

Argentina - 4th reporting period. Observations to State Party Reports in accordance with articles 16 and 17

Committee on Economic, Social and Cultural Rights 61 Pre-Sessional Working Group (09 Oct 2017 - 13 Oct 2017)

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According to the general guidelines for the participation of NGOs, the following observations are offered so that they may be taken into account in the draft list of issues that will be sent to the Argentine State. This report does not cover the full range of rights involved in the Covenant, and instead focuses on some of the issues that have been part of the working agendas of the signatory organizations. This document seeks to bring accurate information to the Committee but is not exhaustive in addressing all relevant issues in the area of Economic Social and Cultural Rights (ESCR).

1. Social security: non-contributory pensions for people with disabilities. Due process in decisions related to ESCR and regressive measures (article 9 and general comment 19).

During the month of June in 2017, there were suspensions and massive reductions of non-contributory pensions granted to persons with disabilities. Figures, in fact, show that between 70,000 and 80,000 pensions were disrupted in the last year¹. A non-contributory pension serves as a minimum income that caters to the basic needs of people experiencing poverty and/or structural constraints, and they do not depend on an individual's contribution history. The amount is well below the basic basket and minimum living wage², and requires that the individual fulfill specific requirements that are predetermined by state authorities. The disruptions in question occurred without any prior notice³, becoming evident to their recipients with the sudden absence of payment, posing a serious violation of the right to due process and defense of the people affected⁴. In response to a request by various organizations⁵, the Ministry of National Social Development

¹ For more information you can see the publications of the newspapers Clarín and Página 12. For example: https://www.clarin.com/ieco/nuevos-requisitos-ano-cayeron-70000-pensiones-discapacitados_0_rk2T_unzb.html, <https://www.pagina12.com.ar/43813-el-ajuste-donde-mas-duele>

² Out of 170 calls received in ACIJ in total with regards to this situation, it was possible to corroborate that non-contributory disability pensions range from \$ 3,900 to \$ 4,500, the minimum living wage amounts to \$ 8,860 (<https://www.boletinoficial.gob.ar/#!DetalleNorma/165634/20170628>) and that of the basic food basket \$ 5,986.07 (<http://www.telam.com.ar/notas/201706/193076-canasta-basica-alimentaria-canasta-basica-total-indec.html>)

³ In the absence of official data, ACIJ documented the cases of people who contacted the organization for advice and was able to establish that the massive and indiscriminate suspension of benefits was made, in all cases, ignoring the procedures in force, and application of extremely restrictive criteria to withdraw the benefit, without taking into account the additional expenses incurred by families of persons with disabilities, and without prior notification of the decision.

⁴ The interruptions were based on the application of decree 432/97, which was also used for its concession. It is worth clarifying that in order for suspensions to be based on that rule, the beneficiaries' conditions should have either changed due to a situation supervening, or to a change in judgment of the enforcement authority. In either one of these cases, it would be necessary to carry out an administrative procedure, which would guarantee the right of those affected to defend themselves before the administrative decision on the disruption of the benefit that took place. Decree 432/97, in turn, runs counter to the universality of the right to social security, since it determines that vulnerable persons are entitled to a "disability pension" as a result of damage to their health or bodily integrity, by regulating the right to non-contributory pensions based on a medical model that quantifies the physical deficiency in percentages, without taking into account the vulnerability to which disabled people are exposed to, including the many existing social barriers they face.

⁵<http://acij.org.ar/osc-exigimos-al-ministerio-de-desarrollo-social-que-asegure-la-continuidad-inmediata-de-todas-las-pensiones-interrumpidas/>

