

■ ARGENTINA

More market and fewer rights: the State's response to the housing crisis

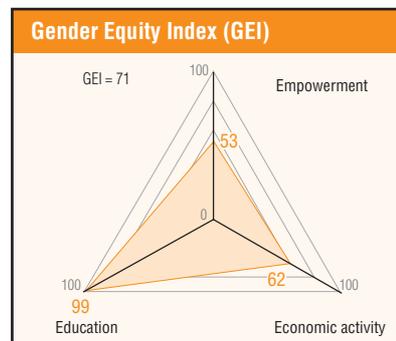
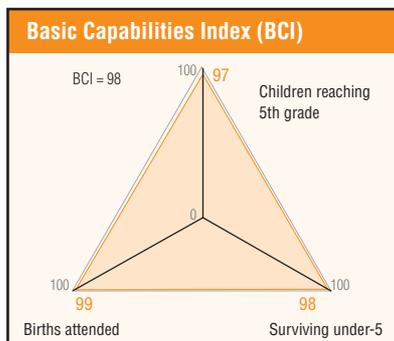


Despite being recognized normatively, the right to housing has systematically been harmed by the action of the State. What is more, the market appears to be the central sphere of satisfaction and the market's logic seems to have a direct influence on the housing situation of the more vulnerable sectors, encouraging massive evictions and generating direct and indirect obstacles for obtaining dwellings.

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The right to adequate housing is guaranteed in article 14bis of the Constitution and, as of the 1994 constitutional reform, numerous international treaties that guarantee the right to adequate housing² have been granted constitutional hierarchy. Among the most relevant is the International Covenant on Economic, Social and Cultural Rights (ICESCR), which in article 11 proclaims that "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."

In view of its international commitments, the Argentinian State is not only obliged to generate egalitarian conditions for access to housing, but must also, with the maximum resources available, respect the minimum contents of these instruments, and the dispositions established by the UN body that monitors implementation of the Covenant. In the particular case of the ICESCR, the Committee on Economic, Social and Cultural Rights has established, under General Comments No. 4 and 7, the international standards for the right to adequate housing. The State must therefore (on the principle of non regressiveness) improve the conditions for its enjoyment and exercise; guarantee the participation of the groups affected in the decision making for the design and implementation of public policies on housing and guarantee access to information, as well as provide suitable and effective channels that can make legal claims possible when the State does not meet its obligations.



Norms and reality

The above is the normative framework, but it does not coincide in practice. According to the National Census of Population and Housing 2001, there were more than 2.6 million households, of a total of over 10 million, living in inadequate housing.³

To complete this overview of the housing situation, apart from the state of the dwellings, the tenancy system should also be considered. A considerable part of the population lives in dwellings under irregular tenancy situations⁴ (15.7% of households). From this it can be inferred that a part of this population, who live in dwellings in a good state of repair, do not have enough income to find adequate dwelling should they have to move from the dwelling they currently inhabit. This implies that an additional number of households should be added to the housing deficit mentioned above.

The State and the market are the two main sources for the satisfaction of needs, and they propose intervention regulations that in many cases are complementary but in others are in open conflict. As Esping Andersen⁵ says, "In the history of social policies, conflicts have focused on the extent to which the degree of market immunity is permissible; that is, the resources, the ex-

tension and the quality of social rights". The concept of 'demercantilization' is central to this discussion. It involves extracting a social relation from the commercial circuit and ascribing it to the State's intervention. How then have these spheres operated in the last few years? In order to find out, we will go over the situation in the Autonomous City of Buenos Aires (CABA in Spanish).

Specifically, in the CABA, which is the capital and one of the richest districts in the country, there is a significant part of the population whose right to adequate housing has been violated. This process became more pronounced after the 2001-2002 socioeconomic crisis, owing on the one hand to the omission of the State in planning pertinent policies, and, on the other (directly related to the first), due to the construction boom, in which the real estate market fixes prices and conditions, restricting the access to adequate housing, especially to the less privileged members of society.

What are we talking about when we talk about the housing crisis in Buenos Aires?

In late 2001 and early 2002, Argentina went through a difficult socioeconomic crisis, which in the first semester of 2003 raised the poverty rate to 54% and the extreme poverty rate up to 27.7%. In spite of being one of the richest districts in the country, the CABA became seriously deteriorated: poverty grew from 1997 to 2002 from 6.8% to 21.2%; and in the second semester 2007, still 21.8% of the people in the CABA and neighbouring zones were living under the poverty line.⁶ The rate for people living under the

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2 The right to adequate housing is stated in the Universal Declaration of Human Rights (Art. 25); International Covenant on Economic, Social and Cultural Rights (Art. 11); American Declaration on the Rights and Duties of Man (Art. XI); American Convention on Human Rights (Art. 26); International Convention on the Elimination of All Forms of Racial Discrimination (Art. 5.e.iii); Convention on the Elimination of All Forms of Discrimination against Women (Art. 14.2.h); and Convention on the Rights of the Child (Art. 27.3).

