

Pandemic and fundamental right to housing: new criteria for adequate housing in the face of COVID-19 challenges in Brazil (2020-2022)

Pandemia e direito fundamental à moradia: novos critérios para uma moradia adequada diante dos desafios da COVID-19 no Brasil (2020-2022)

DOI: 10.55905/oelv21n6-100

Recebimento dos originais: 23/05/2023

Aceitação para publicação: 27/06/2023

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ABSTRACT

The pandemic problem brought with it a new social reality in the moral realm as well as in the habits that people engage in daily, which has irreversibly altered the way people live. In light of this, the goal of this research is to look into the fundamental right to housing, as well as the right to adequate housing, as outlined in the International Covenant on Economic and Social Rights (ICESCR), in the context of changes in people's daily routines brought about by the COVID-19 pandemic in terms of whether or not the environment is habitable. As a result, it explores whether the COVID-19 pandemic influenced the purchasing of houses with a larger number of rooms, given that families began to utilize the home more regularly. It specifically asks if the habitability parameter was changed to satisfy the new requirements that occurred because of the epidemic. To obtain an answer to this question, we will investigate whether or not there has been an increase in the desire for or acquisition of larger homes since the outbreak began. This is because a large percentage of the population is forced to work and study from home. Bibliographic research and data collection are carried out within the framework of the hypothetical-deductive methodology, using information obtained from the website of SECOVI-SSP (Union of Real Estate Purchase and Sale Companies) in relation to the cities of Campinas and Bauru from 2011 to 2022. It has been noted that the pandemic

scenario has prompted people's daily lives to become an experience of social containment procedures with the goal of decreasing viral propagation. Despite this, there were no significant changes in the consumption model of new residences in the municipalities of Campinas and Bauru, even during the zenith of the COVID-19 pandemic.

Keywords: pandemic, COVID-19, fundamental right to housing, habitability.

RESUMO

A pandemia causada pela COVID-19 criou uma nova realidade social no domínio moral, bem como nos hábitos que as pessoas adotam diariamente, o que mudou irreversivelmente a forma como as pessoas vivem. Diante disso, o objetivo desta pesquisa é analisar o direito fundamental à moradia, bem como o direito à moradia adequada, conforme descrito no Pacto Internacional de Direitos Econômicos e Sociais (PIDESC), no contexto das mudanças na vida cotidiana das pessoas causadas pela pandemia de COVID-19 em termos de habitabilidade. Como resultado, está sendo explorado se a epidemia de COVID-19 influenciou a aquisição de edifícios imobiliários de maior porte. Como a casa passou a ser mais utilizada pelas famílias, surge a questão de saber se o parâmetro de habitabilidade foi alterado para se adequar às novas exigências da pandemia. Para dar uma resposta a essa pergunta, analisamos se houve um aumento na demanda ou aquisições de casas com mais quartos após o início do surto. Como uma parcela considerável da população é obrigada a trabalhar e/ou frequentar a escola em suas próprias casas, isso foi feito. Utilizando a técnica hipotético-dedutiva, realizamos pesquisa em bibliografias e coletamos dados do site da SECOVI-SSP (União das Empresas de Compra e Venda de Imóveis) para as cidades de Campinas e Bauru no período de 2011 a 2022. As pessoas acreditam que o cenário pandêmico transformou a vida das pessoas comuns em uma experiência de medidas de contenção social para evitar que o vírus se espalhe ainda mais. Apesar disso, não houve mudanças significativas no modelo de consumo de novas residências nos municípios de Campinas e Bauru, mesmo durante o auge da pandemia da Covid-19. Covid-19. O direito à moradia digna é básico.

Palavras-chave: pandemia, COVID-19, direito fundamental à moradia, habitabilidade.

1 INTRODUCTIONS

Since the 31st of December in the year 2019, the world has been fighting an unseen opponent known as the new coronavirus. In light of this, officials from many countries throughout the world have begun to devise methods for battling and preventing the recently formed epidemic. Individual movement, for example, was restricted, and care protocols were created in health units to treat the disease. This was done to prevent the infection from spreading.