determined that there was a violation of due process as a result of the massive suspensions to these pensions and evident ignorance of the rights of persons with disabilities⁶. These disruptions would have been determined based on information gathered at the intersection of state databases, suspending payment to any beneficiary whose family could access another source of income, social security benefit, or even goods such as cars. These criteria run contrary to the established right to social security recognized in the ICESCR and the CRPD, the right to equality, and non-discrimination of persons with disabilities. The extremely narrow view with which the right to a disability pension was assessed also violates other basic rights, such as the right to live independently, to be included in the community and, in many cases, to an individual's health⁷. After numerous judicial decisions ordering that the pensions be reinstated⁸, the Ministry of Social Development undertook the task of reviewing the measure and renewing the inappropriately suspended pensions in response to the complaints issued by the injured parties. This reverses the burden of proof: it is not the State that must justify suspending a pension, but the individual who must prove his right to receive it. Although many pensions have been restored, there are other pensions that remain unrecovered, and the State continues to withhold necessary information on the matter. The State has reported that it is working on regulatory reforms, without naming the extent of its effects⁹. However, the limited interpretation of the right to such pensions expressed publicly by certain officials is a precedent to be taken into account,¹⁰ as limiting the scope of pensions would imply a regression in the country's compliance with economic, social and cultural rights.

Suggested Questions

- On what grounds were the suspensions and revocation measures adopted? Report in detail the number of pensions that were granted and suspended in the last four years and the reasons for the suspensions, as well as the number of pensions that were reinstated after a suspension or interruption.
- What administrative procedures have been previously and are currently being applied to guarantee the right to due process and defense, prior to the suspension or interruption of social security benefits? Where and how are the terms and characteristics of those processes established?
- If there is a need for legislative change in the criteria used to grant pensions, in which direction will they take these reforms and what guidelines will be used to guide this process? How will State actors facilitate the participation of persons with disabilities and the organizations that represent them in changing the regulations and ensuring that they remain faithful to the ICESCR and the CRPD?
- How do you envision adjusting the criteria and procedures for assessing pensions that have already

⁶ The answer can be seen in: <http://www.ela.org.ar/a2/index.cfm?fuseaction=MUESTRA&codcontenido=2945&plcontempl=38&aplicacion=app187&cnl=3&opc=47>

⁷ In many cases, the suspension of pensions resulted in the interruption of medical and rehabilitation treatment because the non-contributory pension entails the possibility of accessing "Include Health", a program that ensures the provision of medical services, contemplated in the mandatory medical program.

⁸ See: <http://www.rionegro.com.ar/viedma/fallo-a-favor-de-la-restitucion-de-pensiones-para-discapacitados-FJ3038465>; <https://www.pagina12.com.ar/48824-lesiona-derechos-de-orden-alimentario>.

⁹ See: <https://www.pagina12.com.ar/57546-pensiones-en-riesgo>

¹⁰ See: <http://www.lagaceta.com.ar/nota/733565/actualidad/persona-sindrome-down-no-debe-recibir-pension-puede-trabajar.html>; <https://www.minutouno.com/notas/1556448-la-insolita-justificacion-del-gobierno-al-brutal-recorte-las-pensiones-discapacidad>

been granted such that they are in accordance with international human rights law? In particular, how will you ensure the right to a fair hearing and due process, and that such violations are not repeated?

- What criteria are currently used to grant pensions? What is the period established by administrative guidelines to determine whether a non-contributory pension is granted or denied?
- How many applications are currently pending resolution and what are the delays in granting them from the date of the original request?

2. Right to adequate housing in the urban area (article 11.1)¹¹

The state of housing in Argentina continues to be one of the main social issues the country faces. In addition to deficits in infrastructure¹², 13.5% of households live under an informal arrangement of tenancy. This means that people live at risk of eviction, which are often carried out with violence, little or no prior notice, and a lack of alternative housing solutions for affected households¹³. In the Matanza Riachuelo Basin (CMR), which crosses the southern part of the Metropolitan Region of Buenos Aires, approximately five hundred thousand people live in precarious shantytowns and settlements, exposing them to serious health and environmental risks. In 2008, the Nation's Supreme Court forced the federal government, the Province of Buenos Aires and the Autonomous City of Buenos Aires to relocate the families that were settled in the margins of the basin¹⁴. In September of 2010, these government entities signed an agreement¹⁵ where they agreed to relocate 17,771 families living in critical environmental conditions¹⁶. However, so far the plan has achieved limited results¹⁷ and the relocations that were carried out have presented deficits that in many cases have meant further deterioration in the housing situation for the affected families¹⁸.

