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INTRODUCTION

In Argentina, significant structural limitations persist in terms of access and effective exercise of economic, social and cultural rights of most of its population. In the past years, these limitations reinforced due to the combination of political and economic measures that led to a transfer of income to sectors where capital is concentrated, a trend to reprimarization of the productive system¹ and an accelerated process of public indebtedness². Since 2016, a series of measures have had a negative impact, affecting particularly low-income populations and they consisted mainly in: cuts on funds for housing policies³, adjustment of retirement pensions and restrictions on some social protection programs.

Besides, the policy of subsidy cuts affecting gas, electricity and transportation service providers led to a widespread increase of tariffs for residential users. On a cumulative basis and depending on the region, utility tariffs have increased between 200% and 1000% since 2016.

This was already an extremely adverse scenario for the exercise of economic, social and cultural rights. However, this was increasingly aggravated by the political and economic impact of the critical macroeconomic situation in Argentina marked by an internal economic downturn, a decline in labor and social indicators, high inflation (an estimated annual inflation rate of more than 40% in 2018) and the fast decrease in the purchasing power of salaries and fixed income, accelerated by subsequent devaluations of the Argentine peso.

In April 2018, Argentina was shaken by the turmoil of the currency crisis that left a more than 100% devaluation of the national currency against the United States dollar. The government resorted to the International Monetary Fund that granted a 50-billion-dollar loan to Argentina within the framework of the "Memorandum of Technical Understanding"⁴ whereby the Argentine government commits to go ahead with a strict fiscal adjustment focused on a reduction of public spending. The announcement did not restore market confidence in Argentina nor contributed to stabilize the value of the peso. By the end of August, after new "financial runs" and accelerated devaluation, the agreement between IMF and the government was adjusted, committing to further fiscal adjustments: the government requested an early release of funds and committed to make further adjustments to bring the fiscal deficit to zero in 2019.

According to the text of the Memorandum, for the fulfillment of this goal, the government will increase subsidy cuts on energy and transportation, downsizing the public sector and suspending public works. The current fiscal deficit in the provinces, of 0.46% of GDP, must turn into a surplus equivalent to 0.25% of GDP in 2022⁵. Considering the tax structure of Argentina and the limited income-generation capacity of subnational governments, fiscal targets will only be achieved by the strict adjustment of public spending with an impact on two basic social services with decentralized execution: education and health.

The government introduced a transitory tax on exports of primary products until 2020, presented by President Macri calling on those who earn more to contribute with more: "We are asking those in

¹ Para más información ver "El impacto negativo de las políticas económicas en la vigencia de los derechos económicos y sociales" en *Derechos Humanos en Argentina, informe 2017*, disponible en: <https://www.cels.org.ar/web/publicaciones/derechos-humanos-en-la-argentina-informe-2017/>

² Desde diciembre de 2015 la deuda externa argentina aumentó un 142%.

³ La asignación de recursos presupuestarios ha disminuido sensiblemente en materia de políticas estatales de vivienda y hábitat, un área clave para contrarrestar la desigualdad social y territorial en un país con históricos déficit de infraestructura. La participación del gasto público sobre el presupuesto total en vivienda y urbanismo se redujo un 50% entre 2015 y 2016.

⁴ Disponible en: <https://www.argentina.gob.ar/noticias/carta-de-intencion-memorandum-de-politicas-economicas-y-financieras-y-memorandum-de>

⁵ Claudio Lozano y Mariana Rivolta (coordinadores), "La situación de las provincias frente al ajuste del FMI", Instituto de Pensamiento y Políticas Públicas, 10 de agosto de 2018.

better conditions to contribute, that is to say, those who export in Argentina, will have to make a higher contribution.” However, considering that the tax introduced is transitory, fixed and in pesos, the export sector may even have wider profit margins, in a context where greater devaluation is expected, distorting the spirit in which the tax was announced. There is also a risk of tax withholding without trading the exportable production, until the deadline is met, in 2020.

In an austerity push, the government restructured the national cabinet, whereby ministries that implement public policies of great impact in terms of economic, social and cultural rights, remained as secretaries: Environment and Sustainable Development; Energy, Tourism, Work, Agroindustry, Health, Culture and Science and Technology are currently secretaries of state.⁶

The Memorandum considers the possibility of incurring in additional expenses to protect the most vulnerable sectors. Since adjustments increased under the “zero deficit” slogan, the government announced that social allowance beneficiaries will receive bonuses in September and December. These specific measures are announced amid a context of widespread agreement, among all sectors, on the fact that crisis and adjustment have an impact on the rights of people from popular sectors and this situation is getting worse by the minute.

Growing social unrest, caused by worse social and labor conditions, has been addressed by the State, at different levels and forms, using repression, criminalization and intimidation. These measures have a disciplinary impact and slash the rights linked to social protest and public demonstration.

Apart from the issues mentioned in this introduction, this report also addresses other issues such as access to public information and rights related to how the judiciary works, among others. It is part of a series of thematic reports that all together complement the review and analysis of the situation of the cultural, social and economic rights in Argentina. Together with this document and in partnership with different partners and organizations, CELS also presents reports related to the situation of migrants and peasants, users of mental health services, the right to work, cultural property and the situation of the right to abortion in Argentina.

In this document, each section poses questions and recommendations as contributions to the evaluation process and to be considered by the Committee during the forthcoming evaluation hearing within the framework of the 64th session as well as during the release of its Concluding Observations on Argentina.

⁶ Ver decreto 801/2018, disponible en: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/310000-314999/314078/norma.htm>

GENERAL INFORMATION

Methodological changes in the National Statistics System and challenges to produce consistent data sets.

General Description

Within the framework of the restructuring of the National Statistics System (SEN, by its Spanish acronym), important updates have been introduced in the capacity of the National Institute of Statistics and Censuses (INDEC, by its Spanish acronym) to measure the evolution of living conditions of the population. In general, we are pleased to see again the publication of continuous data on poverty and indigence, which had been suspended since the first 2013 semester, as well as the production of a new consumer price index, a key measurement (CPI) of the price variation of retail goods and services, which represents better reliability compared to the index applied until 2015.

However, we need to address key aspects in the effective implementation of changes in 2016 and 2017, translated into management decisions, regulations and the application of new methodologies. Their impact on the system's ability to provide quality statistics in two complementary dimensions has been negative. On one hand, the implemented changes condition the production of consistent statistics over a period of time, due to a lack of comparability which prevents, restricts or seriously hinders the follow-up and assessment of the performance of different indicators over varied periods and regarding the historical evolution. Consequently, the capacity to establish baselines, to accurately diagnose middle and long-term issues as well as the possibility of tracking the impact of the implementation of certain policies and programs, is also affected.

Further on, we present said limitations in detail, as expressed in global decisions taken in terms of management of official statistics such as the "statistical emergency", declared by decree in 2016, or the technical-methodological reformulation of a series of selected indicators: Price Index, Poverty and Indigence, and Social Indicators and Labor Market.

State of Administrative Emergency of the National Statistics System

The "statistical emergency" was declared in January 2016 by decree 55/2016⁷ with the purpose of reorganizing the administration of SEN and INDEC until December 31 of the same year. In terms of data production and publication, the immediate result of this provision was to produce a "statistical blackout" preventing from assessing accurately the cumulative impact of the first policy measures of the current administration on different social and economic activity indicators.

After this "blackout" that lasted, depending on the case, some months and up to one year, different statistical programs resumed publications and, at the same time, for the production of different indicators, important methodological changes were introduced unilaterally and inexplicitly by INDEC. This resulted in more difficulties to sustain indicators' consistency over time and, therefore, it reinforced the aforementioned limitation to conduct evaluations on the initial impact of economic measures introduced by the current administration.

Price Index

The information obtained through the 2004/2005 Survey of Household Expenses (ENGHo, by its Spanish acronym) was used as the basis to create the new Consumer Price Index (CPI). At the same time, the results of this survey were updated with price information obtained in December 2015. Improvements were introduced in terms of the computer system used for processing information and training workers.

⁷ <http://servicios.infoleg.gob.ar/infolegInternet/anexos/255000-259999/257615/norma.htm>

The CPI publication was one of the indicators that were not disseminated due to the “statistical blackout.” When published, from April 2016 onwards, it was a measurement of coverage limited to Greater Buenos Aires area, including the Autonomous City of Buenos Aires and 24 subdivisions of the province of Buenos Aires. Finally, in December of the same year, the National CPI was launched, with representativeness across the territory.

Poverty and Indigence

Methodological changes of the poverty and indigence measurement implemented in the Permanent Household Survey (EPH, by its Spanish acronym) and in the elaboration of the baskets required for its calculation seriously jeopardize the comparability of these indicators.

Key modifications regarding previously applied methodology are linked to a series of updates in the technical criteria adopted to establish the monetary value of the basic food basket (CBA, by its Spanish acronym) and the total food basket (CBT, by its Spanish acronym) and to determine household income. Until December 2015, the calculation of the consumption structure of the reference population was based on information collected through ENGHo carried out in 1985/1986 in Greater Buenos Aires. The new measurement updates consumption structure based on the results of the 1996/1997 ENGHo, validated with data from 2004/2005 ENGHo.

Although this update was desirable, it resulted in a food basket that was different from the one previously used. This was not clearly explained in the first publication of the new series in September 2016, with data from the second quarter of 2016. This brought quite confusion because the poverty number reported appeared to be extremely high, even against data recorded before 2007, on which there are no reservations. CBT and CBA were not recalculated retroactively, not even in those cases where information was reliable, according to the new authorities. An alternative basket, comparable to the previous one, was not offered for the new period⁸. Therefore, the indigence and poverty results of the 2016 and 2017 EPH are not directly comparable to those published up to 2013.

Social Indicators and Labor Market

Regarding social indicators and labor market, their publication was also subject to the “statistical emergency”, thus, the first results were revealed as early as the second quarter of 2016, together with the EPH publication⁹. This makes it impossible to compare the performance of different social and labor indicators during different administrations, preventing from having an accurate diagnosis.

Different methodological issues make it impossible to merge the new survey with the one valid until 2015. According to INDEC, “the simultaneous implementation of a change in the sampling design, the selection method of households, the change in population projections based on 2010 Census, make it difficult to identify the impact of those changes on the results.”¹⁰

SUGGESTED QUESTIONS

- What measures has the State taken to disclose criteria, technical specificities, limitations and scope of the methodological changes applied by the National Statistics System (SEN) since January 2016?

⁸ Únicamente en un documento metodológico, separado de los informes de prensa, donde se comunican los resultados de estimación de la pobreza, puede encontrarse un cálculo re-estimado de la pobreza, utilizando las nuevas canastas, únicamente para 2006. This calculation reveals differences of up to 12.4 percentage points regarding original measurements. Ver: INDEC, “La medición de la pobreza y la indigencia en la Argentina”, Noviembre 2016. Disponible en https://www.indec.gob.ar/ftp/cuadros/sociedad/EPH_metodologia_22_pobreza.pdf

⁹ INDEC Anexo Informe de prensa. Mercado de trabajo: principales indicadores. Segundo trimestre de 2016.

Ciudad Autónoma de Buenos Aires: National Institute of Statistics and Census - INDEC. Disponible en https://www.indec.gob.ar/ftp/cuadros/sociedad/anexo_informe_eph_23_08_16.pdf

¹⁰ INDEC Anexo Informe de prensa. Mercado de trabajo: principales indicadores. Segundo trimestre de 2016 “, Agosto 2016. Disponible en https://www.indec.gob.ar/ftp/cuadros/sociedad/anexo_informe_eph_23_08_16.pdf

- What measures has the State taken to guarantee the capacity of the National Statistics System (SEN) to provide quality statistics based on the State of Administrative Emergency of the National Statistics System (SEN) declared by decree 55/2016 and the technical-methodological reformulation of different indicators?

PROPOSED RECOMMENDATIONS

- Implement active measures to disclose criteria, technical specificities, limitations and scope of the methodological changes applied by the National Statistics System (SEN) since January 2016.
- Implement measures that tend to produce and provide adequate technical means to guarantee historical comparability and consistency of official statistics series after the application of methodological adaptations to measure different indicators within the framework of the restructuring of the National Statistics System (SEN).
- Implement measures that tend to produce and provide adequate technical means to guarantee historical comparability and consistency of official statistics series of those indicators that were not measured during the period of State of Administrative Emergency of the National Statistics System (SEN) declared by decree 55/2016.

