally instated forms of guaranteeing the exercise of human rights.

In sum, despite the lack of legal goals, Chilean operational settings are able to better support the instrumentalization of participatory mechanisms. Thus, if on the one hand, MCMV legal guidelines must be acknowledged for their rights-based perspective, on the other hand, only identifying those entitlements is not enough.¹⁵⁷⁹ the norm must outwork guidelines into efficient mechanisms and

¹⁵⁷² Secretaria de Habitacao do Estado de Sao Paulo, “Diretrizes de Intervencao. Quadras 37e 38 Campos Elíseos” (SEDHAB, Jul 2018).

¹⁵⁷³ SEDHAB, “Diretrizes de Intervencao”, 50-51.

¹⁵⁷⁴ COHAB is a mixed-capital corporation created in 1965 with the aim to facilitate access to adequate housing to low-income population under the criteria established by the municipal and federal governments. See Governo do Estado de Sao Paulo, Lei Ordinária 6.738, de 16 de novembro de 1965, L. 6.738 (1965); Secretaria de Habitacao do Estado de Sao Paulo, “Diretrizes de Intervencao,” 49-50; “História: A Companhia Metropolitana de Habitacao de Sao Paulo.” COHAB Sao Paulo, Website, Accessed Jul 5, 2019, <http://cohab.sp.gov.br/Historia.aspx>.

¹⁵⁷⁵ Event though the report was referring to the previous Portaria 21/2014, it was based on basically the same pillars of social assistance. At the time, P. 464 had not yet been published. See SEDHAB, “Diretrizes de Intervencao”, 51.

¹⁵⁷⁶ SEDHAB, “Diretrizes de Intervencao”, 52.

¹⁵⁷⁷ Arnstein, 217, 223-24.

¹⁵⁷⁸ Arnstein, 217.

¹⁵⁷⁹ Miller and Redhead.

processes. Legal goals must be acknowledged to follow the progressive realization of human rights and particularly enable justiciability, where the Chilean model fails and MCMV shows positive examples. In sum, those two weighs must be balanced: goals and operations.

5.2.2.4 Legal guidelines and criteria and their volatility

Many of the rights-based project standards are nothing more than recommendations, to which duty-bearers may decide not to comply.¹⁵⁸⁰ In addition, legal and technical eligibility conditions have been regulated in diffuse documents in both Brazilian and Chilean contexts, but FGTS-funded projects present a much more fragmented and discretionary legal context.

The most basic problem evidenced was in D.S. 19 core principles. According to D.S. 19's preamble, it would be a "decision" of the State to undertake projects that aim for reducing the national housing gap and socio-spacial exclusion and segregation and a "decision" to support projects that back social integration and participative structures.¹⁵⁸¹ The preamble follows to annotate that it would be in the "interest" of the State to ease access to inclusionary neighborhoods.¹⁵⁸² And finally, that same preamble recognizes the "necessity to contribute" to the construction industry and the creation of employment through such housing subsidies.¹⁵⁸³

However, from a rights-based perspective, the formulation of this norm is mistaken. It is neither a "decision" of the state to support a human right, nor it is in its own "interest" to facilitate inclusion. In fact, as already explained previously, it is a state's obligation to respect, protect and fulfill human rights. That comprehends the right to housing, its adequacy and influencing principles, including accountability, participation, inclusion. The consequence to contribute to the construction industry may be understood a positive effect, but it is not the goal of a rights-based social housing program.

However, projects must also comply to legal eligibility criteria in order to be eligible. D.S. 19 and D.S. 49 require a construction permit or a preliminary project approved by the Municipal Construction Secretary.¹⁵⁸⁴ In case neither the permit nor the approval are to be granted, the development entity may show a proof of income documentation.¹⁵⁸⁵ In the case of D.S. 19, the norm innovates

¹⁵⁸⁰ Brasil, P. 570, art. 3. Cases of legal amendments have been reported to violate the duty of progressive realization of human rights, such as the exclusion of *habite-se* as a mandatory certificate for the most-poor areas. Or else, socio-spatial marginalization is neither properly substantiated in the FGTS-funded category, although that track expressively excludes women of granted rights to other categories.

¹⁵⁸¹ Chile, D.S. 19, Preamble, 1. Author's translation.

¹⁵⁸² Chile, D.S. 19, Preamble, 2. Author's translation.

¹⁵⁸³ Chile, D.S. 19, Preamble, 3. Author's translation.

¹⁵⁸⁴ Chile, D.S. 19, art. 7, b; 8; Chile, D.S. 49, art. 10, b.

¹⁵⁸⁵ Chile, D.S. 19, art. 7-11; Chile, D.S. 49, art. 10.

by allowing the delivery of documents via a computer-based system.¹⁵⁸⁶ D.S. 49 has a comprehensive spectrum and requires, for example, a declaration that states the construction firm and the obligations and responsibilities it is holding.¹⁵⁸⁷

In contrast to the Chilean cases, MCMV's main regulation L. 11.977 did not annotate on legal standards, nor clearly referred to other regulations. Caixa, the operational agent, published a list of required information from providers, which is mainly based on diffuse general procurement norms.¹⁵⁸⁸ That list confronts stakeholders with an unclear framework, that neither properly defines responsibilities or the "rules of the game".

In another issue, although Brazilian norms ensured the creation of legal standards, they failed to systematically design those legal criteria on the main FDS- and FAR-funded regulations.¹⁵⁸⁹ The main message stated is that, at the time of the presentation of the project proposal, applicants should present "sufficient" legal and technical documents.¹⁵⁹⁰ Although that norm includes a list of basic information¹⁵⁹¹ that should be presented, it fails to define upon the necessary documental proof for that legal assessment. There is neither a hint to deadlines or to any exact procedure that assessments should follow. That way, it fails to clearly and objectively define the necessary legal standards of projects.¹⁵⁹²

In contrast, local calls for projects provide a better example of MCMV, in which concrete expectations and limits are set. For example, Goiânia's AGEHAB open call for most-vulnerable families required specific parameters for a public bid.¹⁵⁹³ In this example, more detailed and specific obligations are described in comparison to the main federal regulations, and federal guidelines have been customized to the local context. Nonetheless, federal regulations must be clearer on adequacy standards to be followed by local governments.

¹⁵⁸⁶ Chile, D.S. 19, art. 12.

¹⁵⁸⁷ Chile, D.S. 49, art. 10, m.

¹⁵⁸⁸ CEF, "Checklist Construtora."

¹⁵⁸⁹ Brasil, P. 660; Brasil, P. 114; Brasil, L. 11.977.

¹⁵⁹⁰ Brasil, P. 114, Annex I, 8.2.d.

¹⁵⁹¹ Brasil, P. 114, Annex I, 8.2.1. That includes the presentation of information upon a firm's name and address, a copy of the registration of the real estate property or the offer to purchase, established on behalf of the enterprise, as well as information on pre-existent infrastructure, such as water, sanitation and sewerage networks. Technical information on the project itself is also required, e.g. on financial matters, such as investment and operational costs, on urban design, such as distances to schools, bus stations, bank agencies, and on infra-structure plans, as well as a certificate of approval or of submission to the town hall.

¹⁵⁹² It must be remarked, legal standards for projects are depicted for monitoring procedures. See following Section on Enforcement and Control.

¹⁵⁹³ The state of Goiás, to which Goiânia is capital, has a housing deficit of ca. 180,000 dwellings, of more than a third in the city of Goiânia, and 85,5% of the state's deficit is concentrated among most-vulnerable families. See "*Termo de Referencia*," Agehab, para 4.2.

In all analyzed studies, the final selection of projects shall be made public by the government and formalized via a contract. In D.S. 19 and D.S. 49, MINVU makes information public, and SERVIU leads the contracting phase. One of the main singularities of the Chilean legislation refers to the *convenio*, in which specific required information should be stated on that contract between SERVIU, the development entity and, if the case, with the responsible construction firm.¹⁵⁹⁴ For example, after the publication of results, the Chilean Ministry of Housing and Urbanism will publish selection results, after which a contract should be signed in 30 days.¹⁵⁹⁵

D.S. 19 contracts should define upon the construction company, the number of dwellings from each socio-economic category (vulnerable, emergent and middle-sector), their delivery deadline, required standards and sanctions to contract violation.¹⁵⁹⁶ D.S. 49 requires information upon contractors, construction works, contract guarantees, financing sources and even a working schedule.¹⁵⁹⁷ In both cases, MINVU is allowed to publish selected results all over the country and through all means of communication, it may find useful.¹⁵⁹⁸ The difference is that selected projects shall be secured for 12 months, a time-period in which interested beneficiaries have to apply.¹⁵⁹⁹

In the context of FAR-funded project selection, after proposals have been published by the Ministry of Cities, a “contractual phase” starts where the construction firm must present the financial institution with the terms of commitment, which must have already been established with the local chief executive to conduct all necessary actions to deliver the demanded services.¹⁶⁰⁰ This agreement should include object, parts and attributions of the equipments necessary for the project.¹⁶⁰¹ Yet, in contrast to the Chilean legislation, there is no detailed annotation on the contract conducted with construction firms. Yet, the contract is bound to the terms of commitment set with the public entity, which has been detailed by the auxiliary regulation.¹⁶⁰²

D.S. 49 can first select beneficiaries that, later, in possession of a subsidy certificate, can search for a construction project. In which case, in this second phase, construction works must initiate within 90 days of the official publication

¹⁵⁹⁴ Chile, D.S. 19, art. 14; Chile, D.S. 49, art. 29.

¹⁵⁹⁵ Chile, D.S. 19, art. 14.

¹⁵⁹⁶ Chile, D.S. 19, art. 14.

¹⁵⁹⁷ Chile, D.S. 49, art. 10.

¹⁵⁹⁸ Chile, D.S. 19, art. 17.

¹⁵⁹⁹ Chile, D.S. 49, art. 16-18. This refers to the case of projects approved that, however, did not attach applicant families. In another possibility, where selected projects already count with up to 70% of applicant beneficiaries pre-linked to the application, SERVIU shall secure eventual selected beneficiaries of their dwellings and rest units shall be part of an open selection procedure.

¹⁶⁰⁰ Brasil, P. 114, Annex I, 9.1.a.

¹⁶⁰¹ Brasil, P. 114, Annex III, 7.1.

¹⁶⁰² Brasil, P. 114, Annex III, 7.1.

binding a beneficiary to a project.¹⁶⁰³ A new deadline for construction works may be set by SERVIU's director upon "founded reasons".¹⁶⁰⁴ In D.S. 19, SERVIU has 30 days to follow to project contracting after a published selection of results.¹⁶⁰⁵ It might decide upon an extension of up to 60 days of that deadline based on events of *force majeure*.¹⁶⁰⁶ Although this concept might be stretched to allocate different needs, at least the Chilean legislator limited decisions to exceptional reasons, in contrast to FAR-funded MCMV.

In that FAR context, the responsible financial institution obtains 60 days for contracting a project, a time-period that may be extended by request of the financial institution for another 30 days under justified circumstances.¹⁶⁰⁷ In contrast, the FDS context expressly excluded the possibility of deadline extension for the presentation of documents, which should be conducted in 30 days.¹⁶⁰⁸ Contracting could demand up to 60 days; after which the beginning of works should start in up to 90 days.¹⁶⁰⁹ A deadline extension depends on the approval of the operational agent, Caixa. However, there is no control over such decisions, which neither have a restricted justification setting.

Finally, those paradoxical legal structures within the Chilean and the Brazilian models develop inconsistency and confusion. If vital reasons for different time-periods or for different settings inexistent, then those diverse constructions should be avoided. Programs should inasmuch as possible apply a simple, objective and clear structure.

Nevertheless, when another regulation is referred on the main texts of MCMV, D.S. 19 and D.S. 49, it comes associated to the respective articles, responsible organs or punctual clarifications. For instance, D.S. 19 annotates on dwellings complying with standards found on R.E. 4,832 and on the Bill on Urbanism and Construction.¹⁶¹⁰ In Brazil, amendments and repeals to complementary regulations have often taken place, though content-wise, they remained similar. For instance, P. 114, a norm in effect during this study, states on the quality of life of beneficiary families and promoting accessibility to public areas and sets projects to be in harmony with other interventions and programs as well as with municipal master plans, in order to comply with social, economic and environmental sustainability.¹⁶¹¹ However, since 2010, it has been changed at least six times, from P. 93, of 2010, until the last enactment recorded in 2018.¹⁶¹² And

¹⁶⁰³ Chile, D.S. 49, art. 10.m.3, 32.

¹⁶⁰⁴ Chile, D.S. 49, art. 64.

¹⁶⁰⁵ Chile, D.S. 19, art. 14.

¹⁶⁰⁶ Chile, D.S. 19, art. 14.

¹⁶⁰⁷ Brasil, P. 114, Annex I, 9.3.

¹⁶⁰⁸ Brasil, P. 595, art. 1, I.

¹⁶⁰⁹ Brasil, P. 595, art. 1, II, para 3.

¹⁶¹⁰ For example, see Chile, D.S. 19, art. 10.5; Chile, R.E. 4.832.

¹⁶¹¹ Brasil, P. 114, Annex I, 1, b.

¹⁶¹² Brasil, TCU, TC 033.568/2012-0. P. 114/18 repealed P. 515/17, that repealed each other in the

yet, standards to those guidelines were first outlined in 2018, in another regulation of the Ministry of Cities, P. 660.¹⁶¹³ Until then, P. 269 and previous regulations had not yet established specific figures against socio-spatial marginalization. Those most recent legal changes neither succeeded to hinder socio-spatial exclusion because P. 660 is based on the expectation that a public entity can care for transportation, even though projects lead to social segregation.¹⁶¹⁴ This volatility of the legal system challenges accountability relations for this weakness of the answerability dimension hinders further control and enforcement.

From another perspective, volatility violates the principle of the progressive realization of human rights. For example, *Habite-se*¹⁶¹⁵ is a certificate required by MCMV, issued as a formal guarantee for the regularity and safety of construction works. However, after an amendment conducted in 2019 by Bolsonaro's Administration, *Habite-se* was excluded from among the mandatory certificates of MCMV. Counting from five years before August, 2019, *Habite-se* is not anymore a mandatory measure for ground floor constructions in "areas occupied by low-income population."¹⁶¹⁶

That measure was illegal because it retroacted and because it has put the lives of those all MCMV families, who will not have their dwellings monitored and controlled, in risk. Rules were only relaxed in regard to a specific group (beneficiaries of social housing), what decreased the safety of services provided and generated inequality. In aggravation, the law even recognizes spatial segregation for inferring that areas occupied only by low-income population exist. That targeted legal discrimination enhances the risks of the most-vulnerable population and must be urgently corrected by MCMV. The volatility of norms predicts risks to social housing adequacy.

Yet, volatility has led to violations of the principle of the progressive realization of human rights in both countries. According to Smart and Burgos, "regressions' on quality measures and procedures" appear in Chile in respect to participative mechanisms, potential discrimination, and geographical location of housing projects.¹⁶¹⁷ In 2006, the Solidary Housing Fund¹⁶¹⁸ had set determinants on the maximum distance from dwellings to schools and health centers. However, D.S. 49, subsequent to that policy, eliminated those basic requirements, in 2011. Only in 2016, D.S. 19 aimed again at socio-spatial inclusion and recommended standards.

following other P. 267/17, P. 158/16, P. 168/13, P. 325/11 and P. 93/10.

¹⁶¹³ Brasil, P. 660.

¹⁶¹⁴ See section 5.2.1.5.

¹⁶¹⁵ Brasil, I.N. 42, 2.1.1-2.1.2; Brasil, Ministerio das Cidades. Portaria 539, de 27 de outubro de 2016, P. 539 (2016); Brasil, L. 6.015, 247-A.

¹⁶¹⁶ Brasil, L. 6.015, 247-A.

¹⁶¹⁷ Smart and Burgos, 193-194.

¹⁶¹⁸ Chile, D.S. 174.

In the case of *Minha Casa*, in an affront to the progressive realization of human rights, previous directives that stated on the broadening of access to urban land and on the overall improvement in urban, social and environmental sustainability were repealed in 2017 by Mr. Temer's administration.¹⁶¹⁹ The repealed norm used to require the articulation of sectoral policies of land title regularization in different sectors, namely habitation, environment, basic sanitation and urban mobility, in different government levels and with public and private initiatives, aiming at social integration and promotion of income and work.¹⁶²⁰ Again, the exclusion of the norm suggests a violation to the principle of progressive realization of human rights.

In comparison to previous policies, MCMV extinguished from its structure the figure of a promoting agent (*agente promotor público*).¹⁶²¹ As a rule, Caixa, as the financial and operational agent, and construction firms shared the responsibility of that role. Those "promoting" agents used to be directly linked to federal members, what, according to Rufino, enabled a better urban policy involved with the local perspective.¹⁶²² The volatility of both legal systems, observed in the constant change of social housing regulations, causes confusion and is being used as a form to revoke rights that had been previously guaranteed.

Moreover, the participation of stakeholders used to be supported in processes of land regularization, as well as in the non-judicial solution of conflicts, until recent legal amendments in 2017.¹⁶²³ Marginalized families should be assisted, specially via participatory channels, in land regularization and in the formalization of property rights because those instruments enable secure tenure. The revoked articles had given access to formal political and social rights to a great parcel of the population. Hence, the retrocession is a violation to human rights.

The use of ICTs could particularly help against volatility. Particularly in Brazil, where there are very poor means of tracking changes to the legislation, a comprehensive ICT tool could enable control. In contrast, Chile inspires with the creation of its comprehensive on line legal library.¹⁶²⁴

5.3 Government

The governmental side of the accountability relation is executed by different organs. Mainly, the respective national Ministries, Brazil's Caixa and, Chile's

¹⁶¹⁹ Brasil, L. 11.977, art. 48, I, repealed by L. 13.465/17.

¹⁶²⁰ Brasil, L. 11.977, art. 48, II, repealed by L. 13.465/17.

¹⁶²¹ Maria Beatriz Cruz Rufino, "Um olhar sobre a produção do PMCMV a partir de eixos analíticos," In *Minha casa... e a cidade?*, eds. Amore, Shimbo and Rufino, 55.

¹⁶²² Id.

¹⁶²³ Brasil, L. 11.977, repealed by L. 13.465/17.

¹⁶²⁴ "Leychile.cl," BCN, Official website, Accessed Jul 18, 2019, <https://www.leychile.cl/Consulta/homebasico>.

SERVIU or SEREMI take compulsory roles to manage, implement and guarantee access to housing.¹⁶²⁵ Additionally, other organs or identifiable stakeholders, such as frontline agents, take decisive roles. Following in this section, this research will assess the obligation and ability to inform, answer and justify given to that governmental side of the accountability relation (5.3.1).

5.3.1 Informing, responding and justifying

Concerning the governmental obligations to inform, respond and justify, several public entities and public servants must act accordingly. There is no substantial difference among most-vulnerable and emergent categories, although both country-models have their own peculiarities. For example, deadlines for agents to operate tasks under their responsibilities are sparse in both models. However, different to Chile, the origin of funds permeates the essence of each Brazilian program and influences its internal accountability structures. Also in MCMV's case, responsibilities and obligations to respond and justify have seldom been described with clarity and, when done so, they were rarely defined within main regulations. In contrary, D.S. 1, D.S. 19 and D.S. 49, even if criticized for being often ambiguous and overlapping, find a higher level of clarity and detail than Brazilian regulations.

Governmental bodies take advantage of public documents to officially inform upon legal acts and relations. National gazettes or newspapers are, for instance, means for approaching a massive part population. Transparency and accessibility are two instruments to be guaranteed and achieved during such a procedure.¹⁶²⁶

For the sake of transparency, SERVIU issues a *certificado de subsidio* and other basic documents, such as a memorandum or a resolution.¹⁶²⁷ This document contains diverse copies, which are sent to different organs and attached to each other, including the department of administration and finances and the internal *contraloría*.¹⁶²⁸ Along the documents, the object of sale is described, as well as conditions to acquisition, general rights and obligations.¹⁶²⁹ That way, those official documents assist in the transparency of the acquisition procedure.¹⁶³⁰

It must be remarked that, instead of substantiating the proof of a transaction deal in a contract, Chilean candidates receive a governmental certificate of benefit. From the rights-based perspective, this simple change in form (from private contract to specific official documents) can be positively evaluated, because it

¹⁶²⁵ Brasil, L. 4.380, art. 2; Chile, D.S.19, art. 1; Chile, D.S. 1, art. 1; Chile, D.S. 49, art. 1-2.

¹⁶²⁶ See also chapter 2, The Rights-Based Approach.

¹⁶²⁷ Annex II, Resolution 77.

¹⁶²⁸ Annex II, 1-3.

¹⁶²⁹ Annex II.

¹⁶³⁰ Depending on the case, private contracts may also refer for the alienation of a real state property, if they do not concern the construction of a new dwelling.

implies that the beneficiary is perceived, at least at some level, as a right-holder.¹⁶³¹

The obligation to inform is also observed in other concrete examples. For instance, D.S. 49 defines 30 days for the evaluation of eligibility conditions of housing projects to SERVIU, in which a final term is also given for the beginning of constructions.¹⁶³² Or else, D.S. 49 expressed that the director of a regional SERVIU shall e.g. extend expiration or deadlines in specific cases and, in case of death, replace a beneficiary via resolution with a substitute¹⁶³³. Comparative examples could not be found in MCMV's main regulation nor in accessory regulations.¹⁶³⁴ That does not mean Chilean norms are always or more clear and transparent in comparison to the Brazilian case. However, those Chilean examples portray alternative solutions for a clear and transparent answerability dimension. This way, those legal settings create an organizational behavior that guides stakeholders – also those from the governmental side of the relation.

Undoubtedly, a full explanation of all obligations could be hardly supported by the main norms of Brazilian and Chilean social housing programs. It is just not possible to define how every and each action of a public agent should be taken. However, the legal framework should be at least organized consistently, clearly and transparently, so that the use of diffuse laws does not hinder accountability.

For that matter, norms must also improve decentralization, which, under an organized legal system, must too enable democratic principles. Those democratic aspects include, once again, participation and transparency, aspects that again support accountability, creating hence a virtuous cycle. In order to build an accountability structure at the local level, norms should aim at “shifting responsibility for program implementation closer to citizens [...] particularly in the case of social services delivery, because of their importance for the poor and vulnerable, who tend to suffer from greater exclusion”.¹⁶³⁵ That crucial balance lays on how clear and objective can rights-based operational guidelines be translated with and to the local level. Any parameters and operations should be set clear, because, based on those settings, involved stakeholders are inquired to inform, respond and justify their conduct.

Apparently, the Brazilian social housing case studies illustrate a higher level of federal decentralization than the Chilean ones. They ensure more visibility to

¹⁶³¹ Nonetheless, the whole nature of the certificate is deviated by the systematic interpretation that a consumer relation can be installed. Consequently, that affects how courts interpret the obligation of right-holders to respond, inform or justify. For more, see also UN CESCR, GC4, para 7, 8.c.

¹⁶³² Chile, D.S. 49, art. 13.

¹⁶³³ Chile, D.S. 49, art. 58, 64.

¹⁶³⁴ Brasil, L. 11.977; Brasil, I.N. 42; Brasil, P. 163; Brasil, P.I. 99. The norm should have created deadlines or indicated clear answerability parameters in several occasions, for instance, for Caixa.

¹⁶³⁵ Basset et al, 43.

the different federation members and to institutions with some level of civil society participation. Nevertheless, different accountability solutions were identified among Chilean case studies, despite their more centralized decision-making processes.

For instance, in D.S. 19, a Ministry notice directed to all regional ministries indicates how regional SERVIUs und SEREMIs regulate the terms for calls on project proposals.¹⁶³⁶ That ensures transparency to stakeholders, who should behave accordingly or be prepared to justify their conducts accordingly. Moreover, in that same directive, governmental actors find guidance on how to conduct the diffusion of information and the distribution of dwellings per municipality.¹⁶³⁷

Therefore, despite the centralized structure, that Chilean norm tries to ensure significant transparency, objectivity and clarity in how to inform, respond, justify. In contrast, despite included in a relatively decentralized system, Brazilian models do not clearly communicate terms of implementation to local agents. Legal guidance must be insured, otherwise public servants or addressed agents can neither behave nor justify their conducts accordingly.

Yet, both models should ensure participation of different actors of civil society. Participatory mechanisms should be developed and used to communicate local-level demands through clear and objective mechanisms consistent to a rights-based approach. The previously analyzed examples observed that participatory mechanisms at the local level tend to improve rights-based results.¹⁶³⁸ That shift must be so extended to embed decision-making into citizen accountability relations by enabling them to run systematically in coordination and to take managerial decisions.¹⁶³⁹

Finally, decentralization cannot lead to a lack of control or to an artificial system, where, despite plural instruments and participatory mechanisms, the central government holds decision-making powers.¹⁶⁴⁰ Decentralization should neither mean the lack of accountability, as it is seen in the case of MCMV, where local entities fail to comply to their bidding agreement and yet they fail to be controlled or enforced sanctions.¹⁶⁴¹ On the other way around, decentralization should ensure coordination across different governmental levels and guide local

¹⁶³⁶ Chile, Ministerio de Vivienda y Urbanismo, Circular 6, de 3 de abril de 2019, C. 6 (2019).

¹⁶³⁷ Id.

¹⁶³⁸ See section 5.2.4.

¹⁶³⁹ Arnstein, 217; Dammgard and Lewis, 320-324.

¹⁶⁴⁰ At the same time, even though decentralization and participation are important aspects to those democratic models of continental dimensions like Brazil and Chile, coordination is fundamental to exercise an efficient operational management in any system due its influence in control capacity.

¹⁶⁴¹ TCU, "Relatório de Auditoria no Programa Minha Casa Minha Vida;" CGU, "Relatório de Avaliação Da Execução: Programa Minha Casa, Minha Vida- FGTS."

implementation, specially so to enable involved stakeholders in informing, answering and justifying.

This paradox impacts stakeholders of both cases similarly. Neither a legal system that fails to decentralize clearly, transparently and consistently nor another legal system that fails to formally acknowledge those standards achieve their common goal, which is, to ensure a rights-based approach in the accountability of their social housing programs. Therefore the need of fast-forwarding the weak structures of both cases to rights-based corrections.

5.4 Summary

This chapter shed light on the answerability dimension of accountability. It focused on the obligation to inform, respond or justify and compared the case studies among each other and in respect to vulnerable and emergent categories. For that, it conducted a minucious analysis of eligibility criteria, application and selection procedures of beneficiaries (5.1, 5.1.1-3), service providers (5.2, 5.2.1) and government (5.3).

In sum, none of the analyzed programs ensured transparent, clear, simple, consistent, participatory legal frameworks. This research evidenced that Chilean programs chose *more often* the use of simple, clear and transparent laws, based on operational mechanisms that translated them into practice. However, at the same time, that system lacked rights-based guidelines, which were evidenced in the Brazilian model that yet, lacked operationalization.

Structurally, the contribution method of MCMV expected beneficiaries to pay monthly installments from ten to thirty years, depending on the program. In Chile, against a single parcel, beneficiaries received a certificate of subsidy, which the government directly passed on to an enterprise or entity via the issuing of a certificate. Exceptionally, emergent households had to take loans and incur in monthly debts giving the dwelling in guarantee, similar to MCMV. Transparency issues were particularly identified in FAR contracts, which excluded any mention to service providers, hence hindering accountability (5.1.1-2).

Furthermore, the use of ICTs was found to be more encompassing in Chile too, with the creation of application on line tools. In the case of D.S. 1, D.S. 19 and D.S. 49, an eligible candidate had different channels through which they could initiate the application procedure (5.1.2). Not only could the application be conducted personally, at a SERVIU or at the municipality or province, but also on line (*en línea*) via MINVU's website, with the use of a digital certificate. Yet, migrants or persons with an ongoing divorce proceeding had to apply personally, as well as individuals who had not used one of the only four financial in-

stitutions cooperating with the ICT platform. In Brazil, registration and application was overall much restricted: it could only be conducted personally at a local agency of Caixa or via a supporting entity, if it was the case.

It was observed that most-vulnerable families counted on assistance through supporting agencies in detriment of better-off households (5.1.2.3). However, both models showed a generalized failure to address language and literacy barriers. Yet, Chilean programs created more mechanisms of participation of beneficiaries than MCMV, despite the clear rights-based guidelines that only the later provided. In relation to application rules, it was observed that supporting entities can play a key, strong role of assistance to right-holders. Excluded from FGTS-Individual and FAR models (in this case, it was substituted by a governmental public entity), they were integrated to the accountability relation of MCMV-E, D.S. 1, Title I, D.S. 19 and D.S. 49. Though only in D.S. 49 were they furnished with participatory mechanisms and expanded obligations.

Both Brazilian and Chilean legal models relied on scoring systems for beneficiary selection, though MCMV more strongly depended on raffles (5.1.3). All the previous procedures took place at closed doors and only final results should be turned public. Even though they are designed upon different vulnerability factors, the scoring phase in FAR, FDS, D.S.1 and D.S. 49 projects are based on an equivalent concept that the more points one household gets, the more chances to be granted a dwelling. Exceptionally, D.S. 19 did not provide an own ranking procedure: it is complemented by the procedural selection rules of other social housing programs, including D.S. 1 and D.S. 49. In FGTS-Individual, at least two different selection procedures may occur.

None of the case studies could fulfill adequacy standards suggested by international law. Using a rights-based perspective, this research identified several violation to human rights underpinned by the legal framework of the case studies ranging from rules that worsened inequality and discrimination (5.1.4.1-6), instruments that enabled forced evictions (5.1.4.7), and aspects that increased the risk of unaffordability (5.1.4.8). It was evidenced that certain gender-responsive strategies were observed in MCMV, that prioritized women heads of household (alongside with disabled persons and the elderly) (5.1.2.4). That same scheme enabled women to fulfill eligibility criteria, excluded the need of marital approval and, finally supported the publication of the property title on the name of the woman. Yet, although a similar high rate of women was observed to be selected in both models, Chilean programs surprisingly lacked gender-related policies as MCMV did, meaning that subjacent factors to the law may also be affecting women's participation.

Indigenous persons, afro-descendants, migrants, and homeless persons were observed to be some of the groups who urgently need to be better observed by the policy-maker (5.1.2.5-7). Similarly, an analysis of eligibility criteria (5.1.1) and

of the use of quantitative goals (5.2.2.2) showed that a wrong targeting and the wrong identification of eligible households negatively impacts on program results. This work was also argued that neither of the categories analyzed were able to provide justifications for the thresholds chosen, an evident discretionary choice of the legislator that must be corrected (5.1.4.6).

Overall, Brazilian beneficiaries were overburdened by the need of proof of financial credibility, which can be an impossible requirement to those living in vulnerability (5.1.4.8). Although the Chilean model did not require the same proof, it also burdened candidates with the need of providing a deposit (5.1.2.1-2). This work also criticized the institution of fiduciary alienation, that strongly impacts the Brazilian beneficiaries and leads to more vulnerability, with the additional use of acceleration clauses and the removal of the dwellings (5.1.4.8). The use of the dwelling in guarantee of the debt is one of the matters requiring most urgent reconsideration, particularly because this acknowledges that housing is not established as a human right. Instead, families should be provided with more support in face of non-compliance.

Yet, in all cases, it was evidenced that non-compliance leads to exclusion and consequent eviction, which are counter-indicated measures from a human rights-perspective and in need of urgent reform. This work condemned the use of evictions and relocations, which should just be used as a very last alternative and not infringe the human right to housing (5.1.4.7).

With the exception of MCMV, that since 2016 legally created a national registry and until the presentation of this work was not yet active, the procedural structure of those systems is fairly in compliance with international directives. However, overall, this work concluded that models only partially attempted to comply with technical standards for health, habitability, social-spatial integration, use of sustainable resources and energy standards, cultural adequacy (5.2.2.1).

It was furthermore revealed that service providers followed analogous requisites of eligibility for domestic vulnerable and emergent categories, structurally similar in both national systems (5.2.1).

In sum, the definition of legal, technical, urban and geographic standards for projects and housing units in the three programs was created in an analogous way (5.2.2.1). For example, a housing project must respect a maximum total amount and purchase price of dwellings, which can vary depending on national regions. All social housing categories require in essence fairly similar standards, comprehending e.g. georeference coordinates, a site plan and basic construction permissions. Although this work could only provide a limited discussion upon the technical adequacy of standards due to its legal focus, it was possible to

remark that none of both country-models has been able to comply with minimum adequate standards set by international law (5.2.2.3).¹⁶⁴²

One of the failures of technical and legal designs was to create one-size resolutions. Those rigid forms lead to adverse impacts in the accountability structure, such as fraud and corruption, as well as to inadequate housing conditions. Countries like Brazil and Chile count on extreme regional differences that challenge the legal structure and implementation of all their social housing programs. This research reported on projects constructed in inadequate areas, without basic education, health, leisure, and public transportation services. So, as a consequence, policies must too be reformed to consider their domestic diversity.

Critics to a quantitative-led approach were also conducted, where adjustments are required especially in regards selection and technical and legal standards (5.2.2.2). Yet, both models, but particularly the MCMV framework, designed non-transparent and non-clear rules that created legal insecurity due to volatile and non-mandatory norms (5.2.2.5). It must be pointed out that, when looking at the legal structure, MCMV has been designed differently than D.S. 1, D.S. 19 and D.S. 49. MCMV's fundamental norm L. 11,977 mainly set goals for project implementation and it was complemented by a variety of regulations, published by different organs and entities of the public administration. In contrast, Chilean programs were created via three different executive laws, where a substantial amount of operational settings was defined.

In regard to their application and selection, this work illustrated how paradoxical legal structures within domestic programs developed inconsistency and confusion through out those models (5.2.2.5). Particularly the lack of financial investment in tracks that better support a (limited) rights-based approach were recognized to negatively impact performance, alongside with the need to reform of rules referring to supporting entities and mechanisms of engagement, decision-making and participation in all tracks.

¹⁶⁴² See ch. 2. *See* more United Nations, GC 4; UN-Habitat, "The Right to Adequate Housing"; UNGA, New Urban Agenda. It must be clear that this dissertation is fundamentally based on a legal discussion, so it is not able to deepen discussions over technical values.

6 Dimension 3: Enforcement in social housing programs

What is the difference in the accountability mechanisms used for enforcement and control in the context of the selected social housing case studies? Which sanctions can be applied? From a rights-based perspective, do the legal systems enable justiciability and is remediation possible via accessible, consistent, transparent, enabling participatory grievance and redress mechanisms? Those fundamental questions to the enforcement dimension will be discussed in this chapter, divided in three sections analyzing beneficiaries (6.1), service providers (6.2), and governmental actors (6.3). This assessment is limited to discuss judicial, quasi-judicial, administrative, operational-level and social accountability mechanisms for redress and grievance applicable to the contexts of MCMV, D.S. 1, D.S. 19 and D.S. 49.

As observed in section 2.4.3, measures should be taken to the enforcement of a legal-policy structure in order to ensure the delivery of social services. To that, grievance and redress mechanisms can not only ensure rights-based remediation to beneficiaries, but also offer a decrease in risks of error and corruption.¹⁶⁴³ From a rights-based perspective, that means access to justice must be financially and institutionally guaranteed to right-holders.¹⁶⁴⁴ Timely, transparent and efficient solutions must also be ensured.¹⁶⁴⁵ That includes citizens' ensured of access to information.

Additionally, participatory structures in redress and grievance mechanisms should be expanded because they facilitate not only accountability,¹⁶⁴⁶ but also democratic outcomes.¹⁶⁴⁷ Representative democracy is based on accountability mechanisms¹⁶⁴⁸ and by particularly enabling the involvement of citizens, it is possible to "ensure their government (is) managing their resources effectively, transparently, and meeting community's needs."¹⁶⁴⁹ It is questionable how to make citizens co-responsible "members of a political community, accountable to each other not only for following laws but for participating in political and civic life."¹⁶⁵⁰ Yet, this exact calibration of accountability dimensions supported by social accountability mechanisms and the rights-based approach can transcend this debate into human-rights outcomes.¹⁶⁵¹

¹⁶⁴³ Basset et al, 60.

¹⁶⁴⁴ See more HRC, A/HRC/40/61; Ackerman, "Human Rights and Social Accountability."

¹⁶⁴⁵ OHCHR, HR/PUB/13/1, 11-12; Basset, et al.

¹⁶⁴⁶ UN-Habitat, "Habitat III Issue Papers – 5 Urban Rules and Legislation", 5.

¹⁶⁴⁷ Johan P. Olsen, "Accountability and Ambiguity," in *The Oxford Handbook of Public Accountability*, Mark Bovens, Robert E. Goodin, and Thomas Schillemans ed., (Oxford: Oxford University Press, 2016), 146-148.

¹⁶⁴⁸ Olsen, 148-149.

¹⁶⁴⁹ World Bank, "From Shouting to Counting: A New Frontier in Social Development," 4.

¹⁶⁵⁰ Olsen, 148-49.

¹⁶⁵¹ See Ackerman, "Social Accountability in the Public Sector".

Looking at the case studies, there is a significant disparity between Brazilian and Chilean general enforcement outcomes. According to WJP's 2020 Rule of Law Index Report, Chile presents a better enforcement framework than Brazil in regard to: the implementation of measures against government and officials (n. 20 and n. 64, respectively); openness, information sharing, empowerment accountability mechanisms (n. 18 and n. 31, respectively); and fair implantation and enforcement of regulations (n. 26 and n. 60, respectively).¹⁶⁵² This continuous disparity is expected to resemble in the enforcement dimension of the social housing case studies of a weaker structure in MCMV than in D.S. 1, D.S. 19 and D.S. 49.

Yet, the findings of the last chapters must be taken into close consideration because a weak responsibility framework and the deconstruction of the answerability dimension directly affect enforcement. The following assessment does not expect to find a successful environment for remedies, redress and grievance. Nevertheless, an improved structure of the enforceability dimension can enable changes in answerability and responsibility frameworks.

6.1 Beneficiaries

This section will start by exploring the various exit clauses and sanctions affecting beneficiaries. That exploration is vital for understanding the impact of those rules on the most-vulnerable. Following, this section assesses access to grievance and redress by women (6.1.2.1), migrants (6.1.2.2), the elderly and disabled persons (6.1.2.3), homeless persons (6.1.2.4), as well as by indigenous and afro-descendants peoples (6.1.2.5). Additionally, this section will assess control and remediation through constitutional (6.1.1) and international mechanisms (6.1.2), advocacy organs (ombudspersons, 6.1.3) and social accountability (6.1.4).

6.1.1 Exit and Sanctions

Structurally, the design of exit conditions and sanctions is analogous in Brazil and Chile. However, differences in the operationalization of those rules particularly affect a rights-based enforcement. Therefore, this section outlining sanctions and exit clauses targeting beneficiaries (6.1.1) will be divided in an observation of rules defining contract breach (6.1.1.1) and contract cancellation (6.1.1.2), as well as of sanctions to unaffordability (6.1.1.3), wrong disclosure of information (6.1.1.4), illegal uses of a property (6.1.1.5). A critical assessment of those findings will lead to the discussion of mismatched answerability and responsibility affecting enforcement (6.1.1.6) and to the use of a rights-based approach in sanctioning right-holders (6.1.1.7).

¹⁶⁵² WJP, 22, 24, 27. That ranking index created a list from best to worse, where closest to 1 is assumed to be a country where conditions are most proper for the rule of law.

6.1.1.1 Contract breach leading to exclusion

Exclusion clauses intend to safeguard the financial aspects of contributory programs and to impede beneficiaries from leaving, renting, alienating or dividing dwellings under the threat of a formal discharge of property rights.¹⁶⁵³ Beneficiaries breaching the system's rules can be sanctioned with the reinstatement of the subsidy and of the dwelling in MCMV, D.S. 1, D.S. 19 and D.S. 49.¹⁶⁵⁴ In case of contract breach, this kind of contract cancellation can also lead to the anticipated payment of the debit.¹⁶⁵⁵

Generally, in case of fraud and omission, beneficiaries incur in contract breaching and face exit and sanctions. In Chile, in the case fraud is proven, beneficiaries can face criminal charges.¹⁶⁵⁶ In the context of MCMV, they will be forbidden to participate in any other selection process for the period of two years and police authorities shall be informed of the facts, meaning a criminal investigation may as well take place.¹⁶⁵⁷

If beneficiaries do not occupy dwellings in thirty days after signing the purchasing contract with FAR, selected beneficiaries will incur in contract breaching and be subject to a direct contract cancellation (*distrato*).¹⁶⁵⁸ They must too maintain dwellings in correct order and in compliance with local and condominiumal rules, otherwise they may face eviction and exclusion.¹⁶⁵⁹ In those cases, the beneficiary will be notified to pay the whole amount of the purchase and sale price in cash, within seventy-two hours.¹⁶⁶⁰ This is the most extreme financial sanction identified in both programs, that is not expected to be met.

Moreover, exit clauses can also be imposed during selection and delivery procedures. As a rule, FAR-funded candidates can take part on a raffle procedure even if with a pending status, though, if selected, they will be given 30 days to regularize their situation after the publication of the official selection list. But, expired the deadline and, if still presenting irregularities, the candidate will be excluded from the selection process.¹⁶⁶¹

¹⁶⁵³ Chile, D.S. 1, art. 39-41; Chile, D.S. 49, art. 60; D.S. 19, art. 28; Annex I, 10.c; Annex III, clause twenty-eight, I.f; Annex V, 23; Annex VI, 25.

¹⁶⁵⁴ Chile, D.S. 1, art. 39-40; Chile, D.S. 19, art. 22, 25; Chile, D.S. 49, art. 60-61; Annex I, clause 10; Annex II.I, Sworn Statement, 3; Annex III, fourteenth clause.

¹⁶⁵⁵ Chile, D.S. 19, art. 28; Annex I, 10.c; Annex III, clause twenty-eight, I.f; Annex V, 23; Annex VI, 25.

¹⁶⁵⁶ Chile, Criminal Code, Código Penal de 12 de Noviembre de 1874, (1874) [Código Penal], art. 467, 470, para 8; Chile, L. 17.365, art. 1.

¹⁶⁵⁷ Brasil, P. 163, 9.1. Annex I, 22.3.

¹⁶⁵⁸ Brasil, L. 11.977, 7-A; Annex I, clause 10.

¹⁶⁵⁹ Annex I, 10; Annex III, clause twenty-eight.

¹⁶⁶⁰ Annex I, 10.1.

¹⁶⁶¹ Brasil, P. 163, 5.2.2.2-5.2.2.3, 5.2.3.c.

In the case of D.S. 1, D.S. 19 and D.S. 49, if norms have been infringed before the grant of the subsidy, application will be invalidated or excluded from the selected list. If a certificate of subsidy has already been issued, it will lose validity. In case a dwelling is ready for delivery, it may be reassigned to another family, in accordance with the respective group.¹⁶⁶² In case of inaccuracy between documents, candidates will be too excluded. In case of violations evidenced after granting the housing benefit, SERVIU may require full restitution of the subsidy and the reinstatement of the dwelling.¹⁶⁶³

6.1.1.2 Contract cancellation by the beneficiary

FDS' Board of Trustees can accept the exit and substitution of a beneficiary, as long as it takes place before the conclusion of a project.¹⁶⁶⁴ In the FAR-funded context, the matter is regulated by a specific norm, P. 488.¹⁶⁶⁵ By request of the beneficiary, contract cancellation may only be favored under specific requirements. First, a formal request to the financial institution must be issued, about which the respective public entity must be informed.¹⁶⁶⁶

Nevertheless, in addition to all costs related to the contract termination, which are to be endured solely by the beneficiary, there may not be open debts related to any financial obligations.¹⁶⁶⁷ The dwelling cannot be under irregular occupation and it should be restated in the same conditions of the time of contracting.¹⁶⁶⁸ Beneficiaries remain anyhow registered at CADMUT, meaning that, as a rule, they should never again be able to be selected to another Brazilian social housing program.¹⁶⁶⁹

However, the law does not discipline the cases of beneficiaries who have terminated contracts due to construction vices. And, according to CGU's report, 56.4% of FGTS-funded dwellings already show defects before their guarantee expires.¹⁶⁷⁰ Nonetheless, under the circumstances of life risk and under the confidentiality principle, the lawmaker foresees the possibility of granting a new dwelling.¹⁶⁷¹ That exception can also be granted to victims of domestic violence and to those under a special program of victims and witnesses.¹⁶⁷² In those cases, they should be granted a dwelling in other locations.

¹⁶⁶² Chile, D.S. 49, art. 61.

¹⁶⁶³ Annex II, 5; Chile, Ley 17.635, (V. y U.), de 8 de abril de 1972, L. 17.635 (1972).

¹⁶⁶⁴ Brasil, P.I. 96, art. 7, para 4.

¹⁶⁶⁵ Brasil, Ministerio das Cidades, Portaria 488, de 18 de julho de 2017, P. 488 (2017).

¹⁶⁶⁶ Brasil, P. 488, art. 1, para 3, I-II.

¹⁶⁶⁷ Brasil, P. 488, art. 1, para 3, III;VI.

¹⁶⁶⁸ Brasil, P. 488, art. 1, para 3, III-IV.

¹⁶⁶⁹ Id.

¹⁶⁷⁰ CGU, "Relatório de Avaliação Da Execução: Programa Minha Casa, Minha Vida- FGTS," 11.

As a general rule, up to 5 years from delivery.

¹⁶⁷¹ Brasil, P. 488, art. 2-3.

¹⁶⁷² Id.

In case a beneficiary of D.S.1 decides to resign or if the certificate validity expires without have being applied, the certificate shall be returned to SERVIU, for which the savings should be made available for the account holder.¹⁶⁷³ In that scenario, a sponsor entity may ask SERVIU to replace the beneficiary, to a max. of 20% of total project applicants.¹⁶⁷⁴ Further solutions for extension, theft or loss of the certificate, or to the applicants' death are also foreseen in Chile, in order to guarantee clarity and legal stability.

6.1.1.3 Sanctions to unaffordability

The main difference in respect to sanctions among the case studies refers to penalties. All MCMV contracts count on an acceleration clause of complete reimbursement by beneficiaries, making subsidy restitution more severe in Brazil.¹⁶⁷⁵ Also FAR and FDS vulnerable categories are severely impacted by such clauses.

In contrast, D.S. 49 does not foresee acceleration clauses. That model requires contributions to be payed upfront with the *ahorro*, thus, the long-term financial factor loses importance. But, since it is possible to apply for a mortgage credit in the contexts D.S. 1 and D.S. 19, those models make use of an acceleration clause. And, even so, the restitution of the subsidy has more limited impacts in D.S. 1 and D.S. 19 than in MCMV because outstanding debits shall be partly subsidized by the government.¹⁶⁷⁶

Additionally, those evading the payment of MCMV's monthly installments, added taxes, and contributions will be sanctioned with exclusion and the acceleration of the debit. However, the Brazilian law is controversial when typifying evasion and default. First, MCMV's main norm, L. 11.977, understands it for a non-payment over ninety days.¹⁶⁷⁷ Yet, the concrete case of FGTS contract defines it as insolvency or as the non-payment of main obligations three consecutive times.¹⁶⁷⁸ Then, FDS and FAR contracts present a more rigorous regulation, where 30 days of payment delay over contributions or their tributes can already issue the acceleration of the debit.¹⁶⁷⁹ And, despite at least three main typifications of "non-payment", this research observed that the enforcement of judicial recovery of the dwellings has not been regularly implemented.¹⁶⁸⁰

¹⁶⁷³ Chile, D.S. 1, art. 25.

¹⁶⁷⁴ Chile, D.S. 1, art. 26.

¹⁶⁷⁵ Chile, D.S. 19, art. 22, 25; Chile, D.S.1, art. 69, 71-72, 74.

¹⁶⁷⁶ Chile, D.S. 19, art. 22, 25; Chile, D.S.1, art. 69, 71-72, 74.

¹⁶⁷⁷ Brasil, L. 11.977, 7-B.

¹⁶⁷⁸ See Annex III, clause twenty-eight I.a; Annex VI, 25.

¹⁶⁷⁹ See Annex I, 10.e; Annex V, 23.a.

¹⁶⁸⁰ Santana, Researcher's Interview 4. In interview, the public servant mentioned that "we have a high rate of default and there is no mechanism in place today for returning or what should be done with these houses. So today when you transfer it to the family even if [the family] does not pay this symbolic amount, we do not take it back or send it to another family, so that is why we say that [the

6.1.1.4 Sanctions and veracity of information

Beneficiaries must guarantee the veracity of information delivered,¹⁶⁸¹ particularly that a family income is in conformity with legal requirements, and that they have not been beneficiary from another housing program, nor are owners of a real estate property.¹⁶⁸² In all case studies, false information leads to the termination of FAR, FDS, FGTS, D.S. 1, D.S. 19 and D.S. 49 contracts.¹⁶⁸³ Furthermore, omission is also typified in MCMV as for the lacking of documents or the failure to inform on the no-longer satisfaction of eligibility criteria, for example, due to income changes after the application.¹⁶⁸⁴ In such cases, after the selection procedure is completed and a contract breach is evidenced, beneficiaries shall be sanctioned with an acceleration clause for the reimbursement of the subsidy received.¹⁶⁸⁵

Yet, the vulnerability of social housing beneficiaries must be carefully evaluated. For those living under equal and dignified opportunities, it is expected that they provide competent organs with correct information. A better-off individual trying to pass by as vulnerable one should not be able to deceive control. However, it is an unquestionable challenge for those existing under housing vulnerability to provide documental proof. The most-poor are susceptible to pathogenic vulnerabilities, possibly through all aspects of their lives, so it can not be expected that they will comply with recurrent bureaucratic documental standards. Even those emergent households, who are slightly better-off, must be interpreted under the circumstances of their housing vulnerability. Therefore, concerning those persons subject to vulnerability, the application of the veracity principle to accountability must be relativized depending on each context.

Clearly, organs must be flexible to adapt their formal requirements to the possibilities of most vulnerable households. Therefore, housing models must be invigorated with the support of community centers, of social workers, and of other frontline agents that can verify information at the local level.

dwelling] is donated, because somehow there is no mechanism that can make it return. Even if [the family] does not pay, it does not need to return or [it will not be] passed on to another. We have the same problem when the houses are sold [to third parties]. Sometimes the beneficiary receives the housing unit and resells and then we have many reports. Sometimes we even send Caixa for inspection, but arrives there and the person [says] 'no, I live here'. That's the thing, there's no way to punish or control these units." Author's translation.

¹⁶⁸¹ Brasil, P. 163; Annex I, 22.1-3; Annex I, 10.1; Annex II.I, 3.

¹⁶⁸² Chile, D.S. 49, art. 61. See Annex I, 10.1, 22.1-22.2; Annex II.I, 3.

¹⁶⁸³ Chile, D.S. 19, art. 16.a; Chile, D.S. 1, art. 39; See Annex I, 10.1; Annex II.I, 3; Annex III, 28; Annex IV, Annex V, 23.f; Annex VI, 25, II.a.

¹⁶⁸⁴ Brasil, P. 163, 5.2.3; Annex I, 22.1-22.2.

¹⁶⁸⁵ Annex I, Clause 22.3; Annex III, Clause twenty-fifth, f, Clause twenty-eighth, I.f, II.a.

6.1.1.5 Sanctions to mobility and to the illegal use of property

As a rule, beneficiaries of the analyzed social housing programs are forbidden to resell or to divide dwellings before a final and formal discharge of property rights.¹⁶⁸⁶ In sum, for a certain period of time, beneficiaries will be sanctioned if using the dwelling for other purposes if not for the residency and domicile of their families.¹⁶⁸⁷ The matter has shown diverse approaches in the case studies, but anyhow, a rigidity that must be reformed.

The first obligation of a beneficiary is to occupy the granted dwelling. Particularly in the FAR-context, occupation must take place within 30 days of contract signature, under threats of contract resolution, alienation and transfer of the dwelling to another beneficiary.¹⁶⁸⁸ In contrast, D.S. 49 requires supporting entities to verify on the dwelling occupation after building on social and capacity training with those same beneficiaries and, depending on the case, even assisting with the moving.¹⁶⁸⁹ This example evidences the contrasts in the capacity of social housing models to punish or to assist right-holders. In Chile, the supporting entity is used to support and corroborate the policy aim to materialize the right to adequate housing; whereas the Brazilian outline pursued sanctions, despite failing to provide fundamental support to housing vulnerability.

Moreover, a limited regulation of resale in Chile¹⁶⁹⁰ and a strict prohibition of resale until the full payment of the debt in Brazil show the inaptitude of both models to observe the demands of beneficiaries. In this case of social housing, it would figure an agreement between the main beneficiary and a new trustor, making the latter incumber of the debit and right-holder of tenure.¹⁶⁹¹ However, a reassignment of tenure rights is strictly prohibited until the full payment of the debit in MCMV. A fifteen-year clause counting from the contract signature forbids the *membramento* (attachment) of the units.¹⁶⁹² Such a scenario has led to expressive numbers of contract breaches and fraud.¹⁶⁹³

¹⁶⁸⁶ Chile, D.S. 49, art. 60; D.S. 19, art. 28; See Annex I, 10.c; Annex V, 16; Annex VI, 25, I.b.

¹⁶⁸⁷ Annex I, 10; Annex II.I, 2; Annex III, clause twenty-eight; Annex IV, 2; Annex V, 23; Annex VI, 25. On media news reporting on governmental control, see “Beneficiados con viviendas sociales arriesgan perder sus casas por mal uso,” *Diario El Ovalino*, Website, Accessed March 7, 2018, <https://tinyurl.com/ya8nflg3>; For example, in the case of misuse of the dwelling for other purposes than for the residency of the beneficiary’s family, beneficiary may lose its dwelling.

¹⁶⁸⁸ Brasil, L.11.977, art 7-A.

¹⁶⁸⁹ Chile, D.S. 49, art. 51.

¹⁶⁹⁰ Chile, D.S. 1, art. 41; Chile, D.S. 49, art. 60; Chileatiende, “Solicitud de movilidad habitacional,” Official website. Accessed Nov 18, 2019. <https://www.chileatiende.gob.cl/fichas/7147-solicitud-de-movilidad-habitacional>.

¹⁶⁹¹ Literally translated as “drawer contract”, *contratos de gaveta* are informal but rather usual practices of the Brazilian private housing market, based on the transfer of the real estate purchase to a third-party.

¹⁶⁹² Brasil, L. 11.977, art.36. See Annex V, 17.4.e.

¹⁶⁹³ Chile, Ministerio de Vivienda y Urbanismo, “Ministro Cristián Monckeberg Lanza Inédita

Brazilian jurisprudence observes the nullity of a contract in such cases, sentencing social housing dwellers to eviction.¹⁶⁹⁴ If sued in Court, they will have to evacuate their home. Beneficiaries may have no rights upon the contributions payed during the last ten years to the governmental scheme.¹⁶⁹⁵ But, despite the legal prohibition, as of 2015, almost seventeen percent of residents were not the original beneficiaries in a MCMV sample, that had either rented (64.4%) or purchased the dwelling directly from the original beneficiary (22%).¹⁶⁹⁶

With a different approach, Chile has been dealing with the need of flexibility, even if limitedly. Beneficiaries may be authorized to resell under specific circumstances. As stated on the Chilean law, on the Contract of Purchase and Prohibitions and on the Certificate of Material Delivery of the Dwelling, the transfer of the rights of use of the property are forbidden in the first 5 years after the

Campaña Para Denunciar y Recuperar Viviendas Sociales Mal Utilizadas,” Archivo Histórico de Noticias 2019/Abril, Official website, Accessed May 9, 2019, http://minvuhistorico.minvu.cl/open-site_det_20190509162816.aspx; Rebeca Luengo, “Serviu interpone demandas contra personas que mal utilizan subsidio habitacional,” *Diario El Día*, Website, Nov 15, 2017. <http://www.diarioeldia.cl/region/coquimbo/serviu-interpone-demandas-contra-personas-que-mal-utilizan-subsidio-habitacional>; CGU, “Relatório de Avaliacao Da Execucao: Programa Minha Casa, Minha Vida-FGTS,” 42-43.

¹⁶⁹⁴ Brasil, Tribunal Regional Federal 4 Regiao. AC 5008589-38.2015.4.04.7204, Rel. Marga Inge Barth Tessler (3T Dec 14, 2016); Brasil, Tribunal Regional Federal 4 Regiao. APC 5018923-69.2012.404.7000, Rel. Loraci Flores de Lima (4T Aug 18, 2015); Brasil, Tribunal Regional Federal 4 Regiao. AC 5008146-87.2015.4.04.7204/SC, Rel. Cândido Alfredo Silva Leal Junior. Dependent on AC 5003804-62.2017.4.04.7204, 4T, Rel. Cândido Alfredo Silva Leal Junior (4T Mar 22, 2017).

¹⁶⁹⁵ Brasil, Tribunal Regional Federal 4 Regiao. APC 5068778-95.2018.4.04.7100/RS, Rel. Des. Fed. Vivian Josete Pantaleao Caminha (4T Aug 14, 2019); Brasil, TRF4, APC 5018923-69.2012.404.7000.

¹⁶⁹⁶ CGU, “Relatório de Avaliacao Da Execucao: Programa Minha Casa, Minha Vida- FGTS,” 42-43. Beneficiary. Researcher’s Interview 7. In person, August 27, 2019. This work’s interviewed dweller was neither the original beneficiary of her dwelling. So, it is possible that, if the government discovers about the situation, this individual and their family will lose their dwelling. But in that case, not only they will not be reinsured of the years of payment, nor will they be provided with access to adequate housing. That individual contributes to the payment of that dwelling for a family of seven and, due to their low levels of education, worked his whole life as a domestic employee. That head-of-family suffers from severe spine injuries and has no stable working contract, what had come to be financially better and generated more income to the family; however, due to the informal working conditions, they were not guaranteed the derived social security of formal workers, such as FGTS, hence, they would never be eligible to apply to the social housing program. Another reason is that the individual’s income would also extrapolate the limits of application allowed to category 1. In fact, according to the interviewed beneficiary, they first rented a neighbor dwelling. Years later, the original beneficiary decided to sell it and move away to a “better place”, because “his wife did not enjoy life there”, indicating the humble conditions and poor infra-structure as the reason to it. The interviewed beneficiary took the opportunity and has been paying for the original beneficiary’s contribution since then. With more twenty years of contributions ahead, the question is if they will be able to secure the property in their name after the full payment is completed. It is clear that targeting and legal security, at least in this example, failed to reach for the real vulnerable candidate. According to the interviewee, they were legally advised that this was a secure purchase and that they would have access to the property as soon as they transferred the contract to their name. However, this research has no knowledge of legal scapes.

delivery of the dwelling or to family members.¹⁶⁹⁷ In case of subsidies for vertical densification, the prohibition is extended to 10 years.¹⁶⁹⁸ Yet, SERVIU may uplift that limitation upon a request based on substantiated reasons.¹⁶⁹⁹

As long as authorized by SERVIU, beneficiaries can purchase another dwelling in a maximum of twelve months.¹⁷⁰⁰ In that case, a dweller has to use their subsidy to purchase another social housing unit.¹⁷⁰¹ Among different conditions stated, the dwelling to be purchased should be more expensive than the subsidy retained and not cheaper than the dwelling sold. First, SERVIU must uphold the prohibition to resell, to be registered at a notary office.¹⁷⁰² After that, the beneficiary has twelve months to find a purchaser and a new dwelling, whose new purchaser must prove being informed of the prohibitions over the property, and finally inform about the sale to SERVIU.¹⁷⁰³ Finally, all information concerning involved stakeholders, prohibitions and obligations must be confirmed in a deed of sales.¹⁷⁰⁴

But this mobility system is neither the best solution for MCMV's rigidity. According to the Chilean Minister of Housing and Urbanism, in total, 3,663 accusations of "property misuse" were made from 2014 to 2018.¹⁷⁰⁵ Also criticized by Sánchez, the Chilean system significantly limits mobility of low-income households.¹⁷⁰⁶

¹⁶⁹⁷ Chile, D.S. 19, art. 30; Chile, D.S. 1, art. 39-41; Chile, D.S. 49, art. 35, d, II-III, 60; Annex II, Contract of purchase and prohibitions, fifth clause; Certificate of Material Delivery of the Dwelling. D.S. 19 makes direct reference to prohibitions set by D.S. 1.

¹⁶⁹⁸ Chile, D.S. 49, art. 35, d, 60.

¹⁶⁹⁹ Chile, D.S. 49, art. 60, 35.d.II-III.

¹⁷⁰⁰ Chile, "Orientación Jurídica (Legal)".

¹⁷⁰¹ "Movilidad Habitacional," Ministerio de Vivienda y Urbanismo, MINVU, Official website, Accessed Dec 4, 2019. http://minvuhistorico.minvu.cl/opensite_20070223152225.aspx; Chile, Chileatiende, "Solicitud de movilidad habitacional."

¹⁷⁰² Id.

¹⁷⁰³ Id.

¹⁷⁰⁴ Id.

¹⁷⁰⁵ Chile, Ministerio de Vivienda y Urbanismo, "Ministro Cristián Monckeberg Lanza Inédita Campaña Para Denunciar y Recuperar Viviendas Sociales Mal Utilizadas;" Luengo, "Serviu interpone demandas contra personas que mal utilizan subsidio habitacional;" Chile, L. 17.635. Although the Ministry emphasizes on beneficiaries that have been breaching the contract, numbers theoretically include all kinds of accusations, to beneficiaries, providers and government agents. No specific governmental report was launched on the evaluation and monitoring of D.S. 1, D.S. 19 and D.S. 49. But, in an announcement broadcasted by MINVU's official website, the executive minister observed the recovery of a dwelling that had never been inhabited by its owner and was eventually rented. The official governmental news remarked upon the story of a new dweller, a single-mother, who had been long waiting for her benefit while living in a *campamento*: "I've been waiting for my house for 15 years, but these last few months the process has accelerated. [...] I never imagined that this year I was going to receive the house, I thought that it could happen in a good time more. It is a dream come true. Now it is a new life, a new stage, now that I need it the most" (Chile, Ministerio de Vivienda y Urbanismo, "Ministro Cristián Monckeberg Lanza Inédita Campaña Para Denunciar y Recuperar Viviendas Sociales Mal Utilizadas." Author's own translation).

¹⁷⁰⁶ Sánchez, 27. As she recalls, "moving is harder for subsidy recipients, in part because it is

Therefore, from a rights-based approach, both legal frameworks must be urgently redesigned. Only banning the right to mobility will not end its demand because subsidized homeowners have the same inherent need as any other individual to be mobile, as observed in elevated renting and resale data. On the contrary, engaging with an issue is the only way to find solutions for it. Thus, an efficient system of mobility should be created to consider the demands of the right-holders.

From a rights-based perspective, it is more important to make sure that no one is left behind, holding into account those who incorrectly received a benefit, than creating a system that is so worried about accountability that targets though discriminatory and exclusionary criteria.¹⁷⁰⁷ However, more efficient targeting can decrease enforcement challenges. A recurrent review of targets can ensure policies are correctly selecting households in need.

6.1.1.6 Mismatched Responsibility and Answerability

Particularly in the FDS context, beneficiaries are liable for key adequacy measures. For example, projects shall not be located in indigenous nor *quilombola* territories.¹⁷⁰⁸ As well, restrictions to land division and the preservation of archeological and historical heritage must be observed. Those are evident obligations in respect to adequate location and availability of resources that have been expressively identified to be carried by beneficiaries in the FDS contract. Additionally, the fact that the other important normatives (e.g. FAR) do not refer to those traditional land territories should not exclude their protection.

In practice, even though the delegation of responsibility to technical teams is legally allowed in the FDS context, supporting entities have been given the obligation to elaborate and present viability studies on projects, as well as to implement them.¹⁷⁰⁹ That obligation includes studies on environmental, infrastructural, and legal aspects of the project.¹⁷¹⁰ However, the inexistence of an effective legal mechanism of participation in project planning burdened all project beneficiaries with decisions of a small group. Responsibility is given to those representative commissions (CAO and CRE), that carry at least one member of a supporting entity and at least two elected beneficiaries. In the end, all

difficult for them to sell their home to, for instance, climb the housing ladder or get close to a new job” (Sánchez, 27).

¹⁷⁰⁷ “From a human rights perspective, inclusion errors (providing the benefit to someone who is not in the target group) and exclusion errors (failure to provide the transfer to those targeted) do not have the same significance; exclusion errors are much more serious, constituting a violation of beneficiaries’ right to social security. Moreover, those excluded are often those who have suffered from structural discrimination and will thus find it most difficult to claim for their inclusion” (Sepulveda, Nyst and Hautala, 40).

¹⁷⁰⁸ See Annex V, 23, j.II.

¹⁷⁰⁹ Brasil, R. 214, Annex 2.2.1.b-c.

¹⁷¹⁰ Brasil, I.N. 12, Annex I, 7.4.1.

beneficiaries will have to guarantee on the technical capacity of those projects, even though only the commissions are responsible for decision-making.

Similarly, all wood used in FDS- and FGTS-funded projects must be licensed and certified by the competent organs.¹⁷¹¹ In FGTS-Associativo, the construction firm, guarantor or supporting entity shall be held accountable for executing that obligation. Nonetheless, in MCMV-E, both supporting entities and beneficiaries should not be liable for that correct use of resources for the same reason presented in the previous example.

Beneficiaries have been incorrectly burdened with sanctions because they lack same technical competence and financial resources of duty-bearers. Also, they lack legal responsibility and should only hold the right to engage in project-planning. It is understandable that, in case of misuse of lands or materials, depending on its implementation phase, the whole project must be cancelled or even destructed. But stakeholders should not be affected answerable, if not previously illustrated in the responsibility dimension. In other words, beneficiaries should not bear the costs of an obligation given to supporting entities or to any other duty-bearer.

6.1.1.7 The rights-based approach to sanctions

The logic of the law is that beneficiaries caught breaching obligations should be sanctioned with exclusion from the program and have their debit anticipated. However, that logic over-punishes those living in housing vulnerability. For instance, under MCMV conditions of full reimbursement based on debit acceleration, poor households entering in default will suffer evictions and lose their tenure rights based on judicial execution.¹⁷¹² The already indebted household that had not been able to find adequate housing before entering the program will neither be able to do so after being punished with such a full debit. Therefore, under the worsened vulnerable and unaffordable conditions, the beneficiary and their family will again be facing long-term inadequate housing conditions.

That legal logic requires urgent reform. As appraised by Sepulveda, Nyst and Hautala, “if States impose conditionalities or co-responsibilities in their social protection programmes, they have the obligation to ensure that the final result will not violate the right of individuals to, at the least, minimum essential levels of economic, social and cultural rights.”¹⁷¹³ The unstable social, political and economic conditions of developing economies also tend to aggravate social issues, such as unemployment and unaffordability, and the consequent impossibility of repaying a debit. Especially when considering the most-vulnerable in

¹⁷¹¹ CCFGTS, R. 761, Annex 3.VII. See Annex V, 32; Annex VI, 37. And, the fact that main FAR regulations have not addressed that sustainable protection of materials should not exclude that obligation from duty-bearers.

¹⁷¹² Brasil, P. 488, art. 1, para 1-2.

¹⁷¹³ Sepulveda Carmona, Nyst and Hautala, 52.

the social housing protection system, sanctions to non-compliant beneficiaries worsen the violations to human rights.

In relation to the disrespect of legal guarantees, even though Brazil and Chile ratified international treaties that obliges states to refrain from and to protect against forced evictions, such violations against human rights were reported to be led by the government.¹⁷¹⁴ Moreover, evictions should only be used where they can not be avoidable because they figure, *prima facie*, a violation to human rights: “States should be strictly prohibited – in all cases – from intentionally making a person, family or community homeless following an eviction, whether forced or lawful.”¹⁷¹⁵ Consequently, in case of non-compliance by vulnerable beneficiaries, this “should never result in the automatic exclusion of an individual or household.”¹⁷¹⁶ On the contrary, states should come to understand vulnerability with both causes and consequences of it.¹⁷¹⁷

The socioeconomic burns inflicted by the various sanctions analyzed in this work should be reframed because they will only catalyze a vicious cycle of vulnerability. Programs should create operational mechanisms to address non-compliance with more assistance. In the context of this work, when the dignity of an individual or their family is drastically impacted, not even a legal clause should enable someone’s forced removal from their home. In this sense, accountability, particularly control and enforcement, must be relativized in favor of the respect, protection and fulfillment of human rights.

The need of mobility, the factual unaffordable conditions and overall dissatisfaction with the system should fundamentally not be sanctioned. Instead, those facts should be examined and evaluated and legislators must be challenged to adapt norms and policies to the demand of individuals and, in this case, of beneficiaries. Consequently, strategies for communication must be efficiently de-

¹⁷¹⁴ Brazil has ratified for instance, the UDHRs, ICESCRs, CRC, CEDAW, CERD, all conventions that annotate forced evictions as a violation to human rights. See UN Office of the High Commissioner, “View the Ratification Status by Country or by Treaty,” OHCHR, Online Database, Accessed Feb 25, 2019, https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx.

¹⁷¹⁵ UNCESCR, GC7; United Nations Human Settlements Programme, and Office of the High Commissioner for Human Rights. “Housing Rights Legislation” 6; United Nations Human Settlements Programme, and Office of the High Commissioner for Human Rights. “Housing Rights Legislation” United Nations Housing Rights Programme. Global Campaign for Secure Tenure n 5. Nairobi, 2002, 6.

¹⁷¹⁶ Sepulveda Carmona, Nyst, and Hautala, 53, Recommendation 23.

¹⁷¹⁷ Sepulveda Carmona, Nyst, and Hautala, 53, Recommendation 22. “To the greatest extent possible, States should refrain from imposing co-responsibilities or conditionalities on receipt of social protection, and instead should channel financial and human resources into improving the level of benefits provided and the quality and accessibility of social services available. Where conditionalities are imposed, they must be accompanied by measures to protect against abuses by those monitoring compliance with conditionalities, and by measures to ensure the capacity of the health and education services to meet increased demand.”

signed in order to transmit local needs to policy-makers. *Bolsa Família*, a Brazilian cash-transfer program, inspires solutions to such cases: instead of exclusion, families are put into focus through social workers.¹⁷¹⁸ In such context, social assistance committees aim at backing non-compliant beneficiaries to comply.

In order to refrain from penalizing beneficiaries for their vulnerability, policies must remain consistent to their main human rights goals and find means to support beneficiaries to comply with their obligations, instead of sanctioning them even more. Thus, legal adjustments should take into consideration the aim and the approach taken by the law. The above mentioned sanctions should be urgently transformed into conditionalities that assist beneficiaries in complying to the rules.

6.1.2 Access to grievance and redress by vulnerable groups

Any discriminatory regulations and practices must be adjusted in order to provide access to housing and, consequently, to justice¹⁷¹⁹ to the most vulnerable members of society. Yet, several norms related to the case studies have been generating adverse impacts and even violating human rights concerning e.g. inaccessibility, inequality and discrimination.¹⁷²⁰ Therefore, at this point, this work remarks aspects of redress and grievance mechanisms that must be invigorated in order to enable remediation and control. Access to justice should target intersectional and compound discrimination non-exclusively to the homeless and disabled persons, women, migrants, afro-descendants, indigenous peoples¹⁷²¹, in other words, access should be ensured to those individuals who will be more prone to succumb to an inaccessible judiciary, as well as to unequal and discriminatory treatment and procedures in their exercise to the right to housing.

For example, *bus de la justicia*, or “justice bus”, is a Chilean initiative that provides free legal assistance in remote areas¹⁷²², which contributed to providing

¹⁷¹⁸ Sepulveda, Nyst and Hautala, 52.

¹⁷¹⁹ UNGA, CEDAW/C/GC/33; UNGA Convention on the Elimination of All Forms of Discrimination against Women.

¹⁷²⁰ HRC, A/HRC/37/53/Add.1, para 76; Rosa M. Celorio, “The Case of Karen Atala and Daughters: Toward a Better Understanding of Discrimination, Equality, and the Rights of Women,” *City University of New York Law Review* 15, no. 2 (2012): 352-53.

¹⁷²¹ Not strongly debated in this work due to its framework limitations, targeting should too include, for example, Roma and Sintis, transexual persons, children, victims of the dictatorships, HIV positive individuals.

¹⁷²² “Bus de la Justicia,” Universidad Católica de Temuco, Centro de Resolución Alternativa de Conflictos, Website, Accessed Jan 25, 2019, <http://crea.uct.cl/bus-de-la-justicia/>; “Agenda Del Bus de La Justicia,” Chile, Poder Judicial, Official website, Accessed Mar 20, 2020, <https://www.pjud.cl/bus-de-la-justicia>; Diego Guerrero, “El ‘bus de la justicia’ comenzó su recorrido atendiendo más de 30 consultas,” *Diario El Día*, Apr 17, 2018, Website, Accessed Mar 20, 2020, <http://www.diarioeldia.cl/policial/bus-justicia-comenzo-su-recorrido-atendiendo-mas-30-consultas>; Equipo El Día, “‘Bus de la justicia’ llega a la comuna de Paihuano para acercarse a la comunidad,”

access to justice to indigenous populations. Those initiatives, however, were not focused on housing rights. In this fashion, campaigns should be prepared to target related demands on social housing issues.

6.1.2.1 Women

Discrimination based on sex and gender, already evidenced in the case studies, has been documented among Brazilian and Chilean models.¹⁷²³ First, gender discrimination tends to be aggravated by intersectional and compound discrimination: discrimination towards women can be worsened due to their historical identity, gender identity, forms of families, sexual orientation, religion.¹⁷²⁴ Under such conditions, women tend to fear accessing forums of grievance and redress and, in case they do seek them, they tend to face ineffective remedies and even lack of diligence from authorities.¹⁷²⁵

In the *Karen Atala and daughters* case, the IACHR was presented with a case in which local courts understood that only rigidly formed traditional male and female partners could form families in Chile. The Commission found the Chilean state responsible for the violation of diverse human rights, including to judicial guarantees, protection, equality, non-discrimination.¹⁷²⁶ The IACHR ruled then that a state has a duty to refrain from any discrimination and to guarantee equality, meaning a life with freedom, also on the basis of sexual orientation and gender identity.¹⁷²⁷ Against discrimination, accountability in the context of housing must respond with efficient access to justice and mechanisms of redress and grievance. In this fashion, the creation of public institutions, eventually free of charge, specialized in the legal protection of women and their right to adequate housing should provide immediate response to discriminatory practices.

Training public officials and the judiciary on non-discriminatory and equality questions should impact on the reception of this discussion at national levels.¹⁷²⁸ Additionally, women should be included in facilitated strategies to access justice, in order to empower them to challenge such systems.¹⁷²⁹ Thus, training and legal education targeted at specific groups of women can have effective results for this vulnerable group.¹⁷³⁰ In this fashion, strategies should look particularly at the local conditions of migrant women in Chilean campamentos, indigenous

Diario El Día, Accessed May 14, 2019. <http://www.diarioeldia.cl/region/bus-justicia-llega-comunapaihuano-para-acercarse-comunidad>.