In the Autonomous City of Buenos Aires (CABA), all data points associated with the issue of housing show that the state of access to decent housing is deteriorating. The Buenos Aires shanty towns went from having a population of 107,422 inhabitants in 2001 to 275,000 in 2012. Meanwhile, CABA,

¹¹ This section has been prepared in conjunction with Asociación Civil Madre Tierra.

¹² According to official data, 30% of households do not have sewers and 29% do not have gas. A survey conducted by the state reveals that there are 810,000 families living in 4,100 shanty towns and settlements.

¹³ In February 2016, for example, the police of the Province of Buenos Aires evicted more than a thousand families living in the Nueva Esperanza settlement. The eviction included the burning of precarious homes built by the inhabitants, and the theft and destruction of their belongings. None of the state organisms contemplated an alternative housing solution for evicted families. In October 2016, the same police force violently evicted approximately 30 families living in the El Vivero neighborhood, a 15-year-old informal settlement. The procedure included the use of bulldozers and the total destruction of dwellings and personal belongings. In the City of Buenos Aires, in August of 2014, the City and federal police evicted approximately 700 families who had occupied that space for six months. The operation showed high levels of violence, including abuse, destruction, beatings, and deception so that occupants would leave their homes and belongings. Here too, measures were not taken to address the situation of displaced families, who remained in the street.

¹⁴ The court ruling is available at: <http://www.acumar.gov.ar/ACUsentencias/CausaMendoza/Fallos/cortesuprema200708.pdf>

¹⁵ "Framework Agreement for the Compliance with the Urbanization Plan for Villas and Precarious Settlements in Environmental Risk"

¹⁶ For more information, see: <https://www.mpdefensa.gob.ar/biblioteca/pdf/revista6.pdf>

¹⁷ By July 2017 only 3725 families had benefited, that is, under 21%. 7214 homes are in process of relocation, with a greater or lesser degree of progress. There are still 6832 homes, or 38% of the total, that must be built and have no degree of progress. See: <http://www.acumar.gov.ar/indicadores/3634/soluciones-habitacionales-en-relacion-al-plan-de-viviendas-2010>

¹⁸ The houses built are mostly of poor quality and did not take into account the livelihoods and material reproduction of the relocated families. For more information see the Public Ministry of Defense of the City of Buenos Aires, "The relocations in the framework of the Riachuelo case and the right to the city", available at: <https://www.mpdefensa.gob.ar/biblioteca/pdf/revista6.pdf>

as a whole, went from having 2,776,138 inhabitants in shanty towns to 2,891,082. According to official data, the percentage of inhabitants in shanty towns increased from 4.1% in 2006 to 5.5% in 2010 and 6.5% in 2015. If the time period between 2001 and 2015 is to be considered, the percentage of the city's population that lives in shanty towns grew by 83.4%. The number of CABA households with occupants considered to be living in precarious circumstances increased from 11% in 2013 to 13.1% in 2016. Although "urbanization" projects (which include neighborhood betterment and integration of permanent settlements) were first announced towards the end of 2015, these only reach four neighborhoods with strategic locations, which puts the tenure of the present inhabitants at risk. Finally, data with regards to homelessness differs. Though official state accounts say that there are close to 1,066 homeless individuals, a group of non-governmental organizations that carried out a census in April of 2017 say that there are actually 6,142 persons affected by homelessness, and another 20,000 that are at risk of becoming so.

In its concluding comments in 2011, the ESCR Committee expressed concern about the possibility that 'speculation about land, real estate and construction has created difficulties in accessing housing for the low- and middle-income population' and urged the State to fight against such practices (paragraph 21). However, the federal government has not yet adopted a policy related to this issue. In the report presented in response to the recommendations of the Committee, the government lists policies related to habitat improvement and the proliferation of mortgage loans, but does not contemplate any measures to mitigate the speculative effects of these actions on the real estate market. Conversely, since the end of 2015, the Argentine State boosted the privatization of public lands across the country through their sale of significant plots to real estate developers for high-end housing projects¹⁹. This means that the government is allocating a public resource to promote the interests of individuals, while simultaneously promoting the profitability of housing, which further explains the pervasive trend of exclusion and segregation in urban sectors across the globe²⁰. The sale of public land also implies the loss of a strategic resource for effective compliance with ESCR in general, and the right to adequate housing in particular.