LEVELS OF POVERTY AND INEQUALITY. INFANTILIZATION OF POVERTY (Art. 2.2 - maximum available resources)

Poverty and Inequality

Poverty measurement has sparked controversy in Argentina after the decision taken, during the second 2013 semester, regarding the suspension of statistics on the incidence of poverty and indigence. As aforementioned, from September 2016 onwards, this information started to be published again, revealing the first datum with the new methodology by the second quarter of 2016 and with subsequent biannual calculations from the second 2016 semester onwards.

Apart from the difficulties posed by the methodological updates described in section 1.1 of this report, it is worth mentioning the subsequent changes in the 2013-2015 period, and again in 2016¹¹, in population census projections with which the EPH is prepared. However, different non-official estimations¹² converge and reveal that there was a strong poverty decline between 2002 and 2007, with a persistent but less marked decline until 2011 and a relative stagnation between 2011 and 2015 (with an increase in 2014 and a further decline in 2015).

¹¹ Entre 2013 y 2015 se recalibraron los ponderadores y se actualizaron las proyecciones de población en base al último Censo Nacional de Población de 2010, utilizadas para expandir la muestra de la EPH, al tiempo que se hicieron aparentes mejoras en la recolección de información que, sin embargo, no fueron debidamente documentadas. Desde 2016, dichos ajustes de proyección poblacional se encuentran bajo revisión, y nuevamente no es posible contar con la información suficiente para hacer comparables los datos provenientes de las bases de microdatos de esta Encuesta.

¹² Ver por ejemplo: Zack, G.; Schteingart, D.; Favata, F.; "Pobreza e indigencia en Argentina (2003 – 2017): construcción de una serie completa y metodológicamente completa", Universidad Nacional de General Sarmiento, disponible en: http://www.ungs.edu.ar/ms_ici/wp-content/uploads/2017/12/Recalibracion-Schteingart-Zack-y-Favata-UNGS.pdf, Tornarolli, L., "Series comparables de Indigencia y Pobreza: Una propuesta metodológica", CEDLAS, FCE y UNLP, disponible en: http://www.cedlas.econo.unlp.edu.ar/wp/wp-content/uploads/doc_cedlas226.pdf o Schteingart, D., "Por qué la pobreza (aún) no es menor que a fines de 2015", disponible en: <https://medium.com/@danyscht/por-qu%C3%A9-la-pobreza-a%C3%BAn-no-es-menor-que-a-fines-de-2015-72769a38bc69>

Afterwards, the first interannual official measurement took place during the second 2017 semester¹³ where the poverty index by person dropped from 30.3% in the second 2016 semester to 25.7% in the second 2017 semester (-4.6 percentage points).¹⁴

The decline in the percentage of people falling below the poverty line is probably temporary considering the economic performance during 2018, as a consequence of the strong devaluation of the Argentine peso, producing fast inflation¹⁵, and of the changes introduced in the mobility measurement of some of the main cash transfers to the most vulnerable households, that will be described in the section about the right to social security. Considering the first full 2018 semester¹⁶, inflation rate reached 16% (increasing to 17.3 if only food and beverages are considered) and the CBA and CBT will increase, minimum, in such degree. However, inflation is expected to soar during the second semester. According to the latest Survey of Market Expectations of the Central Bank, the estimated inflation for this year is over 40%¹⁷. On the income side, the minimum wage raised only 7% and the Universal Childhood Entitlement, 12%¹⁸.

Regarding inequality levels, the follow-up of the evolution of this variable embodies the same difficulties as the rest of the indicators. The gap between low and high-income sectors increased during the first 2018 semester. According to INDEC¹⁹ Gini coefficient was 0.440 points against 0.437 during the same period, the year before, i.e. an increase of 5.2%. Now, compared to the fourth quarter of 2017, when the coefficient stood at 0.417, inequality increased in 23 points. During the first quarter of 2018, the percentage of income received by the richest 10% was more than twice as high as the one received by the poorest 40% of the distribution. This value saw a slight increase against the first quarter of 2017²⁰.

¹³ Debido a las reservas señaladas sobre la dificultad de profundizar el análisis de esa evolución de mediano y largo plazo del índice y combinarlo con los datos puntuales de 2016 y 2017, estos son los resultados de las mediciones puntuales aplicadas luego de los cambios metodológicos más recientes. La desventaja principal es la imposibilidad de generar una lectura tendencial de los datos, aspecto clave para evaluar el fenómeno de la pobreza. Si bien esto condiciona el registro preciso del impacto de iniciativas y de políticas por tratarse de un periodo tan breve, se intenta presentar factores relacionados al ingreso de la población que contribuyan a iluminar las fluctuaciones.

¹⁴ Son varios los componentes que permiten valorar esta retracción en el índice de pobreza registrada dicho periodo. En primer lugar, durante ese periodo los ingresos no laborales ligados a la fórmula de movilidad vigente hasta entonces (asignaciones familiares, jubilaciones, Asignación Universal por Hijo) se ajustaron según la recaudación y los salarios de 2016, un periodo de alta inflación. De hecho, la movilidad aplicada en septiembre de 2017 fue la más alta desde la implementación de la Ley de Movilidad Jubilatoria. De esta forma, mientras que estos ingresos aumentaron 28,3% anual en el semestre, la inflación promedio para el mismo periodo fue de 23%, de acuerdo con el IPC Nacional del INDEC.

En segundo término, en 2017 tuvo lugar una leve recuperación del salario real, que según los cálculos del Instituto de Trabajo y Economía se incrementó un 2,4% anual en el segundo semestre de 2017. Finalmente, en el contexto de un mercado laboral más tensionado, el “efecto trabajador adicional” hizo que los trabajadores secundarios de los hogares se incorporen a la búsqueda de empleo, lo cual se reflejó en un incremento de 1,1 puntos porcentuales en la Población Económicamente Activa (PEA) entre el cuarto trimestre de 2016 y el mismo periodo de 2017.

¹⁵ En 2018 el peso argentino acumula una devaluación del más del 100% (<https://www.infobae.com/economia/2018/08/30/en-el-transcurso-de-2018-el-peso-argentino-perdio-mas-de-la-mitad-de-su-valor/>).

¹⁶ Disponible en https://www.indec.gob.ar/uploads/informesdeprensa/ipc_07_18.pdf <http://www.bcra.gov.ar/Pdfs/PublicacionesEstadisticas/REM180831%20Resultados%20web.pdf>

¹⁸ Las series de IPC, Canasta Básica Alimentaria y Canasta Básica Total pueden consultarse en el sitio web del INDEC (https://www.indec.gob.ar/nivel4_default.asp?id_tema_1=3&id_tema_2=5&id_tema_3=31 y https://www.indec.gob.ar/nivel4_default.asp?id_tema_1=4&id_tema_2=27&id_tema_3=65). Las series de Salario Mínimo Vital y Móvil y Asignación Universal por Hijo surgen de la legislación nacional vigente. Las resoluciones del SMVM pueden encontrarse en <https://www.argentina.gob.ar/trabajo/consejodelsalario/resoluciones>. Para asignaciones familiares se sugiere consultar la ley N° 24.714, decreto 1602/2009, ley 27.160 y sus modificatorias. Una serie completa de los montos puede consultarse en el sitio del Ministerio de Hacienda <https://www.minhacienda.gob.ar/datos/>, descargando el paquete de datos de “Empleo e Ingresos”. Las variaciones corresponden al dato de junio 2018 respecto a diciembre 2017.

¹⁹ Informes Técnicos vol. 2 n° 124: Evolución de la distribución del ingreso (EPH)

Primer trimestre de 2018 https://www.indec.gob.ar/uploads/informesdeprensa/ingresos_1trim18.pdf

²⁰ Disponible en https://www.indec.gob.ar/uploads/informesdeprensa/ingresos_1trim18.pdf

In general, many of the measures taken during the last two years were harmful for the low-income sectors and beneficial for the high-income sectors. The following fiscal measures can be pointed out: elimination or reduction, accordingly, of the exports duties on agricultural products and lower progressive taxes, such as the income tax and the personal property tax²¹.

Among positive and compensatory initiatives, on account of their progressive design, we highlight the incorporation, in 2016, of the Partial Refund of the Value Added Tax (VAT) Plan for retirees and pensioners with the minimum retirement income, beneficiaries of the Universal Childhood Entitlement, the Universal Pregnancy Entitlement and beneficiaries of non-contributory pensions. However, almost two years after its implementation, results have been very poor in terms of accessibility²².

At the same time, the general increase of utility tariffs combined with the reduction of subsidies to service providers is over 1000% in the Autonomous City of Buenos Aires and the 24 subdivisions of Greater Buenos Aires and between 200% and 500% in the rest of the country. The social tariff implemented to reduce impact on consumers with an income of less than two minimum salaries provides a good coverage²³. However, by January 2019, the subsidy to sustain the social tariff of electricity will be transferred to the provinces²⁴. The heterogeneous financial situation of the provinces produces uncertainty regarding the continuity of this benefit for the most vulnerable population. Finally, it is worth mentioning that the recent agreement with the International Monetary Fund (IMF) proposes a revision of the general system of social tariffs to make it “better focused” on the four lower deciles of income distribution²⁵, so a reduction in allocations or in beneficiaries is expected.

In general, information on economic activity since 2016 confirms a decline in income equality. The consumption of goods associated with the richest deciles (0 km cars, for example) increases, as well as travelling abroad. At the same time, supermarket sales and other massive consumption indicators cannot recover the level registered in 2015 and have dropped again in the last months²⁶.

Level and use of public spending

During the last years public spending regarding GDP has remained practically unchanged. Between 2015 and 2017 the total spending of the National Public Sector raised from 26.4% of GDP to 26.5%²⁷. However, important variations can be observed in terms of its structure. A significant increase of debt interests can be highlighted, rising 0.9% of GDP between 2015 and 2017, a trend accompanied, to a

²¹ Estas medidas se retoman con mayor detalle en los puntos 4.1 y 4.2 de la sección IV de este informe “DECISIONES REGRESIVAS Y FALTA DE TRANSPARENCIA EN LA POLÍTICA FISCAL”

²² Para un mayor detalle sobre esta medida y la evaluación de su impacto, véase el punto 4.1 de la sección IV de este informe “DECISIONES REGRESIVAS Y FALTA DE TRANSPARENCIA EN LA POLÍTICA FISCAL”

²³ Para el gas y la electricidad, por ejemplo, pueden acceder al beneficio quienes no alcancen ingresos superiores a dos salarios mínimos, los beneficiarios de programas sociales, las empleadas domésticas, personas discapacitadas, entre otros. Para más información ver: <https://www.argentina.gob.ar/energia/tarifasocial>

²⁴ Ver resolución 122/2018, disponible en: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/310000-314999/314143/norma.htm>

²⁵ Ver FMI, “Request for Stand by arrangement- press release and Staff report”, Country Report No. 18/219, Julio 2018. Disponible en <https://www.imf.org/en/Publications/CR/Issues/2018/07/13/Argentina-Request-for-Stand-By-Arrangement-Press-Release-and-Staff-Report-46078> y Carta de intención y Memorandum de Políticas Económicas y Financieras Argentina FMI”, Junio de 2018. Disponible en <https://www.argentina.gob.ar/noticias/carta-de-intencion-memorandum-de-politicas-economicas-y-financieras-y-memorandum-de>

²⁶ <http://itegaweb.org/wp-content/uploads/2018/01/Informe-de-Coyuntura-Ene18.pdf>. Adicionalmente pueden encontrarse datos sobre venta de 0km en <http://www.adefa.org.ar/es/>, Ventas en supermercados en https://www.indec.gob.ar/nivel4_default.asp?id_tema_1=3&id_tema_2=1&id_tema_3=34 y datos sobre ventas minoristas en <http://www.redcame.org.ar/>. Some consultancy agencies that measure consumption such as Kantar Worldpanel has publicly expressed a similar diagnosis: <http://www.iprofesional.com/economia/264132-crecimiento-paritarias-consumo-El-consumo-masivo-no-se-recupera-cayo-2-en-enero-y-analistas-anticipan-un-ano-desafiante> y <http://www.ambito.com/920263-el-consumo-masivo-bajo-1-interanual-en-el-primer-trimestre>.