The SARS-CoV-2 virus has the potential to cause acute respiratory syndrome, which can lead to hospitalization or death. After the pandemic, every area of social life had to be reconsidered, bringing to light the principal method of disease control used before to vaccines: social isolation. However, COVID-19 is not limited to respiratory issues in infected individuals; housing and housing, for example, have been the subject of questions in both the legal as well as the economic and social fields.

The pandemic caused by the new coronavirus has placed housing as the first line of defense against disease transmission. Furthermore, the epidemic has made structural differences in this aspect more visible and striking. Because of the limits placed by governments to prohibit individuals from moving, the question of where an individual can safeguard himself and his family is inextricably tied to the ideal of human dignity. Furthermore, in periods when the slogan "stay at home" is being pushed, this question has become tied to the wishes of everyone.

In this scenario, one's location of residence intersects with many other areas of their day-to-day existence, including employment, school, and spare time. It is also important to consider the freedom that exists within a space, which is likely what sparked individuals' desire to purchase homes with more room so that they can accommodate their families.

As a result, the purpose of this study is to propose an analysis of the fundamental right to housing and adequate housing based on the description in the International Covenant on Economic and Social Rights (ICESCR) in the context of changes brought about in the housing market. When new requirements emerge, the social classes who are in better economic form are more likely to explore for ways to meet those requirements in a timely and effective manner. It is thus speculated that, at least for these people, there was an increase in the demand for larger residences that included a space to study or work as well as a recreation area.

This way, information about apartments is used, which makes them easier to manage because they are larger structures with a greater location and public supervision. As a result, very few buildings can pass unnoticed via the state sieve, bringing us closer to the reality of the situation.

Another factor that contributed to the decision to go in this direction was the current high supply of available flats throughout the country, particularly in the Southeast and South. According to the Continuous National Household Sample Survey (PNAD Continua, 2019), there were 723.95 million households in Brazil. 31.519 million of such households were in the Southeast Region, 18,959 million in the Northeast Region, 10.946 million in the South Region, 5.561 million in the Midwest Region, and 5.410 million in the Northern Region. In the country, there were 59.6 million houses (or 86% of total households), whereas there were 9.5 million apartments (or 13.7% of total households). It is worth noting that both the Southeast and the South reported higher percentages of apartments than the national average: 18.5% and 14.8%, respectively. The current housing conditions in Brazil remain precarious, and groups often use invasions to have a place to live (FIGUEIREDO JÚNIOR). In the year 2022 1.6 billion “people globally were living in inadequate housing, of whom 1 billion were living in slums in highly deprived conditions.” (UN-Habitat Annual Report 2022).

The investigation was conducted using the hypothetical-deductive methodology, with a bibliographic review. The searches were carried out in the informational resources known as SciELO, Public Domain, and Google Scholar.

Another component of the data gathering process was searching for material online on the website of SECOVI-SP, the Union of Real Estate Purchase Companies of the State of So Paulo. This was done mostly in Campinas and Bauru because those were the cities with the most recent information from 2014.

A survey was done based on the information provided in the triannual periods in order to boost the percentage of sales of new flats. This was done in order to boost the quantity provided to the consumer market as well as the number of houses sold. The years 2011 to 2020 were spent collecting data from Campinas and Bauru.

After that, to input the data for 2021 and 2022, the survey was conducted through the Real Estate Market Yearbook, which provided clear information regarding the properties that were launched and sold throughout the year. This is done to limit the transmission of the infection. Despite this, there were no substantial modifications in the consumption model of new dwellings in the municipalities of Campinas and Bauru during



the COVID-19 epidemic. This implies that this indicator (the acquisition and sale of housing properties) is probably not the most appropriate tool to determine, at the material level, the change in the concept of adequate housing (habitability) in epidemic Brazil.

2 THE FUNDAMENTAL RIGHT TO HOUSING AND ADEQUATE HOUSING IN ACCORDANCE WITH THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS

It is important to note that the terms housing and housing are sometimes considered synonyms in the Brazilian legal system (SPCINNI and VIOLI, 2018). This should be emphasized in relation to the evolution of the concept of dwelling. Despite the traditional indistinguishability of the two, it is possible to distinguish between the right to housing and the right to housing. According to Souza (2004), those who use the sarenttion when citing one or the other when there is no mention of the right itself, or even when there is discussion of the legal consequences that each right entails, are not making an error because the rigorism of the adoption of the locution as a synonym has no relevance for practical effects. This is because employing the locution as a synonym has no practical implications.

