CLOSING THE CITIZENSHIP GAPS BETWEEN THE CITY AND THE VILLAS MISERIAS (VILLAS) CREATING CITIZENSHIP THROUGH RIGHTS CLAIMS
AN OVERVIEW OF VILLAS IN BUENOS AIRES CITY

- Between 6 and 10% of the population in Buenos Aires City, the wealthiest of the country, lives in the Villas (between 170,000 and 300,000 people).
- In the “Great Buenos Aires” (the vast urban area surrounding the City of Buenos Aires, more than 2,500,000 people lives in Villas).
- Most of the Villas are located in public lands, most of them in highly environmentally degraded ones.
- Most of the Villas have been established more than 20 years ago. The oldest ones were established around the decades of 1930 and 1940.
- Villas lack proper basic infrastructure and urban services (water, sewage, electric networks, scavenging, telephone, post, paved roads, drains, public transportation, lighting, security, emergency services, etc.).
AN OVERVIEW OF VILLAS IN BUENOS AIRES CITY

- Although the city offers formally universal and free public schools, and primary health care services, the availability and accessibility to that services are very difficult for Villas residents (there are insufficient or inaccessible).

- From a demographic perspective, Villas population has the following relevant trends:
  - Higher % of women than city average
  - Higher % of people with disabilities than city average
  - Much Higher % of young population than city average
  - Much Higher % of Latin American migrants – most of them informal ones- and first generation of Argentines than city average (more than 50 % of Latin American migrants living in the city live in city's Villas)
  - Higher % of illiterate population than city average
Sobre 861 villas y asentamientos de los que se dispone información.

Fuente: Catastro 2011 UTPMP
THE RELEVANT
CONSTITUTIONAL/INSTITUTIONAL
SETTINGS.
THE FRAME OF CITIZENSHIP
THE GOVERNMENTAL APPROACH TO VILLAS

- The traditional approach governments have had towards villas has the following trends:
  - Libertarianism/Individualism: As justificatory framework for evaluating the Villas (Villas are result of individuals choices, capacities, talents)
  - Charity/Solidarity/Social control: As “justification” for the state to help Villa residents (not justice or constitutional based obligations)
  - Temporariness/Precariousness/Reversibility/Administrative Informalism: As basic features of every policy or state intervention in Villas
  - Clientelism/Disempowerment: As the basic dynamic that result of the interaction between Government/community leaders/residents
CONSTITUTIONAL AND LEGAL PROFESSION FRAMEWORKS

- **Federal and local constitutions** recognize and guarantee:
  - enforceable ESCRs (right to food, health, housing, education, cultural identity, environmental rights, etc.)
  - protection against unjust discrimination on socio-economic grounds (either public/private; by intention/result; by action/omission)
  - ESCRs and Antidiscrimination rights can be enjoyed and enforced collectively
  - collective access to justice and remedies in the absence of fulfillment
  - judicial standing to individuals, NGOs and Public Defender Office to bring collective claims on ESCRs and Antidiscrimination rights
CONSTITUTIONAL AND LEGAL PROFESSION FRAMEWORKS

- The City of Buenos Aires has a fairly independent and young (sub 60) judiciary.
- In Argentina, more than 13,000 lawyers graduate each year. Almost a 40% of them will practice in the City of Buenos Aires and the “Great Buenos Aires”.
- Argentine Law schools curricula are very traditional:
  - Don’t include any exposure to “community lawyering” and “community organization”.
  - There aren’t specific courses on “social justice”; “antidiscrimination law”, “ESCRights”.
  - Clinical Legal Education is just a rare and peripheral innovation at some elite and small law schools.
ACIJ’S APPROACH TO VILLAS/RIGHTS/CITIZENSHIP

THE EGALITARIAN APPROACH
ACIJ´S EGALITARIAN APPROACH

a.- We evaluate the very established existence of - and the life condition at- the Villas as a result of -and an expression of- an unjust structural inequality created, maintained, encouraged and/or facilitated by the state action/inaction.

b.- We demand that the State has the (moral, political and legal) obligation to remove the elements that maintain and perpetuates the structural conditions of social and political segregation and subordination that defines the living conditions in the Villas

c.- The egalitarian approach aims to identify the relevant conditions of citizenship, in terms of socio/political “equality”; evaluating how those conditions are distributed between the “formal” city and the Villas; and working on dismantle the structural inequalities based on social and economics origins or conditions.
ACIJ´S
EGALITARIAN APPROACH:
THE RIGHTS APPROACH

The egalitarian approach turns into the Rights Approach once we realize that:

A.- The relevant social equality based on citizenship conditions - in order to overcome subordination/inequalities based on socioeconomics conditions- are basically the content of ESCRs + Antidiscrimination Principle

B.- The relevant political equality based on citizenship conditions –once universal classical political rights to vote and to engage politically are in place- are related to the accessibility/ responsiveness of the public institutions to right based claims.
BRIDGING THE GAP: THE INSTITUTIONAL/COMMUNITY ACTION APPROACH

- What the EGALITARIAN/RIGHTS approach identifies is a broad and deep gap between Institutions and Villas Communities in terms of creation and development of the relevant conditions of social/political citizenship.