²⁷ No se incluyen dentro de esta cobertura el gasto de las provincias y municipios financiados con recursos propios y endeudamiento. No existen estadísticas actualizadas del gasto total del sector público argentino con todos los niveles de gobierno consolidados.

lesser extent, by a growth of retirement pensions and benefits of 0.6% of its budget compared to the GDP. In this second case, the increase partially owes to the improvement of pension assets as a result of the mobility law and, to a lesser extent, to the first impact of the restructuring of assets introduced by the so-called “Historical Remediation”.

On the other hand, different public spending allocations were cut and represent less influence on the GDP. The most significant case is the subsidies for utility tariffs, mainly for electricity, gas and public transportation, road and railway. These allocations were cut in 0.8% of the GDP between 2015 and 2017, an adjustment that can also be observed, in less extent, in other allocations such as public works (0.2%), goods and services (0.2%), salaries (0.1%) and other miscellaneous spending (0.4%)²⁸.

Particularly, in terms of social expenditure incurred by the federal government, there is a share loss of all allocations except for Social Security (mainly retirement pensions and benefits) and Social Assistance and Promotion. The rest of social expenditure allocations had a reduced share between 2015 and 2018, being the most remarkable example the Housing and Urban programs that reduced their budget share in 1.2%²⁹.

By the end of 2015, with the change of government, modifications were made in social expenditure structure. Considering their budget relevance, the main changes were in the Social Security area, accounting for 50% of the total public spending of the National Administration³⁰ through the Historical Remediation that implied an increase of pension assets and the incorporation of sons and daughters of individual tax payers into the Universal Childhood Entitlement. These two measures, plus the increase of benefits thanks to the Pension Mobility, produced an 11% increase, in real terms, of spending in Social Security, between 2015 and 2017³¹.

On the other hand, an improvement is also observed in the Social Promotion and Assistance area that includes different programs of non-contributory income transfers, aimed at youth and adults of working age. In this case, between 2015 and 2017, the increase, in real terms, reached 33%. However, we should note that this allocation only accounts for 2% of the total spending and 3% of the social expenditure.

However, the rest of the areas that compose social expenditure had reductions in their allocations, in real terms, during these years. Considering their relevance, in relative terms, the programs of Housing and Urban Development can be pointed out and investment on them was significantly reduced, as we shall see in another section of this report. The rest of the areas suffered cuts: Science and Technical (-8%), Education and Culture (-5%), Health (-3%) and Work (-1%)³².

Restructuring of welfare programs

During the last two years there has been a process of restructuring of areas and technical teams that had worked in labor inclusion programs, vocational training, education completion, social economy and self-managed work. A relevant case is the merging and migration of welfare programs focused on providing income-generating opportunities through associative organization with financial subsidy of the State to equip and sustain workers' income. Among these programs we can mention: “Ellas Hacen”, “Ingreso Social con Trabajo - Argentina Trabaja” and “Desde el Barrio”, in a new program called “Hacemos Futuro”.³³ This transformation challenges the access and enjoyment of the right to employment and income, because it restricts access. Since programs migrated, the possibility of access of new beneficiaries, has been closed. On the other hand, it marks a shift from a paradigm of collectivization in State intervention (through the promotion of work cooperatives) to individualization

²⁸ Ver: <http://itegaweb.org/wp-content/uploads/2018/05/Informe-de-Coyuntura-May18-.pdf>

²⁹ Comparando el gasto devengado en el primer semestre de 2015 y 2018.

³⁰ www.presupuestoabierto.gob.ar

³¹ Información elaborada en base a datos del presupuesto y del Price Measurement Index del Instituto de Trabajo y Economía.

³² Información elaborada en base a datos del presupuesto y del Price Measurement Index del Instituto de Trabajo y Economía.

³³ Creado el 8 de febrero de 2018 en la órbita de la Secretaría de Economía Social, mediante la resolución N° 96 del Ministerio de Desarrollo Social de la Nación.

(by strengthening personal journeys mainly related to the education dimension of beneficiaries) weakening the collective empowerment in territories. Likewise, it undermines the priority component represented by allocations for women who are victims of male violence, a key issue of “Ellas Hacen” program. Finally, it destroys the work carried out by gender workers who supported and strengthened community networks³⁴.

Another example of this trend in welfare policies and their consequences, is the provision of the Secretary of Employment of the Ministry of Labor, Work and Security³⁵ announcing that as of March 1st. 2018, the Training and Employment Insurance (SCyE, by its Spanish acronym) will no longer accept application from unemployed people. This program offered a tool to gather, follow-up and support groups to strengthen their employability, giving priority to transgender people, women suffering male violence and people living with HIV. This interferes with a national policy of employment, vocational training and socio-occupational inclusion, which has been in place since 2010.

Weaknesses of public policies tending to guarantee ESCR of children and adolescents in vulnerable situations

In Argentina, poverty and indigence have a differential impact on children and adolescents. According to the latest official information available, 45.6% of children and adolescents up to 17 years old in huge urban conglomerates, live in poverty, a percentage that almost doubles 24.2% compared to the rest of the population. Besides, 9.6% of children and adolescents up to 18 years old, are indigent, while this percentage decreases to 4.2% for the population aged 18 or over.³⁶ In absolute numbers, around 5.6 million children and adolescents in the country are poor³⁷.

In this context, early childhood care policies have been cut. If we observe global amounts of social expenditure on childhood, in the government report submitted to the UN Committee for the Rights of the Child, we can confirm that, between 2015 and 2016, there was a decrease of 0.2 points of GDP, dropping from 2.8 to 2.6%³⁸.

³⁴ Ver <https://www.pagina12.com.ar/130966-nosotras-hacemos>

³⁵ El Ministerio de Trabajo fue desjerarquizado y transformado en Secretaría, a cargo del Ministerio de Producción.

³⁶ Información surgida de la Encuesta Permanente de Hogares, correspondiente al IV trimestre del año 2016. Disponible para su descarga en: <http://www.indec.gob.ar/bases-de-datos.asp>. Los datos de pobreza multidimensional son aún más alarmantes: la última medición multidimensional de la pobreza en Argentina indica que, entre 2016 y 2017, la pobreza infantil pasó del 60,4% al 62,5%, es decir, creció un 2,1%. Esto implica que 8 millones de niñas y niños se encuentran sufriendo algún tipo de vulneración de derechos. Hay que subir estos datos al texto y no entiendo como son conciliables con lo que decimos más arriba de la caída de -4,6 puntos porcentuales entre 2016 y 2017 de la pobreza. Esta medición multidimensional es elaborada por el Observatorio de la Deuda Social de la Universidad Católica Argentina, institución con una larga trayectoria en este tipo de análisis. Existen diferentes formas de medir la pobreza: puede ser representada a través de métodos indirectos como la estimación de los ingresos de los hogares y su capacidad de compra de una Canasta Básica total de alimentos y servicios esenciales; o de modo directo a través de un conjunto de indicadores de tipo estructurales como el espacio de la vivienda, el saneamiento, la educación y económicos como el índice de Necesidades Básicas Insatisfechas; o los métodos multidimensionales orientados a medir las diversas dimensiones del desarrollo humano y social desde un enfoque de derechos. Observatorio de la Deuda social en Argentina. Barómetro de la Deuda Social de la Infancia. “Diferentes representaciones de la pobreza infantil en la Argentina (2010-2017). Disponible en: http://www.uca.edu.ar/uca/common/grupo68/files/2018_Observatorio-BDSI-DOCUMENTO-INVESTIGACION_INFANCIA_POBREZA_Boletin-1.pdf

³⁷ Información disponible en “UNICEF. La pobreza monetaria en la niñez y la adolescencia en Argentina”, un documento que analiza la pobreza monetaria infantil en Argentina mediante datos de la Encuesta Permanente de Hogares realizada por el Instituto Nacional de Estadística y Censos, del cuarto trimestre de 2016, última información oficial y pública disponible. Disponible en:

https://www.unicef.org/argentina/spanish/La_pobreza_monetaria_en_la_ninez_y_adolescencia_2017.pdf). De acuerdo a datos de la misma encuesta, para el mismo período, el 45,6% de las niñas, niños y adolescentes de hasta 17 años en grandes aglomerados urbanos viven en situación de pobreza, porcentaje que casi duplica el 24,2% referido al resto de la población; y el 9,6% de los NNyA de hasta 18 años viven en situación de indigencia, mientras que para la población de 18 años o más este porcentaje desciende al 4.2% (Encuesta Permanente de Hogares, correspondiente al IV trimestre del año 2016)

³⁸ Información proporcionada por el Estado argentino al Comité de los Derechos del Niño en el marco del 78° Período de Sesiones. Anexo 8, sobre gasto social en infancia. Disponible en http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=1163&Lang=en

The government informed the Committee that the Ministry of Social Development extended the transfer programs through the implementation of a national plan and different programs addressing children in vulnerable situations such as the “National Plan of Early Childhood”. However, in the specific case of resources allocated to the National Secretary of Children, Adolescents and Family (SENNAF, by its Spanish acronym), which governed policies of promotion and defense of the rights of children and adolescents in 2017, the Executive Power made a reallocation of resources for said Secretary through a budget law, in an amount of 900 million pesos³⁹. Apart from reducing the officially allocated budget, it partially executed the available resources: more than 500 million pesos were unused. The sum of the reallocated and partially executed funds represents 42% of the budget assigned by Congress to that Secretary for that year.

Budget allocation in 2018 is even more regressive: if the amounts adjusted by inflation are analyzed⁴⁰, the allocation of SENNAF decreases by 6%. This reduction is worse in the Program of Promotion and Assistance to Early Childhood Education Centers, with a 33% decrease compared to the budget assigned by Congress in 2017. This analysis of the budgetary allocation and fund execution of SENNAF -responsible of three programs⁴¹ intended to guarantee the rights of children who are the most vulnerable group in Argentina- reveals a violation to the principles of non regressiveness and the maximum use of available resources to guarantee the rights as well as the prohibition to carry out decreasing budget revisions and the intangibility of resources for childhood policies established in the integral protection act 26.061⁴².

SUGGESTED QUESTIONS

- What are the policies that the State has implemented to reduce higher levels of poverty and indigence at national level?
- What measures will the State adopt to revert the dramatic decline in purchasing power of salaries, benefits and retirement pensions?
- What specific measures will the State adopt to reduce the impact of the increase in public services’ tariff, particularly for low-income sectors?
- Which is the scope of the proposal to focus and revise the system of social tariffs included in the official documents of the recent stand-by agreement between the Argentine government and the International Monetary Fund (Country Report N° 18/219 and Letter of Intent and Memorandum of Economic and Financial Policies)? What specific measures will the State adopt to adjust the current policy of social tariffs to the conditions of this proposal?
- How has the State drawn special attention to the protection of the rights of children and adolescents in the least advantaged groups?
- What measures have been adopted to overcome the disparities existing among provinces? What measures were put into effect to achieve full implementation of the Comprehensive Protection Act of the Rights of Children and Adolescents?
- How does the State plan to guarantee proper budget execution for the achievement of the Comprehensive Protection Act?

³⁹ El presupuesto aprobado por el Congreso de la Nación fue de 3.460.070.241 pesos y el presupuesto vigente (luego de múltiples reasignaciones efectuadas por el Poder Ejecutivo Nacional en clara vulneración del principio de división de poderes y de normativa nacional que compromete al Estado a no efectuar este tipo de modificaciones presupuestarias en detrimento de las políticas públicas tendientes a garantizar los derechos de niñas, niños y adolescentes) disminuyó a 2.522.989.375 pesos.

⁴⁰ Se tomó como referencia la inflación estimada por el Poder Ejecutivo Nacional para 2018, que era del 15%. Considerando que hoy esa estimación está por encima del 40%, la reducción del presupuesto es mucho más significativa.