¹⁷²³ See sections 5.1.2.4, 5.1.2.13 and 5.1.4.3.

¹⁷²⁴ UNGA, CEDAW/C/GC/33, para 8-9, 10.

¹⁷²⁵ Id.

¹⁷²⁶ HRC, A/HRC/37/53/Add.1, para 76. See Celorio.

¹⁷²⁷ Id.

¹⁷²⁸ *Atala Riffo and daughters v. Chile*, para 268-272.

¹⁷²⁹ See more HRC, A/HRC/40/61.

¹⁷³⁰ HRC, A/HRC/40/61, para 50.

and afro-descendent women. But also, those legal systems must ensure remedies that can “challenge systemic discrimination” and inequality¹⁷³¹, as the ones reported by this work, for instance, the unbalanced designation of gender-based rights to women in FAR and FGTS contexts or the administration of the property of the “wife” by her “husband” in the Chilean civil model.¹⁷³²

6.1.2.2 Migrants

As observed in the previous sections, migrants in Brazil and Chile have restricted access to the studied social housing programs.¹⁷³³ Migrants must be granted free legal assistance¹⁷³⁴ because especially those living under irregular migration conditions tend to feel hindered from claiming their rights, despite usual language barriers and cultural differences.

An extension of that understanding touches the historical issues of minorities and new migrants in Brazil and Chile. Even though they have been legally neglected from social housing policy targets, states should be obliged to take affirmative measures for any person experiencing discrimination. According to the IACHR,

this implies the special obligations to protect that the State must exercise with regard to acts and practices of third parties who, with its tolerance or acquiescence, create, maintain or promote discriminatory situations. [...]

106. Non-compliance with these obligations gives rise to the international responsibility of the State, and this is exacerbated insofar as non-compliance violates peremptory norms of international human rights law. Hence, the general obligation to respect and ensure human rights binds States, regardless of any circumstance or consideration, including a person’s migratory status.¹⁷³⁵

¹⁷³¹ HRC, A/HRC/40/61, para 49.

¹⁷³² See 5.1.2.4.

¹⁷³³ Just as an example, Brazilian and Chilean States exclude those without a permanent resident visa from applying to MCMV, D.S.1, D.S.19 and D.S. 49. But especially xenophobia and racism against South-American migrants are observed in Chile and Brazil. See sections 5.1.2.1.6. and 5.1.4.1.5.

¹⁷³⁴ See more HRC, A/HRC/40/61.

¹⁷³⁵ Juridical Condition and Rights of the Undocumented Migrants. Advisory Opinion OC-18, § Inter-American Court of Human Rights (2003), para 104, 106. See also UN High Commissioner for Refugees (HRC), CCPR General Comment No. 18: Non-discrimination, GC18 (Nov 10, 1989), para 6.

That obligation is towards the human person and it exists regardless migration or bureaucracy. But, although states cannot discriminate based on nationality or migratory status, it was not possible to observe any organ specialized in the legal protection of migrants, neither one that could support their right to adequate housing. Instead, migrants are actively discriminated by social housing programs, for they must endure extra formal requisites than other nationals under unequal conditions.¹⁷³⁶

The non-compliance to those state-obligations should be investigated by international grievance mechanisms. Therefore, adjustments must be conducted in what concerns eradicating discrimination and inequality from public policies and legislation in Brazil and Chile to include those individuals in the urban and social housing policy-making processes.

6.1.2.3 The elderly and disabled persons

States must ensure that persons with disabilities can engage in all stages of legal processes.¹⁷³⁷ The elderly must also be ensured of access to justice. For that, their physical and mental conditions must be taken into close consideration. Several Brazilian member-states, including Sao Paulo, Rio de Janeiro and Minas Gerais, have created departments of the Public Defender's Office specialized in causes for disabled and/or elderly persons.¹⁷³⁸ Although this refers to general legal services, not focused on access to adequate housing, the creation of specialized structure is in accordance to international guidelines.¹⁷³⁹ For example, the fifth panel of the First Brazilian Regional Federal Court of Appeals, decided in favor of a beneficiary that was denied by Caixa to change dwellings and receive another more adequate to their disability, based on the Convention on Rights of Persons with Disabilities.¹⁷⁴⁰ In contrast, this work did not find public defenders advocating for this social housing group in Chile hence the need of reform.

6.1.2.4 Homeless persons

It was not possible to find any relatable mechanism that could enhance access to grievance or redress to homeless persons in MCMV, D.S. 1, D.S. 19 and D.S.

¹⁷³⁶ See sections 5.1.2.6 and 5.1.4.5.

¹⁷³⁷ UNGA, Convention on Rights of Persons with Disabilities, art. 13.

¹⁷³⁸ "NUPED," Defensoria Pública do Estado do Rio de Janeiro, DPRJ, Official Website, Accessed July 3, 2020, <http://www.defensoria.rj.def.br/Cidad%C3%A3o/NUPED>; "Portal Idoso," Defensoria Pública do Estado de Sao Paulo, DPESP, Official Website, Accessed July 3, 2020, <https://www.defensoria.sp.def.br/dpesp/Default.aspx?idPagina=3343>; Defensoria Pública do Estado de Minas Gerais, "Pessoa Idosa e Pessoa Com Deficiência," DPMG, Official Website, Accessed July 3, 2020, <https://site.defensoria.mg.def.br/servicos/carteira-de-servicos/defensoria-especializada-da-pessoa-idosa-e-pessoa-com-deficiencia/>.

¹⁷³⁹ HRC, A/HRC/40/61, para 38.

¹⁷⁴⁰ Brasil, Tribunal Regional Federal 1 Região, AP 0008951-30.2014.4.01.3200/AM, Des. Fed. Daniele Maranhao Costa (5T Jul 8, 2018).

49. Particularly in Brazil, specific projects of several Defenders Office have been targeting legal assistance campaigns to homeless persons.¹⁷⁴¹ In Chile, *bus de la justicia* provides too mobile legal assistance. However, those limited actions do not disclose a strategic approach to (social) housing.

In fact, those legal systems should create domestic mechanisms that can enable access to justice and the legal representation of homeless persons. Defenders should pursue the use of international human rights mechanisms if no alternative is left at the national level. The legal framework should guarantee that no evictions “result in rendering individuals homeless or vulnerable to the violation of other human rights”¹⁷⁴² via “measures [...] adequate to prevent and, if appropriate, punish forced evictions carried out, without appropriate safeguards, by private persons or bodies.”¹⁷⁴³ Forms of redress can include reparations such as “restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition of rights violations.”¹⁷⁴⁴ Redress mechanisms could ensure that policies are changed to target at homeless families and specially those with minors.

Special national departments in different organs were dictated to provide better access to justice to children and youngsters living in street situation, although those activities were not directly connected to the studied social housing programs.¹⁷⁴⁵ In Chile, a national non-governmental organization required Chile’s National Service for Minors – SENAME to monitor its establishments where minors seek protection, especially to sleep over night.¹⁷⁴⁶ But, overall, children or else families with children in street situation should be supported in accessing justice, since they refer to an expressive contingent of extremely vulnerable persons.¹⁷⁴⁷ For example, local housing authorities in England “must secure that accommodation is available for the applicant's occupation”¹⁷⁴⁸, if they are

¹⁷⁴¹ Brasil, Defensoria Pública da Uniao, Portaria 666, de 31 de maio de 2017, P. 666 (2017). See also “Defensoria Pública lança projeto em favor da população em situação de rua no V Seminário Povos de Rua,” Defensoria Pública do Estado de Goiás, Ascom/DPE-GO, Website. Accessed April 28, 2017. <https://tinyurl.com/y8d4pvgv>; “Bus de la Justicia,” Universidad Católica de Temuco; “Área Cível da DPPR promove mutirão para moradia,” Defensoria Pública do Estado do Paraná, DPEP, Official website, Accessed May 6, 2019, <http://www.defensoriapublica.pr.def.br/2019/5/1409,0>.

¹⁷⁴² Leckie, 23.

¹⁷⁴³ UNCESCR, GC7, para 9. See also ECOSOC, A/RES/60/147, 22.A.

¹⁷⁴⁴ UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, (Mar 21, 2006), 18.

¹⁷⁴⁵ Children and youngsters in street situation are usually supported with other housing policies, such as emergency shelters. Yet, a family with children in street situation is at extreme vulnerability and should be one of the first priorities of social housing.

¹⁷⁴⁶ Chile, Corte Suprema, Fallo 35.112-2017 (3S July 31, 2017). The *Servicio Nacional de Menores* is a national institution, dependent on the Ministry of Justice, created in 1979 to protect children and youngsters.

¹⁷⁴⁷ UN CRC, GC21; HRC, A/HRC/40/61, 52.

¹⁷⁴⁸ England Housing Act, c. 52, part VII, with amendments (1996), 188-189.

homeless or in priority need, such as a pregnant woman or a family with children.

In this fashion, prioritizing those more vulnerable is an efficient strategy. However, prioritization should not refrain states from keeping away from their duty and goal of materializing adequate housing for all. That is neither excuse for the invalidation of the international legal duties of states because all human rights are entitled to adequate housing. Prioritization is only an efficient and social standard used to ensure that all measures must be taken to overcome the challenges that come along with housing inadequacy.

6.1.2.5 Indigenous persons and afro-descendants

Particularly historical minorities should be provided with effective and comprehensive means to fight housing inadequacy. Remedies must not only prevent discrimination (such as laws preventing access to land, property and services), but also act positively to “address systemic inequality.”¹⁷⁴⁹ But, in both countries, only limited strategies have been used to positively impact access to justice and address inequality against indigenous peoples and afro-descendants.

Legally, the Brazilian Public Prosecution Office takes the role to advocate on the rights of indigenous peoples before courts.¹⁷⁵⁰ Inspiring examples come from mobile courts also can create accessibility, especially in the most remote areas where legal assistance is fundamental.¹⁷⁵¹ For example, *Núcleo Institucional de Promoção e Defesa dos Povos Indígenas e da Igualdade Racial e Étnica* – Nupiiir is a special department of the Brazilian Public Defenders Office of Mato Grosso do Sul, created to advocate for collective matter regarding for indigenous peoples, quilombola communities, Roma communities, fishermen, afro-descendants and other traditional peoples.¹⁷⁵² In alignment with international directives, a local plan was established to target the most relevant issues concentrated among indigenous communities, including in the promotion of urgent measures for the right to adequate food. Nupiiir reported visits to indigenous communities in which significant amount of identity cards could be issued, a basic requirement for any applicant of social housing.¹⁷⁵³ The department also

¹⁷⁴⁹ HRC, A/HRC/40/61, para 53.

¹⁷⁵⁰ See more United Nations, “Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Miloon Kothari. Addendum Mission to Brazil,” E/CN.4/2005/48/Add.3 (Commission on Human Rights, Feb 18, 2004), 59-61; See also section 6.4.5.

¹⁷⁵¹ HRC, A/HRC/40/61, para 45.

¹⁷⁵² Brasil, Defensoria Pública de Mato Grosso do Sul, Resolucao DPGE n. 157, de 19 de abril de 2018, R. 157 (2018), art. 2. *Núcleo Institucional de Promoção e Defesa dos Povos Indígenas e da Igualdade Racial e Étnica* – Nupiiir was created by R. 157/DPGE-MS. Fishermen refer to different traditional peoples that live dependent on that artisanal or small-scale activity, in Portuguese, *pesca-dores artesanais, varjeiros, pantaneiros e ribeirinhos*.

¹⁷⁵³ Franco Naurimar, “Indígenas da Região da Grande Dourados têm acesso a documentação por meio da Defensoria,” Defensoria Pública de Mato Grosso do Sul, DPMS, Official website, Accessed

planned specialized training of public defenders and periodical visits to villages to include legal education.¹⁷⁵⁴ However, no reported reference was given upon legal assistance related to housing rights. This failure in the advocacy for housing rights must be reformed.

Other regional *Defensorias* also conduct mobile visits, as the organ in the state of Rio Grande do Sul promoted legal education and legal assistance at indigenous villages.¹⁷⁵⁵ By enabling access to justice through mobile campaigns, the Public Defender's Office actively supports access to justice to remote indigenous communities that exercise contact with individuals from urban centers.¹⁷⁵⁶ This requires a design culturally adequate to the values of communities and special training from involved frontline professionals.

However, the lack of resources and specialized training are among the greatest challenges of those special departments. States must find proper means to curb "linguistic, cultural and religious barriers",¹⁷⁵⁷ in this context, for example, by providing mobile courts reaching the most-vulnerable where they can be encountered, by informing and enabling basic legal education to those who might not understand a formal, legal language, as well as by financing good quality legal assistance, all for free. In such fashion, the Chilean Judiciary offers summaries about common and special courts in four different indigenous languages in its website.¹⁷⁵⁸ This is an important step for providing transparent access to information, to which no comparative example was found in Brazil's system. However, no translated document was published about the thematic of housing

March 18, 2020. <https://cutt.ly/CyMigUP>; Lucas Pellicioni, "Defensoria Pública apresenta plano institucional para prestação de atendimento à população indígena," DPGEMS, Official website, Accessed May 25, 2019. <http://www.defensoria.ms.gov.br/imprensa/noticias/388-defensoria-publica-apresenta-plano-institucional-para-prestacao-de-atendimento-a-populacao-indigena>. Identity cards were emitted as a necessary means to access justice, since the civil registry is a fundamental condition for any public service.

¹⁷⁵⁴ Id.

¹⁷⁵⁵ "Defensoria Pública realiza atendimentos e promove a educação em direitos na aldeia indígena Inhacorá," Defensoria Pública do Estado do Rio Grande do Sul, DPERS, Website, Accessed Oct 30, 2019. <https://cutt.ly/fyMpVys>. However, this is part of a member-state policy strategy and not all regional Public Defenders Offices operate those same mechanisms.

¹⁷⁵⁶ See more International Labor Organization. Indigenous and Tribal Peoples Convention, C169 (1989); Brasil, Decreto 1.775, de 8 de janeiro de 1996, D. 1.775 (1996), art. 7; Fundação Nacional do Índio, "Povos Indígenas Isolados e de Recente Contato," FUNAI, 201AD, Official website, Accessed Mar 18, 2020. <http://www.funai.gov.br/index.php/nossas-acoas/povos-indigenas-isolados-e-de-recente-contato>. It must be remarked that, according to national data, at least 107 indigenous persons live isolated in the Amazon area. As long as they do not "permanently" search for contact with non-indigenous persons, those individuals should be protected and respected in their right of living in isolation. That might not be the case in the state of Rio Grande do Sul, however, communities living in remote areas should anyhow be respected in their traditional values.

¹⁷⁵⁷ HRC, A/HRC/40/61, para 45.

¹⁷⁵⁸ "Folleteria Etnias: Folletería Inclusiva Pueblos Originarios," Poder Judicial, Official website, Accessed Mar 20, 2020. <https://www.pjud.cl/folleteria-inclusiva-pueblos-originarios>. They offer summaries on Rapa Nui, Quechua, Mapudungun and Aymara languages.

rights. Besides publishing information on line, it is necessary to bring such information to the hands of rights-holders for which mobile visits are essential.

This three-legged framework (an adequate cultural and language design, mobile visits, training of frontline professionals) should be specially taken into consideration when looking at housing conditions of indigenous peoples. Yet, it suits too for those living in campamentos or favelas, who are socially segregated due to different reasons. In this way, other vulnerable groups can also find support.

Furthermore, it was possible to track one positive intervention of the Brazilian Comptroller's General Office assisting a Roma community in the suburbs of the Federal District. In the case, MPF notified the governor on the vulnerable situation of the sixty-five *Calons*, which required urgent shelter and food aid.¹⁷⁵⁹ There was no reference to a specific adequate design to cultural or language characteristics of the Roma community. And, although the single action has important positive impacts to the concerned individuals, a systematic change in the approach to human rights is necessary.

Legal remedies improving access to indigenous peoples should be a question of urban social housing. According to the Special Rapporteur, states should also guarantee protection to indigenous peoples living in urban centers because they are significantly prone to vulnerable to homelessness and inadequate housing conditions, as observed previously.¹⁷⁶⁰ Associations of indigenous peoples and watchdogs claimed that "Brazil failed to identify and fully meet the specificities of the cases of indigenous peoples and promote an effective improvement in living conditions, without imposing an alien way of life".¹⁷⁶¹

¹⁷⁵⁹ "MPF Requer Auxílio Emergencial Para Grupo de Ciganos Calon Em Planaltina/DF," Ministério Público Federal, Procuradoria Dederal dos Direitos do Cidadao, PFDC, Official website, Accessed Dec 6, 2019. <https://tinyurl.com/y8o9xuj6>.

¹⁷⁶⁰ HRC, A/HRC/40/61, 47. See more Sam Cowie, "A New Wave of Attacks on Brazil's Amazonian Indigenous Communities." Intercept, Website, Accessed February 16, 2019, <https://theintercept.com/2019/02/16/brazil-bolsonaro-indigenous-land/>; Dom Phillips, "Brazil: Indigenous People Rally in Capital to Protest against Bolsonaro Onslaught," *Guardian* on Apr 24, 2019, Accessed Jun 17, 2019, <https://www.theguardian.com/world/2019/apr/24/brazil-indigenous-people-bolsonaro-protest>; "Bolsonaro' Government Threatens Indigenous Peoples," No Comment TV, *Euronews*, Video produced by No Comment, Accessed Mar 25, 2019, <https://www.euronews.com/2019/04/25/bolsonaro-government-threatens-indigenous-peoples>; Ernesto Londoño, "Jair Bolsonaro, on Day 1, Undermines Indigenous Brazilians' Rights," *New York Times*, January 2, 2019, sec. World, <https://www.nytimes.com/2019/01/02/world/americas/brazil-bolsonaro-president-indigenous-lands.html>; News Agencies, "Brazil's Bolsonaro Targets Minority Groups on First Day in Office," News, Indigenous Rights in Al Jazeera News, Accessed Jul 17, 2019, <https://www.aljazeera.com/news/2019/01/brazil-bolsonaro-targets-minority-groups-day-office-190102202755422.html>; HRC, A/HRC/WG.6/27/BRA/2, 80-85. See also sections 5.1.2.5 and 5.1.4.7. Various sources claim that the Brazilian state, although unsuccessfully, used to better protect indigenous peoples' rights, not only from illegal logging and mining activities on their own lands, but also from a political will that tried to weaken legal protections.

¹⁷⁶¹ HRC, A/HRC/WG.6/27/BRA/3, 54.

This led indigenous communities to claim at international Courts for the justifiability of their rights. In the decision of the Inter-American Court of Human Rights *Ximenes-Lopes v Brazil*, that state had its partial liability acknowledged for the violation of the right to land of indigenous peoples, sanctioned not only to pay for compensatory damages, but also to develop training for health workers.¹⁷⁶² In the *Xucuru Indigenous People v Brazil* case, the government was sentenced by that same Court to provide access to that community to its original land.¹⁷⁶³ This case revealed domestic judicial and non-judicial grievance and redress mechanisms violating human rights.

Despite IACHR's admissibility requirement of exhaustion of domestic measures based on San Jose's Pact, the Court made an exception in this case. Among the reasons, the Court observed the occurrence of unwarranted delays at the domestic level.¹⁷⁶⁴ Remedies used included the publication of the decision and, the creation of a community development fund for the *Xucurus* in compensation for the immaterial damage perpetrated.

Informal bottom-up social accountability mechanisms have also been ensuring that actors are held accountable against violations to indigenous peoples. They may have varied faces, but particularly in Chile, protests for the right to housing and land have led the enforcement and grievance¹⁷⁶⁵ because in that country indigenous communities have rarely been able to hold duty-bearers into account via legal mechanisms, many lost their lands to enterprises. That state did not guarantee "free and informed prior consent" in decisions affecting "their economic, social and cultural rights."¹⁷⁶⁶ Neither did the Chilean state ensure housing rights or access to land via mechanisms "for the restitution of indigenous peoples' lands, but there was a land purchase mechanisms for indigenous peoples."¹⁷⁶⁷ Therefore, many communities found a way of expressing their concerns and turning others accountable via protests and demonstrations.¹⁷⁶⁸

¹⁷⁶² *Ximenes-Lopes v Brazil*, Series C No. 149 (Inter-American Court of Human Rights July 4, 2006).

¹⁷⁶³ *Xucuru Indigenous People v Brazil*.

¹⁷⁶⁴ *Xucuru Indigenous People v Brazil*, D, 44-48; Organization of American States (OAS), American Convention on Human Rights, 44, 45, 46.1.a.

¹⁷⁶⁵ Leslie Cloud and Fabien Le Bonniec, "Criminalization and Judicialization of Indigenous Peoples' Rights in Chile : Current Dynamics 1," in *Scales of Governance and Indigenous Peoples' Rights*, ed. Irene Bellier and Jennifer Hays, 2019, <https://doi.org/10.4324/9781315671888-10>; See Javier Couso et al eds, "The Mapuche People's Battle for Indigenous Land: Litigation as a Strategy to Defend Indigenous Land Rights.," in *Cultures of Legality: Judicialization and Political Activism in Latin America*, 207–33 (Cambridge University Press, 2010). Communities have their sense of identity and culture directly related to traditional lands and natural resources. In Chile, Mapuche is the biggest community, led by followed by Huenteche, Nagche and others.

¹⁷⁶⁶ HRC, A/HRC/WG.6/32/CHL/2, para 88.

¹⁷⁶⁷ HRC, A/HRC/WG.6/32/CHL/2, para 89.

¹⁷⁶⁸ "Disuelta una manifestación mapuche en Chile," euronews. Website, Accessed Dec 8, 2019. <https://cutt.ly/8yMpi7a>; "Disuelta Una Manifestación Mapuche En Chile," euronews, Youtube Video, Accessed Dec 8, 2019. <https://www.youtube.com/watch?v=jcLi7qHrcTo>.

For that, particularly the *Mapuche* have faced strong repression and their community leaders, domestic prosecution based on Chile's Anti-Terrorism Act.¹⁷⁶⁹ In regard to demonstrations about the dispute over their ancestral lands,¹⁷⁷⁰ the Inter-American Court of Human Rights found the Chilean state guilty for violating, among others, the principles of freedom of expression and the rights to equal protection, presumption of innocence and to personal liberty, the due process and the right to appeal, the right to participate in the government, to seek, receive and to impart information and ideas.¹⁷⁷¹

Violence is a common topic when addressing violations against indigenous peoples. According to Amnesty International, land disputes in rural and indigenous areas generate violence and deaths in Brazil and impact on urban migration.¹⁷⁷² In 2017, at least 110 indigenous persons were murdered and 963 denounced violence against their land and property.¹⁷⁷³ The watchdog Indigenous Missionary Council denounces a “rise in impunity” of crimes against indigenous peoples, particularly since the year 2017.¹⁷⁷⁴

Overall, Brazil and Chile violate human rights in two more specific points. One, because, according to GC3, the obligation to guarantee all human rights without discrimination has “immediate effect.”¹⁷⁷⁵ It is not based on the principle of progressive realization, so the Brazilian and Chilean States should have been able to have protected indigenous and afro-descendant peoples. Two, because the Covenant “imposes an additional obligation upon Governments to ensure that, where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved.”¹⁷⁷⁶

Reforms must be urgently conducted in Chile in order to create access to justice to indigenous communities. In Brazil, quilombola communities must be addressed the same way. Also, afro-descendants in urban centers must be able to claim equality and their right to housing.

6.1.3 Control and Remediation

Against any violations to the rights of a stakeholder, remediation and grievance

¹⁷⁶⁹ Norín Catrimán et al; “Chile 2017/2018: Country Report.” Amnesty International, 2018. <https://www.amnesty.org/en/countries/americas/chile/report-chile/>; Chile, Chile's Anti-Terrorism Act, Ley 18.314, de diezesseis de mayo de 1984, L. 18.314 (1984).

¹⁷⁷⁰ Norín Catrimán et al, para 79.

¹⁷⁷¹ Norín Catrimán et al.

¹⁷⁷² “Brazil 2017/2018.” Amnesty International, 2018. <https://www.amnesty.org/en/countries/americas/brazil/report-brazil/>.

¹⁷⁷³ Conselho Indigenista Missionário (Cimi), “Relatório Violência contra os povos indígenas no Brasil – Dados de 2017.” Cimi, Misereor, Adveniat, 2018, 162.

¹⁷⁷⁴ Cimi, 13.

¹⁷⁷⁵ UN CESCR, G3, para 1.

¹⁷⁷⁶ UN Committee on Economic, Social and Cultural Rights, General Comment No. 7: The right to adequate housing (Art.11.1): forced evictions, E/1998/22, GC7 (CESCR, May 20, 1997), para 11; UNGA, ICESCR, art. 2.2, 3.

must be accessible. Particularly to beneficiaries of social housing programs, constitutional (6.1.3.1) and international mechanisms (6.1.3.2) can play a distinctive role against individual or collective violations. Ombudspersons can have a direct impact at the local level (6.1.3.3), particularly for the materialization of human rights. As well, social accountability (6.1.3.4) reveals essential aspects for democratic enclaves.

6.1.3.1 Constitutional remedies

Shielded by justiciability, beneficiaries may seek for remedies through various channels. Judicial mechanisms, as the traditional means of redress and grievance, are part of a full legal framework in which appeals and complaints can take place at possibly any time of the policy cycle.¹⁷⁷⁷ Depending on the situation, remedies could be undertaken to hinder an eminent threat or a violation to a right-holder, also in the context of housing, for instance, an eviction. In Chile, they include the *recurso de protección* (6.1.3.1.1), the writ of *amparo*, and other regular litigation procedures (6.1.3.1.2).¹⁷⁷⁸ In Brazil, enlisted in the Constitution itself¹⁷⁷⁹ are *habeas corpus*, *habeas data* (6.1.3.1.2), the writ of *mandamus* (*mandado de segurança*, 6.1.3.1.3), *ação de usucapiao* (6.1.3.1.4), writ of injunction (*mandado de injeção*, 6.1.3.1.5), people's legal action (*ação popular*, 6.1.3.1.6), public civil suit (*ação civil pública*, 6.1.3.1.7) and a lawsuit against administrative misconduct (*ação de improbidade administrativa*, 6.1.3.1.8). A critical assessment of judicial competences and justiciability (6.1.3.9) and of jurisprudence follow (6.1.3.1.10).

Protection appeal (recurso de protección)

The most specific remedy in the Chilean constitution probably refers to *recurso de protección*, or “protection appeal”.¹⁷⁸⁰ Among other specific rights enlisted, it covers the right to property and of equality.¹⁷⁸¹ Yet, because the right to housing is not inscribed in that Constitution, that judicial remedy cannot be directly used to guarantee this human rights. In a decision of 2014, it was used against the illegality of the expulsion of an associate by the local D.S. 49 association of dwellers, conceived based on the principle of presumption of innocence.¹⁷⁸²

¹⁷⁷⁷ Basset et al, 55.

¹⁷⁷⁸ Chile, Constitution, art. 12, 19.7, 20, 21, 38.2; Danziger, 536.

¹⁷⁷⁹ See Furtado, 1007-27; Brasil, Constitution, art. 5.LXX-LXXIII, 37, para 4, 129.III; Peruzzotti and Smulovitz, 217.

¹⁷⁸⁰ Chile, Constitution, art. 20.

¹⁷⁸¹ Id.

¹⁷⁸² Chile, Corte Suprema, Fallo 6.784-2014 (3S Apr 1, 2014).

Habeas data, habeas corpus and amparo

The Brazilian Constitution foresees the *habeas data*, which can be issued in order to access or correct personal information.¹⁷⁸³ A *habeas corpus*¹⁷⁸⁴ is based on the expectation or on the actual violation or coercion to freedom (literally, freedom of movement) due to an illegal act or abuse of power. This is fundamentally similar to Chile's *recurso de amparo*¹⁷⁸⁵.

. Writ of mandamus (mandado de segurança)

A writ of mandamus (*mandado de segurança*) may be collectively or individually used, also in the housing context, as long as it refer to violations to any liquid and certain right violated by a abuse of power.¹⁷⁸⁶ But decisions based on a *mandado de segurança* must be reviewed under a regular procedure that enables the right to defense among other procedural principles. Therefore, it may happen that final decisions by the same court revert the original concession of rights. In contrast to *habeas corpus* and *habeas data*, this is not free-of-costs, depending too on a lawyer.

In the MCMV context, that could include public agents of e.g. Caixa, the Ministry of Cities, a governor or mayor, or even public servants. This is often the best suitable remedy against emergencies such as imminent evictions. For example, in a case where vulnerable families living over 15 years on a property were facing an imminent risk of eviction, the decision from a Labor Court, based on the constitutional right to housing via a *mandado de segurança*, was to allow them to remain on the property until another ongoing writ over property rights (*ação de usucapião*) could be decided.¹⁷⁸⁷ See here too the importance of acknowledging the right to housing on constitutional texts, because only after that express recognition can constitutional remedies ensure the justiciability of such rights.

Instruments against forced eviction (Ação de usucapião and ZEIS)

Instruments of defense against forced evictions based on a special possession of urban property (*ação de usucapião coletivo* or *individual*) are based on constitutional rights and can be effective against evictions. They can be applied collectively or individually, based on a set of criteria: applicants must fit to a family or an individual, who does not own any other property, but have possessed uninterruptedly and undisputedly for at least five years an area of max.

¹⁷⁸³ Brasil, Constitution, art. 5, LXXII.

¹⁷⁸⁴ Brasil, Constitution, art. 5, LXVIII.

¹⁷⁸⁵ Chile, Constitution, art. 21.

¹⁷⁸⁶ Brasil, Constitution, art. 5, LXIX; Brasil, Lei 12.016, de 7 de agosto de 2009, L. 12.016 (2009).

¹⁷⁸⁷ Brasil, Tribunal Regional do Trabalho 2 Região, MS 1000306-43.2018.5.02.0000, Rel. Des. Bianca Bastos, SDI-8 – Cadeira 6, At DJe Feb 2, 2018 (Feb 16, 2018).

250 square meters.¹⁷⁸⁸ However, public real estate is expressly excluded from that prescription, meaning *usucapião* can be used against private property.¹⁷⁸⁹

That exception would have created issues in MCMV, specially for collective applicants that would not have been able to use their lands for construction, if it had not been for a new instrument created in 2012. Special zones of social interest (*zonas especiais de interesse social* – ZEIS) were instituted by the City’s Statute to categorize areas destined for social housing, which can include collective housing projects and the regularization of illegally occupied areas, such as slums.¹⁷⁹⁰ According to Saule Junior and Rodriguez, this has been the “most efficient instrument adopted by (sic) local authorities to avoid forced evictions.”¹⁷⁹¹

Injunction writ (mandado de injunção)

Furthermore, an injunction writ can be applied if a loophole is preventing the exercise of constitutional liberties (including matters of nationality, sovereignty, and citizenship).¹⁷⁹² This mechanism could allow several corrections to inconsistencies present in the Brazilian legal system. However, the constitutional text excludes social rights from the roll of possible themes that can be claimed with this remedy. Therefore, a constitutional reform should guarantee the claim of regulation over the several rights-based guidelines inscribed in Brazilian norms. Enabling this remedy to the perspective of social rights could highly improve the answerability dimension in the Brazilian context.

6.1.3.2 Actio popularis (ação popular)

Another constitutional remedy for collective purposes is the *ação popular*.¹⁷⁹³ Rooted on the obligation of the state to respect and protect, it enables any (capable) person to engage in the annulment of an illegal or immoral act harmful to public assets. That should be fundamentals on the protection of administrative morality, of the environment, historical and cultural heritages. The fact that it is free of cost enables access, but that can only be ensured via free legal assistance.

Interrelated matters to the right to housing can be addressed, as it was the case of a claim brought by the Public Prosecutor’s Office to the Brazilian Supreme Court.¹⁷⁹⁴ Families faced eviction from an area of permanent environmental preservation that, supposedly offered risks of collapse and flooding. In that case, evictions were justified by the communication of the government that the area

¹⁷⁸⁸ Brasil, Constitution, art. 183. See more Saule Júnior and Rodriguez, 187-88.

¹⁷⁸⁹ Brasil, Constitution, art. 183, para 3.

¹⁷⁹⁰ Brasil, City’s Statute, art. 42-A, V.

¹⁷⁹¹ Saule Junior and Rodriguez, 194.

¹⁷⁹² Brasil, Constitution, art. 5, LXXI.

¹⁷⁹³ Brasil, Constitution, art. LXXIII.

¹⁷⁹⁴ Brasil, Supremo Tribunal Federal, RE 763034/RS, Rel. Min. Carmem Lucia, At DJe 179 Sep 12, 2013 (Pleno Sep 9, 2013).

offered risks. Indeed, the right to housing must be interpreted within the standards of health and environmental adequacy. But those standards conflict with the basic need of shelter and the security of tenure. Thus, evictions must have been prevented, in which case a strategy should have been developed for families willing to relocate.¹⁷⁹⁵

Public civil suit (ação civil pública)

A public civil suit (*ação civil pública*) is a Brazilian constitutional mechanism that is rooted in the theory of accountability.¹⁷⁹⁶ It is based on the premise of sanctioning based on the “responsibility” of duty-bearers for material and non-material damages to, among others, the urban order, the environment, or any diffuse or collective interest, the dignity or honor of racial ethnic or religious groups.¹⁷⁹⁷ It can enforce an obligation or a pecuniary sanction.¹⁷⁹⁸

Yet, it can only be proposed by institutions that represent collective groups, such as the Public Defender’s or Public Prosecutor’s Office.¹⁷⁹⁹ In the MCMV context, supporting entities could take that role if they are formally constituted as a form of association for over one year. Additionally, they must include in their “institutional mission” the protection of “public and social heritage, the environment, the consumer, the economic order, free competition, the rights of racial, ethnic or religious groups or the artistic, aesthetic, historical, tourist and landscape heritage”.¹⁸⁰⁰

However particularly for a mechanism against imminent threats, this long-term bureaucracy hinders the efficient and timely application of this constitutional remedy. An entity would have to first organize itself formally, then, wait one year and, eventually, work on proving their legitimacy by finding another purpose to their organization. In practice, a group of dwellers facing an imminent issue e.g. in their social housing context would be hardly capable of beginning such a lawsuit if, besides all formal obligations, they only hold on to their primary mission of supporting the urban order. Despite being a possible object of this remedy, the “urban order” was excluded from the institutional requisites of associations. This exclusion of the term from art. 5, V can hinder remediation if in hands of strictly formalist courts. Therefore, simplicity and objectivity (less

¹⁷⁹⁵ A remark: ensuring a another dwelling for the evicted families via a social housing program is not a sufficient solution. This extremely complex situation must calculate with those who do not wish to leave their homes and prepare those who are willing to move via participatory assistance procedures.

¹⁷⁹⁶ Brasil, Constitution, art. 5, XXXV, 129.

¹⁷⁹⁷ Brasil, Lei 7.347, de 24 de julho de 1985, L. 7.347 (1985), art. 1, I, IV, VI, VII.

¹⁷⁹⁸ Brasil, L. 7.347, art. 3.

¹⁷⁹⁹ Brasil, L. 7.347, art. 5.

¹⁸⁰⁰ Id, V.

formalism) aligned with a consistent legal framework should be secured by reforms in this instrument.

Federal and local Public Defenders Office tried to protect families of the “*Chico Pregó*” occupation from eviction with the use of judicial mechanisms.¹⁸⁰¹ In that case, a *ação civil pública* brought before Court the condition of those 159 households, all inscribed in the national registry, with the aim to “legalize” the occupation into a housing project to be supported by Minha Casa, Minha Vida.¹⁸⁰² The international and domestic rights-based guidelines was supporting those individuals, in addition to favorable arguments that included the fact that the building had been abandoned for years and that it could provide adequate housing conditions, based on a previous legal designation to its use to social housing for MCMV.¹⁸⁰³ And yet, the reporting judge sustained the illegality of the occupation under the argument that the judiciary could not interfere in the executive power or in the implementation of housing policies that, according to their opinion, had been undertaking concrete measures.¹⁸⁰⁴

Ação de improbidade administrativa

An administrative misconduct¹⁸⁰⁵ can be object of a *ação de improbidade administrativa*. This constitutional remedy is targeted at any stakeholder “responsible” for misusing public assets. Most importantly, this writ can be initiated by any person, about which the Public Prosecutor’s Office and the competent Court of Accounts must be informed.¹⁸⁰⁶

Competence and justiciability

As the Brazilian Constitution asserts, “the norm shall not exclude any injury or threat from the consideration of the Judiciary[sic].”¹⁸⁰⁷ Beneficiaries of MCMV, D.S. 1, D.S. 19 and D.S. 49 can claim in competent courts upon related social housing conflicts. But which judicial court is competent, depends on different matters, such as the subject, court fees or domicile and that has direct consequences on the understanding of Courts on the right to housing.

It is not possible to create a correlation between the outcomes of a writ in constitutional or infra-constitutional courts. However, as long as a constitutional

¹⁸⁰¹ Brasil, Tribunal Regional Federal 2 Região. APC 0014870-94.2017.4.02.5001, Rel. Des. Fed. Guilherme Couto de Castro (6T May 28, 2019).

¹⁸⁰² Brasil, TRF2, APC 0014870-94.2017.4.02.5001, *Relatório*, 1.

¹⁸⁰³ Id.

¹⁸⁰⁴ Brasil, TRF2, APC 0014870-94.2017.4.02.5001, *Voto*, 4.

¹⁸⁰⁵ Brasil, Constitution, art. 37, para IV; Brasil, Administrative Improbability Act.

¹⁸⁰⁶ Brasil, Administrative Improbability Act, art. 14.

¹⁸⁰⁷ Brasil, Constitution, art. 5, XXXV.

right is acknowledged, constitutional courts are, as a rule competent. Consequently, this change in competence can speak positively to justiciability and, eventually, to the outcomes of legal remedies.

In what generally touches competence, Brazilian and Chilean Constitutional Courts can intervene in matters of the public administration.¹⁸⁰⁸ In both legal frameworks, any public prosecutor may start an investigation on corruption grounds, which can be brought to those supreme courts if related to certain actors, e.g. to the Presidency. And, in matters of arbitrary acts or omissions that violate rights and guarantees listed in the constitutions, redress can be sought at those same courts.¹⁸⁰⁹

Public prosecutors may only claim upon rights stated on the national constitutional texts and bring them to those Supreme Courts. Even though the right to housing is not stated on Chile's Constitution, the Chilean Supreme Court can decide upon specific controversies regarding social housing, such as regulatory interventions in *ex ante* and *ex post* circumstances.¹⁸¹⁰ For example, it decided that the Organic Constitutional Law of Municipalities should not allow the intervention of municipal public servants in the accreditation of social housing condominiums.¹⁸¹¹ And, although the Court recognized that co-proprietaries have the right to define an administrator to their social housing condominium, it set that regional governments were allowed to provisorily nominate administrators.¹⁸¹²

However, there is a limit to control in the materialization of that human right. The issue is that, in Chile, where the right to housing is not constitutionalized, right-holders are formally hindered from justiciability.¹⁸¹³ This leads to legal insecurity regarding the right to housing. Although justiciability can derive from different instruments of international human rights law that recognize the right to adequate housing, to which both Brazil and Chile ratify, this interpretation depends on every and each judge. Therefore, the constitutionalization of the right to adequate housing is fundamental, also because it can secure an eventual activation of the national Supreme Court.

In Brazil, a different constitutional and legal framework enables different topics related to housing rights to be brought before federal, criminal, civil or superior courts. In administrative matters, specific organs may have a first say, such as

¹⁸⁰⁸ Chile, Constitution, art. 93; Danziger, 586; OECD, *OECD Reviews of Regulatory Reform Regulatory Policy in Chile*, 68; Brasil, Constitution, art. 102, caput, III.

¹⁸⁰⁹ Id.

¹⁸¹⁰ OECD, *OECD Reviews of Regulatory Reform Regulatory Policy in Chile*, 68.

¹⁸¹¹ Chile, Constitution, art. 118; STC 700, c. 11 In: Enrique Navarro Beltrán and Carlos Carmona Santander, eds. "Recopilación de Jurisprudencia del Tribunal Constitucional (1981-2015)", *Cuadernos del Tribunal Constitucional*, n 59 (2015) 723.

¹⁸¹² Chile, Constitution, art. 113; STC 700, cc. 6 a 8 In: Beltrán and Carmona Santander, 723.

¹⁸¹³ Chile, Constitution, art. 20; Danziger, 546. See also section 3.5.

in the case of control of public entities and to the legitimacy and legality of their normative acts.¹⁸¹⁴ But, since no matter shall be excluded from the appreciation of the judiciary, administrative decisions may also be eventually reviewed by superior courts.¹⁸¹⁵

In the case of MCMV, federal courts will serve as a competent jurisdiction to a substantial amount of causes.¹⁸¹⁶ As a rule, those courts exercise legal power over claims against the Federal Union, its autarchies or state-owned firms, which includes Caixa.¹⁸¹⁷ And, in the case of grave human rights violations, the Attorney General can request the shift on the natural competence to federal courts, in order to make use of its prerogatives to ensure that obligations derived from international human rights treaties are followed.¹⁸¹⁸ Consequently, federal courts will qualify to address several questions in relation to MCMV.

Yet, that sphere is divided in both criminal and civil federal courts, and eventual conducts must incur in both sanctions. For example, in a conflict of jurisdiction between a criminal and civil federal court, the Third Federal Regional Court looked at a case of a MCMV beneficiary that alienated their dwelling. They incurred not only in a contract breach, but also in the crime of larceny. That did not figure in fraud against the financial system, because the fact happened after the dwelling was granted, so the beneficiary's right was legitimate and the evidential documentation proved the contract to be credible.¹⁸¹⁹ But, referring to the purpose deviation of the contract, the Court decided that the ordinary federal court, and not the criminal one, was competent to investigate the matter.¹⁸²⁰

Jurisprudence

As observed in the previous chapter, policies behind social housing programs led to illegal evictions, often due to informal tenures and under the use of negotiation methods that lacked transparency, engagement, or fair procedures.¹⁸²¹

¹⁸¹⁴ Brasil, Constitution, art. 33, para 2, 70-74, 161.

¹⁸¹⁵ Brasil, Constitution, art. 5, XXXV.

¹⁸¹⁶ Brasil, Constitution, art. 109, III. For example, they are competent to causes substantiated on an international treaty or contract.

¹⁸¹⁷ Brasil, Constitution, art. 109, I. That judicial competence is not extended to cases of financial default, labor matters, or election matters. The law is clear in expressing its legal powers over state-owned firms, or *empresa pública federal*, what includes Caixa, but at the same time, excludes from that legal competence *Banco do Brasil*, that is a mixed joint stock corporation, a *sociedade de economia mista*.

¹⁸¹⁸ Brasil, Constitution, art. 109, V-A, para 5. Claim to be addressed by the *Procurador-Geral da República* to the Superior Court, *Superior Tribunal de Justiça*.

¹⁸¹⁹ Brasil, Tribunal Regional Federal 3 Região, 0000025-27.2019.4.03.0000, CJ 21.637/SP, Des. Fed. José Lunardelli, At D.E., Mar 29, 2019 (4S Mar 25, 2019).

¹⁸²⁰ Id. In any case, sanctions to mobility should be revisited. See section 5.1.5.5.

¹⁸²¹ HRC, A/HRC/WG.6/13/BRA/2, 49. "Urban reforms aimed at the beautification and renovation of down town areas, have also led to the resettlement in insalubrious peripheries of Rio de Janeiro, Salvador and Boa Vista. Mass and violent forced evictions were denounced in 2005 in the Sonho Real settlement, in Goiania, where 4,000 families were forcibly evicted, two people were shot

The Special Rapporteur observes necessary measures to be taken in order to guarantee protection through the judicial system. For example, individuals should be guaranteed different forms of legal assistance.¹⁸²² The judiciary should convene public hearings, train specialized judges and lawyers.¹⁸²³ Effective legal instruments are also necessary, but directly depend on a judiciary that “rigorously applies the prohibition of forced eviction.”¹⁸²⁴

Comprehensive adjustments are necessary for effective changes, for example, in the understanding of the judiciary upon matters such as eviction and the progressive realization of human rights. If, on the one hand, procedures addressing collective issues have been used to make the State accountable; on the other hand, there is no guarantee of their outcome.¹⁸²⁵

Yet, judicial efforts to ensure adequate housing also occur. For example, in a decision from 2014, Temuco’s Court of Appeals recognized the interdependence of human rights, creating a positive impact.¹⁸²⁶ It “recognize(d) the obligation of the State to develop public policies to guarantee access to housing, with priority given to vulnerable groups, regardless of income or access to economic resources.”¹⁸²⁷ Yet, this is insufficient for the degree and number of violations evidenced and diagnosed in this study in respect to the right to adequate housing.

In a concrete example that can be used to inspire future adjustments in the social housing model, the Brazilian Supreme Court understood that moral responsibilities become moral duties, if so assigned by law, against which all stakeholders must work together to fulfill.¹⁸²⁸ ABRATI, a national association of transportation firms, argued for the unconstitutionality of federal law 8,899/94, which had not indicated means of funding a policy that instituted free access of low-income persons with disabilities to interstate public transport systems.¹⁸²⁹ At the time, the policy had been regulated to ensure that at least two seats in each vehicle were reserved for persons with disabilities.¹⁸³⁰

dead, 100 people were injured, and 800 people were arrested. Likewise, 1,000 families (approximately 6,000 persons) were evicted in the private urban area of Fazendinha (Curitiba) in 2008. In Manaus, slum upgrading projects funded by the Inter-American Development Bank resulted in the relocation of local families away from the city” (HRC, A/HRC/13/20/Add.2, para 47). *See* section 5.1.2.1.8.

¹⁸²² UNGA, A/73/310/Rev.1, para 93.

¹⁸²³ UNGA, A/73/310/Rev.1, para 93.

¹⁸²⁴ UNGA, A/73/310/Rev.1, para 92.

¹⁸²⁵ UNGA, A/73/310/Rev.1, para 93.

¹⁸²⁶ *See* Chile, Corte de Apelaciones de Temuco, Rol N° 253-2014.

¹⁸²⁷ HRC, A/HRC/37/53/Add.1, para 80.

¹⁸²⁸ Brasil, STF, ADI 2649.

¹⁸²⁹ Brasil, Lei 8.899, de 29 de junho de 1994, L. 8.899 (1994).

¹⁸³⁰ Since July, 2018, there is no more limit in the quantity of seats that shall be left to persons with disabilities, based on a decision of the TRF3 and further guidelines of the National Transport

According to the decision, the law was constitutional because its aim was to implement the ratified International Convention on Rights of Persons with Disabilities¹⁸³¹, thus “all society, not only the state, has the obligation to adopt means and ways to include these people in what is compatible to their conditions.”¹⁸³² This progressive understanding of the reporter Min. Carmen Lucia elucidated that transport firms were not left with financial burdens because, in her understanding of a free market, costs are passed on to consumers and so the existent financial burden was left to society as whole.¹⁸³³

But, as already observed previously, the improvement of the enforcement dimensions depends on reforms in responsibility and answerability.¹⁸³⁴ In order to guarantee enforcement, it is essential that courts acknowledge government and service providers as duty-bearers and beneficiaries as right-holders in the social housing context. As well, legislators must create a mandatory and adequate framework at the constitutional level to be brought via efficient mechanisms before Courts.

6.1.3.3 International mechanisms

International mechanisms can lead to redress and grievance. Individuals and, in this case, beneficiaries of the studied social housing programs can use them to hold both Brazilian and Chilean States accountable before international courts. Through the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights and the International Court of Justice, friendly settlements have been creating a novel impact in human rights disputes.¹⁸³⁵ Yet, the right to housing in the urban context has not yet been object of review in Latin-American international Courts.¹⁸³⁶ According to Santos, the “one case referring to social [housing] rights was not admitted by the IACHR” because it would had meant to decide on its justiciability in the Americas.¹⁸³⁷

Agency – ANTT. See more Brasil, Tribunal Regional Federal 3 Regiao. AP 0007694-43.2000.4.03.6000 Acórdão 1226387/MS, Des. Fed. Nery Junior. At eDJF3 Judicial 1 Jun 13, 2014 (3T Jun 4, 2014); Brasil, Decreto 3.691, de 19 de Dezembro de 2000, D. 3.691 (2000).

¹⁸³¹ UNGA, Convention on Rights of Persons with Disabilities.

¹⁸³² Brasil, STF, ADI 2649. Author’s Translation.

¹⁸³³ “Passe Livre Em Transporte Interestadual é Mantido Pelo Supremo,” Supremo Tribunal Federal, STF, Official website, Accessed May 8, 2008, <http://portal.stf.jus.br/processos/detalhe.asp?incidente=2018332>.

¹⁸³⁴ See more ch. 4-5.

¹⁸³⁵ Jorge Contesse, “Settling Human Rights Violations,” *Harvard International Law Journal* 60, no. 317 (Jan 7, 2019), <https://papers.ssrn.com/abstract=3311352>.

¹⁸³⁶ “Jurisprudence Finder,” Inter-American Court of Human Rights, IDH, Official website. Accessed Aug 10, 2019. <http://www.corteidh.or.cr/cf/Jurisprudencia2/index.cfm?lang=en>.

¹⁸³⁷ Cecilia MacDowell Santos, “Transnational Legal Activism and the State: Reflections on Cases against Brazil in the Inter-American Commission on Human Rights,” *Sur. Revista Internacional de Direitos Humanos* 4, n. 7 (2007), <https://dx.doi.org/10.1590/S1806-64452007000200003>, 42.

At the international level, the OECD National Contact Point initiative also created neutral platforms to resolve cases based on mediation and conciliation.¹⁸³⁸ Their use can be invoked in both countries by anyone addressing violations to human rights conducted by businesses enterprises.

Moreover, the United Nations Special Rapporteur on the right to adequate housing has been operating in diverse countries, including to Brazil and Chile in the past years. They ensure accountability in the context of housing by making local voices heard in the international arena. Their findings are of extreme importance because they challenge governments to adjust to the needs of the most vulnerable. Although they are not able to sanction or to provide dispute settlement procedures as a strict quasi-judicial organ, those UN experts serve as monitoring bodies, bringing local demands to the international level and creating room for discussion. They orchestrate transparency and publicity to local issues, impacting in the way states and business enterprises adjust their conducts.¹⁸³⁹

6.1.3.4 Ombudspersons

In neither Brazil nor Chile is there a special Ombudsperson for the right to adequate housing or else to social housing.¹⁸⁴⁰ Yet, several institutions assume that role. In Chile, the public prosecution's office and the *Instituto Nacional de Derechos Humanos* – INDH complement each other on roles to investigate and protect, whereas, in Brazil, the Public Defender's Office and the public prosecution share the role to protect human rights and the most vulnerable.

Some regional Public Defender Offices have created special departments for the individual or collective advocacy of housing rights.¹⁸⁴¹ But, overall, actions are also taken by the *Defensoria* in the enforcement of housing rights. For example, informed about 355 irregular residents in the city of Sao José do Rio Preto, in Sao Paulo, a public defender denounced the illegal conditions to the local parliament.¹⁸⁴² At the municipality of Barra de Coqueiros, in Sergipe, public defenders provided legal assistance in-situ to more than 300 residents that had

¹⁸³⁸ Kathryn Dovey, "National Contact Points", Soundcloud, OECD on the Level, Accessed September 17, 2018. <https://oecdonthellevel.com/2018/10/03/got-a-grievance-getting-to-know-the-national-contact-points/>.

¹⁸³⁹ As independent experts, Mr. Miloon Kothari, went to Brazil in 2004, Mrs. Raquel Rolnick monitored the implementation of recommendations, in 2010 (See UN Human Rights Council (HRC), "Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Miloon Kothari. Addendum Mission to Brazil," E/CN.4/2005/48/Add.3. Commission on Human Rights, February 18, 2004; HRC, A/HRC/13/20/Add.2.) The current envoy, Mrs. Leilani Fahra, has been to Chile in 2017 (See HRC, HRC/37/53/Add.1).

¹⁸⁴⁰ See section 4.4.6.

¹⁸⁴¹ See "Moradia," Defensoria Pública do Estado do Rio Grande do Sul, DPERS, Official website, Accessed Apr 9, 2019, <http://www.defensoria.rs.def.br/moradia>.

¹⁸⁴² "Defensoria constata 355 casos de fraudes no 'Minha Casa Minha Vida,'" Câmara Municipal de São José do Rio Preto – SP, Website, Feb 3, 2019, <http://www.riopreto.sp.leg.br/noticias/defensor-publico-entrega-nomes-de-350-irregulares-no-minha-casa-minha-vida>.

been adverted due to their irregular residency conditions.¹⁸⁴³ At times, mobile services and local campaigns are also offered *in situ* to ease access to justice.¹⁸⁴⁴

In Brazil, public prosecutors take a quasi-judicial role as ombudspersons, for which they can issue administrative sanctions or initiate demands through key constitutional remedies. In both legal systems, the national Public Prosecution Offices can inquire or orchestrate administrative mechanisms, namely notifications in matters of their competence.¹⁸⁴⁵ Since they are responsible for protecting indigenous rights, to control police actions and to conduct police investigations, the work of Public Prosecution Offices can be extremely relevant for social housing beneficiaries. Members of the *Parquet* can issue constitutional remedies, such as a *ação civil pública*, for the protection of social rights, as well as other diffuse and collective rights¹⁸⁴⁶ and so, they can also intervene in issues related to the right to adequate housing.

In Brazil, the Public Prosecution office – MP, is just as in Chile an organ with autonomy.¹⁸⁴⁷ Yet, its main responsibilities comprehend not only that to conduct investigations, like in Chile, but also to defend social and individual rights, the legal order and the democratic regime established by the Constitution.¹⁸⁴⁸ For instance, in the context of MCMV, it could conduct civil investigations, hold public audiences, and give official recommendations, sign cooperation agreements and terms for conduct adjustment – TAC. At the federal level, the MP has chambers that coordinate and review the work of prosecutors in the context of e.g. administrative acts and social rights, corruption, environmental issues as well as indigenous populations and traditional communities’ rights.¹⁸⁴⁹

That quasi-judicial function has been decisive for the respect and protection of human rights. For instance, they are competent to address courts upon violations to collective rights. They can use several constitutional remedies to support civil society participation, including plebiscites and popular initiative law projects.¹⁸⁵⁰ According to Peruzzoti and Smulovitz, public prosecutors shaped the new contours of the respective democratization processes by legitimizing the use of the media to impose transparency and to spread opinions.¹⁸⁵¹

¹⁸⁴³ “Mutirão atende famílias beneficiárias do Minha Casa Minha Vida na Barra dos Coqueiros,” G1, Accessed Aug 28, 2019, <https://cutt.ly/CyMizO1>.

¹⁸⁴⁴ “Área Cível da DPPR promove mutirão para moradia,” Defensoria Pública do Estado do Paraná, DPEP, Website, Accessed May 6, 2019, <http://www.defensoriapublica.pr.def.br/2019/5/1409.0>; “Moradia,” Defensoria Pública Geral do Estado do Ceará, DPGE, on Jan 29, 2015, Official website, Accessed 18 Mar 2020, <http://www.defensoria.ce.def.br/atuacaogeral/moradia/>.

¹⁸⁴⁵ Brasil, Constitution, art. 129, VI; Furtado, 934; Danziger, 536.

¹⁸⁴⁶ Brasil, Constitution, art. 129, III.

¹⁸⁴⁷ Brasil, Constitution, art. 127, para 1.

¹⁸⁴⁸ Brasil, Constitution, art. 127; Chile, L. 19.640, art. 1.

¹⁸⁴⁹ Brasil, Lei Complementar 75, de 20 de maio de 1993, LC 75 (1993).

¹⁸⁵⁰ Paoli and da Silva Telles, 1998, and Bastos Arantes, 1997, In: Peruzzotti and Smulovitz, 216.

¹⁸⁵¹ Peruzzotti and Smulovitz, 222.

Part of the mechanisms used by Brazilian public prosecutors also include the monitoring of legislative proposals related to human rights and the publication of statements, recommendations and notifications to federal authorities. They may as well, if necessary, request for information and documents, establish an own administrative procedure for the investigation of human rights violations, conclude terms of conduct adjustment – TAC, file lawsuits. They may too sign cooperation protocols.

Although its activities are now over, in 2013, a working group on social housing was created to coordinate different chambers and their prosecutors.¹⁸⁵² Again, in 2018, another special working group of the *Procuradoria Federal dos Direitos do Cidadão* was set to discuss the right to the city and to adequate housing, by articulating local engagement and, consequently, more social accountability.¹⁸⁵³ Those are not a traditional forum because they are only temporary organs holding public hearings and audiences with different members of the civil society. But their aim of supporting civic participation, to communicate local demands and to mediate conflicts gives those working groups key functions.¹⁸⁵⁴

According to public prosecutor Mr. Paulo Sérgio Ferreira Filho, coordinator of that working group, participation and social control are key elements for the *Procuradoria Federal dos Direitos do Cidadão*.¹⁸⁵⁵ With more social control, it would be possible to achieve more accountability, transparency and social engagement. Although a non-specialized Ombudsperson, the *Procuradoria* is responsible for advocating on the matter of housing rights, by ensuring that duty-bearers are providing the necessary infra-structure.¹⁸⁵⁶

For example, its Chief-Ombudsperson supported the targeting of the auto-construction category of MCMV, which had been for a while not addressed by the governmental policy.¹⁸⁵⁷ Their goal was to distance the program from its eco-

¹⁸⁵² “Apresentação: 1ª Câmara – Direitos Sociais e Fiscalização de Atos Administrativos em Geral,” Ministério Público Federal, MPF, Official website, Accessed Jul 22, 2019, <http://www.mpf.mp.br/atuacao-tematica/ccr1/atuacao/grupos-de-trabalho-e-relatorios/grupos-de-trabalho-1>.

¹⁸⁵³ Ferreira Filho, Researcher’s Interview 6.

¹⁸⁵⁴ Ferreira Filho, Researcher’s Interview 6.

¹⁸⁵⁵ “[...] we can not leave all monitoring to the public administration”. Ferreira Filho, Researcher’s Interview 6, 18:09. Author’s translation.

¹⁸⁵⁶ “[...] so that the delivery not only ends with the house, because the concept of adequate housing is interrelated with the city and dependent to other human rights, such as health, education, mobility, etc”. Ferreira Filho, Researcher’s Interview 6, 15:12. Author’s translation.

¹⁸⁵⁷ Ferreira Filho, Researcher’s Interview 6, 16:20.

conomic growth aim, by returning its main attention to the right to adequate housing.¹⁸⁵⁸ And most lately, the working group has also been trying to reenact Con-Cidades, inactive for the past 3 years.¹⁸⁵⁹

The Brazilian PFCD has been active in monitoring or and notifying to pressure organs.¹⁸⁶⁰ For example, PFDC required Caixa and the Ministry of Regional Development (extinguished Ministry of Cities) about detailed information on paralyzed projects in the cities of Suzano and Sao Paulo.¹⁸⁶¹ The Ministry was also inquired about already approved projects for selected 8,889 most-vulnerable families that had been postponed for more than 120 days.¹⁸⁶²

In the Chilean model, *Fiscales nacionales* are just like in Brazil an autonomous organ responsible for the protection of victims and witnesses.¹⁸⁶³ There is however a contrasting difference between Brazilian and Chilean Public Prosecutors. The guidelines set by the norm for public prosecutors were not translated into an organizational behavior that could enable legal action. In other words, the norm did not provide sufficient judicial remedies that could enable Chilean public prosecutors to protect social rights and, particularly, the most-vulnerable.

It must be pointed that, although different internal departments diffusely cover the matter, none is particularly targeted to the social housing programs of MCMV, D.S. 1, D.S. 19 and D.S. 49. In neither countries was a quasi-judicial institution found to advocate solely for the right to adequate housing, a strategy that could promote better results. However, if specialized in the context of adequate and social housing, those institutions could more efficiently support investigations and initiate claims, facilitate negotiations and mediate interests identified at the local level.¹⁸⁶⁴ They could also require scrutiny by demand-control mechanisms, again in support of the enforcement dimension. Hence, Brazilian and Chilean organs should yet create departments to directly monitor and investigate the analyzed social housing programs.

¹⁸⁵⁸ *Ib.*

¹⁸⁵⁹ Ferreira Filho, Researcher's Interview 6, 18:30.

¹⁸⁶⁰ "Moradia Adequada," Ministerio Público Federal, Procuradoria Federal dos Direitos do Cidadão, PFDC, Official website, Accessed October 4, 2019, <https://tinyurl.com/y9z5oqqk>.

¹⁸⁶¹ "PFDC Cobra Andamento Na Construção de Habitações de Interesse Social Já Autorizadas Pela União," Ministerio Público Federal, Procuradoria Federal dos Direitos do Cidadão, PFDC, Official website, Accessed Mar 13, 2019, <https://cutt.ly/lyMufpc>; "Direito à Moradia: PFDC Questiona Ministro Sobre Atraso Na Construção de Habitações de Interesse Social," Ministerio Público Federal, Procuradoria Federal dos Direitos do Cidadão, PFDC, Official website, Accessed May 10, 2019, <https://cutt.ly/LyMpAK1>.

¹⁸⁶² PFDC, "Direito à Moradia: PFDC Questiona Ministro Sobre Atraso."

¹⁸⁶³ Chile, L. 19.640.

¹⁸⁶⁴ HRC, A/HRC/40/61, para 38.

6.1.3.5 Social accountability

One of the main problems of the Brazilian and Chilean models refers to their failure in creating participatory, local, social accountability mechanisms involving social housing beneficiaries. The only example from Brazil comes from MCMV-E and its commissions with local, social accountability roles.¹⁸⁶⁵ D.S. 49 was the only Chilean example to engage in an actual social accountability mechanisms.¹⁸⁶⁶ Based on a definition of participation, even those mechanisms do not enable full citizen control and only allow certain consultation or informing instruments.¹⁸⁶⁷

CAO and CRE are commissions formed by at least one member of a supporting entity and two elected beneficiaries that enable social accountability in MCMV-E. In the case of CAO, its specific aim to monitor and evaluate the construction project demonstrates its key accountability role over service providers.¹⁸⁶⁸ Alternatively, CRE manages the financial resources of a “project’s construction and legalization,”¹⁸⁶⁹ enabling a limited participatory mechanism over budget-making. However, even though CRE and CAO enable certain level of social accountability to beneficiaries, it is not legally clear how those commissions should proceed in control procedures, nor if all beneficiaries will have means to inquire against their final decisions.

In the Chilean case, D.S. 49 expressly indicates the “development of programmed visits of families to their dwellings, in order to detect vices before delivery,”¹⁸⁷⁰ observations which should be formalized in minutes. However, there is no clear legal outline for the weigh or the final use of that information. Thus, right-holders are to be heard but there is no guarantee that their claims will be “heeded by the powerful”.¹⁸⁷¹ Neither is there a minimum amount and procedure for those visits, or if it brings the attention of beneficiaries to rights-based aspects of adequate housing.¹⁸⁷² Therefore, this procedure is already flawed in its own inconsistencies.

Furthermore, in the case of D.S. 1, the norm designed the arrangement of visits by beneficiaries.¹⁸⁷³ However, no purpose of evaluation, control or monitoring was predicted. Again, this inconsistent translation of goals into an organizational behavior hinders performance of controls mechanisms. Top-down models of D.S. 19, FAR and FGTS context, where beneficiaries receive a finalized

¹⁸⁶⁵ See section 4.1.

¹⁸⁶⁶ Chile, R.E. 1.875, 2, *Area seguimiento del proyecto habitacional*, 10.

¹⁸⁶⁷ See Arnstein, 217.

¹⁸⁶⁸ Brasil, Ministerio das Cidades, I.N. 12, Annex I, 1.1.f.

¹⁸⁶⁹ Brasil, Ministerio das Cidades, I.N. 12, Annex I, 1.1.e. Author’s translation.

¹⁸⁷⁰ Chile, R.E. 1.875, 2, *Area seguimiento del proyecto habitacional*, 10. Author’s translation.

¹⁸⁷¹ Arnstein, 217.

¹⁸⁷² See more UN CESCR, GC4, section 2.3.

¹⁸⁷³ Chile, R. 620, art. 3.

unit, must be urgently changed.¹⁸⁷⁴ The lack of mechanisms of control and of decision-making is determined for the collapse of the analyzed programs.

Evidence in the context of the Chilean program *Recuperación de Barrios* program, destined to recover vulnerable neighborhoods, showed that citizen engagement was decisive for the performance of projects.¹⁸⁷⁵ Those with poor performance did not include community members or leaders in *ex ante* procedures. Yet, projects with high performance were evidenced in neighborhoods that included mechanisms of social accountability.¹⁸⁷⁶

As well, a project developed by the German Development Service – DED impacted on the creation of a master plan for the city of *Fortaleza, Ceará*. According to the project’s report, in 2001, “despite being legally obliged to, the former city administration was not willing to allow for a participatory process.”¹⁸⁷⁷ As a result of DED’s advocacy work for participatory mechanisms and social accountability, between the years of 2004 and 2009, the supported creation of a network of institutions and civil society culminated in the launching of a master plan based on dialogue with civil society and enabled public hearings, that end up protecting original neighborhoods from speculation, eviction and dysfunctional social housing projects.¹⁸⁷⁸

Used as a tool for monitoring the delivery of projects, surveys with beneficiaries have been often seen in reports conducted by the Court of Accounts and the Comptroller General.¹⁸⁷⁹ A CGU report could evidence that most of the beneficiaries had shown an average level of satisfaction with their new dwellings.¹⁸⁸⁰ Yet, it was not clear if those beneficiaries would be addressed in their complains.

The use of social accountability mechanisms and participatory methods is indicated, because they can give a rights-based perspective to projects, by magni-

¹⁸⁷⁴ Chile, R.E. 6.509.

¹⁸⁷⁵ “Programa de Recuperación de Barrios,” Ministerio de Vivienda y Urbanismo, MINVU, Oficial website, Accessed Dec 7, 2019. <https://www.minvu.cl/beneficio/ciudad/programa-de-recuperacion-de-barrios/>.

¹⁸⁷⁶ Ministry of Housing and Urbanism/SEREMI. OECD interview (2012) in: OECD, *OECD Urban Policy Reviews, Chile 2013*, 181-82.

¹⁸⁷⁷ Deutscher Entwicklungsdienst -DED, “Adequate Housing: Urban Development Planning in Brazil & Participation, Habitability and Accessibility,” *Governance and Democracy, Promising Practices On the Human Rights-Based Approach in German Development Cooperation* (Bonn & Eschborn: DED, 2010), 2.

¹⁸⁷⁸ DED.

¹⁸⁷⁹ For example TCU, “Relatório de Auditoria no Programa Minha Casa Minha Vida;” CGU, “Relatório de Avaliação Da Execução: Programa Minha Casa, Minha Vida- FGTS.”

¹⁸⁸⁰ CGU, “Relatório de Avaliação Da Execução: Programa Minha Casa, Minha Vida- FGTS,” 47, table 19.

ifying voices and enabling communication and debate among historically divided sectors of society.¹⁸⁸¹ This is one of the key issues to be reformed in the analyzed case studies, as pointed out by this work.

Participatory mechanisms

Different participatory councils at local or national levels, who have seats for members of the civil society, join the structure of the direct administration. The existence of those councils has been recognized as a significant platform for participation and policy development, for instance for granting more autonomy to local actors.¹⁸⁸² They can be key tools for citizens. Nevertheless, the observed councils mainly possessed a deliberative nature to create directives for national policies, most of the times lacking decision-making power and, hence, providing limited results.¹⁸⁸³

In general, citizen consultation has been used over the last democratic years of Brazil and Chile with the purpose to create more instruments for democratic communication.¹⁸⁸⁴ At the national level, in 2014, a national council for urban development council – CNDU¹⁸⁸⁵ was installed in Chile to discuss the national urban development policy. That happened over ten years after ConCidades was created in Brazil.¹⁸⁸⁶

But probably the most efficient forms of social accountability in Brazil and Chile refer to the creation of local councils. In two divergent lines, local councils have been able to improve accountability relations. But their respective financial and social control mechanisms, that particularly in the last case enabled support instead of direct sanctions to vulnerable families,

Locally, the experience of local participatory councils has shown positive results. The city of Porto Alegre created in 1989 an institutionalized bottom-up participatory process to influence on relevant matters of the political life, such

¹⁸⁸¹ Schedler, 23.

¹⁸⁸² OECD, *OECD Reviews of Regulatory Reform: Brazil 2008*, 33; Bárbara Marguti et al, “Contribuições à Nova Agenda Urbana: o relatório do Concidades para a Conferência Habitat III.” *Texto para Discussão*. Brasília : Rio de Janeiro: IPEA, May 2018, p. 20.

¹⁸⁸³ See OECD, *OECD Reviews of Regulatory Reform: Brazil 2008*, 33. “This administrative model was also to introduce a contractual approach to management, while ensuring accountability between the ministries and the agencies, a system that has not been put into practice in most of the cases”.

¹⁸⁸⁴ Chile, Ministerio de Relaciones Exteriores, “Answers by the State of Chile,” 5; Chile, Resolución Exenta 4.864 (V. y U.) de 16 de agosto de 2011, R.E. 4.864 (2011).

¹⁸⁸⁵ CNDU, “Consejo Nacional de Desarrollo Urbano,” Official website, Accessed August 5, 2019, <https://cndu.gob.cl/>.

¹⁸⁸⁶ Although ConCidades used to enable the debate of different members of the civil society and of the private sector, this participatory organ was co-extinguished alongside the Ministry of Cities in 2018. See also 3.3.2.3, 4.4.9.

as public budgeting.¹⁸⁸⁷ *Orçamento participativo*, or participatory public budgeting, is one of the most significant contributions from the Brazilian democratic development since the end of the dictatorship, because it ensured local engagement in the prioritization of public budget spendings.¹⁸⁸⁸ This same mechanism would be replicated in various countries, and appeared in Chile first in 2001, in the municipality of *Cerro Navia*.¹⁸⁸⁹

During the years, the use of e-procurement platforms was supported in both countries, making information more transparent and available in order to allowing social monitoring.¹⁸⁹⁰ However, there is no sound reference found that reflects the use of participatory budgeting directly to the context of MCMV. The example shows, though, that transparency and participation are imperative components of efficient accountability.¹⁸⁹¹

Local committees share a strong participatory approach in their responsibility to report on irregularities to higher instances of the public administration. Basset et al stresses that over 5,000 Brazilian municipalities have created what they call a “social control” or, literally translated, social assistance committee.¹⁸⁹² Such committees improved results for diverse programs included in the federal social assistance policy, including Bolsa Familia.¹⁸⁹³

For instance, in Porto Alegre, its *Conselho Municipal de Assistência Social*, formed for more members of civil society than of the government, deliberates upon social assistance policies.¹⁸⁹⁴ However, since social housing is not part of the social assistance policy plan, developed in 2004, local social control committees never monitored MCMV.¹⁸⁹⁵ The legal gap prevented that a highly successful demand-side accountability mechanism could be practiced in the Brazilian case study.

6.2 Service Providers

This section will analyze exit conditions and sanctions affecting service providers (6.2.1), as well as control and monitoring mechanisms and remedies (6.2.2),

¹⁸⁸⁷ Luciano Joel Fedozzi and Kátia Cacilda Pereira Lima, “Participatory Budgets in Brazil,” in *Hope for Democracy: 25 Years Of Participatory Budgeting Worldwide*, ed. Nelson Dias (Portugal: in Loco Association, 2014), 156.

¹⁸⁸⁸ Fedozzi and Pereira Lima; Pablo Pano Yáñez, “Analysis of Participatory Budgeting in Chile: A Reflection of the National Public Policy,” in *Hope for Democracy*, ed. Nelson Dias, 181.

¹⁸⁸⁹ Fedozzi and Pereira Lima, 156.

¹⁸⁹⁰ Evidence and Lessons from latin America – ELLA, “Citizen Participation in Latin America: Innovations to Strengthen Governance,” 2013, 5.

¹⁸⁹¹ UNDSA, “SAIs, Parliaments & Citizens,” 36.

¹⁸⁹² Basset et al, 66.

¹⁸⁹³ Basset et al, 66.

¹⁸⁹⁴ Brasil, Lei 8.742, de 7 de dezembro de 1993, L. 8.742 (1993).

¹⁸⁹⁵ Ministério do Desenvolvimento Social e Combate à Fome, *Política Nacional de Assistência Social – PNAS/2004. Norma Operacional Básica NOB/SUAS*, 2 ed (Brasília, 2005).

particularly in respect to supporting entities (6.2.2.1), financial institutions (6.2.2.2) and construction firms (6.2.2.3).

6.2.1 Exit and Sanctions

In both country-models, the lack of objectivity and clarity in legal structures hinders accountability. Although a diffuse system of sanctions has its positive sides, in the concrete case studies it has made it more complex to know the exact consequences firms may face when contracting with the public administration. As a general rule, if a firm is caught in any crimes or violations related to fraud or corruption, it will be forbidden to contract with the respective Brazilian and Chilean Public Administrations.¹⁸⁹⁶ Following in this section, terms of exit arising from contractual agreements (6.2.1.1) and eventual sanctions due to administrative (6.2.1.1), criminal and civil liability (6.2.1.2-3) will be discussed.

6.2.1.1 Contractual exclusion

Exit rules and sanctions were not consistently observed within the legal structure of the analyzed case studies. Those aspects are diffusely structured along the legal system and rarely mentioned in social housing regulations. Yet, exceptional remarks were collected along the texts.

Chilean main regulations allow developing entities of D.S. 1, D.S. 19 and D.S. 49 to have a more specific, special list of violations established in their contract with SERVIU.¹⁸⁹⁷ Differently, MCMV service providers have to follow the legal text.¹⁸⁹⁸ For example, business enterprises are to have their contract cancelled if e.g. final deadlines and conditions are not respected.¹⁸⁹⁹ Or else, supporting entities shall be excluded from MCMV-E if registered at CADIN (registry that catalogues legal persons in debit) or CEPIM (registry of legal persons with pending administrative irregularities).¹⁹⁰⁰ They will neither be allowed to contract if presenting labour irregularities or if they carry construction works that do not show progress during a six-month period.¹⁹⁰¹ Executive directors of those same entities may neither be registered at CADIN or be themselves or relatives

¹⁸⁹⁶ See section 3.2.

¹⁸⁹⁷ Chile, D.S. 1, art. 40, 50; Chile, D.S. 19, art. 31; Chile, D.S. 49, art. 52, 61.

¹⁸⁹⁸ However, although that should ensure an homogenized structure in Brazil, that country's volatile rules ensure strong levels of flexibility. This way, outcomes of human rights violations may be very different, even for similar parties.