3 This housing deficit is defined in terms of the number of households that fall under some of the following categories: Dwellings with inadequate conditions that are also condemned; dwellings with inadequate conditions that can be restored; dwellings in suitable conditions but the number of persons per room is higher than two and/or they share the dwelling with one or more other households/families (overcrowding).

4 Irregular situations include: owner of a single dwelling, tenant by loan, de facto dweller and other situations.

5 Esping Andersen, Gosta, 1993, *Los tres mundos del Estado del Bienestar*, Valencia, Edicions Alfons el Magnanim, p. 60.

6 INDEC, "Incidencia de la pobreza e indigencia en el total de aglomerados urbanos y por región estadística, Primer semestre 2007".

line of extreme poverty rose to 6.3% in May 2002 and by the second semester 2007 was at 8.2%.⁷

According to data from the National Institute of Statistics and Census (INDEC in Spanish) by 2001, there were 14.3% households in the country with Unmet Basic Needs.⁸ As stated by the Municipal Committee for Housing, the housing deficit in the CABA in 2002 was 400,000 for a total of 2,776,138 inhabitants;⁹ data that reflects the housing crisis is the number of people who receive some type of state assistance for lacking dwelling. While in 1999 the Government of the CABA assisted 2,285 people, in 2002 the number rose to 8,090. After various changes in housing policy, by the first semester 2007 the number of households assisted by the Programme for Assistance to Families living in the street was much higher than the number of households assisted in previous years.

In 2002, it was estimated that more than 100,000 people were living in emergency housing¹⁰ (between 1991 and 2001 the number of people living in these settlements and in transitory housing centres rose by 100.3%), 200,000 were squatters, 70,000 lived in rented rooms (50% of whom were in an irregular situation because they did not pay the rent), 70,000 lived in hostels and 120,000 lived in family homes or in their own overcrowded homes. Although these data indicate that around 20% of the population of the CABA were in a deficient housing situation, the annual census of street people for 2007 shows that 1,029 people were in this situation. Given that more than 85,000 families were in deficient housing situations, the Government of the CABA designed the Programme for the Assistance of Street People of the CABA,¹¹ by which families benefited

from a 6-month subsidy. This programme oversaw the situation of 4,146 households in emergency housing in 2006 and in the first semester only of 2007 assisted 3,657 households (almost the same amount assisted in the previous year). Therefore, by August 2007, the programme had almost entirely used up the budget allocations for the full year.

The number of families who were left to live in the street and obtained housing subsidies to be able to pay for a hotel or transitory lodging grew by 274% between the first and the second semester 2006. However the number of evictions the Programme was notified about affected 2,339 families, which proves the failure of this policy, since these families were left without any state protection.

The State's omissive and regressive response

The other side of the coin of economic changes was the growth of the real estate and construction businesses in the CABA. From 2002 onwards, these became the two safe options for savings and a good deal for private operators. The sector's boom exponentially increased the value of land and real estate, making the restrictions to access to housing more severe for the sectors with the least resources.¹² The real estate market aimed the construction of housing at upper middle and upper social sectors; the new dwellings therefore had scarce or nil effect in reversing the housing deficit.

The new urban initiatives changed the purpose of many dwellings, especially houses, occupied by the lower middle and lower sectors through renting or irregular tenancy, causing them to move elsewhere. At the same time, as a consequence of the increase in the price of dwellings, there was a steep rise in rent values and increased requirements demanded by the owners for the potential tenants to be able to access the dwellings, which excluded the middle and lower middle sectors from the rented housing market.¹³

A direct consequence of this was the strong increase in the number of eviction proceedings in the courts of justice¹⁴ while in the state agenda no space for discussion was made that would take into account the dimensions of the housing problem. Although the proceedings are mostly private in nature, there is also a great number of evictions that have been taken to court by the Government of the CABA and by the National Institution for the Administration of the Properties of the State.

None of the three powers

Although so far reference has been made to the Government of the CABA, there is nothing to indicate that the other powers of the State, whether at the level of the CABA or at national level, have behaved differently. It is worth remembering that according to the ICESCR, and the Additional Protocol to the

American Convention on Human Rights in questions of economic, social and cultural matters, the three powers of the State are obliged to use all means at their disposal to guarantee these rights.