According to Andrade (2016), there is no such thing as a dignified living without adequate housing, which is why the right of a citizen to a home is one of the most fundamental human rights. "The fundamental right to housing is a vital, biological, and indispensable human need for a dignified life" (ANDRADE, 2016: 145). According to this viewpoint, "the fundamental right to housing is a vital, biological, and indispensable human need for a dignified life."

According,

"it should be made abundantly clear that the preservation and exercise of the right to stay, to live, or to live is an essential component of both the right to housing as well as housing, in accordance with the objective of the law that defines them or the right that declares them" (SOUZA, 2004, p. 142);

There is a link between patrimonial concerns and the right to life and the right to housing. The right to housing is predicated on the guarantee of human dignity (SPINICCI

and VIOLIN, 2018, page 03). "But that exercises the enjoyment of the right to housing adequately and with decency, as occurs in the hypothesis provided for in Article 144 of the Brazilian CC." (SOUZA, 2004, p. 142).

It is obvious in the sense of Spinicci and Violin that housing is, therefore, a broader right than a basic dwelling. This is because housing is a basic human requirement. To put it another way, habitability is one of the components that identifies a house's sufficiency (though it is not the only one).

The Brazilian Constitution of 1988 was the document responsible for safeguarding social rights, specifically in Article 6 (FIGUEIREDO JUNIOR & CHAI, 2021). As a result, the right to housing was not officially recognized as a constitutional right until the year 2000, when Amendment No. 26 was ratified and placed in the same article as the preceding sentence. Because the International Covenant on Economic, Social, and Cultural Rights was enacted on July 6, 1992, it was incorporated into our legal system prior to the previously mentioned Constitutional Amendment (MASTRODI; ROSMANINHO, 2013). Because there is no other normative act that defines the term "adequate housing," its substance must include the components specified in the UN Special Rapporteurship (2020). Must stand out "the role of public spaces in enhancing community inclusion and cohesion, economic empowerment, climate change adaptation and resilience, politics engagement, as well as the health and wellbeing of urban dwellers" (UNITED NATIONS 2022).

As a result, it is not surprising that the word "adequate housing" has been introduced into the Brazilian legal system since 1992. The Committee thinks that a person's right to adequate housing encompasses the right to live in peace, security, and dignity, and that this right cannot be interpreted as just having a roof over one's head. According to Waldman and Sampaio (2019), page 78, housing serves two primary functions: protecting the being from external physical interferences and meeting the being's psychic needs.

It is a well-known fact that conceptual formulations of the right to housing have undergone significant changes over time. Despite the existence of other papers on the subject, Waldman and Sampaio (2019) claim that the ICESCR is the most comprehensive

and important of them all. This is due to the fact that Article 11 of the ICESCR created an obligation for the International Community, States, and, in fact, all human beings, to grant to any person the possibility of obtaining what is necessary for their development, particularly in the fields of food, shelter, and clothing. This is the reason for the situation. This requirement was established by Article 11 of the ICESCR.

Additionally, it enhances that parties would take adequate measures to ensure the fulfillment of this right, recognizing, in this context, the necessity of international collaboration based on free consent (Ministry of Human Rights, 2019, page 04). The idea of appropriate housing is mentioned in the first paragraph of Article 11 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR); nevertheless, the term "adequate" is not defined anywhere in the document, as Waldman and Sampaio (2019, page 69) note out.

In its General Comment No. 4, the Committee on Economic, Social, and Cultural Rights raises the concern that, despite the fact that the international community frequently reaffirms the significance of the right to adequate housing, there is still a worrying gulf between the norms described in Article 11, Paragraph 1, of the ICESCR and the prevailing situation in many regions of the world, including Brazil (Wadman and Sampaio, 2019, p. 66).

According to the committee's findings, the idea of appropriate housing is subject to several specifics that are dependent on the location of the planet. These particulars are distinct variables that must be considered when developing a strategy for what constitutes "adequate" housing. According to SPINICCI and VIOLIN (2018), the concept of housing has been exclusively associated with the concepts of property and domicile since its conception. Housing must continue to grow while conforming to a set of minimal criteria to give occupants with a sense of safety and meet their needs.