¹⁸⁹⁹ Brasil, L. 11.977, art. 2, III, 6, 6-6-B, 7.

¹⁹⁰⁰ Brasil, P. 747, Annex I, 2.1-2.1.b.

¹⁹⁰¹ Id. Specifically, that regards an entity that *“has, within the framework of the programs managed by the Ministry of Cities, signed contracts more than six (6) months ago but has not yet started construction works, or its construction works have been paralyzed for more than six (6) months without renegotiation with the Financial Agent, except in cases where the start and the paralysis of the works occur for reasons not attributable to the entity”*. Author's translation.

up to the second degree of political agents or of agents of the FDS Board of Trustees, the FNHIS Managing Board or of the Ministry of Cities.¹⁹⁰²

Decisions may be taken by non-judicial forums. In FGTS-Associativo, a construction firm may be directly substituted under the approval of the majority of beneficiaries (that contracted one specific project) if incurring contract breaches, the use of false declarations, insolvency, project modifications without Caixa's express consent, the initiation of judicial or administrative actions, project interruption or delays.¹⁹⁰³ This structure where the decision of substitution is entitled to right-holders is not evidenced in none of the other models.

6.2.1.2 Administrative liability and sanctions

As a rule, if incurring in violations, natural or legal persons contracting with either the Brazilian or Chilean Public Administrations shall be liable and subject to sanctions annotated in a diffuse framework.¹⁹⁰⁴ Created under a similar diffuse structure, Chile's D.S. 75 sets the ordinary regime of public procurement, which includes sanctions such as the prohibition to contract with the administration, that can be raised to up to eight years in case of false documentation.¹⁹⁰⁵ Decree 48 annotates on advisory works, for instance, by sanctioning consultants who enter in delay with daily fees.¹⁹⁰⁶ D.S. 47, an ordinary norm on urbanism and constructions, subjects infringers to fees in case of e.g. contravention to any of obligations set for changing the goals of a project without authorization or even for lacking enough supervisors and professionals on field.¹⁹⁰⁷

In Brazil, multiple administrative sanctions can be imputed by various organs. Those include, for example, a public declaration of disreputability, a prohibition to contract with the public administration and a fine of up to 20% of an enterprise's profits.¹⁹⁰⁸ If framed for administrative wrongdoings (*ato de improbidade administrativa*), sanctions include fines, indemnification and even

¹⁹⁰² Brasil, P. 747, 2.2.b.

¹⁹⁰³ Annex VI, 19.

¹⁹⁰⁴ "Preguntas Frecuentes. Calidad de La Construcción Archivos," Ministerio de Vivienda y Urbanismo, MINVU, Official website, Accessed Dec 4, 2019, <https://www.minvu.cl/preguntas-frecuentes/calidad-de-la-construccion/>. Administrative sanctions are to be administered by the head of a Ministry, state or municipality, by superintendencies, like Environment Superintendence – SMA, as well as by the Contraloría or the Brazilian Superior Court of Accounts – TCU and the Comptroller General – CGU, or even by a member of the *Parquet* (Brasil, L. 8.666, art. 87). In other words, the judiciary is not the only one capable of punishment. See more on ch. 6.

¹⁹⁰⁵ Chile, Decreto Supremo 75, de 1 de diciembre de 2004, D.S. 75 (2004), art. 45.1.b, 45.5.

¹⁹⁰⁶ Chile, Decreto 48, de 9 de septiembre de 1994, D. 48 (1994), art. 87.

¹⁹⁰⁷ Chile, Decreto Supremo 47, (V. Y U.) de 16 de Abril de 1992, actualizada de 22 de febrero de 2018, D.S. 47 (1992) [Ordenanza General de Urbanismo y Construcciones – OGUC], 1.3.1-2.

¹⁹⁰⁸ Brasil, Administrative Improbability Act, art. 12; Brasil, Decreto 8.420, de 18 de marco de 2015, D. 8.420 (2015), art. 4, 15-16, 41-43. A *Processo Administrativo de Responsabilizacao – PAR* subjects enterprises incurring in infringements concerning to the ordinary public procurement Law 8,666, to the Anti-Bribery Law, or to those mentioned by art. 6, L. 12,836/13. An administrative sanction of legal persons can be determined in Brazil through PAR.

the prohibition to contract with the public administration for up to ten years.¹⁹⁰⁹ Other possible sanctions regard the widespread publication of the name of sanctioned persons.¹⁹¹⁰ If incurring in specific environmental crimes, a provider will be prohibited to contract with the Brazilian Public Administration, to receive fiscal incentives or to participate in public procurement procedures for a period of three to five years.¹⁹¹¹

Moreover, transparency is also a principle that must be respected by private parties. Legal or private persons that restrain transparency of information (to the government) shall be imputed with a declaration of disreputability for which they will be temporarily hindered from participating in public bids or from contracting with the public administration for up to two years.¹⁹¹² That declaration may as well be issued via internal mechanisms as long as the right of defense of the interested party is respected.¹⁹¹³

Depending on the nature, price or emergency of the matter that is object of a contract, different sanctions to agents will apply. For example, if a Brazilian project decides to contract projects regulated by the Bill on the Differentiated Public Procurement Regime – RDC, a procedure that ruled among others the works of the Olympic Games, it will welcome the application of sanctions of L. 8.666.¹⁹¹⁴ Or else providers infringing the Reverse Auction Law (regulating the acquisition of general goods and services) will be sanctioned with a prohibition to contract with the public administration for up to five years.¹⁹¹⁵

TCU can punish offenders with a declaration of disreputability (*declaracao de inidoneidade*), what will prevent one to participate in any bidding procedures with the public administration for up to five years.¹⁹¹⁶ In general, a Brazilian provider that fails to perform a contract totally or partially with any entity of the public administration will be temporarily forbidden to engage in any further

¹⁹⁰⁹ Brasil, Administrative Improbability Act, art. 12.I.

¹⁹¹⁰ Id.

¹⁹¹¹ Brasil, Lei 9.605, de 12 de fevereiro de 1998, L. 9.605 (1998), art. 10.

¹⁹¹² Brasil, Access to Information Bill, art. 33.IV-V.

¹⁹¹³ Brasil, Access to Information Bill, art. 33, para 3.

¹⁹¹⁴ Brasil, Differentiated Public Regime, Lei 12.462, de 4 de agosto de 2011, L. 12.462 (2011). [Regime Diferenciado de Contratacoes Públicas], art. 47.I-X, para 2.

¹⁹¹⁵ Legal or natural persons infringe the Reverse Auction Law by e.g. not signing a contract within deadlines set in a proposal, fail to present or present false documents for the public bid, provoke delays in execution, fail to keep the proposal, fail or in any means contribute to fraud in the execution of the contract, undertake an disreputable behavior or commit tax fraud. But the legal controversy is worsened when the Reverse Auction Law accepts L. 8,666 “*subsidiariamente*” or as a subsidiary norm. In this sense, it is controversial if sanctions of L. 8,666 should apply to the Reverse Auction Law. See Brasil, L. 8.666, art. 88.I-III; Brasil, Eletronic Reverse Auction Law, Lei 10.520, de 17 de julho de 2002, L. 10.520 (2002) [Lei do Pregao], art. 7, 9.

¹⁹¹⁶ Brasil, Organic Law of the Brazilian Federal Court of Accounts, Lei 8.443, de 16 de julho de 1992, L. 8.443 (1992) [Lei Orgânica do Tribunal de Contas da União], art. 46.

contract for a period up to two years.¹⁹¹⁷ Additionally, it shall be added to a list of disreputable persons for as long determining reasons for sanctions still exists or for the same time-being of the prohibition to contract given in the previous sanction.¹⁹¹⁸

Public ICT-based databases, as those provided by CGU's *Portal da Transparência*, enable transparency in social control.¹⁹¹⁹ “*Lista Suja*”, a governmental registry that since 2003 lists employers caught in labor crimes related to slavery, is another example of how “open” transparent information has been supported.¹⁹²⁰ As the government makes the information widely public, enterprises suffer of bad reputation. Yet, that does not exclude further civil, administrative and criminal sanctions.

Also in Brazil, the biggest registry tool, the National Registry for Unsuitable and Suspended Firms – CEIS, enlists an online database of private individuals and legal persons sanctioned to be hindered from participating in public bids.¹⁹²¹ In 2019, CEIS counts on 10,411 registries, although the years of 2017 and 2016 enlisted almost 15 thousand names.¹⁹²² An administrative process guarantees a preliminary administrative before enrollment, meaning all unacceptable listed persons must have been given the right of defense.¹⁹²³

Those different public procedures can all be applied at some level at MCMV. Particularly de use of ICT databases support transparency of information and positively impact eventual social accountability. However, the creation of a highly diversified system of public procurement with their respective new mechanisms of exit and sanction challenges accountability relations by increasingly enhancing costs on compliance. Taking a step forward, Mulgan advised that “multiplicity [as of having multiple “points of access” and forums] almost always involves an element of potential confusion caused by overlapping responsibilities, on the part of both accounts or account-holders.”¹⁹²⁴ Although he

¹⁹¹⁷ Brasil, L. 8.666, art. 87.III.

¹⁹¹⁸ Brasil, L. 8.666, art. 87.IV.

¹⁹¹⁹ “Portal Da Transparência,” Controladoria Geral da Uniao, CGU, Official website, Accessed March 13, 2019. <http://www.portaltransparencia.gov.br/>.

¹⁹²⁰ Brasil, Ministerio do Trabalho e da Previdência Social & Ministerio da Mulher, da Família e dos Direitos Humanos, Portaria Interministerial 4, de 11 de maio de 2016, P.I. 4, 2016; “Brasil: Ministério Do Trabalho Publica Lista Suja, Cadastro Atualizado de Empregadores Autuados Por Submeter Trabalhadores à Condição Análoga a de Escravos.” Business & Human Rights Resource Centre. Website. Accessed Mar 13, 2019. <https://tinyurl.com/y8mdzncw>. Based on P.I. 4/16, that list publicized 165 employers responsible for maintaining employees in conditions similar to slavery in April, 2018.

¹⁹²¹ Brasil, D. 8.420. CEIS, *Cadastro Nacional de Empresas Inidôneas e Suspensas*, was created alongside other of registries with the same purpose of “shaming” wrong-doings, such as CEPIM, that only enlists non-profit private entities. The contrary, CADIN, enlists only *bona fide* firms.

¹⁹²² “Portal da Transparência – Sanções,” Controladoria Geral da Uniao, Official website, Accessed Jul 30, 2019. <http://www.portaltransparencia.gov.br/sancoes>.

¹⁹²³ Brasil, L. 8.666, art. 87.III-IV.

¹⁹²⁴ Mulgan, 233.

recognizes a certain degree of ambiguity will be inherent to the nature of those relations, the clarification of those structures could favor less costly and more efficient accountability.¹⁹²⁵ Thus, reforms should be conducted particularly in the Brazilian model to induce clarity through a simpler and more consistent public procurement framework.

6.2.1.3 Criminal and civil liability and sanctions

Both systems ensure that service providers will be sanctioned for criminal and civil misconducts. In Chile, legal persons are criminally liable (*responsabilidad penal*) in cases of money laundering, terrorism financing and bribery.¹⁹²⁶ Fraud in the context of real estate or construction is sanctioned with prison if incurring in patrimonial damage to the promising purchaser, particularly regarding the requirements of the national Bill on Urbanism on notarial acts and documents.¹⁹²⁷

Similarly, the Brazilian Anti-Bribery Law created administrative as well as civil liabilities to legal persons.¹⁹²⁸ The norm did not define criminal offenses, nor necessarily relate it to specific intents, like in Chile. Yet, the national criminal code sentences public officials to 2 to 12 years of prison, and a fine, for passive corruption or embezzlement.¹⁹²⁹

If efficiently implemented by projecting simple, clear and consistent norms, such a diffuse systems could have enhance the chances of redress to violations in different sectors. But the unpredictable systematic of all those multiple norms added to failed mandatory settings (also on basic human rights matters) deconstructs the answerability dimension and limits the enforcement of sanctions. As Mulgan puts it, “many of the performance objectives for which institutions and individuals are held accountable tend to be vague and open-ended, thus making it difficult to pin down precisely what has been achieved and whether performance falls short of what was was exported.”¹⁹³⁰ Other issues also challenge enforcement in both models¹⁹³¹, such as limits in accessing justice.

First, that structural inconsistency of answerability and responsibility dimensions must be corrected, as already evaluated in the case studies.¹⁹³² But accountability must ensure that appropriate mechanisms based on clarity and on “dialogue and discussion”¹⁹³³ deal with such natural structural issues. Duty-

¹⁹²⁵ Id.

¹⁹²⁶ Chile, Ley 20.393, de 2 de diciembre de 2009, L. 20.393 (2009).

¹⁹²⁷ Chile, Bill on Urbanism and Construction Works, art. 138 bis; Chile, Criminal Code, art. 479, 9.

¹⁹²⁸ Brasil, L. 12.846.

¹⁹²⁹ Brasil, Criminal Code, art. 312, 317.

¹⁹³⁰ Mulgan, 233.

¹⁹³¹ See section 6.1.5.

¹⁹³² See for example sections 5.1.5.6, 5.2.1.5, 5.2.1.6.

¹⁹³³ Mulgan, 233.

bearers must be kept under on-going control¹⁹³⁴ and transparent mechanisms should be included in those schemes, such as “open processes of decision-making.”¹⁹³⁵

6.2.2 Control and Remediation

Against an incorrect sanction, remedies may be enacted by service providers. Yet, the rights-based approach cares for how can those stakeholders enable remediation for beneficiaries. This section shall therefore observe enforcement rising from grievance, redress and monitoring led by supporting entities (6.2.2.1), financial institutions, (6.2.2.2) and construction firms (6.2.2.3) in favor of beneficiaries.¹⁹³⁶ Those mechanisms are found to be cost and time-effective, especially when compared to other more traditional ones, such as constitutional and international remediation mechanisms.

6.2.2.1 Supporting entities and monitoring mechanisms

Supporting entities have a strong monitoring role in both Brazilian and Chilean social housing programs.¹⁹³⁷ Particularly in D.S. 49 and MCMV-E, they are expected to directly engage with beneficiaries in decision-making and monitoring processes.¹⁹³⁸ In Chile, they are supposed to reinforce community organization and promote identity. That is to be achieved via the realization of meetings and elaboration of projects to improve the respective neighborhood, which is to be developed together with affected families.¹⁹³⁹

In D.S. 49, during eligibility and selection phases, supporting entities monitor families in their formal application, issuing a “participatory diagnose” of applicants, in which they classify individuals and households upon gender, age, qualitative and quantitative characteristics. That information is to be used to monitor and evaluate needs of applicant households in order to create a Social Follow-up Plan (*Plan de Acompañamiento Social*).¹⁹⁴⁰ During the delivery phase, supporting entities must verify that a family is effectively occupying the dwelling and provide the government with a technical and financial evaluation of the land used.¹⁹⁴¹ Additionally, they must review technical projects, coordinate eventual changes of a construction firm in line with the decisions of applicant house-

¹⁹³⁴ Mulgan, 234-35. See more ch. 6.

¹⁹³⁵ Mulgan, 234-35.

¹⁹³⁶ Judicial and quasi-judicial remedies were explored in the previous section.

¹⁹³⁷ See more on sections 4.2.6 and 5.1.3.3.

¹⁹³⁸ Brasil, P. 464, Annex IV, 2.5; Chile, R.E. 1.875, 1.3.

¹⁹³⁹ Chile, R.E. 1.875 (2015), p. 4-5, *Plan de Acompañamiento Social Etapa de Apoyo a la Conformación del Nuevo Barrio*.

¹⁹⁴⁰ Chile, R.E. 1.875, 2.1. See also section 5.2.1.1.7.

¹⁹⁴¹ Chile, R.E. 1.875, p. 17, *Plan de Acompañamiento Social Etapa de Apoyo a la Conformación del Nuevo Barrio*. That is only an obligation to mega-projects or construction in new lands.

holds, monitor the development of the project, its implementation and construction works, verify labor obligations related to the construction workers.¹⁹⁴² Finally, entities must submit all information to the government as and when required.¹⁹⁴³

In that context, supporting entities must also demand information and monitor construction firms to execute their contract.¹⁹⁴⁴ They should report on field visits to verify the post-occupation process, elaborate on the technical and financial viability of the land where projects are constructed, execute a legal analysis of tenure title of the land, inform SERVIU every two months about the working progress of projects, among other tasks.¹⁹⁴⁵ Because of their attachment to the local level and to what their activities can provide, they are key partners in the case study policies.

D.S. 49 partially delegates monitoring and evaluation roles from MINVU to SERVIU, which has powers to sub-delegate it to specialists.¹⁹⁴⁶ In this case, SERVIU can define a specialist team – FTO to conduct one of four special instruments of monitoring and evaluation.¹⁹⁴⁷ Sub-delegated FTO specialists must follow one of the control regimes created by the norm, whereas SERVIU agents have been excluded from the obligation to follow those standardized evaluation and monitoring procedures.¹⁹⁴⁸

The choice over one of four monitoring regimes (A, B, C and D) depends on the subsidy and on the amount of dwellings in a project.¹⁹⁴⁹ Those regimes distinguish themselves upon the frequency of visits and the technical requirements of professionals working for the FTO.¹⁹⁵⁰ For example, mega-projects for more than 71 dwellings will require professionals with more than four years of experience in the field and monitoring field visits of at least 5 days a week, whereas self-construction subsidies may be monitored every fifteen days by a technician with at least one year of experience.¹⁹⁵¹ In Brazil, the sole norm that provides upon monitoring and evaluation does not present monitoring mechanisms or regimes forehand.¹⁹⁵² This omission of the norm must be adjusted to provide clarity for all stakeholders.

¹⁹⁴² Chile, R.E. 1.875, p. 18-19, *Gestión Técnica y Social de Proyectos*.

¹⁹⁴³ Chile, R.E. 1.875, p. 18-19, *Gestión Técnica y Social de Proyectos*.

¹⁹⁴⁴ Chile, R.E. 1.875, 2.10.

¹⁹⁴⁵ *Ib.*

¹⁹⁴⁶ Chile, R.E. 1.875, art. 4.4.

¹⁹⁴⁷ Chile, R.E. 1.874, art. 4.1, 4.10.

¹⁹⁴⁸ Chile, R.E. 1.875, art. 4.2, 4.9-12. They are expressly alleviated from the procedures observed in art. 10, 11 and 12 of the same law, but they should follow a contracted procedure, as established in art. 9.

¹⁹⁴⁹ Chile, R.E. 1.875, art. 4.10.

¹⁹⁵⁰ Chile, R.E. 1.875, art. 4.10.

¹⁹⁵¹ Chile, R.E. 1.875, art. 4.10-11.

¹⁹⁵² Brasil, P. 464, Annex III, 2.1, 7.

The execution of field visits, or *visita de obra*, and of other tasks, such as a plan of activities and even post-sale monitoring, are as well delegated to the FTO. That goes in contrast to the Brazilian regime, that foresees to the construction firm itself the role to care for dwellings for a period of 60 days after conclusion, but does not observe a monitoring agent for that task.¹⁹⁵³ In case there is a clear work stoppage for a period of 60 days, SERVIU may determine more frequent field visits.¹⁹⁵⁴ If the situation remains, a FTO's contract may be cancelled, in which case it should be directly undertaken by SERVIU.¹⁹⁵⁵

It is contrasting how consistently mechanisms of control and monitoring have been outlined in D.S. 49 with the use of tables and detailed items for each specific task. Other complementary norms for D.S. 1 and D.S. 19 have also envisaged detailed annotations, but they have not come to the comprehensive composure observed in the latest version of R.E. 1.875. Brazilian regulations should be strongly inspired by such form, in order to bring clarity, objectivity and transparency to accountability relations.

Content-wise, several public institutions assume such monitoring roles in Brazil. Yet, in the FDS program, a supporting entity is joined by beneficiaries holding a similar monitoring role as that evidenced in D.S. 49.¹⁹⁵⁶ This is a progressive agenda of participation, looking from the perspective of the exercise of voice of right-holders. However, it is still significantly limited.

CAO, the commission composed by at least two beneficiaries and one member of supporting entity, is supposed to control and monitor the construction works in FDS projects. As well, although it did not forbid the universal participation of dwellers, it expressly opted for a selected group of beneficiaries to engage in decision-making.

And, if, on the one hand, that design created a (limited) participatory mechanism, on the other hand, it did not outline any further mechanisms and means of control.¹⁹⁵⁷ There is no description of obligations to be conducted by that commission and, naturally, no sanctions could be created against inexistent obligations. Similarly, FGTS-Associativo created a loophole, where the only legal outline attributes to organizing (supporting) entities the responsibility to monitor project execution.¹⁹⁵⁸ However, matters of control and evaluation were left unattended by the norm.

¹⁹⁵³ Brasil, P. 114, Annex I, art. 2.5, a,b,c.

¹⁹⁵⁴ Chile, R.E. 1.875, art. 8.

¹⁹⁵⁵ Id.

¹⁹⁵⁶ Brasil, I.N. 12, Annex I, 1.1.f.

¹⁹⁵⁷ See section 6.1.

¹⁹⁵⁸ Brasil, I.N. 43, Annex I, 1.2.1.c.

Mechanisms created in the Brazilian and Chilean models are limited to consultation, information and manipulation.¹⁹⁵⁹ It is not clear how feedback provided will be used. And even the mechanisms that engage in a certain level of partnership or cooperation with dwellers limit the participation of beneficiaries.¹⁹⁶⁰ Therefore, progressive participatory mechanisms of monitor and control should, for example, transfer review and monitor of both technical and financial aspects to all right-holders. In the end, service providers are key in the support of the most-vulnerable because they alleviate limitations that come along with poverty. Yet, their work should substantiate the development of independent action and decision-making of right-holders.

6.2.2.2 Financial institutions and monitoring mechanisms

In Chile, financial institutions were designed with the responsibility to provide means for the existence of a deposit and, exceptionally, in the case of emergent-families, for providing loans. Thus, their role is much more limited to their nature than that observed in MCMV. Main communication strategies used refer to local agencies, call centers, e-Mails, virtual chats, social media (e.g. Facebook, twitter, and instagram).¹⁹⁶¹ For example, the national *Asociación de Bancos* provides a communication mechanism for addressing eventual issues, but it is not transparent in the due diligence of grievances.¹⁹⁶²

Although the UN guidelines excluded state-based mechanisms from this typification, in the Brazilian social-housing context, where the governmental side of the relationship takes several roles of providing services, the essence of those mechanisms can also be observed with Caixa independent mediation mechanisms. Caixa, the sole operational agent and often financial agent of MCMV, may be contacted directly via internet chat on social media, as well as via public audiences. Its mechanism *de olho na qualidade* (“keeping an eye on quality”) was created to mediate construction firms and beneficiaries.¹⁹⁶³

In case of detection of a construction problem, FAR’s contract suggests that a telephone contact should be addressed.¹⁹⁶⁴ In the following, the construction firm should be notified and invited to schedule a meeting and, if necessary, re-

¹⁹⁵⁹ Arnstein.

¹⁹⁶⁰ Id.

¹⁹⁶¹ “BancoEstado Personas: Cuenta Ahorro Vivienda,” BancoEstado; “Crédito Hipotecario,” Banco Santander;

¹⁹⁶² “Contacto,” Asociación de Bancos, ABIF, Website, Accessed Jul 4, 2020, <https://www.abif.cl/contacto>. It was not possible to find any remarks on an operational-level grievance mechanism used by the association. See more on due diligence and operational-level grievance mechanisms on Vilmondes.

¹⁹⁶³ “De Olho Na Qualidade – Habitação,” Caixa Econômica Federal, CEF, Official Website, Accessed Jun 19, 2019. <http://www.caixa.gov.br/voce/habitacao/minha-casa-minha-vida/de-olho-na-qualidade/Paginas/default.aspx>.

¹⁹⁶⁴ Id.

quired to repair damages. If the service is neither executed nor there is an express justification against it, then the firm is to be sanctioned with e.g. the hindrance to make further contracts with Caixa until problems are solved.

It must be remembered that the sole publication of a code of conduct is not the factor defining the actions of an enterprise to respect or violate human rights. In order to guarantee that they complied with their responsibilities, policies and mechanisms should “identify, prevent, mitigate and account for how they address their impacts on human rights” and, if necessary, to provide the necessary remediation.¹⁹⁶⁵ Thus, the collaboration of a firm in such operational-level mechanisms is essential, as well as the elaboration of an internal code that binds its managers and and frontline professionals to responsible business practices.

But, as evidenced in the previous chapters, Brazilian financial institutions have been designed with certain control functions linked to more substantial managing and monitoring responsibilities over projects. For example, the financial agent of FGTS, Caixa, was expected to evaluate dwellings before the issuing of *habite-se*.¹⁹⁶⁶ In the FAR-context, the obligation of monitoring supporting entities is also addressed to financial agents, expressed in the norm as Caixa or Banco do Brasil.¹⁹⁶⁷ They were designated to monitor and evaluate the operation of local executor agents (local public entities that implement social work).

In that context, Caixa created the COTS manual (*caderno de orientação técnica social*) to guide the monitoring and evaluation of the PTS.¹⁹⁶⁸ On the one hand, the manual describes infra-structure standards to be controlled by frontline professionals, as well as their responsibilities. On the other hand, the manual is object of critics by the literature, that sees a top-down approach to monitoring and evaluation methods.¹⁹⁶⁹ For example, COTS uses reports of frontline professionals as their main instrument of control. And, although engagement and even capacitation of local community members is suggested for the approval of a social housing project, a final COTS report may be based on different documental proof, not necessarily including minutes of meetings.¹⁹⁷⁰ In this sense, a bottom-up approach is not mandatorily adopted by Caixa in its monitoring and evaluation procedures.

Moreover, the Brazilian Court of Accounts already observed low effectivity in PTS-related activities. Particularly in pre-contractual phases, tasks are not conducted in due time, and, over all phases, training is often discontinued.¹⁹⁷¹ In

¹⁹⁶⁵ OHCHR, HR/PUB/11/04, para 15.

¹⁹⁶⁶ Brasil, P. 539; Brasil, L. 6.015, 247-A. Before, nevertheless, the certificate became non-mandatory.

¹⁹⁶⁷ Brasil, P. 464, Annex II, art. 2.3.d.

¹⁹⁶⁸ CEF, “COTS”.

¹⁹⁶⁹ Pimentel, 25; Cardoso, Mello and Jaenisch, 97.

¹⁹⁷⁰ CEF, “COTS”, 5, 41.

¹⁹⁷¹ TCU, “Relatório de Auditoria no Programa Minha Casa Minha Vida,” para 260-63.

relation to the articulation of social inclusion policies, over eighty-four per cent of interviewed beneficiaries responded that PTS effects were dissatisfactory.¹⁹⁷² This hints for the review of implementation, particularly in what regards training of Caixa's frontline professionals and of locally instituted building's managers (*síndicos*).¹⁹⁷³

And observed by Cardoso et al, several agents refrain from controlling and monitoring construction projects themselves, making reference to loopholes or lack of legal clarity.¹⁹⁷⁴ However, the norm was fairly clear to indicate the financial institution as responsible for monitoring the execution of construction works and services (at least until their completion), as well as to insure that all legal norms have been strictly observed.¹⁹⁷⁵ The same norm defined the responsibility to monitor the implementation of public equipments (services, works, infrastructure) to municipalities.¹⁹⁷⁶ Courts have already discussed the issue of Caixa's liability.¹⁹⁷⁷ Therefore, the issue in monitoring, evaluation and control does not start in the responsibility dimension. In fact, based on the evaluation of the previous chapters, the legislator most failed in the design procedures, definition of rules and in not creating mechanisms that create access to justice. In this fashion, reforms require changes in answerability and enforcement dimensions, so that the existent mechanisms of control can be used.

Furthermore, specialized lower federal courts are competent for matters related to the public administration, traditionally including, for example, those involving Caixa.¹⁹⁷⁸ Even though focused on members and matters of the public administration, federal criminal courts can even decide upon specific criminal matters enlisted in administrative law, such as those committed by public employees.¹⁹⁷⁹ However, in MCMV projects, where Caixa only operates as a financial agent, common courts are competent, due to the nature of the role exercised by the public company.¹⁹⁸⁰

6.2.2.3 Construction firms and operational-level grievance mechanisms

In general, enterprises have created channels of on-site, virtual or telephone communication. For example, MRV, one of the biggest construction firms in the context of MCMV, is active in different social media platforms. It has created a smartphone application and a website platform where beneficiaries can have

¹⁹⁷² TCU, "Relatório de Auditoria no Programa Minha Casa Minha Vida," para 261-63.

¹⁹⁷³ TCU, "Relatório de Auditoria no Programa Minha Casa Minha Vida," para 264.

¹⁹⁷⁴ Cardoso et al, 91-96.

¹⁹⁷⁵ Brasil, P. 114, Annex I, 2.3.c, 2.3.f.

¹⁹⁷⁶ Brasil, P. 114, Annex II, 7.1.2.

¹⁹⁷⁷ See section 4.2.3.

¹⁹⁷⁸ Brasil, Constitution, art. 109.

¹⁹⁷⁹ Brasil, Constitution, art. 109.

¹⁹⁸⁰ Brasil, STJ, RESP 1163228/AM, 200902048149; Brasil, STJ, RESP 1534952/SC.

access to different services.¹⁹⁸¹ However, there is no indication of an effective implementation of operational-level grievance mechanisms for communities or individuals affected by MRV.¹⁹⁸² Moreover, Direcional,¹⁹⁸³ Rossi,¹⁹⁸⁴ Cyrela¹⁹⁸⁵ and Pacaembu,¹⁹⁸⁶ other Brazilian firms in the construction sector, innovate by providing consumer support via cross-messaging platforms for mobiles or website chats.

In line with D. 8.420, enterprises also present ethic and conduct codes. For example, Rossi presents a code of professional and ethic conduct.¹⁹⁸⁷ It presents the guidelines of transparency, objectivity and ethic; roles and responsibilities are in detail annotated and sanctions, generally defined. However, their code is fairly silent on human rights due diligence or on the operational-level grievance mechanisms, actually essential instruments for a firm.

Chilean enterprises provide similar channels of communication. For example, AVIFEL, a constructor for D.S. 19 and D.S. 49, provides a physical address, an email and a telephone contact¹⁹⁸⁸, as did registered sponsor entities such as Nexo Consultores¹⁹⁸⁹, Bedecarratz,¹⁹⁹⁰ CreaTiva,¹⁹⁹¹ Oval¹⁹⁹² and Riosalco.¹⁹⁹³ None of the observed Chilean enterprises presented a code of conduct and ethics on their on line platforms.

¹⁹⁸¹ “Clientes: Institucional,” MRV, Website, Accessed Oc 17, 2019, <https://www.mrv.com.br/institucional/pt/relacionamentos/clientes>.

¹⁹⁸² “MRV Sustentabilidade,” MRV, Website, Accessed Oct 17, 2019, <https://www.mrv.com.br/sustentabilidade/pt>.

¹⁹⁸³ “Direcional,” Direcional, Website, Accessed Dec 7, 2019, <https://direcional.com.br/>; “Fale conosco,” Direcional, Website, Accessed Oct 5, 2019, <https://direcional.com.br/minas-gerais/fale-conosco/>.

¹⁹⁸⁴ “Fale Conosco,” Rossi Residencial, Website, Accessed Oct 5, 2019, <https://www.rossiresidencial.com.br/fale-conosco.php>.

¹⁹⁸⁵ “Whatsapp. Apartamentos e Salas Comerciais,” Cyrela, Website, Accessed Oct 17, 2019, <https://www.cyrela.com.br/>.

¹⁹⁸⁶ “Pacaembu Portal,” Pacaembu, Website, Accessed Dec 7, 2019, <https://www.pacaembu.com/pacaembu-portal/index.html>.

¹⁹⁸⁷ Rossi, “Código de Conduta Ética Profissional,” Mar 2014, <https://www.rossiresidencial.com.br/assets/pdf/codigo-etica-conduta-v5.pdf>.

¹⁹⁸⁸ “Terrazas de Panguipulli,” Constructora Avifel, Website, Accessed Dec 7, 2019, <https://avifel.cl/proyectos/terrazas-de-panguipulli/>.

¹⁹⁸⁹ “Sobre nosotros,” Nexo Consultores, Website, Accessed Oct 15, 2019, <http://www.nexoconsultores.cl/>.

¹⁹⁹⁰ “Entidad Patrocinante. Asesorías y Servicios,” Constructora Bedecarratz, Website, Accessed Oct 15, 2019, <http://www.bedecarratz.cl/entidad-patrocinante/>.

¹⁹⁹¹ “Entidad Patrocinante,” Consultora Creativa, Website, Accessed Oct 17, 2019, <http://www.consultoracreativa.cl/inicio/entidad-patrocinante/>.

¹⁹⁹² “Contacto,” Constructora Oval, Website, Accessed Oct 15, 2019, <http://www.construtoraoval.cl/contacto/>.

¹⁹⁹³ “Entidad Patrocinante Riosalco.” Riosalco, Website, Accessed Oct 15, 2019, <http://www.riosalco.cl/entidad-patrocinante/>.

6.3 Government

This section investigates the enforceability dimension shedding light to exit and sanctions (6.3.1) and to mechanisms of control and remediation (6.3.2).

6.3.1 Exit and Sanctions

In respect to exit and sanction of governmental representatives, frontline workers and public servants, a similar structure can be observed in Brazilian and Chilean case studies. In general, public servants have obligations to which they will be directly responsible and answerable. Exceptionally, in Brazil, public entities will have obligations that lead to eventual exclusion due to non-compliance. Those rules are similarly inserted in diffuse norms. However, because their systematic is not clear, that creates legal confusion. This section analyzes exit clauses and sanctions over public servants (6.3.1.1) and public entities (6.3.1.2).

6.3.1.1 Public servants

Chile has fairly “strong and well-enforced” anti-corruption legislations, for which “general terms [of] governing purchase order [...] proved [to be] highly successful.”¹⁹⁹⁴ Just like in Brazil, the Criminal Code addresses bribery against public officials (cohecho) as a crime, for what both recipient or payer of an economic benefit incur in sanctions.¹⁹⁹⁵ The general Comptroller may sanction wrongdoings of public employees with fees or even suggest Courts to sentence them to up to one year of imprisonment.¹⁹⁹⁶

A Chilean compliance program was created under the terms of Law 20,931, of 2009¹⁹⁹⁷, which could lead to sanctions of fees and even imprisonment.¹⁹⁹⁸ For example, in 2014, a *Juízo de Cuentas* sanctioned four public servants to a fee based on 20% of their monthly income, in a reformed sentence that condemned them for omission in a matter of social housing.¹⁹⁹⁹

The responsibility of Brazilian public agents includes their criminal or civil liability for damages caused to the public administration or to third parties.²⁰⁰⁰

¹⁹⁹⁴ OECD, *Public Procurement in Chile*, 11; Business Anti-Corruption Portal, “Chile Corruption Report,” GAN Integrity, Accessed July 21, 2019, <https://www.ganintegrity.com/portal/country-profiles/chile/>, Legislation.

¹⁹⁹⁵ Chile, Criminal Code, art. 248-251; 260.

¹⁹⁹⁶ Danziger, 566.

¹⁹⁹⁷ Chile, L. 20.393.

¹⁹⁹⁸ Danziger, 566.

¹⁹⁹⁹ Chile, Contraloría General de la República, JC 51808, n. 40779, Patricia Arriagada Villouta (Tribunal de Cuentas Sep 29, 2014). This case made reference to social housing constructions after the eruption of Chaitén, where the environmental catastrophe quickly increased the demand for dwellings.

²⁰⁰⁰ Brasil, Constitution, art. 37, para 6; Brasil, Lei 8.112, de 11 de dezembro de 1990, L. 8.112, (1990), art. 122-123, 125; Brasil, Criminal Code, art. 32.I-III, 312-326, 359A-359H; Ministério da

Not traditional public servants, the City's Statute annotates that Brazilian mayors incur in crimes of administrative improbity if they obstruct or fail to guarantee participation, transparency and access to documents.²⁰⁰¹ Moreover, federal public servants have their own disciplinary regime.²⁰⁰² They can be penalized for wrongdoings with e.g. dismissal, revocation of pension, civil sanctions, criminal charges of up to six years of confinement, fines, a declaration of disreputability and the impediment to contract with the public administration for up to two years.²⁰⁰³ Only exceptionally, in case a public servant is absolved from a criminal offense charge that deny their authorship, the result of those criminal charges can affect an administrative process.²⁰⁰⁴

Yet, multiple sanctions can be charged. Despite any civil or criminal sanctions, any public agent that incurs in an administrative conduct may be also sanctioned via a *ação de improbidade administrativa*. Sanctions include the full compensation for the damage and the loss of assets or amounts unlawfully added.²⁰⁰⁵ If applicable, a public agent loses their position and has their political rights suspended for a period that can vary from three to ten years.²⁰⁰⁶ A civil fine may be imposed to be twice as high as the damage caused or up to hundred times the bribe received.²⁰⁰⁷ Particularly service providers will be prohibited to contract with the government or receive tax benefits, incentives, or credits for a period that can extend from three to ten years.²⁰⁰⁸

The Brazilian Federal Court of Accounts has the “power-duty”, *o poder-dever*, to apply the fees defined by its organic law, every time the Court verifies a situation in which a public agent acts with omission.²⁰⁰⁹ In AC 673/2018, an agent was sanctioned to a fee of 10,000 BRL because they had not followed the instruction of the Court to adopt all effective and necessary measures that should have guaranteed the solution of issues evidenced in a housing project in the state

Transparência, Fiscalização e Controladoria-Geral da União and Controladoria Geral da União, *Manual de Processo Administrativo Disciplinar* (Brasília: CGU, 2017) 20-21.

²⁰⁰¹ Brasil, City's Statute, art. 40, para 4.I-III; art. 52.V.

²⁰⁰² Brasil, L. 8.112, art. 127, 141-142; Brasil, Supremo Tribunal Federal, HC 104174/RJ, Rel. Min. Ayres Britto, At DJe 93 May 18, 2011 vol. 02524-01 p. 118 (2T, Mar 29 2011). Public servants of state and municipal spheres may be given their own legal statutes by their constituencies, but these should generally follow the structure of L. 8,112. Members of the military are set to another regime, were not even given the constitutional guarantee to a *habeas corpus*.

²⁰⁰³ Brasil, L. 8.666, art. 81-108.

²⁰⁰⁴ Brasil, L. 8.112, art. 126; Brasil, Civil Code, art. 935; CGU, *Manual de Processo Administrativo Disciplinar*, 22-24.

²⁰⁰⁵ Brasil, Administrative Improbity Act, art. 12.

²⁰⁰⁶ Id.

²⁰⁰⁷ Id.

²⁰⁰⁸ Id.

²⁰⁰⁹ Brasil, Tribunal de Contas da União, Acórdão 673/2018, TC 019.676/2013-1, Min. Aroldo Cedraz, Online Code AC-0673-10/18-P (Plenário Mar 28, 2018), 4.16; Brasil, Organic Law of the Brazilian Superior Audit Court, art. 58, IV.

of *Maranhao*.²⁰¹⁰ From a strictly legal perspective, the decision followed the correct assumption that a head of department is responsible for all its subordinates.

However, two problems followed. One, that the Court set abstract guidelines and demanded a successful outcome from that head of staff, but did not produce an operational modus to be followed. Forums must be careful when holding one public servant accountable for a goal they neither understand nor can explain how to achieve. And particularly judicial forums should be most careful when interfering in policy-making. The Court is no frontline or political agent and it must be careful when penalizing one individual based on procedures and for the sake of control and performance results. This turns back to the issue of responsibility and the need to clearly define them, as a requisite for enforcement.

Second, the decision did not take into clear consideration that, despite carrying a leadership position, one agent from a federal power structure may not have (and clearly did not, in the presented case) the extended capacity to exercise an efficient coordination within the accountability structure furnished by regulations. Brazil has a continental size: the head of department sitting in the Ministry of Cities was geographically unable to manage actions in all national regions at the same time and neither particularly at a municipality over 1,600km of distance without direct connection, as it was the case of the municipality of Fortuna, in the state of Maranhao.²⁰¹¹ And just like this municipality, one federal servant should not be held accountable for the inefficiency of several other agents, since they were not be able to coordinate strategies with the existent legal instruments.

First, it is vital to restructure the whole responsibility and answerability dimensions in the social housing contexts that could predict the rules and roles of all stakeholders. Particularly between governmental levels, the norm must create transparent mechanisms that clarify which agent took responsibility for each act taken. Only under consistent and transparent parameters can duty-bearers be fairly held accountable.

In a different scenario, the same Audit Court sanctioned²⁰¹² architects involved in the construction of projects in Rio Branco, Acre.²⁰¹³ The project was located in the urban area of that capital, located in the remote north-west region. However, it was clear that those architects should have been working at the local level for they held with the responsibility to report construction vices. Hence,

²⁰¹⁰ Brasil, TCU, Acórdão 673/2018.

²⁰¹¹ Over 1,600km away from the capital Brasília, where the Ministry officially seats, a journey to Fortuna can take from seven to ten hours by car from Maranhao's state capital Sao Luís, accessible via flight connections.

²⁰¹² Brasil, Tribunal de Contas da Uniao, Acórdão 920/2016, TC 039.953/2012-2, Min. Weder de Oliveira. RA, at 13/2016, SeinfraAeroTelecom (Plenário Apr 20, 2016).

²⁰¹³ Brasil, TCU, Acórdão 920/2016.

in contrast to the previously discussed case, this procedure was able to hold duty-bearers accountable because of rules shifted responsibility and answerability to those agents at the local level.

6.3.1.2 Public entities

Exceptionally in MCMV, municipalities and state-members will be considered as independent stakeholders, who, although part of the governmental sphere, need to sign a general bidding agreement, updated with a new commitment term for each project.²⁰¹⁴ Thus, municipalities and state-members will be answerable to the specific responsibilities they documented, for which, in case of non-compliance, they could be excluded from the program or sanctioned.

In case public entities fail to comply with obligations in the selection of beneficiaries, they will not be allowed to contract with MCMV again, to which other sanctions may also incur.²⁰¹⁵ However, those alternative sanctions were not defined by the norm.

Previous norms had restricted financial institutions and agents of MCMV from conducting further contracts with the respective public entity as a sanction or excluded those from further projects with MCMV and the Ministry of Cities.²⁰¹⁶ Whereas the new wording of the norm is more assertive, it fails to clearly define possible sanctions. Hence, MCMV requires more clarity and consistency along the legal framework.

Cardoso et al argued too that legal inconsistencies affect the obligation to monitor in MCMV.²⁰¹⁷ During interviews conducted with agents from Caixa and from Rio's municipality, they recognized a divergent understanding on roles and obligations, that led to a lack of supervision in projects. According to them, Rio's agents subject the monitoring obligation to Caixa because those engage in contracting the construction.²⁰¹⁸ Caixa agents, in turn, confront the Ministry of Cities with the responsibility to monitor, saying Caixa should be exceptionally contracted to provide such a service.²⁰¹⁹ In the end, agents tended to blame beneficiaries for an improper use of dwellings, despite an acknowledged need for more monitoring of construction firms that recognizedly use low-quality materials to achieve higher profit margins.²⁰²⁰

This example shows how issues in the responsibility and answerability dimensions affect enforcement. If roles are not clearly defined or if obligations (to

²⁰¹⁴ See more on public entities, on section 4.3.

²⁰¹⁵ Brasil, P. 163, ch I, 9.2.

²⁰¹⁶ Brasil, P. 595, 9.3-9.4; Brasil, P. 610, 7.3.

²⁰¹⁷ Cardoso, Queiroz e Mello and Jaenisch, 91-94.

²⁰¹⁸ Id.

²⁰¹⁹ Ib.

²⁰²⁰ Ib.

inform, respond or justify) are not clearly set, then it will not be possible to hold one accountable. As a dramatic consequence, all accountability relations are negatively affected by such an inconsistent legal structure.

6.3.2 Control and Remediation

This section will focus on shedding light over mechanisms that can exercise a pathway to control, such as National Action Plans (6.3.2.1), or external government control, such as *toma de razón*, *dictámenes* and *juicio de cuentas* (6.3.2.2.1), audits (6.3.2.2.2), financial investigations (6.3.2.2.3). It also adds to this chapter quasi-judicial (6.3.2.2.4), local-level (6.3.2.2.5), and grievance mechanisms (6.3.2.2.6) as well as the influence of the media and of grass-root movements as an external form of governmental control (6.3.2.2.7). This section follows to analyze mechanisms of internal administrative control (6.3.2.3), including communication, monitoring and evaluation mechanisms (6.3.2.3.1), the Brazilian administrative process of responsibility, and the disciplinary administrative process (6.3.2.3.2).

6.3.2.1 National Action Plans

Inspired by the United Nations Principles on Business and Human Rights, both Brazilian and Chilean States took steps to address accountability and the respect to human rights in their national contexts.²⁰²¹ The Brazilian *Programa Integridade* was set to create mechanisms and internal procedures of integrity, audit and reporting of irregularities, based on the application of a business' ethic and conduct codes.²⁰²² That integrity program also recommends enterprises to create their own operational-level grievance mechanisms.²⁰²³ However, the lack of mandatory guidelines (those are only recommendations) hinders enforcement.

Brazil has neither published nor is officially developing a NAP. The Chilean government came further and published a National Action Plan on Business and Human Rights – NAP, in accordance to the international agenda.²⁰²⁴ That country's NAP, based on the international agenda, brings a long list of recommendations, guidelines of models and concrete examples that should be able to fit to the needs and expectations of each and every firm.²⁰²⁵

²⁰²¹ HRC, HR/PUB/11/04.

²⁰²² Brasil, D. 8.420, art. 41-42.

²⁰²³ Brasil, D. 8.420, art. 41-42.

²⁰²⁴ National Action Plans on Business and Human Rights. "Countries Archive," Official website. National Action Plans on Business and Human Rights, Accessed December 6, 2019, <https://global-naps.org/country/>; See also Julia Schönsteiner et al, "Estudio de Línea Base Sobre Empresas y Derechos Humanos," Centro de Derechos Humanos, (Chile: UDP, Mar 2016), 132-139.

²⁰²⁵ Chile, Ministerio de Relaciones Exteriores, "Plan de Acción Nacional de Derechos Humanos y Empresas de Chile" (2017), <https://minrel.gob.cl/minrel/site/artic/20170821/asocfile/20170821145507/>. See also "Guiding Principle 29. Chile," National Action Plans on Business

However, solutions presented are again nothing but suggestions, not mandatory to private actors. Addressing the right to adequate housing, Chile's NAP suggested only two direct questions that any enterprise should argue upon their activities. One, if they can ensure that salaries payed to their employees are enough to cover their family's basic necessities, including housing; and two, if the enterprise can assure that previous owners of local facilities or lands were not violated in their rights, e.g. left without access to food or housing.²⁰²⁶

Therefore, an expanded version of Chile's NAP on the right to adequate housing could facilitate service providers to engage with their own responsibilities with the creation of mandatory settings for due diligence and operational-level grievance mechanisms. Another solution for both countries is the development of a binding law on business and human rights. That should increase compliance if aligned to sanctions and rewards. But, independent of that, providers should ensure that they comply to international standards in both social housing models.

6.3.2.2 Mechanisms of external control

As part of the external actors that influence the accountability triangle, there are numerous examples that offer mechanisms of accountability for the profit of beneficiaries, providers and government. For instance, forums exercise control via judicial and non-judicial mechanisms, in bureaucratic and democratic levels in both countries. And, although not directly part of the framed accountability relations, composed by beneficiaries, the state-solicitor and service providers, forums are imperative for redress and grievance.

Toma de razón, dictámenes and juicio de cuentas

In Chile, the Comptroller General is responsible for the control and supervision of public accounts (*toma de razón*).²⁰²⁷ Based on the understanding of answerability, the Chilean legal system foresees the *dictámenes*, the capacity of the Comptroller General to inquire any individual for information. This is mandatory for those part of the public administration²⁰²⁸, creating also especial disciplinary administrative processes.²⁰²⁹ In its internal control function, Chile's Comptroller General's Office adopted standardized *ex post* audit processes,

and Human Rights, Nov 2, 2017, Website, Accessed Dec 12, 2019. <https://globalnaps.org/ungp/guiding-principle-29/>; "Countries Archive. Chile," National Action Plans on Business and Human Rights, NAPS, Official website, Accessed Dec 6, 2019, <https://globalnaps.org/country/>.

²⁰²⁶ Consejo del Instituto Nacional de Derechos Humanos, "Guía de Derechos Humanos y Empresas de Chile", CINDH, 2018, 100, 127.

²⁰²⁷ Chile, L. 19.880, art. 1.

²⁰²⁸ Eduardo Soto Kloss, "El principio de juridicidad." In Soto Kloss, *Derecho administrativo : bases fundamentales*, 24–113. *Editorial Jurídica de Chile*, 1996; Chile, Decreto 2.421, de 7 de julio de 1964, D. 2.421 (1964).

²⁰²⁹ Danziger, 918; Chile, Ley 18.834, de 23 de septiembre de 1989, L. 18.834 (1989), art. 126; Chile, Ley 10.336, de 16 de julio de 1964, L. 10.336 (1964).

with standard tests and an Integrated System for Audit Control.²⁰³⁰ A special contentious writ, *el juicio de cuentas*, can be installed to hold responsible agents accountable.²⁰³¹ In other words, the Comptroller General also affects D.S. 1, D.S. 19 and D.S. 49.

Audits

Audits are useful mechanisms of monitoring and evaluation in the context of MCMV, D.S. 1, D.S. 19 and D.S. 49. They are conducted in both models, traditionally by the respective organs of external and internal control. Contraloría has reported irregularities of government, beneficiaries and service providers. In Audit 545, of 2018, administrative wrongdoings were investigated after allegations from a parliamentarian that at least eleven beneficiaries of D.S. 49 were not following the eligibility condition to reside in their granted dwellings.²⁰³² As a result, direct adjustment orders were given to the respective local SERVIU.²⁰³³

In another case, Audit 974, of 2018, diverse irregularities were evidenced in the construction works of Mirador San Antonio I and II, in the province of Valparaíso, also a D.S. 49 project.²⁰³⁴ Those included irregular expenditures of the construction material used and of minimum requirements e.g. in acoustic and thermic standards that probably have led to an emergency contract, but that however lacked technical justifications. Additionally, that project's service provider lacked a regular registry. The audit set direct orders to the local SERVIU, including that to install an internal disciplinary procedure in that section in the max. of 60 days.²⁰³⁵ However, those are focused audits, and it was not possible to find direct published information about general governmental audits and evaluation reports conducted on the social housing programs.

TCU has published a total of four extensive audit reports on MCMV since 2014.²⁰³⁶ The latest, published in 2018, was geographically limited to the state of Alagoas, which is in fact one of the three national states with less sanctioned

²⁰³⁰ OECD, *Making Decentralization Work in Chile*, 210.

²⁰³¹ Danziger, para 507.

²⁰³² Chile, Contraloría General de la República, Auditoría 545/2018, Cristian C. Diaz (Feb 22, 2019).

²⁰³³ Id.

²⁰³⁴ Chile, Contraloría General de la República, Auditoría 974/2018, Victor Rivera Olguín (Jan 4, 2019).

²⁰³⁵ Chile, Contraloría, Auditoría 974/2018, 34-36.

²⁰³⁶ Brasil, TCU, Acórdão 2.456/2016; Brasil, TCU, Acórdão 1.836/2017; Brasil, Tribunal de Contas da Uniao, Acórdão 2.255/2014, TC 010.900/2013-6, Min. Weder de Oliveira. SCN, at 33/2014, SecobEnergia (Plenário Aug 27, 2014); Brasil, Tribunal de Contas da Uniao. Acórdão 524/2014, TC 033.568/2012-0, Ministro Weder de Oliveira. RA, at 7/2014, Seaud (Plenário Mar 12, 2014); TCU, TC 033.568/2012-0. It must be remarked that, in 2014, there was no specialized housing department in the structure of TCU and at, the time, the audit was conducted by the department on energy and airport monitoring.

persons (a total of 76, in comparison to 3,131 in Sao Paulo).²⁰³⁷ It has not come to the knowledge of this work of any published reports on audits conducted on the specific case studies by the Chilean Contraloría, by internal advisory departments of MINVU or the Brazilian Ministry of Cities. And, if the special departments refrain from their responsibilities, they are pointless.

Similar issues have been consistently evidenced in audits conducted by TCU, as *relatório de auditoria* or *tomada de contas*. They may recommend or determine the adjustment to norms. In the case of TCU, determinations on policies or general adjustments are given when a norm is not followed, whereas recommendations are set when good-practices advise a different practice. In case of a loophole in the context of social housing, the Court also recommends guidelines to the Ministry of Cities.²⁰³⁸ Nevertheless, the soft character of decisions hinders changes and enforcement. For the stability and efficiency of that legal system, it should be taken into consideration enabling final decisions of the Brazilian Supreme Audit Court to have force of *res judicata*, just like in Chile.

As an administrative court, non-judicial and legally independent of the governmental body, TCU, the Brazilian Federal Court of Accounts, can inquire and control public procurement procedures or, as a rule, any aspects that involve federal resources.²⁰³⁹ Subdivided in regional departments (*Tribunais de Contas dos Estados*), TCU may as well conduct investigations, assess impacts and even sanction actors – though only administratively.²⁰⁴⁰ Yet, those sanctions have limited effects. Judicial courts have the power to revert decisions issued by any non-judicial organ.²⁰⁴¹

TCU supports the legislative in its constitutional mission, remaining with great autonomy to monitor and to sanction on specific matters, e.g. related to budget control and the legality of certain acts.²⁰⁴² And also due to this non-judicial nature of the organ, TCU's decisions do not consist in *res judicata*, meaning they lack enforcement, and they may be reverted via judicial interference.²⁰⁴³ This

²⁰³⁷ “Portal da Transparência – Sanções,” Controladoria Geral da Uniao, Official website, Accessed Jul 30, 2019, <http://www.portaltransparencia.gov.br/sancoes>, graph *Sancoes Vigentes por Localidade do Sancionado*.

²⁰³⁸ Bruno Lima, Researcher's Interview 5, In person, August 20, 2019.

²⁰³⁹ Brasil, Organic Law of the Brazilian Federal Court of Accounts. Therefore, the correct location of TCU in this section. Despite its administrative capacity, it is not directly part of the federal body.

²⁰⁴⁰ Id.

²⁰⁴¹ Brasil, Constitution, art. 5, XXXV. This is because decisions given by TCU, CGU or any other non-judicial Brazilian organ may be subject to revision by the judiciary. Although it is a custom to see Brazilian judiciary respecting decisions of that court, that is not substantial in a civil law tradition of political instabilities.

²⁰⁴² Furtado, 942-43. This work will not enter the discussion if TCU is part integrant or independent from the Legislative, although it is important to remark that this organ has a special nature.

²⁰⁴³ Ib.

gives reason for criticism: in theory, any decision of the Supreme Audit Court may be nullified by a Court.

Conversely, the Chilean legal system, inspired in the Anglo-Saxon model, adopted the use of a singular institution that cumulates the control of public funds and of legality of acts.²⁰⁴⁴ Chile's supreme audit institution, the Contraloría, is also responsible for the external control of the public administration.²⁰⁴⁵ This autonomous organ with constitutional nature shall ensure the principle of legality is respected, especially in what regards public resources, and "examine and judge [...] individuals entrusted with resources of public entities under the supervision of the Comptroller."²⁰⁴⁶ The Chilean Comptroller General's Office not only exercises administrative, but also jurisdictional control.²⁰⁴⁷ Its decisions have definite effect (in contrast to those of TCU, which can be overturned by the judiciary). Its internal structure, in respect to *ex post* audit processes, aims at guaranteeing quality standards via "sample methodology, standard tests per audit type and an [...] Integrated System for Audit Control" – SICA.²⁰⁴⁸

Moreover, internal departments can support better accountability systems. TCU has, for example, a thematic unit for urban infrastructure and mobility, which in some cases led the MCMV audits. As departments of Fiscalía, UNAC (*Unidad Especializada Anticorrupción*) investigates infringements concerning patrimonial or personal aspects of the public administration, and ULLDDECO (*Unidad Especializada en Lavado de Dinero, Delitos Económicos y Crimen Organizado*), money laundry, economic infringements and organized crime.²⁰⁴⁹

Financial investigations

The Brazilian Council of Control of Financial Activities – COAF²⁰⁵⁰ was designed to receive, examine and identify, as well as to communicate competent authorities upon money laundering or any other financial illicit.²⁰⁵¹ The council uses the sanctioning or penalty administrative procedures – PAS/PAP to decide

²⁰⁴⁴ Chile, Constitution, art. 98.1. Danziger, 545; Furtado, 942.

²⁰⁴⁵ Chile, Constitution, art. 98; Danziger, 17, 536.

²⁰⁴⁶ OECD, *Making Decentralization Work in Chile*, 210; Danziger, 545.

²⁰⁴⁷ Danziger, 551; Chile, Organic Constitutional Law of the General Administration of the State, art. 1.

²⁰⁴⁸ OECD, *Making Decentralisation Work in Chile*, 212; OECD, *Chile's Supreme Audit Institution: Enhancing Strategic Agility and Public Trust*, OECD Public Governance Reviews (Paris: OECD Publishing, 2014), <https://www.oecd-ilibrary.org/content/publication/9789264207561-en>.

²⁰⁴⁹ "Quiénes Somos: Unidades y Divisiones," Fiscalía, Official website, Accessed July 22, 2019, http://www.fiscaliadechile.cl/Fiscalia/quienes/fiscaliaNac_unidades_divisiones.jsp.

²⁰⁵⁰ See section 4.3.6.

²⁰⁵¹ The expressions "terrorism" and "terrorism financing" have been excluded from the norm, and since 2012 any kind of use of money that is involved in illicit resources. See Brasil, Lei 9.613, de 3 de marco de 1998, L. 9.613 (1998), art. 1, 14-16.

upon the matters investigated, against which an appeal can be filed to the appeal court of the National Financial System – CRSFN.²⁰⁵²

Chile also counts with a national financial council that encapsulates one auditor responsible for investigations.²⁰⁵³ The auditor leads different administrative procedures, the CMF’s council has the competency to, for example, sanction.²⁰⁵⁴ Since service providers are key partners and banks finance social housing strategies in both countries, these councils convey an extra mechanism of administrative control. Yet, their reports on activities did not highlight investigations, procedures or sanctions related to the case studies, or at all, to social housing programs.

Yet, it must be remembered that investigative procedures conducted by those councils are not the first choice of the most-vulnerable. Despite the fact of its gratuity and the mechanism of denunciation, those living in vulnerability suffer from the lack of awareness and access to such organs, that fail to actively involve the local level. Thus, this background mentality of administrative organs must be reformed to address the need of accessibility of those living in vulnerable conditions.

. *Quasi-judicial mechanisms*

Quasi-judicial mechanisms also play a key accountability role: they support extra-judicial control, mediation, and soft enforcement. The Brazilian Department of Consumer Protection and Defense – PROCON and Chile’s SERNAC offer important quasi-judicial dispute settlement mechanisms for beneficiaries, which enable grievance and redress in various phases of the policy cycle. Those organs, that can be qualified as quasi-judicial though their nature either misses or exceeds the classic concept, are all key for extra-judicial dispute resolution.²⁰⁵⁵

In both cases, the unfortunate consideration of beneficiaries of social housing programs as consumers, positively qualifies them to use these mechanisms. The two models follow structurally similar models, where requested providers have a time-period to respond to consumers and against which mediation procedures follow.

²⁰⁵² “Processo Administrativo Sancionador (PAS),” Ministério da Economia, Official website, Accessed Dec 6, 2019, <https://cutt.ly/cyMoqCw>.

²⁰⁵³ Chile, Ley 21.000, de 23 de febrero de 2017, L. 21.000 (2017), art. 5.4-5, 5.7, 5.16, 5.21, 5.22, 5.27, Title IV, para 4.

²⁰⁵⁴ Chile, L. 21.000, art. 36; Comisión para el Mercado Financiero, “Etapas del Procedimiento Sancionatorio Simplificado de la CMF,” CMF, Official Website, Accessed Jun 8, 2020, <http://www.cmfchile.cl/portal/principal/605/w3-article-26414.html>.

²⁰⁵⁵ See more section 2.1.

Despite its administrative character, PROCON's aim is to mediate consumers' claims²⁰⁵⁶, what would hence include beneficiaries of MCMV.²⁰⁵⁷ Each regional PROCON department may develop its own administrative procedure to be complemented by municipalities. The state of Sao Paulo, for example, created a decentralized program bidding 270 municipalities.²⁰⁵⁸ If a beneficiary files an inquiry in one of the state's departments, a provider has 10 days to respond to it.²⁰⁵⁹ In case the provider fails to fulfill the request of the consumer, only then an administrative procedure may be installed. This procedure follows to the installations of a mediation audience and to eventual administrative sanctions.²⁰⁶⁰

And, due to its decentralized creation, even Brazilian departments have been able to develop ICT-based strategies. For example, the city of Campinas -SP counts with its own department, where individuals may make claims in person or on line.²⁰⁶¹

Similarly in Chile, SERNAC is an analogous consumer's department, as a quasi-judicial mechanism where consumers claim against a service provider. SENARC can be reached in its regional offices, in offices at partner municipalities or via a toll-free line. Firms are given the possibility of formally responding to claims in a maximum 18 working days, in a way that an argument shall be noted as fully or partially accepted, rejected or contested.²⁰⁶² If the consumer is not satisfied with the result, they are allowed to appeal to special non-judicial mechanisms at a *juzgado de policía local*.²⁰⁶³

²⁰⁵⁶ Fundacao Procon SP, "Programa de Municipalizacao de Protecao e Defesa Do Consumidor," 201AD, www.procon.sp.gov.br, 2. For example, *Sao Paulo's* Procon describes that "Procon enables: prevention and hindering of consumer-relations' conflicts (...)". Author's own translation.

²⁰⁵⁷ Critics to this consumer perspective are highlighted along this work. See section 5.1.

²⁰⁵⁸ Fundacao Procon SP, 2.

²⁰⁵⁹ Governo do Estado de Sao Paulo, Portaria Normativa Procon 21, de 12 de abril de 2005, PNP 21(2005), art. 8.

²⁰⁶⁰ *Governo do Estado de Sao Paulo*, PNP 21, art. 9, para 5; Brasil, Consumer's Code, art. 55, para 4. The Brazilian Superior Court – STJ settled the understanding that organs of consumer protection may impose sanctions concomitantly even when a superintendency already exists, because they pertain to different structures of the federal administration.

²⁰⁶¹ "Procon Campinas: Ranking," Official website, Procon Campinas, Accessed August 13, 2019, <https://procon.campinas.sp.gov.br/>.

²⁰⁶² Chile, L. 19.946; "Reclamo: SERNAC," Servicio Nacional del Consumidor, SERNAC, Official website, Access Aug 14, 2019, <https://www.sernac.cl/portal/618/w3-propertyvalue-22029.html>.

²⁰⁶³ Id.

Another mechanism prescribed by the national consumer's law is a specific mechanism named *alerta ciudadana*, that enables individuals to deliver information regarding firms, concerning collective adverse impacts.²⁰⁶⁴ The procedure can be installed on line or at a department of SERNAC. Consequences may follow to inspections or to a collective mediation procedure.²⁰⁶⁵

Overall, consumers tend to seek for support in PROCONs and SENARCs. Those consumer departments shine as an alternative to other judicial and non-judicial mechanisms because it is faster and cheaper for both right-holders and business enterprises to use of their clear procedures of mediation than to go for trial in judicial courts. For example, in Procon-Campinas, as of June, 2019, Caixa was among the 10 groups with most complaints. In the whole state of Sao Paulo, Caixa had already received 3,861 reclamations by August, 2019, and reached for settlements in almost 80% of cases.²⁰⁶⁶

Most cases reported that the enterprise conducted improper charging or a breach of contract.²⁰⁶⁷ Moreover, over hundred cases regarded an inefficient operational-level mechanism for provided by the firm to dispute resolution, named SAC.²⁰⁶⁸ Those issues included lack of response, exceeding deadlines, maintenance of charging even after decision of immediate suspension.²⁰⁶⁹

Another quasi-judicial organ is the *Consejo de la Transparencia*, supposed to monitor compliance to transparency rules and to the guarantee of the right to access information.²⁰⁷⁰ In theory an independent organ, with its own legal personality and funds, it is though formed by four counselors nominated by the Chilean President. And, although named as a council, it possesses a quasi-judicial nature²⁰⁷¹, as this should be a channel for redress and grievance, where individuals can inquire information, claim and denounce. This scheme remembers the program developed by the Brazilian *Portal da Transparencia*. However, this Brazilian case is different because it is mainly an informative public database run by the Comptroller's General Office²⁰⁷², whereas the Chilean Consejo de Transparencia has control, monitoring and sanctioning obligations.

²⁰⁶⁴ Chile, L. 19.496.

²⁰⁶⁵ "Cómo ingresar una Alerta Ciudadana," Servicio Nacional del Consumidor, SERNAC, Website, Accessed Aug 14, 2019, <https://www.sernac.cl/portal/617/w3-article-55680.html>.

²⁰⁶⁶ "Ranking de Atendimentos – Procon-SP: 10. Caixa," Procon-SP/SINDEC, Official website, Accessed Aug 11, 2019, http://sistemas.procon.sp.gov.br/rank_estadual/?m=rank_atend.

²⁰⁶⁷ Id.

²⁰⁶⁸ "Ranking de Atendimentos – Procon-SP: 10. Caixa," Procon-SP/SINDEC.

²⁰⁶⁹ "Ranking de Atendimentos – Procon-SP: 10. Caixa," Procon-SP/SINDEC.

²⁰⁷⁰ Chile, L. 20.285, art. 31.

²⁰⁷¹ "Quiénes somos," Consejo para la Transparencia, Official Website, Accessed Jul 4, 2020, <https://www.consejotransparencia.cl/quienes-somos/>.

²⁰⁷² See section 5.2.3.2.

Local-level mechanisms

Local councils have been created under different forms in Brazil and Chile, exercising influence to accountability relations with their own mechanisms. In Brazil, examples of social control committees that created social accountability at the local level were best observed in *Bolsa Família*.²⁰⁷³ However, they were not used within the accountability structure of *Minha Casa, Minha Vida*.²⁰⁷⁴

With a different aim, but also with local level influence, Chile counts with a national association of municipalities – AMUCH. Of voluntary participation, the association aims at supporting municipalities in their decentralized tasks, for instance in training and communication with the central government.²⁰⁷⁵ Its aim is to engage governmental actors among each other and with civil society, private actors and academic institutions. But, according to ELLA’s report about the general situation in Latin America, “engendering true participation in the local councils remain a significant challenge in the region.”²⁰⁷⁶

On the one hand, local housing councils portray a recognized significant social accountability tool.²⁰⁷⁷ They generally have a deliberative, monitoring and consultive nature and, like that, they can support social housing projects. On the other hand, their approaches is recognized to be limited.²⁰⁷⁸ According to the OECD, in Chile, “the top-down approach to participatory practices, grounded in legally required compliance, is insufficient to ensure implementation, particularly at the subnational level.”²⁰⁷⁹ Thus, bottom-up strategies could be extended, for example, with the assistance of supporting entities and with the integration of already existing social movements.

Other constrains at the local level include limitations to information access and to participation due to the socio-economic situation.²⁰⁸⁰ Not to forget, general weak accountability relations prevent the full performance of such councils.²⁰⁸¹ The impact of councils depends on each municipality, but overall, in the long-term, strong top-down and bureaucratic institutional approaches to social accountability tend to be ineffective.²⁰⁸² In such a context, local actions can rarely

²⁰⁷³ Basset et al, 66. More on social accountability, councils and associations see sections 6.1.3-4.

²⁰⁷⁴ See section 6.1.3.

²⁰⁷⁵ “Corporativo: Asociación de Municipalidades de Chile,” AMUCH, Website, Accessed 13 Jun 2019, <https://www.amuch.cl/corporativo/>; OECD, *OECD Urban Policy Reviews, Chile 2013*, 183-84.

²⁰⁷⁶ ELLA, “Increasing Citizen Participation in Local Governance”, 5.

²⁰⁷⁷ Evidence and Lessons from latin America – ELLA, “Increasing Citizen Participation in Local Governance: Latin America’s Local Citizen Councils,” 2012. <http://tinyurl.com/czghlgt>.

²⁰⁷⁸ OECD, *Making Decentralisation Work in Chile*, 47.

²⁰⁷⁹ OECD, *Making Decentralisation Work in Chile*, 47.

²⁰⁸⁰ ELLA, “Increasing Citizen Participation in Local Governance”, 5.

²⁰⁸¹ ELLA, “Increasing Citizen Participation in Local Governance”, 5.

²⁰⁸² OECD, *Making Decentralisation Work in Chile*, 47.

influence policy-making.²⁰⁸³ The need of individuals to be orchestrated within better accountability relations is clear.

At the local level, a special figure can be found in the Chilean legal system. *Jueces de policía local* are responsible for sanctioning those infringing OGUC, the general law on urbanism and construction works.²⁰⁸⁴ So, they directly impact on D.S. 1, D.S. 19 and D.S. 49 at the local level. They can be enacted, for example, after a disputed claim in SERNAC. Thus, they are not considered to be part of the judiciary, yet they exercise certain level of jurisdictional activity.²⁰⁸⁵

In fact, some of the issues in control and enforcement have roots in the lack of enforcement at the local level. Chilean city councils have a normative, resolutive and monitoring nature, among which to control plans and programs and to evaluate investments conducted in municipalities.²⁰⁸⁶ City councils hold officials accountable in respect to financial activities, for which a special control department should monitor and inform the council on illegalities found.

According to a OECD report, 60% of Chilean municipalities presented some kind of deficiency in the constitution of their control departments, including the lack of a regulation chief auditor or a procedure for internal operational audits, and inadequate training.²⁰⁸⁷ As evidenced by this work, in 2016, the municipal council of Santiago authorized the purchase of 3,673 m² of land and properties in Santiago city, to be used for the construction of social housing, comprehending at least 104 housing units, shops and parking spaces.²⁰⁸⁸ And, although the city council of Santiago possesses a control department regularly emitting notes upon the program, no official notice has been published online upon the beginning of construction works as of July, 2019.²⁰⁸⁹ Thus, despite the issue of construction delay, issues in information transparency (there is no justification on the delay) damage that project.²⁰⁹⁰

²⁰⁸³ OECD, *Making Decentralisation Work in Chile*, 48

²⁰⁸⁴ Chile, D.S. 47.

²⁰⁸⁵ See more in Andrés Bordalí Salamanca, *La independencia judicial en el derecho chileno* (Legal Publishing, 2010).

²⁰⁸⁶ Chile, Organic Constitutional Law of Municipalities, art. 29.

²⁰⁸⁷ OECD, *Making Decentralisation Work in Chile*, 209-210.

²⁰⁸⁸ “Consejo Municipal de Santiago aprueba compra de terrenos para la construcción de 115 viviendas sociales en la comuna,” Municipalidad de Santiago, Official website, Accessed Oct 13, 2019. <https://cutt.ly/ryMib3z>.

²⁰⁸⁹ “El Programa – Revive Santiago,” Municipalidad de Santiago, Official website, Accessed Dec 6, 2019, <http://www.munistgo.info/revivestgo/el-programa/>.

²⁰⁹⁰ Without knowing why the project is delayed, it is not possible to critically analyze if there is an enforcement issue. But possibly, the control department lacks means of enforcing or sanctioning duty-bearers.

Grievance mechanisms: D.S. 1 and D.S. 49

Grievance mechanisms were identified in the contexts of D.S. 1 and D.S. 49, where MINVU, SEREMI and SERVIU enable direct redress via internal procedures.²⁰⁹¹ For example, D.S. 49 created a process for which a candidate may appeal against errors or mistakes conducted in the selection process.²⁰⁹² In such cases, beneficiaries can use those mechanisms to seek redress directly with the organ, without a forum.

D.S. 1 created internal control procedures for appeals, resignation and substitutions.²⁰⁹³ An aggrieved candidate may appeal within 10 days of the announcement of selected candidates.²⁰⁹⁴ Yet, claims are only eligible if based on factual errors not imputable to the candidate itself nor to the sponsor entity.²⁰⁹⁵

Those grievance mechanisms could provide more details over their procedures (transparency) and be expanded to all Chilean programs (e.g. D.S. 19). However, the Brazilian Ministry's or Caixa's models produce mainly communication channels²⁰⁹⁶, whereas the Chilean models act in reviewing procedural errors or content-wise projects or applications. MCMV did not offer any similar direct grievance procedure in its social housing context comparable to those Chilean initiatives. The Chilean control mechanisms created by D.S. 1 and D.S. 49 should inspire the Brazilian model.

Media and grass-root movements

Previously in this work, several grass-root organizations or events were mentioned to have taken action for their right to housing, such as: the Ocupacao Chico Prego²⁰⁹⁷, aiming for legalizing a MCMV destined property; or the *Mapuche*, who were wrongly criminalized for demonstrating for their right to property.²⁰⁹⁸ Those are only pictures of extreme social and housing gaps, and they do not exclude any and each single individual in vulnerability. Yet, they show the importance of bottom-up collective actions in the redress for adequate housing rights.

The use of medias and the press as a mechanism of control can be also key for the enforceability dimension. Particularly in Brazil, their activity created social mobilization in democratic institutions.²⁰⁹⁹ Between 2015 and 2016, in an active

²⁰⁹¹ Chile, Organic Constitutional Law of the General Administration of the State, art. 7, 11.

²⁰⁹² Chile, D.S. 49, art. 26.

²⁰⁹³ Chile, D.S. 1, para 8.

²⁰⁹⁴ Chile, D.S. 1, art. 24.

²⁰⁹⁵ Chile, D.S. 1, art. 24.

²⁰⁹⁶ Santana, Researcher's Interview 4.

²⁰⁹⁷ Resistência Urbana Capixaba, "Ocupação Chico Prego."

²⁰⁹⁸ Norín Catrimán et al; "Chile 2017/2018: Country Report."