⁴¹ Acciones para la Promoción y Protección Integral de los Derechos de Niños, Niñas y Adolescentes; Promoción y Asistencia a los Centros de Desarrollo Infantil Comunitarios; Políticas Federales para la Promoción de los Derechos de Niños y Adolescentes.

⁴² Ley 26.061, artículos 5 inc.4 y 72. Para más información ver: http://acij.org.ar/wp-content/uploads/2018/02/documento_infancia.pdf

- How does it intend to combine public spending adjustment with a stronger provision of early childhood care and education services?
- How does it plan to tackle the expected decline in education and health service provision in the provinces as a consequence of the provincial public spending adjustment?

PROPOSED RECOMMENDATIONS

- Implement measures tending to adjust social tariff programs for public services so as to neutralize the negative impact of the widespread increase of tariffs.
- Reassess the subsidy reduction policy on public services to propose a tariff scheme offering broader protection to reach middle and middle low sectors.
- Promote policies tending to reduce high levels of poverty and extreme poverty in Argentina, where children are hit the hardest, drawing attention to the high number of borderline poor and revert the regressive bias of the current system and the infantilization of poverty.
- Guarantee access of all children and adolescents to **Universal Childhood Allowance**, eliminating restrictions in terms of procedure or coordination and those linked to the conditions of the family group.
- Move forward in the revision of tax policies that entail a differential treatment of state transfers for children and adolescents.
- Move forward in establishing universal social policies focused on children and adolescents as holders of rights, with no exclusion criteria.
- Redouble efforts for the full implementation of the National Comprehensive Protection law, emphasizing the need to allocate enough resources, respecting the principle of non-regressiveness and executing the allocated budget to ensure adequate facilities and, thus, guarantee the rights of children and adolescents, respecting the principle of maximum use of available resources.
- Promote a democratic discussion among civil society, academia, unions and businesses for the design of a national comprehensive care system addressing effectively and comprehensively key aspects of gender equality.
- Design mechanisms to guarantee the provision of education and health services with basic quality standards, in the face of the difficulty that provinces will encounter to secure this.

REGRESSIVE DECISIONS AND LACK OF TRANSPARENCY IN FISCAL POLICY (Art. 2 maximum available resources)

Reduction of tax burden on concentrated sectors

Since the change in government administration in December 2015, a series of partial tax reforms have been introduced and the distinct feature is the reduction of tax burden on higher income sectors, either individuals or large corporations.

Among them, we consider relevant to mention the full elimination of exports duties of the main grains (wheat and corn) and the gradual reduction of the aliquot for the export of soy and derivatives, from 35% in 2015 to 27.5% by mid 2018. These measures represented a significant benefit for large export corporation of agricultural products⁴³. In the case of the mining sector, something similar happened, this sector benefitted from the elimination of export duties, whose products had an aliquot of around 5% and 10%.

On the other hand, a reform of the personal income tax was implemented. This reform implied an extension of the brackets where each aliquot applies, a norm to automatically adjust brackets and a non-taxable minimum according to the evolution of salaries. The consequence of these reforms was less impact of the income tax on the total collection, which means a considerable reduction of the redistributive power of fiscal policy.

⁴³ Implementadas a través de los decretos presidenciales 133/2015, 349/2016 y 1343/2016. Incluir los links de acceso.

Parallel to these reforms, an initiative of Partial Refund of the Value Added Tax (VAT) was implemented in 2016, for retired and pensioners with the minimum retirement income, beneficiaries of the Universal Childhood Entitlement and the Universal Pregnancy Entitlement and beneficiaries of non-contributory pensions. A report of the Institute of Work and Economy where official data linked to this program was analyzed⁴⁴, reveals that the impact of this program during the first 20 months has been extremely limited. Only 2 out of 10 retirees with the minimum retirement income, used it. In the case of beneficiaries of the Universal Childhood Entitlement, only 6 of 100 have benefitted from this policy⁴⁵.

Finally, a partial reform of social security contributions has also been implemented, establishing a non-taxable minimum that shall increase gradually between 2018 and 2020⁴⁶. The impact of this measure will directly affect financing for social security. Such measure reallocated part of the income tax collected for provincial governments, mainly for the Province of Buenos Aires.

The case of tax policy on wastelands in the Province of Buenos Aires⁴⁷

Tax on real estate is a fundamental instrument to promote the fulfilment of the right to housing. Apart from being a key collection tool, these taxes may discourage speculative practices in real estate operations that pose a structural obstacle for the access to housing of middle and low sectors.⁴⁸

Tax policy on wastelands clearly depicts the relationship between taxes and socio-territorial dynamics, and its impact on the right to decent housing. The existence of wasteland in urban areas has a negative impact on the levels of accessibility to land and housing. The idle land located in urban areas, generally waiting for a raise in value, restricts land offer in the land market.

The increase of tax pressure on idle real estate is an effective instrument to discourage idleness. Following this principle, the Fair Access to Habitat (14.449)⁴⁹ act was passed in 2012, in the Province of Buenos Aires, and established a 50% increase in property tax of wasteland. However, as the tax value of properties is not updated, this measure is not enough to discourage speculation.

During the past ten years the relative burden of this tax has decreased compared to the values of the land market. A comparative study carried out in two areas of Greater Buenos Aires between the land prices⁵⁰, the tax base and the value of the property tax, revealed that land prices in the first area of expansion of Greater Buenos Aires⁵¹ multiplied by 22, between 2006 and 2016, while the tax collected only multiplied by 14. In the second area of expansion⁵² land price multiplied by 26 while tax only

⁴⁴ "El impacto de la devolución del IVA a casi dos años" Disponible en: <http://itegaweb.org/el-impacto-de-la-devolucion-del-iva-a-casi-2-anos/>

⁴⁵ De acuerdo con la información oficial, se esperaba que 8,4 millones de personas percibieran el beneficio. Sin embargo, de los cerca de 3 millones de jubilados que cobran el haber mínimo, poco más de 600 mil se beneficiaban de esta iniciativa hasta febrero de 2018, representando una cobertura efectiva cercana al 20%. En el caso de los titulares de una pensión por fallecimiento y de beneficiarios de la AUH, la cobertura es más baja aún, ubicándose en el 6% y prácticamente sin cambios durante todo el período analizado

⁴⁶ Ver ley 27430, de modificación de impuesto a las profit, Disponible en <http://servicios.infoleg.gob.ar/infolegInternet/anexos/305000-309999/305262/norma.htm>

⁴⁷ Escrito en base al informe "Política Fiscal y Garantía de los Derechos Económicos, Sociales y Culturales en América Latina" presentado en conjunto con organizaciones de la región ante la Comisión Interamericana de Derechos Humanos. Disponible en: <http://www.cesr.org/es/politica-fiscal-y-garantia-de-los-derechos-economicos-sociales-y-culturales-en-america-latina>

⁴⁸ Para mayor información sobre esto ver el informe la relatora de vivienda adecuada, sobre financiarización de la vivienda, disponible en: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/51.

⁴⁹ Disponible en: <http://www.gob.gba.gov.ar/legislacion/legislacion/l-14449.html>

⁵⁰ Se ha tomado como fuente un relevamiento de precios de la Secretaría de Planeamiento de la Ciudad de Buenos Aires disponible en: <http://www.buenosaires.gob.ar/planeamiento/publicaciones/mercado-inmobiliario/terrenos-en-la-region-metropolitana>. Los datos de 2017 son de elaboración propia en base a un promedio de dos fuentes: el portal Properati y el portal Reporte Inmobiliario.

⁵¹ Incluye los municipios de Avellaneda, Lanus, La Matanza, Morón, Ituzaingó, San Isidro, Vicente López, San Martín, Tres de Febrero, Hurlingham, Quilmes.

⁵² Incluye los municipios de Lomas de Zamora, Esteban Echeverría, Merlo, Moreno, Tigre, San Fernando, Alte Brown, Florencio Varela, Berazategui, Ezeiza, San Miguel, José C. Paz, Malvinas Argentinas

multiplied by 8.⁵³ It is worth mentioning that in both case, the tax base remained almost unchanged due to the lack of updated fiscal appraisals.

Recently, the government of the Province of Buenos Aires established a reappraisal of properties to close the gap between tax value and market value⁵⁴. According to the government itself, this involves an average increase of around 56% of the value of the property tax. However, no specific measures have been established for vacant urban properties.

Lack of transparency and impact analysis of tax expenditures

Inadequacy of public policies tending to guarantee ESCR happens in a context where, according to official figures, tax benefits or exemptions (involving a more beneficial treatment for certain sectors or activities) raised to 3.23% of GDP in 2017⁵⁵. Even though some tax expenditures could be justified, others are clearly regressive and no information or evidence is produced to measure its impact on inequality and the possibility of guaranteeing rights. The State response to public information requests in all cases where estimates of tax expenditures were published, was that there were no records that measured impact, consequences and reasons to incur in or sustain those expenses. Some examples of tax expenditures without a reasonable justification are income tax withdrawal for judiciary officials, different tax exemptions to the mining industry⁵⁶ and the decrease of aliquot⁵⁷ and the recent application of tax exemptions to personal goods⁵⁸.

Despite the obligation to use the maximum available resources, Argentina does not assess impact and the real need for these exemptions. Inaccurate estimations of tax expenditures are used and, in many cases, they might underestimate the real costs they have. On top of the increasing burden of tax expenditures in the total spending, additionally and as a consequence of lack of impact assessment, once tax expenditures are incorporated into Argentine fiscal policy, they are not regularly reviewed and, in most cases, no limitation period is foreseen for most of them. In Argentina, there are no estimated official figures on loss due to evasion and elusion.

SUGGESTED QUESTIONS

- Are there reports, researches and impact studies of tax exemptions in force in Argentina? What do these studies reveal?
- Are there reports, researches and impact studies of tax exemptions of the measures stemming from presidential decrees 133/2015, 349/2016 y 1343/2016? What are the results shown in these studies?

⁵³ Los promedios de la base imponible y del cobro del impuesto inmobiliario se ha realizado a partir de los datos de un mismo terreno baldío por municipio como caso testigo para todos los años analizados.

⁵⁴ <https://www.infobae.com/economia/2018/01/25/revaluo-inmobiliario-en-la-provincia-de-buenos-aires-las-facturas-llegan-con-subas-superiores-al-900/>

⁵⁵ Ver estimaciones oficiales en <http://www.mecon.gov.ar/onp/html/presupresumen/resum17.pdf>

⁵⁶ El régimen de promoción de la actividad minera implica un gasto estimado para 2017 en 2.076 millones de pesos argentinos.

⁵⁷ La ley 27.260 y la Resolución General 4091-E de la AFIP establecieron una reducción de la alícuota del impuesto a los bienes personales para el año 2017, pasando de 0,75% a 0,50%. Disponible en: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/275000-279999/276750/norma.htm>

⁵⁸ En julio de 2016, mediante la ley 27.260 se creó una exención para las y los contribuyentes que hayan cumplido con sus obligaciones fiscales en 2014 y 2015. El carácter de contribuyente cumplidor/a les permite eximirse, de forma alternativa, del pago del impuesto a los bienes personales para los períodos fiscales 2016, 2017 y 2018 o, del pago del impuesto a las ganancias correspondiente a la primera cuota del aguinaldo de 2016 en el caso de tratarse de personas empleadas en relación de dependencia o jubiladas. Constituye un supuesto de desigualdad y discriminación por condición social y económica, que se estableció como un beneficio para quienes son buenos cumplidores de sus obligaciones impositivas y sólo beneficia a aquellos contribuyentes de mayor poder adquisitivo, quienes pagan impuesto a los bienes personales, y quienes pagan impuesto a las ganancias. Los contribuyentes que no pagan impuesto a las ganancias por sus bajos ingresos y que no pagan impuesto a los bienes personales quedan excluidos de toda posibilidad de beneficiarse.