The right to housing includes the conditions of habitability provided by urban centers, and the inability to fully exercise this right imposes a very high cost on society (Andrade, 2016). Accordingly, it is possible to say that the right to housing also refers to the building, which means "having an adequate place to take refuge safely, adequate lighting and ventilation, basic infrastructure, and access to work at a moderate cost"



(Wadman). The substance of paragraph 60 of the United Nations Conference on Human Settlements report states that having appropriate housing entails more than just having a roof over one's head (SPICINNI and VIOLI, 2018).

It also includes:

[...] adequate privacy, adequate space, physical accessibility, adequate security, security of tenure, structural stability and durability, heating, adequate lighting, and ventilation; adequate basic infrastructure.

In the words of Waldman and Sampaio (2019), "the house is the place where he can live in peace with his neighbors, heal himself of diseases, have comfort and intimacy, and live in safety."

During the COVID-19 pandemic, staying at home became part of the World Health Organization's guidance to help stop the spread of the disease.

This epidemic has caused several repercussions, some of which include growing disparities in access to housing and in the condition of housing. As a result, it is critical to conduct additional research on what has changed in people's requirements in relation to where they live.

3 A REEVALUATION OF THE HOUSING SITUATION IN THE CONTEXT OF THE COVID-19 PANDEMIC

In light of the relative availability that involves the right to housing as a result of the historical moment in which each society lives, in the face of the COVID-19 pandemic, it is worth reflecting on the new needs. This is due to the relative availability of the right to housing as a result of each society's historical period. As a result, in the context of a pandemic and in the face of scientific uncertainties regarding therapy, the primary direction of governments and authorities for the prevention of virus spread is social isolation (AHLERT, 2021). Some cities suffered more incidence, such as "The uniqueness and severity of the COVID-19 pandemic has generated tremendous attention on how to improve the resilience of existing and future housing in the CoM (City of Miami)"



In other words, the scenario of the COVID-19 pandemic has transformed people's daily lives into an experience of social containment measures, as advocated in virtually all countries around the world, with the intention of reversing the virus's spread. Isolation from society was the most common method used before immunization became widely available. As a result, thousands of people's daily routines were severely changed. Home offices and home studies were required, generally in homes with limited ability to adapt to the pandemic setting and access to digital resources. This resulted in a significant increase in the amount of conflict that existed between the spaces that were used for living, working, and studying. Importantly, change is now constant "the uniqueness and severity of the COVID-19 pandemic has generated tremendous attention on how to improve the resilience of existing and future housing in the CoM (City of Miami)" (VELÁZQUEZ-DIAS, GOSAIN, GANAPATI &, ZHANG, 2022).

Therefore, it is essential to understand that, according to Costa (2019, p. 54), "richer groups have better housing, better medical care, more and better leisure, and higher life expectancies than groups that occupy a lower position in the socioeconomic structure." There may be a greater demand for larger houses at the moment. According to Souza (2004), the right to "housing" is rigorously recognized as one of the factors capable of providing not only dignity but also the health and safety of the individual and his family in a time when governments and health agencies prefer to stay at home. This is a time when governments and health organizations prefer to stay at home. Housing protection, according to Spinicci and Violin (2018), is linked to security protection, which involves the predictability of behaviors, the consistency of relationships, and the guarantee that one will receive from the law.

Housing is linked to the preservation of life in the context of the COVID-19 epidemic since it is the location where an individual engages in their leisure activities, job, business, and even studies. That is to say, as a direct result of the COVID-19 pandemic's constraints, families have begun to use their homes in unprecedented ways. As a result, in the setting of the epidemic, housing has developed into much more than just a place to sleep.



Agreeing to Souza (2013), page 30, "Now, for the citizen, it is worthy and necessary that it be the center of their activities, interests, and social and legal relations." This redesigned house must also provide conditions for leisure and study, so it must be comprised of a set of new components to be adequate. Following this understanding, Mastrodi and Rosmaninho (2013), the right to housing refers not only to the occupation of a place in space, but also to the conditions that make this space a good place to live. In other words, the right to housing relates to the conditions that make this space acceptable for habitation.