²⁰⁹⁹ Francisco Panizza, "Neopopulism and Its Limits in Collor's Brazil." *Wiley on Behalf of Society*

engagement of the press and social media, the pressure over corruption scandals linked to Minha Casa, Minha Vida and other social programs was decisive to withdraw the democratically elected President Dilma Rousseff based on, up to this point, unfunded legal reasons.²¹⁰⁰ In contrast, Chilean media encounters different limitations, namely “the persistence of legal obstacles, the high concentration of [press] property, and the conservative ideological orientation of most the media that has managed to survive the property concentration process.”²¹⁰¹

6.3.2.3 Mechanisms of internal administrative control

Brazilian and Chilean legal systems incorporated diffuse internal administrative controls,²¹⁰² even though they developed differently through out the years. In both cases, there is no specialized organ controlling social housing, though any person using public funds may be subject to administrative control.²¹⁰³ And, as a rule, administrative control is supposed to correct illegalities or abuse of power within the sphere of State action.²¹⁰⁴ To be analyzed in this section are internal control and audit mechanisms developed by the executive branch, since they concern directly the analyzed accountability relations.²¹⁰⁵

In both Brazil and Chile, administrative processes are guided by the principles of *audi alteram partem*, *ex officio*, economy and *nemo iudex in causa sui*.²¹⁰⁶ The Brazilian administrative process also follows general administrative law principles, such as publicity and morality, as well as distinct principle of the

for *Latin American Studies*, Old and New Populism in Latin America, 19, n. 2 (Apr 2000). For example, in 1992, mainstream media revealed a concrete public scandal of Brazil’s first democratically elected president in 29 years, Color de Mello, generating enough public mobilization that eventually legitimated and led to his resignation.

²¹⁰⁰ Afonso de Albuquerque, “Protecting Democracy or Conspiring against It? Media and Politics in Latin America: A Glimpse from Brazil.” *Journalism* 20, no. 7 (2019), <https://doi.org/10.1177/1464884917738376>; Teun A. van Dijk, “How Globo Media Manipulated the Impeachment of Brazilian President Dilma Rousseff,” *Discourse & Communication* 11, no. 2 (2017), <https://doi.org/10.1177/1750481317691838>.

²¹⁰¹ Peruzzotti and Smulovitz, 224.

²¹⁰² In Brazil, the Supreme Audit Court – TCU takes the traditional role of external controller, whereas the CGU should be responsible for internal control. In Chile, the Comptroller General’s Office will cumulate both roles.

²¹⁰³ Danziger, 565-66.

²¹⁰⁴ Furtado, 934.

²¹⁰⁵ Danziger, 536. Administrative control is in both legal systems categorized in internal or external forms, influencing control in social housing programs. Internal control is exercised within the structure of an agency, whereas external control, as a rule, is exercised by an independent organ. They are carried out within organs, based on the principle of hierarchy and *ex officio*, and internal procedures must be undertaken under rigorous legal structures. Naturally, the observation of those roles is relative because it will depend on specific situations if an organ is exercising external or internal control.

²¹⁰⁶ Soto Kloss, 314-15; Furtado, 1035-42; Aaron X. Fellmeth and Maurice Horwitz, *Guide to Latin in International Law* (Oxford University Press, 2009).

ability to appeal in the due process (*recorribilidad*), loyalty, gratuity, motivation, material truth and of moderate formalism.²¹⁰⁷ In Chile, literature adds too the principle *in dubio pro actione*.²¹⁰⁸ Brazil and Chile control not only their own administrative acts based on those principles, for instance, the legitimacy of domestic laws, but they also have an internal operational control to hold duty-bearers into account. In both systems, an administrative act is that which has been created by the State's Administration, but exceptionally different from other legal acts, due to specific characteristics stated on law to which it must follow.²¹⁰⁹ Imperative is the adjustment of those frameworks to comprehensively inform on the actions of its agents and to sanction (or praise) them under that same strict rationale.²¹¹⁰

Latin-American principles that guide the public administration were summarized by literature under the “*tres E*” or three E-s rule: efficacy, efficiency and economy.²¹¹¹ Enforcement, this last factor of accountability, is guided in Chile by other three principles: generality, expansion and publicity.²¹¹² That means that any kind of administrative action may be held into account (generality) by a diffuse system, consistent of different organs and modalities of public control (expansion and publicity).²¹¹³ The enforceability dimension led by administrative mechanisms is based on those principles.

Communication, monitoring and evaluation mechanisms

MINVU created a web platform for the reporting of social housing misuse.²¹¹⁴ The platform enables any citizen to provide information and support control. It accepts the use of pictures and the definition of google map locations as proof of evidence. Administrative, civil or criminal procedures may follow, depending on findings.

Just alike, MINVU and the Ministry of Cities may install control procedures or delegate them. For example, MINVU can be contacted via different channels of communication, including telephone and even video calls. Each of Chile's SERVIU is composed by a *oficina de información, reclamos y sugerencias* – OIRS. These regional offices collect complaints and suggestions, as well as requests for information.²¹¹⁵ As a rule, requests may be conducted per telephone

²¹⁰⁷ Furtado, 1039-41.

²¹⁰⁸ Soto Kloss, 314-15.

²¹⁰⁹ Chile, L. 19.880, art. 3, 51.

²¹¹⁰ Goetz and Jenkins, 9.

²¹¹¹ Danziger, 533; Furtado, 1035-39.

²¹¹² Danziger, 538.

²¹¹³ As a rule, acts and resolutions the State, including procedures used, are public. See Brasil, Constitution, art. 8.

²¹¹⁴ Ministerio de Vivienda y Urbanismo, “Denuncie El Uso Irregular de Viviendas Sociales,” MINVU Denuncia, Official website. Accessed Jun 8, 2019. <http://denuncia.minvu.cl/>.

²¹¹⁵ “OIRS,” Ministerio de Vivienda y Urbanismo, MINVU, Accessed August 12, 2019, <https://www.minvu.cl/sobre-minvu/oirs/>.

or personally. If necessary, an administrative procedure can be installed to investigate claims.²¹¹⁶

Generally, in the Chilean context, SERVIU is the main responsible organ for controlling and monitoring projects.²¹¹⁷ In D.S. 1, SERVIU and SEREMI share monitoring and control tasks. SERVIU takes on evaluation tasks over all assistance services, whereas SEREMI is supposed to conduct audits.²¹¹⁸ More specifically, the law regarded to SEREMI the role of creating audit systems upon the implementation and delivery of housing programs, while SERVIU should evaluate the execution of social work.²¹¹⁹

Similarly, in D.S. 19, the monitoring role was mainly limited to SERVIU²¹²⁰, such as over eligibility checks and for monitoring social work implementation²¹²¹, although the over-monitoring of those tasks was defined to SEREMI.²¹²² In that case, supporting entities were designed with a role more closely related to management, instead of that observed in D.S. 49, in which supporting entities more strongly acted in control with the engagement of beneficiaries.²¹²³ Yet, also in D.S. 49, SERVIU holds the monitoring obligation that can be sub-delegated to specialist teams – FTOs.²¹²⁴

In comparison, local public entities take on the monitoring role over bidding procedures as well as of the execution of the PTS, verifying the use of public resources by projects in the FAR-framework.²¹²⁵ But this is a much more limited obligation in comparison to the Chilean example. It is also less efficient, for the norm fails to describe in detail how control mechanisms should be designed.²¹²⁶

The Ministry of Cities used to be composed by a special advisory department on internal control (*Assessoria Especial de Controle Interno do Ministério das Cidades*) until 2018, and MINVU is constituted of departments responsible for internal audits and control (*Departamento Auditoría Interna Ministerial* and *Contraloría Interna Ministerial*)²¹²⁷. However, none of the mentioned organs has internal departments with the role to control the analyzed social housing programs. In respect to the financial investment and social relevance of MCMV,

²¹¹⁶ Chile, L. 19.880, art. 16.

²¹¹⁷ Smart and Burgos, 192.

²¹¹⁸ Chile, R. 620, art. 5.1.

²¹¹⁹ Chile, R. 620, art. 5.

²¹²⁰ Chile, D.S. 19, art. 15.

²¹²¹ Chile, R.E. 6.509, art. 7.

²¹²² Chile, R.E. 6.509, art. 7.

²¹²³ Chile, R.E. 1.875, art. 1.3, 9.1.

²¹²⁴ More on FTOs, *see* section 4.2.4, 4.4.3.

²¹²⁵ Brasil, P. 464, Annex II, art. 7. *See* also section 5.1.2.3, 5.2.2.4.

²¹²⁶ *See* also section 6.2.1.

²¹²⁷ Brasil, Decreto 8.927, de 8 de dezembro de 2016, D. 8.927 (2016), art. 2.d; Chile, Decreto 33, (V.y U.), de 25 de abril de 2001, D. 33 (2001).

D.S. 1, D.S. 19 and D.S. 49, a more comprehensive internal control network could facilitate enforcement.

Monitoring and evaluation responsibilities of the Ministry of Cities are often delegated under a decentralized framework, particularly when analyzed in comparison to the Chilean case studies.²¹²⁸ For example, monitoring and evaluation of FAR-funded operations has been partially and in specific circumstances delegated to other organs such as, for instance, the *Comitê de Acompanhamento do Programa Minha Casa, Minha Vida – CAPMCMV*.²¹²⁹ The Ministry also delegates to the operational agent and financial institutions the responsibility to provide information on the development phase and on the condition of projects.²¹³⁰ It requires from projects a disclosure of the released budget and the planned date for project conclusion and inauguration (in the case of constructions in progress), or the expected released budget as well as the amount to be used for solar heating or other alternative water heating systems (for those operations under ongoing analysis or already commissioned).²¹³¹

Weak enforcement and the lack of control mechanisms in the metropolitan region of Goiânia has led IPEA to define its accountability structure upon the use of soil and land as “low or barely existent.”²¹³² The region is not served with an organ for management and control, meaning that each municipality analyses projects individually. A local chamber, supposed to engage in related matters of the use of land and property is not active, although it should have been installed since 1999.²¹³³ The report could neither determine the existence of any channels of participation in housing projects or related policies e.g. on land use and occupation, basic sanitation, use of river basins or environmental resources.

However, the work of the metropole’s Transportation Chamber – CDTC illustrated advancements. CDTC created a costumer service with a call center that enabled information awareness on a metropolitan transport joint venture by engaging the use of ICTs.²¹³⁴ IPEA also criticized the fact that no grievance mechanism was installed, but solely channels of communication, in which case it is

²¹²⁸ Brasil, P. 114, Annex I, 10.1.

²¹²⁹ Brasil, P.I. 96, art. 9; Brasil, P.I. 99, art.8. Brasil, Decreto 9.784, de 7 de maio de 2019. However, similarly to the Trustee Council, the *Comitê de Acompanhamento do Programa Minha Casa Minha Vida – CAPMCMV* was extinguished in the most recent developments of Brazilian politics, since 2019.

²¹³⁰ Brasil, P. 114, Annex I, 10.1.1-10.1.6.

²¹³¹ Brasil, P. 114, Annex I, 10.1.1-10.1.6. Phases include: project operations under ongoing analysis; already commissioned operations; ineligible operations (rejected in the eligibility phase); concluded projects; operations under the process of alienation of properties (sale); and projects with constructions in progress.

²¹³² IPEA, “Caracterização e Quadros de Análise Comparativa Da Governança Metropolitana No Brasil,” 80. The report uses governance as a synonym to accountability.

²¹³³ IPEA, “Caracterização e Quadros de Análise Comparativa Da Governança Metropolitana No Brasil,” 26, 33, 41-43, 54.

²¹³⁴ IPEA, “Caracterização e Quadros de Análise Comparativa Da Governança Metropolitana No

was not possible to guarantee remediation or redress.²¹³⁵ Anyhow, such strategic reforms can inspire strategic reforms for metropolitan regions.

Furhermore, the Brazilian Ministry of Cities created mechanisms that could lead to the installment of an administrative procedure, in accordance to the national Access to Information Bill.²¹³⁶ In 2015, 351 messages had been received via that ICT platform.²¹³⁷ They mostly regarded matters such as the alienation of housing units, legislation, or beneficiary selection. However, that mechanism remained merely informative.²¹³⁸ They do not enact procedures of citizen engagement, nor do they guarantee feedback, remediation, or redress.²¹³⁹

The Ministry of Cities directly controls right-holders too. For example, it conducts checks on beneficiaries and over their financial conditions during the eligibility phase. First, that organ, via its national database, is expected to coordinate a cross-check analysis of the households.²¹⁴⁰ The verification is supposed to involve other databases, namely FGTS, RAS, CADMUT, CADIN, SIACI.²¹⁴¹ At this point, ICT tools are necessary to conduct those crosschecks on beneficiaries' data. Such control mechanisms are essential for the development of "good" accountability relationships.

Administrative process of responsibility

If there is evidence of illicit committed in the context of public procurement, for example, in the selection of a MCMV project, the administrative liability of legal persons is to be determined through a Processo Administrativo de Responsabilizacao – PAR.²¹⁴² The procedure requires a preliminary investigation, to be conducted under a confidential procedure by at least two public servants and concluded in 180 days; sanctions may include a fine of up to 20% of an enterprise's profits, besides the prohibition to further contract with the Public Administration and the public announcement of the decision.²¹⁴³ In this case

Brasil," 69.

²¹³⁵ IPEA, "Caracterização e Quadros de Análise Comparativa Da Governança Metropolitana No Brasil," 67-69.

²¹³⁶ CGU, "Relatório de Avaliacao Da Execucao: Programa Minha Casa, Minha Vida- FGTS," 54; Brasil, Access to Information Bill.

²¹³⁷ CGU, "Relatório de Avaliacao Da Execucao: Programa Minha Casa, Minha Vida- FGTS," 54; Brasil, Access to Information Bill. Among those messages, 104 were accusations, 94 complaints, 144 demands.

²¹³⁸ Arnstein, 217.

²¹³⁹ Id.

²¹⁴⁰ Brasil, P. 163, 2.1-2.2.

²¹⁴¹ Brasil, P. 163, 2.4.

²¹⁴² Brasil, L. 9.784; Brasil, D. 8.420, art. 15-15, 41-43. This general administrative procedure subjects enterprises incurring in any infringements concerning the general public procurement law, anti-bribery law, or those mentioned by art. 6, L. 12.836. General guidelines to the Brazilian administrative law can be found in L. 9.784 or, depending on the matter, on sparse regulations, such as D. 8.420.

²¹⁴³ Brasil, D. 8.420, art. 4, 15-16.

of internal control, not only the head of office of the respective Executive Institution (e.g. Ministry of Cities) is supposed to lead the procedure, but also the Comptroller General – CGU may install and lead procedures under specific circumstances given by the norm.²¹⁴⁴

Disciplinary administrative process

Moreover, the Disciplinary Administrative Process (processo administrativo disciplinar – PAD) is another internal control process but exclusive for holding public servants of the Brazilian federal administration accountable.²¹⁴⁵ Based on principles of the due process of law, such as *audi alteram partem*. In this case, a head of department conducts procedures of preliminary investigation, inquiry, a general or a disciplinary administrative process.²¹⁴⁶ Two types of procedures may be installed: an inquiry or an administrative process. The latter homonym procedure is more complex and entails different procedures and phases, with the requirements to be conducted by at least three public servants with equal or higher education degrees of the defendant.²¹⁴⁷ An inquiry is a summary procedure for “low level infringements”, which may install an administrative disciplinary process, depending on the gravity of results found.²¹⁴⁸ According to a report from CGU²¹⁴⁹, from 2003 to 2019, a total of 7,588 sanctions of expulsion have been applied to federal public servants.²¹⁵⁰ However, the norm creates legal confusion by naming one of its administrative procedures exactly like its main process and even for forgetting to detail on procedures.²¹⁵¹

²¹⁴⁴ Brasil, D. 8.420, art. 13-14.

²¹⁴⁵ See Brasil, L. 8.112, art. 143; Brasil, Ministerio de Estado do Controle e da Transparência, Portaria 335, de 30 de maio de 2006, P. 335 (2006); CGU, Manual de Processo Administrativo Disciplinar, 35; Furtado, 862-64. Excluded from PAD are e.g. political agents, the military, private agents in contract with the public administration, temporary workers, interns, *celetistas*, as well as international consultants.

²¹⁴⁶ Brasil, P. 335, art. 3, para.

²¹⁴⁷ Furtado, 863.

²¹⁴⁸ Furtado, 862-64.

²¹⁴⁹ Brasil, Decreto 966-A, de 7 de novembro de 1890, D. 966-A (1890); Brasil, Constituição da República Federativa do Brasil de 1967, CF 67 (1967); Brasil, Lei 13.844, de 18 de junho de 2019, L. 13.844 (2019), art. 51; Brasil, L. 10.683, art. 18 (Currently regulated by L. 13.844, that repealed previous norms). Created in 2003, the Ministry of Transparency and Comptroller General – CGU was created to conduct the internal supervision of other organs of the public administration. It is also responsible for the prevention and combat of corruption and for improving transparency in the context of the public administration, what includes MCMV. Yet, in Brazil, the *Ministerio Publico* (Prosecutor’s Office), the Comptroller’s General Office – CGU and the *Tribunal de Contas da Uniao* – TCU share monitoring and control roles. Brazil’s first administrative court was created in 1890, although it was in 1967, that the military dictatorship created the system in the structure known nowadays, amended by the democratic constitution of 1988.

²¹⁵⁰ Controladoria Geral da Uniao, “Relatório de Acompanhamento Das Punições Expulsivas Aplicadas a Servidores Estatutários Do Poder Executivo Federal” (Brasilia: CGU, 2019), 1.

²¹⁵¹ Brasil, L. 8.112, art. 143, 156; 15-19.

6.4 Summary

In sum, it must be clear that rules cannot actively violate human rights, on the contrary, they must progressively materialize the right to adequate housing. However, everything and everyone is prone to error. Therefore, a harmonic relation requires any eventual wrongdoings to be democratically remediated.

Based on those premises, this work diagnosed that the analyzed social housing programs must have their enforcement dimension also redesigned to implement transparent and accessible remedies that can guarantee timely, effective, affordable, non-discriminatory solutions. The identified legal reforms in this enforceability dimension should particularly ensure access (to justice) and participation (citizen-control).

Exit clauses and sanctions over beneficiaries were found to challenge the rights-based goals of the analyzed programs (6.1.1). Although beneficiaries could be excluded from programs if any legal or contractual obligations were breached such as lack of payment (6.1.1.3), or the presentation of false information (6.1.1.4), programs allowed beneficiaries to withdraw from social housing programs only exceptionally (6.1.1.2). Additionally, beneficiaries could also be sanctioned if caught using the property for other purposes than their own or their family's residency, including if renting the dwelling or for business purposes (6.1.1.5). The Chilean Ministry, however, innovated with the creation of a mobility system, that enabled SERVIU to authorize the alienation, encumbrance or transfer of the use and enjoyment of the property before prohibitions expired. Furthermore, a mismatched design of responsibility and answerability dimensions was diagnosed in particular MCMV scenarios (6.1.1.6). Mistakenly, exclusion led fundamentally to evictions, and consequently, to more vulnerability of those individuals who did not have their right to housing guaranteed. From a rights-based perspective, sanctions should be either excluded or reformed to support and assist compliance, depending on the case (6.1.1.7).

This the first section also concluded that there is an urgency to facilitate access to grievance and redress to the most-vulnerable (6.1.2). Objects of analysis, women (6.1.2.1), migrants (6.1.2.2), the elderly and disabled persons (6.1.2.3), homeless (6.1.2.4), indigenous and afro-descendent persons (6.1.2.5) tend to fear accessing the judiciary, and to deal with the lack of diligence and with ineffective remedies. This calls for reforms for enhanced free and mobile legal assistance, specialized training for frontline professionals, adequate cultural and language designs, improved targeting mechanisms (answerability dimension). States must ensure that they do not, under any circumstances, violate human rights. Instead, they must act for the progressive materialization of the right to adequate housing.

For that, Brazil and Chile should focus on improving constitutional remedies to social housing right-holders. It was diagnosed that those legal systems present a series of limitations (6.1.3.1). Constitutional remedies tended to be rather generic, such as habeas data (6.1.3.1.1-2) or too limited, such as the writ of mandamus (6.1.3.1.3). The Brazilian system could ensure more specific remedies against extreme violations to housing rights, as in the example of usucapiao and ZEIS, which are two mechanisms that guaranteed the regularization of illegally occupied areas (6.1.3.1.4). As an instrument created to hold duty-bearers accountable, the *ação civil pública* should too enable less formal and more consistent eligibility requirements (6.1.3.1.7).

Subverted understandings of Courts against the protection of the right to adequate housing have led to human rights violations (6.1.3.1.9-10). Changes are urged particularly in Chile, where the right to housing must yet be constitutionally acknowledged. The Brazilian Supreme Court pends at time to the understanding of the existence of the minimum existential and to its applicability towards social rights.

International mechanisms were evidenced to play a key role in the redress of violations to human rights when domestic mechanisms fail (6.1.3.2). National ombudspersons also strongly contributed for the materialization of housing rights at the local level, for which their work should be facilitated particularly with the creation of specialized organs (6.1.3.3). In neither countries did a special quasi-judicial institution advocate for the right to adequate housing. In the best situation, departments have been created, like in the case of Brazil's working group of the *Procuradoria Federal dos Direitos do Cidadão*. The Brazilian *Defensoria Pública* and Public Prosecutor's office shared a strong role in protecting human rights in Brazil. However, it was also evidenced that stronger judicial remedies on housing rights could amplify those positive impacts of ombudspersons. Inspired by Brazilian public prosecutors and defenders and by the international role of the Special Rapporteur on the Right to Adequate Housing, the creation of domestic ombudspersons in Chile should improve a rights-based approach to control and remediation in Chile.

Furthermore, despite the existence of progressive mechanisms in other domestic social programs such as *Bolsa Família* in Brazil, social accountability mechanisms have been underused in both contexts (6.1.3.4). This work diagnosed community members lacking direct involvement in control, monitoring and evaluation of projects and, when a participatory design was created, as in the case of D.S. 49 and FDS models, participation was still limited. Councils and associations at national and local level could improve participatory mechanisms, but the most vigorous example, ConCidades, has already been co-extinguished (6.1.3.4.1-2).

Furthermore, exit clauses and sanctions for service providers were diagnosed to lack clarity and objectivity, partly because of diffuse national legal systems (6.2.1). Generally, if caught in wrong-doings, service providers will be excluded from social housing programs and may face administrative, civil and criminal charges. Overall, this research identified weak means of communication and non-transparent procedures challenging the access of the most-vulnerable to control and remediation (6.2.2). Supporting entities could better assist beneficiaries in the communication of local demands to both service providers and governmental actors by carrying the responsibility to inform, train and provide legal support to families, if those obligations were so set as mandatory (6.2.2.1). The “participatory diagnose” is a useful “first-step” participatory approach, although there is more room for engagement. Service providers and government should not only actively engage with beneficiaries, be it through the use of information from hotlines, letter-boxes or even via personal complaints and social workers. They should also enable remediation through diligent grievance mechanisms, feedback, information transparency, further knowledge capacity expansion and full citizen-control ²¹⁵²over policies.

Moreover, the exploration of exit and sanctions affecting public servants (6.3.1.1) and public entities (6.3.1.2) evidenced an exceptionality in Brazil: there, even member-states and municipalities could face exclusion from programs due to non-compliance. It also concluded that Chilean system more prone to better accountability relations because D.S. 1, D.S. 19 and D.S. 49 accommodated fairly clearer and more transparent systems of rules for service providers than MCMV, which presented prolix and obscure legal examples in diffused norms. Nevertheless, extensive reforms are urgently needed in both legal structures.

For control and remediation, National Action Plans could too be reformed/created with a mandatory nuclear structure, where service providers are to be required to respect human rights (6.3.2.1). Both Brazilian and Chilean models created a framework limiting control, grievance and redress to its central Ministries, delegated organs, administrative, judicial and even quasi-judicial structures (6.3.2-3). External control bodies (6.3.2.2) made often use of administrative procedures (6.3.2.2.1), audits (6.3.2.2.2), financial investigations (6.3.2.2.3), quasi-judicial, local level and grievance mechanisms (6.3.2.2.4-6).

Particularly quasi-judicial mechanisms enabled faster and cheaper access to justice (6.3.2.2.4). PROCON and SERNAC, as well as the Consejo de la Transparencia, offered non-judicial support to beneficiaries, but they were neither specialized in the (social) housing context. At the local-level, Chilean city councils and *jueces de policia local*, influenced social housing (6.3.2.2.5). But direct

²¹⁵² Arnstein.

grievance mechanisms within the structures of the social programs, only exceptionally evidenced in D.S. 1 and D.S. 49, failed to transparently design their own procedures (6.3.2.2.6). For that, the influence of non-institutionalized bottom-up instruments led by grass-roots movements and the media was observed to be essential in a healthy democracy (6.3.2.2.7). However, in a violation to human rights, the use of force and violence to inhibit social pressure has been reported in both countries.

Overall, internal mechanisms of administrative control failed to produce clear, transparent, consistent enforcement (6.3.2.3). In a harmonic process, the accountability dimensions must communicate with each other under those “best” principles, in which they enable one other their best performance (6.3.2.3.1). Despite legal confusions created by the legislator, Brazilian administrative procedures enable the internal control of public servants (6.3.2.3.2-3). They can furthermore inspire in the creation of internal procedures in social (housing) programs.

7 Synthesis and Discussion

Underpinned by a critical assessment of the human rights-based approach, this study aimed at finding out the difference in accountability relations between Brazilian and Chilean case studies. This study elaborated on several findings and indicated necessary reforms in accountability relations of the case case studies. Ultimately, it became clear that, from a rights-based perspective, both models of social housing were inconsistent with their sole existential reason: the provision of adequate housing.

In sum, the accountability relations of two national social housing policies and a total of 7 programs were object of the legal comparison. In respect to those cases, three dimensions of accountability were analyzed, namely responsibility, answerability and enforcement. As a conclusion, this work defends that social housing strategies should provide the most vulnerable with adequate minimum housing standards, as well as ensure grievance and redress against duty-bearers that are responsible, answerable and enforceable.²¹⁵³

The assessment of the responsibility dimension shed light to actors, particularly in respect to legal clarity and transparency, and to the use of consistent, coordinated, decentralized and, participatory legal frameworks. The answerability dimension addressed the obligations of those actors to inform, justify and respond under those same previous criteria, as well as to housing adequacy standards set by the international agenda.²¹⁵⁴ Mechanisms of control were furthermore examined in regard to justiciability and accessibility, as well as to consistency, transparency and participation.

Better accountability was chosen as an strategic approach, because it can provide key answers for democratic public policies.²¹⁵⁵ But it is its influence from the rights-based approach that enables the materialization of human rights.²¹⁵⁶ Therefore, the combination of those two theories was advocated by this work. At the theoretical level, it was also possible to integrate the rights-based approach to an accountability framework because both shared an identification of two internal levels: legal guidelines to standards (or virtues) as well as of mechanisms of operations.

²¹⁵³ OHCHR, HR/PUB/13/1; UNDG, “The Human Rights Based Approach to Development Cooperation”; Ackerman, “Human Rights and Social Accountability;” World Bank, *World Development Report 2004*.

²¹⁵⁴ Clarity, transparency, objectivity, coordination, participation, decentralization, consistency, simplicity, accessibility, justiciability, security of tenure, targeting/ inclusion, gender-Response, equality & non-discrimination, health standards, habitability, availability of resources, sustainability, affordability, spatial-distribution. *See* Table 1.

²¹⁵⁵ World Bank, “World Development Report 2004”; Bovens, Schillemans and Goodin; Bovens. *See* chapter 2.

²¹⁵⁶ Kaltenborn; OHCHR, HR/PUB/13/1; Sepulveda, “General Introduction”. *See* chapter 2.

Moreover, the analogous scenarios of the case studies enabled this legal comparison.²¹⁵⁷ Parallels in legal, historical, socio-economical, political developments of Brazil and Chile triggered the creation of those analyzed housing programs with similar aims to construct and deliver social housing to those in vulnerability. As well, the division in two similar legal settings with structural categories for urban households (“most-vulnerable” and “emergent”) facilitated the creation of the analytical framework.

Although the success of social housing is limited to, among others, the political influence over socio-economic policies, this legal study was crucial for various reasons. Through the revision of the analyzed legal frameworks, the presented findings can impact on the improvement of social housing programs in the short-term through the adjustment of accountability relations. And in the long-term, those findings suggested recommendations that can be used generally to any social housing ownership scheme. Thus, this work was also justified by a long-term goal to support social justice, for it provided recommendations on how states may fulfill their obligations on the human right to housing²¹⁵⁸ and on how to improve accountability.²¹⁵⁹

By shedding light over legal accountability reforms from a rights-based perspective, this discussion provided grounds for further interdisciplinary, more comprehensive policy studies on the same or alternative case studies. Breaking off the language barrier was also essential for further studies in Brazil and Chile, to which the detailed legal evidence and critical conclusions of this work can be used as source for further exploration of the case studies. Therefore, this study generated essential development to the legal academic literature on Latin American countries.

This documental analysis contemplated domestic and international laws, doctrine, policy, jurisprudence, governmental, academic and private sector reports. This research also took into consideration the perspective of independent watchdogs, press statements, social media, and public information of different organizations, including of the private sector. Interviews controlled this critical analysis, bringing a practical perspective to the interpretation of those models.

Chapter 2 introduced the theoretical framework with the general concept of accountability, followed by the examination of the rights-based approach and of the right to adequate housing. A final section also discussed the academic literature on accountability relations in the context of social housing programs. Chapter 3 organized an introduction to the specific context of the case studies. A presentation of historical, political and social-economical backgrounds of Brazil and Chile substantiated their selection for this comparative research.

²¹⁵⁷ See chapter 3.

²¹⁵⁸ UNGA, ICESCR, art. 11; UN CESCR, GC4.

²¹⁵⁹ HRC, A/HRC/37/53, 101-109.

Then, it followed to outline administrative law fundamentals of those legal systems. It was also crucial to review the development of housing policies and of justiciability in both models. Chapters 4 to 6 critically assessed and compared the similarities and differences of the case studies in respect to the accountability dimensions of responsibility (4), answerability (5) and enforcement (6). This final chapter (7) will provide a quick synopsis and a final debate on the most significant findings, returning to the critiques, remarks and suggestions of chapters 4, 5, and 6 in respect to responsibility (7.1), answerability (7.2) and enforcement (7.3).

7.1 Responsibility in focus

The first research question inquired who were the main actors, what were their respective roles and responsibilities in the accountability context, and how did they differ among each other in the respective case studies. In sum, instead of three, there were, at times, four sides illustrating basic legal accountability relations: a *beneficiary*, at times assisted by a *supporting entity*, who purchased a dwelling subsidized by the *government*, a work led by a *service provider*, which could be e.g. a small business firm or a large corporation. Financial institutions, although of private nature, often played alongside the governmental side of the relationship, as Caixa, in MCMV. Those exact actors and their intermediators were found to be different, yet substantially relatable in all cases of the responsibilities they carried.

Looking from a rights-based perspective, this work diagnosed that both programs created similar structures of responsibilities. Those structures, at a first look, supported accountability, but they presented issues in relation to transparency, clarity, simplicity, objectivity, consistency, decentralization, coordination and participation. Those vices affected answerability and enforcement dimensions.

Accountability relations were particularly impacted to overall inconsistencies to the rights-based approach. For example, MCMV, D.S. 1. D.S. 19 and D.S. 49 challenged responsibility for understanding beneficiaries as regular consumers. That defied the fundamentals of the rights-based approach insofar as those vices hindered progressive norms as well as control based on the vision that beneficiaries are right-holders. As a consequence, that misconception also perpetuated into violations to human rights, including unaffordability and inequality.

Additionally, overlapped or cumulative functions of governmental actors and service providers were issues evidenced in those models, caused also by the unclear legal systems.²¹⁶⁰ They demonstrated a lack of consistency, coordination and decentralization in the roles of organs. For example, in MCMV, the roles of operational and financial agents have particularly cumulated in Caixa. The roles

²¹⁶⁰ See section Service Providers.

of SEREMI, SERVIU, and MINVU overlapped, in a confusing responsibility scheme.

In both Brazilian and Chilean models, supporting entities played an unexpected key role.²¹⁶¹ Originally related to social assistance, they presented a different nature from other service providers, who endured a for-profit character, such as financial agents or construction firms. Consistent fundamentally of private and non-profit actors, they were delegated with assistance to the most-poor. Depending on the respective rules of each program, when required, supporting entities intermediated communication channels among beneficiaries and governmental and private actors, by engaging in local-level decision-making and management tasks.

For directly engaging with beneficiaries and for mediating demands to and from the local level, the existence of supporting entities enabled more efficient accountability relations. Their interference positively impacted the operationalization of decentralization and participation.²¹⁶² Therefore, legal reforms activating the role of supporting entities can directly impact answerability and enforcement, because those stakeholders can bridge individual beneficiaries to other actors, henceforth influencing the success of a rights-based approach to accountability.

Findings showed that, particularly in Chile's D.S. 49, supporting entities engaged in more expanded aspects of social assistance, in which they led participatory mechanisms of decision-making. D.S. 49 policy strategy evoked all project-applicants to participate in project-planning. During D.S. 49 project phase for Organization of Demand, Design and Execution, supporting entities were responsible and answerable for the communication tasks and the engagement of families in project development, as in the provision of feedback.²¹⁶³ They assisted in various matters related to planning, implementation, delivery, and post-delivery, including legal assistance and household registration programs.²¹⁶⁴

In contrast, MCMV-E (FDS-funded track) created a participatory approach, which however discriminated engagement, by only selecting a limited number of beneficiaries for two defined commissions. Participants of CAO were designed to issue the acceptance of a project planned by a third party²¹⁶⁵, whereas CRE-beneficiaries were responsible for certain financial aspects of the project. This difference in the range of obligations and responsibilities of local supporting agents and in participatory decision-making mechanisms significantly impacted on accountability dimensions. However, the restrictive decision-making

²¹⁶¹ See figure 2.

²¹⁶² See section Supporting entities.

²¹⁶³ Chile, D.S. 49, art. 51,1.1, c.2, 1.2, a.

²¹⁶⁴ Chile, D.S. 49, art. 56.

²¹⁶⁵ See section Supporting entities Brasil, I.N. 12.

power of the commissions, already limited by the restrictive participation of only elected beneficiaries, must be reformed, also because, in sum, although responsibility was selective, all beneficiaries were answerable for their projects.

A worsened scenario was evaluated in D.S. 1, Title II and FGTS-Individual categories, that excluded the role of supporting entities. In such cases, beneficiaries had no assistance, lacking too rights-based mechanisms that could support their participation, inclusion and decision-making. The traditional accountability triangle was identified under that traditional concept: beneficiaries, service providers, and government actors were bound to the accountability relation, whereas other actors, such as forums and ombudspersons could exercise influence if requested.²¹⁶⁶ In sum, those programs targeted better-off categories, who were not entitled to social assistance hence the exclusion of the supporting role.

However, even though they might not live under the poverty line, those families have been finding themselves in a condition of vulnerability, because their human right to housing was fundamentally violated. Therefore, they ought too be granted social assistance. Thus, changes are required in both Brazilian and Chilean programs in order to grant social assistance to emergent categories via supporting entities.

In another challenging finding, FAR introduced public entities in the role of supporting entities in social assistance tasks.²¹⁶⁷ In other words, the strongly subsidized track developed a top-down approach that did not furnish beneficiaries with rights-based mechanisms. By rejecting the use of supporting entities, MCMV did not consider the lack of enforcement against local public entities, their geographical disparity and their non-specialized nature. The program also legally refrained from engaging beneficiaries in planning and decision-making processes, in which case local public entities operated mainly based on obligations to inform and train beneficiaries for the new habitat. That is too little compared to the social demand of beneficiaries, who had their decision-making power removed. Based on that, this accountability structure affected enforcement of rights-based guidelines e.g. of the democratic management of the city and induced the generation of a top-down approach, that requires urgent reform.

However, this study also came to the conclusion that, in all analyzed programs, supporting entities mainly took roles of information and consultation.²¹⁶⁸ Legal structures could have adopted a more strong agency supporting a genuine articulation of voice by beneficiaries. Therefore, not only the role of supporting entities should be activated, but also their obligations towards beneficiaries and an overall answerability with the use of extended participatory mechanisms.

²¹⁶⁶ Chile, D.S. 1, art. 62.

²¹⁶⁷ Brasil, P. 464, Annex III, 2.5.

²¹⁶⁸ Arnstein, 217.

That way, supporting entities could better exercise control and assist beneficiaries in the exercise of social accountability and grievance.

The harmonization of both a program's strategic model within its accountability dimensions can solve this participatory issue. Expanded mechanisms that include all beneficiaries in decision-making should be thrived. MCMV should too expand the obligations of supporting entities at the local level to all its programs, particularly in mechanisms of participatory project-planning and social control, and in their legal and social assistance through the various project phases. In Chile, the inspirational examples observed in D.S. 49 should be expanded to a more genuine decision-making capacity of beneficiaries in all project categories, since D.S. 1 and D.S. 19 failed to create a similar participatory legal framework to D.S. 49.

NGOs, civic-based organizations, watchdogs, academic institutions, deliberative, participative, consultive, and control organs balanced those relations specially in democratic platforms. Their role, or better saying, their capacity to engage in a dialogue with government and private actors, combined with an efficient answerability dimension where obligations and mechanisms are properly set, directly influenced the capacity to enforce. Suggestions should focus in the corroboration of the role of specialized and (eventually) independent Ombudspersons in both models, the reinstallation of ConCidades and the expansion of its role, as well as the creation of a similar participatory institution in Chile. Yet, their action also depends on mechanisms of grievance and redress, which should be justiciable and accessible.²¹⁶⁹

Target and calibrate

In all social housing programs, beneficiaries referred to a majority of women, possibly heads of households, living under the poverty line or slightly better-off, but incapable of providing adequate housing for their own family.²¹⁷⁰ A quote from 6 to 20% referred to disabled and elderly persons.²¹⁷¹ However, those numbers do not indicate that the most-vulnerable have been in focus. As

²¹⁶⁹ As observed in chapter 6.

²¹⁷⁰ In Brazil, as of 2015, at least 77% of all low-income MCMV beneficiary-households were headed by women (ONU Mulheres, Entidade das Nações Unidas para a Igualdade de Gênero e o Empoderamento das Mulheres, 30). From 2011 to 2018, women referred to 81% of all most-vulnerable selections of D.S. 49 (Reporte D.S.49, MINVU, in Observatorio Urbano and Centro de Estudios Ciudad y Territorio, 15). That preference over male counterparts seems to follow a general female vulnerability: eighty-two per cent of Chile's 40% most poor persons are women (Reporte D.S.49, MINVU, in Observatorio Urbano and Centro de Estudios Ciudad y Territorio, 7).

²¹⁷¹ The number of disabled beneficiaries selected for D.S. 49 more than trippled: from 2,2%, in 2011, to 7,3%, in 2019 (Observatorio Urbano and Centro de Estudios Ciudad y Territorio, 9). The elderly have been selected under a substantially stable rate along the years, as they regard a majority of women and, in total, sum up to 10,7% of all selected since the program was launched (Observatorio Urbano and Centro de Estudios Ciudad y Territorio, 10).

diagnosed by this work, a series of misconceptions diagnosed showed that urgent reforms must be conducted in both models, in order to improve targeting and address inequality, discrimination, and vulnerability.

In MCMV, D.S. 1, D.S. 19 and D.S. 49, beneficiaries were divided in two main categories, of most-vulnerable and emergent households.²¹⁷² They envisaged different forms of calculation, contribution and benefit levels. As this study could observe, vulnerable beneficiaries were expected to live under the poverty line, what means too, that they tend to face more extreme vulnerability than emergent households. In contrast, emergent Brazilian and Chilean categories were granted less rights and imposed more financial burdens than vulnerable beneficiaries. At times, in the highest-income categories, the contributory model used in the case studies was strongly similar to that of the private consumer market: with the use of interest rates or loans. Those better-off categories were neither granted the right to social assistance.

The basic definition of beneficiary in both programs was highly connected with their obligations, to which they were answerable to and, eventually, in case of non-compliance, could suffer the sanction of eviction. In such a context, all three accountability dimensions must be reformed harmonically, because any vices or misconceptions can lead to several human rights violations, as observed by the findings.

Definitions of beneficiaries in both models must be simplified and consistently calibrated to targeting. Overall, transparency and clarity issues extend through the definition of category thresholds, as this work diagnosed²¹⁷³ that both models did not address matters of intersectional and compound discrimination nor essential vulnerability matters in their designs. The Chilean categories also showed legal inconsistency, for they did not take into consideration the existential endangerment that (even a slight) income difference may offer to poor households.²¹⁷⁴

Procedural problems with the legal definition of categories were particularly identified in the Chilean model. On the one hand, D.S. 49 limits application rule to made the most-poor 40% Chileans eligible. D.S. 19,²¹⁷⁵ on the other hand, accepted the 50% most-poor, and accepted those applicants from D.S. 49. But the disparities in income and social conditions observed between the 40% and 50% most poor Chileans was significant.²¹⁷⁶ The design put better-off households in equal competition with most-poor ones and decreased the chances of

²¹⁷² See sections 4.1 and 5.1.

²¹⁷³ See section Beneficiaries.

²¹⁷⁴ See section Beneficiaries.

²¹⁷⁵ It must be remembered that D.S. 1 and D.S. 49, as well as social housing beneficiaries from other programs can apply to D.S. 19 with their subsidy certificate.

²¹⁷⁶ See sections Vulnerable categories: FAR, FDS, D.S. 19 and D.S. 49 Emergent categories:

the most-poor Chileans (40%). In the end, that structure created equal eligibility conditions for unequal households. This measure must be corrected under rights-based lens. Such decisions must be calibrated looking closer at vulnerability and intersectional and compound discrimination or at least find a plausible justification. It was also evidenced that, although structures were similar among Chilean programs, there was no justified reason why those strategies could not be unified or even use unified concepts.

Furthermore, higher subsidies were granted in Brazil and Chile depending on the region of the dwelling.²¹⁷⁷ Yet, contrary concepts were applied to those models.²¹⁷⁸ The justification of such key legal settings could be transparently communicated by the legislator, in a way to enable eventual control.

Another diagnosed issue was the lack of a unison legal definition for the concept of *beneficiário*. Only defined in specific D.S. 1 and FAR-funded regulations, it was not clear how related national projects evidenced their targeted stakeholder. Furthermore, from a rights-based perspective, there are calls for adjustments to adapt the Chilean definition of family that, as a rule, excludes single-person households from application.

Based on general reports of abuses against LGBTQ+ persons and on specific claims addressing discrimination in social program registries, same-sex families should also be expressly included in the concept of household for social housing programs.²¹⁷⁹ Therefore, households should be defined based on solidarity and economic ties.²¹⁸⁰ The conceptual definition of “family” developed through out the years, though an express unison clarification of the concept that welcomes all forms of families should erase any doubts of an inclusionary policy approach.²¹⁸¹ At their best, category definitions, based on eligibility criteria and selection procedures, should be calibrated observing a human rights-based perspective, which is neither an easy approach.²¹⁸² Nevertheless, the needs of the most-vulnerable should be made target of social housing policies.

FGTS (1.5, 2 and 3), D.S. 1 and D.S. 19. Chile’s GMHI of the 40% most-poor refers to 85,634CLP or ca. 134USD; whereas from the 41-50%, to 189,073CLP or ca. 296USD (CUEX; Chile, Ministerio de Desarrollo Social, ORD, DAF 2822, 2, e).

²¹⁷⁷ See **Table 3: Beneficiaries and their categories in MCMV, D.S.49, D.S.19, D.S. 1.**

²¹⁷⁸ For example, dwellers of metropolises, such as Brasilia, Rio and Sao Paulo, were granted the highest subsidies, whereas, in Chile, those living in geographically excluded regions, such as *Atacama* or the *Antartica Chilena*, were favored with extra subsidies.

²¹⁷⁹ For years, same-sex marriage had not been recognized in neither countries. Particularly in Chile, same-sex couples would be excluded from social housing programs that, as a rule, neither accepted single-person applications. See details on HRC, A/HRC/29/23; CRC, CRC/C/CHL/CO/3.

²¹⁸⁰ OECD, s.v. “Household.”

²¹⁸¹ A possible solution came from FGTS regulation. Brasil, I.N. 42, art. 1.1.1.

²¹⁸² See section Rights-based critics.

Furthermore, this study confirmed from several legal examples that the case studies did not consider beneficiaries as full right-holders.²¹⁸³ In fact, in the context of MCMV, D.S. 1, D.S. 19 and D.S. 49 programs, they have been rather treated as consumers. Applicants were not certified proprietaries or nor even residents of a dwelling from the time of contract or subsidy formalization. Indeed, such an expectation requires high levels of efficiency, but the aftermath of beneficiaries lacking a household in despite of their contract or certificate showed to be a central issue of concern and should ensure reforms for guarantees.

Despite the rights-based guidelines used in the Brazilian framework, this system provided worsened conditions to beneficiaries. This is an unexpected finding because an specific operational behavior goes against a system's goals. For example, the use of the particular impact of loans over better-off households directly impact on unaffordability conditions, similar to those found among private consumers.²¹⁸⁴ The Brazilian contract expressively depicted the beneficiary in the figure of a consumer in a private instrument of purchase, who is bound to a clause of fiduciary alienation.²¹⁸⁵ However, those strategies are incorrect, because housing should be acknowledged as a human right.²¹⁸⁶ This crucial aspect must be urgently adapted for the creation of a unison legal definition that can refer to all social housing programs, in order to guarantee not only clarity and transparency, but also a rights-based perspective.

Additionally, none of the presented legal definitions addressed beneficiaries as right-holders in compliance to the international agenda. That essential terminology was in not all programs designed and, when so, it was not consistent with a human rights-based understanding of a right-holder as to an individual granted the social benefit attached to the right to housing. On the contrary, it was presented closer to that of a purchaser (or consumer) and, at times, discriminatory.²¹⁸⁷

Indeed, the Chilean model was more empathic to the role of a right-holder, for it created a certificate of subsidy. At least, formally, this form does not shine analogies to a private contract. Not only the nature of a certificate was more prone to consider the non-consumer identity of beneficiaries, but also, that cer-

²¹⁸³ See section **Right-holders** Legal definitions.

²¹⁸⁴ See sections **(Un)Affordability**.

²¹⁸⁵ Kumar, 348-349; Brasil, L. 9.514, art. 22-23; Brasil, Civil Code, art. 1.361 a 1.368-B; Annex I, Clause 7. See section 5.1.1.5-7.

²¹⁸⁶ See more UNGA, A/71/310.

²¹⁸⁷ See previous subsection on the creation of the term family and its consequences and sections 4.1.4 and 5.1.2.1. See details on HRC, A/HRC/29/23; CRC, CRC/C/CHL/CO/3.

tificate involved official documents that defined governmental agents and development entities, information that at times was excluded by Brazilian contracts, such as in the FAR-funded model.

All studied Brazilian contracts were based on the institute of fiduciary alienation, which provided the property in guarantee until the full payment of the debit. Exceptionally, Chilean emergent categories in possession of a loan were expected to provide the dwelling in guarantee. Under the enforcement dimension, such a rule has been giving grounds for an unstable interpretation of security of tenure and consequent forced evictions.

As observed by this study, an efficient legal reform should be undertaken to clarify the definition of a beneficiary based on their role of right-holder. MCMV should exclude the formalization of contracts in behalf of subsidy certificates.²¹⁸⁸ In addition, consumer laws, such as institutions as fiduciary alienation and the use of the property in guarantee, should not be applied to social housing contexts, and particularly not in respect to vulnerable categories, because they challenge the fundamental meaning of guaranteeing access to housing. But not only formal measures should be taken. Intrinsic values of the judiciary must be reformed in both models so that courts finally examine housing as a human right.²¹⁸⁹ That also depends on the availability of effective remedies and on the legal acknowledgment of that constitutional right, an examined key issue in Chile.²¹⁹⁰

In this fashion, responsibility, answerability and enforcement become interconnected. That basic definition follows to substantiate the entry requisites of a beneficiary, which are nonetheless some of the criteria to which they are answerable for and of which they may be sanctioned in case of non-compliance. If beneficiaries are for once acknowledged as right-holders and under equal and anti-discriminatory settings, then efficient redress and grievance mechanisms could be activated to ensure the remediation of any legal violations. Therefore, the urgent need of the creation of a harmonic (dimension-wise) rights-based definition of that stakeholder.

Ensure consistency

As duty-bearers, construction firms were expected to sign legal contracts with central governments, backed by minimum standards set by the norm. Their roles did not suffer substantial changes between projects for most-vulnerable and emergent categories. In fact, they integrated those different schemes as fundamentally expected.

²¹⁸⁸ See sections Legal definitions , Beneficiaries, and Annexes.

²¹⁸⁹ See sections 3.5, 6.1.1 and 6.4.1.

²¹⁹⁰ See sections 3.5, 6.1.1 and 6.3.1.4.

Yet, financial agents had substantially different roles in Brazilian and Chilean programs.²¹⁹¹ Particularly in D.S. 1, D.S. 19 and D.S. 49, those traditionally private actors, but also state-owned banks, mainly financed construction works. In MCMV, two state-owned banks subsidized housing with resources partially or completely managed by the federal government. This strong governmental influence in MCMV led by Caixa, which took an official management role, but also often, a financial role. Banco do Brasil, another Brazilian state-owned bank, also took a financial role alongside with Caixa, though other public or private financial institutions were underrepresented in MCMV.

International cooperation was overall recommended, particularly for it should support adequacy to international standards. Additionally, programs must avoid unnecessary inconsistencies among procedures at the domestic level. Basically, divergence started with the usage of different terminologies for supporting entities, including *entidades desarrolladoras*, *entidades patrocinadoras*, *entidades organizadoras*, *entidades promotoras*, *entidades executoras (do trabalho social)*. Different nomenclatures provided by the judiciary and the legislative also created confusion concerning operational, financial, and executor agents²¹⁹², as legal definitions lacked clarity in the concept and nature of financial institutions in programs. Although D.S. 1 brought a clear and simple concept, other programs did not annotate that concept on their main normative.²¹⁹³ In Brazil, each program proposed a different definition and particularly Caixa had overlapping functions, what impacted on the nature of financial institutions in that model. Such loopholes should be reassessed, essentially with a general social housing norm that consistently annotates on the roles and obligations of involved stakeholders in social housing programs.

The consequences of that misconception were easily observed in the enforcement dimension and Brazilian Courts had to intervene discussing on the role of Caixa. The problem was that a cumulation of roles identified in Caixa surpassed its different names: it created different obligations and overall answerability.²¹⁹⁴ First, the overlapping functions faked a decentralized context, where the government controlled financial investments, management, and monitoring. Second, it created legal confusion about the liability of duty-bearers, in which right-holders could not observe the responsibility framework under clear lens. Thus, the essence of that agency must be reconsidered in the Brazilian context.

Furthermore, this work concluded that sanctions to duty-bearers, public agents or frontline professionals, should be proportional to their legal responsibility and answerability frameworks. For example, a head of department should not

²¹⁹¹ See section 4.2.1-3.

²¹⁹² See sections 4.2.1-2.

²¹⁹³ Chile, D.S. 1, art. 1.

²¹⁹⁴ See section 4.2.2.

skip its leadership obligations, but neither respond for tasks they can not influence when another agent is directly responsible.²¹⁹⁵ Therefore, the necessary clear and consistent description of rules and roles.

It was also encompassed that the international agenda expects business enterprises to develop channels of communication, grievance, and redress, as well as to guarantee for the respect to human rights in the work they provide.²¹⁹⁶ Concerning construction firms, it was evidenced that due-diligence processes based on operational-level grievance mechanisms was fundamentally underdeveloped in all case studies. Their key failure was to mainly focus on means of communication neglecting grievance mechanisms.

It must be remarked that, although none of the key mechanisms proposed by the international agenda can guarantee the respect to human rights by firms, they can bring enterprises to, step-by-step, change their behavior. And this is also what the rights-based approach, advocated by this work, strives for. In the context of the case studies, adjusting regulations in domestic vertical and horizontal levels for more coherence with international human rights laws and obligations could help reshape business' practices and the case studies.

7.2 Answerability in focus

This work followed to compared the difference among social housing strategies by inquiring upon means of responding, informing, and justifying, and the extent to which those procedures fulfill the rights-based approach. A significantly similar legal skeleton was found among all programs regarding concepts, eligibility criteria, application and selection procedures, as well as sanction and exit clauses. And yet, a detailed research on MCMV, D.S. 1, D.S. 19 and D.S. 49 showed that *all* analyzed programs lacked or failed to implement rights-based standards at some level. There were several matters where one national strategy or program successfully approached matters and should inspire all others, at the same time as there were remarks to rules that must be urgently corrected, due to their active violation to human rights.

The deconstruction of answerability was evidenced in both national case studies and revealed to be one of the key problems in those accountability relations. Particularly the lack of non-mandatory commands in the Brazilian framework and issues in justiciability in Chile deconstructed the obligation to answer. Those scenarios triggered an incapacity to enforce and, therefore, overall limited accountability.

²¹⁹⁵ See section 5.3.2.1. Brasil, TCU, Acórdão 673/2018; Brasil, TCU, Acórdão 920/2016.

²¹⁹⁶ OHCHR, HR/PUB/11/04.

Findings showed that MCMV's failure was rooted on its incapacity to manipulate rights-based guidelines into an organizational behavior. This work highlighted weak operational settings, that did not perform as commanded by its own guidelines. At times, guidelines turned into operational instructions were not of mandatory compliance. Correspondingly, other issues evidenced referred to difficult access to basic information, redundancy and verbosity of Brazilian norms. The legislator refrained from objectively pointing out standards or third norms, leading to a generalized lack of clarity. In this fashion, the materialization of human rights resembled only a vague promise of the Brazilian Constitution.

The diffuse legal systems of both case studies made it harder for service providers to comply with all standards, although the Brazilian case was much extreme than the Chilean, for it did not organize references to third norms and like that created legal confusion. Such a scenario particularly impacted beneficiaries, because it constrained their access to information particularly in regard to their entitlements. Overall, that impacted enforceability and created instability inasmuch as it challenged the judiciary to interpret loopholes or legal confusions.

This critical conclusion contrasted the expectations that the Brazilian model could illustrate a more robust rights-based approach than D.S. 1, D.S. 19 and D.S. 49. Though, in fact, MCMV's guidelines acknowledged the outcome of adequate housing, this model failed to mirror them into answerable processes, operations, standards, mechanisms. For that, Chile's model provided punctual and clearer, more transparent, and more consistent alternatives. Yet, it was surprising to identify rights-based mechanisms within the Chilean model, because that framework weakly acknowledges that same approach. For example, Chilean D.S. 1, D.S. 19 and D.S. 49 supported answerability in different forms, be it through time-limitations (deadlines), a more transparent definition of roles and responsibilities, or the creation of operational-level grievance and redress mechanisms. Also in contrast, MCMV application and selection procedures of projects were identified to be non-linear, superfluous at times, but also lacking vital content.

As an example, fundamental mechanisms that directly impacted Chilean social housing refer to the creation of punctual participatory and redress mechanisms in D.S. 49, the support of incrementational architecture in D.S. 1, or the idealization of socio-spatial integration and its translation into selection criteria in D.S. 19. Additionally, specific technical and urban standards were substantially defined in the fundamental norms of those social housing programs. Although disperse regulations also asserted in certain matters, such as the the Bill of Urbanism and Constructions, D.S. 1, D.S. 19 and D.S. 49 often referred to third norms in fairly clear announcements: articles and numbers of third regulations

were annotated along with the main norm, what increased clarity and access to information.

However, this neither solves the main problem of the lack of legal commitment. Accountability mechanisms were used sporadically and did not serve to exclude human rights violations from the Chilean model, because issues in justiciability fundamentally hindered those mechanisms. To begin, the Chilean Political Constitution started by failing to acknowledge the right to adequate housing. And, in express (in the case of D.S. 19's preamble) or omissive (due to the lack of constitutional acknowledgment and remedies in respect to the right to housing) cases, Chile did not foresee the right to housing as an ultimate goal. And, for that at least, the Brazilian model provided several useful solutions.

In the end, findings did not validate a better social housing model in any of the case studies. On the contrary, this work identified violations to the principle of the progressive realization of human rights, as well as violations to principles of non-discrimination, equality, the right to participation in public decisions in Brazil and Chile. Both models fundamentally failed in their approach to the most vulnerable, that discriminated investment to the most-poor in favor of better-off households. Policies also set overall quantitative-led goals that neglected basic standards of adequacy.

For one, legal frameworks did not underline their choices for criteria of benefit levels and standards of eligibility. Rules were created without reference to academic studies, reports, or statistical justifications. Particularly the right to non-discrimination and equality was violated by procedures of eligibility, application, and selection of beneficiaries. In general, matters of compound and intersectional discrimination should have been addressed by both models.

Additionally, eligibility and selection phases issued standards technical or social perspectives, that neither targeted the most-vulnerable or provided a justification for that matter, failing to consistently observe the principle of progressive realization of human rights. Adequacy, as of accessibility, affordability and secure tenure, and a habitable, infra-structured and healthy environment, were only punctually operationalized by projects. Therefore, a discretionary power of legislators overburdened beneficiaries.

In conclusion, the Brazilian legal framework constitutionalized the right to adequate housing and inserted several rights-based guidelines in infra-constitutional norms, in contrast to the Chilean legislator, that has been committed to a (though rights-based limited) operationalization of the housing strategy. That paradoxical systematic developed by Brazilian and Chilean housing models had one result in common: the misconception of the use of all available measures to progressively realize the right to adequate housing. Those legislators should

hence learn from each other's experiences and reform their legal guidelines and operational settings.

Adequate rules

One of the necessary reforms required in both programs is the creation of mandatory settings based on housing adequacy. Sustainability, habitability, availability of services, materials, a healthy environment, access to facilities, and an overall infrastructure were insufficiently tackled by all programs.²¹⁹⁷ In the end, none of the programs was fully adapted to command the fulfillment of adequacy as portrayed by the international sustainable agenda.²¹⁹⁸

Particularly concerning sustainability standards, the legal framework of both countries did not compel duty-bearers to align with progressive standards. On the other way around, it either suggested or recommended the use of best sustainable practices. Although duty-bearers were to be held responsible, obligations were at times set as suggestions, in which case they could not be enforced, or at times, obligations were not timely regulated. For example, Chile's NAP is anyhow mainly a recommendation to business enterprises to respect human rights.²¹⁹⁹ This evident mistake impacted negatively on answerability and enforcement dimensions.

Moreover, Brazilian legal guidelines suggested the use of certain sustainable methods. MCMV attempted to create certain operational settings, such as requiring FGTS-based projects to only use certified wood material.²²⁰⁰ However, there was no overall operative scheme that could change the behavior of duty-bearers for the use of resilient and sustainable techniques. Aspects in which national models were closest trying to conform to international standards were those related to technical urban and health standards, e.g. ventilation, urban grid, safe water, and sewerage. And yet, they referred to non-mandatory guidelines, such as *Cadernos Minha Casa +Sustentável* or *Selo Azul*.²²⁰¹

In another example, MCMV regulation set the respect to socio-spatial and urban design as a legal guideline. However, it did not properly substantiate or operationalize those criteria in its text. The Brazilian FAR and FDS-based regulation would allow the exclusion of certain distance in the socio-spatial integration to

²¹⁹⁷ See UN CESCR, GC4, para 8.

²¹⁹⁸ See for example UNFCCC, Paris agreement; UNGA, New Urban Agenda. See more on ch. 2.

²¹⁹⁹ See section National Action Plans.

²²⁰⁰ CCFGTS, R. 761, Annex 3.VII; Annex V, 32; Annex VI, 37. See section Sustainability in vulnerable categories.

²²⁰¹ "Selo Casa Azul," CEF; Ministerio das Cidades and SNH, "Minha Casa +Sustentável. Caderno 1"; Ministerio das Cidades and SNH, "Minha Casa +Sustentável. Caderno 2"; Ministerio das Cidades and SNH, "Minha Casa +Sustentável. Caderno 3." See section Technical criteria. Or else, in FAR and FDS-funded programs, technical criteria could be excluded from application, creating room for inadequacy (Brasil, P. 660, Annex I, 6.1).

localities where local transport could be provided.²²⁰² However, transportation from peripheral neighborhoods generate financial, social and environmental costs and generates stigma. Or else, urban master plans, which should rule over a “democratic management of the city” and participatory instruments also englobing the MCMV context, failed to portray inclusive and sustainable urban perspectives. Such matters must be carefully taken into consideration when planning for the most-vulnerable and before the creation of this legal exception.

Moreover, in concrete examples, CAO and CRE commissions failed to define legal mechanisms instructing them in how to proceed in the authorization of a project plan.²²⁰³ Moreover, in the FGTS context, a similar matter related to the lack of regulation to the topic of infrastructure condemns it to failure. A federal regulation annotated that all projects had to be situated within the urban grid.²²⁰⁴ However, it did not set technical criteria in its main norm nor refers to a third regulation.

In contrast, in Chile, the accountability structure applying an organizational change was more efficiently created. D.S. 19 fundamentally aimed at socio-spatial integration by aiming to include different economic categories (vulnerable and emergent) in one single project. This work also evidenced the prioritization of projects that characterized best standards in D.S. 19 projects, as well as the creation of several technical criteria²²⁰⁵ defining “distance” to e.g. health centers or more scores to project plans with dwellings that have a bigger construction surface.²²⁰⁶

Indeed, projects should require an adequate definition of close distances from dwellings to vital institutions. Nevertheless, legal standards of D.S. 19 did neither sufficiently comply with the international adequacy agenda, for they failed to substantiate settings for a sustainable, safe, resilient, healthy urban design. Moreover, it was not possible to identify any audits controlling those aspects of D.S. 19. A very similar legal construction in MCMV, controlled via governmental reports, provided this study with the following conclusion: the lack of enforcement over responsible duty-bearers directly affected the implementation of such connected infrastructure.²²⁰⁷

Over and over, by creating a rule via an exception, or by not regulating adequacy criteria, the Brazilian system deconstructed its answerability dimension. In another example, the legal text of a Brazilian norm only required the identification of risk and unhealthy factors in the area of the project, but it did not forbid its

²²⁰² Brasil, P. 660, Annex I, 3.6.2.

²²⁰³ Brasil, I.N. 12, Annex I, 1.1.f. *See* sections 6.1 and 6.2.1.

²²⁰⁴ Brasil, P. 570, 2, I.

²²⁰⁵ Chile, D.S. 19, Preamble, art. 10-11.

²²⁰⁶ Chile, D.S. 19, art. 9, a.

²²⁰⁷ TCU, “Relatório de Auditoria no Programa Minha Casa Minha Vida,” para 156, graph 12.

construction.²²⁰⁸ In addition to a judiciary that rejects to interpret housing as a human right, that misconception can lead to a strictly literal understanding of the norm. In the end, rules that do not demand clear standards cannot enforce or control adequacy.

Furthermore, the use of certain more resilient and sustainable techniques should be strongly envisaged by social housing. The current international political struggle requires a change from old economic models to sustainable and resilient economies. Although certainly more expensive at first, green policies successfully respond in long-term lower costs and risks for all involved stakeholders.²²⁰⁹ Thus, predicting the construction of thousands of new dwellings and even millions of them, the result of non-compliance to sustainable strategies is disastrous from the future socioeconomic and environmental perspective.

For example, the use of certified lamps or even connected sewerage to dwellings have a direct impact on every-day lives by reducing direct economic costs.²²¹⁰ Besides, they indirectly and in the long-term reduce health-related costs and risks. Yet, such small actions enable today the protection of human rights of future generations.²²¹¹ Therefore, resilient and sustainable strategies must be mandatorily used in social housing.

A contrasting unique solution was observed in D.S. 1. The program opted for the forward-looking architectural planning of gradual incrementation and “housing as a process”.²²¹² That architectural design of gradual incrementation enables further construction and incrementation by the dweller after the delivery. In contrast, incrementation was, as a rule, forbidden in MCMV, depending on Caixa’s express authorization. Those rigid systematics were destined to dissatisfaction and failure because dwellers had no input in planning and were furthermore hindered from adapting dwellings to their own needs. Particularly Brazilian beneficiaries were left with projects top-down planned (without the use of participatory mechanisms) and without the freedom to increment them. In order to find successful implementation, MCMV and the other Chilean tracks should be inspired by D.S. 1’s gradual incrementation.

The justification of legal and policy measures is an aspect that this study found out to be critical. Reasons were not given for the diverse categories thresholds, their grants and contributory requests, of their architectural and urban measures, standards, conditionalities or fundamental concepts used by the studied social

²²⁰⁸ Brasil, P. 660, Annex III, 2.3.j.

²²⁰⁹ *See also* Gerbert et al.

²²¹⁰ Issa, 38-43; UNGA, New Urban Agenda.

²²¹¹ UNFCCC, Paris agreement.

²²¹² Chile, D.S. 1, art. 42.1.a; Marinovic and Baek. *See* section Eligibility, Application and Selection, Application and selection of emergent categories: D.S. 1 and D.S. 19.

housing policies. However, a justification of legal and policy choices could support legal consistency. Such a reform could also overcome the observed violations to human rights principles and regressive changes identified in legal measures taken in both social housing models (for instance, the exclusion of non-documented migrants).²²¹³ Therefore, possible solutions should push legislators to justify their measures taken, based on reference reports and field studies.

Overall, social housing programs must trade their current lens for a new one that rigorously angles adequacy and accountability. From the accountability perspective, the lack of non-mandatory settings deconstructed answerability and, hence, clearly impedes enforcement in both countries. In this fashion, the selection procedure of projects in D.S. 19 could be reformed under this presented critics and be expanded to all the case studies.²²¹⁴ Chilean and Brazilian social housing programs should comprehend the actual proposal of a green agenda, and expend it to all its social housing context.

Address vulnerability

One of the main contrasts observed was that the legal texts of D.S. 1, D.S. 19 and D.S. 49 brought fundamental information upon eligibility criteria, categories, application, and selection procedures of beneficiaries and projects. Application and its related cross-checks, for example, were deployed in procedures described clearly by MINVU regulations, though this scenario was substantially different from the one found in Brazil. MCMV procedures were diagnosed with widespread unclear rules, repeated information and lacking objectivity.²²¹⁵

In the FAR and FDS contexts, selection counted with a short prioritization list (only containing three main aspects, that could, as a rule, be eventually be enhanced by public partner entities) and was followed by on a raffle procedure. Families composed of disabled persons, elderly persons, or women heads of households were given priority.²²¹⁶ However, those three criteria were too limited and they were not able to translate a minimum understanding of vulnerability.

The most marginalized persons in both countries suffered financial, discriminatory, cultural, language, literacy, bureaucratic, legal challenges, standards which were not used to calibrate selection methods to prioritize the most-vulnerable,

²²¹³ See section Justification on benefit and contribution levels in vulnerable categories.

²²¹⁴ See section Discrimination against migrants.

²²¹⁵ See section Application and selection of vulnerable categories: D.S. 19 and D.S. 49 Application and selection of emergent categories: D.S. 1 and D.S. 19.

²²¹⁶ See sections Eligibility, Application.

nor to adapt to local demands in order to satisfy performance. Selection should not be defined by luck among different applicants, as it was fundamentally settled by raffles in MCMV. Instead, a comprehensive frame on vulnerability should have enabled the prioritization of beneficiaries.

In comparison, the Chilean scheme provided an enhanced scoring procedure, only exceptionally allowing raffles.²²¹⁷ Anyhow, although that Chilean system priority criteria could be taken as a positive procedural model, it was criticized content-wise, for it did not correctly address vulnerability and inclusion or, in fact, because it included controversial criteria. For example, Chilean programs excluded from targeting those groups more prone experience housing inadequacy, e.g. homeless persons, migrants or indigenous peoples, at the same time that they prioritized the selection of firemen and those who fulfilled military obligations.²²¹⁸

Therefore, a reorganization of scoring factors and a reinterpretation of vulnerability in the context of social housing in Chile would directly and positively impact on selection. In Brazil, a reform in the procedural scheme is vital, as well as an alignment to rights-based guidelines.

It should be pointed out that, although a universal approach to housing should be supported as a long-term targeting strategy, national resources of both countries are limited. On the short-term, it is comprehensible that policies first target those with the most urgent issues. So, exactly because of that resource limitation, it is unacceptable that case studies failed to comprehensively target the largest domestic vulnerable groups, particularly through intersectional and compound lenses. This misconception requires urgent reform.

Along decades of social housing programs, Chile has been criticized for its quantitative focus, as well as for the lack of a rights-based lens.²²¹⁹ In contrast, MCMV guidelines set the aim to provide access to low-income households, articulated in federal, state and municipal levels. However, the Brazilian housing gap and MCMV quantitative-focused results indicated that those policy aims have neither been consistently followed. Particularly the general principle of public procurement procedures (choosing the “most advantageous proposal”²²²⁰) failed to create a framework that tackled housing inadequacy. Therefore, a qualitative focus on adequacy should also be used in the case studies’ agenda.

As an example and, despite demanding a rights-based reform, D.S. 19 provided a procedural solution. It objectively created a scoring procedure that envisioned

²²¹⁷ See section Selection.

²²¹⁸ Chile, D.S. 49, art. 24. See table 4.

²²¹⁹ See section Rights-based critics.

²²²⁰ Brasil, P. 114, Annex I, 7.1.2. See more sections 3.2 and 5.2.2.

minimum standards of adequacy for households and better ranked those projects that better provided adequate solutions.²²²¹ Thus, better adequate projects were rewarded with better chances of selection. Such behavioral changes are urgently necessary in MCMV in order to adapt its project selection procedures to proposals that better suit local habitat needs.

Additionally, this research evidenced a subtle difference, but of strong effects on participation: the form of application is cause for different accountability relations in each program and model. Overall, collective applicants were ensured with more participatory or, at least, engaging mechanisms, in contrast to individual applicants. For example, in MCMV, an individual applicant had to fit either FAR-funded or FGTS-Individual categories which, as a rule, excluded them from changing to a collective program and, consequently, excluded their involvement on project planning, implementation, and control that mainly the collective categories of MCMV-E and FGTS-Associativo enabled.²²²²

In Chile, nevertheless, an originally individual applicant would be allowed to join collective applications.²²²³ Under that different framework, individual applicants could enjoy the assistance of supporting entities for organized project planning, implementation and control. That Chilean structure revealed a less rigid configuration as well as an indirect support to participatory engagement through collective categories and their improved mechanisms. Further changes in the Brazilian model should be discussed in order to employ a choice for individual applicants, with the background idea that it can slightly enhance the participatory factor.²²²⁴ Legal reforms must facilitate the activities of supporting entities with the creation of participatory decision-making mechanisms and must too refrain from discriminating and excluding persons in vulnerability. In sum, both models should reform their guidelines and operationalize them into tools that implement adequate housing.

Clean structure

The case studies failed to portray objective and simple legal frameworks that could induce decentralized participatory models. In sum, procedures of eligibility, application, and selection of firms and their projects were conveyed under diffuse top-down administrative legal systems in both models. That negatively impacted in participation and clarity of both systems. It was also evidenced that procedural information of selection was not disclosed on an on-going basis, but

²²²¹ Chile, D.S. 19, art. 11, 13-14; Chile, R.E. 822. *See* sections Application and selection of emergent categories: D.S. 1 and D.S. 19, Technical criteria.

²²²² Brasil, P. 464, Annex IV; Brasil, I.N. 43, 1.2.1.

²²²³ Chile, R.E. 1.875; Silva Didier, Researcher's Interview 8.

²²²⁴ *See* sections Beneficiaries, Eligibility, Application and Selection. *See* also Arnstein.

just as final selection results. This way, it was hardly possible for beneficiaries to hold errors or fraud into account due to the lack of transparency.

As a positive example, this study noticed a more succinct and accessible manner in how the Chilean policy-maker presented essential procedural information. As well, the Chilean model installed internal redress and grievance mechanisms and the use of ICTs. Making such kind of adjustments in answerability and responsibility, as well as incrementing them, can only support enforcement and thus, in general, accountability.

But, particularly in both case studies a top-down, centralized policy-making atmosphere hindered participation. For some time, in Brazil, legal guidelines set the tone for decentralization and participatory decision-making, thrived by ConCidades.²²²⁵ In Chile, the centralization of roles was already expected within SERVIU and SEREMI's tasks management and planning.²²²⁶ It was also confirmed that those duty-bearers must yet create more democratic spaces to address local level demands.

Within the limits of this research, it was suggested that reforms should look for the creation of mandatory norms as well as of accessible control mechanisms, and particularly of judicial remedies that could enable redress. That could enforce duty-bearers to fulfill the right to adequate housing under democratic, participatory, transparent, decision-making structures. The aim should be to move decision-making and implementation closer to people.²²²⁷

Such changes could induce, for example, in a reinterpretation of investments. As it was observed in Brazil, only a small part of investments was directed to MCMV-E (FDS) and FGTS-Associativo, in contrast to FAR and FGTS-Individual.²²²⁸ The federal government, behind those funds' presidency or trustee boards, as well as of the governmental budget, controlled investments. If, however, democratic spaces could be enforced, via e.g. participatory councils and budgeting, social needs could be better taken into consideration and, eventually, investments could be redirected to programs that better enable participatory planning.

²²²⁵ However, political changes (that led to the later extinction of ConCidades), the centralization of power, the lack of coordination, and the distance of federal agents from local-level implementation directly impacted on performance in that country.

²²²⁶ See sections 4.3, 5.3.

²²²⁷ UN ECOSOC, E/CN.5/2001/2, para 14-15, 72-74.

²²²⁸ In 2014, FGTS-Associativo was funded with ca. 100mi USD, in comparison to FGTS-Individual, with 9bi USD (Respectively 267mi BRL and 26 bi BRL; CUEX; MTE, "Relatório de Gestao Do Exercício de 2014", 70, 76). From 2009 to 2017, FAR was funded with 20,4bi USD in contrast to FDS/MCMV-E, with 67mi USD (Equivalent to 76,3bi BRL and 2,5bi BRL; CUEX; Ministério das Cidades, SNH e SIAFI/SIGA, Brasil in: Congresso Nacional, CONOF(CD), CONORF (SF), "Informativo Avaliacao de Políticas Públicas Programa Minha Casa, Minha Vida," 2).

For that matter, this work evidenced in D.S. 49 two positive settings highly impacting decentralization and participatory decision-making. One, via its Social Follow Up Plan, D.S. 49 created mechanisms that enabled the engagement of beneficiaries in project decision-making and planning.²²²⁹ Essential for the best accountability performance, those settings enabled certain expression of voice to beneficiaries. Two, via a grievance mechanism that enabled both a certain level of social accountability and redress. Applicants could claim against SERVIU decisions if their project had not been selected.²²³⁰ Such mechanisms are key to accountability because they tend to speed results, increase satisfaction, lower costs and ensure that local demands are heard.

The legislator must eventually understand that legal guidelines must be translated into an operational behavior. For example, in D.S. 19, a program purposed to tackle social-spatial segregation, an evaluation commission was composed mainly by public agents and designed to select projects at closed-doors.²²³¹ MCMV-E, designed to follow the principle of participation, also observed the creation of a commission of beneficiaries and a member of the supporting entity to accept and authorize a third partner's creation of a project plan.²²³² In both cases, the legal design of programs is a only a weak translation from legal guidelines into an operational behavior. That impacts performance and the realization of the right to adequate housing.