- Are the results of the exemptions' impact on different quintiles and deciles of populations considered?
- How much money did the State stop receiving by applying these exemptions during recent years? What studies were carried out to identify the impact of tax reform on the level of access to ESCR?
- Which statistical information led to assert that a reduction of income tax on mining and agricultural sectors has had a positive impact on employment opportunities and the generation of wealth? Which sectors of the population have been benefitted and to what extent?
- How have these measures made possible to progressively guarantee the rights acknowledged by the International Covenant on Economic, Social and Cultural Rights?
- What measures have been taken to guarantee sustainability of social investment programs addressing vulnerable groups within the framework of the elimination of export duties on some products?
- Has the impact of fiscal austerity measures been evaluated in terms of the realization of the rights of people in vulnerable situation? What was the outcome and which measures have been taken to reduce the impact of spending cuts and to avoid negative consequences for the fulfilment of rights?
- Has there been an evaluation of the impact on vulnerable populations, of the measures recommended by the IMF through the stand-by agreement for 50 billion dollars?
- What measures have been taken to guarantee sustainability of social investment programs addressing vulnerable groups within the framework of an increase of external debt burden and budget deficit?

PROPOSED RECOMMENDATIONS

- Create adequate conditions and mechanisms to assess fiscal policy and different tax exemption plans in the light of the principle of equality and non discrimination, as well as the principle that dictates the maximum use of the available resources to progressively guarantee the economic, social and cultural rights.
- Promote analyses on the economic and social results sought and attained by different tax exemption plans.
- That the minimum contents of tax expenditures assessments have measurable objectives and clear indicators, that cover the efficiency and effectiveness of tax expenditures, start and termination dates, impact on the guarantee of rights, taking into consideration the redistribution of income (number of new employment opportunities, number of people from vulnerable groups who were benefitted, etc.), the impact in terms of gender equality and justice by geographical area, population or economic sector that is benefitted.
- Assess the impact on vulnerable groups of fiscal austerity measures to be promoted and those backed by the IMF or those set out to comply with the agreement.
- Design and implement measures to guarantee sustainability of social investment programs addressing vulnerable groups.
- Review the Partial Refund of the Value Added Tax (VAT) Plan for retirees and pensioners with the minimum retirement income, beneficiaries of the **Universal Childhood Allowance**, the **Universal Pregnancy Allowance** and beneficiaries of non-contributory pensions, so as to increase the level of accessibility of beneficiary sectors.

THE RIGHT TO SOCIAL SECURITY (Art. 9 - the right to social security)

Measures for the adjustment of social security policies

Law Nº 27.160 passed in 2015, establishes that family benefits like the Universal Childhood Entitlement and the Universal Pregnancy Entitlement will not be fixed and that the adjustment will be made according to the formula established in Law Nº 26.417 that rules the adjustment of pension benefits. This formula sets out that assets must be adjusted, in equal parts, based on the fluctuation of tax revenues and salaries. This law allowed the establishment of an income floor for the recipients of social security funds, giving predictability to the whole social security system.

By the end of 2017, Tax Reform law Nº 27.246 was passed introducing changes in the calculation of mobility and establishing that the adjustment of assets will depend 70% on the evolution of CPI and 30% on salary variation. Besides, a plan was implemented where adjustments are made on a quarterly basis (instead of semi-annually, as used to happen with the previous law).

The impact of these modifications was detrimental to retirement pensions and family benefits. According to a recent study from the Centre of Research and Training of the Republic of Argentina (CIFRA, by its Spanish acronym) the first increase of the minimum retirement pension was 5.7% (corresponding to March 2018) considerably less than the increase calculated with the previous formula.

The adjusted increase corresponding to June 2018 raising the minimum retirement pension to 8,096 is equivalent to an average loss of purchasing power of around 2.6% during the first half of 2018 and around 4.2% on an interannual basis. Based on the purchasing power of the minimum retirement pension corresponding to July 2015 compared to the same month in 2018, the estimation indicates a real loss of more than 10%.⁵⁹

The formula of law Nº 27.160/2015 considered the revenue evolution (balanced by the number of beneficiaries of the system to secure sustainability) and salaries, giving the same significance to both parts. Beyond the results of any specific period, this meant engaging economically inactive population and children in the economic growth, through increased revenues, and the achievements of the union movement in terms of salary evolution. The current formula only intends to maintain the real purchasing power of current benefits (which is not guaranteed throughout all periods because salaries that currently represent 30% of the formula may grow below inflation), without questioning if the current level is adequate nor engaging this population in possible improvements of actual income of the country, something expected in the middle and long-term.

In the Memorandum of Technical Agreement subscribed by the Argentine government and the IMF on June 12, 2018 an extraordinary clause was incorporated to address the most vulnerable groups and alleviate the impact of the adjustment program. However, it is not clear in which situations this safeguard clause will be applied and, at the same time it was informed that the allocation is only 0.2% of GDP⁶⁰. For the moment, this allocation is evidently insufficient to alleviate the full impact of the spending cuts plan agreed with the multilateral entity.

On the other hand, the Pension Inclusion Plan was supposed to end in December 2017. People with insufficient contributory records were given access to benefits through this plan and more than 2 million beneficiaries were incorporated, out of which 75% were women. The plan was replaced by the Universal Pension for the Elderly (PUAM, by its Spanish acronym) and to benefit from this plan, the

⁵⁹ CIFRA, Informe de situación del mercado de trabajo, junio de 2018, disponible en www.centrocifra.org.ar

⁶⁰ Ver FMI, "Request for Stand by arrangement- press release and Staff report", Country Report No. 18/219, Julio 2018. Disponible en <https://www.imf.org/en/Publications/CR/Issues/2018/07/13/Argentina-Request-for-Stand-By-Arrangement-Press-Release-and-Staff-Report-46078> y Carta de intención y Memorandum de Políticas Económicas y Financieras Argentina FMI", Junio de 2018. Disponible en <https://www.argentina.gob.ar/noticias/carta-de-intencion-memorandum-de-politicas-economicas-y-financieras-y-memorandum-de>

requirement is to be 65 years or older, provided no other social benefit of equal amount is received⁶¹. The termination of the Pension Inclusion Plan and its replacement by the PUAM has two negative consequences. In first place, a limitation for women who can retire at 60 but do not have enough contributory records. In the present situation, they will have to wait 5 more years to have access to PUAM, without receiving any income unless they can remain active in the labor market. On the other hand, the value of PUAM benefit is set as 80% of the value of the minimum retirement income while within the framework of the Pension Inclusion Plan, 100% of the minimum retirement income was received (deducting the payment of moratorium for the amounts owed, which in no case could exceed 20% of the benefit). These modifications are gender biased as women are over-represented in the population without enough contributory records, the legal retirement age is 60 years for women (compared to 65 years for men) and most beneficiaries had entered the system through the previous Pension Inclusion Plan.

Finally, another problem posed while addressing different social security components is the recently announced change in the Family Benefits System that provides financial benefits for registered workers with minor dependent children. The following modifications were introduced through decree 702/2018: i) variation of the minimum and maximum salary to be able to receive the benefits (in practice, this means the exclusion of workers that used to be included)⁶²; ii) the benefit is excluded for workers whose employers owe contributions; iii) zone differentials are eliminated in the amount of benefits, which represented higher amounts for areas with higher costs in terms of consumption baskets⁶³.

The reinforcement of the contributory feature of the program and the pretended principle of equity among jurisdictions, justify these modifications. However, these modifications: i) reinforce segmentation of the transfer system based on childhood; ii) affect low-income workers who, in practice, are the beneficiaries of this policy; iii) disrupt a historical policy that intends to benefit unpopulated and disadvantaged areas; iv) constitute a violation of the right of children who, in theory, are rights holder⁶⁴.

Non-contributory pensions for persons with disabilities

Non-contributory pensions represent a minimum income to meet the basic needs of people who are currently suffering poverty and/or face barriers to exercise their rights, on equal terms. These pensions are granted to persons with disabilities, among others. In Argentina, the system of provision of non-contributory disability pensions, questionably named “incapacity pension”, flagrantly violates the right to social security enshrined in article 9 of PIDESC and multiple rights acknowledged in the Convention on the Rights of Persons with Disabilities (CRPD).

The eligibility requirements for non-contributory pensions established by the applicable legislation, particularly by decree 432/97⁶⁵, go against the obligations stemming from the aforementioned agreements and are unreasonable given the structural inequality of this population group.

⁶¹ La PUAM fue creada mediante la Ley N° 27.260, promulgada mediante el Decreto N° 881/2016. Finalmente, la misma norma establece a 3-year extension of Pension Moratorium (Law N° 26970) expiring on July 23, 2019 and is only available for women.

⁶² La justificación de esta modificación es que no deberían recibir las prestaciones quienes no tienen un ingreso suficiente para contribuir, por ello se aumenta el mínimo, ni deberían recibir las prestaciones quienes por otro lado realizan deducciones por hijos a cargo en la tributación al impuesto a las ganancias, por ello se reduce el máximo. Ver para mayor explicación Rodríguez Enríquez et. al. (2018).

⁶³ Debido a la resistencia presentada por gobernadores de las provincias involucradas, la aplicación de esta norma fue postergada por tres meses.

⁶⁴ Según estimaciones del IPyPP, la modificación en el límite inferior deja “afuera” a 108.824 niños y la modificación en el límite superior deja afuera otros 140.454 niños. Ver al respecto: <https://ipypp.org.ar/descargas/2018/Cambios%20AAFF.pdf>

⁶⁵ Disponible en: <http://servicios.infoleg.gob.ar/infolegInternet/anexos/40000-44999/43325/texact.htm>. En línea con ello, en 2012 el Comité sobre los Derechos de las Personas con Discapacidad observó con preocupación las disposiciones normativas del Estado Argentino en lo relativo al acceso a pensiones no contributivas, bajo la consideración de que éstas discriminaban directa o indirectamente a las personas con discapacidad, mencionando entre ellas, el Decreto reglamentario

This decree establishes, for example, an eligibility requirement for this pension: potential beneficiaries cannot have any family member able to provide them food⁶⁶ and the spouse of the person with disabilities cannot be covered by a retirement, pension or non-contributory benefit⁶⁷. Conditioning the eligibility to receive this benefit to the fact that other persons are able or not to take care of a person with a disability is a welfare-oriented perspective, incompatible with the social model of disability that impedes the right to live independently and be included in the community (art. 19 CRPD) and conditions their situation and the enjoyment of rights to the economic ups and downs of their families.

On the other hand, the decree requires to prove that “*disability decreases, in seventy-six percent (76%) or more, the capacity to work*” (subparagraph h of article 1 of annex 1 of the decree). The evaluation of this condition follows only medical and standardized criteria, bluntly opposite to the social model of disability imposed by the CRPD.

Massive cut of non-contributory pensions for persons with disabilities

In June 2017, the Ministry of Social Development made an untimely and massive suspension of non-contributory pensions that used to benefit persons with disabilities⁶⁸. Different non official sources informed that the number of suspensions during last year were around 70,000 and 80,000⁶⁹. Cancellation of pension payments was ordered without previous notification and without giving them the possibility of submitting evidence to support their right and revert the decision, thus, this constitutes a violation of due process and the right of defense⁷⁰.

This measure led thousands of people into a situation of deep vulnerability, with no resources to cover their basic needs. Furthermore, a high number of people stopped having health coverage because the non-contributory disability pension is linked to the “Incluir Salud” (formerly called PROFE) program that ensures healthcare services through the mandatory healthcare program.

At that moment, the reasons argued by the Ministry of Social Development to justify this action, were the failure to meet the requirements established by decree 432/97, which violate the obligations acquired by the State at international level. But, apart from the inconveniences of what the decree established, the interpretation made by the Ministry was totally unreasonable. For example, in several cases the purchase of a car was considered a reason for suspension, when this -far from being a luxury item- is usually necessary for transportation, considering the lack of accessibility in public transport and public spaces.

We reassert that the criteria established in this decree and its restrictive interpretation clearly oppose the right to social security as recognized by PIDESC (art. 9) and the right to adequate living conditions and social protection with no discrimination guaranteed by the CRPD (art. 28). Likewise, it poses a barrier to the full enjoyment of other basic rights such as the right to equality and non-discrimination, to health, to live independently and to be included in the community.