The Brazilian Constitution, according to NOLASCO (2008), specifies that everyone has the right to a residence for themselves and their families. This right is defined as "a physical space of adequate dimension in conditions of hygiene and comfort that preserves personal intimacy and family privacy." Weber (2013, page 199) calls attention to the new needs that have arisen as a result of the pandemic, in addition to the importance of conforming to this fundamental right, which concerns "not only a set of benefits sufficient only to ensure the existence (the guarantee of life) of humanity [...] but a life with dignity, in the sense of a healthy life." If housing was already recognized as an important human good and defended and established in significant documents, then after the pandemic it became even more essential because it was recognized as a place to ensure the preservation of health and life, particularly during the phases with high infection and mortality rates.

In this scenario, housing would acquire a new notion, as it already had one in the Italian Civil Code: "the place where the person habitually lives, settling the domicile in the place where it is established, being the main headquarters of its business and interests" (SOUZA, 2013, p. 33).

This is identical to the definition of "domicile" contained in the Italian Civil Code. However, adequate housing in times of pandemic has not been recognized as a right of every citizen in the Brazilian legal system, and, more importantly, those with better purchasing power will invest in houses and apartments with more rooms and free areas to meet the current needs in their place of domicile. This will be done to meet the Brazilian government's requirements.



An analysis of existing data on the commercial reality of real estate that was marketed before and during the pandemic in the municipalities of Campinas and Bauru, both in the State of So Paulo, was conducted to gain a better understanding of this pandemic moment in the real estate market in relation to a paradigm shift in the acquisition of these assets. But we have to take into account that "Values and value priorities are important predictive and explanatory factors in the decision-making processes of different stakeholders" (GOSAIN, ZHANG &, GANAPATI, 2022).

Understanding Real Estate Mobility During the COVID-19 Pandemic The issue of housing, which was previously reserved only for the need to protect families in their place of residence from external dangers, is now being analyzed, given the circumstances that were exposed, under a new perspective: the protection of the health of individuals who were advised to remain in their homes. But we must not forget that "the post-pandemic city will likely face two serious challenges – acute shortage of housing and high vacancy of commercial spaces" (UGWUONAH, 2022).

Since many people have the purchasing power to choose a new home with adequate space for new habits, which is essential to living with a minimum of health and well-being, data on the sale of new housing by the number of bedrooms is observed. These nuances are separate concerns that must be considered to construct appropriate housing. Research is required if one wishes to identify new conceptual and normative qualities relevant to housing. In the section of research and indexing, the information supplied in this work was taken from the websites of Secovi-SP, Sindicato da Habitação, Sindicato das Empresas de Compra, Venda, Locação, and Administração de Imóveis Residencial e Comerciais de So Paulo. Secovi-SP publishes the results of the Real Estate Market Survey (PMI) and the regular Residential Rental Survey in it on a regular basis.

The Real Estate Market Survey and the Real Estate Market Yearbook were used in this study. The research can be accessed in relation to a number of municipalities, including, but not limited to, Bauru, Campinas, Jundiai, Piracicaba, Ribeiro Preto, and Santos, in the order listed on the website. Campinas and Bauru were chosen because, in addition to being the first, they have complete data in the Real Estate Market Survey for



the years 2011 to 2020, as well as the years 2018 to 2022 in the Real Estate Market Yearbook. This was a big consideration in our decision.

The pandemic, particularly beginning in March 2020, when COVID-19 cases began to spread, as well as the initial implementation of social isolation policies in Brazil, will be highlighted. As a result of the survey, it was possible to perceive a significant increase in the supply of new apartments, with a prompt acquisition much greater than this, as the results of the most recent two triennial surveys indicated. In comparison to 10,131 (08/17 to 06/20) and 3,869 (07/17 to 12/19), a total of 12,433 (04/18 to 03/21) Campinas and 6,321 (07/18 to 06/21) Bauru were listed for sale during this time period. As a result, the number of brand-new flats available for purchase has increased significantly (SECOVISP, 2022).