As this research could also evidence, there is a strong disconnection between local needs and legal commands, the best example being the rigid mobility system affecting social housing in both countries that hindered beneficiaries from reselling or renting their dwellings at different levels.²²³³ Despite strong sanctions in both models, beneficiaries have been consistently insisting on breaking that norm.²²³⁴ And the main problem evidenced does not seem to concern beneficiaries, who have a human need to be mobile, but it has been related to the legislator, that, in both countries, was unable to understand people's demands. Therefore, the need of shifting decision-making as close as possible to the local-level.²²³⁵

²²²⁹ Chile, R.E. 1.875. *See* section Vulnerable categories: D.S. 19 and D.S. 49 Eligibility, Application and Selection.

²²³⁰ Chile, D.S. 49, art. 13.

²²³¹ Chile, D.S. 19, art. 12; Chile, R.E. 822, art. 1.

²²³² Brasil, I.N. 12, Annex I, 1.1.f.

²²³³ Brasil, L. 11.977, art.36; Chile, D.S. 49, art. 60; D.S. 19, art. 28; *See* Annex I, 10.c; Annex V, 16, 17.4.e; Annex VI, 25, I.b.

²²³⁴ Luengo; Chile, "Ministro Cristián Monckeberg Lanza Inédita Campaña Para Denunciar y Recuperar Viviendas Sociales Mal Utilizadas;" CGU, "Relatório de Avaliacao Da Execucao: Programa Minha Casa, Minha Vida- FGTS," 42-43. *See* section Exemption from eligibility criteria and forced evictions.

²²³⁵ *See* section 5.2.2, 5.3.

Future adjustments should ensure that information gathered at the local level can be delivered to policy-makers at state and federal levels. Providers and governmental organs should more actively engage with community members in order to gather data for such evaluation and monitoring. Although there are existing means enabling communication for beneficiaries, such as e-mails, post, toll-free hotlines, they should too start considering matters of cultural adequacy, including language and literacy levels. As well, increased attention should be put on developing feedback and remediation through existent communication mechanisms. The legislator should operationalize constitutional guidelines into mechanisms that could ensure a rights-based operational behavior, with the goal to develop democratic citizen-control.²²³⁶

Looking only at service providers, their eligibility or “*habilitation*” procedure should be reformed to propitiate more transparency and clarity.²²³⁷ It was ascertained that MCMV overlapped responsibilities of diverse actors, including operational and financial institutions, land donors or even the Ministry of Cities. The development of rules entailed, consequently, complex procedures of application and selection, monitoring, and control under those overlapped roles. Evidence showed non-linear settings in MCMV, where information and checks would be sent back and forth to different stakeholders, at times only named differently. Main regulations lacked vital legal information found in disperse norms, lacking time-limits and redress mechanisms.

Those misconceptions created by the legislator on Caixa’s responsibilities and FAR’s accountability relations had their consequences identified in a formal contract.²²³⁸ FAR contracts must be reviewed to incorporate information on construction firms or service provider engaged in that accountability relation. One of the reasons to that is particularly because Caixa, the agent subscribing that contract, will not always be liable.²²³⁹ The overlapping functions of Caixa created a scheme where that organization tries to skip its own liability and yet, gives space for errors and fraud. In sum, reforms must be conducted so that any issued formal document identifies responsible duty-bearers in order to guarantee transparency.

²²³⁶ See also Arnstein.

²²³⁷ See section Eligibility, Application and Selection

²²³⁸ See sections Caixa, Application and selection of vulnerable categories: FAR.

²²³⁹ Its liability depends on the interpretation given by Courts, based on Caixa’s role and activities within a project, that can be that of a performer of public policies (in which case it is liable) or of a mere financial agent (not liable). Most recent MCMV contracts expressively exclude Caixa’s liability, which must eventually have to be argued in Court (remitting to the issue of Caixa’s responsibility).

In contrast, the Chilean government created a framework of selection, where service providers present information upon management and specialized professionals responsible for a project.²²⁴⁰ Also a representative of the service provider was expressly named at the time of acquisition. Therefore, in this case, the Chilean legal system portrayed significant transparency and clarity in comparison to the Brazilian one.

As well, increasing coordination throughout local-level planing, management, and implementation mechanisms should improve efficiency. For example, in D.S. 19, the application procedure ranked projects with better technical criteria, responding to matters of housing adequacy.²²⁴¹ Particular standards for project selection drove applicants through a rather simple and objective ranking procedure based on construction plans. This impacted application and selection procedures with more transparency and clarity. Yet, D.S. 1 and D.S. 49 did not describe a procedure of selection as objectively as D.S. 19. Thus, there is room for reform in those programs.

In contrast, MCMV-E was the only one to require supporting entities to be established at least three years prior to their application. However, that measure could not prove experience levels, which seemed to be the intention of the legislator.²²⁴² D.S. 1, D.S. 19 or D.S. 49, diversely, required substantial information on specialists responsible for their respective projects, a much more objective strategy to identify if an entity had capacity and experience.²²⁴³

Drawing attention to this point: laws should have a purpose and a means of application. As advocated by this work, this is done by operationalizing legal guidelines into mechanisms. In this sense, the Chilean model was found to be more objective and simpler. Its procedures were established under a higher level of clarity and transparency, which could strongly inspire MCMV. Nevertheless, content-wise, adequacy standards should be reformed in Chile in order to better suit a resilient, sustainable, green agenda. Overall, social housing programs must trade their current lens for a more progressive and efficient one, that rigorously angles the fulfillment of the right to adequate housing and accountability.

For that, ICTs can also be of great support. The use of ICT platforms amplifying legal access should be particularly backed by Brazilian policy-makers to enable

²²⁴⁰ That model even required, for instance, all involved legal professionals to be identified.

²²⁴¹ See sections Rights-based critics.

²²⁴² Brasil, P. 747, Annex I, 2. See section Application and selection of vulnerable categories: FDS Again, a measure that did not provide any express justification.

²²⁴³ Chile, D.S. 49, art. 52; Chile, R.E. 1.875, art. 2.3; Chile, D.S. 1, art. 50; Chile, R.E. 6.509, art. 2.2.

more clarity and transparency.²²⁴⁴ The Chilean government engineered more robust methods of communication than the Brazilian. For example, under certain circumstances, registration could be done in Chile via an official website or a smartphone application added to a digital certificate.²²⁴⁵ Moreover, officially public documents describing those on line procedures created transparency and clarity.

It is questionable if the most-poor have access to such technological platforms. Indeed, those living under extreme vulnerability, such as homeless persons, are not expected to have access to internet or to possess a digital certificate. ICTs are costly and require special literacy. Nevertheless, it is expected that, in the long-term, the most-poor will find means of overcoming vulnerability and so, those constraints to the use of ICTs should be temporary. In other words, as long as social programs and social security networks perform well, individuals should be alleviated from poverty, meaning that access to ICTs may increase in the long-term. Therefore, it would make sense to develop such alternative, efficient mechanisms for those that overcome vulnerability.

First, not all social housing applicants experience the same vulnerability conditions. For involved stakeholders that do not have the existential minimum guaranteed, it will be an impossible task to understand if or how their claims can be redressed. Yet, particularly emergent households represent a gap that arguably enjoy of technological access and could use such improved mechanisms. Or else, those who have their livelihoods improved by a social housing program are expected to profit in several other dimensions in the long-term. This way, one can consider a significant share of vulnerable beneficiaries having (even if limited) ICT access.

Second, supporting entities should have the capacity to make use of ICTs. Their financial conditions and specialized staff should be able to fill in that gap where poverty hinders access. And third, alternative application models should be ensured, so that right-holders may choose their own physical or virtual solutions.²²⁴⁶

²²⁴⁴ This work found that the Brazilian national registry created specially for FAR and FDS programs, SNCH, though created in 2016, has never been implemented. As a consequence, MCMV had to borrow the use of Caixa registries, mainly concerning economic factors. It stopped using CadUnico – a registry that contained information on all social housing programs, for example, Bolsa Familia, and which could, actually, share significant information on the vulnerability of applicants. However, without having access to comprehensive information, control mechanisms can not efficiently perform. Therefore, the need of urgent revision of this scenario (Santana, Researcher’s Interview 4; Brasil, Ministerio das Cidades, P. 464, Annex III, 2.4.b; Brasil, Ministerio das Cidades, P. 163).

²²⁴⁵ See 5.1.3. Chile, D.S. 19, art. 7-13; Chile, D.S. 49, art. 11; “Información General de Subsidios,” MINVU; “Claveúnica,” Servicio de Registro Civil e Identificación, Clave Única; “Obtención de la clave única,” Chileatiende; “Subsidio D.S. 49: Postulación En Línea,” MINVU.

²²⁴⁶ See section Social assistance.

And, for that matter, ICTs can also directly impact legal empowerment, particularly by enabling access to information. ICTs remains vital for accessing legal information and creating awareness upon social housing and obligations of all stakeholders.²²⁴⁷ However, how both legal systems published, classified, and portrayed their legal framework was found to be highly problematic.

Overall, MINVU provided an unofficial listing of housing programs' norms, in addition to a virtual platform of the Congress, which assembled all national laws.²²⁴⁸ Ley Fácil took the progressive step to issue publications of several laws in easier language and in indigenous languages. However, none of those translations referred to housing rights.²²⁴⁹ In the end, despite those technological efforts of transparency, IT platform ensure only restricted access to the most-poor, often non-Spanish speaking population.

In a more challenging scenario, MCMV's main norm only proposed vague guidelines that did not make concrete reference, for example, to the program categories or their economic thresholds, or neither to basic selection procedures.²²⁵⁰ That information required complementary regulations, but to which no express reference was given. The Brazilian Ministry of Cities published all its regulations listed per year, independent if they had already been revoked. And yet, there was no virtual search engine that comprehensively listed regulations of all competent bodies (just to mention, Caixa, *Banco do Brasil*, all the managing bodies of the diverse Funds, Federal Government, municipalities, federal states). In the end, flyers or websites of the Ministry of Cities and Caixa, or even of real estate and construction firms, were observed to provide information for beneficiaries.

Refrain from human rights violations

The gravest issues diagnosed are based on violations to human rights caused by discriminatory settings. Basically, it was evidenced that all policies did failed to correctly target the most-vulnerable women, homeless persons, migrants, afro-descent, indigenous persons, which are only some of the major groups of victims of compound and intersectional discrimination. To begin with, a majority of most-poor families suffered from inadequate housing conditions in both models, but investments in both countries targeted better-off categories. And, even if their number had not been expressive, the level of deprivation experienced by families of Brazilian *favelas* or in Chilean *campamentos* should have been enough to ensure their prioritization in social housing programs. However,

²²⁴⁷ Basset et al, 20-22; NAO.

²²⁴⁸ "Leychile.cl," BCN.

²²⁴⁹ "Ley Fácil," BCN.

²²⁵⁰ Brasil, L. 11.977.

this research evidenced an incongruence between policy targets and social needs.²²⁵¹

What worsened the policy mismatch was that both approaches failed to consistently identify vulnerability and to provide support and access to those victims of compound and intersectional discrimination. The observed definitions of eligibility was based on a household's economic or socioeconomic threshold. Those were diagnosed to be not only inconsistent among each other but also to social housing aims. Thus, targeting must be urgently calibrated.

A simple and unified legal concept should be set in order to optimize access to information for stakeholders, as well as to correctly target those living in vulnerable conditions. Targeting should be legally justified (in case criteria must be confronted or argued invalid), under a unison, but locally adaptable criteria structure that efficiently addresses vulnerability. Those criteria should include economic factors, but also indicate compound and intersectional factors that generated inequality.²²⁵²

Particularly in Chile, paradoxical criteria continued to impact targeting and selection. For example, the norm did neither justify the priority given to professional classes (e.g. policemen and firemen), nor the active discrimination against migrants without a residency permit. And yet, the Chilean legislator looked at addressing a historical memory of the country and provided preferred scores to victims of the dictatorship.²²⁵³ This matter was never mentioned in MCMV, despite Brazil's similar history.

Nonetheless, Chilean standards fashioned selection through priority standards that included some aspects of vulnerability. For example, in D.S. 49, households living in overcrowding conditions or lacking access to toilet had preference scores. And yet, applicants working as firemen and at penitentiaries were prioritized by receiving better scores in detriment of those households lacking toilets and water connections.²²⁵⁴ Thus, D.S. 49 scoring and vulnerability factors provided an operational solution advancing in comparison to MCMV, though it still failed to identify vulnerability.

Therefore, responses given by the programs were not sufficient in face of the gravity of vulnerability observed in the presented context of social housing. As a result, they discriminated right-holders by treating equally unequal individuals. Instead, they should have targeted socio-economical aspects of vulnerability that included compound and intersectional discrimination. As observed before,

²²⁵¹ See section Rights-based critics.

²²⁵² See sections Eligibility Selection

²²⁵³ See section Targeting the elderly, disabled persons and victims of the dictatorships.

²²⁵⁴ Chile, D.S. 49, art. 24. See table 4 and sections Rights-based critics Rights-based critics

the definition of beneficiaries (responsibility dimension) should also have introduced such aspects. And, in case of eventual violations, right-holders should have had the possibility, under an efficient enforcement dimension, to use make use of control mechanisms to enforce the guarantee of the right to adequate housing.

Target homeless persons

Although it should be logically expected that a social housing program would first address those living under the most extreme conditions, such as the homeless persons, this was not the case in neither Brazil or Chile. Instead, this study observed that programs erased homelessness from their bigger official census databases.²²⁵⁵ Without acknowledging the existence of an individual, it is impossible to address their demand.

This misconception of policies against homeless directly impacts on enforcement. Homeless persons, as well as women and migrants, highlight a group categorically hindered from accessing justice. Thus, they do not receive any policy focus (responsibility, answerability) and their capacity to remediate that misconception is weak (enforcement). The creation of specialized Ombudspersons and social services is hence strongly necessary, besides the reform in rules and policy goals prioritizing that vulnerable group.

Target afro-descendants and indigenous peoples

In Brazil, the majority of *favelas* population is constituted by Afro-descendants, who were not referred among policy targets. Those models must urgently refrain from such discriminatory policies. Reports on MCMV show that dwellings have been also granted as an indulgence for relocated families that, living without secure tenure (in places, such as favelas), had weak remedies against the state's and private sector's interests. In the same fashion, traditional communities, often lacking access to formal titles, have been victims of the use of violence in forced evictions in both countries. Neither models consistently targeted indigenous groups or quilombola communities who, evicted from their own traditional lands, were forced to migrate to urban centers. Governments must first urgently learn to engage in participatory processes and search for solutions that best fit affected individuals. For example, the creation of free of access legal mechanisms directed to the remediation to the right to housing should empower those groups and communities and eventually surge changes in the answerability and responsibility dimensions.²²⁵⁶

²²⁵⁵ See section Discrimination against homeless persons.

²²⁵⁶ See section Discrimination against indigenous peoples and afro-descendants.

Target migrants

It was evidenced that all policies actively discriminated migrants because without a permanent residency visa, they were ineligible for the analyzed social housing programs. Particularly in Chile, such legal criteria was diagnosed to amplify the exclusion of those individuals, who had to resent to inadequate housing conditions in *campamentos*. Both Brazilian and Chilean models must be urgently changed in order to make it possible to reassess the inclusion of migrants and enable their eligibility in housing programs, even if lacking a residency permit, because these are groups highly prone to vulnerability. With examples like this in both models, this study was reassured that the focus of the legislator was more focused on the economical consequence of social housing, than on the actual purpose of social housing, which is to guarantee access to basic human rights. All things considered, both targeting tools and approach require urgent reform.²²⁵⁷

Target women

However occasional and limited as they were, certain strategies supported access to social housing ownership to Brazilian women, Chilean victims of the dictatorship, and overall, the disabled and the elderly.²²⁵⁸ Brazilian most-vulnerable beneficiaries found the right to equality and non-discrimination partially operationalized: they were targeted with supportive selection criteria; they were granted authorization to contract without marital authorization; and they were ensured that property title registration should be issued preferably on the female's name.²²⁵⁹

By prioritizing and endorsing the formalization of acts by women, the law not only acknowledged but also empowered the female role in society. However, no differentiation was held among women, for instance, if they were afro-descendant, indigenous or migrants, which are factors that drastically impact their vulnerability. Statistically, white women do enjoy of better chances than others. So, in the end, the norm issued a discriminatory character because it treated equally those who are unequal.

In contrast, the Chilean social housing policy clearly failed to implement a gender-responsive agenda. They were not supported with priority. On the contrary, women in Chile are challenged by a civil legal system that discriminates married women (enabling husbands to control their property)²²⁶⁰.

²²⁵⁷ See sections **Discrimination against migrants**.

²²⁵⁸ See sections 5.1.2 and 5.1.4. Also observed in Chile (Chile, D.S. 49, art. 24).

²²⁵⁹ Annex I, Clause 1.2; Brasil, L. 11.977, art. 35, 35-A.

²²⁶⁰ See sections **Gender-inequality**

One of the most interesting findings was governmental data showing that, in all researched programs, women counted for the majority of beneficiaries. From that unexpected result it can be inferred that, even though policies do not engage in efficiently targeting specific groups, which does not necessarily exclude them from accessing social housing.

However, that neither means a fair approach. For instance, it was not possible to clarify the proportion of white and non-white women that had access to the program.²²⁶¹ There is a possibility that a majority of white women ensured access to those programs. Still, the lack of information on questions of compound and intersectional discrimination show the low interest from the policy-maker to even identify who are the most-vulnerable.

And, even if statistics showed favorable results of a non-expressive gender policy, those numbers would not concretely refer to legal violations.²²⁶² In other words, Chilean civil norms influence its social housing model by discriminating women: husbands are still allowed to manage their wife's property. In this fashion, the whole legal framework of those countries must be studied to address the specific needs of gender-responsive blueprints. Only then, they can be installed and expanded in all social housing programs.

In neither models is there a clear perception of a policy-setting focusing on gender responses to inequality nor to aspects of intersectional and compound discrimination. Nor is there a legal mechanism or institute that could efficiently remediate such cases. Even if that punctual accommodation of priorities triggered positive results in Brazil, none of which were used in Chile, there are several aspects that should be extended in both models in goals and operations for gender intersectional equality.

Make social housing affordable

It was evidenced that social housing beneficiaries have been confronted with the issue of affordability.²²⁶³ Contracts must prevent the use of indirect costs and extra burdens but, when necessary, clearly inform upon them. Acceleration clauses should be avoided, if they create more financial burdens to an already vulnerable household. And, once again, evictions due to default and non-payment should not be the first legal sanction addressed to households unable to afford their social housing costs. For all that, the judiciary can not accept the vulnerability of a family as a the cost of the financial gain of another party.

²²⁶¹ There was no public information available on intersectional segments of women beneficiaries, it was not possible to verify if they referred other groups, e.g. migrants, homeless, indigenous or afro-descendant persons.

²²⁶² See section Gender-inequality.

²²⁶³ See sections (Un)Affordability.

If a beneficiary comes to a point where they do not have means to pay for their contribution or related debits, the social housing program must ensure that the right to adequate housing of those families remains first and foremost fulfilled. In such sense, assistance should be provided to support the beneficiary in complying because, as this work advocates, the goal of social housing is to fulfill its own purpose. Thus, the creation of more financial burdens, as the case studies have been doing, is the wrong path to be followed.

Furthermore, MCMV runs a financial crosscheck on all applicants over national debtors's registries, a condition only evidenced for better-off Chilean categories. If incurring in irregularities or debt, applicants may be called to correct any pending questions. In which case, if they can not correct issues, they will be excluded from the program.²²⁶⁴

From a financial perspective, it is comprehensible to evaluate the probability of a beneficiary to pay their contribution or loan along various years of installments. However, from a rights-based lens, this design attacks the nature of social housing. A household in debt will encounter less chances to be financed by the private market, so it will be more prone to remain living under inadequate housing conditions, specially if governments also exclude them from applying. Therefore, such crosschecks are inconsistent with social housing because they do not recognize affordability and vulnerability as two co-dependent factors. Future research should focus on solutions to support beneficiaries to comply with their contributory obligations.

Tax alleviation, as observed in MCMV, supports social housing for the most poor. Tax relief supports service providers too, as they can supply more for the most-vulnerable (for example, when less taxes are attached to construction material for social housing). Thus, housing frameworks could carry out extensive tax reforms, in complementation and support to its core strategies.²²⁶⁵ Overall, the strategy of alleviating financial burdens is more coherent to a rights-based approach to social housing.

Moreover, contract cancellation initiated by a beneficiary highlighted the conditions of unaffordability that governments submitted individuals. In Brazil, they would have to bear all related financial costs, without the right to reimbursement and would not be able to apply again to social housing programs. In contrast, the norm is simpler and consistent in Chilean programs: beneficiaries should have their contribution reimbursed and could eventually apply again. In the end, that exceptional tax support enlisted by MCMV could be welcomed by the Chilean norm, as MCMV should reimburse contributions.

²²⁶⁴ Brasil, P. 163, ch I, 4.3.1. *See* section National registries.

²²⁶⁵ *See* section (Un)Affordability.

7.3 Enforcement in focus

The third and final question of this research inquired upon the mechanisms of enforcement in the case studies, their differences and to what extent they followed a rights-based approach. Overall, this work diagnosed that the enforcement dimension of the case studies shared a fairly similar skeleton. Alike, criminal, administrative, civil, environmental sanctions could be enforced against duty-bearers and right-holders. In Brazil, those sanctions could be applied and enforced to public entities.

Nevertheless, that dimension was limited by the inaccessibility and inconsistency of those legal systems and impacted by weaknesses in justiciability and by a deconstructed answerability dimension. Thus, reforms to ensure more clarity, transparency, simplicity, objectivity, predictability and consistency in the responsibility and answerability dimensions are also expected to positively affect enforcement. Finally, among all appropriate means for the materialization of the right to adequate housing, access to justice must be ensured.²²⁶⁶

Refrain from evictions and legal insecurity

It was evidenced that the judiciary of both countries only seldom observed vulnerability in the context of social housing. As a consequence, violations to human rights were accepted as sanctions. For example, judges accepted evictions as sanctions, based on juspositive legal texts. However, they rarely weighed on the validity international treaties that acknowledged the right to adequate housing.²²⁶⁷

It was clear that laws, policies and courts of the studied countries have been failing to make use all sufficient measures to materialize the right to adequate housing. Particularly individuals who take action in front of an omissive State cannot be sanctioned, and particularly not with evictions.²²⁶⁸ Even though there are public policies to supply the national demands to housing, such as MCMV, D.S. 1, D.S. 19 and D.S. 49, access to adequate housing is still a privilege in Brazil and Chile.

²²⁶⁶ HRC, A/HRC/40/61, para 12-13, 52.

²²⁶⁷ An exception found, a decision of a Brazilian Labour Court withdraw an eviction, based on the right to adequate housing (Tribunal Regional do Trabalho 2 Região, MS 1000306-43.2018.5.02.0000). On evictions, *see* section Exemption from eligibility criteria and forced evictions.

²²⁶⁸ The examples of the Mapuche, who were criminalized for Chilean courts for protesting their land rights, and the occupation Chico Prego, that was sent to eviction are only two examples (Resistência Urbana Capixaba, “Ocupação Chico Prego;” Norín Catrimán et al; “Chile 2017/2018: Country Report”).

Legal institutions, such as fiduciary alienation, provided legal grounds for violating the security of tenure.²²⁶⁹ Fiduciary alienation guaranteed evictions, a type of sanction that goes against the basic goals of social housing programs. Those sanctions must be urgently banned from contracts. Reason to that is: conditionalities to social housing programs are not supposed to worsen living conditions or to violate that same right it had achieved.

The strict legalism of the judiciary shows a dangerous caution with the the use of accountability controls against those with leverage and, on the other way around, an increased use of force and power over the most-vulnerable. In sum, this must be corrected, because, as the dignity of an individual or their family is to be negatively impacted, not even a legal clause should enable someone's forced removal from their home. In fact, the legislator should ensure that the most-vulnerable do not suffer from worsened conditions due to sanctions imposed by their programs, because that will only maximize vulnerability.

Overall, evictions must be avoided by the judiciary. Courts must refrain from ruling strictly in favor of the law, particularly when families get to be deprived from their fundamental human rights. As a solution, conditionalities can provide solutions, inasmuch as they transform sanctions into support and assistance to right-holders.²²⁷⁰ First, that requires a new optic for both legal systems, who need to understand beneficiaries of social housing are not usual consumers. Second, the judiciary could take advantage of its role and cement a progressive understanding based on the international agenda.

Or else, rigid frameworks challenged mobility and security of tenure by threatening with eviction and exclusion of the programs those beneficiaries who rented or resold their dwellings.²²⁷¹ However, under such poor targeting and planing, it is not surprising that beneficiaries will not be satisfied with their conditions and take the cost of sanctions.

Moreover, as beneficiaries presenting false information will also incur in sanctions of contract termination.²²⁷² From a rights-based perspective, although information must be controlled by accountability mechanisms, strict documental

²²⁶⁹ In Chile, only emergent categories had their dwelling taken in guarantee in case of non-payment or default, whereas in Brazil, all categories were affected.

²²⁷⁰ Sepulveda Carmona, Nyst and Hautala, 52.

²²⁷¹ See section Exemption from eligibility criteria and forced evictions.

²²⁷² Chile, D.S. 49, art. 61. Chile, D.S. 19, art. 16.a; Chile, D.S. 1, art. 39; Annex I, 10.1, 22.1-22.2; Annex II.I, 3; Annex III, 28; Annex V, 23.f; Annex VI, 25, II.a.; Brasil, P. 163, 5.2.3; Annex I, 22.1-22.3; Annex III, Clause twenty-fifth, f, Clause twenty-eighth, I.f, II.a. If typified for omitting information, which fundamentally depends on the beneficiary having failed to present documents or no-longer satisfying eligibility criteria, they shall be sanctioned with an acceleration clause for the reimbursement of the subsidy received and with the return of the dwelling. However, exceptions to principles of transparency and publicity must be made based on the respect to human rights. See also Exit and Sanctions.

veracity must be challenged. Due to the pathogenic vulnerability of poverty, a beneficiary is expected to find difficulties in complying with the presentation of required documentation. Thus, rules foreseeing exclusion, expropriation and eviction for those presenting “false” information, as long as there was no intention of fraud detected, should be reconsidered. Unless fraud or corruption is proven, the most-poor should not be excluded due to their incapacity to portray documental proof. Therefore, veracity of information must be relativized for the most-poor.

Other relatable issues emerged from the case studies. For example, victims of domestic violence should correctly have their identity respected and names withdrawn from public lists in MCMV and D.S. 1 foresaw the possibility of moving victims to other regional projects.²²⁷³ However, such exceptionality depended on documental proof, such as a Prosecutor’s Office certificate or a judicial decision. The Chilean norm also designed the requirement of land titles for applicant indigenous persons (a possibility for those who require a subsidy to construct on their own lands), as well as a certification of their indigenous identity. However, when illustrating the most-vulnerable women or indigenous persons, formal requirements construct barriers to which they may be unable to conform. Programs must understand that, in such cases, they should alleviate the applicant from strictly formal requirements, unless there is a substantiated proof of fraud.

Particularly to the case of Chilean land proof requirements, those are unequal legal barriers to application.²²⁷⁴ First, Latin-American indigenous communities have been living for centuries on their historical lands, of which they tend not to be able to provide proof of secure tenure. Second, the indigenous identification that Chilean programs require is not a mere self-description statement, but a whole formal registration in a national database. An third, such a documentation is possibly useless in the urban context. Those lands tend to be located in rural areas, but a great issue is portrayed on indigenous persons that migrated to poor urban areas.²²⁷⁵

For those living in the most marginalized conditions, those requirements set real barriers to application. And, for those with available access to that registry, formally qualifying oneself as part of a stigmatized and segregated group is neither an ideal solution. Therefore, a certain relativity is fundamental when addressing the most-vulnerable because only then will the social housing enable access and guarantee inclusion to those living in vulnerability. Courts must hence relativize

²²⁷³ Chile, D.S. 1, art. 27, a. See also Rights-based critics, Sanctions and veracity of information.

²²⁷⁴ See also sections Discrimination against indigenous peoples and afro-descendants Indigenous persons and afro-descendants.

²²⁷⁵ Cecchini and Martínez, 176; HRC, HRC/37/53/Add.1, 73

the principle of veracity of information for documental proof delivered by the most-poor under the elementary aspect that, if assured, that could increase access to social housing policies.²²⁷⁶

But, in contrast to pure legalism, legal insecurity was also diagnosed as a challenge. In Chile, beneficiaries were not necessarily granted a dwelling even if in the possession of a subsidy certificate.²²⁷⁷ However, finding an available project to which they could apply was not always possible, often because beneficiaries were dependent on the demand and supply conditions of the private construction sector.

Despite the various critiques to the program, the Brazilian model provided more security in such a scenario. For example, selection procedures in FAR-funded projects were supposed to take place during the on-going construction of projects.²²⁷⁸ At least stronger legal guarantees were proposed by MCMV. Thus, measures must yet be taken in order to secure D.S. 49 beneficiaries.

Furthermore, in a different context, this work could evidence that a majority of regressive measures were especially taken in Brazil during the Temer and Bolsonaro administrations. For example, the exclusion of *habite-se*; the extinction of the ConCidades and other concerning participatory structures in social housing.²²⁷⁹ In Chile, regressions were as well observed.²²⁸⁰ Overall, the volatility of laws led to those violations to the principle of progressive realization of human rights, which must be stopped and urgently reformed.

But, in order to achieve all those goals, legal workers must be specially trained. As they finally execute the ultimate interpretation of norms, prosecutors, judges and lawyers must be educated on vulnerability, a multi-faceted condition that per se cannot affect people with privileged background. Additionally, monitoring bodies must be created to be formed and performed by local communities, which should be able to engage in evaluation, monitoring and remediation.

²²⁷⁶ Chile, D.S. 49, art. 3.j.4; HRC, A/HRC/37/53/Add.1, para 74; See more UN Human Rights Council, “Summary of Other Stakeholders’ Submissions on Brazil – Report of the Office of the High Commissioner for Human Rights,” A/HRC/WG.6/27/BRA/3 (Feb 24, 2017), para 55, 91-99. More on diverse violations to indigenous rights on *Xucuru Indigenous People v. Brazil*, N. 149 Series C (Inter-American Court of Human Rights Jul 4, 2006); *Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile*, Case Summary (Inter-American Court of Human Rights May 29, 2014); Jessica McCormick, “Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile,” *Loy. L.A. Int’l & Comp. L. Rev.* 38, n. 4 (2016).

²²⁷⁷ See section 5.2.2.4.

²²⁷⁸ Brasil, P. 163, ch I, 4.3. See section 5.2.2.

²²⁷⁹ Brasil, L. 6.015, 247-A; Brasil, I.N. 42, 2.1.1-2.1.2; Brasil, P. 539; Brasil, L. 6.015, 247-A; Brasil, L. 10.683; Brasil, M.P. 103; Brasil, L. 11.124; Brasil, D. 5.790. See sections 3.3.2, 4.3.1.2, 5.2.1.5 and 5.2.1.9.

²²⁸⁰ Smart and Burgos, 193-194. See section 5.2.

Specialize and localize control

Both countries created diffusely structured systems with a similar framework based on organs that support mediation with or at the local level. Particularly strong similarities were evidenced in the diffuse control system set to control and monitor service providers in Brazil and Chile. In case of non-compliance, both systems indicated service providers to be excluded from participating in any public procurement levels. However, the numerous non-mandatory rules that deconstructed answerability, in high number evidenced in MCMV, impacted the enforcement dimension particularly in regard to adequacy standards.²²⁸¹

The issue of justiciability was remarked particularly in the Chilean context: without constitutional mention, constitutional remedies can hardly be used and the right to adequate housing could hardly be enforced by courts.²²⁸² Therefore, its crucial to constitutionally acknowledge the right to housing and to operationalize it via constitutional and legal mechanisms of redress and grievance.

In addition, Chilean organs of control lacked a specialized focus on audit and monitoring of social housing programs. Although this work neither identified specialized control or protection organs in Brazil, that model alternatively created specialized urban departments, often at the regional level. That was the case of TCU, CGU, the Public Defender's and the Public Prosecutor's offices.

Nonetheless, control departments specialized in social housing can strongly enhance remediation. Those special organs should be capacitated with specialized workers, funds, and legal mechanisms. Training is crucial because those who are be more prone to succumb to an inaccessible judiciary, as well as to unequal and discriminatory treatment, should receive specialized support.²²⁸³

This work also evidenced that judicial mechanisms were used as formal venues of enforcement and redress by beneficiaries.²²⁸⁴ And yet, the case studies must urgently fill in the communication gap between duty-bearers and right-holders. This is a significant issue in Chile. That case study should design an ombudsperson inspired, for example, in the international figure of the Special Rapporteur on the Right to Adequate Housing. For example, although Chilean public prosecutors have the obligation to protect victims and witnesses, this is a more restricted function than that evidenced in Brazil.²²⁸⁵

²²⁸¹ See more details in sections *Mismatched Responsibility and Answerability Control and Remediation*.

²²⁸² See section *Justiciability in Chile*.

²²⁸³ *Atala Riffo and daughters v. Chile*, para 268-272.

²²⁸⁴ See section *Control and Remediation*.

²²⁸⁵ See section *Ombudspersons*.

The Brazilian *Ministério Público* took a comprehensive role in enforcement, which could enlighten the Chilean model. Among its obligations, it was responsible for the protection of social, collective and indigenous rights. They were also served with administrative and judicial mechanisms, as well as with powers to sanction and to install investigations.²²⁸⁶

Moreover, the *Defensoria Pública* (Public Defender's Office) was evidenced to take active steps in providing access to justice to the most-poor. Thus, ombudspersons presented an active advocacy work in Brazil, that could however be enhanced with the creation of specialized organs on the right to adequate housing and by more robust legal remedies.²²⁸⁷

Regarding supreme audit courts, it was evidenced that in Brazil, in contrary to Chile's Contraloría, TCU's decision had a soft character that could be reverted by the judiciary.²²⁸⁸ That scenario weakened the role of Brazil's Court of Accounts, which conducted several substantial control mechanisms in the social housing context, including checks, audits, and sanctions. This insecurity of the Brazilian model should be reconsidered to define TCU's decisions as *res judicata*, just as in Chile's Contraloría. Additionally, administrative, operational-level, and social accountability mechanisms should be too expanded and have their access enhanced in the social housing context²²⁸⁹, because they tend not only to lower costs but also to be more rapid. Yet, a strategy should be created to enable access to the most-vulnerable, train professionals to this field, and produce mechanisms for grievance and redress.

Furthermore, this work also scrutinized other non-judicial sources of control. The quasi-judicial forums SENARC and PROCON used consumer-based laws to mediate between rights-holders and duty-bearers, creating a fundamental contradiction to their competency (if beneficiaries acquire the status of right-holders, they would lose the capacity to use such forums).²²⁹⁰ At the local level, non-judicial Chilean organs, *jueces de policia local* sanctioned those violating the urban and construction code. However, although fundamentally legitimate and close to the local level, those are all bureaucratic routes that lack bottom-up mechanisms. And none of those cited examples are specialized in matters concerning the right to adequate housing.

²²⁸⁶ Brasil, Constitution, art. 129.

²²⁸⁷ See sections Ombudspersons **Ombudspersons**.

²²⁸⁸ See sections Courts, Internal control organs External control

²²⁸⁹ See also Financial Councils, Superintendencies, National participatory councils, Local consultative bodies, Control and Remediation.

²²⁹⁰ See section Quasi-judicial agencies.

Expand mechanisms

In MCMV, D.S. 1, D.S. 19, and D.S. 49, community members could only exceptionally and limitedly exercise control, monitoring, and evaluation of projects. Most of the programs required information from beneficiaries, to be used as a form of monitoring or control. FGTS-Asociativo was the only program enabling beneficiaries to change a construction firm by their own direct decision, as long as under specific conditions such as contract breach or delay.

Pro-active communication between service providers and beneficiaries of social housing programs was evidenced, be it through the use of hotlines, smartphone applications, or via personal complaints.²²⁹¹ But only improving communication means is not sufficient, as observed by the international agenda.²²⁹² Even though Chile took a progressive step and launched a national plan for action on business and human rights based on the GPBHRs, in 2017, that urban policy was understood to be overall inconsistent.²²⁹³

Supportive access to transparent feedback, as well as to mediation and redress mechanisms, are essential at the local level. Particularly for service providers, operational-level grievance procedures reduce costs, optimize the identification of solutions, and further expand knowledge capacity. To that, supporting entities may play a crucial role if they can have their responsibilities expanded to support communication and to ensure legal assistance.²²⁹⁴ Therefore, service providers should invest in grievance mechanisms, not only because they are relevant for their enterprises' efficiency, but also because they ensure the respect to human rights.

As this work did not identify efficient grievance and remediation mechanisms within those case studies, it observed that the existent procedures were not transparent on feedback, nor were they clear on how the information provided (by beneficiaries) would be taken into consideration. Overall, existent structures failed to secure timelines, which are essential procedural steps. Reforms must ensure transparency of procedures, as well as timely decisions.

Nevertheless, two exceptional examples architected procedures with deadlines, response and appeal structures, which should be expanded and improved. For example, in D.S. 49, in case a project would not be approved during the evalu-

²²⁹¹ See sections Construction firms and operational-level grievance mechanisms, Communication, monitoring and evaluation mechanisms

²²⁹² OHCHR, HR/PUB/11/04.

²²⁹³ HRC, A/HRC/37/53/Add.1, para 33; Chile, Plan de Acción Nacional de Derechos Humanos y Empresas de Chile.

²²⁹⁴ See sections 6.1.4 and 6.4.6.

ation phase, applicants could appeal against that decision, to which the governmental side of the relationship had a period of 30-days to respond.²²⁹⁵ Subsequent phases and periods for appeal and response were also given.

MCMV-E also created a grievance mechanism where supporting entities could appeal against provisory selection results. Clear timelines were set for appeals and responses.²²⁹⁶ Those are significant grievance mechanisms that can strongly impact accountability relations and should inspire its extension to other Chilean and Brazilian programs.

However, a remark must be outlined: it was clear that, if a service provider missed a deadline, they would be excluded from the grievance procedure. However, there was no clear sanction for public agents breaking their timely obligations. Therefore, in such scenarios, the inconsistency of the legal frameworks challenges the performance of the grievance mechanism, because it permits the violation of those time-settings when public agents are not held accountable for their non-compliance. As a consequence, that deconstruction of answerability directly generates impacts, for instance, in a long wait for project delivery.²²⁹⁷ Thus, it is crucial to create a consistent and harmonic design of all accountability dimensions.

Ensure access to justice and justiciability

In both Brazilian and Chilean history, diverse under-covered strategies of social housing have relocated poor families without participatory methods, with the use of violence and against their will.²²⁹⁸ Sanctions have been too connected to claims of unaffordability. Violations to human rights shall not be accepted, in this case also because they damage the core legitimacy of social housing.

When looking at the most-vulnerable, who experience scarcity in all possible contexts of their lives, claiming any right is way beyond their means. Particularly financial and psychological constraints can play strong inhibiting factors. Therefore, access to justice and justiciability are hence fundamental measures that both models should reassess.²²⁹⁹

As this work analyzed, both models can strongly expand their justiciability character, in Chile, constitutional and legal reforms must be urgently reassessed. The fact that the right to housing was not constitutionally recognized in Chile is an

²²⁹⁵ Chile, D.S. 49, art. 13.

²²⁹⁶ Brasil, P. 45, art. 7, para 2.

²²⁹⁷ Silva, Researcher's Interview 1; Silva Didier, Researcher's Interview 8. As it was confirmed by interviewed project managers from Chile and Brazil.

²²⁹⁸ See section Access to grievance and redress by vulnerable groups

²²⁹⁹ See section Access to grievance and redress by vulnerable groups.

obvious barrier to be reformed²³⁰⁰. Yet, weak constitutional mechanisms in Brazil could neither ensure that right-holders would find redress.²³⁰¹

This work also spotted vital changes to be conducted. Lifting judicial costs and guaranteeing free legal assistance at accessible geographic locations (close to where possible beneficiaries live) can enable access to grievance and redress mechanisms. Additionally, it is necessary to train the judiciary (as well as executive and legislative agents) to use a rights-based approach, as well as to understand vulnerability. For example, regarding forced and illegal evictions, the judiciary must refrain from violating the right to adequate housing due to stipulated sanctions or conditionalities. For that, laws should also refrain from using evictions as a direct sanction. In this fashion, specialized training is essential.

Justiciability must be guaranteed through specialized constitutional and legal control mechanisms. However, even when special control mechanisms were created, the constitutional protection of the right to adequate housing could not be guaranteed because of structural accountability weaknesses. The Brazilian Constitution tried its best: it acknowledged the right to housing and created several constitutional mechanisms for the protection of individual or collective rights.²³⁰² However, a not always receptive judiciary and the various limitations to accessing justice challenge the application of those same constitutional mechanisms. Therefore, judicial and social control mechanisms must be engaged in a rebranded rights-based judiciary.

²³⁰⁰ See sections **Justiciability in Chile**, Access to grievance and redress by vulnerable groups, 6.1.3.

²³⁰¹ See sections **Justiciability in Brazil**, **Mismatched Responsibility and Answerability** Access to grievance and redress by vulnerable groups Control and Remediation

²³⁰² Brasil, Consitution, art. 5, LXVIII, LXIX, LXXI, LXXII, 21. See section **Constitutional remedies**

8 Conclusion

Undoubtedly, the world has changed since this dissertation began to be written. Chileans engaged in protesting for more political, civil, social and economical rights, while many Brazilians inclined to a right-wing political crisis. At a global level, this dissertation experienced the Time's Up movement raising the voice of women, young climate activists striking on Fridays for social climate justice and George Floyd's murder elevating a global wave of protests against racial discrimination and inequality.

And yet, it was an unexpected global political and economic turmoil caused by the SARS-CoV-2 pandemic, which under unprecedented scenarios challenged power structures. When in 2020, schools, airports, factories, public life and the global economy shut down, housing came back to focus. People were required to stay home in the hope of controlling the spread of that virus. The Global South and North saw many losing their jobs, others that could not keep their informal income, and many bread-winners that died to that disease. As a consequence, social vulnerability increased to historical levels. For those living under vulnerability, reality refers to homelessness, slums, *favelas* and *campamentos*, often in conditions of agglomeration, enduring informality and violence, lacking access to health, potable water or sewerage. So, just to "keep distance, wash hands, stay home" was a privilege, that a great parcel of the world did not enjoy.

Therefore, the urge to provide access to adequate housing is more crucial than ever. The findings presented by this work, as a result of a comparative legal analysis of social housing programs from Brazil and Chile, substantiate game-changing solutions for social climate justice. Rights-based adjustments to accountability relations should enable a better performance of social housing programs.

This legal research compared accountability relations of Brazilian and Chilean MCMV, D.S. 1, D.S. 19 and D.S. 49. Those programs were expected to use their goals and operations for the fulfillment of human rights, and most particularly, for the materialization of the right to adequate housing. The analytical framework was focused on three dimensions of accountability (responsibility, answerability and enforcement) in the case studies. First, the assessment of the responsibility dimension shed light to legal clarity and transparency, and for a coordinated, participatory, decentralized, consistent and simple legal framework. Second, answerability or the obligation to inform, justify, and respond

was explored using those same criteria, and also taking into consideration housing adequacy standards set by the international agenda.²³⁰³ The final enforcement dimension was examined in the case studies regarding justiciability, accessibility, consistency, transparency and participation.

The analogous scenarios of the case studies enabled this legal comparison.²³⁰⁴ Parallels in legal, historical, socio-economical, political developments of Brazil and Chile triggered the creation of those analyzed housing programs with similar aims to construct and deliver social housing to those in vulnerability. For that, a documental analysis contemplated related domestic and international laws, doctrine, policy, jurisprudence, governmental, academic and private sector reports. Taking into consideration interviews from different stakeholder perspectives and information from different contexts, such as independent watchdogs, social media, the private sector, this work provided a multifaceted critical analysis of the case studies.

The adjustment of accountability relations was chosen as an strategic approach for it is a key catalyzer of improved public policies.²³⁰⁵ However, the game-changer configuration of this work was the use of the rights-based approach, for it can impact and induce legal structures for the progressive materialization of human rights.²³⁰⁶ Therefore, the combination of those two theories is advocated as the correct approach to social programs. At the theoretical level, it was also possible to integrate the rights-based approach to an accountability framework, because both shared an identification of two internal levels: of legal guidelines to standards (or virtues) and of a behavior materialized via mechanisms or operations.

And so this research resulted in an essential guide for social housing. Moreover, by shedding light over legal accountability reforms from a rights-based perspective, this work provided recommendations that can be generalized to any social housing ownership scheme, as well as grounds for discussion in further interdisciplinary, more comprehensive policy-studies. And, by breaking-off the language barrier, this work was also essential for further English-speaking studies on Brazil and Chile. This way, this study generated essential development to the legal academic literature on Latin American countries.

Nevertheless, this study had to prioritize specific categories due to space and time limitations. Despite the existence of other social housing solutions, such

²³⁰³ Clarity, transparency, objectivity, coordination, participation, decentralization, consistency, simplicity, accessibility, justiciability, security of tenure, targeting/ inclusion, gender-Response, equality & non-discrimination, health standards, habitability, availability of resources, sustainability, affordability, spatial-distribution. *See* Table 1.

²³⁰⁴ *See* chapter 3.

²³⁰⁵ World Bank, “World Development Report 2004”; Bovens, Schillemans and Goodin; Bovens. *See* chapter 2.

²³⁰⁶ Kaltenborn; OHCHR, HR/PUB/13/1; Sepulveda, “General Introduction”. *See* chapter 2.

as rental models or rural schemes, it focused on social housing ownership strategies of the Brazilian and Chilean urban categories of FAR, FDS, FGTS, D.S. 1, D.S. 19 and D.S. 49. But, in summary, any social housing strategy should provide the most vulnerable with adequate minimum standards and should also ensure grievance and redress by making duty-bearers responsible, answerable and enforceable.²³⁰⁷

The following final recommendations show opportunities of legal reforms, as this work advocates:

1. **Social housing programs must use of all available resources to ensure the fulfillment of the right to adequate housing.** *All policy and legal means should be used to materialize the right to housing.* States must make use available resources to materialize the human right to adequate housing. Even it is not directly possible to fulfill all housing rights of all domestic residents at once, a progressive strategy must be comprehensively undertaken by States for the operationalization of rules as an organizational behavior at the program level. A prioritization of those living under most-vulnerable conditions is a first step. Among other matters, the implementation of the rights-based approach in social housing programs depends on both legal acknowledgment, in constitutional or legal guidelines, and on means to operationalize a rights-based behavior at the program level.
2. **Programs must have clear, transparent, consistent, and simple rules.** As a key element of democracy, accountability depends on a relationship of different actors following transparent and clear rules. In this scenario, it must ensure too that duty-bearers remain responsible, answerable and enforceable under systems and mechanisms of control, by also enabling redress and remediation. That requires the extinction of overlapped functions and cumulative roles, in a system where it should be possible to identify the responsibilities and obligations of a specific duty-bearer. Particular aspects of costs and standards on entry and exit need to be transparently and consistently clarified through out a social housing model. Adequacy, as of accessibility, affordability and secure tenure, and a habitable, infra-structured and healthy environment must be operationalized at the program-level. Social housing programs should also: increase coordination through local-level, participatory planning, management and implementation mechanisms; avoid unnecessary disparities in procedures and terminology at the domestic level; work on an international cooperation project to adequate those

²³⁰⁷ OHCHR, HR/PUB/13/1; UNDG, “The Human Rights Based Approach to Development Cooperation”; Ackerman, “Human Rights and Social Accountability;” World Bank, *World Development Report 2004*.

rules to international standards of sustainability and resiliency. *Access to information, including on social housing programs, must be legally guaranteed to be public and accessible. The legislator should as well be able to justify their most important decisions on policy strategies, such as category thresholds, based on facts and studies. Accessibility requires adaptation of information and communication to cultural and language diversities.* It is vital to develop an intersectional gender-responsive and inclusionary agenda to most vulnerable groups, such as indigenous, afro-descendants, LGBTQ+, homeless persons. The vulnerability condition of beneficiaries at the local level must be taken into consideration, specially adapted to cultural and language diversities. For improved results, *governmental agents should be continuously trained on human rights.* Particularly judicial officials should be supported with courses and continued education on equality and non-discrimination.

3. **Understand, identify and prioritize vulnerability.** If a universal social protection approach can not be implemented due to a State's macroeconomic constrains, *the most-vulnerable must be targeted.* Nevertheless, that requires a correct identification of vulnerability, *which must consider, among others, social, economical, historical aspects and intersectional and compound discrimination.* Laws must ensure equal and non-discriminatory treatment, both as constitutional goals and when translated as operational settings. *For vulnerable beneficiaries, the relativization of the principle of veracity of information for documental proof based on vulnerability can be a strong means of guaranteeing adequate housing.*
4. **Access to justice must be guaranteed.** *The creation and expansion of constitutional and legal control mechanisms for the right to adequate housing is hence crucial because they can hinder regressive measures, ensure enforcement and enable eventual remediation.* Legal mechanisms should ensure access to justice via judicial and non-judicial means, also with the support of specialized ombudspersons or supporting entities. For that, rules must be clear and transparent. Depending on the context, cultural and language adaptation, as well as financial alleviation, such as free legal advice, should generate essential positive changes and amplify access to justice. In addition, *courts must reconsider their understanding of vulnerability and challenge any proposals that violate human rights in favor of strict legality.* That requires extensive and continuous training of governmental and judicial agents as well as the expansion of social accountability mechanisms, for they can impact on democratic outcomes. *Beneficiaries must be acknowledged and entitled as right-holders.*

5. **Sanctions may not violate the right to adequate housing.** Instead of sanctioning beneficiaries for their needs, programs must learn to cope with the demand of beneficiaries by creating management systems, improving targeting methods and introducing substantial participation of beneficiaries in planing phases. Compliance to conditionalities can be better achieved via social assistance mechanisms, that can be conducted by supporting entities. *Courts must refrain from violating fundamental human rights in favor of strict legality. When the dignity of an individual or their family is to be negatively impacted, not even a legal clause should enable someone's forced removal from their home.* Beneficiaries not able to comply with their responsibilities should receive extra-support because, for most-vulnerable persons, that can be the only guarantee to housing. A social housing program must ensure that the right to adequate housing of families remains first and foremost fulfilled. Social housing programs should secure tenure in all its forms and finally create conditionalities that support beneficiaries to access adequate housing. *Evictions must be avoided at all possible costs, as well as those institutions that lead to them, including default and non-payment, fiduciary alienation or the use of the house in guarantee of the non-payd debt.*
6. **Increase coordination through local-level participatory planning, management and implementation mechanisms.** *Decentralization and coordination require a shift of decision-making and policy making to the local-level, ensuring democratic platforms of communication for the articulation of local issues at regional and national levels.* The engagement of stakeholders can enable the supply of their demands, reduce exit, decrease monitoring costs and improve democratic performance. Therefore, *beneficiaries should be supported with participatory mechanisms.* Mechanisms should harmonically involve all sides of the accountability relation in order to ensure democratic platforms of communications for the articulation of local issues at regional and federal levels. *The use of ICTs should be expanded, alongside with other traditional mechanisms.*
7. **Minimum adequacy standards must be mandatory and in accordance to the international agenda.** Obligations that refer to minimum adequacy standards of a project must be mandatory, in order to sustain the answerability dimension and to enable enforcement for which progressive practices can be rewarded. *Programs consistently designed in accordance to the international, green, human rights progressive agenda. States should work in international cooperation.*

If all, the current global crisis has shown that materializing housing for all human beings is a vital. All elaborations and recommendations provided by this

study can serve as inspiration to a wider range of social housing ownership models. For a practical application to Brazilian and Chilean models, this study must be debated in comparison to other social policies before changes are included as part of long-term, universal safety nets. Social housing ownership is only one of many forms of tackling housing inadequacy, which should be also supplied within social protection structures, such as e.g. emergent accommodation, transitional housing, and rental.²³⁰⁸ The private rental market and social rental models should as well be researched, adjusted and ideally expanded. The policy-maker should too consider social protection, as for example, cash-transfers schemes or tax alleviation, which could not be assessed by this research, but that overall have strongly impact on the access to an adequate standard of living.²³⁰⁹ Yet, those are topics object of future comparative legal and policy research.

²³⁰⁸ See also City of Sidney, 2014, 3, in Gilbert and Rosen, Dr., *Can You Afford to Live Where You Choose?*, 16.

²³⁰⁹ See UN Human Rights Council, Report of the independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona, A/HRC/11/9 (HRC, Mar 27 2009).

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10 Annexes

Annex I: Translation. Contract FAR

CAIXA

Private Instrument for Sale and Direct Purchase of Residential Property with Installment Plan and Fiduciary Alienation – PMCMV – FAR

Degree of secrecy #PUBLIC

PRIVATE INSTRUMENT OF SALE AND PURCHASE OF PROPERTY, WITH INSTALLMENT PAYMENT AND FIDUCIARY ALIENATION IN GUARANTEE IN THE PROGRAM MY HOUSE MY LIFE – PMCMV – RESOURCES FAR.

Under this Private Instrument with a character of public deed, pursuant to Article 61 of Law 4,380/64, art. 2 of L.10,188/01, and L. 11,977/09, the parties mentioned below and qualified contract the present sale and purchase of real estate with obligations, installment payment and fiduciary alienation as collateral in the SFH, under the My House My life Program, under the conditions below:

A – QUALIFICATION OF THE PARTIES

A1 – SELLER / FIDUCIARY CREDITOR: FUND OF RESIDENTIAL RENTING – FAR, CNPJ no 03.190.167/0001-50, financial fund created by CAIXA by determination of the caput of Art. 2 of Law 10.188/01, represented by CAIXA ECONÔMICA FEDERAL, financial institution, constituted under the form of public company, legal entity of private law, created by D.-L. 759/69, governed by the Statute in force on the date of this contract, with headquarters in Brasilia-DF in [address], CNPJ/MF n. [number], represented by [name of legal representative and personal data], according to the power of attorney issued in the notes of the Notary Office in the book [number], p. [number]; and sub delegated, drawn up in the notes of the Office of [name], in the book [number], p [number].

A2 – CONSENTING PARTY: CAIXA ECONOMICA FEDERAL, in the condition of fiduciary owner, as defined in § 3o of Art. 2 of Law 10,188/01, already duly qualified.

A3 – BENEFICIARY(S)/PURCHASER(S)/DEBTOR(S)/TRUSTOR(S): [name and personal data], hereinafter named **DEBTOR(S)/TRUSTOR(S)**

B – DESCRIPTION OF THE SUBJECT MATTER OF THIS CONTRACT

B1 – Property located at (address), municipal inscription, duly registered under the number, registration, book, sheet.

C – CONDITIONS OF THE INSTALLMENT PLAN:

C1 – **Modality:** Installment plan

End page 1

C2 – **Origin of Resources:** FAR – PMCMV

C3 – **Amortization System:** SAC

C4 – **VALUE OF PURCHASE AND SALE OF REAL ESTATE/ CONTRACTED LIABILITIES:** The value of the contracted debt, destined to the payment of the purchase and sale of the property characterized in this instrument, is BRL [sum]

C5 – Amount of the fiduciary guarantee/mobile for the purpose of sale in public auction: BRL [sum]

C6 – Term for amortization and release of the subsidy, in months: [number]

C7 – Initial monthly charge: [data]

C7.1 – FAR grant: BRL [sum]

C7.2 – Charge to be paid: [sum]

C8 – Annual interest rate: BRL N.d.

C9 – First Monthly Charge Due: [date]

C10- Form of payment on contract date

(Automatic filling out by SIACI: current account debit / payroll debit / bank slip)

D – FAMILY INCOME

Income (composition) for the purpose of covering the occurrences of death or permanent disability.

Name of Debtors: [personal information]

Participation (%)

1. OF THE SALE AND PURCHASE AND OF THE INSTALLMENT – The DEBTOR(s)/TRUSTOR(s) acquire(s) the property described in item B from FAR, in the total amount and conditions indicated in item C, whose payment will be paid within the contractual terms, in monthly installments composed by:

I – a personal and non-transferable subsidy, allocated by FAR and,

II – the amount to be paid monthly by the PURCHASER(s), in restitution of the loan is calculated based on the family income, according to the parameters defined in current regulations.

1.1 The real estate object of this contract is destined to be the home of the DEBTOR(s)/TRUSTOR(s) and their family.

1.2. Under the terms of Art. 73-A of L. 11,977/09, amended by L. 12,424/11, this contract may be signed by the woman, without the need for marital granting.

1.3. The DEBTOR(s)/TRUSTOR(s) declares that they have previously received the Total Effective Cost – TSC calculation spreadsheet with amounts in nominal form and are aware of: I of the flows considered in the TSC calculation and II that the debit balance and charges will be updated as provided in the contract.

2. OF THE FORM AND PLACE OF THE MONTHLY CHARGES – The installments will be made through the payment of monthly and successive charges.

2.1. The payment of monthly charges shall be made until the due date, regardless of any notice or notification, in the indicated manner

End of page 2

may be debited from a holding account held by the DEBTOR(s)/TRUSTOR(s) and maintained with CAIXA or a payment slip. **2.2** If charges are to be made from the holding account, the right holder(s), DEBTOR(s)/TRUSTOR(s) grant(s) a mandate to CAIXA for the necessary measures to carry out the procedure and are obliged to maintain a sufficient available balance for the payment of monthly charges, accepting for this purpose, the use of any available resource in such account, with preference over other obligations.

2.2.1 Up to 10 (ten) days before the due date, the DEBTOR(s)/TRUSTOR(s) are obliged to communicate any changes in the characteristics of the deposit account indicated to deduce the monthly charge.

2.3. In case they do not receive the monthly invoice with the respective payment slip, the DEBTOR(s)/TRUSTOR(s) must go to the nearest bank branch or to the Real Estate Correspondent, with the indication of their contract number.

2.4. It is allowed to change the due date of following installments, if agreed between the parties.

2.5. The DEBTOR(s)/TRUSTOR(s) may not pay any monthly charge of the installment plan until those previously overdue have been paid and settled, and, if such fact occurs, the payment made will be charged in the liquidation or amortization of the first charge due and not paid.

3. RECALCULATION OF PROPERTY AND DEVELOPING BALANCE – The debt balance, the monthly installments and the monthly subsidy not yet allocated to the contract will suffer annual corrections, on the anniversary of the signature of the contract, by the Referential Interest Rate (TR) of the first day of the respective month, accumulated in the period of twelve months.

3.1 In the calculation of the debit balance, a daily update proportional to the date of the event shall be applied, for the period between the date corresponding to the signature of the contract or the last update already occurred of the debit balance, inclusive, and the date of the event, exclusive.

3.2 At the end of the period for amortization of the outstanding balance, if all installments of the installment plan have been paid and the full amount of the subsidy has been released, the contract will be considered settled for all legal purposes, and FAR will bear the difference of the existing residual balance, if there shall be any.

4. AMORTIZATION OF THE DEBT – Amortization is achieved through the monthly and successive payment of charges. **4.1.** The amount of the debt described in field "C4" will be paid by the DEBTOR(s)/TRUSTOR(s) with regards to the installment plan and, by FAR, with regards to the subsidy, throughout the contracted term.

5. ANTICIPATED LIQUIDATION – The DEBTOR(s)/TRUSTOR(s) are entitled to an early settlement of the debt, which shall be determined by the updated debit balance.

5.1. The early settlement of the operation will result in the mandatory payment of the full amount of the debt contracted by the DEBTOR(s)/TRUSTOR(s), without the deduction arising from the economic subsidy, that have already been granted in due installments due, paid or not, and in open installments.

6. DELAY IN THE PAYMENT OF THE MONTHLY RENT INSTALLMENTS – Interest will fall upon arrears amounts at the rate of 1% (one percent) per month, within 30 days of the maturity of the charge, under the terms of the legislation in force.

6.1 If CAIXA, on behalf of FAR, pays any of the charges inherent to the property or the guarantee, the DEBTOR(s)/TRUSTOR(s) shall reimburse them within 30 (thirty) days, as from the receipt of the communication, under penalty of characterizing delay.

7. FIDUCIARY ALIENATION IN WARRANTY – The DEBTOR(s)/TRUSTOR(s) alienate to FAR, under the terms of art. 2, p. 3 of Law 10,188/01, in fiduciary character, the property now transacted, in guarantee of compliance with the obligations of this contract, according to L. 9,514/97, including accession, fixtures, improvements, constructions and facilities.

7.1. The property, disposed under fiduciary alienation in this instrument, is part of FAR assets, which will be kept under the fiduciary ownership of

End of page 3

CAIXA, under the terms of art. 2, p. 3, of L. 10,188/01, but it does not communicate with CAIXA's assets, for which the following restrictions with regards to assets and rights shall be observed:

- a)** it does not integrate CAIXA's assets, nor is included in its list of properties and rights, for the purpose of judicial or extrajudicial liquidation;
- b)** it does not respond directly nor indirectly any of CAIXA's obligations;

c) it may not be given in guarantee by CAIXA nor be judicially enforceable by any of its creditors;

d) no security interest may encumber over the property.

7.2 In the form required by paragraphs 4 and 5, of Art. 2, of the L. 10,188/01, CAIXA promptly requests to the competent Real Estate Registry the annotation to the corresponding registration of the highlight and of the restrictions mentioned in the item 7.1 of this clause.

7.3 To non-defaulting DEBTOR(s)/TRUSTOR(s) is assured the free use of the property, observed the legal restrictions and obligations assumed in this Contract.

7.4. Up to 30 (thirty) days after the settlement of the debt, CAIXA shall provide the term of discharge to the DEBTOR(s)/TRUSTOR(s), which shall be recorded in the Real Estate Registry, for which the respective expenses of this act shall be the responsibility of the DEBTOR(s)/TRUSTOR(s).

8. SPECIAL RESTRICTION TO THE USE OF THE BUILDINGS – The DEBTOR(s)/TRUSTOR(s) declare(s) to be aware of the constructive method used (**Structural Masonry Works or similar**), and commit(s) to observe the special restriction of use, consisting of the prohibition of opening walls, various installations and removal or displacement of walls.

8.1. The DEBTOR(s)/TRUSTOR(s) declare(s) that they are aware that the special restriction indicated in the caput is necessary for the solidity and safety of the property, as well as that its noncompliance may lead to danger of collapse, and will therefore be liable under the terms of the law and this contract.

9. IMPROVEMENTS, CONSERVATION AND WORKS – The DEBTOR(s)/TRUSTOR(s) is (are) obliged to keep the property in perfect state of conservation, safety and habitability, as well as to make, at their own expense, the works and repairs necessary for its preservation.

10. ACCELERATION CLAUSE – **The debt will be considered to be due in advance, in the following cases:**

- a) **non-immediate occupation of the property, as of the signature of this instrument;**
- b) **destination of the alienated property other than to the residence of the beneficiary and his family;**
- c) **transfer or assignment to third parties, in whole or in part, of the rights and obligations arising from this contract, without authorization of CAIXA;**
- d) **abandonment of the property;**
- e) **delay of 30 (thirty) days in the payment of the obligations;**
- f) **proposed lawsuit with the purpose of charging fees and/or taxes on the defaulting property;**
- g) **lack of maintenance of the property that depreciates the guarantee;**
- h) **incidence of an act of judicial constriction, filing of lawsuit against any DEBTOR(s)/TRUSTOR(s) or decree of judicial/administrative measure that affects the property or the guarantee;**
- i) **false declaration/information provided by the DEBTOR(s)/TRUSTOR(s); and**
- j) **breach of the obligations stipulated in law or this contract.**

10.1 The occurrence of the situations set forth in this clause shall imply in the immediate notification to the DEBTOR(s)/TRUSTOR(s) to proceed with the payment of the total amount of the purchase and sale indicated in item C, in cash and within seventy-two (72) hours.

10.2 The non-payment of the price under the conditions set forth in this instrument shall imply in the constitution of the DEBTOR in default, leading to the execution of the guarantee, pursuant to Law 9,514/97 and L. 11,977/09.

11. CONTRACT TERMINATION – The non-fulfillment of any of the provided clauses for in this instrument will authorize the full right to contraction termination.

11.1 The amount paid by the beneficiary will be reverted in favor of FAR as a compensation for the occupation of the property.

12. GRACE PERIOD

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FOR THE EXPEDITION OF NOTIFICATION – The grace period for issuing a notification order is 30 (thirty) days, counted from the maturity of the first due and unpaid monthly charge or from the decree of early maturity of the debt, without prejudice to the creditor adopting a longer term.

13. NOTIFICATION – The default of the DEBTOR(s)/TRUSTOR(s) shall be ratified by means of a personal notification or to their legal representative or attorney-in-fact regularly constituted with a period of 15 (fifteen) days for purging.

13.1 Purged the arrears in the Real Estate Registry, the fiduciary alienation shall convalesce, for which the DEBTOR(s)/TRUSTOR(s) shall be responsible for the payment of the expenses on notifications and charging.

13.2 Any difference between the amount paid as purging the arrears and the amount due on the day of purging shall be paid by the DEBTOR(s)/TRUSTOR(s) together with the amount due.

14. CONSOLIDATION OF THE PROPERTY – After the period referred to in item 13 has elapsed, without purging the arrears, the ownership of the real estate will be consolidated in the name of FAR through the payment of taxes due for the transfer.

14.1 Once the property is consolidated in the name of FAR, the DEBTOR(s)/TRUSTOR(s) shall deliver the property, free and unimpeded, under penalty of payment to CAIXA of an occupation rate of the property, per month or fraction, of the value corresponding to 1% (one percent) of the value of the property, updated in the manner defined in this contract.

14.2 The right of preference of the tenant, established on art. 27 of Law 8,245/91, does not apply to the property subject to this contract.

15. INDICATION OF BUILDINGS TO BENEFICIARIES OF MCMV – Once the property has been consolidated, the fiduciary creditor may waive the holding of an auction, providing for the redirection of the property to another beneficiary of the Minha Casa Minha Vida Program, pursuant to art. 6-A, p. 9 of L. 11,977/09.

16. EXTRAJUDICIAL AUCTION – Once the property has been consolidated in the name of the FAR, and the fiduciary creditor opts to hold the auction, the property will be disposed according to the procedures provided in art. 27 of Law 9,514/97.

16.1. For the purposes of an extrajudicial auction, the parties adopt the following concepts:

I – Value of the property: value of the valuation in item "C5", plus the value of the accession and existing and integrated improvements, monetarily updated up to the date of the auction, reserving to FAR the right to reevaluate the property;

II – Amount of the debt: debtor balance of the fiduciary alienation operation, on the date of the auction, including conventional interest, penalties and other contractual charges and,

III – Amount of the expenses: sum of the amounts of the charges, costs of notifications and those necessary for the holding of the public auction, including expenses related to the announcements and the auctioneer's commission.

16.2. The first auction will be held within 30 (thirty) days, counting from the registration of the consolidation of the property in the name of FAR, for the value of the property.

16.3 If there is no offer in an amount at least equal to that set forth in the first auction, the real estate property shall be offered in a second auction, within 15 (fifteen) days, as of the date of the first public auction, for the value of the updated debt plus expenses, insurance premiums, legal charges, including taxes and condominium contributions.

16.4 Once the property has been sold, within five (5) days following the full and effective payment, FAR shall return to the DEBTOR(s)/TRUSTOR(s) the remaining amount, including the amount of conducted improvements, after deducting the debts, expenses and charges referred to in paragraphs 2 and 3 of art. 27 of L. 9,514/97, and the provisions of the final part of art. 516 of the Civil Code shall not apply, with reciprocal settlement.

16.5 In the 2nd auction, in the absence of a bid greater than or equal to the value of the debt, or in the absence of a bidder, the debt will be considered extinguished and FAR will be exonerated from the obligation to refund to the

End page 5

DEBTOR(s)/TRUSTOR(s) of any amount, by whatever means.

16.6 If the debt is extinguished, within five (5) days from the date of the second auction, FAR shall issue a term of discharge to the debtor.

16.7 If the property has been rented, the contract may be denounced with a period of thirty days for vacancy, unless there has been written consent of the trustor, and the denunciation shall be made within ninety days from the date of consolidation of the property to them.

17. DEATH OR PERMANENT INVALIDITY – In the event of death or permanent invalidity of one or all the DEBTOR(s)/TRUSTOR(s), the OVERDUE DEBT and regarding the property shall be considered partially amortized in proportion to its responsibility for the payment of the monthly installment (item D) or settled, upon communication of the event to CAIXA/FAR.

18. PHYSICAL DAMAGES TO THE REAL ESTATE PROPERTY – FAR will assume the expenses related to the recovery of physical damages occurred to the property arising from external causes, by means of a communication to the CAIXA/FAR, caused by:

I – Fire;

II – Explosion;

III – Flooding;

IV – Total collapse;

V – Partial collapse, understood as the destruction or collapse of walls, beams or other structural element;

VI – Threat of collapse duly proven and,

VII – *Destelhamento* (Unroofing).

18.1 If after occupation of the unit a constructive problem is verified, the beneficiary must inform FAR/CAIXA by the [toll-free] telephone number [number], in order to seek a solution for the existing damages to the property.

19. PROHIBITION TO GROUPING – It is forbidden to regroup the land for a period of 15 years from the date of conclusion of this Contract, under the terms of art. 36 of Law 11,977/09.

20. FISCAL BURDENS – The burdens levied on the property shall be paid in due time by the DEBTOR(s)/TRUSTOR(s), for what FAR may require proof.

21. STATEMENTS OF THE SELLER(s) – FAR declares that there is no debt or action on the subject of this contract that compromises the transaction and is responsible for any debts until this date.

22. COMMUNICATION AND STATEMENTS OF RESPONSIBILITY OF THE PURCHASER(s) – The DEBTOR(s)/TRUSTOR(s) declare(s) that they guarantee the veracity of the information related to marital status, nationality, profession and identification and about the preconditions for the signature of this instrument, the receipts and/or information on income and expenses presented at the time of the proposal/contracting.

22.1. The DEBTOR(s)/TRUSTOR(s) declare(s) that:

a) they meet the conditions established for the Subsidy Program regarding family income of up to 1,800.00 BRL;

b) they did not receive any benefit of a housing nature arising from budgetary resources of the Union, FAR, FDS or housing discounts granted with resources of the FGTS, except for subsidies or discounts for the acquisition of construction materials; c) they are not the owner(s), promising purchaser(s), usufructuary(ies), tenant(s) of PAR – *Programa de Arrendamento Residencial* or holder(s) of a loan to a residential property in any location in the country.

22.2. [The DEBTOR(s)/TRUSTOR(s) declare] that they had previous knowledge, read and understood the contract, agreed(s) with the stipulations provided, and are aware of the contractual rights and obligations.

22.3. If the statement contained in this Clause is not true, the DEBTOR(s)/TRUSTOR(s) will have the contract terminated, giving rise to:

I – the early maturity of the entire debt,

II – the return to the treasury of the awarded grant, plus interest and monetary adjustment, based on the remuneration of the funds that served as basis for its granting, without prejudice to the penalties provided for by law and,

III – the communication of the facts to the competent police authority to report the incident.

23. The DEBTOR(s)/TRUSTOR(s) are aware that the information inherent to the present contract is subject to the Principle of Advertisement,

End page 6

since the operation involves public resources.

23.1. The DEBTOR(s)/TRUSTOR(s) authorizes CAIXA to send them the necessary information regarding this contract, the addresses and telephone numbers that appear in their registration information, by any means of communication, including SMS, and it is their responsibility to immediately inform CAIXA of any changes regarding ownership, number, cancellation of the telephone contract with the operator, or anything regarding their details.

24. EVICTION OF THE PROPERTY – FAR shall receive from the expropriating power the indemnification, to be decreased from the total amount of the debt and the outstanding debt, if any, to the DEBTOR(s)/TRUSTOR(s), who remain(s) responsible for payment in the event of a compensation lower than the debt.

24.1 The DEBTOR(s)/TRUSTOR(s) declare(s) to be aware that the expropriation of the property does not generate any right to indemnity.

25. WAIVER OF CERTIFICATES – The DEBTOR(s)/TRUSTOR(s) and FAR declare that they waive the requirement of the documents listed in D. 93,240/86, replacing them with the Updated Land Registry Certificate, by promptly presenting the proof of payment of ITBI – real state transfer tax.

26. JURISDICTION – The Judicial Section of the Federal Justice of the location of the property subject to the guarantee.

27. REGISTRATION – FAR is obliged to register this contract with the competent Real Estate Registry (after registration of the institution of the condominium/construction endorsement or other, if the housing unity is alienated with documental pendency in the enterprise), committing itself to deliver to the DEBTOR(s)/TRUSTOR(s) a copy of this instrument with the respective certificate of registration in the competent Real Estate Registry within a maximum of 30 (thirty) days from the registration.

27.1 The costs and fees related to the registration of this contract and the corresponding guarantee has reduced costs, because they fall within the scope of the Minha Casa, Minha Vida Program (PMCMV), in accordance with article 43 of Law no. 11.977/09 and its amendments.

TAXES AND OTHER PERTINENT CHARGES TO THIS CONTRACT

ADDITIONAL INFORMATION/EXCEPTIONS

End page 7

And for being in full agreement with the Clauses, terms and conditions of this instrument, the following sign this in three (3) copies of equal content, together with the witnesses.

PLACE/DATE

DEBTOR/TRUSTOR/ISSUER(s)

[Signature 1]

[Signature 2]

SELLER(s)/FAR

[Signature]

WITNESS [1]

[Signature, Name, CPF]

WITNESS [2]

[Signature, Name, CPF]

CAIXA' Costumer Service: xxx (informations, claims, suggestions, commendations)

For persons with hearing or speaking disability: xx

Ombudspersons: xx

caixa.gov.br

End of translation.

Annex II: Translation. Certificate D.S. 49 and Sworn Statement

SERVIU. Ministry of Housing and Urbanism.
 AUTHORIZES THE PAYMENT OF THE SUBSIDY PROGRAM FSEV YEAR 2016 TO
 MRS. [name], MUNICIPALITY OF PUERTO NATALES.
 EXEMPT RESOLUTION [number].
 [Place, date].

WHEREAS,

- a) D.S. 49 of 2011, that regulates the granting of housing subsidies in the modality Housing Program Fund for Housing Choice.
- b) MINVU's Exempt Resolution 464, of 27th May 2016, that granted a housing subsidy according to FSEV, art. 17, V, to Mrs. [name].
- c) Law n. 20,882, of 5th December 2015, that granted approval to the 2016 Budget for the Public Sector.
- d) The faculties given to me by Resolution of Answerability n. 2, of 14th January 2015, MINVU, and the Exempt Resolution n. 2.269, 5th December 2014, of the Director of SERVIU XIIa. Region.