- This gap must be first bridged and then narrowed and closed.

- This bridge has to be: A two lanes bridge: **bottom-up and top-down simultaneously**.

- It has to create **social empowerment and institutional sensitivity/responsiveness** at the same time, in a constructive dynamic of deliberative inclusion.

- The strategy for creating this bridge has to be two folded: **systemic and synergetic**.
BRINGING THE INSTITUTIONS CLOSER TO THE COMMUNITIES

The institutions must:

(A) acknowledge its obligations and failures in terms of conditions of structural equality;
(B) identify them as inconsistent with constitutional commitments and political legitimacy preconditions; and
(C) recognize the Villas communities as subjects of strong enforceable rights (not charity or control) and institutional remedies.

It won’t happened voluntarily or spontaneously
BRINGING THE INSTITUTIONS CLOSER TO THE COMMUNITIES

- The Judicial Power is very well equipped to perform this symbolic and pragmatic transformation in the way the institutions treat Villa communities:
  - The “public reason” oriented dynamic of judicial intervention (impartiality)
  - The (new) capacity to engage in the judgment of structural violations of rights and constitutional review of public policies
  - The pedagogical dimension of judicial decisions for the legal community and public opinion
  - The “inclusive” dynamic of collective judicial process, and enforcement of structural judicial decision
The “strategic”, “structural”, “public interest law” litigation on ESCRs and Antidiscrimination: a useful tool to build a bridge between institutions and communities

- Creating effective interpretation of these rights
- Opening judicial system – and the legal culture - to segregated and often “invisible” communities rights claims
- Making government to give institutional, public and formal explanations and justifications of its policies related to Villas and its constitutional implications
- Creating a formalized and accountable procedure for the state to change the status quo
Examples of Cases ACIJ has worked on

- **Anti Discrimination:**
  a. Waste baskets for poor areas
  b. Access to school buses for Villas children
  c. Equal squares and recreation spaces for Villas

- **ESCRs:**
  a. Access to water and sanitation Facilities in Villas
  b. School vacancies for public early education for poor children
  c. Access to emergency services and Quality of public primary health care services for Villas residents
CREATING RIGHTS BASED EMPOWERING PRACTICES WITH VILLAS COMMUNITIES. REACHING THE INSTITUTION FROM THE VILLAS
“Community interest advocacy” (and lawyering): the other lane of the bridge

- **Rationale of this model**: idea of advocacy in/with/for Villas Communities as a means for creating empowering experience through rights based claims related to the social and political conditions of egalitarian citizenship.

- The Arena for these claims could be administrative agencies, legislatures and judiciary –as well as public opinion sphere. Whatever the setting is, the project is to build and strengthen the capacities of communities to frame, express, negotiate and defend the improvement of their social living conditions from a right based (and correlative state constitutional obligations) perspective.

- The process implies the creation, development, deepening, strengthening and sustaining of the empowering experience.
“Community interest advocacy” (and lawyering): the other lane of the bridge

This can only be achieved by a comprehensive transformative approach, that includes:

a.- Trust building: continued and stable presence

b.- Service: working on whatever issue the community identifies as relevant for the improvement of their social conditions of dignity

c.- Strong citizenship Learning process: building capacities within the community for framing social conditions of living in terms of justice not charity; rights/obligations not favor; and relationship with state in terms of responsiveness/accountability not alienation/discretion.

d.- Qualified legal support: helping, counseling, accompanying and back covering the community.

e.- Facilitate Tools and Networking: Helping the community to dominate some tools that can strengthen their strategic capacities and the impact of their claims and initiatives

f.- Adaptability: Being aware (and ready) to identify when to step aside, step back, challenge the community to move, avoid being both elitist/paternalistic and irrelevant.
“Community interest advocacy” (and lawyering): the other lane of the bridge

This model might be:
- demanding but transformative
- expensive but sustainable
- focused but scalable

But above all, this model is consistent with the idea of promoting inclusive and deliberative democracy, and a strong understanding of what the core value of human rights and equality should mean for our communities.
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