432/1997. En esa oportunidad, instó al Estado argentino a “revisar su marco legislativo en materia de seguridad social y reformular aquellas disposiciones que impiden a las personas con discapacidad (...) el acceso en igualdad de condiciones a la protección social de conformidad con el artículo 29 de la Convención”. Comité sobre los Derechos de las Personas con Discapacidad, Observaciones finales sobre el informe inicial del Estado Argentino, CRPD/C/ARG/CO/1, 2012, párr. 46.

⁶⁶ Artículo 1, Inciso G del Anexo 1 del decreto.

⁶⁷ Ley 1, artículos 5 inc.4 y 72. Artículo 1, Inciso G del Anexo 1 del decreto.

⁶⁸ Para mayor información pueden verse las publicaciones de los diarios Clarín y Página 12 en los siguientes links: https://www.clarin.com/ieco/nuevos-requisitos-ano-cayeron-70000-pensiones-discapacitados_0_rk2T_unzb.html y <https://www.pagina12.com.ar/43813-el-ajuste-donde-mas-duele>

⁶⁹ Disponible en: <https://www.pagina12.com.ar/45809-cambiamos-una-menor-cobertura-social-por-ahorro-fiscal>

⁷⁰ Ante la falta de datos oficiales, ACIJ documentó los casos de las personas que se contactaron en busca de asesoramiento y pudo constatar que la suspensión masiva e indiscriminada de las prestaciones se hizo, en la totalidad de los casos, desconociendo los procedimientos vigentes, sin tener en cuenta los gastos adicionales en que incurrían las familias de personas con discapacidad, y sin notificación previa de la decisión.

After several judicial decisions ordering to restore pensions⁷¹, the government committed to reconsider the measure and to restore pensions that were suspended “by mistake” without specifying what would be understood by “mistake” and without considering that the sole violation of due process forced to restore all suspended benefits. Besides, pensions would be restored upon the demand of the affected person, representing a reversed burden of proof: the government did not have to justify the suspension of a pension, instead, the person had to prove his/her right to receive it. Although many pensions have been restored, others remain suspended and the State does not provide any detailed information in this sense.

The government did inform that they would work on legislative reforms, without specifying the orientation and scope of those reforms⁷². In this point, it is worth indicating that based on the available budget information, the number of people considered as beneficiaries of those pensions has decreased from 1,063,653 in 2017 to 1,003,661 in 2018⁷³.

Upon analyzing the periodic report submitted by the Argentine government, the Committee asked to inform (within the context of the reforms of the non-contributory plan for persons with disabilities) how will the state guarantee adequate benefit amounts, eligibility requirements and application procedures. However, the government has given a partial response, only replying that sons/daughters with disabilities have the right to a lifetime family benefit and to inform updated values. Likewise, the government mentioned the incorporation of a non-contributory subsystem into the family benefits plan, which applies to beneficiaries of non-contributory disability pensions, among others, financed with resources of the pension plan, and the requirements and procedures for eligibility are established by law Nº 24.714.

SUGGESTED QUESTIONS

- What criteria is currently applied to decide if non-contributory pensions are granted to persons with disabilities? Which is the timeframe established in administrative norms to determine the approval or rejection of a non-contributory pension? How do we interpret the requirements that the norm in force (decree 432/97) establishes to be eligible for the benefit?
- Which are the grounds for the adoption of measures that suspend and stop paying pensions? Report in detail the number of registrations and cancellations produced in the last four years (disaggregated by year) and the reason for cancellation, as well as the number of pensions restored after a decision of suspension or interruption.
- Which administrative procedures were previously applied and are currently applied to guarantee the right to defense and due process before the suspension or interruption of social security benefits and in which administrative acts are timeframes and features of those processes established?
- In case of foreseeing a normative modification in the criteria for the provision of pensions, which will be the orientation and guidelines of said reform and how the participation of persons with disabilities and organizations representing them will be dealt with to modify norms and adjust them according to PIDESC and CRPD?
- Currently, how many requests are still waiting for resolution? Which is the average timeframe between the pension application and the resolution by the competent entity?

⁷¹ Información disponible en: <http://www.rionegro.com.ar/viedma/fallo-a-favor-de-la-restitucion-de-pensiones-para-discapacitados-FJ3038465> y <https://www.pagina12.com.ar/48824-lesiona-derechos-de-orden-alimentario>

⁷² Información disponible en: <https://www.pagina12.com.ar/57546-pensiones-en-riesgo>

⁷³ La información desagregada sobre “Atención de Pensiones por Invalidez” de 2017 se encuentra disponible en: <https://www.minhacienda.gob.ar/onp/documentos/presutexto/ley2017/jurent/pdf/D17J85.pdf>. La misma información para 2018 está disponible en: <https://www.minhacienda.gob.ar/onp/documentos/presutexto/ley2018/jurent/pdf/D18E917.pdf>. En los últimos días se realizaron protestas por los recortes, que implicó falta de pago a los prestadores e interrupción de los servicios. Véase: <https://www.pagina12.com.ar/138858-contra-el-ajuste-en-discapacidad>; <http://www.lavoz.com.ar/galerias/marcha-de-prestadores-de-discapacidad-por-centro-de-ciudad?item=1>; <https://www.tiempoar.com.ar/nota/las-prestaciones-para-personas-con-discapacidad-en-riesgo-por-el-atraso-en-los-pagos>

PROPOSED RECOMMENDATIONS

- Modify legislation governing the provision of non-contributory pensions in line with the obligations stemming from PIDESC and CRPD, eliminating the requirements that condition eligibility to “degrees of disability” or socioeconomic situation or household income, and guaranteeing a progressive and non-restrictive, rights-based, interpretation of norms.
- Establish suspended pensions, in violation of the right to defense and due process, that have not been replaced yet.
- Adopt measures to avoid delays in the system of provision of non-contributory disability pensions and to secure amounts that allow an adequate standard of living.

THE RIGHT TO A DECENT HABITAT. ACCESS TO HOUSING AND BASIC SERVICES (Art. 11 - the right to an adequate standard of living)

Argentina presents a persistent deficit in housing, affecting around 30% of households, according to records from the last 3 national population and housing censuses. The survey carried out by the National Registry of Popular Neighborhoods in Urban Integration⁷⁴ (RENABAP, by its Spanish acronym) revealed that by the end of 2016 there were around 4,200 informal settlements where around 800,000 families lived. At the same time, the 2017 Permanent Household Survey⁷⁵ revealed that more than 10% of houses across the country are not connected to water networks and more than 30% do not have sewerage. Besides, 7% is located less than 300 meters from a dump, 11.7% is in flood-prone zones and 12.4% live in poorly built houses. Almost 29% of houses are not connected to gas networks and 13.5% live under an informal ownership housing plan.

Modifications in housing policy at national level and in the Province of Buenos Aires

Public work cuts

Historically, Argentina has implemented a traditional policy of construction and improvement of houses and residential networks, and installation of basic service infrastructure. These policies have been implemented with a sectoral vision and not in coordination with territorial and environmental policies, therefore, their remedial scope has always been limited⁷⁶. However, they have been essential to guarantee the right to adequate housing of those who live in precarious housing conditions. Since the 40s, in the last century, the national government has kept an important level of financing for this kind of work.

During the last years, investment in construction and improvement of houses, infrastructure networks and improvement of public spaces has suffered cuts. Between mid 2017 and 2018 transfers for capital expenditure decreased 38.6% and this reduction mainly affected Housing and Urban Development, Transport and Drinking Water and Sewage projects⁷⁷. This translates into a decline of public funds share in the total budget of housing improvement projects. Housing and urban development category reduced 50% between 2015 and 2016, from 2.2% to 1.1% and slightly increased in 2017 to 1.3%. The

⁷⁴ Registro creado a través del Decreto 358 de 2017, en el ámbito de la Jefatura de Gabinete nacional, con el objetivo de “registrar los bienes inmuebles ya sean de propiedad fiscal o de particulares donde se asientan los barrios populares, las construcciones existentes en dichos barrios y los datos de las personas que habitan en ellas”. Para más información ver: <https://www.argentina.gob.ar/barriospopulares>

⁷⁵ Encuesta Permanente de Hogares del Instituto Nacional de Estadísticas y Censos.

⁷⁶ Para más información ver, “Diseño e implementación de políticas territoriales integrales”, en *Consenso Nacional para un Hábitat Digno*, disponible en <https://www.cels.org.ar/web/publicaciones/consenso-nacional-para-un-habitat-digno-diez-propuestas-de-politicas-publicas>

⁷⁷ Asociación Argentina de Análisis Presupuestario, *Informe de Ejecución Presupuestaria de la Administración Pública Nacional*, junio 2018. Disponible en: <http://www.asap.org.ar/wp-content/uploads/2018/07/infoasapapn0618.pdf>

share of investment on water and sewerage projects dropped from 2% to 1.4% between 2015 and 2016, and in 2017 it plummeted to 0.3%⁷⁸.

Regarding investment on housing construction and improvement, unfortunately there is no accurate information because the federal government has stopped publishing information in this sense. The last official publication of data dates back to 2014.

In the Province of Buenos Aires, where around 40% of the housing deficit in the country concentrates, the decrease in expenditure on housing programs was also significant. According to information from the Institute of Housing, as of December 31, 2017, only 3,508 houses were under construction and, in the first semester of that year, 669 houses had been completed. This implies a strong decrease in social housing construction, as observed in the following graph:



Source: Personal creation based on information of the National Housing Council and the Institute of Housing of Buenos Aires

Since 2015, the information on the number of houses built has not been publicly available. CELS had access to this data through a request for public information that was partially replied, after being taken to court.

Furthermore, the provincial government disrupted, at institutional level, the implementation of the Fair Access to Habitat law, passed in 2012, which recognizes principles and instruments of urban management to promote more inclusive and just city construction processes⁷⁹. Through a reform of the cabinet structure approved at the beginning of 2018, the provincial government has divided the implementation of the law in three different ministerial portfolios: Ministry of Infrastructure and Public Services, Ministry of Social Development and Chief of Cabinet. The history of institutional fragmentation in the implementation of public policies in the Province of Buenos Aires raises concern regarding the comprehensive and complex approach to the housing issue promoted by the law.

Public-Private Partnerships (PPPs): risks for the development of basic social infrastructure and access to social services

The present administration in Argentina, which is in line with related recommendations made by different multilateral institutions, has given a new impetus to the system of public-private partnerships. The key argument is that these mechanisms would enable private financing and, thus, replace current resources (in fact inexistent) from public budget. For this purpose, the government has established a new system of PPPs through the enactment of law 27328 and its decree 118/17.

⁷⁸ Lanfranchi, Granero, Duarte, “Desarrollando la agenda del hábitat en Argentina”, CIPPEC: 2016.
⁷⁹ La actual Relatora de vivienda adecuada de Naciones Unidas, Leilani Farha, destacó esta norma en dos de sus informes como una herramienta valiosa e innovadora para hacer efectivo el cumplimiento del derecho a la vivienda. Ver informe sobre el rol de las autoridades locales (A/HRC/28/62) y su informe sobre estrategias de vivienda (A/HRC/37/53).

Although the effective application of the new system has started with a series of road infrastructure megaprojects⁸⁰, this mechanism might be considered for housing construction⁸¹ and the provision of sewerage infrastructure and drinking water⁸².

The international experience on this issue as well as the little clarity on the way in which transparency and accountability mechanisms⁸³ will be implemented, question the effectiveness of this strategy and, consequently, the impact in terms of access and enjoyment of basic social rights such as access to drinking water, basic sewerage, health, among others.

The following problematic issues can be pointed out; i) the securitization attempt of these mechanisms, which may imply serious future indebtedness for the State⁸⁴; ii) the limitation posed to access by the implementation of different co-payment mechanisms in the benefits; iii) the increase of fiscal cost, since the State is the guarantor of profitability of investments.

Mortgage loans

Budget cut on housing policies is understood as part of a broader and structural decision. It consists in redirecting housing policy towards mechanisms of the financial sector. The Secretary of Housing and Urban Development described this new direction as the evolution of a purely “constructor” to a “facilitator” State. That is to say, the State will not create housing solutions but co-invest with the private sector⁸⁵.