CONSIDERING,

- a) The deed of sale notarized as n. [number], 12th December 2016, Notary [name], firmed between beneficiary Mrs. [name] and seller Mrs. [name], in a document elaborated and signed by SERVIU Region XII, in the quality of sponsor entity.
- b) The prohibition written on p. [number], n. [number], of the respective registries of year 2016 of the Real Estate Registry of [name]; in a document elaborated and signed by SERVIU Region XII, in the quality of sponsor entity.
- c) The Request for Payment of FSEV D.S. 49, issued by EP SERVIU [name], with the required documentation.
- d) The authorization of payment n. xx, generated by the Request for Payment System.
- e) The Certificate of Housing Subsidy series n. [number] endorsed to the beneficiary.
- f) The necessity to fulfill course requirements by the beneficiary and the operation described on a).

DETERMINE:

1. AUTHORIZE the payment of the Certificate of Housing Subsidy D.S. 49 of 2013, to Mrs [name], in an amount of 774 UF.
2. The Department of Administration and Finances of this Service will proceed to cancel the payment of 774 UF granted in behalf of Mrs. [name].
3. Any expenses originating from this Resolution [umber], to be charged for an amount of 774 UF, FSEV year 2016.

TO BE REGISTERED, COMMUNICATED AND FILED

End page 1

[signature]

DEPUTY PROVINCE *ÚLTIMA ESPERANZA*
SERVIU MAGALLANES Y ANTÁRTICA CHILENA

[list of documents attached]

End page 2

MEMORANDUM n. 39

TO: DEPUTY PROVINCE PUERTO NATALES

FROM: PROVINCE COUNSELLOR OF PUERTO NATALES

SUBJECT: PAYMENT OF SUBSIDIES D.S. 49 AND D.S. 1

[date]

1. The present instrument makes reference to the payment of subsidies in the context of D.S.49 and D.S. 1, the files that contain the background notes and prohibitions regarding this service, in regard to the following beneficiaries:

- [name]
- [name]
- [name]

2. From the background analysis, it can be inferred that, in the case of beneficiary Mrs. [name], the real estate property that she acquired is duly registered in her name, [page], of the Real Estate Registry of *Última Esperanza* year 2016, as well as the corresponding prohibition in favor of the service registered on [page]. In regard to the two cases of construction in self-owned venues, they follow the certificate of definitive reception of [number]m2 and [number]m2 of construction work and the prohibition established against them enrolled on [page], of the Registry of Interventions and Prohibitions in Alienations year 2016 of the Real Estate Registry of *Última Esperanza*.

3. In the case of construction in self-owned venues, the payment shall be done in favor of the constructor firm [name].

4. Accordingly, art. 33 and 34 of D.S.1 should be implemented, in what they instruct to provide the payment to the sellers by cheque, extensive to Mr. [name] and Mrs. [name]. Likewise the payment will be conducted to the respective contractors.

5. The administrative authority renders the antecedents.

Sincerely,
[signature]

PROVINCE COUNSELLOR OF PUERTO NATALES

(...)

End page 3

DS49-AVC PAYMENT AUTHORIZATION N. XX

1. Authorization

N. Authorization: [number]

Region: Magallanes y Antartica Chilean

Year: 2016

Call year: 2016

Procedural State: Accepted

Call Type: Direct allocation

Date of process: n.d.

Consolidated: No

2. Payment Information

Resolution of Payment: [number]

Date: [date]

Amount: [sum]

3. Cheques

1 Cheque – Amount [sum] – Designated to Mrs [name]

4. Notes:

Beneficiary: Mrs. [name]

5. Beneficiary:

Certificate N. [number]

Name: Mrs [name]

Executive[signature]

Supervisor[signature]

Head of Budget Department[signature]

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CERTIFICATE OF HOUSING SUBSIDY ADSPI00XX
HOUSING PROGRAM FUND FOR HOUSING CHOICE
D.S. 49, 2011

THE PRESENT SUBSIDY IS GRANTED TO:

Name: M.

ID:xx

Spouse: n.d. (...)

INFORMATION ON THE SUBSIDY

Region of Application: *XII Magallanes y Antartica Chilean*

Date of emission: [date] Maturity: [date]

Amount of savings: waived

[TABLE] INFORMATION ON THE ASSIGNMENT

Resolution: 464 MINVU Date: [date]

Call: Housing Program Fund for Housing Choice

Type: Individual

[blank space info]

[TABLE]

Construction in self-owned venue, vertical densification, small complex: NO

[blank space]

[signature]

[Minister name]

Minister of Housing and Urbanism

End page 5

[informational page]

End page 6

MINISTRY OF HOUSING AND URBANISM

SERVIU EP/PSAT

DECLARATION

(AWARD HOUSING MOBILITY, ART. 36, D.S. 49)

I, Mrs. MA, declare I am aware of the following:

Amount of Award for Housing Mobility: 50UF

Requirements: Neither the seller (owner) nor their spouse may be legatee of another dwelling. The property to be alienated will be acquired by a beneficiary of D.S. 49, and the profit will be used to the acquisition of another dwelling.

Max. Worth of the dwelling to be acquired using the award: 2.200 UF

Time-period to acquire another dwelling: 12 months after entry on the respective Real Estate Registry of the alienation of the property.

For what has been indicated and stated on art. 36, D.S. 49, that regulates FSEV, I declare that the profit from the alienation of my dwelling located at [location] at the jurisdiction of [location] will be used for other ends (it does not fit for the Award Housing Mobility).

Address [address]

Municipality [name]

Telephone number [number]

E-mail [e-mail]

[signature]

End page 7

MINISTRY OF HOUSING AND URBANISM

REQUEST FOR PAYMENT

HOUSING PROGRAM FUND FOR HOUSING CHOICE D.S. 49

Individual Operations of Acquisition of a Constructed Dwelling

Beneficiary: [name]

Id: [number]

Telephone number: [number]

Address: [address]

E-mail:[e-mail]

Name of the seller: [name]

Id: [number]

Email: n.d.

[blank spaces]

Please select the type of operation:

2. Acquisition of a used dwelling

REQUIRED AND ATTACHED DOCUMENTS, ACCORDING TO THE TYPE OF OPERATION

1. Certificate of Housing Subsidy endorsed and signed by the beneficiary. SERVIU
2. Authorized copy of the deed of sale with the registration of ownership in favor of the beneficiary or their partner, or copy of the registration of ownership, if it shows the price of the purchase price and the payment method. SERVIU
3. The public deed mentioned on the previous item should contain a clause that indicates the number of a Construction Permit, and the filed dossier with antecedents will be considered part of the respective deed of sales. 2/SERVIU
4. Copy of the registry in favor of SERVIU and the prohibitions to alienate and celebrate for 5 years the acts and contracts to which art. 34 refers to, which shall not be necessary if there is a copy of the registry of the respective deed of sale. SERVIU

5. Copy of the registry of the mortgage constituted for the time-period of 5 years in favor of SERVIU (v. art. 36), which shall not be necessary if there is a copy of the registry of the respective deed of sale. SERVIU [cross]
6. Certificate of Definitive Reception. SERVIU [cross]
7. Public deed in respect to the Construction Permit, in regard to new dwellings and what is established by DFL 2, 1959. 2 [cross]
8. In case of an overdue Certificate of Payment: certificates that accredit that the respective public deed and the Request for Municipal Receipt have been processed at the Real Estate Registry and at the Municipality, respectively, during the time-being of the Certificate of the Housing subsidy. [not cross]

[signature of beneficiary or supporting entity]

End page 8

SERVIU

Region of *Magallanes y de la Antártica Chilena*
MINISTRY OF HOUSING AND URBANISM

CERTIFICATE OF MATERIAL DELIVERY OF THE DWELLING
HOUSING PROGRAM FUND FOR HOUSING CHOICE D.S. 49, de 2011
Individual Operations of Acquisition of a Constructed Dwelling

In *Puerto Natales*, on the 2nd of November of 2016, it is proceeded to the material delivery of the dwelling of Mrs. [name], Id [number], purchased from Mrs. [name], through a subsidy of the Housing Program Fund for Housing Choice, located at [address] of Residential [name] of this city, who declares to receive the real estate property in its full and total satisfaction. (A dwelling) (a house) was constructed in the building with the respective water, sewerage, light and gas installations.

The dwelling is presented in good maintenance conditions, in accordance to what has been established on the appraisal report, and to the Technical Standard for Acquisition of Dwellings available for Resale, in agreement with art. 44 of D.S. 49 of 2011, presenting satisfactory living conditions in compliance with current regulations, known by the purchaser, Mrs. [name], for which she takes responsibility for the maintenance from this day on.

In this opportunity, it is proceeded to present a copy of the public deed filed in [page], of 12 December, 2016, Notary [name] of this city.

Furthermore, it is declared that Mrs.[name] knows and accepts all conditions and prohibitions imposed by D.S. 49/2011, in respect to her condition as proprietary, for which it is identified: “*Art. 39 Obligations and prohibitions.*”

In regards to the subsidy received, the dwelling that should be constructed or acquired in accordance with this regulation, will be directly inhabited personally by the beneficiary of the subsidy and/or the family members that haven been declared as such by the application and for the period of at least during the following five years counting from the material delivery of the dwelling.

For all effects, an inhabited dwelling is that which constitutes the usual home of the indicated persons.

Furthermore, for a period of five years, the beneficiary shall not sell nor encumber the dwelling, nor celebrate a contract that may transfer the capacity of use and enjoyment of that, be it for valuable consideration or gratuitously, without previous authorization of

SERVIU. The mentioned prohibitions will be filed the respective entry at the Real Estate Registry.

Elapsed the time-period, the prohibitions will be lifted up against the requirement of the interested party.

Only in justified cases and by justified resolution, SERVIU may authorize the alienation, encumbrance or transfer of the capacity of use and enjoyment of the dwelling before that time-period has elapsed.”

“Art. 36. Guarantee

In order to guarantee for the faithful observance of the obligations previously mentioned and for the restitution of the subsidies received, the beneficiary shall constitute a primary mortgage over the property and in favor of SERVIU.

Elapsed the time-period of prohibitions inscribed in art. 34, SERVIU, upon request of the beneficiary, shall lift up the mortgage”

In what regards basic services (electricity, water and gas), and the shared expenses of the building, there are no open debts, as proven by the presentation of the latest invoices.

The beneficiary accepts all presented terms and signs the present certificate in two copies, one which stays in power of the proprietary and another of SERVIU XII Region.

[signature]

[name]

[identification]

End page 9

CONTRACT OF PURCHASE AND PROHIBITIONS

HOUSING PROGRAM FUND FOR HOUSING CHOICE D.S. 49, de 2011

[name]

To

[name]

And

SERVICE FOR HOUSING AND URBANIZATION XII REGION

Or SERVIU XII Region

Puerto Natales, [date],

Present Don E., chilean, married, employed, Id xx, in the capacity of administrator of the marital partnership and of the property of his partner, Ms. [name], chilean, [identification], representing herself and giving authorization as observed in art. 1,749 of the Civil Code, represented by Mrs. [name], chilean, [identification], all resident and domiciled at [address], hereon **“the seller”**; Mrs. [name], chilean, [identification] domiciled at [address], hereon **“the purchaser”**; Mr. [name], chilean, engineer, Id., domiciled at [address], representing the legal person of SERVIU XII Region, located at the same domicile; all legal of age, hereby state the following: they agreed in the following contract, which is in accordance with art. 68, L. 14,171, changed by art.

End page 10

12, L. 16,392, with art. 61, L. 16,391. **FIRST:** Hereby Mr. [name], administrator of the marital partnership and of the property of his partner, Ms. [name], here represented by Mrs. [name], sell, assign and transfer to Mrs. [name], who purchases and acquires for herself, the real estate property located at [address]. Mrs. [name] and Mrs. [name]. inherited the real estate property from Mrs. [name], entry [number], 11 December 2015, whose possession was given to the daughters in agreement with RE xx of the Office of Vital Records XII Region, followed by the entry on the Real Estate Registry in the year of 2016. **SECOND:** The purchase costed 841 UF, equivalent to 22.000.000 CLP, calculated on the 1 of August of the current year, of which an amount of 26.145,01 CLP includes: **a)** 57 UF, invoiced promptly; **b)** 10 UF originating from the savings account of the beneficiary at *Banco de Estado de Chile*. The purchaser gives express and irrevocable powers to the seller to use in their name and representation the savings account with the equivalent of 10 UF; **b)** with 774 UF of the Certificate of Housing Subsidy of D.S. 49 (...). From the 774 UF, 544 refer to the Basic Housing Subsidy, 200 UF to Location Subsidy, 30 UF to Incentive and Bonus for additional savings. **The purchaser** is obliged to provide all necessary documents required by MINVU, according to art. 66, of D.S. 49, renouncing any actions to terminate the contract for default due to no presentation of documents. **The purchaser** declares to have received the dwelling in conformity to the description of this contract. **The seller** declares having received the purchase price and declares it payed. The parties expressly renounce to legal actions to terminate this contract. **THIRD:** The parties declare to have abide the terms of the purchase and sale commitment related to the real estate property object of this contract. **FOURTH:** The sale is *corpus cerium*, as inspected and specified, in the state in which the property is currently found, with its rights, practices, customs, as well as positive and negative easements, free from any charges and debts. **The purchaser** declares to know the state of the property. **FIFTH: PROHIBITION.** According to art. 60, D.S. 49, the purchaser is prohibited for a period of five years to sell or encumber the dwelling, nor celebrate any contract that may transfer the capacity of use and enjoyment of that, be it of valuable consideration or gratuitously, without previous authorization of SERVIU. Elapsed the time-period, prohibitions may be uplifted against the requirement of the interested party. SERVIU XII Region, here represented, declares to acknowledges the prohibition. Hence, due to the subsidy, the dwelling acquired must be directly inhabited personally by the purchaser or the family members that have been as such declared for the period of five years following the material delivery of the dwelling. According to art. 61, D.S. 49/2011, the infringement of any of the previous obligations entitles SERVIU XII to require the restitution

End page 11

of the totality of the amount payment as subsidy, calculated the UF at the date of the restitution. The Real Estate Registry will file the mentioned prohibitions in the respective entry. **SIXTH: The purchaser** declares knowledge of norms established on D.S. 49, 2011, its changes and sanctions that have been established to infringements. **SEVENTH:** For all the effects, **the purchaser** is domiciled at *Puerto Natales*. **EIGHTH:** The carrier of the authorized copy of the public deed may require the Real Estate Registry to proceed to the necessary annotations. Moreover, the parties grant to SERVIU the irrevocable mandate to write, subscribe and grant all public and private documents that modify, clarify or ratify the present public deed. **NINETH:** The expenses referred to the entry and file will be supported by **the purchaser**. **TENTH:** The person of Mr. J has been designated as representative of SERVIU XII Region, according with RTZ 2, 14 January of 2015, MINVU, as so nominated by the Deputy of *Última Esperanza*, RE 2,269, 5 December of 2014, SERVIU XII Region, which delegates to the Deputy of *Última Esperanza* and their legal substitute, among other powers,

that to subscribe purchase deeds and other contracts that SERVIU has granted housing subsidies and/or mortgage credits. Mrs. MA is represented by Mrs. N, as provided by a special mandate granted in public deed filed before the Public Notary of Puerto Natales Mr. H., on the book xx, for which the Notary certifies. **ATTACHED DOCUMENTS. CERTIFICATE OF FISCAL EVALUATION: CONTRIBUTIONS:** Tax Service On line. Emission [date]. Certificate of Fiscal Evaluation. [number] Destination of the property: Habitation. Amount: [sum]. Without taxes: [sum]. Incident taxes: 0. The evaluation has followed the

End page 12

current legislation on territorial taxes, hence, it is not a commercial valuation of the household. **MARRIAGE CERTIFICATE OF THE SELLER: (...)** **MARRIAGE CERTIFICATE OF THE SELLER: (...)**

End page 13

Mrs. [name, signature, id]
Mrs. [name, signature, id]
Mrs. [name, signature, id]
Mr. [name, signature, id]

End page 14

Public Notary – Real State Property [name, signature]
Commerce and Mining
REAL ESTATE REGISTRY OF *PUERTO NATALES*
CERTIFICATE OF REGISTRY

It was registered on book [number] the requirement for registration of ownership, which was filed on [number] of the Real Estate Property Registry of the Year of 2016, Puerto Natales, 12 December of 2016.

It was registered on book [number], the requirement for registration of prohibitions, which was filed on [number] of the Real Estate Property Registry for Prohibitions to Alienate of the Year of 2016.

Puerto Natales, [date].

[signature]
Notary – Puerto Natales

End of translation

Translation. Sworn Statement

DJ 49-2
Mandatory

SERVIU. Ministry of Housing and Urbanism.

Sworn Statement

Application to the Program Solidary Fund for Housing Choice

(Chapter II, Para I, Art. 3, l. I, D.S. 49 (V. y U.), de 2011 and amendments)

I,[name], ID n. [number], hereby declare that:

1. The evidence, background and information provided for the purposes of my application at the SERVIU region of [region], are reliable and resemble my current social and housing situation.
2. The housing object of this subsidy application is necessary for my family and myself to live in, according to the declaration I signed at time of the application. I will not be able to rent it, sell it or leave it uninhabited for 5 years from the date of the respective entries in the Notary Registry, except for written authorization from the respective SERVIU, and 10 years if I receive the vertical subsidy (*Subsidio de densificación en altura*) of 140 or 190UF.
3. I am aware that SERVIU has the right to cancel my application, the Certificate of Subsidy or request the restitution of the submitted grant (direct and indirect), if it is found that the evidence or information declared in my application does not correspond to reality.
4. By this act, I declare my willingness to authorize the SERVIU to deliver information upon my application to third parties, for the purpose of receiving information on housing, or other information that may guide me in the choice of my housing solutions:

[Box] I authorize [Box] I do not au-

thorize

[Digital Signature]

[Date]

End of translation.

Annex III: Translation. Contract FGTS-Individual

CONTRACT BY PARTICULAR INSTRUMENT OF PURCHASE AND SALE OF AN ISOLATED UNIT AND OF LOAN WITH OBLIGATIONS AND FIDUCIARY ALIENATION – PROGRAM INDIVIDUAL LETTER of CREDIT FGTS – PROGRAM MINHA CASA MINHA VIDA

“The contracting parties declare themselves to be aware of the possibility of obtaining prior authorization from the www.tst.jus.br website of the Negative Certificate of Labor Debts (CNDT), pursuant to art. 642-A, of CLT, with wording by L. 12,440/11 ”.

By this particular instrument, which has the nature of a public deed, in the form of art. 61 of L. 4,380/64, as amended by L. 5,049/66, the parties hereto mentioned and qualified have, among themselves, fair and contracted the present operation (sic, of) sale and purchase of property and of loan with bonds and fiduciary alienation covered by guarantee, in the context of the Program Letter of Credit FGTS and the National Popular Housing Program, which is part of the MCMV Program, pursuant to L. 11,977/09, as amended by L. 12,424/11, according to the following clauses, terms and conditions:

A – QUALIFICATION OF THE PARTIES

SELLER(s): [data] **Real Estate Projects**, represented by [personal data]

PURCHASER(s)/DEBTOR(s)/TRUSTOR(s): [personal data]

FIDUCIARY CREDITOR: CAIXA ECONÔMICA FEDERAL, a financial institution in the form of a state-owned enterprise, related to the Ministry of Finance, created by D.-L- 759/69, governed by the bylaws in force on the date of this contract, based in Brasilia -DF at [address], CNPJ n. [number], hereby represented by **L.**, [personal data], hereinafter referred to as CAIXA.

- INITIAL INCOME OF THE DEBTOR (COMPOSITION) FOR CALCULATION OF PAYMENT OF MONTHLY INSTALLMENTS:

Debtor:	Proved:	Not proven:
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End of page 1

I.,	BRL 2,484.41	BRL 0.00
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2 – COMPOSITION OF INCOME FOR THE PURPOSE OF THE HOUSING GUARANTOR FUND – FGHAB

Debtor	Percentage
I.	100.00

B – VALUE OF PURCHASE AND SALE AND FORM OF PAYMENT

The purchase and sale price amounts BRL 95,000.00 (ninety five thousand reais), consisting of the payment of the installments described below, which will be paid to the sellers in accordance with the provisions of clause fourth of this instrument:

Own resources BRL 16,887.00

Resources related to the buyer's FGTS account BRL 0.00

Resources given as discount by the FGTS BRL 2,113.00
 Subsidy given by the creditor BRL 76,000.00

C- Loan/Redemption/Charges/Dates/Other values/Conditions

- 1 – Origin of Resources: FGTS / Federal Union
- 2 – Norm: HH.200.003 . 05/11/2012 – GEMPF
- 3 – Value of the Operation: BRL 78,113.00
- 4 – Discount: 2,113.00
- 5 – Debit: 76,000.00
- 6 – Fiduciary Guarantee: 110,000.00
- 7 – Amortization system: SAC
- 8 – Period, in months of redemption: 360
 of renegotiation: 0
- 9 – Annual interest rate (%): Nominal: 5.5; Effective: 5.6407
- 10 – Initial Charges – installment: BRL 559,44
 Administration rate: 0.00
 FGHAB: 11,40
 Total: 570,84
- 11- First due date: 27/12/2012
- 12- Time of recalculation of charges: in accordance with clause 11
- 13 – Date of *Habite-se*: 08/09/2010
- 14 – Form of payment: Bank Slip

End of page 2

FIRST CLAUSE – SALE & PURCHASE – The seller declares themselves the owner and possessor of the property described, free of charge, sells it for the constant price of letter “B”, for which payment will be satisfied in the form of letter “B”. Once satisfied with the purchase price, the seller grants the full and irrevocable discharge to the PURCHASER, and due to this contract and the *clausula constituti*, transmits to the PURCHASER all tenure, ownership, right and action over the property sold, accepting by themselves, their heirs and successors the present sale and purchase. The PURCHASER declares to accept this sale and purchase[contract].

SECOND CLAUSE – FINANCING – The PURCHASER, hereon named TRUSTOR, declares that in case of a loan designated to complete the amount required of the real estate purchase, with the intent of his own residency, and filling the legal requisites of Credit Letter of FGTS, they have been to CAIXA and obtained the loan, in the context of SFH and the norms of the Curator’s Council of FGTS (CCFGTS) and conditions of Program MCMV, under the constant value of 3 – C of this instrument, which corresponds to the sum of constant values in fields 4 and 5 – C of this contract.

FIRST PARAGRAPH – The constant value of field 4, calculated in conformity with the rules established by the Curator’s Council of FGTS, is given only once and for the acquisition of only one real estate property, to be completely endured by FGTS.

SECOND PARAGRAPH – The DEBTOR(s)/TRUSTOR(s) declares to be aware of payments and receipts considered in the calculation of the Total Effective Cost – CET for the present operation, as well as that the annual interest rate with values in its nominal form, demonstrated in a document filed by CAIXA, of which content the TRUSTOR has become aware of, accepted and agreed with, under the terms of the BACEN Resolution 3,517 of December 6th 2007, which produced effects from March 3rd, 2008.

THIRD PARAGRAPH – The DEBTOR(s)/TRUSTOR(s) declares themselves aware of the constant annual interest rate present in the document mentioned in the previous second Paragraph, of which a copy was given to him, representing the conditions of this contract signature date and that the debit balance and the monthly charges will be updated in accordance to the conditions agreed in this contract.

THIRD CLAUSE – DECLARATION OF PROGRAM ELIGIBILITY – CAIXA certifies that the DEBTOR(s)/TRUSTOR(s) proved with documents and personal declarations, that he complies to the requisites and conditions established by L. 11,977/09 and altered by L. 14,424/11, of eligibility of the present MCMV operation, in what it concerns the characteristics of the DEBTOR and the real estate property.

End of page 3

FOURTH CLAUSE – DESTINATION OF RESOURCES – The resources listed in 4 and 5 of letter C, as well as the correspondent FGTS amount of the DEBTOR(s)/TRUSTOR(s), will be paid to the vendor in the form indicated by CAIXA and by accepted by them.

FIRST PARAGRAPH – The amount to be paid to the SELLER will be added of interest and updated at monetary correction, to the index applied to savings deposits, as foreseen in art 12 of Law 8,177/91, and art. 7, L. 8,660/93, corresponding to the period from the date of hiring until the date of release of the resources.

SECOND PARAGRAPH – In what regards revenues earned in the form of the previous paragraph, the income tax will refer to rates defined according to the length of time.

THIRD PARAGRAPH – The payment to the SELLER will be conditioned to the delivery to CAIXA of this instrument registered at the respective Real Estate Registration Office.

FIFTH CLAUSE – CONFESSION OF THE DEBIT- The DEBTOR(s)/TRUSTOR(s) admits to owe CAIXA the amount stated in field 5 – C of this contract, and authorizes CAIXA to pay the Vendors this amount directly.

SIXTH CLAUSE – FINANCING CONDITIONS – Amortization and renegotiation terms, as well as interest rates, the due date of the first month charge, the time of recalculation of charges and the amortization system of the debit balance, stated in this loan, are present in letter C of this contract. Together with the monthly charges, the DEBTOR(s)/TRUSTOR(s) will pay an administration fee, owed to the Monetary Commission FGHAB, also described in the letter C of this contract.

FIRST PARAGRAPH – Administrative rates, when not payed by the client, have been completely supported by FGTS in accordance with the specific legislation.

SECOND PARAGRAPH – Tax rates referred in field 9 – C are given to beneficiaries that comply to norms established in the program legislation.

THIRD PARAGRAPH – In case of reduced tax rates permitted by the program legislation, the difference obtained between the tax rate of the previous paragraph and the maximal tax rate of the program was completely endured by FGTS, except the reduction of 0,5% a year, given to the participant of the fund according to clause [number] of this contract.

FOURTH PARAGRAPH – The pecuniary commission FGHAB, owed from the date of the signature of this contract, corresponds to the sum of 0,5% and the variable percentage of this deal with the age of the DEBTOR(s)/TRUSTOR(s), according to paragraph one of the twentieth clause, applied over the value of the monthly amortization and interest rate constant in field 10 – C.

SEVENTH CLAUSE – FORM AND PLACE OF PAYMENT OF THE MONTHLY CHARGES – The amortization of the loan will be done with the payment of monthly and successive installments, the first due to the date stated in field 11 – C of this contract.

FIRST PARAGRAPH – The payment of monthly installments will be conducted until its maturity, independent of any notice or notification, in the form indicated by (sic,

CAIXA) CEF, which may be conducted via a direct debit on the bank account of the DEBTOR(s)/TRUSTOR(s) and maintained at (sic, CAIXA) CEF.

End page 4

SECOND PARAGRAPH – In case of direct debit on the bank account, of which its holder, the DEBTOR(s)/TRUSTOR(s) authorizes (sic, CAIXA) CEF, granting her powers, through this instrument, to take the necessary actions to the effectuation of the procedure, obliging to keep sufficient balance for the payment of the monthly installments, admitting for this end, the use of any available resource in favor of the DEBTOR(s)/TRUSTOR(s) in its bank account, including it, to the effectuation of the debit.

THIRD PARAGRAPH – The DEBTOR(s)/TRUSTOR(s) is obliged to communicate, up to 10 days before the due date, any alterations in the characteristics of the account that had been indicated to debit the monthly installments.

FOURTH PARAGRAPH – In case there is not enough balance in the indicated account, the DEBTOR(s)/TRUSTOR(s) will be considered overdue, in which case all legal and contractual penalties apply, just as the anticipated maturity of the debit, as stipulated in this instrument.

FIFTH PARAGRAPH – During the amortization period foreseen in field 8 – C, the alteration of the due date of monthly installments may take place, in case of a mutual agreement of parties, after a specific requirement of the DEBTOR(s)/TRUSTOR(s).

SIXTH PARAGRAPH – In the case of the alteration of the due date of monthly installments, the debit balance will be updated “pro rata die”, including the period comprehending the date of maturity of the last installment, and excluding the new date of maturity of the installment. The DEBTOR(s)/TRUSTOR(s) is obliged to pay daily interests for the period counting from, including, the date of the last installment, excluding the due date.

SEVENTH PARAGRAPH – The amount of the first monthly installment, after the alteration of the due date, will be obtained from the composition of the amortization and the interest tranches calculated as described in paragraph sixth of this clause.

EIGHTH PARAGRAPH – The administration tax and FGAB indicated in letter C10 of this contract owed in that month will be payed independently of installment with due date.

NINTH PARAGRAPH – The alteration of the due date of monthly installments, the evolution of the debit balance, as well as the updating of the value of the guarantee, stated in clauses 9 and 16, will be conducted obeying the new maturity date.

EIGHTH CLAUSE – REMUNERATIVE INTEREST – Until the final solution of the debit, remunerative interests shall apply to the amount loaned based on the rates fixed on letter C of this contract.

SINGLE PARAGRAPH – Interest rates referred in this clause apply too to the amount used by CAIXA for the preservation of its interests foreseen in this contract, such as the payment of taxes, insurance prizes, condominium and notary debits, debits on execution and necessary to the maintenance and realization of the guarantee.

End page 5

CLAUSE NINTH – UPDATE OF THE DEBIT BALANCE – The debt balance will be monthly updated, based on the day of the signature of this contract and on the coefficient of update applicable to bound accounts to the FGTS.

FIRST PARAGRAPH – For the calculation of the debt balance, the proportional update will be based on the “pro rata die” criteria, using the same rates taken for the updating of the respective FGTS accounts, in the period comprehending the signature of the contract or the last update of the contractual debit, and if so, the date of the event.

SECOND PARAGRAPH – Other values calculated in this contract, not observed in their own clause, that shall be solved until the cancelling of the registry of the fiduciary property, will be used in the form stated in the had of this paragraph.

THIRD PARAGRAPH – In case the debit balance bound to FGTS accounts is adjusted monthly, the adjustment will take place on the date defined by the head of this Clause, to be operated monthly applying the respective monthly official rates.

CLAUSE TENTH – MONTHLY CHARGES INCIDENTS OVER LOAN – The loaned amount will be restituted by the DEBTOR to CAIXA through monthly and successive installments, which comprehends, in this date, the installment regarding amortization and interest, calculated over the amortization system described on item “C”, the administrative tax if existent, and the pecuniary fee FGAB, as described on item “C”.

FIRST PARAGRAPH – Interest rates will be first calculated over the basic monthly installment and the rest will be ascribed as of the amortization of the debit balance.

SECOND PARAGRAPH – If the figures set for installments are insufficient for the appropriation of remuneratory interest, any surplus will be incorporated to the debt balance.

CLAUSE ELEVENTH – RECALCULATION OF MONTHLY INSTALLMENTS – RECALCULATION OF MONTHLY INSTALLMENTS – In the first 02 (two) years of the amortization period of this contract, the figure of the amortization installment will be recalculated every 12 (twelve) months, counting from the day of signature of the contract.

FIRST PARAGRAPH – The recalculation of the amortization installment will be conducted based on the updated debt balance as observed on clause NINTH, in addition to interest rates, the amortization system and the remaining period of the contract.

SECOND PARAGRAPH – From the third year on, the figure of the amortization installment shall be calculated every three months, counting from the day of the contract signature, in the odds of an economic and financial instability of the contract.

THIRD PARAGRAPH – The interest installment constituent of the monthly installment will be recalculated monthly over the debt balance, updated as Claus NINTH, kept the interest rate, the defined amortization system and the remaining period.

FOURTH PARAGRAPH – The Administrative tax, if existent, shall not be readjusted.

FIFTH PARAGRAPH – The pecuniary fee FGAB is to be annually recalculated based on the correspondent day of the signature of this instrument, with the application of the amortization installment and recalculated interest of 0,5%,

End page 6

added to the variable percentage correspondent to the new age range category of the DEBTOR(s)/TRUSTOR(s), according to clause TWENTIETH, paragraph first of this contract.

SIXTH PARAGRAPH – The recalculation of the correspondent monthly installment observed in this instrument is neither tied to the salary or income of the professional category of the DEBTOR(s)/TRUSTOR(s) nor to the Wage Equity Plans.

TWELTH CLAUSE – RESIDUAL DEBIT BALANCE – In the case of the residual debit after the expiration of the amortization period, the DEBTOR(s)/TRUSTOR(s) is obliged to pay it, with their own resources, at once, at the due date of the last monthly installment, independent of any warning, notification, judicial or extrajudicial interpellation.

CLAUSE THIRTEENTH – OVERDUE PAYMENT – In case of failure in any of the payment obligations stated in this contract in due time, the amount to be payed will be adjusted, monetarily, since the due date until the date of the effective payment, “pro rata die”, and in accordance with the legislation.

FIRST PARAGRAPH – Interest rates described on item C9 will apply over the amount to be charged in accordance with the thirteenth clause.

SECOND PARAGRAPH – Remunerative interest rates of 0,033% for each day of delay will apply over the amount to be charged.

THIRD PARAGRAPH – Besides the previous obligations, a fee of 2% will apply over delayed installments.

CLAUSE FOURTEENTH – FIDUCIARY ALIENATION IN GUARANTEE – In guarantee to the payment of the debt from this loan, as well as to the faithful observation of the contractual and legal obligations, the debtors alienate to CAIXA, under a fiduciary character, the real estate object of this loan, in the end of this contract described and characterized, in accordance with art. 22 and following of Law 9,514/1997.

FIRST PARAGRAPH – After registration of the contract at the Real Estate Registry, the fiduciary property will be constituted in name of CAIXA, with indirect tenure of the real estate; and the debtor shall be guaranteed direct tenure rights.

SECOND PARAGRAPH – As long as they remain in compliance with the obligations set, debtors shall be guaranteed of the free use, at their own risk, of the real estate object of this contract.

End of page 7

THIRD PARAGRAPH – The contracted fiduciary guarantee regards the real estate identified in the end of this instrument, including accretion, improvements, constructions and installations that have been added to it, and it will last until the full restitution of the financed amount, its respective burdens and monetary adjustments, for which it will remain intact as long as the debtors fully comply with their contractual and legal obligations related to this legal business, as observed by art. 15, L. 9,514/97.

CLAUSE FIFTEENTH – IMPROVEMENTS – Any accession or improvements (useful, voluptuous or necessary) that the DEBTOR desires to address, under their own expenses, must be notified to CAIXA, in which case the DEBTOR obliges themselves to obtain all necessary administrative licenses, CND/INSS, and to promote the necessary annotation at the respective Property Registration Office, whereby, in all cases, they integrate the property and its value for the purpose of an extrajudicial auction.

FIRST PARAGRAPH – Pursuant to art. 27, para 4 and 5, of L. 9,513/97, there will be no right to withhold improvements, even if authorized by Caixa.

SECOND PARAGRAPH – In the case of a property taken in guarantee consolidates to CAIXA, there will be no compensation for improvements as long as the alienation of the property does not occur.

CLAUSE SIXTEENTH – SUM OF THE FIDUCIARY ALIENATION – The parties agree that the value of the property is given as fiduciary guarantee, for the purpose inscribed in art. 24, VI, L. 9,514/97, is now expressed in national currency assigned in item C6 of this contract, subject to the monetary correction of the same rate used for monthly corrections of the savings account of the say of the signature of this contract, to what is reserved to Caixa the right to require a new assessment at any time.

SINGLE PARAGRAPH – In this case, the debt will be corrected proportionally, based on the criteria set by the adjustment pro rata defined by specific prevailing legislation at the time of the event, in reference to the period between the day of signature of the contract and the last contract update, if existent, and the date of the event.

CLAUSE EIGHTEENTH – EXTRAORDINARY REDEMPTION – The execution of extraordinary redemptions for the reduction of the period of financing or the price of installments is ensured to the DEBTOR(s)/TRUSTOR(s), as long as in good standing.

FIRST PARAGRAPH – In order to reduce the sum destined to the redemption, updates on the amount of the debt and of the discount will be exercised based on the Clause NINTH, FIRST Paragraph, for which the elimination of the effect over the update of the reminiscent

balance will be conducted, after the reduction observed in the previous paragraph, against the division of that balance by the same applicable correction rates.

End of page 8

SECOND PARAGRAPH – New sums of monthly installments and/or of reminiscent periods resulting from extraordinary redemption will be evaluated in regard to the already redeemed debt, excluded from application updated interest rates, the amortization system and the reminiscent period, for which is not interrupted the period used for the recalculation of the redemption and interest rates applied in clause ELEVENTH.

THIRD PARAGRAPH – The amount correspondent to the Administration Rate remains unchanged.

CLAUSE NINETEENTH – TRANSFER OF THE DEBT – The transfer of the debt to third parties is allowed to be conducted by the DEBTOR(s)/TRUSTOR(s), if composed by the proportionally updated debt's balance, based on the pro rata adjustment defined by the specific prevailing legislation at the time of the event, in reference to the period between the date of signature of the contract or of the last contractual update, and the date of the event.

CLAUSE TWENTIETH – SOCIAL HOUSING GUARANTEE FUND – This contract foresees the coverage of the Social Housing Guarantee Fund – FG HAB, created by L. 11,977, of July 7, 2009, during the existence of this contract, with the purpose to:

I – guarantee the payment of the monthly installment, in case of unemployment or temporary reduction of the payment capacity of the DEBTOR(s)/TRUSTOR(s);

II – take on the debt's balance of the housing loan, in case of death or permanent invalidity of the DEBTOR(s)/TRUSTOR(s), as well as the debts related to the refurbishment of the physical damages of the dwelling.

FIRST PARAGRAPH – CONTRIBUTIONS – In order to have access to the respective guarantees mentioned on the main section of the article, during the coverage of this contract, the monthly installment in the form of a pecuniary fee of the DEBTOR(s)/TRUSTOR(s) is mandatory and hereinafter:

I – the fix monthly pecuniary fee corresponds to the application of the percentage range of 0,5% over the monthly installment and interest rate annotated on field 10.C of this contract;

II – the variable monthly pecuniary fee is based on the age range of the DEBTOR(s)/TRUSTOR(s), as it follows:

- a) up to 25 years – 1,50%
- b) from 25 years to 30 years – 1,54%
- c) from 30 years to 35 years – 1,64%
- d) from 35 years to 40 years – 1,82%
- e) from 40 years to 45 years – 2,59%
- f) from 45 years to 50 years – 3,02%
- g) over 50 years – 6,64%

SECOND PARAGRAPH – In the case of composed income, the perceptual of the variable monthly commission, observed in paragraph first, item II, will be equal to the average of the percentage rates of pecuniary fees of each DEBTOR(s)/TRUSTOR(s) weighed on the responsibility of each one, expressed on this contractual instrument.

THIRD PARAGRAPH – Whenever any of the DEBTOR(s)/TRUSTOR(s) changes their age range category, the percentage of the variable monthly pecuniary commission, observed on paragraph first, item II, will be altered as of the recalculation of this contract.

FOURTH PARAGRAPH – OF THE GUARANTEE OF THE MONTHLY CONTRIBUTIONS – The guarantee annotated on item I of the main clause will be conducted as hereinafter:

I – the commitment of at least 30% of the household's income at the time of the event (that motivated the guarantee by FG HAB), even if during the contracting phase that percentage was identified to be lower;

II – the maximal number of monthly contributions in the contract, in accordance with the brutto monthly income at the time of contract signature, limited to:

- a) 36 installments for those with an income of up to 2,500BRL;
- b) 24 installments for those with an income from 2,500,01 to 4,000BRL;
- b) 12 installments for those with an income from 4,000,01 to 5,000BRL;

III – the payment of at least six installments of the financing contract, for the first requirement of FG HAB;

IV – the formal requirement of presenting proof of unemployment and/or income loss, every three installments;

V – the payment of 5% of the amount of the required installment, for each requirement of FG HAB;

VI – the due payment of the contract during the previous months of the solicitation of FG HAB;

VII – the signature of the contract of loan by particular instrument with FG HAB;

VIII – the return of the installments honored by FG HAB immediately after the termination of the period of guarantee, as well as of loan, within the reminiscent time-range of the loan or with the prorogation of the initial period, updated for the same levels observed in the contract of loan.

FIFTH PARAGRAPH – The installments honored by FG HAB shall be repaid by the DEBTOR(s)/TRUSTOR(s) observing the following settings:

- a) the charging of the debt should take place under the same conditions asserted in the contract of housing financing;
- b) after the evaluation of payment capacity of the DEBTOR(s)/TRUSTOR(s), the debt will be incorporated to the outstanding debt balance and will be payed immediately after the end of the each period of guarantee and loan installment;
- c) there may be, if it is the case, a prorogation on the time-range of the loan for the total payment of the debt by the DEBTOR(s)/TRUSTOR(s);
- d) in the case of incapacity of due payment by the DEBTOR(s)/TRUSTOR(s), the debt may be payed at any time, or at the end of the amortization time-period of the loan or in the case of acceleration of the debt;
- e) in case of lateness in the due payment of the obligation, the debt will be added to the interest in arrears in the same way defined by the payment of monthly installments of the loan contract established on the contract.

CLAUSE TWENTY-FIRST – OF THE GUARANTEE OF THE PAYMENT OF DEBT – FG HAB foresees the partial or total coverage of the debt related to the loan under the following conditions:

I – death of the DEBTOR(s)/TRUSTOR(s), independent of the cause; and

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II – permanent invalidity of the DEBTOR(s)/TRUSTOR(s), that occurred after the signature of the contract, caused by an accident or a disease and informed in a maximum period of one year, counting from the day the concession of permanent disability retirement was informed.

FIRST PARAGRAPH – The coverage over situations of permanent disability is subject to confirmation by the official organ of social security or previous evaluation by CAIXA through medical examination;

SECOND PARAGRAPH – The amount taken on by FG HAB will be equivalent to the updated debt and capitalized to the fee of the contract up to the effective payment in the following manner:

I – the updated amount will be conducted *pro rata die*, using the same rate of housing contract from to the last date of the previous change before the event, including*, until the date of the effective payment, excluding*;

II – the capitalization of contractual interests from the due date before the occurrence of the event, inclusive*, until the date of the effective payment conducted by FG HAB, excluding*, uses the criteria of interest *pro rata die* during a period shorter than 30 days.

THIRD PARAGRAPH – Concerning the coverage mentioned in this clause, it is considered as date of occurrence of the event motivating the guarantee:

I – in case of death: the date of death;

II – in case of permanent invalidity:

a) the date of concession of permanent disability retirement or of first time receiving the benefit, considering informed via a notification of the social security organ if the DEBTOR(s)/TRUSTOR(s) is associated to the special or general regime of social security;

b) the date of the medical report that diagnosed the permanent incapacity.

FOURTH PARAGRAPH – For the effects of the payment of the debt, all obligations to which the DEBTOR(s)/TRUSTOR(s) is responsible will be considered payed until the previous day before the occurrence of the event motivating the guarantee.

FIFTH PARAGRAPH – In case there is more than one guaranteed party for the same housing unit, including husband and wife, the guarantee will be proportional to the responsibility of each one, expressed in this contractual instrument.

SIXTH PARAGRAPH – In case the age of the DEBTOR(s)/TRUSTOR(s) of the date of contract signature, added to the initial time-range of amortization exceeds eighty years and six months, the debt will be determined considering as original loan the compatible amount of the monthly installment, proportional to the income and to the maximum time-range of loan, in regard to each DEBTOR(s)/TRUSTOR(s).

SEVENTH PARAGRAPH – FG HAB will take on the expenses related to the necessary amount for the restoration of physical damages to the dwelling, limited to the amount the property was evaluated at the time of contract signature, updated in accordance with contractual conditions, caused by:

I – fire or explosion:

II – flood or inundation, when a river or channel bursts and its water affects the dwelling or floods caused by external agents to the dwelling, rain or broken pipes outside of the residency;

III – partial or total collapse of walls, timbers or any other structural parts, as long as caused by external agents or forces;

*it is unclear what the original text meant by exclusion or inclusion, hence the literal translation.

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IV – damages in roofing tiles caused by strong winds or hail; and

V – damages occurred in dividing or prop walls – indemnification of up to the limit of 2,800BRL or the equivalent of 3% of the value of the property, updated in accordance with to the contractual conditions, the lowest amount as long as proved the existence of a wall when of the loan and included in the original project.

EIGHTH PARAGRAPH – There will be no coverage for the costs of restoration of dwellings due to damages caused by the use or deterioration due to time and the normal use of the thing, even if cumulatively relating to: (internal) cover, electrical installations, hydraulic installations, paintings; frames, glass, iron, floors and the following costs:

I – costs caused by actions taken to revert the propagation of physical damages to the real estate property, for its safety and protection and for the removal of construction debris;

II – monthly charges owed by the DEBTOR(s)/TRUSTOR(s) to the financial agent in case of physical damages to the dwelling, if determined the vacation of the property;

III – loss of content, in case of loss of the real estate;

IV – costs caused by physical damages in common areas or within building installations;

V – rent, in case of vacation of the real estate;

VI – costs for restoration of the property caused by damages due to construction vices, proved via monitoring reports led by the project administration or, else, damages with repetitive characteristics caused by events previously guaranteed but against which no action was taken by those entitled to that right and who took no necessary action to prevent them and if they repeat within three years from each other.

NINTH PARAGRAPH – The engagement [of the DEBTOR(s)/TRUSTOR(s)] in life insurance, permanent invalidity insurance, and physical damages to the real estate, in accordance with L. 11,977, art. 28, is waived.

CLAUSE TWENTY-SECOND – COMMUNICATION OF EVENTS FOR ELIGIBILITY TO THE COVERAGE OF FGHAB – The DEBTOR(s)/TRUSTOR(s) declare to be aware and, henceforth, commit to inform their beneficiaries in case:

I – of the event of death, beneficiaries should communicate CAIXA upon the event, in written notice and immediately, under penalty of coverage loss within three years after the date of decease;

II – of permanent invalidity, under penalty of coverage loss within one year if the DEBTOR(s)/TRUSTOR(s) does not communicate the event to the financial agent, counting from the date [that the DEBTOR(s)/TRUSTOR(s) is] aware of retirement due to permanent invalidity:

a) in case the DEBTOR(s)/TRUSTOR(s) is associated to the general regime of social security, the date used [refers to that in] which the DEBTOR(s)/TRUSTOR(s) is called by the social security organ to present themselves to a bank agency to receive their first benefit or, in case of a document that mentions that event, the date of mailing of the document sent by the social security organ informing the DEBTOR(s)/TRUSTOR(s) of the concession of retirement due to permanent invalidity;

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b) in case the DEBTOR(s)/TRUSTOR(s) is associated to the special regime of social security, proper of public servants, [the date used refers to] the date of publication of retirement due to permanent invalidity on the Official Gazette;

c) in case the DEBTOR(s)/TRUSTOR(s) is not associated neither the general or special regime of social security, [the date used refers to] the date given by the medical technical report as that of beginning of the permanent disability.

III – the event of physical damages to the real estate object of this contract and to present the respective documentation according to the following paragraphs.

FIRST PARAGRAPH – In the case of coverage for the payment of the monthly installments of loan, in case of unemployment, at least the following documents [are to be presented]:

I. Copy of the Work and Social Security Card with annotation of the employment dismissal;

II. Term of work contract termination;

III. Documentation of PIS/PASEP²³¹⁰ registration;

*PIS/PASEP, Profit Participation Program and Civil Servants' Investment Program, are two social security contributions.

IV. Declaration of the DEBTOR(s)/TRUSTOR(s) on the veracity of the information and documents delivered.

SECOND PARAGRAPH – In the case of coverage for the payment of the monthly installments of the housing loan under temporary reduction of payment, at least the following documents [are to be presented]:

I – document issued by the social security organ to which the beneficiary is associated, declaring the beginning of the temporary invalidity;

II – copies of the gross monthly income documentation of the beneficiary and co-beneficiaries at the date of contract signature, specified at the date of the signature of the loan, socio-economic cards or registration; and

III – copies of the gross monthly income documentation of the DEBTOR(s)/TRUSTOR(s) of the month previous to the event.

THIRD PARAGRAPH – In the case of coverage for the event of death or permanent invalidity, at least the following documents [are to be presented]:

I – death certificate, in case of death;

II – letter of concession of retirement for permanent invalidity, emitted by the social security organ or published on the official gazette, if a public servant;

III – declaration of the Social Security Institute to which the DEBTOR(s)/TRUSTOR(s) contributes, in case of permanent invalidity.

FOURTH PARAGRAPH – In the case of coverage for physical damages to the real estate, at least the following documents [are to be presented]:

I – three budget proposals;

II – bill;

III – invoice;

IV – construction specifications or inspection report or other document that specifies the material used and finishing standards, as of the signature of the loan contract; and

V – pictures of the real estate.

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CLAUSE TWENTY-THIRD – FISCAL BURDENS – All taxes, fees and other burdens or contributions, including tributary ones that affect or come to affect the alienated real estate, that are inherent to the guarantee, or that affect or come to affect the operation object of this contract, such the Land and Urban Tax – IPTU and the contributions owed to the condominium, to the dwellers' association, among others, will be payed by the DEBTOR(s)/TRUSTOR(s) in their due time, to which CAIXA reserves the right to require that respective proof at any time.

SINGLE PARAGRAPH – In the case of delay in payment, in the fulfillment of the obligations and in case CAIXA does not consider the debt overdue, the right to make the payment to any of those burdens observed in this clause is reserved to the DEBTOR(s)/TRUSTOR(s), to which they oblige themselves to reimburse all amount so spent under monetary and interest update as established in this contract.

CLAUSE TWENTY-FOURTH – CONSERVATION AND WORKS – The DEBTOR(s)/TRUSTOR(s) are complexed to keep the alienated work in perfect state of conservation, safety and habitability, making any necessary reparation, as well as other works required by CAIXA for the preservation of the guarantee, to which is forbidden the realization of demolition, alteration or addition works without the previous and express consent from CAIXA. For an exact compliance to this clause, it is assured to CAIXA the faculty to monitor the alienated real estate at any time.

CLAUSE TWENTY-FIFTH – DECLARATIONS OF DEBTOR(s)/TRUSTOR(s) – The DEBTOR(s)/TRUSTOR(s) have the obligation to communicate CAIXA of eventual impugnations done to this contract of loan, as well as to any events that may directly or indirectly

affect the alienated real estate, notably the change of numbering or identification system, during the validity of this contract of loan, declaring as well that:

- a) there are no responsibilities arising from guardianship, curatorship or testaments;
- b) they do not respond from any real or personal action, claim, attachment, motion, deposit, impound, protest [of a bill], bankruptcy, debt rehabilitation or composition with creditors, fiscal debts, execution, nothing existing that could commit the real estate object of the present transaction and fiduciary guarantee constituted in favor of CAIXA.
- c) informations on their civil status, nationality, profession and identification are authentic and true;
- d) all taxes and charges affecting this operation were payed.
- e) they are not associated to the social security system as a beneficiary in the condition of employer or as a rural producer, otherwise the Certificate of Negative Debt – CND should be presented at the act of registration of this instrument at the registry office.
- f) **that the eventual discovery of falsehood over the presented declarations, or the facts resulting from their conduct that affect on the modification of conditions observed in this contract making it suitable to the Program Stand-by Letter of Credit FGTS, will lead to the immediate ineligibility of the referred program and will apply them the duty to reimburse FGTS for any costs referring to the discounts received.**

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g) they are aware that all information concerning this contract can be published by an organ or entity that requires it with the aim to monitor the execution of the Program Stand-by Letter of Credit FGTS and of the program MCMV and/or the correct application of the public resources received as a subsidy by the beneficiary.

FIRST PARAGRAPH – In regard to debts of fiscal and condominial nature mentioned on clause TWENTY FIFTH, the DEBTOR(s)/TRUSTOR(s) declare themselves subsidiary responsible for the payment of any debts, admit the responsibility for the payment before CAIXA, in case the SELLER(s) do not comply to the obligation to pay as directly stipulated in this instrument, saving the right to regressive collection, though always observing this contractual instrument.

SECOND PARAGRAPH – **At the time that the DEBTOR(s)/TRUSTOR(s) declare themselves holders of the account associated to FGTS, with a minimum of three years of work under the FGTS regime, as they also recognize that the reduction of 0,5%, in accordance with R. 537 of August 2007, CCFGTS, was correctly applied to the nominal interest rates as annotated on item C.9 of this contract.**

CLAUSE TWENTY-SIXTH – HOLDER OF THE LOAN CONTRACT AND THE QUALITY OF PROPRIETARY – The DEBTOR(s)/TRUSTOR(s) declare themselves, under the penalty of law:

- a) not to be a holder of an active housing loan in any municipality in national territory;
- b) not to be proprietary, assignee or committed purchaser of a housing unit, without a loan or already payed, located in the current domicile and on the municipality object of the contract;
- c) not to have a contract with PAR, Pais and not to have been part, at any time, as a beneficiary of housing programs funded by federal budget or housing discounts provided by FGTS.

FIRST PARAGRAPH: Despite the declarations observed in the main clause, according to the aims of L. 11.977/2009 and D. 7.499/11 that regulate MCMV, the DEBTOR(s)/TRUSTOR(s) also declare that:

- a) they are aware of the legal prohibition stated on art. 36, of L. 11.977/2009, based on which they are forbidden over a period of fifteen years, counting from the current date, to undertake the division of the land over which the dwelling is constructed as described and characterized in this contract;

b) that the declarations that substantiated the previous conditions of the signature of this instrument are authentic and true, including those foreseen on L. 11.977/2009 and its regulation and those that are stated on information and proof of income and of costs delivered at the act of proposal.

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SECOND PARAGRAPH – In case of use of resources associated to the FGTS account, and besides of what the DEBTOR(s)/TRUSTOR(s) also declares not to have been buyer or proprietary of a dwelling concluded or in construction in the municipality in which they exercise their main occupation, in neighbor municipalities or in metropolitan regions or neither in their current domicile municipality.

THIRD PARAGRAPH – Without prejudice to other applicable legal sanctions, the falsehood of declarations foreseen in this clause will generate, among others, the following consequences to the DEBTOR(s)/TRUSTOR(s):

- a) the loss of the right to FGAB coverage;
- b) the obligation to reimburse to the account associated to FGTS the amount used for this operation;
- c) the acceleration of the debt as observed in clause twenty-eighth.

CLAUSE TWENTY-SEVENTH – DECLARATIONS OF SELLER(s) – The SELLER(s) declare, under penalty of law, that until the moment:

– in relation to the real estate, there are no *in rem* guarantee or possessory lien and debt of any fiscal or condominium nature, including taxes and fees, to which they assume in irreversibly character the exclusive responsibility for eventual debts of such nature that may be owed up to the present date.

- there are no responsibilities arising from guardianship, curatorship or testaments and that they do not respond personally from any real or personal action, claim, attachment, motion, deposit, impound, protest [of a bill], bankruptcy, debt rehabilitation or composition with creditors, fiscal debts, execution, nothing existing that could commit the real estate object of the present transaction and fiduciary guarantee constituted in favor of CAIXA.

- not to be associated with the social security system, be it as a private person in the quality of employer and/or rural producer, on the contrary, or in the case of a legal person of a SELLER(s), in which case the Certificate of Debt Clearance – CND should be presented at the act of registration of this instrument at the registry office.

- do not have pending debts of federal taxes and contributions.

- the dwelling object of purchase and sale described and characterized by the end of this instrument was never inhabited.

SINGLE PARAGRAPH – If the seller is a legal person that exercises the activity of purchase and sale of dwellings, rental, division or allotment of lands, real estate development or the construction of buildings destined to construction, they declare, under the penalty of law, that the dwelling object of the present transaction is not and never was integrative part of their permanent assets, what waives them from the presentation of the Certificate of Clearance of Federal, CND and INSS Tax and Contributions.

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CLAUSE TWENTY-EIGHTH – THE ACCELERATION OF THE DEBT – The debt will have its due date anticipated, independent of any judicial or extrajudicial notification, leading to the enforcement of execution of this contract, in which case it will be collected in its totality, with all its accessories and, if it is the case, the discounts updated as stated in clause 9.1, based on legal grounds and also:

I – IF THE DEBTOR(s)/TRUSTOR(s):

a) fail(s) to comply to the payment of three consecutive monthly installments or not* or any other contribution foreseen by this instrument which are not covered by FGAB;

b) assign(s) or transfer(s) rights and obligations to third parties, in totality or partially, sell or commit to the purchase the alienated real estate without the previous and express consent of CAIXA;

c) do(es) not keep the alienated real estate in perfect state of conservation, security and habitability or if they conduct, without previous and express consent from CAIXA, demolition, alteration or extension works in the dwelling that may compromise its maintenance or the use of the guarantee;

d) constitute(s) new alienations, mortgage or *in rem* guarantees over the real estate, totally or partially, without previous and express consent from CAIXA;

e) when required by CAIXA, fail(s) to present the payment receipts of tributes, taxes, social security and insurance charges that may affect the alienated real estate and that may be of their responsibility;

f) turn(s) to be ineligible to the program, in which case they will have to return all discounts referring to clauses second and sixth, updated as in accordance to this instrument.

II – IN THE EVENT OF ANY OF THE FOLLOWING HYPOTHESIS:

a) if proven the falsehood of any declaration provided by the DEBTOR(s)/TRUSTOR(s) on their registration card attached to the process of loan or on the contract;

b) if the guarantee is depreciated or deteriorated, and the DEBTOR(s)/TRUSTOR(s) do not reinforce it, after the due notification;

c) if any action or execution or judicial or administrative measure is issued against the DEBTOR(s)/TRUSTOR(s) that, in any form, affects the real estate given in guarantee, totally or partially;

d) if the dwelling given in guarantee is expropriated;

e) at any time, if the DEBTOR(s)/TRUSTOR(s) applicant of this loan is confirmed to be proprietary of residency, financed or not, located in the municipality of the location of the dwelling;

f) if it is verified that the DEBTOR(s)/TRUSTOR(s) have objected to the strict social and assistance aims that this loan targeted, giving the alienated real estate another destination than that of their residency and of their relatives;

g) in the case of bankruptcy of the DEBTOR(s)/TRUSTOR(s);

*the expression “or not or” was included in the original clause, and as also translated, although it is unclear.

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h) if any of the clauses of the present loan contract are broken;

i) if the registration stipulated by this contract is not conducted in its due time.

CLAUSE TWENTY-NINTH – THE GRACE PERIOD FOR THE EXPEDITION OF THE OFFICIAL NOTICE – Pursuant to L. 9,514/17, art. 16, para 2, a period of 60 days will be provided, counting from the maturity date of the first non-payd charge.

FIRST PARAGRAPH – OF THE DEFAULT AND BREACH OF CONTRACT – After those 60 days of grace period related by this clause, CAIXA or its assignee may initiate the procedure of Summons and, even if not materialized, the DEBTOR(s)/TRUSTOR(s) that try to remediate the late payment will have consider the payment of the payd and non-payd monthly installments, the contracted interest rate, interest on arrears and late payment fine, extra charges and costs of the Summons procedure, as well as taxes, condominium and association contributions, in accordance with clause 13 of this instrument.

SECOND PARAGRAPH – Any eventual delays longer than the one described by this instrument are considered an option taken by CAIXA and do not constitute in any factor generating rights to the DEBTOR(s)/TRUSTOR(s).

THIRD PARAGRAPH – The delay of the DEBTOR(s)/TRUSTOR(s) will be ratified through an official notice with a period of 15 days to its remedy.

FOURTH PARAGRAPH – Only the payment of the charges and if interest on arrears will not waive the DEBTOR(s)/TRUSTOR(s) from the responsibility to settle the obligations, for what they will remain in default for all legal and contractual effects.

FIFTH PARAGRAPH – The Summons procedure will obey the following requisites:

a) the official notice required by CAIXA or its assignee sent to the official precinct chief of the Real Estate Registry Service indicate[s] the overdue and non-paid amount and the default penalties;

b) the Summons proceedings will be conducted by the official precinct chief of the Real Estate Registry Service of the real estate district where the dwelling is situated or of the domicile of those who should be summoned, or else, via mail, including a receipt notice to be signed personally by the DEBTOR(s)/TRUSTOR(s) or by those who receive the official notice;

c) the official notice will be conducted personally to the DEBTOR(s)/TRUSTOR(s) or to their legal representative or to a person given powers of attorney;

d) if the defendant has an unknown domicile, as certified by the official precinct chief of the Real Estate Registry Service or of the Titles and Documents Registry Service, the former will be responsible for serving the defendant with a Summons through a public notice within 15 days, counting from the first appearance and published for three days at least in one of the local newspapers of greatest circulation and in one at a judicial district of easy access if there is no local daily press in the dwelling's location.

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e) if the defendants ignores the service of the process, in which case they do not accept the service or hide from being served, or even if they refuse to sign the acceptance receipt, the respective official precinct chief of the Real Estate Registry Service is authorized to publish the public notices after the certification of non-execution of the service, as observed in L. 9,514/97, art. 26, para 4.

SIXTH PARAGRAPH – In case of remediation of the late payment, the contract of fiduciary alienation will be revalidated, to which the payment of the collection and summons procedures will be charged to the DEBTOR(s)/TRUSTOR(s).

SEVENTH PARAGRAPH – Any eventual differences between the amount paid as a remediation of the late payment and the amount owed at the day of late payment will be paid by the DEBTOR(s)/TRUSTOR(s) with the first or second charges that are due after the remediation at the Real Estate Registry Service.

EIGHTH PARAGRAPH – The DEBTOR(s)/TRUSTOR(s) will not be allowed to pay any monthly installment of the loan as long as the previous overdue installments have not been paid. In case that happens, they payment will be used for the liquidation and amortization of the first overdue and unpaid charges.

NINTH PARAGRAPH – The receipt of payment of the last overdue installment does not presume the acquittance of the previous one.

TENTH PARAGRAPH – In case there is more than one overdue charge, the remediation of the late payment will only be allowed simultaneously, with the payment of all overdue charges, unless CAIXA authorizes the payment in installments.

ELEVENTH PARAGRAPH – If CAIXA comes to pay any charges related to the real estate or the guarantee, the DEBTOR(s)/TRUSTOR(s) will reimburse those in 30 days counting from the receipt notice of the communication, in which case all penalties of default apply.

TWELFTH PARAGRAPH – In case the DEBTOR(s)/TRUSTOR(s) fail to remediate the late payment in due time, the official precinct chief of the Real Estate Registry Service will issue a certificate and promote the registration of the consolidation of property to CAIXA on

the registration of the real estate, based on the proof of payment of the real estate transfer tax – ITBI, to which the DEBTOR(s)/TRUSTOR(s) will be served with a Summons.

THIRTEENTH PARAGRAPH – If the real estate has been rented, the rental contract may be imputed and given thirty days for vacancy, unless there has been written acquiescence of the fiduciary creditor, to which this imputation will be conducted in ninety days after the consolidation of the property to the fiduciary creditor.

CLAUSE THIRTIETH – EXTRAJUDICIAL AUCTION – Once the property is consolidated on behalf of CAIXA based on the non-remediated late payment that transformed into complete default, the real estate shall be alienated by CAIXA to third parties, according to L. 9,514/97, art. 27.

FIRST PARAGRAPH – The alienation shall always be conducted via extrajudicial public auction.

SECOND PARAGRAPH – The first public auction will be conducted 30 days after the date of registration of property consolidation on behalf of CAIXA, for which the amount established in this instrument item 6.C shall be offered, monetarily updated as clause SIXTEENTH, to which CAIXA reserves the right to require a new evaluation.

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THIRD PARAGRAPH – In case there is no offer in an amount equal or superior to the one established by the parties, as in accordance with the previous paragraph, the real estate will be offered in a second auction, to be conducted within 15 days after the first public auction, in which case the real estate shall be offered for the amount of the debt.

FOURTH PARAGRAPH – The public auction (first and/or second) will be announced in one public notice with a period of 10 days counting from the first appearance and published for three days at least in one of the local newspapers of greatest circulation and in one at a judicial district of easy access if there is no local daily press in the dwelling's location.

FIFTH PARAGRAPH – CAIXA, as the owner of full property title, will transmit the direct and/or indirect equitable ownership and possession of the real estate to the seller.

SIXTH PARAGRAPH – In the case of an extrajudicial auction, the parties adopt the following concepts:

I – the amount of the real estate is the amount set on item C.6 of this contract, monetarily updated until the date of the judicial action in the form of clause SIXTEENTH, to which CAIXA reserves the right to require a new evaluation;

II – the amount of the debt is equivalent to the amount of the following amounts:

- a) the outstanding debt balance as observed in clause NINTH, first paragraph;
- b) the sum of the payed and non-payd installments, in addition to the default penalties;
- c) the auctioneer's commission;
- d) costs of serving Summons to the DEBTOR(s)/TRUSTOR(s) and of public notices;
- e) costs for the consolidation of property on behalf of CAIXA;
- f) condominium contributions (overdue and non-payd charges until the auction date), in case that the real estate is an independent unity integrating an special condominium;
- g) installments (overdue and non-payd charges until the auction date) owed to the dweller's association or similar entity, if the real estate integrates such a project;
- h) costs on water, electricity and gas (overdue and non-payd charges until the auction date), if it is the case;
- i) IPTU and other eventual taxes or contributions (overdue and non-payd charges until the auction date), if it is the case;
- j) occupation tax per month or fraction counting from the date of real estate alienation in public auction, fixed on 1% over the real estate's value and updated over the same rate here annotated, to which CAIXA reserves its right to require a new evaluation;

k) any other social contribution or tax affecting any payment conducted by CAIXA due to the Summoning and the extrajudicial auction and the delivery of any amount to the DEBTOR(s)/TRUSTOR(s);

l) the payment of any necessary restoration to the dwelling in order to make it identical to the state of delivery to the DEBTOR(s)/TRUSTOR(s), unless it was returned in such conditions to CAIXA or to the purchaser in the extrajudicial auction;

m) transfer and *laudemium* tax that may be eventually payed by CAIXA due to the consolidation of the property on its behalf caused by the default of the DEBTOR(s)/TRUSTOR(s).

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SEVENTH PARAGRAPH – In accordance with paragraph SIXTH of this clause, the amount of the debt shall be monetarily updated from the date of the consolidation of the debt until the date of the second auction.

EIGHTH PARAGRAPH – The highest bid offered in the second auction will be accepted, as long as equal or higher than the amount of the debt as observed on paragraph SEVENTH of this clause, in which case CAIXA shall refund the reminiscent amount to the DEBTOR(s)/TRUSTOR(s) in 5 days subsequent to the complete and effective receipt, as ruled ahead.

NINTH PARAGRAPH – In case there is no bid higher or equal to the amount of the debt in the second auction, the debt will be considered waived and the obligation from CAIXA to refund the DEBTOR(s)/TRUSTOR(s) with any amount will be extinguished.

TENTH PARAGRAPH – The debt will be also waived if there are no bidders in the second auction.

ELEVENTH PARAGRAPH – Waived the debt, CAIXA will issue a certification of extinguishment of obligation within 5 days of the date of the second auction.

TWELTH PARAGRAPH – If a reminiscent amount is to be refunded to the DEBTOR(s)/TRUSTOR(s) after the first or second auction, CAIXA will make that sum at their disposal or will deposit that sum to the account of the DEBTOR(s)/TRUSTOR(s), considering included the indemnification for upgradings, if it is the case.

THIRTEENTH PARAGRAPH – CAIXA will keep the legal reporting available for the DEBTOR(s)/TRUSTOR(s) for the period of 12 months from the realization of the auction.

FOURTEENTH PARAGRAPH – The DEBTOR(s)/TRUSTOR(s) will vacate the dwelling on the day after the consolidation of the property on behalf of CAIXA, making it free and unobstructed to people or things, under penalty of payment to CAIXA or to the auction purchaser, as a form of occupation tax updated as defined by this contract, including the responsibility of payment of all costs over condominium, taxes, associative installments, water, electricity and gas incurred after the auction, as well as all costs charged for the restitution of the real estate to the state of delivery.

FIFTEENTH PARAGRAPH – The vacancy tax mentioned on paragraph Fourteenth affects from the date of alienation of the real estate property until the date in which CAIXA or their successors have the writ of entry issued.

End of page 21

SIXTEENTH PARAGRAPH – In case the vacancy of the real estate does not occur in the form and period as annotated, CAIXA, its assignees and successors, including the purchaser of the real estate of the auction or later, may require the repossession (or the writ of entry, as of the purchaser), in which case DEBTOR(s)/TRUSTOR(s) is/are declared to be aware of the preliminary injunction of repossession for vacating in maximum 60 days, according to L. 9,514/17, art. 30, as long as proven that the consolidation of the property on behalf of CAIXA or the registry of the contract celebrated due to the purchase and sell of the auction or after the auction, depending on the plaintiff and based on the real estate registry, without prejudice of charging the daily tax of occupation and other costs observed in this contract.

SEVENTEENTH PARAGRAPH – Pre-emption rights do not apply to the renter of the real estate object of this contract, in accordance with L. 8,245/91, art. 27.

CLAUSE THIRTY-FIRST – DISPOSSESSION – CAIXA will receive from the respective authority the corresponding indemnification in case of dispossession of the real estate given in guarantee, affecting the debt and releasing the discharge to the DEBTOR(s)/TRUSTOR(s), should there be any.

FIRST PARAGRAPH – If the indemnification observed on the main clause is smaller than the debt balance, the DEBTOR(s)/TRUSTOR(s) shall bear the costs, under penalty of judicial collection of the remaining amount.

SECOND PARAGRAPH – The DEBTOR(s)/TRUSTOR(s) declare to be aware of an eventual dispossession does not generate rights to insurance indemnification.

CLAUSE THIRTY-SECOND – ASSIGNMENT AND GUARANTEE OF RIGHTS – The fiduciary credit resulting from this instrument shall be assigned or used as guarantee in totality or partially to CAIXA, independent of notification to the DEBTOR(s)/TRUSTOR(s).

FIRST PARAGRAPH – CAIXA may too assign the credit constituted through this contract, partially or totally, including the securitization of real estate credits, independent of consent or intervenience of the DEBTOR(s)/TRUSTOR(s), in accordance with L. 9,514/97.

SECOND PARAGRAPH – In case of alienation or securitization of real estate credits, CAIXA may assign the credits originated in this contract to the credit securitization company.

THIRD PARAGRAPH – Real estate credits may back the emission of a credit title via the credit securitization company, denominated Certificate of Receivable Real Estate – CRI, that will be freely negotiated by the parties through the centralized systems of safekeeping and financial settlement of private titles.

FOURTH PARAGRAPH – Thus, the DEBTOR(s)/TRUSTOR(s) are aware that the operation of real estate loan that they are acquiring represents the connection bond of a chain of legal business that initiates with fundraising by CAIXA, follows to the granting of loan to the DEBTOR(s)/TRUSTOR(s), the securitization of credits and the negotiation of certificates of Receivable Real Estate – CRI, backed by those credits.

End of page 22

CLAUSE THIRTY-THIRD – NOVATION – The forbearance of any infringement conducted by the DEBTOR(s)/TRUSTOR(s) of legal and contractual obligations, as well as other arrangements that may facilitate the regularization of overdue payments, will not constitute novation.

CLAUSE THIRTY-FOURTH – REGISTRATION – The DEBTOR(s)/TRUSTOR(s) will furnish CAIXA with a receipt of the registry at the competent real estate registry within 30 days counting from the date of signature of this contract.

FIRST PARAGRAPH – In case that receipt is not furnished by the DEBTOR(s)/TRUSTOR(s) in the time-period indicated in the main clause, CAIXA may consider the acceleration of the debt or conduct the registration, attributing the DEBTOR(s)/TRUSTOR(s) with inherent costs to that act.

SECOND PARAGRAPH – Costs resulting from the registry and other acts related to the first real estate acquired or finance through MCMV will be reduced in accordance with L. 11,977/2009, art. 43.

CLAUSE THIRTY-FIFTH – ACQUIESCENCE OF THE CONTRACTUAL CONTENT – The DEBTOR(s)/TRUSTOR(s) declare to be aware of all contractual clauses, under sufficient period and form, stating that they are clear and devoid of ambiguity, dubiousness or contradiction, for which they are aware of the rights and obligations observed in this contract.

CLAUSE THIRTY-SIXTH – COMMUNICATION WITH THE DEBTOR(s)/TRUSTOR(s) – The DEBTOR(s)/TRUSTOR(s) authorize CAIXA to use any communication

means based on their personal registry information to send them messages related to the obligations/installments observed on this instrument and respected related legal provisions.

CLAUSE THIRTY-SEVENTH – GRANTING OF POWER OF ATTORNEY – In case of two or more DEBTOR(s)/TRUSTOR(s), they all declare themselves to be jointly and severally liable for all obligations taken before CAIXA and their power of attorneys until the full payment of the debt with irrevocable general and special powers in any jurisdiction to require, agree, appeal, compromise, receive or give discharge, quit, be served Summons, including seizure, auction or public auction, at last, all necessary acts for the faithful performance of this mandate.

CLAUSE THIRTY-EIGHTH – CAIXA’S ENGINEERS – Caixa’s engineers are understood by the professionals among their staff or for that reason authorized, or a technical specialized firm or habilitated in engineering services, also authorized for that matter.

CLAUSE THIRTY-NINTH – EXTINCTION OF THE COEFFICIENT UPDATE OVER THE DEPOSITS OF ACCOUNTS ASSOCIATED TO FGTS – The values observed on this contract, that are dependent on the variations of the coefficient update for deposits of accounts associated to FGTS, shall be updated by the rates that come to be determined by specific legal provisions.

End page 23

CLAUSE FORTIETH – WAIVER OF CERTIFICATES – The PURCHASER(s) and the SELLER(s) declare that they waive the presentation of certificates enlisted on D. 93,240/86 by mutual agreement, including the fiscal and filed certificates, in which case they shall be substituted by an updated certificate of detailed status, in addition to the presentation of a receipt of payment of the Real Estate Tax Transfer – ITBI.

SINGLE PARAGRAPH – If required by state legal provisions, fiscal and filed certificates shall be presented for the registry, without prejudice of other requirements of the Real Estate Registry.

CLAUSE FORTY-FIRST – DISCHARGE OF THE DEBT – CAIXA shall furnish the respective discharge certificate within 30 days of the debt after the liquidation of the debt, under penalty of a monthly fee equivalent to 0,5% or a fraction over the value of the loan contract in favor of the DEBTOR(s)/TRUSTOR(s).

SINGLE PARAGRAPH – The DEBTOR(s)/TRUSTOR(s) shall present the Real Estate Registry with the certificate of discharge of the debt with the aim to make the property on their behalf, for which they ARE AWARE that the costs/emoluments arising from that act will be of their full responsibility. The DEBTOR(s)/TRUSTOR(s) also commit to inform their update residency address for correspondence.

CLAUSE FORTY-SECOND – JURISDICTION – The correspondent jurisdiction of the headquarters of the federal judiciary section with judicature over locality where the real estate object of this contract is located shall be elected to settle any questions that may directly or indirectly of this contract.