Suggested Questions

- What policies is the State implementing to guarantee adequate land supply for the lower and middle class in urban sectors? How does it intervene in the market to prevent speculation and consequent price increases?
- How does the State intend to mitigate the negative effects of new mortgage loans and credits on the price of real estate and thus avoid worsening access to housing?
- What is the state's plan to ensure the full participation of shanty town and settlement residents in the ongoing urbanization processes announced in 2015?
- What measures is the State taking to improve housing conditions in all shanty towns and settlements across the City of Buenos Aires, such that these populations are not displaced by market effects?

¹⁹ According to data from the Observatory of the Right to the City, through a succession of decrees the new national government has authorized the sale of 93 national fiscal properties, equivalent to almost 19,000 hectares. Of this total, 52 properties, equivalent to approximately 32ha, are located in the City of Buenos Aires, where almost 10% of the population live in a crowded state, and 6.5%, that is, almost 200,000 people. emergency.

²⁰ See Report of the Rapporteur on the right to adequate housing above housing market profitability, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/009/61/PDF/G1700961.pdf?OpenElement>

- What measures is the State taking to promote the full implementation of the Fair Access to Habitat Law in the Province of Buenos Aires and in the municipalities of Buenos Aires?
- What measures has the State taken to ensure that, in the context of evictions, judges guarantee the right of affected individuals to defend themselves?
- What measures has the State taken to guarantee the right of those affected by evictions to adequate housing?
- What steps has the State taken to prevent abuses at the hands of police forces during eviction proceedings?
- What is the State's plan of action under the aforementioned Marco Convention with regards to the urgent housing problem faced by families living on the banks of the Matanza Riachuelo basin, who are being exposed to serious health risks?
- What measures has the State assumed to ensure that families being relocated under the Marco Convention have access to adequate housing solutions according to their housing needs?

3. Vacancy of the National Ombudsman

Despite the Committee's recommendation in the Concluding Observations of 2011²¹, since 2009, the position of Ombudsman of the Nation remains vacant. Not only is the vacancy unconstitutional, but it also leaves the collective rights of its population exposed and unprotected. The National Supreme Court has since warned the National Congress about the need to cover the charge²². Subsequently, the National Chamber of Appeals also ruled urging Congress to initiate the designation procedure outlined in Law 24.284²³. These organizations presented a document with recommendations based on national and international standards for the selection of public officials to the Bicameral Commission on the Ombudsman's Office, with the aim of achieving an open, transparent, participatory procedure that promotes robust debate for the selection of the Ombudsman. The Bicameral Commission on the Ombudsman's Office received, in recent months, at least 12 nominations from various legislators. However, Congress has not yet published official information about who the candidates are or the extent of their backgrounds, nor has it established a participatory procedure for the selection of the the Ombudsman.

Suggested Questions:

- What steps has the State taken to improve the appointment procedure, guaranteeing transparency and social participation in the procedure, in addition to applying criteria that will lead to the election of an ideal candidate, or at least one with experience in human rights work?
- On what deadlines will the information about the proposed candidates be published? How will the organizations in question be able to play a role in the process? Under which deadlines will the candidates be voted upon, either to reject or approve them?

²¹ See Paragraph 7 of the Concluding Observations for Argentina 2011: "The Committee recommends that the State party consider modifying the procedures for appointing the Ombudsman in order to be able to fill that position now and avoid future delays in that process."

²² Supreme Court of Justice of the Nation, "Centro de Estudios para la Promoción de la Igualdad y la Solidaridad y otros c/Ministerio de Energía y Minería s/ amparo colectivo", FLP 8399/2016.. Sentence of the 18 of August of 2016.

²³ National Chamber of Appeals in Litigation and Administrative Matters, "Asociación por los Derechos Civiles y otros c/ EN - Honorable Cámara de Senadores de la Nación y otro s/ Amparo Ley 16.986", Case No. 1774/2015, judgment of August 18, 2016.