This raises concern because international and, specifically, Latin American experience has shown the strong limitations of using market mechanisms exclusively oriented to demand, without dealing with the offer. The cases of Chile, Costa Rica or Mexico are good examples that illustrate that handing over to market, those decisions related to urban development and location and construction of social housing, and restricting state policies to the promotion of financing and compensatory assistance in popular neighborhoods leads to higher speculation of the price of land, reinforces urban divide and social segregation⁸⁶. The present Special Rapporteur on the Right to Housing, Leilani Farha, warned about this in her report on financialization of housing.⁸⁷

With the purpose of promoting the market of mortgage loans, the government created the Purchasing Power Unit, that is to say, a reference value to establish the amount of mortgage loans. This unit is adjusted according to a Reference Stabilization Coefficient, based on the variation of the Consumer Price Index. The conditions of loans granted with this instrument are more accessible than the conditions of loans in the market, which has translated in a significant increase of mortgage loans stock in 2017.

However, the loan alternative has quickly shown limitations as long-term and large-scale instrument of housing policy. The strong devaluation suffered by the Argentine peso during the second quarter of 2018 has translated into a strong increase of prices in general and, particularly, of real estate value⁸⁸. This has had direct impact on the value of the Purchasing Power Unit with an increase of almost 11% in only 4 months: its value increased from 22.61 on April 1st. 2018 to 25.05 on August 1st. 2018. Since

⁸⁰ <http://ppp.vialidad.gob.ar/wp-content/uploads/2017/11/PROYECTO-3.pdf>

⁸¹ <https://www.argentina.gob.ar/noticias/programas-de-asociacion-publico-privada-para-hacer-mas-viviendas-en-chaco>

⁸² <https://www.argentina.gob.ar/asociacion-publico-privada/programa-de-ppp-en-agua-potable-y-saneamiento>

⁸³ <https://farn.org.ar/wp-content/uploads/2018/03/Las-Asociaciones-público-privadas-en-Argentina.pdf>

⁸⁴ <https://www.eurodad.org/files/pdf/5b66f9071ddec.pdf>

⁸⁵ “Le pusimos la pelota delante del arco al sector”. Entrevista al Subsecretario de Vivienda de la Nación, Iván Kerr, en el diario La Nación. 1ero de julio de 2017. Disponible en: <https://www.lanacion.com.ar/2038542-ivan-kerr-le-pusimos-la-pelota-delante-del-arco-al-sector>

⁸⁶ A. Rodríguez y A. Sugranyes (comps.), Los con techo. Un desafío para la política de vivienda social, Santiago de Chile, Ediciones SUR, 2005; y M. Cohen y otros (comps.), Hábitat en deuda. Veinte años de políticas urbanas en América Latina, Buenos Aires, The New School University, Café de las Ciudades, 2016

⁸⁷ Ver párrafo 50 del informe, disponible en: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/009/61/PDF/G1700961.pdf?OpenElement>

⁸⁸ Argentine real estate market has been informally dollarized since mid 70s, approximately.

the Purchasing Power Unit was created, two years ago, the increase has been 68%⁸⁹. In a context where the agreements on salary adjustment have lagged behind inflation, this criteria for indexation has proved to be very harmful for the salaried middle class. This has had an impact on the demand of mortgage loans, which significantly decreased. The amount of loans granted by Purchasing Power Units had a 60% decrease between March and June 2018⁹⁰. In the case of the City of Buenos Aires, mortgage loan deeds dropped by 52.7% in June 2018 compared to May and 25% interannually, according to the Notary's Association of the City of Buenos Aires⁹¹.

Evictions in urban areas⁹²

In Argentina there are extremely violent forced evictions with no minimum guarantee and without considering alternative housing solutions. Frequently, eviction orders are issued without having the chance to previously negotiate or without giving the victims the opportunity to defend themselves. Judges tend to take no part in the enforcement of judgements: court decisions do not include measures to guarantee a process in accordance with law and judges are not present during evictions. In the past year and a half, there have been, at least, 44 known cases of forced eviction in different provinces across the country⁹³, according to informal records from civil society organizations. However, the lack of official information in this sense, prevents from measuring the real dimension of the problem. Besides, this makes it difficult to design adequate public policies to address the issue.

At judicial level, there is still a lack of action protocols of provincial and national security forces based on standards established by international human rights legislation, which consider spaces for political control before, during and after proceedings. No progress has been observed in relation to the last concluding observations of the committee urging the Argentine government to adopt measures to guarantee housing alternatives for evicted families⁹⁴.

The ruling party presented a bill on Social Urban Integration and Land-title Regularization proposing the suspension of evictions for a period of four years (see chart), among other measures. If the bill is approved, this measure will undoubtedly draw a clear line to the procedures of forced evictions and, therefore, there will be significantly better conditions of predictability for those living in informal settlements. However, the government must adopt the necessary measures to transform the situation in structural terms. Among other measures, this involves moving forward and building a legal framework to govern eviction procedures specifically and according to international standards of human rights.

SUGGESTED QUESTIONS

- How can an increase in housing deficit be avoided, considering the decline of public investment on housing and basic service infrastructure?
- Which mechanisms will be put in place to guarantee the coordination between the three entities in charge of implementing the Fair Access to Habitat law within the Province of Buenos Aires? Which actions are planned to promote its implementation by local governments?

⁸⁹Para más información ver: http://www.bcr.gov.ar/publicacionesestadisticas/Principales_variables_datos.asp

⁹⁰ Ver: <https://www.lanacion.com.ar/2152442-cayo-60-el-otorgamiento-de-creditos-uva-desde-que-se-acelero-la-devaluacion>

⁹¹ Ver: <https://www.colegio-escribanos.org.ar/index.php/category/estadisticas-de-escrituras/>

⁹² Esta sección fue elaborada en conjunto con TECHO

⁹³ Eight cases of eviction in the Province of Córdoba; twelve in the Province of Buenos Aires; one in the City of Buenos Aires; four in the Province of Río Negro; three in the Province of Santa Fe; six in the Province of Mendoza; two in the Province of Santiago del Estero; six in Misiones; one in Corrientes; one in Formosa; two in Entre Ríos; one in San Luis and one in Chaco.

⁹⁴ En sus Observaciones finales de 2011, el Comité instó al Estado argentino "a que adopte medidas específicas, legislativas o de otro tipo, para que las personas que han sido víctimas de desalojos forzados puedan obtener alojamiento alternativo o una indemnización justa y equitativa de acuerdo con lo establecido en la Observación general N° 7 1997), relativa a los desalojos forzados". (apartado 21, pf. 2°)

- Which policies are planned to counter the negative impact of speculation practices in real estate market, on the effective fulfilment of the right to housing? Which policies will be implemented to guarantee an offer of adequate land for middle and low-income sectors in the urban areas?
- Which evaluations have been made to show that fiscal cost and long-term return of Public-Private Partnerships is less than the direct cost of direct public investment?
- When and how will control and transparency mechanisms of PPPs will be regulated within the framework of the new plan for the sector?
- Which decision will the Argentine government take regarding the companies that are already part of PPPs agreements (in the roadway system) and that are currently under investigation for bribery?

PROPOSED RECOMMENDATIONS

- Publish official figures regarding housing construction within the framework of programs promoted by government, disaggregated by province, from 2015 onwards.
- Publish information on housing construction within the framework of provincial programs, from 2015 onwards.
- Review securitization mechanisms of PPPs in the light of the risks entailing for future public budgets.
- Urgently regulate transparency and accountability mechanisms within the framework of the new system of PPPs.
- Ensure that PPPs carry out gender and environmental impact assessment, previously to investment implementation.
- Create a registry to centralize information on the eviction proceedings at federal level and invite provinces to join and contribute with information regarding evictions taking place at provincial level.
- Approve a national action protocol for federal security forces, based on international standards, in eviction cases.
- Create dispute resolution stages in court between the parties in conflict, the Judiciary and the provincial and local Executive so as to find alternative solutions to eviction and/or guarantee the right to housing for the victims of eviction.

Institutional violence in demonstrations to defend ESCR and in land conflicts

Despite government's response to question 2 of the list, since the beginning of 2016, the government has taken decisions and issued clear intimidating messages towards people involved in demonstrations and other forms of social conflict, in a context where social unrest has been escalating in the face of regressive social and economic measures. Many actions of the Judiciary, either at federal or provincial level, have been also in line with this abusive policy that, as a result, limits the exercise of the right to protest. Provincial or local governments also resorted to intimidation, repression and criminalization as a form of solving social conflicts. The following incidents can be highlighted:

- Criminalization of leader Milagro Sala and her group "Organización Barrial Túpac Amaru" [Túpac Amaru Neighborhood Group] in the Province of Jujuy since the beginning of 2006 and until now.⁹⁵
- Recurring violent repression against workers from sugar refineries in the Province of Salta⁹⁶ and Jujuy.⁹⁷

⁹⁵ <https://www.pagina12.com.ar/130013-un-juicio-con-pocas-garantias>

⁹⁶ <https://www.pagina12.com.ar/94786-reprimen-a-trabajadores-de-un-ingenio-en-salta>

⁹⁷ <https://www.tiempoar.com.ar/nota/represion-en-jujuy-la-policia-embistio-con-gases-y-balas-de-goma-a-trabajadores-del-ingenio-la-esperanza>

- Teachers who tried to establish a mobile school in the square opposite the National Congress, in the City of Buenos Aires, were violently kicked out.⁹⁸
- Repeated violent repressive acts by the police against Wichi indigenous people claiming land in the Provinces of Chaco and Formosa.⁹⁹
- Serious repressive acts against different mapuche communities claiming land in the Provinces of Chubut, Río Negro and Neuquén.¹⁰⁰
- Repression and detention of fifteen women and five men after the mobilization on occasion of the International Women’s Strike, on March 8, 2017 in the City of Buenos Aires.¹⁰¹
- Repression against a group of social movement demonstrators in front of the Ministry of Social Development, in the city of Buenos Aires, on June 28, 2017.¹⁰²
- Violent police repression and detention of dozens of demonstrators in mobilizations against the pension reform, in the City of Buenos Aires, on December 14 and 18, 2017.¹⁰³
- Violent eviction in settlements in the locality of Juárez Celman, Province of Córdoba, on June 1st. 2018.¹⁰⁴
- Repression against Rio Santiago shipyard workers, in La Plata, on August 21, 2018.¹⁰⁵

Some of the main characteristics of this violent state response are: irrational use of police force in violent and disproportionate operations; other irregular or illegal police practices, including hustling and beating demonstrators and detainees; lack of judicial control on judiciary acts; prosecution of demonstrators; the arbitrary and unprecedented use of serious grades of crimes; and the creation of “terrorist acts” to justify violent responses to land disputes. Added to this is the lack of dispute resolution tools to negotiate claims and the nature of protest.

The police repression witnessed during the past months showed the irrational and illegal use of force. In most cases it was a disproportionate use of the so-called “less-lethal weapons” mainly rubber bullets and chemical irritants. Demonstrators and passers-by were injured in the face by the impact of rubber bullets, which means police shot directly to the body and head, supposedly to disperse them. Security forces used chemicals irritants such as tear gas in an unjustified and abusive way. On some occasions, such as the mobilization against the pension reform, on December 18, 2017, the fact that demonstrators threw stones was used as an excuse to attack and disperse dozens and thousands of demonstrators.

The standard that dictates that police participation in social conflicts should not involve lethal arms was violated on different occasions. Undoubtedly, the most serious violation was during the operations following the eviction of the mapuche community Lafken Winkul Mapu, in Mascardi Lake, Province of Río Negro, in November 2017. The Ministry of Defense ordered the deployment of tactical teams resulting in the death of Rafael Nahuel, a young member of the mapuche community.

At the same time, on different occasions, they made illegal use of physical force: beating and kicking, verbal offenses, insults, and threats against arrested persons. Police equipment such as motorbikes, which are not weapons, were used to harm demonstrators, running over their bodies.