[TABLE:] DESCRIPTION OF THE REAL ESTATE OBJECT OF THIS CONTRACT

Residential house, containing: 2 sleeping rooms, 1 living room, 1 kitchen, 1 bathroom, 1 service area, 1 circulation, 1 suite, with a total area of 67,92 m², based on xx in this municipality. With an area of 250m². In front of Street xx, with 10m; with a background to xx with 10m; to the right side to xx with 25m and to the left side to xx with 25m. Registration n. xx.

[TABLE:] ADDITIONAL INFORMATIONS/RESERVATIONS

[BLANK]

End of page 24

And being in full agreement with the clauses, terms and conditions of this instrument, [the following] sign the present agreement in four copies of equal content, together with the witnesses.

[place, date].

PURCHASER(s)

[Signature]

SELLER(s)

[Signature 1]

[Signature 2]

WITNESS [1]

[Signature]

WITNESS [2]

[Signature]

CAIXA's Costumer Service: [telephone number] (informations, claims, suggestions, commendations)

For persons with hearing or speaking disability: [telephone number]

Ombudspersons: [telephone number]

Caixa.gov.br

End of page 25

[STAMP:] REAL ESTATE REGISTRY [place]. Protocol [number]. On [date]. [Registry number]. Registration under [number] – Fiduciary alienation. On [date]. [Registry number] – Purchase and Sell with alienation On [date]. [Registry number]. [Signature]

End of translation.

Annex IV: Translation. Certificate D.S. 1 and Sworn Statement

SERVIU

Region of Magallanes and Antartica Chillena

Ministry of Housing and Urbanism

Authorizes the payment of the housing subsidy D.S. 1 (V. y U.) de 2011, Sr./A. [name] and [name].

Resolution n. [number]

[place, date]

[stamp MINVU SERVIU XII REGION]

[stamp SERVIU INTERNAL CONTRALORÍA]

WHEREAS,

a) D.S. 1 (V. y U.) de 2011, and its amendments that regulate the Integrated System for Housing Subsidy;

b) MINVU's R.E. 8,750 of 22 December 2014 and R.E. 5,015 7 of July 2015 approved the nomination of the selected [beneficiaries] to the Integrated System for Housing Subsidy;

c) the faculties given to me by R. *Con Toma de Razón* n.2 1of 4 Jan 2015, Ministry of Housing and Urbanism and R.E. 2,269 of 5 Dec 2014, by the Director of SERVIU XII Region.

CONSIDERING:

a) The Memorandums 26 and 27, both from 10 July 2017, with information from the Provincial Delegate Lawyer that approves the payment of the housing subsidies;

b) The payment order n. [number] for [sum], in favor of the contractor Mr. [name] and the order n. [number] for [sum], in favor of the contractor Mr. [name].

c) The Law n. 20,981 published on the official gazette on [date], that approved the public budget for the year 2017;

I DECIDED TO

1.- Authorize the payment of the housing subsidy D.S. 1 series [number] and series [number] according to the following details:

[table]

[first column] ORDER [number 1] [number 2]

[second column] RUT BENEFICIARY [number 1] [number 2]

[third column] NAME BENEFICIARY [name 1] [name 2]

[fourth column] TITEL/CATEGORY – II – I 2

[fifth column] JURISDICTION [name 1] [name 2]

[sixth column] SUM OF THE SUBSIDY UF [sum 1] [sum 2]

2.- Allocate the costs caused by the execution of this resolution to the housing subsidy title [number].

To be registered, communicated and implemented.

[signature, stamp, Provincial Delegate Lawyer SERVIU]

Distribution:

- Administration and Finance Department

- Legal Department

- Party offices

End page 1

Ministry of Housing and Urbanism
Government of Chile

DS-1 AUTHORIZATION OF PAYMENT [number]

[Table] 1. Authorization

Authorization n.: [number]

Region: Magallanes and Antartica Chilena

Year of the program: 2014

Year of call: 2014

Title n.: II

Type of call: regular

Stage of process: accepted

Consolidated: no

Code of project: no code

Name of project: no project

Code of group: no code

[Table] 2. Information of the payment

Resolution n.: [number]

Day of payment: [date]

Sum: [sum]

[Table] 3. Paycheck

N. 1 / Sum: [sum] / RUT [number] / NAME [name] / Observation [n.d.]

[Table] 4. Notes

Notes: Beneficiary [name]

Executive [name, signature]

Supervisor [name, signature]

Head of Payment [name, signature, stamp]

End of page 2

SERVIU

Region of Magallanes and Antartica Chillena

Ministry of Housing and Urbanism

MEMORANDUM [number]

To: Provincial Delegate Lawyer SERVIU [place]

FROM: Lawyer Provincial Delegate Lawyer SERVIU [place]

SUBJECT: Approval subsidy payment

DATE: [place] 2017

1. Based on this instrument, making reference to the payment of the D.S. 1 (V. y U.) de 2011 subsidy from the Ministry of Housing and Urbanism, the folder that contents the information upon the prohibition against this service in regard to the beneficiary

- [name, RUT]

2. Based on the analysis of this case, that refers to a construction on own lands, it can be concluded that they have duly required the waiver of this prohibition in favor of this service.

3. In addition, the certificate of final receipt and building permit is attached.

4. Consequently, the payment of the respective subsidy follows, according to the art. 34, D.S. 1 (V. y U.) de 2011.

5. Records to be forwarded.

Presents its compliments

[name]

Provincial Delegate Lawyer SERVIU

Distribution:

- Internal Contraloría
- Provincial Delegates

End page 3

Ministry of Housing and Urbanism
Government of Chile

Certificate of Housing Subsidy [number]
D.S. 1 (V. y U.) de 2011
Integrated System for Housing Subsidy
[stamp] Certified Process ISO 9001

Third National Call 2014

Title: II

Series: [number]

Alternative: Individual

Beneficiary name: [name]

National ID: [number]

Spouse name: [n.d.]

National ID: [n.d.]

Region of subsidy application: [name]

Period of validity of the Subsidy Certificate: [date]

Sum concerning the housing subsidy: calculated based on the following:

- $(1.000 - 0,5 * \text{value of the dwelling}) \text{UF}$, if the value of the dwelling is lower than 1,800UF

- 100UF, if the value of the dwelling is higher or equal to 1,800UF and up to 2,000UF.

Maximum Subsidy: 400UF

Previously credited *ahorro*: [ca. 50UF]

Max. Value of the dwelling accepted: 2,000UF

Group: [n.d.]

Group code: [n.d.]

Housing project: [n.d.]

Project code: [n.d.]

Construction in own lands / building construction: YES (CSP)

Address: [address]

Entitles rights in the community: NO

Initiated divorce: NO

Reference information for the calculation of the subsidy

[informational table for calculation]

[date]

[Beneficiary, signature]

[Ministry of Housing and Urbanism, signature]

[Excerpt] Exceptional conditions

- The sum given as an *ahorro* shall not be object of a transaction until its full application; exceptionally it may be used for the anticipated payment of the dwelling, in the case of own land construction, based on SERVIU's authorization.

- In case this certificate applies to the acquisition of a new dwelling, located in urban redevelopment areas or of priority development, it will be granted a subsidy between 300 and 200 UF, according to the established on letter c) art. 67, of D.S. 1 (V. y U.) de 2011.

- In case a mortgage credit is required for the completion of the loan, an unemployment insurance, for a formal employee and a temporary disability insurance, for self-employed workers, are required at the moment of the application (except for pensioners) and for the first 48 months, in which case an additional subsidy for the same period is offered. After the time is elapsed, the maintenance of the insurance is optional.

End of page 4

Certificate of Housing Subsidy [number]

D.S. 1 (V. y U.) de 2011

Integrated System for Housing Subsidy

The following certificate extends the benefit to the person whose name have been written on the front side of this [document] in the quality of:

Substitute [in the event] of death of Mr(s): [n.d.]

Holder, [in the event] loss of the certificate series [n.d.], annulled.

Background information on the person to which this certificate is endorsed:

Endorsed to:[n.d.]

Name: [name]

ID number: [number]

Domicile: [address]

Date of endorsement: [date]

[signature of beneficiary]

[Table] Background information in case of reservation of a dwelling that is part of the payroll of SERVIU's projects:

[n.d.]

End of page 5

Ministry of Housing and Urbanism

Government of Chile

DS-1 AUTHORIZATION OF PAYMENT [number]

[Table] 1. Authorization

Authorization n.: [number]

Region: Magallanes and Antartica Chilena

Year of the program: 2015

Year of call: 2015

Title n.: I

Type of call: Regular

Stage of process: Accepted

Consolidated: no

Code of project: no code

Name of project: no project

Code of group: no code

[Table] 2. Information of the payment

Resolution n.: [number]

Day of payment: [date] 2015

Sum: [sum]

[Table] 3. Paycheck

N. 1 / Sum: [sum] / RUT [number] / NAME [name] / Observation [n.d.]

[Table] 4. Notes

Notes: Beneficiary [name]

Executive [name, signature]

Supervisor [name, signature]

Head of Payment [name, signature, stamp]

End of page 6

SERVIU

Region of Magallanes and Antartica Chillena

Ministry of Housing and Urbanism

MEMORANDUM [number]

To: Provincial Delegate SERVIU [place]

FROM: Lawyer Provincial Delegate SERVIU [place]

SUBJECT: Approval subsidy payment

DATE: [place] 2017

1. Based on this instrument, making reference to the payment of the D.S. 1 (V. y U.) de 2011 subsidy from the Ministry of Housing and Urbanism, the folder that contains the information upon the prohibition against this service in regard to the beneficiary

- [name, RUT]

2. Based on the analysis of this case, that refers to a construction on own lands, it can be concluded that they have duly required the waiver of this prohibition in favor of this service.

3. In addition, the certificate of final receipt and building permit is attached.

4. Consequently, the payment of the respective subsidy follows, according to the art. 34, D.S. 1 (V. y U.) de 2011.

5. Records to be forwarded.

Presents its compliments

[name]

Provincial Delegate Lawyer SERVIU

Distribution:

- Internal Contraloría

- Provincial Delegates

End of page 7

Ministry of Housing and Urbanism

Government of Chile

Certificate of Housing Subsidy [number]

D.S. 1 (V. y U.) de 2011

Integrated System for Housing Subsidy

[stamp] Certified Process ISO 9001

First National Call 2015

Title: I

Category: 2

Series: [number]

Alternative: Individual

Beneficiary name: [name]

National ID: [number]

Spouse name: [name]
 National ID: [number]
 Region of subsidy application: [name]
 Period of validity of the Subsidy Certificate: [date]
 Sum concerning the housing subsidy: [ca. 700UF]
 Previously credited *ahorro*: [ca. 30UF]
 Max. Value of the dwelling accepted: [1,600UF]
 Group: [n.d.]
 Group code: [n.d.]
 Housing project: [n.d.]
 Project code: [n.d.]
 Construction in own lands / building construction: YES (CSP)
 Address: [address]
 Entitles rights in the community: NO
 Initiated divorce: NO
 Reference information for the calculation of the subsidy
 [informational table for calculation]
 [date]
 [Beneficiary, signature]
 [Ministry of Housing and Urbanism, signature]
 [Excerpt] Exceptional conditions
 - The sum given as an *ahorro* shall not be object of a transaction until its full application; exceptionally it may be used for the anticipated payment of the dwelling, in the case of own land construction, based on SERVIU's authorization.
 - In case a mortgage credit is required for the completion of the loan, an unemployment insurance, for a formal employee and a temporary disability insurance, for self-employed workers, are required at the moment of the application (except for pensioners) and for the first 48 months, in which case an additional subsidy for the same period is offered. After the time is elapsed, the maintenance of the insurance is optional.
 - Depending on the costs that the beneficiary may have for the collection of the certificate of subsidy, they may obtain an additional subsidy of up to 15UF destined to finance costs of project elaboration and administrative costs, such as the respective building permit, final municipal acceptance, certificates and registrations.

End of page 8

Certificate of Housing Subsidy [number]

D.S. 1 (V. y U.) de 2011

Integrated System for Housing Subsidy

The following certificate extends the benefit to the person whose name have been written on the front side of this [document] in the quality of:

Substitute [in the event] of death of Mr(s): [n.d.]

Holder, [in the event] loss of the certificate series [n.d.], annulled.

Background information on the person to which this certificate is endorsed:

Endorsed to:[n.d.]

Name: [name]

ID number: [number]

Domicile: [address]

Date of endorsement: [date]

[signature of beneficiary]

[Table] Background information in case of reservation of a dwelling that is part of the payroll of SERVIU's projects:

[n.d.]

End of translation.

Translation Sworn Statement

D-2

Mandatory-November, 2016

SERVIU. Ministry of Housing and Urbanism.

Sworn Statement

Application to the Integrated System for Subsidized Housing

(Art. 16, 1, and final paragraph, D.S. 1 (V. y U.) de 2011)

I, [name], ID n. [number] , hereby declare that:

1. The evidence, background and information provided for the purposes of my application at the SERVIU region of [region], are reliable and resemble my current social and housing situation.
2. The housing object of this subsidy application is necessary for my family and myself to live in, according to the declaration I signed at time of the application. I will not be able to rent it, sell it or leave it uninhabited for 5 years from the date of the respective entries in the Notary Registry, except for written authorization from the respective SERVIU.
3. I am aware that SERVIU has the right to cancel my application, the Certificate of Subsidy or to request the restitution of the submitted grant (direct and indirect), if it is found that the evidence or information declared in my application does not correspond to reality.
4. I authorize SERVIU to consult public institutions and financial and credit institutions in regard to any information respective to my application to this housing subsidy.
5. By this act, I declare my willingness to authorize the SERVIU to deliver information upon my application to third parties, for the purpose of receiving information on housing, or other information that may guide me in the choice of my housing solutions:

[Box] I authorize [Box] I do not au-

thorize

[Digital Signature]

[Date]

End of translation

Annex V: Translation. Contract FDS/MCMV-E

Degree of secrecy

PUBLIC

General Clauses of the Private Instrument of Purchase and Sale, Loan for Construction of Residential Property and Fiduciary Alienation in Guarantee in the PMCMV – E FDS

General Clauses of the Private Instrument of Purchase and Sale, Loan for Construction of Residential Property and Fiduciary Alienation in Guarantee in PMCMV – Entities, resources of the FDS, with character of public deed, in the form of art. 61 of Law 4,380/64, of art. 26 and 27 of Law 9,514/97 and of Law 11,977/09

1 – SALE AND PURCHASE – The SELLER(s) declare(s) themselves owner(s) and possessor(s) of the property described in item D free of charges, and sell(s) it for the price and in the form contained in item B of the Specific Clauses of the Private Instrument of Purchase and Sale, a Loan for Construction of Residential Property and Fiduciary Alienation in Guarantee in the PMCMV – Entities with resources of FDS.

1.1 – As soon as the sum of purchase is satisfied, the SELLER(s) gives the DEBTOR(s)/TRUSTOR(s) full and irrevocable discharge and transmits to the DEBTOR(s)/TRUSTOR(s) all possession, control, right and title to the property sold, accepting for themselves, their heirs and successors the present purchase and sale under the effected terms and being liable for evictions (loss of the right to possession and/or property as a result of a judicial decision).

2 – FINANCING – The DEBTOR(s)/TRUSTOR(s) contract(s) a loan with FDS for the acquisition of the real estate identified in item D, construction of a residential unit, payment of social work and legalization, as for the amount listed in item B.2.2 of the specific clauses and confess to owe that amount.

2.1 – The DEBTOR(s)/TRUSTOR(s) declare(s) that they have already received a spreadsheet of calculation of the Total Effective Cost – CET, with values in nominal form and that they are aware of it: (i) of the rates considered in the calculation of CET; (ii) that the annual interest rate is that in force on the date of contracting; (iii) that the debt balance and charges will be updated under the contractual form.

2.2 – Pursuant to art. 73-A of L. 11,977/09, the present contract may be signed by the head of the family without the need of consent by the spouse, to which the provisions of art. 1,647 to 1,649 of Law 10,406/02 (Civil Code) do not apply.

3 – OPENING OF ACCOUNTS BINDED TO THE OPERATION – The DEBTOR(s)/TRUSTOR(s) declare(s) that they are aware of the opening of a savings account (operation 013), exclusively linked to the operation now contracted and opened in the name of the COMMISSION OF REPRESENTATIVES (CRE), according to the contract signed between that Commission and the CAIXA, with the specific purpose of receiving and moving the funds indicated in item B.2 for the purpose indicated in B.1 of the aforementioned specific clauses.

3.1 – The DEBTOR(s)/TRUSTOR(s) agree(s) and authorize(s) the FDS to credit the amount indicated in item B.2.2 of the specific clauses, directly to the savings account in the name of CRE.

3.2 – The DEBTOR(s)/TRUSTOR(s) authorize(s) the opening of the savings account in their name(s), linked to the operation of credit, on the date of signature of this contract, the amount corresponding to as a counterpart, resources associated to the account of FGTS and/or own resources, as mentioned in B.2.1 of the mentioned specific clauses.

3.3 – The DEBTOR(s)/TRUSTOR(s) agree(s), authorize(s) and grant(s) a mandate to the CAIXA to effect the movement of own resources.

4 – CREDIT OF RESOURCES – The financed resources will be credited as follows:

- a) according with item B.2.2.1 of the aforementioned specific clauses, the amount related to the acquisition of the property shall be paid to the SELLER(s), as indicated among the options made available by the CAIXA, after delivery of this contract registered with the appropriate Real Estate Registry, plus interest and monetary restatement calculated at the rates applied to savings deposits, including from the date of the contract until the day before the release of funds; and,
- b) the amount destined to

End of page 1

the construction of the residential unit, mentioned in item B.2.2, will be credited in periodic installments in the account associated to the transaction, to which its release is conditional to the compliance with milestones set out in the schedule approved by FDS, which is an integral and complementary part of this contract, and to the compliance with other requirements established in this instrument.

4.1 – The amount corresponding to the consideration mentioned in item B.2.1, deposited by the DEBTOR(s)/TRUSTOR(s) on this date in the account associated to the transaction in their name, which shall be transferred to the account linked to the transaction and released in accordance with the schedule approved by FDS.

4.2 – The DEBTOR(s)/TRUSTOR(s) agree(s), authorize(s) and grant(s) a mandate to CAIXA to effect the movement of the resources related to the counterpart.

4.3 – In the case of use of resources associated to the FGTS account, the remaining amount of resources in that FGTS account, in case there are any, will be returned to the associated account(s) of the DEBTOR(s)/TRUSTOR(s) after the release of the last installment.

4.4 – In the event of stoppage in construction works, CAIXA may suspend the transfers of the non-released FGTS quotas until the work is resumed and, if the stoppage occurs for a period equal or superior to 180 (one hundred and eighty) days, CAIXA shall provide for the irreversible cancellation of the use of the FGTS quotas, in which case the sums not yet made available shall be returned to the associated account of the DEBTOR(s)/TRUSTOR(s), without prejudice to the other penalties provided for in this instrument.

4.5 – In the event of acceleration of the settlement of outstanding debt of the loan during the construction phase of the dwelling, the non-released savings associated to the FGTS account will be returned to the associated FGTS account(s) of the DEBTOR(s)/TRUSTOR(s).

4.6 – Provided that the Program's legislation allows it, in the event of substitution of (a) DEBTOR(s)/TRUSTOR(s) that have(has) used FGTS resources, the non-released sums until the moment of substitution shall be returned to the linked account of FGTS, duly updated as established by the FGTS legislation, in which case the new DEBTOR(s)/TRUSTOR(s) shall complement the amount returned to that Fund.

4.7 – If this contract is not materialized with the registration at the competent Real Estate Registry, FDS and CAIXA will not reimburse the DEBTOR(s)/TRUSTOR(s) with any sums paid by them, that are related to contributions and costs incurred by this Agreement.

5 – EVALUATION AND TRANSFER OF RESOURCES – With the exception of the last installment, the evaluation of loan sums conducted previous to work execution is conditioned to the progress of construction works, according to the construction-financial schedule approved by FDS and the fulfillment of other requirements established in this instrument.

5.1 – The first installments referred in items B.2.1, B.2.2 and B.2.3 of the aforementioned specific clauses shall be collected within the maximum period of time informed in item **C.6.3**, counting from the date of signature of this instrument, in which case FDS can immure the penalties of contract termination and acceleration of the debt, conditioned to:

- a) the presentation of a Construction Permit or License for project;
- b) duly approved project;

- c) ART – Certificate of Technical Responsibility for execution;
- d) Work Registration issued by INSS or proof of exemption;
- e) proof of registration of this instrument at the competent Real Estate Registry; and,
- f) proof of payment of IPTU installments respective to the property.

5.2 – The evaluation of the second installment referred in item 5.1 and subsequent installments shall be made upon the presentation of:

- a) a statement of the engineer indicated by the SUPPORTING ENTITY, certifying the conclusion of the previous project milestone and the existence, in a visible and privileged location, of the standardized nameplate indicating the loan, according to the standards provided by CAIXA;
- b) a statement of the engineer indicated by CAIXA, certifying the percentage of executed work, concluded as scheduled for the project milestone, and the regularity of execution of external infrastructure services, when applicable;

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- c) a minimum period of 30 (thirty) days between the dates of release of the installments, unless CAIXA decides to reduce this period;
- d) receipt of payment of labor, social security and fiscal regularity charges, when applicable;
- e) compliance with any pending issues indicated by CAIXA in previous reports;
- f) collection of INSS, based on CEI's registration or a receipt of exemption from payment;
- g) projects, details, memorials approved by the competent public agencies, ART for inspection and execution of works/services registered at the regional CREA and a license to perform works or services issued by the competent agencies;
- h) Report of Monitoring and Evaluation of Social Work – AVT, to be issued by the technical social worker appointed by CAIXA, certifying the regularity of Social Work; and,
- i) receipt of payment of IPTU installments related to real estate.

5.3 – CONDITIONS FOR RELEASE OF THE LAST INSTALLMENT – The release and withdrawal of the last installment, which must be equivalent to at least 5% (five percent) of the loan, is conditioned to the presentation and approval by the CAIXA of the following:

- a) report of the engineer indicated by the CAIXA, attesting the total conclusion of the work and that all the previously delivered installments were invested in it and, if applicable, the execution of the external infrastructure services;
- b) certificate assuring the construction works, "Habite-se", based on the respective registration or transcription and individualized to the purchasers;
- c) CND obtained from the Social Security Revenue Office, or proof of exemption, and proof of payment of FGTS [contributions] related to the work;
- d) Final opinion issued by a technical social worker appointed by CAIXA certifying the performance of social work;
- e) proof of registration of the condominium specifications/institution, in case of construction of autonomous units according to L. 4,591/64;
- f) servicing of any eventual pending issues pointed out by CAIXA in previous reports; and,
- g) receipt of payment of IPTU installments related to the property.

5.4 – In addition to the requirements stipulated above, the release of the last installment is conditioned to the verification by CAIXA of the placement in a visible and accessible place of a permanent metallic plate in each block/tower of the construction project, noting on guidelines of the risks and/or burdens inherent to alterations made to walls of the dwelling, in case the construction system uses load-bearing/self-supporting walls, such as structural masonry and concrete walls.

5.4.1 – In the case of isolated units, the plate with the type of construction system must be affixed above the electric panel.

5.5 – In the event of delay of construction works, FDS may require the rescheduling of the construction and financial schedule.

5.6 – For the purpose of installments release, the monitoring of construction works will be performed by an engineer indicated by CAIXA, in which case evaluation shall be made EXCLUSIVELY for the purpose of verifying the application of resources, without any technical responsibility for the project or future building construction works.

6 – TIME-PERIOD FOR CONSTRUCTION WORKS AND LEGALIZATION OF THE HOUSING UNIT – The time-period is defined in the item C.6.1 of the mentioned specific clauses.

6.1 – At the discretion of CAIXA, the Ministry of the Cities and CCFDS, the maximum term foreseen in Letter C.6.1 may be extended upon request of the DEBTOR(s)/TRUSTOR(s).

6.2 – Regardless of notice, notification or judicial or extrajudicial petition, the amortization of the loan by the DEBTOR(s)/TRUSTOR(s) shall start at the end of the term established in item C.6.1.

6.3 – In case the work is not concluded by end of the term, FDS is exempted from releasing the remaining installments of loan and the DEBTOR(s)/TRUSTOR(s) are obliged to conclude the work with their own resources within the 6 (six) months after the contractual term for its conclusion, including the extension term, as well as to submit all documentation that would be required for the release of the last installment of the financing, leaving the DEBTOR(s)/TRUSTOR(s) without entitlement to rights

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to the loan, or any obligation or liability from FDS or CAIXA.

6.4 – The DEBTOR(s)/TRUSTOR(s) oblige to occupy the purchased real estate within a maximum period of 30 (thirty) days from the date of completion of the works, under penalty of termination of the same [contract], in which cases CAIXA is fully entitled to declare the contract terminated and to sell the property to another applicant.

7 – FINANCING CONDITIONS – These are those set forth in item C of the specific clauses.

8 – MONTHLY INSTALLMENTS – FORMULATION, CALCULATION AND FORM OF PAYMENT – The monthly installment is composed by the amortization of the outstanding debt calculated based on the amortization system indicated in item C.5 of the specific clauses, counting from the end of the term for construction and legalization of the housing unit, indicated in item C.6.1, without interest incidence, in which case the payment shall be made until the due date indicated in item C.8.

8.1 – No charges are due during the time-period of construction of residential units.

8.2 – The due date of the monthly charges may be changed, by agreement between the parties, upon specific request of the DEBTOR(s)/TRUSTOR(s).

8.3 – Amortization installments are calculated annually on the contract date by the update index of savings on the 1st (first) of the month.

8.4 – The sum to be payed by the DEBTOR(s)/TRUSTOR(s) related to the monthly installment is deducted from the amount of the subsidy granted monthly by FDS indicated in item C.10.3.

8.5 – The DEBTOR(s)/TRUSTOR(s) may not pay any monthly fee of the loan as long as those overdue have not been paid and settled, and in such case, the payment made will be imputed to the settlement or amortization of the first fee past due and not paid.

8.6 – If it is impossible to send the payment slip to the residence of the DEBTOR(s)/TRUSTOR(s) or at their request, the delivery of the slip to the SUPPORTING ENTITY is expressly authorized. 8.7 – The DEBTOR(s)/TRUSTOR(s) authorize the debit of the monthly fee in the account indicated in item C.10.5 of the mentioned specific clauses, of which they are account holders, as well as the debit in payroll, if applicable.

9 – REMUNERATORY INTEREST – There is no interest on the amount lent.

10 – DEBT BALANCE – After the end of the period for construction of the residential units informed in item C.6.1, the outstanding debt balance shall be constituted of installments of the released loan to the DEBTOR(s)/TRUSTOR(s), in which case the corresponding monthly installments shall be recalculated.

11 – UPDATE OF THE DEBT BALANCE AND GUARANTEE – It shall occur annually, on the day corresponding to the date of hiring, using the update index of savings.

11.1 – In any case, the update of the debt balance shall be proportional to days and applied for the period between the date equivalent to the signature of the contract or the last contractual update of the debt balance, and the date of the event.

11.2 – The guarantee may be reassessed at the request of the DEBTOR(s)/TRUSTOR(s) or FDS.

11.3 – On the expiration date of the last monthly installment, any residual balance will be undertaken by the FDS.

12 – FISCAL CHARGES – Tributes, fees, tariffs, fines and other taxes affecting the property must be duly paid by the DEBTOR(s)/TRUSTOR(s), for which FDS may require proof of payment.

12.1 – Delay in the performance of those obligations may give rise to acceleration of the debt or to payment by the FDS for later reimbursement, updated by the same savings index on the 1st (first) day of the month.

13 – DELINQUENCY – In any event of overdue payment, the sum due shall be monetarily updated from the due date, inclusive, up to the date of the actual payment, exclusive, using the daily proportional criteria and increasing by interest in arrears of 0.033% per day of delay.

13.1 – The payment of any monthly charges while not paid and settled

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shall be charged to the liquidation or amortization of the first charge due but not paid.

13.2 – The payment of the most recent monthly installment shall not presume the discharge of the previous one, nor exonerate the DEBTOR(s)/TRUSTOR(s) from the responsibility of settling obligations, remaining in arrears for legal and contractual purposes.

13.3 – The receipt of payment of the last installment due does not presume discharge of the previous one.

13.4 – Regardless of the guarantee adopted, the lack of payment by the DEBTOR(s)/TRUSTOR(s) will cause their inclusion in restrictive registrations.

13.5 – In the event of the filing of a claim for collection of debts in arrears or for the settlement of overdue obligations, the collection of attorney's fees, in accordance with article 395 of the Civil Code, shall be levied in addition to the above-mentioned charges.

14 – EXTRAORDINARY AMORTIZATION – The amortization of the debt balance of the loan by the compliant DEBTOR(s)/TRUSTOR(s) does not imply a reduction of the initial monthly installment informed in item C.10.4 of the specific clauses, and/or of the amortization period.

15 – ACCELERATION OF THE DEBT – The acceleration of the debt will imply the full loss of the subsidy/subsidy already granted in due installments paid or not or to come, and shall imply the payment of the full amount of the contractual debt of the property, without the economic subsidy informed in item C.10.3 of the specific clauses, duly updated and increased by any eventual concerning debts.

16 – TRANSFER OF THE REAL ESTATE – **The transfer of the property *inter vivos* (between living people) object of this contract is prohibited, unless the respective debt balance is settled.**

16.1 – The replacement of (a) DEBTOR(s)/TRUSTOR(s) is admitted up to the limit of thirty percent (30%) of the total of the initial listing [of beneficiaries] only during the production phase of the residential unit, upon the formalization of the withdrawal of the interested party or their exclusion approved in a general meeting with registered minutes, and is conditioned to the homologation in a general meeting of the new DEBTOR(s)/TRUSTOR(s) in compliance with the criteria in force on the date of replacement and does not imply on the discharge of the transaction's outstanding debt.

16.2 – The consolidation of the transfer of the debt will be formalized through the signature of the applicable contractual instrument with the CAIXA, in which the new purchaser will assume all charges and obligations attributed to the DEBTOR(s)/TRUSTOR(s).

17 – DECLARATIONS OF THE PARTIES – The contracting parties declare that they are aware of the possibility of obtaining, in advance, the Labor Debt Clearance Certificate (CNDT), pursuant to article 642-A of the CLT available on the website www.tst.jus.br.

17.1 – The DEBTOR(s)/TRUSTOR(s) and the SUPPORTING ENTITY are responsible for the implementation of basic infrastructure conditions of the enterprise that aim, jointly or alternatively, at the solution of water supply and sanitary exhaustion, public lighting, earth-works, drainage system, paving of sidewalks and of the internal access roads of the area and soil containment and stabilization works, among others.

17.2 – The DEBTOR(s)/TRUSTOR(s), VENDOR(s) declare, under the penalties of the law, that the vouchers, documentation and personal statements on their marital status, nationality, profession, identification, income and expenses are authentic.

17.3 – The DEBTOR(s)/TRUSTOR(s) and the SUPPORTING ENTITY assume the obligation to inform CAIXA, representative of the FDS, of any objections to this financing agreement, as well as any occurrences that may, directly or indirectly, affect the property sold during the term of this loan contract, notably the change of its numbering or identification.

17.4 – The DEBTOR(s)/TRUSTOR(s) and the SUPPORTING ENTITY declare that the real estate object of the guarantee has no restrictions on use, including restrictions related to zoning, land parcelling, preservation of archaeological and historical heritage, restriction of activities due to APA (Area of Environmental Preservation) or APP (Area of Permanent Preservation), meeting the requirements imposed by the competent bodies, nor is it located on lands of indigenous or quilombola occupation, so defined

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by the competent authority.

17.5 – SUPPORTING ENTITY – As the responsible party for the planning, direction, follow-up, execution and inspection of the project of the enterprise mentioned in item B.1, [the SUPPORTING ENTITY] declares that:

- a) [they] will be responsible, without reservations, for the execution and integrity of the enterprise and of each of its component parts, even those carried out under the responsibility of contracted third parties [contracted by the SUPPORTING ENTITY];
- b) under no circumstances, will they regroup or allow the regrouping of the land object of this contract or ascertain financial gain in this operation;
- c) is responsible for the authenticity of statements that substantiate the preconditions for the signature of this instrument, the evidence and/or information on expenses, indications on the constitution of the SUPPORTING ENTITY, the marital status, nationality, profession and identification of the managers presented according to the requirements and conditions imposed by L. 11,977/09;
- d) will maintain a register of beneficiary candidates containing the identification of those registered, available for consultation by any interested party on a permanent basis, as provided in P. 163/16 of the Ministry of Cities, and that, for each proposal submitted to CAIXA, they will approve the prioritization criteria of their beneficiaries in a specific assembly with

registration of the minutes in a notary public, regulated by the respective statutes or bylaws, informing all their associates and disseminating the information through means that ensure wide publicity;

e) it shall keep all documentation concerning the enterprise in its files, including contract, technical parts, projects, budgets, schedules, invoices, receipts, proof of payment of taxes, fees, tariffs and tributes, correspondences and minutes of assemblies and/or meetings;

f) it shall constitute the Monitoring Committee of Construction Works – CAO and the Representatives Committee – CRE, each one integrated by two beneficiaries of the associative group and one representative of the ORGANIZING ENTITY, elected in an assembly with registered minutes with the following attributions:

f.1) MONITORING COMMITTEE OF CONSTRUCTION WORKS – CAO:

I – to be responsible, together with the SUPPORTING ENTITY, for the execution of the work and/or for the follow-up of the elaboration, presentation and approval of projects, together with competent organs;

II – to follow-up the works and the application of the resources managed by CRE;

III – to carry out the communication with the construction company, in the case of a modality that includes the construction of housing units, and/or with the companies supplying the construction material;

IV – to carry out the communication with the engineer responsible for the works or, in the case of land acquisition, with the technical advisory team responsible for the elaboration of the projects; and,

V – to account to other beneficiaries participating in the enterprise about the development of the projects or, in the case of construction, about the work progress, safety and custody of works and the material acquired.

f.2) REPRESENTATIVES COMMISSION – CRE:

I – to open a non-jointly and several liable savings account at the CAIXA agency granting the loan;

II – to manage the financial resources released for the production of the residential units;

III – to report to the other participant beneficiaries of the project on the application of the resources released by the CAIXA; and,

IV – to perform the financial monitoring of the contract.

17.5.1 – AUTHORIZATION OF THE SUPPORTING ENTITY: [the SUPPORTING ENTITY] authorizes the members of CAO and CRE to be responsible for the registration of the work and to practice the necessary acts with the RFB and the City Hall for the issuing *Habite-se* and the CND, in case it is replaced or removed from the activities of execution and monitoring of the works.

17.6 – DEBTOR(s)/TRUSTOR(s) – Declare(s) that: a) is(are) not the owner(s) of another active housing loan in any part of the country and that is (are) not the owner(s), promising buyer(s), usufructuary(s), lessee(s) under the Residential Lease Program – PAR of a real estate property, built or under construction, in any locality of

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the country; b) has not received, at any time, direct or indirect subsidies with budgetary resources from the Federal Union and/or funds, such as FGTS, FDS, FAR, FNHIS for housing acquisition and has not received, at any time, a dwelling from housing programs, unless the modality applied refers to building constructions;

c) there is no debt or claim on the real estate property object of this contract that affects the present transaction and the fiduciary alienation constituted in favor of the FDS;

d) it is subsidiarily responsible for the payment of debts on the real estate property, in case the SELLER(s) do(es) not do it;

e) they have taken knowledge:

e.1) that they are prohibited, for a period of 15 (fifteen) years from the present date, to promote the grouping of the units related to the real estate property object of this contract, according to art. 36 of L. 11,977/09;

e.2) that the reduction of costs and emoluments provided in L. 11,977/09 shall apply solely to the registration and other acts related to the first residential property acquired or financed via the Minha Casa, Minha Vida Program – PMCMV;

e.3) the conditions, procedures and deadlines set for the granting of MIP and DFI guarantees;

e.4) that CAO and CRE and their main attributions were constituted, each one integrated by two beneficiaries of the associative group and a representative of the SUPPORTING ENTITY, elected in an assembly with registered minutes;

e.5) that the veracity of the information provided is verified by means of the crossing of their tax and banking data, ensuring the constitutional confidentiality of the data informed;

17.7 – AUTHORIZATION OF THE DEBTOR(s)/TRUSTOR(s) – Authorize(s) CAIXA to provide all information linked to the present contract, including your personal and bank information whenever requested by the following bodies and regardless of judicial authorization: Civil and Federal Police, State and Federal Public Prosecutor's Office, Comptroller's General Office, Federal Court of Accounts, FDS Board of Trustees and Ministry of Cities.

17.7.1 – The DEBTOR(s)/TRUSTOR(s) also authorize(s) CAIXA to send the necessary information regarding this contract to the addresses and telephone numbers that appear in their registry, by any means of communication, including SMS, for which they have the responsibility to immediately inform CAIXA of any eventual changes regarding ownership, mobile phone number, cancellation of the telephone contract with the operator, and others cases regarding their data.

17.8 – The SELLER(s) declare(s) a) in case of a private person as a SELLER(s), for the purposes of L. 8,212/91, they are not bound to Social Security as an employer and they are not a INSS taxpayer as a rural producer, thus not subject to the obligations covered by the social security legislation. Otherwise, it will be presented, upon the registration of this contract at the Real Estate Registry, the INSS Certificate of Negative Debt – CND;

b) in case of a legal person as a SELLER(s) that only exercises the activity of purchase and sale of real estate, grouping or allotment of land, real estate development or construction of buildings intended for sale, declares that the property object of this transaction does not, nor has ever been part of their permanent assets, being recorded as part of their current assets (D. 3,048/99, art. 2S7, § 8-º, IV);

c) the real estate object of this contract does not have any debt or claim that affects the transaction, being responsible for any debts until this date;

d) there are no real and personal *in rem* actions or other real burdens related to the real estate (D. 93,240/86, art. 1, IV, and §3); and,

e) there is no debt or any other obligation related to the condominium (L. 4,591/64, art. 4, single paragraph; L. 7,433/85, art. §2 of art. 2).

18 – CONTRACTUAL NON-COMPLIANCE – In case of a diverse use other than that foreseen in the Minha Casa Minha Vida Program – Entities, the DEBTOR(s)/TRUSTOR(s) shall fully reimburse the sum granted as subsidy/subvention, added to the updated monetary

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variation of SELIC, without prejudice to penalties provided for by law.

18.1 – Among the hypotheses of breach of contract is the assignment or rental of the property before the end of the amortization period.

19 – FIDUCIARY ALIENATION – The DEBTOR(s)/TRUSTOR(s) alienates the property now used in guarantee of compliance with the obligations set by this contract to FDS, according to L. 9,514/97, which covers accession, improvements, construction and installations.

19.1 – The fiduciary property is constituted with the registration of this contract, making the DEBTOR(s)/TRUSTOR(s) direct [possessor] holder(s) and the FDS indirect owner of the property.

19.2 – At their own risk, the DEBTOR(s)/TRUSTOR(s) are granted the free use of the property object of the fiduciary alienation.

20 – VALUE OF THE GUARANTEE – The value of the real estate property considered to be ready is the one indicated in item C.4 of the specific clauses.

21 – BENEFITS, CONSERVATION AND CONSTRUCTION WORKS – The DEBTOR(s)/TRUSTOR(s) commit to keep the alienated real estate property in perfect state of conservation, safety and habitability and to execute works for its preservation, including those requested by CAIXA, representing FDS, to preserve the guarantee in a given time-period.

21.1 – It is expressly forbidden to make any changes, alterations or additions without the prior and express consent of FDS. In order to verify the exact compliance with this clause, CAIXA, representing FDS, is assured of the right to inspect the sold property at any time.

21.2 – Failure to comply with this clause may result in the acceleration of the debt, without prejudice to the obligation to repair the damage caused.

22 – SPECIAL RESTRICTION TO THE USE OF THE REAL ESTATE – The DEBTOR(s)/TRUSTOR(s) declare(s) to be aware of the constructive method used and in the case of structural masonry or similar, commit(s) to observe the special restriction of use, consistent as the prohibition of opening walls, installations and removal or displacement of walls.

22.1 – The DEBTOR(s)/TRUSTOR(s) also declare(s) that: a) they are aware that the special restriction indicated is necessary for the solidity and safety of the property, as well as that their noncompliance may lead to the danger of collapse, and they will be liable according to the law and this contract; and,

b) they are aware of the existence in a visible and accessible place, in each block/tower of the enterprise or isolated unit, of a permanent metal plate contemplating orientations about the risks and/or burdens inherent to the alterations made to the walls of the property.

23 – ACCELERATION OF THE DEBT – The debt shall be considered to be due in advance based on any of the reasons provided by law, in particular that contained in Art. 1,425 of the Civil Code, and in the following cases:

a) delay of 30 (thirty) days in the payment of the contractual obligations or lack of payment of taxes affecting the property, which are of responsibility of the DEBTOR(s)/TRUSTOR(s);
b) transfer or assignment to third parties, totally or partially, of the rights and obligations arising from this contract without authorization of FDS;

c) lack of maintenance of the property that depreciates the guarantee or the conduction of demolition, alteration or increase works on the property that compromise the maintenance or realization of the guarantee given, without prior and express consent of CAIXA, as representative of FDS;

d) if verified that the DEBTOR(s)/TRUSTOR(s) gave another destination to the property other than their residency and of their family or performed grouping of objects of the Program, under the terms of L. 11,977/09, art. 36 of and in case of insolvency of the DEBTOR(s)/TRUSTOR(s) under the terms of CCFDS R. 214/16 and succeeding resolutions;

- e) constitution over the property of another *in rem* guarantee, totally or partially;
- f) false information/declaration provided by the DEBTOR(s)/TRUSTOR(s);
- g) filing a lawsuit against any of the DEBTOR(s)/TRUSTOR(s) that threatens or affects the property given in guarantee, totally or partially;
- h) failure to register the specific clauses of this contract within 30 (thirty) days after its

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signature;

- (i) non-compliance with the obligations stipulated by law or in this contract; and,
- (j) during the effectiveness of the contract, if the competent authority verifies that the property object of the guarantee:
 - (I) has restrictions on its use, including restrictions related to land parceling, preservation of the archaeological, paleontological and historical heritage, or that the borrower does not comply with requirements established by the competent authority;
 - (II) is located on lands of indigenous and quilombola occupation and conservation units, as defined by the competent authority;
- (m) does not start the construction works within the period informed in item C.6.

23.1 – The value of the debt shall be due in the month following the event that motivated the breach of contract, on the day that corresponds to the signing of this contract.

24 – DEVIATION OF PURPOSES – In case of use of funds for purposes other than those foreseen in the Minha Casa Minha Vida Program – Entities or in disagreement with its rules, the DEBTOR(s)/TRUSTOR(s) will reimburse in full the sum granted as a subsidy, plus a monetary update calculated by the variation of the SELIC rate, without prejudice to penalties provided by law.

25 – DEADLINES FOR SERVING THE SUMMONS – The grace period for issuing the summons shall be of 30 (thirty) days, counted from the due date of the first monthly charge overdue and unpaid.

26 – SUMMONS – Upon expiration of the grace period for serving the summons, the DEBTOR(s)/TRUSTOR(s) or their legal representative or attorney duly constituted shall be personally summoned, with a period of 15 (fifteen) days for remediation (payment of the overdue debt and charges, remediation of the non-execution of the obligation to which the purchaser gave cause, so as to avoid effects arising from it).

26.1 – Once the remediated the obligation is registered at the Real Estate Registry, the fiduciary alienation shall remain valid (the guarantee shall remain, and the loan contract shall be maintained), and the DEBTOR(s)/TRUSTOR(s) shall be responsible for paying the collection and summons costs.

26.2 – Any difference between the amount paid for remediation and the debt at the day of remediation will be payed together with the due charge.

27 – CONSOLIDATION OF PROPERTY – After at least 30 (thirty) days after the expiration of the term referred in item 26 without remediation, the property will be consolidated on behalf of FDS upon payment of the tributes due to the transfer.

27.1 – Until the consolidation on behalf of FDS is effectively registered, the DEBTOR(s)/TRUSTOR(s) may pay the due installments (remediation) and the expenses related to charges and costs of the summons and those necessary for the realization of the auction, including those related to the announcements and commission of the auctioneer, in which case the contract shall remain valid.

27.2 – After the registration of the referred consolidation of the fiduciary property on behalf of FDS until the date of the 2. auction, the right of preference to acquire the property for a price corresponding to the value equal or superior to the debt is assured to DEBTOR(s)/TRUSTOR(s), plus the contractual charges of costs, insurance premiums, the

legal charges, including taxes, the condominium contributions and the laudemium, if applicable, paid for the purposes of consolidation of the fiduciary property on behalf of FDS, and the expenses related to the collection and auction procedure.

27.3 – The DEBTOR(s)/TRUSTOR(s) shall pay the tax charges and expenses affecting the new acquisition of the real estate property, including costs and fees.

28 – EXTRAJUDICIAL AUCTION – Once the property is consolidated on behalf of FDS, the property will be alienated (sold) by FDS to third parties, according to the procedures set forth in art. 27 of L. 9,514/97.

28.1 – For the purposes of the extrajudicial auction, the parties adopt the following concepts:

I – value of the property:

a) value of the evaluation stated on item C.4, of specific clauses, plus the sum related to existing improvements, updated monetarily up to the date of the auction, reserving the right to reevaluation of the real estate property by FDS; or

b) if the value of the real estate property established in

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the preceding paragraph is lower than the reference value for the determination of ITBI, then this will be the minimum value established as a parameter for the purpose of selling the property in the first auction;

II – sum of the debt: debt balance of the operation of fiduciary alienation on the day of auction, including penalties and other contractual charges; and,

III – sum of the expenses: sum of the amounts of charges and costs of the Summons and those necessary for holding the public auction, including expenses related to publications and the commission of the auctioneer and the amounts spent by FDS for the preservation of its rights such as: taxes, fees, condominium debts and repair costs, among others.

28.2 – The 1st auction will be held within 30 (thirty) days from the date of registration of the consolidation of the property on behalf of FDS, for the value of the property.

28.3 – If in the first auction the highest bid offered is lower than the value of the property, as set forth in item 28.1, I, a or b, the 2nd auction shall be held within the following (15) fifteen days.

28.4 – Once the property is sold within 5 (five) days after full and effective payment, FDS shall reimburse the DEBTOR(s)/TRUSTOR(s) with reminiscent sum, considering in it the amount of the indemnification for improvements, after deducting the amounts of the debt and the expenses and charges, with reciprocal discharge. 28.5 – In the 2nd auction, in the absence of a bid greater than or equal to the value of the debt or in the absence of a bidder, the debt shall be considered extinct and the FDS shall be released from the obligation to return to the DEBTOR(s)/TRUSTOR(s) any amount, by any means.

28.6 – The dates, times and places of the 1st auction and the 2nd, if any, shall be communicated to the DEBTOR(s)/TRUSTOR(s) by means of correspondence addressed to the addresses in the contract, including their electronic address.

28.7 – Once the debt is extinguished, within 05 (five) days from the date of the 2nd auction, FDS shall provide the DEBTOR(s)/TRUSTOR(s) with a discharge certificate.

28.8 – Once the property is consolidated on behalf of FDS, the DEBTOR(s)/TRUSTOR(s) will deliver the property, free and clear, under penalty of payment to FDS or to whoever succeeds it, as an occupation fee of the property, per month or fraction, a sum corresponding to 1% (one percent) of the value referred in item 28.1, counting and payable from the date of consolidation of the fiduciary property on behalf of FDS until the date on which the FDS, or its successors, have access to the property.

28.9 – The DEBTOR(s)/TRUSTOR(s) are liable for the payment of taxes, fees, condominium contributions and any other charges that affect or may affect the property, possession of which has been transferred to the FDS as a result of the auction, until the date on which the FDS has access to the property.

28.10 – The right of preference in favor of the tenant, established by art. 27 of L. 8,245/91, does not apply to the property that is the object of this contract.

28.11 – If the property is rented, the rent shall be terminated with 30 (thirty) days for vacancy, unless the FDS or its successors give a written permission, in which case the termination shall occur within 90 (ninety) days from the date of consolidation of the property.

29 – EVICTION OF THE REAL ESTATE PROPERTY IN GUARANTEE – FDS will receive from the dispossessing public power (federal entity that carries out the eviction) the indemnification, reducing from the sum of the debt and making available the outstanding balance to the DEBTOR(s)/TRUSTOR(s), if any, which remains responsible for the payment in the event of a lower indemnification than the debt.

29.1 – The DEBTOR(s)/TRUSTOR(s) declare(s) to be aware that an eventual eviction from the real estate property does not generate any rights to any indemnification against FDS.

30 – INSURANCE – This instrument does not have insurance coverage of MIP – Permanent Death Invalidity or DFI – Physical Damage to the Property contracted by FDS or CAIXA.

30.1 – FDS commits to the partial or total debit balance of the financing operation in the event of a personal accident, under the following conditions:

I – death of the DEBTOR(s)/TRUSTOR(s), whatever the cause and informed within 3 (three) years as of the date of death of the beneficiary; and

II – permanent disability of the DEBTOR(s)/TRUSTOR(s), if taking place after the date of contracting of the

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operation, caused by an accident or an illness and informed within 1 (one) year, counted from the date of granting of the benefit by a social security agency, or from the date of publication in the Official Gazette for the public service, or from the date of the Technical Medical Report indicated by FDS, depending on the case.

30.2 – FDS' responsibility is extinguished in the event that the MIP event is not communicated to the Financial Agent within the periods mentioned in sections I and 1.

30.3 – In the event of a personal accident, the amount assumed by FDS will be destined to the amortization or total settlement of the outstanding balance, duly updated as agreed in this instrument, observing the income proportionality indicated in this instrument.

30.4 – In the event that the personal claim is less than the debtor balance, the difference in the debt shall be of responsibility of the holder, spouse, heirs and/or successors.

30.5 – For the purpose of calculating the debt balance to be borne by FDS, all commitments due by the DEBTOR(s)/TRUSTOR(s) up to the day prior to the date of the event giving grounds to the guarantee and the percentage of participation informed in item C.11 shall be deemed paid.

30.6 – Expenses for recovery of physical damage to the property shall be borne by FDS up to the limit of the amount of the updated financing operation, in the event of such damage:

I – fire or explosion;

II – flooding and flooding caused by external agents;

III – partial or total collapse of walls, beams or other structural part, provided that it is caused by external forces or agents; and,

IV – unroofing caused by strong winds or hail.

30.7 – FDS does not commit to the expenses related to:

- a) measures taken to combat the spread of physical damage to the property, to safeguard and protect it and of removal of construction waist from the location;
- b) the due monthly installments owed by the DEBTOR(s)/TRUSTOR(s), in the event of DFI, in the case of verification of the need to vacate the property;
- c) rent, if the property is vacated;
- d) loss of content, in the event of loss of the property;
- e) external works necessary to protect the property, outside the perimeter of the land on which it is built;
- f) infrastructure works;
- g) poor conservation, understood as the lack of the usual care aimed at the normal functioning of the property, such as, for example, the cleaning of gutters and sewage pipes;
- h) the acts of the DEBTOR(s)/TRUSTOR(s) themselves or of whomever;
- i) external acts that cause the repetition of occurrences previously indemnified against which no measures indicated by CAIXA have been taken by those entitled to it;
- j) rainwater or snow, when penetrating directly into the interior of the property through doors, windows, skylights, ventilation or open or defective ventilators;
- k) tap water or its registry, even if inadvertently left open;
- l) water infiltration or of other liquid substance through floors, walls and ceilings, except when consequential to the guaranteed occurrences;
- (m) water originated from the rupture of plumbing, canalizations, water mains and reservoirs, which belong to the property itself or to the building or group of which the property is an integral part;
- (n) the recovery of the property for damages arising from construction vices, certified by an inspection report promoted by CAIXA;
- (o) to the repetitive physical damage of occurrences previously guaranteed against which no action has been taken by those entitled to it to prevent them, and if these occur in an interval of less than 3 years since the last occurrence, and
- p) to the recovery of the property for damages arising from regular use and verified to be only a result of the course of time and regular use of the thing, even if cumulatively, in relation to coatings, electrical installations, hydraulic installations, painting, frames, glass, iron and floors.

31 – SUBMITTED CERTIFICATES – The DEBTOR(s)/TRUSTOR(s) and SELLER(s) declare that they waive the presentation of the documents listed in D. 93,240/86 replacing them with the Updated Certificate of Entire Content of the Registration. As long as presented, the receipt of

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payment of the tax on the transfer of property and the certificates of judgements and *in rem* guarantees (L. 7,433/85, art. 1, para 2).

32 – LEGAL WOOD – The SUPPORTING ENTITY and the DEBTOR(s)/TRUSTOR(s) must present the licenses for transport and storage of native wood (Document of Forest Origin – DOF or Forest Manuals) until the delivery of the construction work, established by the competent agency (IBAMA) proving the legal origin and a declaration informing the volume, [and] the final destination of the wood used in the work.

32.1 – If the documents required to prove the origin of the native wood used are not presented, IBAMA shall be informed of the noncompliance.

33 – ASSIGNMENT AND GUARANTEE OF RIGHTS – The fiduciary credit resulting from this instrument may be assigned or offered as guarantee (offered in guarantee), totally or partially by the FDS, including for the purposes of securitization foreseen in L. 9,514/97,

regardless of notification to the DEBTOR(s)/TRUSTOR(s), and all the conditions of this contract remain in favor of the assignee.

33.1 – The DEBTOR(s)/TRUSTOR(s) declare(s) that they are fully aware that this contract constitutes the basis for the issuing of the Real Estate Credit Note – CCI in accordance with L. 10,931/04. **34 – NOVATION** – The settlement of overdue debts does not indicate novation (creation of a new obligation, replacing and extinguishing the previous and original obligation, form of payment).

35 – POWER OF ATTORNEYS – In case of two or more DEBTOR(s)/TRUSTOR(s), all declare themselves to be jointly and severally liable for the obligations assumed before FDS and constitute themselves as reciprocal attorneys-in-fact until all the obligations of this contract are fulfilled, with general irrevocable powers at any jurisdiction and special powers to request, agree, claim, compromise, appeal, receive or give discharge, quit, be served Summons, including seizure, auction or public auction, at last, all necessary acts for the faithful performance of this mandate.

35.1 – POWER OF ATTORNEYS to the SUPPORTING ENTITY: The DEBTOR(s)/TRUSTOR(s) hereby grant(s) a power of attorney to the SUPPORTING ENTITY, qualified under item A.2, with express powers to represent them during the production phase, in cases which the program's legislation allows and there is a need to substitute the DEBTOR(s)/TRUSTOR(s) for the good progress of the enterprise, being able for such purpose to distribute, transmit possession, domain, rights and actions, answer for the risks of eviction, resign, sign deeds, documents and/or necessary contracts, arrange conditions, promote all necessary acts to formalize the purchase and sale or the recommended replacement of the DEBTOR(s)/TRUSTOR(s) before the competent Real Estate Registry, comply with requirements, gather and withdraw documents, make payments, receive and give settlements, sign service provision contracts for the execution of the project, if applicable, as well as register the constructions, promote the legalization of the Condominium at the end of the construction works of the object of the loan and specification of the Condominium and allocation of the units as decided at a meeting called for this purpose, with the relevant Real Estate Registry, constitute a mortgage or fiduciary alienation on the individualized unit in the name of the DEBTOR(s)/TRUSTOR(s), receive the enterprise at the end of construction works, give consent to the delivery of housing units, request certificates, propose administrative appeals, withdraw, confess, compromise, agree, on behalf of the DEBTOR(s)/TRUSTOR(s), with the replacement of DEBTOR(s) and the consequent sale of the ideal part, as well as to represent them before municipal, state and federal public agencies, particularly the City Hall of the city where the property is located, the local electric, water and sewerage concessionaires and before INSS. This power of attorney will be **automatically extinguished and revoked upon completion of the construction works and registration of the units with the relevant Real Estate Registry**, and, if applicable, the creation of a fiduciary alienation or mortgage in favor of FDS, remaining only

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the contractual liability assumed by the DEBTOR(s)/TRUSTOR(s) with FDS.

36 – ACQUISITION OF CONTRACTUAL CONTENT – The DEBTOR(s)/TRUSTOR(s) declare that they had previous knowledge, read and understood the contract, agreed to the stipulated stipulations, and are aware of contractual rights and obligations.

37 – THE WAIVER OF THE GUARANTEE – Within 30 (thirty) days after the settlement of the debt, FDS will provide the certificate of discharge, under penalty of a fine in favor of the DEBTOR(s)/TRUSTOR(s) of 0.5% per month or fraction of the sum contracted, which shall be registered in the Real Estate Registry and which costs are set as responsibility of DEBTOR(s)/TRUSTOR(s)

38 – REGISTRATION – FDS commits to proceed with the registration of this contract with the competent Registry, committing to deliver to the DEBTOR(s)/TRUSTOR(s) a copy of this instrument with the respective certificate of registration with the competent Real Estate Registry within a maximum period of 30 (thirty) days from its registration.

38.1 The costs and fees related to the registration of this contract and the corresponding guarantee fall within the scope of the program Minha Casa Minha Vida (PMCMV) and are reduced in accordance with art. 43 of L. 11,977/09 and its amendments.

[STAMP:] 2nd Official Registry of Titles and Documents and Private

Legal Person of xx

[address, telephone]

[fees]

Registration under n. xx [date] And microfilmed under n. xx [date]

[Signature]

CAIXA's Costumer Service: [telephone number] (informations, claims, suggestions, commendations)

For persons with hearing or speaking disability: [telephone number]

Program "Olho na qualidade" (only for Minha Casa, Minha Vida):[telephone number]

Ombudspersons: [telephone number]

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End of translation.

Annex VI: Translation. Contract FGTS-Associativo

CONTRACT BY PRIVATE INSTRUMENT OF PURCHASE AND SALE OF LAND AND LOAN FOR CONSTRUCTION OF HOUSING UNIT WITH SURETY, FIDUCIARY ALIENATION IN GUARANTEE AND OTHER OBLIGATIONS – NATIONAL URBAN HOUSING PROGRAM – PNHU – ASSOCIATION FOR OFF-PLAN PROPERTY – MINHA CASA MINHA VIDA – MCMV – FGTS RESOURCES – WITH THE USE OF THE RESOURCES ASSOCIATED TO THE FGTS OF THE PURCHASER(S) AND DEBTOR(S)/TRUSTOR(S).

Under this Private Instrument with a character of public deed, pursuant to art. 61 and paragraphs of L. 4,380/64, as amended by L. 5,049/66, the parties mentioned below and qualified contract the present sale and purchase of land, loan for the construction of housing unit with surety, constitution of guarantee in fiduciary alienation and other obligations under the National Urban Housing Program – PNHU – Association for off-plan property – Minha Casa Minha Vida Program, according to L. 11,977 and L. 12,424, under the clauses, terms and conditions below:

[Table] A- QUALIFICATION OF THE PARTIES

I)- SELLERS: [identification, headquarters address, CNPJ, state registration, social contract registration including amendments], in this act represented under the terms of clause 1st of the last contractual amendment, by its partners [name, identification]

II) – PURCHASER(S)/DEBTOR(S)/TRUSTOR(S): [name, identification]

III) – SUPPORTING ENTITY: [name, identification; the same enterprise in item A-I], already qualified according to item A-I

IV) – BUILDING AND GUARANTOR ACTOR: [name, identification; the same enterprise in item A-I], already qualified according to item A-I

V) – FIDUCIARY CREDITOR: CAIXA ECONÔMICA FEDERAL, financial institution constituted under the form of a government-owned corporation, a legal entity of private law, created by the D.-L. 759/69, altered by D.-L. 1,259/73, being ruled by the Statute in force on the date of this contract, with headquarters in Brasília – DF, [address, CNPJ], herein represented by [name, identification]

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power of attorney drawn up on pages [number] of Book [number], on [date] at the [number] Office of Notes of Brasília/DF and delegation of powers on pages [number] of Book [number], on [date] at the [number] Office of Notes of [place], hereinafter referred to as CAIXA.

B – VALUE OF PURCHASE AND SALE OF THE HOUSING UNIT, VALUE OF PURCHASE AND SALE OF THE LAND, ALLOCATION OF THE RESOURCES OF THE OPERATION, DEADLINE FOR COMPLETION OF WORKS, TOTAL VALUE OF SALE:

B1 – PURCHASE AND SALE VALUE OF THE HOUSING UNIT: The value of acquisition of the housing unit object of this contract is equivalent to BRL [number], to be paid in installments mentioned below.

a) Own resources already paid in local currency: BRL [number]

b) Balance of the buyers' FGTS linked account: BRL [number]

c) Discount granted to FGTS, (if any): BRL [number]

d) Lan granted by the SELLER: BRL [number]

B2 – VALUE OF THE PURCHASE AND SALE OF THE LAND. [number], whose payment will be made according to the provisions of the FIFTH CLAUSE of this instrument.

B3 – DESTILATION OF OPERATION RESOURCES: The operation now contracted is for the acquisition of the land object of this instrument and construction of one of the housing

units that compose the [name] enterprise. The survey of the operation resources will occur under the terms of this instrument's FIFTH CLAUSE.

B4 – DEADLINE FOR CONCLUSION OF WORKS: The deadlines and steps for the measurements and conclusions of the works are those provided in the physical-financial calendar, observing the provisions of the THIRD CLAUSE of this instrument.

B5 – GLOBAL SALES VALUE: It is the sum of the value of all the individual unit of the enterprise.

B6 – NUMBER OF UNITS BELONGING TO THE ENTERPRISE: 6 (six)

C – ACKNOWLEDGMENT OF THE DEBT/LOAN/REDEMPTION/INSTALLMENTS/DATES/OTHER SUMS AND CONDITIONS:

1 – Source of resources: FGTS/ U NION HH.

2 – Regulation: 21. 151 – 01/11/2012 – SUHAM/GEMPJ

3 – Value of operation: BRL [number]

3.1 – Discount Value: BRL [number]

3.2 – Amount of debt/Financing: BRL [number]

4 – Value of Grantia Fiduciária: BRL [number]

5 – Depreciation System: SAC- NEW AMORTIZATION SYSTEM

6 – Term-periods in months:

6.1- of construction/legalization 10

6.2 – of depreciation 300

6.3 – renegotiation: 0

7 – Annual Interest Rate (%):

Nominal: 4,5000

Effective: 4,5941

8 – Expiration of Monthly Charge: ACCORDING TO THE PROVISIONS OF CLAUSE SIX

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9 – Adjustment Period of Charges: ACCORDING TO CLAUSE NINTH

10 – Initial Charge – Installment (a + j): BRL [number]

FGHAB: BRL [number]

Administration fee: 0,00

TOTAL: BRL [number]

11 – INITIAL INCOME COMPOSITION FOR THE PAYMENT OF MONTHLY INSTALLMENTS

DEBTOR(s): [name]

Proven: BRL [number]

Not proven: 0.00

12 – INCOME COMPOSITION FOR THE PURPOSE OF COVERING THE GUARANTEE FUND

OF THE DWELLING – FGHAB

DEBTOR(s): [name]

Percentage: 100,00

13 – IDENTIFICATION OF THE RESIDENTIAL UNIT:

Located in front of [reference, address, zip code]

14 – MEANS OF PAYMENT OF THE MONTHLY INSTALLMENT ON THE DATE OF CONTRACT

Debit in Bank Account

D – OF THE CONSTRUCTION OF THE ASSOCIATIVE ENTERPRISE, DESCRIPTION AND CHARACTERISTICS OF THE LAND OBJECT OF SALE AND PURCHASE AND THE FIDUCIARY GUARANTEE:

D1 – OF THE CONSTRUCTION OF THE ASSOCIATIVE ENTERPRISE:

The SELLER(s), in the quality of proprietaries of lands of [number] at [location] and situated within the urban perimeter of the city and jurisdiction of [name], registered under n. [number] at the Registry Office [name], grouped in six (6) parts according to Av. [number] . The construction of housing units was authorized by the local municipality on the mentioned land, containing 6 units, each on each side and with the same designation, with de resources mentioned on previous item B.1, through CAIXA. This project is part of the National Urban Housing Program (PNHU), Association for Off-Plan Property, Minha Casa Minha Vida – MCMV, which fundamental characteristic consists in the regimentation of private individual applicants, within the rules of the program, for the acquisition of an ideal fraction of land and construction of the housing unit linked to the project.

D2 – DESCRIPTION AND CHARACTERISTICS OF THE LAND OBJECT OF SALE AND PURCHASE AND OF THE GUARANTEE FOR FIDUCIARY ALIENATION:

A piece of land here designated as part 1 consisted of part of area B (residual) of registration [number] at the [name] Real Estate Registry Office at [address], of total area [square meters], [location], where a [square meters] residential housing units will be built, containing living room, kitchen, two bedrooms, bathroom and service area. Taxpayer [registry number]

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FIRST CLAUSE – LOAN AND CONFESSION OF DEBT – The(s) SELLER(S) declare(s) that they are the masters and legitimate owners of the property described and characterized in this instrument, free and clear of any encumbrances, and, thus, sell it at the price contained in item B of this contract, payment to be satisfied in the form referred to in the mentioned item, certain that the withdrawal of the installment of the same price shall be conducted as provided for in the FIFTH CLAUSE. Thus, satisfied the sale price, the SELLER(s) gives the DEBTOR(s) full and irrevocable discharge and, by virtue of this instrument and the *constituti* clause, transmits to the DEBTOR(s) all possession, control and right of action over the property now sold, to which they commit themselves, their heirs and successors, to make the present sale always good, sound and valuable and, further, to respond for evictions. The DEBTOR(s) declare(s) to accept the present purchase and sale in the terms in which it is implemented.

First Paragraph – If the purpose of the present contract is the acquisition of an ideal fraction of land that has been previously mortgaged/fiduciary alienated to CAIXA by virtue of a private contract/public deed previously formalized with the SELLER(s), CAIXA, as MORTGAGEE/FIDUCIARY SELLER, expressly authorizes the cancellation of those liens constituted by the SELLER(s), conditioning such act to the concurrent constitution of the new liens established in this contract.

Second Paragraph – The PURCHASER(s), hereinafter referred to as DEBTOR(s)/TRUSTOR(s), declare that, in need of financing destined to the payment of the price of the land and the construction of his/her residence in the building/group of residences called [name] and, fulfilling all the legal requirements for the framing in the National Program of Urban Residence – PNHU, Association for Off-Plan Property, Minha Casa Minha Vida – MCMV; reached for CAIXA and obtained a loan, based on the norms of the FGTS Board of Trustees – CCFGTS and the Financial Housing System – SFH, equivalent to the sum noted in items B and C of this instrument. The DEBTOR(s)/TRUSTOR(s) confess to owe CAIXA the aforementioned amount, which shall be collected in accordance with the provisions of CLAUSE FIFTH.

Third Paragraph – The discount granted to DEBTOR(s)/TRUSTOR(s) and contained in item C.3.1 of this instrument, destined to complement the value of the operation contained in item C.3 of this same contract, is calculated in accordance with the rules established by the FGTS Board of Trustees and supported by FGTS and by the Federal Government.

Fourth Paragraph – The DEBTOR(s)/TRUSTOR(s) declare(s) themselves aware of fluctuations related to the payments and receipts considered for Total Effective Cost – CET calculation of the present loan operation, as well as of the annual percentage rate in nominal form value, demonstrated in a filed spreadsheet by CAIXA, of which the DEBTOR(s)/TRUSTOR(s) had knowledge, accepted and agreed, under the terms of BACEN R. 3,517/07, in effect on March 3, 2008.

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Fifth Paragraph – Furthermore, the DEBTOR(s)/TRUSTOR(s) declare(s) that the annual percentage rate of the spreadsheet observed in the fourth paragraph, previously delivered in copy, represents the conditions in effect on the date of signing of this instrument and that the debt balance and the monthly charges shall be updated in accordance with the conditions agreed upon in this contract.

Sixth Paragraph – Through documentation and personal statements, CAIXA certifies that the DEBTOR(s)/TRUSTOR(s) proved their compliance with the requirements and conditions specified by L. 11,977/09, as amended by L. 12,424/11, for framing this operation into the Minha Casa, Minha Vida Program, both in regard to the characteristics of the debtor and the characteristics of the property.

Seventh Paragraph – Regarding the constitution of the value if the real estate property, in case of the use of the resources of the FGTS associated account and/or of own in kind resources described in item B.1 of this contract, DEBTOR(s)/TRUSTOR(s) authorize(s) the opening of a ‘housing savings account’ (operation 012) associated to the enterprise and destined to the credit of these resources.

Eighth Paragraph – The sum in the FGTS associated account, mentioned in item B.1 of this contract, if existent, shall be automatically credited on the date of signature of this operation’s contract, and the amount of these own resources shall be deposited by the DEBTOR(s)/TRUSTOR(s) on this date, to be released in accordance to CLAUSE THIRD.

Ninth Paragraph – The DEBTOR(s)/TRUSTOR(s) grants CAIXA an irrevocable and irreversible mandate for the transaction of resources credited in the referred housing savings account.

Tenth Paragraph – Monthly and on a correspondent date of contract signature, the existing resources in the housing savings account shall be affected by interest and monetary update, based on the coefficient applied to deposits in the savings account on the same day of this contract.

CLAUSE SECOND – LOAN CONDITIONS – The terms of construction and amortization, as well as of interest rates, the due date of the first monthly installment, the time of recalculation of charges and the amortization system for the outstanding debt balance, are agreed upon for the present loan as observed in item C of this contract. Together with the monthly installments, the DEBTOR(s)/TRUSTOR(s) shall pay additional fees, which are the administration fee, and, if necessary, the pecuniary commission of FG HAB, also described in item C.

First Paragraph – The amount loaned, annotated in item B of this instrument, shall constitute a part of a totality that represents the global value of the loan granted to the DEBTOR(s), that shall be destined to pay up the total price of the land, as specified in item B of this instrument.

Second Paragraph – The administration fee, included in item C.10, if not of responsibility of the DEBTOR(s)/TRUSTOR(s), was fully supported by the FGTS according to the specific legislation.

Third Paragraph – The interest rate referred in item C.7 is granted to the DEBTOR(s)/TRUSTOR(s) that meet the standards established by the program's legislation.

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Fourth Paragraph – The interest rate differential was fully borne by FGTS and applied at the rate mentioned in item C.7, in accordance with the income framework established by the program's legislation, as provided by the FGTS Board of Trustees R. 460/04 and its amendments.

Fifth Paragraph – A reduction of 0.5% per year was applied to the interest rate mentioned in item C.7 for DEBTOR(s)/TRUSTOR(s) holder(s) of an account associated to FGTS with at least 3 (three) years of work under the FGTS regime.

Sixth Paragraph – During the construction period, the outstanding debt balance will consist of the installments of the loan granted to the DEBTOR(s)/TRUSTOR(s).

CLAUSE THIRD – TIME-PERIOD FOR CONSTRUCTION AND LEGALIZATION OF THE HOUSING UNIT – The period for the end of construction and legalization of the housing unit linked to the development is stated in item C.6.1 of this contract, which may be extended up to a maximum limit of 24 (twenty-four) months, based on a technical analysis and on an authorization from CAIXA, as well as on current regulations.

First Paragraph – In case of delay in compliance with the final term defined in the construction-financial schedule, the sum regarding the last installment may be credited with a total or partial impediment over the free movement of the account held by the SUPPORTING ENTITY until the fulfillment of the foreseen milestone, at the discretion of CAIXA and based on the advice of CAIXA's Engineering Team, or else it may be required the alteration of the mentioned construction-financial schedule for the adjustment of installments, making those an integral and complementary part of this instrument.

Second Paragraph – The SUPPORTING ENTITY has up to 60 days after the deadline for the end of the construction of the housing unit linked to the enterprise, mentioned in the caput of this Clause. for delivery of the keys of the property to the DEBTOR(s)/TRUSTOR(s).

Third Paragraph – The SUPPORTING ENTITY shall be responsible for maintaining the real estate property under safety and for its maintenance, bearing costs arising from repair or eventual vacancy, including the obligation to propose a judicial measure for vacancy, if applicable.

Fourth Paragraph – After the transfer of the last installment of the housing savings account to the to the free transaction account, the remaining sum related to FGTS incomes, if existent, will be returned to the account(s) of the DEBTOR(s)/TRUSTOR(s).

Paragraph Five – In the event of work stoppage, CAIXA may arrange for the suspension of transfer of non-released FGTS quotas until construction works restart.

Sixth Paragraph – In the event of a work stoppage for a period equal or superior to 90 (ninety) days, without prejudice to the other penalties provided for in this instrument, CAIXA shall irreversibly cancel the use of FGTS quotas, returning the amounts still at its disposal to the account of the DEBTOR(s)/TRUSTOR(s).

Seventh Paragraph – Any outstanding sum from the FGTS associated account, which are in the savings account linked to the project, shall be allocated as follows:

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a) in case of an outstanding balance for the release of installments, use, as a priority, for the amortization of the borrower's debt balance.

b) if there is a remaining balance of income, return to the FGTS associated account.

Eighth Paragraph – In the event of substitution of the DEBTOR(s)/TRUSTOR(s) who have used the associated account of the FGTS, non-released sums until the moment of substitution shall be updated and returned to the linked account of the FGTS.

CLAUSE FOURTH – RESPONSIBILITIES OF THE SUPPORTING ENTITY: Are the following obligations, among others relevant for this purpose:

- a) to develop all the activities concerning the planning and elaboration of projects, legalization of documents and implementation of the [project] enterprise;
- b) to be responsible for the execution and legalization of the enterprise, including for the payment of additional financial resources, if applicable;
- c) to respond, without reservations, for the implementation, integrity and proper functioning of the [project] enterprise and of each of its component parts, even those carried out under the responsibility of third parties;
- d) to organize groups of beneficiaries;
- e) to summon interested parties and invite CAIXA to participate in a General Meeting in which all characteristics and conditions of the [project] enterprise to be done shall be presented, notably with respect to the powers to be granted by them to the SUPPORTING ENTITY:
- f) to contract the CONSTRUCTION COMPANY that will execute the work, in case they are not themselves the CONSTRUCTION COMPANY;
- g) to provide the legal-administrative assistance to interested parties, looking at the preparation of the necessary documents to formalize the loan;
- h) to send the interested parties organized in properly instructed groups to CAIXA for the formalization of the loan contract;
- i) to coordinate the participation of all those involved in the execution of the project so as to ensure synchronism and harmony in the implementation of the project and in making available the resources necessary for its execution;
- j) to present the project and perform the Social Technical Work, together with the CONSTRUCTION COMPANY, when applicable, when the value of the real estate property in guarantee in the item C.4 is less than or equal to BRL 40.000,00;
- k) to previously commercialize the units of the [project] enterprise, respecting the legal, contractual and regulatory requirements, aiming at the fulfillment of all its financial commitments;
- l) to submit a work supervision report and a statement of the physical evolution of the enterprise quarterly to CAIXA and to the DEBTOR(s)/TRUSTOR(s), as established in the technical projects, specifications and global construction-financial schedule approved;
- m) if the case, to guide the construction company in hiring the insurances for Constructor's Implementation Guarantee, Engineering Risks and Constructor's Civil Responsibility;
- n) to communicate the insurance company in cases of reformulation of the global schedule that imply in expansion of the originally contracted construction term, for the due adjustments in the insurance policy(s);

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- o) to promote the legalization of the [project] enterprise before the competent bodies, including CAIXA;
- p) to monitor the [project] enterprise in the event of substitution of the CONSTRUCTION COMPANY, in compliance with the provisions of the SOLE PARAGRAPH of the CLAUSE NINETEENTH;
- q) to pay all financial charges under their responsibility.