It was discovered that the sale of flats with four bedrooms in the city of Campinas increased to 78.11% between the months of August 17 and June 20, from a previous figure of 62.20% between the months of August 15 and July 19. In addition to this, from the 18th of April to the 21st of March, it rose to 88.06 percent, which indicates that there was a practically exponential increase in the number of units sold that contained five or more bedrooms (SECOVISP, 2022).

The demand for apartments with four bedrooms has remained high in the municipality of Bauru, as indicated by the fact that buyers have purchased 87.5% of the flats that have been placed on the market in each of the most recent two triannual surveys (SECOVISP, 2022). It is also important to point out that in the city of Bauru, the sale of apartments with three bedrooms increased from 54.55% of the total (06/16 to 08/19) to 64.92% (01/17 to 12/19) and then rose to 91% in the lapse between 07/18 and 06/21, whereas in the city of Campinas, the rate remained stable without substantial changes (SECOVISP, 2022).

According to a study that was based on the Yearbook of the Real Estate Market, in the city of Bauru, in the months that spanned July 2018 to December 2022, there were no launched 4-bedroom flats; nevertheless, 38 units were sold in the first 12 months, and after 01 in 2020 and 04 in 2021, This was based on the findings of a survey that was conducted in the months that covered July 2018 to December 2022. Already in Campinas,



113 4-bedroom flats were released between August 2018 and July 2019, with 80 of those homes sold. Already in 2020, this figure nearly reverses because 80 units were launched, and 111 units were sold. However, the number of 4-bedroom apartments drops again in 2021, with 90 properties launched and 29 sold, and again in 2022, with 9 properties launched and 32 sold (SECOVISP, 2022).

Now, taking into account apartments with three bedrooms in the city of Bauru, the first 12 months (July 2018 to June 2019) and the final 12 months (January 2022 to December 2022) are the only periods in which there were more properties launched than sold; Similarly, in the case of apartments with two bedrooms, the situation was the same, particularly in the year 2021, when 282 apartments were introduced to the market while 885 apartments with two bedrooms were purchased (SECOVISP, 2022).

In the city of Campinas, it followed the same pattern when it came to apartments with three rooms: more properties were put on the market in the first 12 months (July 2018 to June 2019) and in the final 12 months (January 2022 to December 2022). These requirements pertain to both material and moral goods. This is even clearer now, in the midst of the COVID-19 epidemic, with the development of protection measures for health, leisure, and the workplace. Despite this, it is abundantly clear from the facts that have been presented thus far that there have been no shifts in the behavior of families in the examined localities in terms of real estate consumption.

That is, despite all the new requirements imposed by COVID-19, the population with the financial capability to acquire flats has not demonstrated an effective change in their stance regarding the acquisition of real estate for their home.

4 FINAL CONSIDERATIONS

The right to housing is indispensable to the realization of the human dignity principle and the highest possible quality of life. In the event of a pandemic caused by the COVID-19 virus, the standards for suitable housing have undergone substantial changes. Individuals who were permitted or required to conduct their professional activities and academic pursuits in the manner of a home office have been particularly affected by these changes.



Due to the aforementioned factors, it is possible to demonstrate that the right to housing has evolved or mutated in response to the newly imposed conditions. Due to the demands associated with working and studying at home, it is now necessary for the population to reside in larger homes that are in better condition for habitation. However, the data collected in relation to the municipalities of Campinas and Bauru, particularly during a portion of the COVID-19 pandemic, revealed that there were no significant changes in the consumption model of apartments for families in relation to larger dwellings.

Even though the pandemic afflicted both of these cities, this was the case. Despite the demands that surfaced during the pandemic, this situation was not necessarily reflected in the actual purchase and sale of real estate during the examined time period. Given the economic effects of the pandemic, there are several factors beyond the scope of the proposed investigation, such as the loss of purchasing power of enormous segments of the middle class during the pandemic.

This, however, does not undermine the elasticity of the concept of "demand." This suggests that the answer may not lie precisely in the pattern of buying and selling housing properties; in other words, the purchase and sale of real estate is not the best parameter indicated to measure the modification of habitability in the COVID-19 pandemic; rather, it should be observed how people, within the material means they had, have adapted their routines and homes to the challenge.

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