⁹⁸ <https://www.diariopopular.com.ar/politica/violento-desalojo-docentes-que-instalaban-una-escuela-itinerante-n306060>

⁹⁹ <http://www.eldisenso.com/politica/represion-formosa-ninos-wichis-baleados-la-policia/>

¹⁰⁰ <http://www.perfil.com/noticias/sociedad/chubut-dos-heridos-graves-en-la-comunidad-mapuche.phtml>, <https://notasperiodismopopular.com.ar/2018/07/19/denuncian-represion-comunidad-mapuche-bariloche/>, <http://www.infonews.com/nota/310559/otra-represion-contra-la-nacion-mapuche>

¹⁰¹ <https://www.lanacion.com.ar/1991570-denuncian-que-las-detenciones-en-la-marcha-de-mujeres-fueron-arbitrarias>

¹⁰² <http://www.perfil.com/noticias/politica/asi-fue-la-represion-a-los-manifestantes-en-la-avenida-9-de-julio.phtml>

¹⁰³ <https://www.cronista.com/economiapolitica/Protesta-y-represion-Imagenes-de-una-jornada-violenta-20171214-0096.html>, <https://www.pagina12.com.ar/82579-palos-perros-y-gas-pimienta>, <https://www.tiempoar.com.ar/nota/las-imagenes-de-la-represion>

¹⁰⁴ <https://latinta.com.ar/2018/06/desalojo-juarez-celman-destrozando-viviendas/>

¹⁰⁵ <https://www.minutouno.com/notas/3085021-violenta-represion-trabajadores-del-astillero-rio-santiago>

Apart from the irrational use of force, other irregularities were observed in different police interventions. So-called police chases were repeatedly observed. In these chases, instead of running after demonstrators -and other civilians- to disperse them or lift roadblocks, police did this to arrest, intimidate and discipline. These arrests are frequently “haphazardly” and arbitrary. Chases are observed, in general, when protesters have already dispersed, and people are on their own or in small groups, that is to say, when they are most vulnerable to police actions and there are less or no witnesses. Police reports always claim disorderly conduct or disrespect of authorities by detainees but no evidence is furnished. In Chubut, gendarmes were involved in an even more violent chase, entering a premise while running after a mapuche group that had been blocking roads. Although the roadblock had been lifted and arguing that they were throwing stones, more than fifty army gendarmes entered the premise and chased community members, shooting rubber bullets and throwing stones. Santiago Maldonado was killed in this operation, while trying to escape.

Another point of concern is that police officers recurrently carry no identification. In the City of Buenos Aires, the public security law passed in 2016 establishes that “police officers acting in public demonstrations should carry, with no fail, a clear and easily visible identification in their corresponding uniforms”¹⁰⁶. This irregular practice was also observed in the Province of Buenos Aires during the repression against Rio Santiago shipyard workers, in La Plata, on August 21, 2018.

In addition to the violent and arbitrary actions of security forces in demonstrations, we observe the judicial interventions that criminalize and intimidate demonstrators. During 2016, 2017 and 2018, there were increased criminal and misdemeanor prosecutions of organizations, militants and activists for acts or situations related to the exercise of human rights: there were frequent arrests, multiple denunciations, reopening of forgotten court cases or pursuing charges to final judgment, penalties and shutting down of unions and social organizations. One of the abusive practices against demonstrators observed during 2017 in the City of Buenos Aires was to isolate detainees in police departments, up to 72 hours (3 days) with judicial authorization. With the same purpose of intimidating messages against protesters, a judicial strategy is observed, responding to political instructions, whereby all detainees are accused of “public intimidation”. The use of this criminal charge is new among the criminalization practices against demonstrations. It is a federal crime.

Finally, the violent way in which national and provincial governments address land conflicts involving mapuche communities, must be pointed out. In different public presentations and documents during the past years, the national government has linked terrorist activities to different mapuche groups that have been claiming access, for years, to lands that are in private or state hands in Patagonia. An internal document of the Ministry of Security states that mapuche groups “intend to impose ideas by the use of force” and, therefore, their actions, “territory misappropriations, arson, damages, threats”, would constitute federal crimes¹⁰⁷. In this line, based on information of dubious origin, the government came up with the existence of an organization called RAM (“Resistencia Ancestral Mapuche”) [Mapuche Ancestral Resistance], with violent practices and associated with armed organizations across the world, whose objective would be to “impose an autonomous and mapuche republic in the middle of Argentina”¹⁰⁸. In December 2017 a document was presented on the so-called organization that has been charged with different crimes, from painting graffiti to homicides, although there is no concluding evidence that relates them to those isolated actions. There is an array of pictures of demonstrators and materials taken from houses through search warrants, such as saws and other carpentry tools and some old weapons commonly used in rural areas¹⁰⁹.

Even though there is no certainty on structure, dimension and skills of this organization (if it truly exists), the Ministry of Security does not hesitate to label different mapuche communities in land

¹⁰⁶ Ley 5688 art. 100.

¹⁰⁷ “Resultados de gestión – Ministerio de Seguridad de la Nación”, 30 de agosto de 2016

¹⁰⁸ <http://www.perfil.com/politica/bullrich-no-permitiremos-que-impongan-una-republica-autonoma-mapuche-.phtml>

¹⁰⁹ “R.A.M. Informe conjunto realizado entre el Ministerio de Seguridad de la Nación y los Gobiernos de las Provincias de Río Negro, Neuquén y Chubut”, diciembre de 2017.

conflicts, as “RAM”. Police reports drafted by security forces in the operations ending with the death of Santiago Maldonado and Rafael Nahuel, label Pu Lof and Lafken Winkul Mapu communities as RAM. This generalization, without having any evidence, prompts the violent approach to social conflicts, arguing that those groups are dangerous. This seems evident in the case of the operation in Lake Mascaradi, with the killing of Rafael Nahuel: the deployment of a Navy tactical group was ordered to control the area due to the supposed dangerous nature of this group and, as a consequence of a supposed clash, one victim was killed from behind. Likewise, the operation where Santiago Maldonado died, was disproportionate, because more than 120 gendarmes were deployed to chase eight demonstrators.

SUGGESTED QUESTIONS

- What is the federal government doing to incorporate into national and provincial legislation, law enforcement criteria in demonstrations included in Resolution 210/11 of the Ministry of Security?
- What measures are federal and provincial governments taking to avoid the presence of unidentified police officers in public demonstrations, which has been recurrently happening during the past two years?
- Which measures is the federal government taking to address with no violence, the demands of access to land presented by mapuche communities in Patagonia?

PROPOSED RECOMMENDATIONS

- National and provincial governments should incorporate into their legislation and protocols governing the action of police officers in public demonstrations, the standards and criteria included in the annex of Resolution 210/11 of the Ministry of Security, under the name of “Minimum criteria for the development of law enforcement protocols of Police Squads and Federal Security Forces in public demonstrations”.

Other institutional issues.

Ombudsman Vacancy

Despite the recommendation of the Committee in the 2011 Concluding Observations¹¹⁰, the Ombudsman position has been vacant since 2009. In 2016, the Supreme Court of Justice warned Congress on the need to fill this position¹¹¹ and the ruling of the National Chamber of Appeals of Administrative Matters, within the framework of a writ of protection presented by different civil society organizations, urged both Congress chambers to start the appointment process under law 24.284¹¹². In 2017, a group of organizations submitted a document to the bicameral committee of the Ombudsman Office¹¹³, with recommendations based on international and national standards on the appointment of public servants, with the purpose of having an open, transparent, participatory procedure that promotes a rich debate for the appointment of the Ombudsman. The bicameral commission decided to submit the candidacies of Humberto Roggero, Jorge Sarghini and Alejandro Amor, without using a participatory process involving civil society organizations and individuals and without explaining on which grounds and merits these three candidates were selected.¹¹⁴ In view of

¹¹⁰ Ver Párrafo 7 de las Observaciones Finales para Argentina de 2011: “El Comité recomienda al Estado parte que considere la posibilidad de modificar los procedimientos de nombramiento del Defensor del Pueblo para poder cubrir ese puesto ahora y evitar en el futuro demoras en ese proceso.”

¹¹¹ CSJN, “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. Sentencia del 18 de agosto de 2016.

¹¹² Cámara Nacional de Apelaciones en lo Contencioso y Administrativo, “Asociación por los Derechos Civiles y otros c/ EN - Honorable Cámara de Senadores de la Nación y otros/ Amparo Ley 16.986”, Causa N° 1774/2015, sentencia del 18 de agosto de 2016.

¹¹³ Ver: <http://acij.org.ar/comunicado-de-las-organizaciones-de-la-sociedad-civil-sobre-el-proceso-de-seleccion-del-defensor-del-pueblo/>

¹¹⁴ Un grupo de organizaciones manifestamos manifestaron su preocupación ante organismos internacionales tales como la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos (ACNUDH) y el Comité Internacional de

the pressure exerted by organizations, as well as the lack of consensus in the Legislative Power, the three candidates proposed failed to succeed and the debate was postponed. During 2018, Congress did not appoint the bicameral commission in charge of the selection of candidates and no candidacies were presented.

SUGGESTED QUESTIONS

- Which measures has the State adopted to improve appointment procedures, securing transparency and social participation, apart from the application of criteria that ensures the election of the right candidate or with a proven human rights track record?
- Which measures has the State adopted to create the permanent bicameral commission for the Ombudsman Office?
- Which measures did the State adopt to put in practice the mechanism to appoint the Ombudsman?
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PROPOSED RECOMMENDATIONS

- Put in practice the mechanism to appoint the Ombudsman, urging the selection of a suitable candidate, through an open and participatory procedure.

Restriction of vulnerable sector's access to justice: regressive proposal of a law of Collective Action Procedures

The Ministry of Justice and Human Rights prepared a draft bill of a law of Collective Action Procedures that would seriously restrict the use, scope and effectiveness of collective actions, if approved.¹¹⁵ More than 40 civil society organizations expressed concerned about the existence of a draft bill¹¹⁶ and claim a serious lack of participation and transparency in drafting this bill as well as an unconstitutional content. The drafting process of this bill developed without the participation of civil society organizations that usually use the collective actions enshrined in the national constitution, to guarantee rights such as life, health, education, equality and non-discrimination, environment, rights of users and consumers, among others.¹¹⁷

SUGGESTED QUESTIONS

- Have you considered reviewing the bill of Collective Action Procedures created within the framework of the Justice 2020 Program of the Ministry of Justice and Human Rights?

PROPOSED RECOMMENDATIONS

- Review the bill of Collective Action Procedures through an adequate and non/regressive lens in terms of access to justice and human rights guarantees, engaging civil society organizations with experience in organizing collective processes.

Coordinación de las Instituciones Nacionales de Derechos Humanos#, y denunciaron que el procedimiento de designación desconoce los “Principios relativos al estatuto de las instituciones nacionales” (Principios de París), que representan las normas internacionales mínimas para el establecimiento de las Instituciones Nacionales de Derechos Humanos (INDH), así como las Observaciones Generales del Subcomité de Acreditación. Vease en <https://acij.org.ar/poder-ciudadano-y-acij-reclamaron-a-la-onu-por-el-proceso-de-designacion-del-defensor-del-pueblo-de-la-nacion/>

¹¹⁵ Los documentos de esta iniciativa se encuentran disponibles en:

<https://www.justicia2020.gob.ar/eje-civil/ley-procesos-colectivos/>

¹¹⁶ Ver: <http://acij.org.ar/fuerte-rechazo-al-anteproyecto-de-ley-de-procesos-colectivos/>

¹¹⁷ Algunos de los casos en los que las acciones colectivas han sido claves para garantizar derechos fueron: “Benghalensis” que ordenó garantizar el derecho a acceder a tratamiento y medicamentos para personas con VIH, “Mendoza” que ordenó reparar la contaminación del Riachuelo, “Verbitsky” sobre el derecho a condiciones dignas en las cárceles en la provincia de Buenos Aires, “Unión de Usuarios y Consumidores c/TBA” que protegió el derecho a no sufrir discriminación de las personas usuarias de la línea de ferrocarril Sarmiento, “Fundación Mujeres en Igualdad c/Freddo” que protegió el derecho de las mujeres a no sufrir discriminación por las empresas, “Castillo” que ordenó respetar el derecho a educación laica en Salta, “Cepis” que resolvió la nulidad de aumento de tarifas de gas establecido sin audiencia pública.