CLAUSE FIFTH – FUNDRAISING – It shall be done as following:

First Paragraph – The parcel related to the land, except for the provisions of Paragraph EIGHTH of this clause, shall be kept in CAIXA, in a control account linked to this operation on behalf of the SELLER(s).

Second Paragraph – Regarding the sum mentioned on Paragraph FIRST of this clause, a remuneration equivalent to the savings deposits shall be added to it, according to art. 12 of L. 8,177/81, and art. 7 of L. 8,660/93, *pro rata temporis* from the date of signature of this contract until the date of its effective release.

Paragraph Three – Regarding the remuneration referred on Paragraph SECOND of this clause, according to the legislation in effect, income tax shall affect it directly at source over the tax rates effective due to the continuity period.

Fourth Paragraph – The release of funds to the SELLER(s) is conditioned to the delivery of this instrument registered at the Real Estate Registry, as well as to the compliance with other requirements established in this contract to CAIXA.

Fifth Paragraph – The sum related to this loan, to own resources and to the FGTS associated account, if any, destined for the execution of construction works, shall be credited to the SUPPORTING ENTITY in monthly installments with a minimum period of 30 days between the mentioned installments, according to the construction-financial schedule approved by CAIXA's Engineering Team, which is hereby expressly authorized to conduct that obligation.

Sixth Paragraph – The transfer of resources mentioned in Paragraph FIFTH of this clause is conditioned to the progress of construction works, in the percentage attested by the Enterprise's Monitoring Report – RAE.

Seventh Paragraph – The monitoring of the implementation of construction works, for the purpose of releasing installments, shall be carried out by the CAIXA's Engineering Team, in which case the inspection shall be made EXCLUSIVELY for the purpose of measuring the progress of construction works and verifying the application of resources, without any technical responsibility for the unit itself.

Eighth Paragraph – In case of a [project] enterprise linked to debenture operations issued by the SUPPORTING ENTITY whose debenture holder is FGTS via CAIXA, in the capacity of an Operational Agent, the amount related to the parcels of land and works will be credited in a bank account linked to such [project] enterprise of debenture operations, opened at CAIXA and owned by the SUPPORTING ENTITY responsible for the execution of the [project] enterprise, for which CAIXA has exclusive transaction rights, in accordance with the guidelines of the trustee.

Ninth Paragraph – Payment of the first installment – It shall occur 30 (thirty) days after the signature of this instrument, cumulatively conditioned to the fulfillment of the following requirements:

a) presentation of this instrument registered at the Real Estate Registry, accompanied by the respective Registration Certificate;

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b) presentation of the Construction Permit, the Certificate of Registration – CM of construction works issued by INSS and the Technical Responsibility Certificate – ART;

c) maintenance of projects, specifications and memorials approved by the competent public bodies at the work site available for CAIXA's Engineering Team;

d) presentation of documents proving the satisfaction of the contractual charges, labor, social security and fiscal regularity, of the SUPPORTING ENTITY, of the CONSTRUCTION FIRM and of the [project] enterprise, if required by CAIXA;

e) presentation by the SUPPORTING ENTITY of the INSS payment receipts related to the [project] enterprise, annotated in CEI's registry;

- f) presentation by the SUPPORTING ENTITY of the proofs of payment of FGTS related to the [project] enterprise;
- g) proof the regularity of FGTS by the SUPPORTING ENTITY and by the CONSTRUCTION FIRM;
- h) receipt of payment of charges owed to CAIXA;
- i) proof certified by CAIXA's Engineering Team of regularity of implementation of the external infrastructure services foreseen in the specific schedule, when applicable;
- j) presentation, by the SUPPORTING ENTITY, of the Spreadsheet for Survey of Services – PLS;
- k) Enterprise Monitoring Report – RAE issued by CAIXA's Engineering Team, certifying the percentage of work executed and informing the existence, in a visible and privileged location, of a standardized plate informing upon the loan, in accordance to the model furnished by CAIXA;
- l) correction of eventual pending concerns pointed out in RAE;
- m) presentation of a Partial Monitoring and Evaluation (AVP) report issued by CAIXA's Social Technician, attesting the regularity of the Social Technical Worker, when the amount of the guarantee, in item C4 refers to less than or equal to BRL 40.000,00.

Tenth Paragraph – Payment of intermediary installments – Unless CAIXA decides to reduce this period, [the payment of intermediary installments shall] observe a minimum period of 30 (thirty) days between the release of the installments, cumulatively conditioned to the fulfillment of the following requirements:

- a) presentation by the SUPPORTING ENTITY of the Spreadsheet for Survey of Services – PLS;
- b) Enterprise Monitoring Report – RAE issued by CAIXA's Engineering Team, attesting the physical percentage of the work executed and informing the existence, in a visible and privileged location, of a standardized plate informing upon the loan, in accordance to the model furnished by CAIXA;
- c) correction of eventual pending concerns pointed out in RAE;
- d) receipt of payment of charges owed to CAIXA;
- e) presentation of documents proving the satisfaction of contractual,

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labor, social, social security and fiscal regularity charges by the SUPPORTING ENTITY, by the CONSTRUCTION FIRM and by the enterprise when required by CAIXA;

- f) presentation by the SUPPORTING ENTITY of the payment receipts of FGTS related to the [project] enterprise;
 - g) maintenance of projects, specifications and memorials approved by the competent public bodies at the work site available for CAIXA's Engineering Team;
 - h) proof certified by CAIXA's Engineering Team of regularity of implementation of the external infrastructure services foreseen in the specific schedule, when applicable;
 - i) presentation of a Partial Monitoring and Evaluation (AVP) report issued by CAIXA's Social Technician, attesting the regularity of the Social Technical Worker, when the amount of the guarantee, in item C.4 refers to less than or equal to BRL 40.000,00.
- Eleventh Paragraph – Survey of the last installment – Conditioned cumulatively.

Eleventh Paragraph – Payment of the last installment – Cumulatively conditioned to the fulfillment of the following requirements:

- a) presentation, by the SUPPORTING ENTITY, of the Spreadsheet for Survey of Services – PLS;
- b) Enterprise Monitoring Report – RAE issued by CAIXA's Engineering Team, certifying the percentage of work executed and informing the existence, in a visible and privileged

location, of a standardized plate informing upon the loan, in accordance to the model furnished by CAIXA;

c) presentation by the SUPPORTING ENTITY of a negative Certificate of Debts – CND issued by the Revenue Service [*Receita Federal*] and the payment receipts of FGTS related to the [project] enterprise;

d) presentation by the SUPPORTING ENTITY of “Habite-se”;

e) presentation by the SUPPORTING ENTITY of the certificate of registration of the construction works at the Real Estate Registry;

f) proof of compliance to all loan contracts linked to the [project] enterprise signed with the DEBTOR(s)/TRUSTOR(s) by the SUPPORTING ENTITY;

g) submission of proof of registration of specifications/establishment of the condominium, in case of construction of autonomous housing units according to L. 4,591/64;

h) presentation of the Forest Origin Declaration and the Declaration of Volume and Use of Native Wood in the Work, according to the model provided by CAIXA;

i) when applicable, certify the conclusion of the social works carried out with the beneficiaries of the [project] enterprise via CAIXA’s Social Technical Workers;

j) presentation of the Monitoring and Final Evaluation Report on the Social Technical Project – AVF issued by the CAIXA’s Social Technical Worker, when the amount of the guarantee in item C.4 is less than or equal to R\$. 40,000.00.

SIXTH CLAUSE – CHARGES – FORMULATION, CALCULATION AND PLACE OF PAYMENT – The following charges will be due:

First Paragraph – At the contract:

I) By the SUPPORTING ENTITY, to be debited in its bank account at CAIXA, which is hereby authorized:

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a) Coverage Fee for Costs in Cash – TCCAV, according to the CAIXA – PJ fee table, against the debit on the free transaction bank account owned by the supporting entity and as of now authorized.

II) By the DEBTOR(s)/TRUSTOR(s):

a) Pecuniary Commission FGAB of the value established in the item C.10 of this instrument, according to CLAUSE TWENTY-FIRST.

Second Paragraph – Monthly, during the construction works period:

I) By the SUPPORTING ENTITY, against the debit on the free transaction bank account other ownership at CAIXA and as of now authorized:

a) Cost Coverage Fee for Monthly Monitoring – TCCMO, according to the CAIXA- PJ – Habitação fee table;

b) Cost Coverage for Schedule Changes Fee – TCCRC and/or the Cost Coverage Reevaluation of Contracted Enterprise Fee – TCCREC, when such services have been requested to CAIXA.

c) Extra Inspection Fee, a sum to be defined by CAIXA’s Engineering Team.

Third Paragraph – During the construction phase and during the phase of installment payment, DEBTOR(s)/TRUSTOR(s) shall pay the following charges to CAIXA on a monthly basis, in the month subsequent to the contract on the same day corresponding to the day of the signature of this contract, in the manner defined by CAIXA or against debit in bank account:

a) interest rate, defined in item C of this instrument;

b) monetary restatement, calculated as provided in CLAUSE EIGHTH;

c) administration fee, if due, established in item C of this instrument;

d) pecuniary commission FG HAB as established in item C of this instrument, according to CLAUSE TWENTY-FIRST.

Fourth Paragraph – The payment of installments due during the construction time-period shall be made on the due date, regardless of any notice or notification, by means of a debit in the bank account at CAIXA, as for now authorized.

Fifth Paragraph – In case of a housing savings account (operation 012), the monthly charge shall be automatically debited to it during the construction term and any incident income to that account may be used.

Sixth Paragraph – Should the income mentioned in Paragraph FIFTH of this clause not be sufficient for the payment of the monthly installment, the DEBTOR(s)/TRUSTOR(s) shall pay the difference by means of a deposit in the housing savings account (operation 012) opened in their name, which shall be informed via a notification to CAIXA.

Paragraph Seven – Considering that the INTERVENIENT/CONSTRUCTION COMPANY is GUARANTOR of the DEBTOR(s)/TRUSTOR(s) according to CLAUSE FOURTH of this instrument, in case of insufficient balance in the mentioned account of the DEBTOR(s)/TRUSTOR(s) for the payment of the charges until the end of construction works, by the the end of that term for construction and legalization of the [project] enterprise as in item C of this instrument and the observation of CLAUSE THIRD of this contract, the debit will be unconditionally routed to the account held by the aforementioned INTERVENIENT/CONSTRUCTION COMPANY and in the contracts linked to the debenture operation the debit will be implemented in the bank account linked to the debenture operation, as described in Paragraph EIGHTH of CLAUSE FIFTH.

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Eighth Paragraph – The right of collection against the DEBTOR(s)/TRUSTOR(s) is reserved to the INTERVENIENT/CONSTRUCTION COMPANY.

Ninth Paragraph – At the end of the construction and legalization period of the [project] enterprise provided for in item C of this instrument and in compliance with the provisions in main CLAUSE THIRD, the DEBTOR(s)/TRUSTOR(s) shall pay CAIXA, monthly, on the same day as the day of contract signature or on the day indicated in item C.8 of this instrument, the following charges:

- a) amortization and interest (A + J) obtained at the rate and within the period established in items C.6 and C.7 of this instrument, applied on the outstanding balance updated in the form of CLAUSE EIGHTH;
- b) Pecuniary commission FG HAB, according to the provisions of CLAUSE TWENTY-FIRST;
- c) Administration Fee, if due, as provided in the CLAUSE EIGHTH.

Tenth Paragraph – In the event that, in the subsequent months, there is no day indicated for payment of the monthly charges, the obligation shall expire on the last day of those months and, if the due date coincides with Saturday, Sunday or holiday, the payment shall be made on the first subsequent business day without any added charges.

Eleventh Paragraph – The payment of the monthly charges will hence be made against a bank slip or against debit in a free movement account of the DEBTOR(s)/TRUSTOR(s).

Twelfth Paragraph – In the case of debit of deposits held by the DEBTOR(s)/TRUSTOR(s), the latter(s) authorizes CAIXA to carry out the operation, granting, by this instrument, an irrevocable and non-retractable mandate for the execution of the referred entry, obliging itself to maintain a sufficient available balance for the payment of the monthly charges, admitting for this purpose, the use with preference of any resource available therein.

Thirteenth Paragraph – In the absence of sufficient resources in the deposit account indicated for the debit of the monthly installment, the DEBTOR(s)/TRUSTOR(s) shall be considered

as in arrears, in which case all legal and contractual obligations applicable to the species shall apply, including the acceleration of the debt, as indicated in this instrument.

Paragraph Fourteen – The DEBTOR(s)/TRUSTOR(s) is obliged to communicate any change in the characteristics of the deposit account indicated for the purpose of debiting the monthly installments at least 10 (ten) days prior to the next due date.

Paragraph Fifteen – During the validity of the amortization period, as foreseen in item D.6 of this contract, an agreement between the parties, under request of the DEBTOR(s)/TRUSTOR(s), may change the due date of the monthly installments.

Paragraph Sixteen – In the event of change of the due date of the monthly installments, the outstanding balance will be updated *pro rata die* from the period between the expiration date of the last charge, inclusive, and the new expiration date of the charge, exclusive. The DEBTOR(s)/TRUSTOR(s) commit to pay the daily interest calculated between the due date of the last installment, inclusive and the date chosen for the next expiration, exclusive.

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Paragraph Seventeenth – The amount of the first monthly charge, after the change of the due date, shall be obtained through the composition of the amortization and installment of interest rates calculated as described in Paragraph SIXTEENTH of this Clause.

Paragraph Eighteen – The monthly Pecuniary Commission FG HAB and the Administration Fee indicated in item C.10 of this contract shall be paid regardless of the existence of due charges in a respective month, without prejudice to the provisions of CLAUSE TWENTY-SECOND.

Nineteenth Paragraph – After changing the due date of the monthly installments, the updated outstanding balance and the updated value of the guarantee shall be corrected according to Paragraph Sixth and CLAUSE THIRTEENTH and the newly defined due dates.

SEVENTH CLAUSE – REMUNERATORY INTEREST – On the amount lent and until the final solution of the debt, interest will be charged at the rates fixed in item C.7 of this contract.

SINGLE PARAGRAPH – Interest shall be charged at the rate referred to in the main clause on the amounts spent by CAIXA to preserve its rights arising from this contract, such as the payment of fees and taxes, condominium debits and emoluments, expenses with execution and those necessary for the maintenance and realization of the guarantee.

EIGHTH CLAUSE – UPDATE OF THE DEBTOR(S) BALANCE – **The outstanding debt balance of this loan shall be updated monthly, on the day corresponding to the signing of this contract, based on the update coefficient applicable to the accounts associated to FGTS.**

First Paragraph – In any event of calculation of the debt balance, the proportional updating shall be applied according to the criterion ‘*pro rata* working day’, using the basis indexes for readjustment of FGTS associated accounts in the period between the date of the contract signature or the last contractual update of the debt balance, if it has already occurred, and the date of the event.

Second Paragraph – Other sums linked to this contract, that may be ascertained until the waiver of the fiduciary alienation, will be updated as defined in the main clause.

CLAUSE NINTH – RECALCULATION OF THE MONTHLY INSTALLMENT – During the 02 (two) first years of this contract’s amortization period, the sum corresponding to the amortization installment will be recalculated every twelve-month period, on the day corresponding to the contract signature.

First Paragraph – The recalculations of the amortization installment shall be made based on the updated debt balance in the form of the EIGHTH CLAUSE, maintaining the interest rate, the amortization system and the remaining time-period of this agreement.

Second Paragraph – The pecuniary commission FGHAB shall be recalculated annually, on the day corresponding to the signature of this instrument, which will be affected by the variable percentage corresponding to the new age group(s) of the DEBTOR(s)/TRUSTOR(s), as provided in the First Paragraph of CLAUSE TWENTY-FIRST of this contract.

Third Paragraph – The percentage mentioned in Paragraph SECOND of this Clause shall be applied over the new value of the Pecuniary Commission obtained through the application of 0,5% over the recalculation for the new installment of amortization and interest rates.

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Fourth Paragraph – In case of the event of an economic-financial imbalance of the contract, as of the third year of effectiveness of the amortization period, the sum of the amortization installment may be recalculated quarterly, on the day of the contract's anniversary.

Fifth Paragraph – The interest component of the monthly installment shall be recalculated monthly on the outstanding debt balance updated according to CLAUSE EIGHTH, maintaining the interest rates, contracted amortization system and remaining time-period.

Sixth Paragraph – The recalculation of the monthly installment foreseen in this instrument is not linked to the salary or due date of the professional category of the DEBTOR(s)/TRUSTOR(s), nor to Salary Plans for Equivalency.

CLAUSE TENTH – RESIDUAL BALANCE – In the eventual occurrence of a residual debt balance at the end of the amortization period, the DEBTOR(s)/TRUSTOR(s) commit to pay it once and with their own resources, on the due date of the last monthly charge provided for this contract, regardless of any notice, notification or judicial or extrajudicial appeal.

Sole Paragraph – The renegotiation of the residual balance shall be allowed within the maximum term defined item C of this contract, as long as observed as the monthly installment, the minimum amount equivalent to the last monthly installment in force during the amortization period.

CLAUSE ELEVENTH – DELINQUENCY – In the event of delinquency in the satisfaction of any payment obligation, the amount to be paid will be monetarily adjusted from the due date to the date of the effective payment affected *pro rata die*, applying the index used for the update of the debt balance due, according to clause eighth.

First Paragraph – The sum regarding the obligation in arrears shall be updated as observed on the main clause and affected by compensatory interests, calculated by compound interest rates methods with monthly capitalization affected *pro rata die*, at the same interest rate provided for in item C.7 of this instrument.

Second Paragraph – The sum observed as the obligation in arrears updated monetarily, according to the main clause, shall be affected by an interest rate of 0,033% per day of delay.

Third Paragraph – The sum observed as the obligation in arrears updated monetarily, according to the the main clause, shall be attached to a moratorium fine of 2% (two percent), according to the legal terms.

CLAUSE TWELTH – GUARANTEE OF FIDUCIARY ALIENATION – In guarantee of payment of the debt arising from this loan, as well as for the faithful compliance with all contractual and legal obligations, the DEBTOR(s)/TRUSTOR(s) assign(s) to CAIXA, the property object of this loan under a fiduciary character, at the end described and characterized in the terms and for the purposes of art. 22 and following ones of L. 9,514/97.

First Paragraph – The fiduciary alienation constituted as a result of this loan affects the real estate property with all of its accessories, constructions or improvements already existing or to be added, regardless of the constructed area effectively registered in the respective registration, hereby waiving the DEBTOR(s) from the entitlement of any rights or indemnification for non-registered additional construction works.

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Second Paragraph – By the registration of the fiduciary alienation contract here signed, the fiduciary property shall be constituted on behalf of CAIXA, making the DEBTOR(s)/TRUSTOR(s) direct possessor(s) and CAIXA indirect possessor of the real estate property object of the fiduciary guarantee.

Third Paragraph – As long as in compliance with the obligations herein agreed upon, the DEBTOR(s)/TRUSTOR(s) is assured with the free use, at their own risk, of the real estate property object of this contract.

Fourth Paragraph – The DEBTOR(s)/TRUSTOR(s) commit to keep the property in the same state of conservation of the date of this instrument, according to the respective report of evaluation/inspection, besides committing to caring for its safety and to the dully payment of all taxes, fees and any other contributions or charges, that affect or may affect the real estate property or that are inherent to the guarantee, such as the Real Estate Property Tax – IPTU and contributions to the residents' association condominium, among others.

Fifth Paragraph – CAIXA reserves the right to demand proof of payment of fiscal and/or tax charges or any other contributions related to the property, at any time.

Sixth Paragraph – The contracted fiduciary guarantee regards the real estate property identified by the end of this instrument, including accretion, improvements, constructions and installations that have been added to it, and it will last until the full restitution of the loan, its respective burdens and monetary adjustments, for which it will remain intact as long as the DEBTOR(s)/TRUSTOR(s) fully comply with their contractual and legal obligations related to this legal business.

CLAUSE THIRTEENTH – SUM OF THE FIDUCIARY ALIENATION – Pursuant to para VI of art. 24 of L. 9,514/97, the parties agree that the value of the property now object of fiduciary alienation is expressed in Brazilian current currency, signed in item C.4 of this contract, subject to monetary restatement by the same index used on a monthly basis in the restatement of the savings account of the day of signature of this instrument, reserving to CAIXA the right to request a new evaluation at any time.

Sole Paragraph – In the event of extinction of the update index for deposits in savings account, that sum will be updated by the index that replaces it or that is determined in specific legislation.

CLAUSE FOURTEENTH – FIDEJUSSORY GUARANTEE – In addition to the fiduciary guarantee, the INTERVENIENT CONSTRUCTION COMPANY, qualified in item A of this instrument, appears in this act as SURETY and main payer of all the obligations assumed by the DEBTOR(s)/TRUSTOR(s), expressly waiving the benefits foreseen in the art. 827, 835, 838 and 839 of the Civil Code.

Sole Paragraph – Foreseen in item C of this instrument and in compliance with the provisions of the main THIRD CLAUSE of this contract, the fiduciary guarantee shall prevail during the period of construction and legalization of the [project] enterprise, when the INTERVENIENT CONSTRUCTION COMPANY and SURETY shall cease to be responsible for the obligations of the DEBTOR(s)/TRUSTOR(s).

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CLAUSE FIFTEENTH – EXTINCTION OF THE UPDATE COEFFICIENT OF FGTS ACCOUNTS – The sums defined on this contract, dependent on the fluctuations of the update coefficient of FGTS associated accounts, shall be updated by indexes to be determined in specific legislation in case those coefficients are extinguished.

CLAUSE SIXTEENTH – IMPROVEMENTS, CONSERVATION AND CONSTRUCTION WORKS – Accretion or improvements (useful, voluptuous or necessary), that the DEBTOR(s)/TRUSTOR(s) wish to perform at their own expense, must be notified to CAIXA, in which case the DEBTOR(s)/TRUSTOR(s) commit to obtain the necessary ad-

ministrative licenses, the Certificate of Negative Debt – CND of the work issued by the Revenue Service [*Receita Federal*] and to promote the necessary registrations at the respective Real Estate Registry, for which, in all cases, they shall integrate the real estate property and its value for the purpose of extrajudicial auction.

First Paragraph – Pursuant to the provisions in para 4 and 5 of art. 27 L. 9,514/97, there shall be no right to retraction of improvements, even if authorized by CAIXA.

Second Paragraph – In the event that the property given as collateral is consolidated on behalf of CAIXA, the indemnification for improvements shall not exceed the remaining balance.

Third Paragraph – The DEBTOR(s)/TRUSTOR(s) commits to keep the alienated real estate property in perfect state of conservation, safety and habitability, making the necessary repairs, as well as the construction works required by CAIXA for the preservation of the guarantee, though however, it is forbidden to perform demolition, alteration or addition works without prior and express consent of CAIXA. In order to verify the exact fulfillment of this clause, CAIXA is guaranteed with the faculty to inspect the property fiduciary alienated at any time.

CLAUSE SEVENTEENTH – EXTRAORDINARY AMORTIZATION – After the end of the construction term, the use of extraordinary amortizations for the reduction of the loan period or the value of the installments is ensured to those DEBTOR(s)/TRUSTOR(s) in good standing with their obligations.

First Paragraph – The reduction of the amount destined to the amortization will be conducted with an update of the outstanding debt balance, pursuant to the First Paragraph of CLAUSE EIGHTH.

Second Paragraph – The amount offered for amortization will be preceded by the collection of remuneratory interest, calculated *pro rata* day at the interest rate stipulated in item C.7 of this instrument, for the period between the date of the last contractual update and the date of the event.

Third Paragraph – The new monthly charge shall be calculated according to the debt balance already affected by the amortization, the amortization system and the remaining time-period, in which case the period for the recalculation of amortization installment and interest annotated on CLAUSE NINTH shall not be interrupted.

Fourth Paragraph – The sum corresponding to the administration fee remains unchanged, except for the provisions contained in CLAUSE NINTH.

CLAUSE TWENTY-EIGHTH – ACCELERATION OF THE DEBT – After the end of the construction term, the early settlement of the debt is ensured to the DEBTOR(s)/TRUSTOR(s).

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Single Paragraph – The sum for settlement shall be composed of the monetarily updated debt balance pursuant to the clause EIGHTH of this contract, plus remuneration interest calculated *pro rata* day at the interest rate noted in item C.7 of this instrument, in the period between the date of the last update of the contract and the date of the event, plus any debts in arrears.

CLAUSE NINETEENTH – SUBSTITUTION OF THE CONSTRUCTION COMPANY – The CONSTRUCTION COMPANY shall be replaced at the will of the majority of all the DEBTOR(s)/TRUSTOR(s), formalized with CAIXA regardless of notification, for any of the reasons provided by law, and also:

a) if any declaration made by the CONSTRUCTION COMPANY in the financing process or contract are proven to be false;

b) if any action or execution is filed or any judicial or administrative measure is set against the CONSTRUCTION COMPANY, in any way that affects the progress of the construction works;

c) in the event of bankruptcy of the CONSTRUCTION COMPANY;

d) in the event of breach of any clause of the present loan contract by the CONSTRUCTION COMPANY;

e) [in case] the project is modified due to non-compliance to its plans, descriptive memorials, construction works' schedules, budgets and other documents accepted by CAIXA and members of the present contract, without the prior and express consent of CAIXA;

f) [in case] the construction work, object of this financing, is not concluded within the contractual term;

g) [in case] there is a delay or stoppage of construction works for a period equal or superior to 30 days, without a reason duly justified and accepted by CAIXA.

Single Paragraph – In the event of substitution of the CONSTRUCTION COMPANY, the resources coming from this loan shall be released totally or partially to the Insurance Company, after an inspection of CAIXA's Engineering Team, in which case the aforementioned Insurance Company remains responsible for the progress of construction works until its conclusion, as observed on the respective Insurance Policy for Execution Guarantee.

CLAUSE TWENTIETH – INSURANCE OF THE CONSTRUCTION COMPANY – The CONSTRUCTION COMPANY commits to present the Insurance Policy for Execution Guarantee, Insurance Policy for Engineering Risks and Insure Police for the Civil Liability of the Construction Company.

First Paragraph – The Insurance Policy for Execution Guarantee must be in force until the conclusion of the [project] enterprise and guarantees the substitution of the CONSTRUCTION COMPANY, the resumption, the conclusion of the works and the legalization of the [project] enterprise.

Second Paragraph – Insurance Policy for Engineering Risks must be in effect during the entire construction term of the [project] enterprise and guarantees indemnification to the CONSTRUCTION COMPANY for damages resulting from accidents that may occur during the execution of the work that may result in damage or destruction of civil engineering works;

Third Paragraph – The Insure Police for the Civil Liability of the Construction Company must be in effect during the entire construction term of the undertaking, and may be contracted separately or linked to the Insurance Policy for Engineering Risks, guaranteeing to the CONSTRUCTION COMPANY the reimbursement of sums to which they are liable as a result of body or property damages caused to third parties, which result from accidents occurring during the execution of the work.

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CLAUSE TWENTY-FIRST – GUARANTOR FUND FOR POPULAR HOUSING (FGHAB) – During the term of this contract, FGHAB covers this contract as observed by L. 11,977/09 and its amendments:

I – to ensure the guarantee for the monthly installment of the loan in the event of unemployment and temporary reduction of the payment capacity of the DEBTOR(s)/TRUSTOR(s);

II – to commit to the debt balance of the real estate loan in case of death and permanent disability of the DEBTOR(s)/TRUSTOR(s), and to the reparation costs of physical damages to the property.

First Paragraph – Contributions – In order to have access to the respective guarantees mentioned in the main clause, the DEBTOR(s)/TRUSTOR(s) must contribute monthly during the validity of this contract with a pecuniary commission as follows:

I – fix monthly pecuniary commission corresponds to the application of 0.5% (five tenths of a percent) on the monthly installment of amortization and interest rates described in item C.10 of this contract;

II- variable monthly pecuniary commission according to the age of the DEBTOR(s)/TRUSTOR(s), as follows:

- a) Up to 25 years old – 1,50%
- b) 25 to 30 years old – 1,54%.
- c) from 30 to 35 years old – 1.64%
- d) from 35 to 40 years old – 1.82%.
- e) from 40 to 45 years old – 2.59%
- f) from 45 to 50 years old – 3.02%
- g) Above 50 years – 6.64%

Second Paragraph – In case of composition of income, the percentage of the variable monthly pecuniary commission, foreseen in item II of paragraph FIRST of this clause shall be equal to the percentage average of the pecuniary commission of each DEBTOR(s)/TRUSTOR(s) weighted by each one's responsibility and expressed in this contractual instrument.

Paragraph Three – When any of the DEBTOR(s)/TRUSTOR(s) change their age bracket, the monthly variable pecuniary commission percentage foreseen in item II of paragraph FIRST of this clause shall be changed in the first contract recalculation.

Fourth Paragraph – Coverage of the Monthly Installments – The guarantee referred to in item I of the main clause shall be reactivated under the following conditions.

I – commitment of the family income exceeding 30% (thirty percent), as of the date of formal request by the DEBTOR(s)/TRUSTOR(s).

II – maximum number of installments per financing contract according to the gross family income, verified at act of contracting and limited to:

- a) 36 installments for income up to BRL 2,500.00,
- b) 24 installments for income between BRL 2.500, 00 and BRL 4.000,00;
- c) 12 installments for income between BRL 4.000,00 and BRL 5.000,00;

III – minimum payment of 6 (six) installments of the loan contract, for the first application to FG HAB;

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IV – formal request through the proof of unemployment and/or loss of income, every 3 (three) required installments;

V – payment of 5% (five percent) of the amount of the installment due in the current month, at each request to FG HAB;

VI – compliance of the contract in the months prior to the request to FG HAB;

VII – signature of a Private Loan Contract Instrument on behalf of FG HAB;

VIII – return of the installments honored by FG HAB immediately after the end of each period of use of the guarantee, together with the loan installment, within the remaining term of the loan or with an extension of the initial term, updated by the same indexes foreseen in the loan contract.

Paragraph Fifth – Installments honored by the FG HAB shall be reimbursed by the DEBTOR(s)/TRUSTOR(s), observing the following:

- a) the collection of the debt shall occur under the same conditions established in this housing loan agreement;
- b) after evaluation of the DEBTOR(s)/TRUSTOR(s)'(s) ability to pay, the debt shall be incorporated into the outstanding balance of the contract and shall be paid immediately after the end of each period of use of the guarantee together with the loan installment;

c) if applicable, an extension for the term of total loan installments payment due by DEBTOR(s)/TRUSTOR(s) may be given;

d) lacking the capacity to pay, the DEBTOR(s)/TRUSTOR(s)'(s) debt may be paid at any time or at the end of the amortization period of the financing stated in item C.6 of this contract, or in the case of early settlement of the accelerated debt;

e) in the event of delinquency in the payment of the obligation, the debt shall be increased by default charges in the same manner as defined for payment of the monthly installments of the loan contract, established in this contract.

CLAUSE TWENTY-SECOND – COVERAGE OF THE DEBTOR BALANCE OF THE REAL ESTATE PROPERTY AND RESTORATION – FG HAB provides partial or total coverage of the outstanding debt balance of the object of this contract and recovery of the property, under the following conditions:

I – death of the DEBTOR(s)/TRUSTOR(s), whatever the cause;

II – permanent disability of the DEBTOR(s)/TRUSTOR(s), occurring after the date the operation was contracted, caused by accident or illness;

I – recovery of physical damages of the property, limited to the importance assessed during the evaluation provided in item C.4 of this contract, updated in the form of the CLAUSE THIRTEENTH.

First Paragraph – For the purposes of the coverage, the date of the event that motivates the FG HAB guarantee is considered to be the date of death, in the case of death and, in the case of permanent disability, what follows:

- a) the date permanent disability retirement was granted or the receipt of the first benefit, informed via notification issued by the social security agency, in case the DEBTOR(s)/TRUSTOR(s) are associated to the special or general social security regime; or
- b) the date of the technical medicine report that verified the permanent disability.

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Second Paragraph – Coverage in situations of permanent disability is conditioned to proof by an official social security agency or prior evaluation by CAIXA based on a medical evaluation.

Third Paragraph – The amount assumed by the FG HAB shall be equivalent to the updated debt balance of the loan, capitalized at the contract rate until full payment, as follows:

- a) monetary adjustment *pro rata die*, using applicable indexes of savings deposits to the due date anniversary of installments, until the day of full payment;
- b) capitalization at contractual interest rates for the period between the month of the last installment due before the event, inclusive, until the month of the payment of the guarantee, exclusive.

Fourth Paragraph – For the purpose of calculating the outstanding debt balance, all commitments due by the DEBTOR(s)/TRUSTOR(s) shall be considered as having been paid up to the day prior to the date of the event giving cause to the guarantee.

Fifth Paragraph – In case there is more than one guarantee for the same residential unit, the guarantee shall be proportional to the liability of each one, as expressed in this instrument.

Sixth Paragraph – If the age of the DEBTOR(s)/TRUSTOR(s) ascertained on the date of the contract added to the initial amortization period exceeds the total of eighty years and six months, the debt balance shall be determined considering as original loan the amount compatible with the contractual installment proportional to income and the maximum financing period allowed to each DEBTOR(s)/TRUSTOR(s).

Seventh Paragraph – FG HAB shall assume costs related to the recovery of physical damages to the property, observing the provisions in item III of the main clause, resulting from:

- a) fire or explosion;

b) flooding and flooding, in case a river or channel bursts and the water reaches the property or flooding caused by external agents to the real estate property, rain or broken pipes outside the residence;

c) partial or total collapse of walls, beams or other structural parts, provided it is caused by external forces or agents;

d) collapse caused by strong winds or hail;

e) damages occurred in dividing and support walls: indemnification up to the limit of BRL 2.800,00 or up to the equivalent of 3% (three percent) of the value of valuation of the property, updated as provided in CLAUSE THIRTEENTH of this instrument, whichever is lower, provided the presentation of proof over the existence of the wall as of the contract signature and in the original project.

Eighth Paragraph – Repairing costs for damages on the property resulting from use verified only due to the passage of time and normal use of the thing, even if cumulatively, related to coatings, electrical installations, hydraulic installations, painting, frames, glass, iron and floors and also the following expenses will not be covered:

a) costs arising from measures taken to combat the propagation of physical damage to the property, for its protection and for construction rubbish clean-up;

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b) monthly installments due by the DEBTOR(s)/TRUSTOR(s) to CAIXA, if identified physical damages to the property require its vacancy;

c) loss of content, in case of loss of the real estate property;

d) costs arising from physical damage to common parts and buildings facilities in a condominium;

e) costs of recovering the property for damages arising from construction vices proven by an inspection report conducted by the project Administrator or, still damaged due to repetitive characteristics of previously guaranteed occurrences against which no measures were taken by whom entitled to prevent them, and this is repeated in less than 3 years since the last event.

Paragraph Nine – The contract of an insurance with coverage for Death, Permanent Invalidity – MIP and Physical Damage to Property – DFI, as provided for in article of L.11,977/09, is waived.

CLAUSE TWENTY-THIRD – COMMUNICATION OF EVENTS FOR THE HABILITATION OF FGAB – The DEBTOR(s)/TRUSTOR(s) declare(s) to be aware that, in case of an defined in the TWENTY-SECOND clause of this contract, they are obliged to communicate to their beneficiaries of the existence of the FGAB and also the following, immediately after signing this instrument, .

a) in the event of death, to immediately communicate the event in a written notice to CAIXA, under penalty of loss of coverage after three years from the date of death;

b) in the event of permanent disability, communicate the event in a written notice to CAIXA, within one year from the date of retirement, under penalty of coverage loss;

c) in the event of physical damage to the property object of this contract, communicate immediately the event in writing to CAIXA.

First Paragraph – The DEBTOR(s)/TRUSTOR(s) declare(s) that they must submit the following documentation to CAIXA:

I – in the event of death or permanent disability, the following documents must be presented: death certificate in the event of death; letter of concession of permanent disability retirement issued by the social security organ or publication of the retirement on the official gazette, in case of a public employee, and declaration of the social security institute, in the event of permanent disability:

II – in the event of physical damages to the real estate property object of this contract, at least 3 (three) budget proposals, invoice, receipt, descriptive memorial and pictures of the real estate must be presented;

III – in the event of unemployment and temporary reduction in the ability to pay the monthly loan installment: copy of the labor and social security card with the annotation of termination of employment, letter of termination of employment contract and proof of registration at PIS/PASEP.

Second Paragraph – CAIXA is authorized to receive directly from FG HAB the amount of the indemnification, in which case it shall apply it to the settlement or amortization of the debt and make the outstanding balance, if any, available to the DEBTOR(s)/TRUSTOR(s).

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CLAUSE TWENTY-FOURTH – FISCAL CHARGES – All taxes, fees, fines and other charges or contributions, including tributary ones, that affect or may affect the alienated real estate property, that are inherent to the guarantee, or that affect or may affect the operation object of this contract, such as the Real Estate Property Tax – IPTU and contributions due to the condominium, to the association of residents, among others, will be paid by the DEBTOR(s)/TRUSTOR(s) in due time, to which CAIXA reserves its right to demand respective proof of payment at any time.

Sole Paragraph – In case of delay of the DEBTOR(s)/TRUSTOR(s) in the fulfillment of such obligations and if CAIXA does not prefer to consider the debt as overdue, it reserves its rights make the payment of any charges referred in this clause, in which case the DEBTOR(s)/TRUSTOR(s) commit to reimburse all sums spent updated monetarily, plus the interest stipulated in this contract.

CLAUSE TWENTY-FIFTH – ACCELERATION OF THE DEBT – The debt arising from this financing, plus all charges and other accessories, and if applicable, the discounts, as well as any amounts of responsibility of the DEBTOR(s)/TRUSTOR(s), updated in the form of the CLAUSE EIGHTH, will be considered overdue and immediately collectable by CAIXA, regardless of notice, notification or judicial or extrajudicial interpellation, and may give rise to a credit enforcement suit of the contract and its respective guarantee, due to any of the reasons provided for by law, in particular the one contained in art. 1,425 of the Civil Code, and also:

I – IF THE DEBTOR(s)/TRUSTOR(s):

a) fail to pay three consecutive monthly charges or not, or any other amount foreseen in this instrument not covered by FG HAB;

b) assign or transfer to third parties their rights and obligations, totally or partially, sell or promise to sell the fiduciary property, without prior and express consent of CAIXA;

c) do not keep the fiduciary property in perfect state of conservation, safety and habitability, or perform on the property, without prior and express consent of CAIXA, demolition, alteration or additional construction works in such a way as to compromise the maintenance or performance of the guarantee given;

d) constitute *in rem* guarantee on the real estate property offered as guarantee, totally or partially, without the prior and express consent of CAIXA;

e) when requested by CAIXA, fail to present receipts of taxes, fees or contributions, as well as of social security and insurance charges, that affect or may affect the fiduciary property and that are their responsibility;

f) do not fit anymore to the eligibility requirements of MCMV Program and of Association for Off-Plan Property Program, in which case they shall return the discounts referred in CLAUSE FIRST, updated as provided in this instrument.

II – IN THE EVENT OF ANY OF THE FOLLOWING CASES:

a) if proven the falsehood of any declaration made by the DEBTOR(s)/TRUSTOR(s) in specific documents that determine the beneficiary's income related to the loan process or to the contract;

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b) if the guarantee is defaulted due to depreciation or deterioration, and the DEBTOR(s)/TRUSTOR(s) do not reinforce it after being notified;

c) if any action or execution is filed or any judicial or administrative measure is issued against the DEBTOR(s)/TRUSTOR(s) that, in any way, affects the property given as guarantee, totally or partially;

d) if the property given as guarantee is expropriated;

e) at any time, if it is verified that the DEBTOR(s)/TRUSTOR(s) were, as applicants for this loan of housing ownership, on the date of this contract, the owners of a residential real estate property financed under SFH conditions, or, even without financing, located in the municipality of the situation of the property now financed;

f) if it is found in any way that the DEBTOR(s)/TRUSTOR(s) avoid the strictly social and welfare purpose for which this loan was intended, giving the alienated property another destination than their residence and of their relatives;

g) in case of insolvency of the DEBTOR(s)/TRUSTOR(s);

h) in case of breach of any clause of the present loan contract;

i) if the project is modified due to the non-observation of plans, descriptive memorials, construction schedules, budgets and other documents accepted by CAIXA and [other] members of this contract, without prior and express agreement of CAIXA;

j) if the registration of the present contract is not conducted within the term stipulated in this contract.

CLAUSE TWENTY-SIXTH – GRACE PERIOD TO SERVE SUMMONS – For the purposes set forth in para 2, art. 26 of L. 9,514/97, a period of 60 (sixty) days is established, counting from the due date of the first monthly overdue and non-paid installment.

First Paragraph – Any tolerance that comes to admit delays greater than those agreed herein shall be a mere forbearance of CAIXA, and shall not constitute a fact that entitles rights to the DEBTOR(s)/TRUSTOR(s).

Second Paragraph – After the grace period of 60 (sixty) days, as noted on the main clause, CAIXA or its assignee may initiate the Summons procedure.

Third Paragraph – Within fifteen days, the DEBTOR(s)/TRUSTOR(s) shall be summoned to pay the overdue installment and those other overdue, [plus] conventional interest, penalties and other contractual charges, legal charges, including taxes, condominium contributions affecting the property, in addition to the costs of collection and Summons [procedures].

Fourth Paragraph – The DEBTOR(s)/TRUSTOR(s) may not pay any monthly loan installment as long as those overdue have not been paid and [the debt] settled, and, if such fact occurs, the payment made shall be imputed to the settlement or amortization of the first overdue and non-paid installment.

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Fifth Paragraph – The receipt of payment of the last due installment does not presume the discharge of the previous one and the simple payment of the charges, without monetary update, default fines and other contractual and legal charges shall not waive the DEBTOR(s)/TRUSTOR(s) from the responsibility to settle such obligations, remaining in arrears for all legal and contractual purposes.

Sixth Paragraph – A Summons shall be served in compliance to the following requirements:
I. a Summons shall be requested by CAIXA or its assignee to the official precinct chief of the Real Estate Registry, indicating the overdue and unpaid sum and default penalties;

II. Summons proceedings will be carried out by the official precinct chief of the Real Estate Registry and, at their discretion, it may be carried out by the official precinct chief of the Registry of Titles and Documents of the jurisdiction where the real estate property is located or where the domicile those who should receive it is located or else, by the Post Office, with a receipt notice;

III. a Summons will be served in person to the DEBTOR(s)/TRUSTOR(s), to their legal representative or to a duly constituted attorney-in-fact;

IV. if the DEBTOR(s)/TRUSTOR(s), their legal representative or constituted attorney-in-fact regularly is in an uncertain and unknown location, the official precinct chief will issue a certificate of the fact, in which case the competent Real Estate Registry will be responsible for publishing public notices for at least three days in one of the newspapers with the largest local circulation or in another easily accessible district, if there is no local daily press;

V. if there is a refusal of the defendant(s) to be served the Summons, or if the defendant(s) refuses to be found, or if the defendant(s) refuses to sign the receipt of the Summons, the official precinct chief of the Real Estate Registry is authorized to publish public notices, after certifying that the summons has not been served by hand, as provided for in para 4 of art. 26, of L. 9,514/97.

VI. if the DEBTOR(s)/TRUSTOR(s) remediate(s) the late payment, the official precinct chief of the Real Estate Registry will certify the fact and, based on the receipt of payment of the real state transfer tax (ITBI), and will conduct the formalize the registration the consolidation of the property on behalf of CAIXA in that real estate's registry.

Seventh Paragraph – Once the an overdue debt is remediated at the Real Estate Registry, the fiduciary alienation shall remain, and the DEBTOR(s)/TRUSTOR(s) shall be responsible for the payment of the collection and Summons [proceedings] costs.

Eighth Paragraph – Eventual differences between the amount paid for the settlement and and the amount due on the day of the settlement shall be paid by the DEBTOR(s)/TRUSTOR(s) together with the first or the second installments that fall due after the settlement.

Ninth Paragraph – If CAIXA pays any costs inherent to the property or to the guarantee, the DEBTOR(s)/TRUSTOR(s) must reimburse it within 30 (thirty) days, counting from the receipt of their communication, in which case the same penalties for cases of default are applicable.

Tenth Paragraph – **If the property is rented, the rental contract may be denounced with a period of thirty days for vacancy, unless the fiduciary has agreed in writing, in which case the denunciation shall be made within ninety (90) days as of the date of consolidation of the property on behalf of the fiduciary.**

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CLAUSE TWENTY-SEVENTH – EXTRAJUDICIAL AUCTION – Once the property is consolidated on behalf of CAIXA due to overdue debt transformed into absolute default, the property shall be alienated by CAIXA to third parties in compliance with the procedures set forth in art. 27 of L. 9,514/97.

First Paragraph – The alienation shall always be made by extrajudicial public auction.

Second Paragraph – The first public auction shall be held within 30 (thirty) days, counting from the date of registration of the consolidation of the property on behalf of CAIXA, and shall be offered for the sum established in this instrument, monetarily updated, to which CAIXA reserves the right to request a new evaluation.

Third Paragraph – If there is no offer of an amount equal or greater than that established by the parties, according to the previous paragraph, the property shall be offered at a second auction, to be held within 15 (fifteen) days, counted from the date of the first public auction, in which case the property shall be offered for the value of the debt.

Fourth Paragraph – The public auction (first and/or second) shall be announced via a single announcement with a period of 10 (ten) days counting from the first announcement, published for at least 3 (three) days in one of the newspapers with the greatest circulation in the location of the property or in another jurisdiction of easy access, if there is no local press with daily circulation in the place of the property.

Fifth Paragraph – CAIXA, in this case as full domain holder, will transmit the domain and ownership, indirect and/or direct, of the real estate property to the winning bidder.

Sixth Paragraph – For the purpose of extrajudicial auction, the parties adopt the following concepts.

I – the value of the unit is its evaluation value set in this contract, updated monetarily to the date of the auction, in which case CAIXA reserves the right to request a new evaluation;

II – the debt balance is equivalent of the sum of the following amounts:

- a) value of the outstanding debt calculated in the form of this instrument;
- b) value of overdue and unpaid installments, plus default penalties;
- c) auctioneer's commission;
- d) costs for serving Summons to the DEBTOR(s)/TRUSTOR(s) and publishing public notices;
- e) costs with the consolidation of the property on behalf of CAIXA;
- f) condominium contributions (overdue and non-paid sums on the date of the auction), in the event that the property is an autonomous unit of a special condominium;
- g) monthly fees (overdue and non-paid sums on the date of the auction) owed to the dwellers' association or similar entity, if the property is part of an [project] enterprise with such characteristic;
- h) water, electricity and gas costs (overdue and non-paid sums on the date of the auction), if applicable;
- i) IPTU and other taxes or contributions that may be levied (overdue and non-paid sums on the date of the auction), if applicable;
- j) occupancy rate *pro* month or fraction, fixed at 1% (one percent) of the property's value, updated by the same index agreed here, in which case CAIXA reserves its right to request a new evaluation, and due from the date of alienation of the auctioned property;

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k) any other social contribution or tax affecting the payment made by CAIXA as a result of the Summons and the alienation in extrajudicial auction and the delivery of any amount to the DEBTOR(s)/TRUSTOR(s);

l) the cost of the necessary repair works to restore the property to the same condition as when it was delivered to the DEBTOR(s)/TRUSTOR(s), unless they have already returned it in such conditions to CAIXA or to the purchaser at the extrajudicial auction;

m) transfer tax and *laudemium* that may have been paid by CAIXA caused by the consolidation of full ownership due to DEBTOR(s)/TRUSTOR(s)'(s) default.

Seventh Paragraph – The debt sum ascertained according to Paragraph SIXTH of this clause is monetarily updated from the date of consolidation of the debt to the date of the second auction.

Eighth paragraph – In the second auction, the highest bid offered will be accepted, as long as equal or superior to the outstanding debt evaluated according to this instrument, in which case CAIXA will deliver DEBTOR(s)/TRUSTOR(s) the remaining funds, as further disciplined, in the 5 (five) days following the full and effective receipt [of the sum].

Ninth Paragraph – In the absence of a bid greater than or equal to the amount of the debt in the second auction, the debt shall be considered extinct and CAIXA shall be released from the obligation of restitution to the DEBTOR(s)/TRUSTOR(s) of any amount, in any case.

Tenth Paragraph – The debt shall also be waived if there is no bidder in the second auction.

Eleventh Paragraph – Waived the debt, CAIXA shall issue a certificate of waive of the obligation to the DEBTOR(s)/TRUSTOR(s) within 5 (five) days from the date of the second auction.

Twelfth Paragraph – If, as a result of the first or second auction, there is any excess amount to be returned to the DEBTOR(s)/TRUSTOR(s), CAIXA shall place the difference at their disposal or make a deposit in the account of the DEBTOR(s)/TRUSTOR(s), considering in it the amount of the indemnification for improvements, if any.

Thirteenth Paragraph – CAIXA shall keep available the financial reporting for the DEBTOR(s)/TRUSTOR(s) for a period of 12 (twelve) months, counting from the execution of the auction(s).

Fourteenth Paragraph – The DEBTOR(s)/TRUSTOR(s) shall return the property, on the day following that of the consolidation of the property on behalf of CAIXA, leaving it free of people and things, under penalty of paying CAIXA or the new purchaser, as a fee for occupying the property, the value corresponding to 1% (one percent) of the value of the property, calculated per month or fraction, updated in the form defined in this contract, without prejudice of its responsibility for the payment of all condominium costs, taxes, membership fees, water, electricity and gas that occurred after the date of the public auction, as well as all costs necessary to restore the property to the state in which it was received.

Fifteenth Paragraph – The occupancy fee mentioned in Paragraph FOURTEENTH shall affect from the date of sale of the property until the date on which CAIXA or its successors have access to the possession of the real estate property.

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Sixteenth Paragraph – If the real estate is not vacated within the adjusted term and form, CAIXA, its assignees or successors, including the new purchaser of the real estate property, whether acquired at the auction or later, may request repossession (or the writ of entry, as of the purchaser), in which case the DEBTOR(s)/TRUSTOR(s) declare to be aware that, pursuant to art. 30 of L. 9,514/97, the repossession shall be granted preliminarily, by court order, for vacancy within a maximum term of sixty (60) days, provided that it is proven, by means of a certificate of registration of the property, the consolidation of full ownership on behalf of CAIXA, or the registration of the contract as a result of the sale of the property at the auction or after the auction, depending on who is the plaintiff of the repossession writ, without prejudice to the collection of daily occupation fees and other costs foreseen in this contract.

Seventeenth Paragraph – Established by art. 27 of Law 8,245/91, pre-emption rights in favor of the tenant do not apply to the real estate object of this contract.

CLAUSE TWENTY-EIGHTH – DISPOSSESSION – In the case of dispossession of the alienated real estate property, CAIXA will receive from the respective authority the corresponding indemnification, affecting the debt and releasing the discharge to the DEBTOR(s)/TRUSTOR(s), should there be any. If the indemnification is less than the balance of this debt, CAIXA will charge the difference from the DEBTOR(s)/TRUSTOR(s) and/or contractual parties.

First Paragraph – If the indemnification stated on the main clause is lower than the balance of the debt, the DEBTOR(s)/TRUSTOR(s) shall bear the difference, under penalty of judicial collection of the remaining amount.

Second Paragraph – The DEBTOR(s)/TRUSTOR(s) declare(s) aware that eventual dispossession of the property does not generate the right to any insurance indemnity.

CLAUSE TWENTY-NINTH – ASSIGNMENT AND GUARANTEE OF RIGHTS – The fiduciary credit arising from this contract may be assigned or guaranteed, totally or partially, by CAIXA, once the DEBTOR(s)/TRUSTOR(s) is notified.

First Paragraph – CAIXA may also, at its discretion, promote the assignment of the credit hereby constituted, totally or partially, including means of securitization of real estate credits, regardless of new consent or prior intervention of the DEBTOR(s)/TRUSTOR(s), in accordance with the provisions of Law 9,514/97.

Second Paragraph – In the event of the sale and securitization of real estate credits, CAIXA may assign the credits originated from this contract to an insurance company.

Third Paragraph – Real estate credits may back the issue of a title of credit security by the insurance company, called Certificate of Real Estate Receivables – CRI, which will be freely negotiated through a centralized system of custody and financial settlements of private security titles.

Fourth Paragraph – Thus, the DEBTOR(s)/TRUSTOR(s) are aware that the real estate loan operation, of which they are the borrowers, represents one of the links in a chain of legal business that begins with the fundraising by CAIXA, proceeds to the concession of the loan to the DEBTOR(s)/TRUSTOR(s), goes through the securitization of these credits and the negotiation of the Certificates of Real Estate Receivables – CRI, backed by such credits.

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CLAUSE THIRTIETH – NOVATION – The exceptional forbearance of any infringement conducted by the DEBTOR(s)/TRUSTOR(s) of legal and contractual obligations, as well as other arrangements that may facilitate the regularization of overdue payments, will not constitute novation.

CLAUSE THIRTY-FIRST – REGISTRY – The DEBTOR(s)/TRUSTOR(s) shall submit a copy of the registry of this instrument to CAIXA with the respective certificate of the Real Estate Registry within a maximum period of 30 (thirty) days, counting from the date contract signature.

First Paragraph – In the event that the registration of this agreement within the term stipulated in the main clause, is not proved by the DEBTOR(s)/TRUSTOR(s), CAIXA may consider the debt as overdue, or, at its discretion, promote such registration by attributing the costs inherent to the act to the DEBTOR(s)/TRUSTOR(s).

Second Paragraph – The costs and emoluments resulting from the registration and other acts related to the first residential property acquired or financed via the Minha Casa, Minha Vida – PMCMV Program are reduced in accordance with the provisions of art. 43 of L. 11,977/09 and L. 12,414/11.

CLAUSE THIRTY-SECOND – DISCHARGE OF THE DEBT – CAIXA shall furnish the respective discharge certificate within 30 days of the debt after the settlement of the debt, under penalty of a monthly fee equivalent to 0.5% per month or fraction over the value of the loan contract in favor of the DEBTOR(s)/TRUSTOR(s).

Sole Paragraph – The DEBTOR(s)/TRUSTOR(s) shall present the Real Estate Registry with the certificate of discharge of the debt with the aim to make the property on their behalf, for which they are aware that the costs/emoluments arising from that act will be of their full responsibility. The DEBTOR(s)/TRUSTOR(s) also commit to inform their updated residency address for correspondence.

CLAUSE THIRTY-THIRD – DEBT TRANSFER – After the end of the construction term, in other words, during the amortization period, the DEBTOR(s)/TRUSTOR(s) are allowed to transfer the debt to third parties, in which case it shall be composed by the proportionally updated debt balance, based on the *pro rata* adjustment criteria defined in specific legislation in effect at the time of the event, counting from the date of contract signature or of the last contractual update, and the date of the event.

CLAUSE THIRTY-FOURTH – COMMUNICATION WITH THE DEBTOR(s)/TRUSTOR(s) – The DEBTOR(s)/TRUSTOR(s) and TRUSTOR(s) authorize CAIXA to use any means of communication based on their personal registry information to send them

messages related to the obligations/installments observed in this instrument and respected legal provisions in force.

CLAUSE THIRTY-FIFTH – ACQUIESCENCE OF THE CONTRACTUAL CONTENT – For all legal purposes, the DEBTOR(s)/TRUSTOR(s) declare to be aware of all contractual clauses, under sufficient period and form, stating that they are clear and devoid of ambiguity, dubiousness or contradiction, for which they are aware of the rights and obligations observed in this contract.

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CLAUSE THIRTY-SIXTH – WAIVER OF CERTIFICATES – The DEBTOR(s)/TRUSTOR(s) and the SELLER(s) declare that they waive the presentation of certificates enlisted on D. 93,240/86 by mutual agreement, including fiscal certificates and filed acts, in which case they shall be substituted by a clearance certificate of in rem guarantees or possessory liens.

SINGLE PARAGRAPH – If required by state legal provisions, fiscal and filed certificates shall be presented for the registry, without prejudice of other requirements of the Real Estate Registry.

CLAUSE THIRTY-SEVENTH – LEGAL WOOD – The INTERVENIENT CONSTRUCTION COMPANY and the SURETY must present the mandatory licenses for transport and storage of native wood (Document of Forest Origin – DOF or Forest Manuals) until the delivery of the construction works, as established by the competent agency (IBAMA), as proof of the legal origin of the wood used and a declaration informing the volume, [and] the final destination of the wood used in the work to be delivered to CAIXA with the other documents evidencing the legal origin of the wood used.

First Paragraph – In order to issue the Document of Forest Origin, or equivalent Document of Forest Transport, the INTERVENIENT CONSTRUCTION COMPANY and SURETY shall have a regular registry before IBAMA's Federal Technical Registry – CTF.

Second Paragraph – CAIXA shall inform IBAMA of a non-compliant INTERVENIENT CONSTRUCTION COMPANY and SURETY, due to the failure to present the documents required to prove the legal origin of the native wood used in the construction works of the [project] enterprise, and the same shall be subject of inspection by that environmental agency.

CLAUSE THIRTY-EIGHTH – MANDATE – The DEBTOR(s)/TRUSTOR(s) hereby grants power of attorney(s) to the INTERVENIENT CONSTRUCTION COMPANY and SURETY, herein qualified, with express powers to: I) to represent them before the Real Estate Registry competent for the practice of the following acts: (a) to confirm the registration of the incorporation, provided that the original conditions of incorporation are not changed; (b) to implement, at the appropriate time, the registration of the creation, division, specification and meeting of the condominium; (c) to proceed with the timely registration of the construction works; II) to represent them before concessionary companies of public services and licensing bodies in order to request and authorize their facilities and connections in the [project] enterprise and in the autonomous unit object of this contract, in which case they shall too authorize the institution of essential easements to the infrastructure constructed for the contracted enterprise and as long as they do not matter in changes of the basic characteristics of the [project] enterprise and of the housing unit now acquired and III) to represent them before the municipality, its bodies and entities in order to conduct the fiscal registration of the autonomous unit object of this contract.

First Paragraph – The performance of those acts defined in this clause is limited to the ideal fraction of land, to the autonomous unit and to the respective common areas object of this contract.

Second Paragraph – The acts specified in this Clause are not of sole interest of the INTERVENIENT CONSTRUCTION COMPANY and SURETY, who will practice them with the

only purpose of enabling the delivery of the housing units in habitable conditions and within a reasonable period of time, nor do they constitute responsibilities to the DEBTOR(s)/TRUSTOR(s).

Third Paragraph – The DEBTOR(s)/TRUSTOR(s) declare that they agree with this Clause and that at any time, they may manifest themselves to revoke it.

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CLAUSE THIRTY-NINTH – DECLARATIONS OF THE INTERVENIENT CONSTRUCTION COMPANY and SURETY:

First Paragraph – As the responsible [party] for the execution of the construction works object of this contract, declares that:

- a) agrees with all clauses, terms and conditions of this contract;
- b) expressly acknowledges the priority of CAIXA to credit, renouncing entitlements to rights that the the law may grant;
- c) does not oppose its replacement, if deemed necessary;
- d) will implement the construction works of the [project] enterprise, in accordance with the project presented and approved by the CAIXA's Engineering Team;
- e) will present the project and carry out the Social Technical Work together with the SUPPORTING ENTITY, if the value of the guarantee of the property in item C.4 is greater than or equal to BRL 40,000.00;
- f) will be responsible for the safety and solidity of the construction work as well as for the technical requirements indispensable to the terminal movement of the works;
- g) without prejudice to the obligations of imposed by the civil legislation, commits to promptly respond to any complaints from the DEBTOR(s)/TRUSTOR(s) due to proven construction vices, under penalty of being considered unfit to sign new contracts with CAIXA;
- h) is responsible for the obligations set in CLAUSE FOURTH of this instrument, in case it is also the SUPPORTING ENTITY of the [project] enterprise.

Second Paragraph – Declares, furthermore, that is responsible for the conclusion of the construction works of the mentioned [project] enterprise against the purchasers of units part of that [project] enterprise mentioned in item B of this contract and for eventual losses suffered by the purchasers and/or DEBTOR(s)/TRUSTOR(s) as a result of unjustified delay in the conclusion of the works.

Third Paragraph – Declares, furthermore, that it commits to obtain prior, formal and unanimous consent from the purchasers and/or DEBTOR(s)/TRUSTOR(s) of the units part of the [project] enterprise mentioned in item B of this contract, in the event of changes in technical specifications to occur during the execution of the work, according to art. 43 of L. 4,591/64, as well as that they commit to inform CAIXA of that respective consent.

Fourth Paragraph – In the quality of SURETY of the loan granted to the DEBTOR(s)/TRUSTOR(s), declares that:

- a) they assumes, as the main payer, the responsibility for the payment of the monthly installments due by the DEBTOR(s)/TRUSTOR(s), being jointly and severally liable for the totality of the debt, as well as for any additional, until the registration of the construction and the effective annexation of the real estate property to the DEBTOR(s)/TRUSTOR(s), expressly waiving the benefits provided for in Art. 827, 835, 838 and 839 of the Civil Code.

CLAUSE FORTIETH – DECLARATIONS AND COMMUNICATIONS OF THE DEBTOR(s)/TRUSTOR(s) – The DEBTOR(s)/TRUSTOR(s) agree and declare themselves aware that:

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- a) the construction of the project will be financed by CAIXA, through the autonomous loan granted in totality or partially to the [project] enterprise, in a case of joint and several liability

of the DEBTOR(s)/TRUSTOR(s) for the obligations assumed in this instrument during the construction period;

b) due to the joint and several liability of the DEBTOR(s)/TRUSTOR(s) for the totality of the debt contracted during the construction term, the value of the loan granted herein shall be credited, on a monthly basis, in an account in the name of the SUPPORTING ENTITY, upon compliance with the construction work schedule.

c) during the construction term, the group of residences and their respective lands shall be liable for the respective debt resulting from the loan granted to the DEBTOR(s)/TRUSTOR(s) and to the other members of the associative group linked to the enterprise, in an indistinct and jointly and severally liable manner;

d) shall be jointly and severally liable for the totality of the loan granted, until the construction of the enterprise is concluded with the presentation of the certificate proof of registration of the construction at the Real Estate Registry;

e) upon completion of construction works, they shall be liable only for the debt linked to the autonomous unit that is the object of this loan;

f) all information related to the present contract may be disclosed to the competent governmental agencies in order to supervise the execution of the Programs with FGTS resources and/or the application of public funds;

g) there is no responsibility arising from guardianship, curatorship or testaments at their costs;

h) there are no judicial or extrajudicial charges affecting the alienated real estate property;

i) information on marital status, nationality, profession and identification are true;

j) they are responsible for the veracity of income proofs presented or for the information provided about unproved income;

k) they are subsidiarily liable for the payment of any debts regarding IPTU and the condominium shares up to this date, assuming before CAIXA, the responsibility for the payment in case the SELLER(s) does not comply with that obligation, as provided in CLAUSE FORTY-FIRST, reserved their right of collection;

l) agree with the replacement of the CONSTRUCTION COMPANY, if applicable, as set forth in CLAUSE NINETEENTH;

m) are not bound as employers to INSS and as contributors to FUNRURAL;

First Paragraph – In addition to the declarations contained in the main clause regarding the responsibility over the loan and the quality of owner, the DEBTOR(s)/TRUSTOR(s) also declare(s), under the penalties of the Law:

a) not be (in) holders of any active housing loans in any municipality of the national territory;

b) not to be the owner(s), assignee(s) or promissory(s) buyer(s) of residential property without financing or already settled, located in the current place of residence or in the municipality of the property object of this contract;

End of page 31

c) not be the holder(s) of a lease contract in the Residential Lease Program – PAR in the country, and not to have figured, at any time, as a beneficiary(s) of housing programs based on the budget resources of the Federal Government or housing discounts granted by the FGTS.

Second Paragraph – For specific purposes of L. 11,977/09, L. 12,424/11 and D. 7,439/11 that regulate the Minha Casa Minha Vida Program, the DEBTOR(s)/TRUSTOR(s) declare(s) that they are aware of the legal hindrance contained in art. 36 of L. 11,977/09, by which they are hindered for a fifteen-year period counting from this date to promote the remembrance of the land on which is (will be) built the property described and characterized in this contract.

Third Paragraph – In case of use of the resources of the FGTS linked account, in addition to the provisions on the main clause, the DEBTOR(s)/TRUSTOR(s) declare(s) not to be a

committed purchaser or owner of a residential property concluded or under construction in the municipality where they exercise their main occupation, in the neighboring municipalities and in the metropolitan region, and neither in the current municipality of residence.

Fourth Paragraph – Without prejudice to legal sanctions that may be imposed, the falsehood of the declarations indicated in this clause shall cause the DEBTOR(s)/TRUSTOR(s), among others, the following consequences:

- a) The loss of the right to FGAB coverage;
- b) The obligation to reimburse the FGTS sums used in this operation back to their association account and,
- c) the acceleration of the debt as observed in CLAUSE TWENTY-FIRST.

Fifth Paragraph – In case a declaration mentioned in the main clause and on Paragraph SECOND is found to be false, this will lead to the loss of the insurance coverage related to the second purchase and the reimburse of the updated resources to the FGTS account, in which case the provisions of CLAUSE TWENTY-SECOND may be applied.

Sixth Paragraph – The DEBTOR(s)/TRUSTOR(s) declare(s) to be aware that, because they have been previously granted with a discount granted by FGTS or by the Federal Government, they have not been entitled to receive it in this loan and, therefore, agrees with the application of the interest rate and with the payment of the administration fee, defined in item C.7 of this instrument.

Seventh Paragraph – The DEBTOR(s)/TRUSTOR(s) commits(s) to the obligation to communicate CAIXA to any oppositions made to this loan contract, as well as to any occurrences that may, directly or indirectly, affect the fiducially alienated property, notably a number or identification change, during the term of this loan contract.

CLAUSE FORTY-FIRST – DECLARATIONS OF THE SELLER(s) – The SELLER(s) solemnly declares, under the penalties of the law, that until the present moment:

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a) regarding the object of the contract, they are not responsible for any possessory lien or in rem guarantee, or any debts of fiscal or condominium nature, taxes, fees and contributions, in which case they commit to take on exclusive responsibility to any eventual debts of such nature that may be due up to the present date;

b) there is no responsibility arising from guardianship, curatorship or testaments, and they do not answer personally to action *in rem*, action *in personam*, seizures, motions, deposits, arrests, impound, bankruptcy, debt rehabilitation concordats and/or composition with creditors, fiscal debts, attachment or collection, which may compromise the property object of this transaction and the mortgage guarantee constituted on behalf of CAIXA;

c) not be bound to the social security system either as employer taxpayer(s) and/or rural producer(s), otherwise, or in the case of a SELLER legal entity, to present the the Certificate of Debt Clearance – CNO issued by the Revenue Service [*Receita Federal*] at the registration of this instrument at the Real Estate Registry;

d) not have debts arising from federal taxes and contributions:

e) that the property here alienated is not part of its permanent assets, under the terms of L. 8,212/91 and art. 135, III of the Social Security Costs Regulation approved by D. 90,817/85;

f) there is no action *in rem* or action *in personam* and no *in rem* guarantee that binds or may represent risk to the real estate object of this operation.

Single Paragraph – It the SELLER(s) is(are) a legal person that exercises the activity of purchase and sale of dwellings, rental, division or allotment of lands, real estate development or construction of buildings destined to purchase, they declare, under the penalty of law, that the dwelling object of the present transaction is not and never was an integrative part of their permanent assets, what waives them from the presentation of the Certificate of Clearance of

federal, CND and INSS tax and contributions, issued by the Revenue Service[*Receita Federal*]. (IRIB)

CLAUSE FORTY-SECOND – DECLARATIONS OF THE PARTIES- The parties declare that they have been duly informed of the possibility of obtaining in advance and online the Certificate of Clearance of Labor Debts (CNDT), regulated by L. 12,440/12.

CLAUSE FORTY-THIRD – JURISDICTION – The court of the headquarters of the judiciary section of the federal justice is elected as competent to settle any issues arising directly or indirectly from this contract, with jurisdiction over the location where the property object of this contract is located.

End page 33

[table]ADDITIONAL INFORMATION/EXCEPTIONS

[blank paragraph]

The creditor/fiduciary waives the presentation of certificates of on going proceedings and tax debts according to L. 7,433/85.

[blank paragraph]

We emphasize item D2 – DESCRIPTION AND CHARACTERISTICS OF THE LAND OBJECT OF SALE AND PURCHASE AND OF THE GUARANTEE FOR FIDUCIARY ALIENATION, to annotate that the property faces the alignment of [street] and not as it was [described] before.

[stamp, signature CAIXA]

End page 34

And being in full agreement with the clauses, terms and conditions of this instrument, [the following] sign the present agreement in 4 (four) copies of equal content, together with the witnesses, after the full description of the real estate object of this contract, as following:

[place, date].

PURCHASER(s)

[Signature]

SELLER(s)/SUPPORTING ENTITY/CONSTRUCTION COMPANY/SURETY

[Signature 1]

[Signature 2]

[Signature 3]

CAIXA'S REPRESENTATIVE

[Signature]

CAIXA's Costumer Service: [telephone number] (informations, claims, suggestions, commendations)

For persons with hearing or speaking disability: [telephone number]

Ombudspersons: [telephone number]

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End of page 35

WITNESS [1]

[Signature]

WITNESS [2]

[Signature]

CAIXA's Costumer Service: [telephone number] (informations, claims, suggestions, commendations)

For persons with hearing or speaking disability: [telephone number]

Ombudspersons: [telephone number]

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[STAMP:] REAL ESTATE REGISTRY [place]. Protocol [number]. On [date]. Costs [sum].

Annotations:

ND in [Registry number] – N. [number] Repeated on [date]; [Registry number], [Registry number] On [date] [Signature]

End of translation.

Annex VII: Pager on Accountability in Social Housing

7 Guiding Rights-based Principles

1. Social housing programs must use of all available resources to ensure the fulfillment of the right to adequate housing.

All policy and legal means should be used to materialize the right to housing. That requires the operationalization of rules as an organizational behavior at the program level.

2. Programs must have clear, transparent, consistent, and simple rules.

Any overlapped functions and cumulative roles must be substituted by a clear and consistent system, where it should be possible to identify the responsibilities and obligations of any specific duty-bearer. Programs must ensure that information is public and accessible, taking into consideration the vulnerability of beneficiaries. Clear and consistent eligibility criteria, application and selection procedures, conditionalities and responsibilities should be adapted to cultural and language diversities. The legislator should be able to justify policy strategies based on facts and studies. Programs should avoid unnecessary disparities in procedures and terminology at the domestic level.

3. Understand, identify and prioritize vulnerability.

Social programs must target the most-vulnerable. They must identify and prioritize those individuals affected by intersectional and compound discrimination, negatively impacted in cultural, social, economical, historical aspects. Laws must ensure equal and non-discriminatory treatment, both as constitutional goals and when translated as operational settings. The relativization of the principle of veracity of information for documental proof based on vulnerability can be a strong means of guaranteeing adequate housing.

4. All legal measures must be used for the progressive realization of the right to adequate housing

Constitutional and legal texts should acknowledge the right to housing and create legal mechanisms and remedies to enforce it. Beneficiaries must be recognized and entitled as right-holders. Their access to justice must be guaranteed. Eased redress and grievance mechanisms must ensure rapid and cheaper solutions. Legal assistance costs for the most-vulnerable must be alleviated, for which ombudspersons and supporting entities can play a key role. Courts must comprehend vulnerability and refrain from violating fundamental human rights in favor of strict legal solutions. Governmental and judicial agents must continuously receive special education on equality and non-discrimination.

5. Sanctions may not violate the right to adequate housing.

Beneficiaries not able to comply to their responsibilities should receive extra-support and social assistance. A legal clause should not enable forced removals, if the dignity of an individual or their family is to be negatively impacted. Evictions must be avoided at all possible costs, as well as those institutions that lead to them, such as fiduciary alienation using the dwelling in guarantee. Sanctions to duty-bearers must take into consideration their role, responsibility and capacity to comply to an obligation.

6. Increase coordination through local-level, participatory planning, management and implementation mechanisms.

Decentralization and coordination require a shift of decision-making and policy making to the local-level, ensuring democratic platforms of communication for the articulation of local issues at regional and national levels. Beneficiaries should be supported with participatory mechanisms. The use of ICTs should be expanded, alongside with other traditional mechanisms.

7. Minimum adequacy standards must be mandatory in accordance to the international agenda.

Programs consistently designed in accordance to the international, green, human rights progressive agenda. States should work in international co-operation.

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Mariana Vilmondes studied and practiced law in Brazil, before coming to Germany in 2011 to take a Master degree in political sciences, sociology and history in the University of Siegen. She then pursued her Ph.D in international development studies at the Institute of Development Research and Development Policy, Ruhr-University of Bochum (IEE-RUB). Supported by the International Realization Budget, she conducted field research in Brazil, participated in the UN-Habitat PrepCom2, in Nairobi, Kenya and visited the King's College. Since March 2021, she works as an underwriter for a german reinsurer.

Institutional crises have been continuously embedded in weak accountability. In Latin America, human rights' violations catalyze the outcomes of such crises. In the aim of understanding the housing crisis, this research evidenced a vicious cycle in Brazil and Chile: despite the creation of massive social housing programs, the lack of adequate housing particularly affects the most-poor due to weak accountability. The comparison of legal accountability relations in the urban social housing ownership models Minha Casa, Minha Vida, from Brazil, and D.S. 49, D.S. 1, and D.S. 19, from Chile, revealed several of those inconsistencies, but also advised on concrete solutions to their accountability relations inspired by the rights-based approach. Policies fall short on the organization of responsibilities to duty-bearers, whose weak obligations to inform, justify or respond neutralize concrete chances of enforcing redress or grievance. In such a scenario, this research showed that the most-vulnerable remain hindered from accessing the minimum existential and, particularly, adequate housing. The solution is obvious: the respect, protection and fulfillment of human rights must be used as means and goals of those or any other policies and institutional structures. ,

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