In the case of the Judiciary, the judges in charge of eviction proceedings only took into account the rights of those who requested the eviction in order to dispose freely of their property, without bearing in mind the social rights of the evicted tenants, or that most of them had no alternative housing. The judges' position may explain why, in general terms, they understood that participation of other institutional actors was unnecessary, whether they were public juvenile defenders, or liaising with other divisions of the Government of the CABA or other jurisdictions involved in the matter.¹⁵ In all, practically the entirety of the judiciary measures were focused on facilitating the eviction of tenants and not to finding answers – whether permanent or transient – to the housing problems of the evicted, or to involve the other two state branches in the sphere of their competencies.

Nor has the legislative branch produced a holistic approach to the problem, and on occasions has exhibited markedly regressive behaviour, e.g., in the framework of the 2001 crisis different changes were made to the eviction procedure, and new legal tools were created that speeded up the eviction process and involved the loss of legal guarantees for the evicted. This power was aimed at accelerating the eviction process in view of the recent increase in value of land in the CABA, with no consideration given to the situation of thousands of families and family groups whose right to adequate housing is not guaranteed, thus aggravating their current problems.

A final word

Instead of leading to the design of increased State intervention to satisfy people's rights, State solutions to the housing crisis seem to have led to the creation of zones more suitable for private investment. Real 'opportunity areas' were created as market incentives, allowing the market to regulate the sector without designing or implementing policies that would intervene in the free-for-all commercial relations that leave out the more disadvantaged sectors.

Instead of 'demercantilizing' or making it the responsibility of the State to provide certain goods and resources normally defined as social rights, or to facilitate access to them to sectors that are unable to satisfy them on the market, the State seems to have gone in the opposite direction. On the one hand the market is considered the central sphere of satisfaction; on the other, for sectors that do not make it to this modality, the logic of the market seems to directly affect their housing situation, with the massive evictions and the direct and indirect obstacles to access to dwellings that it brings about. It is not in the market's nature to provide housing to those who cannot buy it; it is the State's responsibility to broach this problem as public policy. ■

7 According to the National Census of Population, Households and Housing 2001 and the housing situation report 2001, of the total number of household with a housing deficit, 31,587 (29%) live in condemned dwellings; 11,099 (10%) live in dwellings with different levels of precariousness (some of which could be recuperated); and the remaining 65,569 (61%) households live in good quality dwellings although in overcrowded rooms, i.e., more than two persons per room.

8 INDEC (2001). "Total for country per province. Households and Population: total and with Unmet Basic Needs (UBN)". UBN were defined according to the methodology used in "La pobreza en la Argentina" (Serie Estudios INDEC No. 1, Buenos Aires, 1994). UBN households show at least one of the following deprivation indicators: 1. Overcrowding: households with more than three persons per room; 2. Dwelling: households living in inconvenient types of dwellings (rented rooms, precarious dwelling or others, which excludes houses, apartments or shacks); 3. Sanitary conditions: households that have no type of toilet; 4. School attendance: households with school-age children (6 to 12 years old) who do not go to school; 5. Capacity for subsistence: households with four or more members per person holding a job and whose head has not completed third grade in primary school.

9 Total population according to age groups. Censo Nacional 2001, Ciudad de Buenos Aires.

10 Neighbourhood of precarious dwellings, with serious lack of infrastructure.

11 Until that date, the policy of the Government of the CABA had consisted in lodging in hotels – subsidized by the government itself – to people or families in housing emergencies who lived in appalling hygienic and security conditions. Cf. "Programa de Atención en Casos de emergencia Individual o Familiar (ACEIF)", implemented by Ordinance 41.110 of January 1986; and "Programa Integrador para Personas o Grupos Familiares en Situación de Emergencia Habitacional", created by Decree 607/97 (BOCBA No. 213) and Decree 690/06 (BOCBA No. 2463).

12 "Los desalojos y la emergencia habitacional en la Ciudad de Buenos Aires", report produced by the Social Rights area of the Ombudsman's Office of the CABA. September 2007.

13 *Ibid.*

14 The Ombudsman's Office's report shows that 4,833 eviction procedures were deposited with the National Justice during 2006. In the same year, the Judiciary pronounced 1,976 sentences of eviction.

15 For further information see CELS, Annual Report 2008, Chapter 7, "El acceso a la justicia y el papel de la defensa pública en la promoción de derechos sociales. Una mirada sobre el derecho a la vivienda en la ciudad de Buenos Aires."