

SOUTH CENTRE CONFERENCE

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I would like to thank the South Centre, and in particular Martin Khor, for inviting me as a panelist to this Conference, but mainly for always being supportive to South development.

As most of you already know, for Argentina the issue of the consequences of foreign debt, and in particular of vulture funds, is of high importance.

1. CONTEXT / BACKGROUND

The study of the negative impact of vulture funds on the full enjoyment of all human rights must be framed within a broader analysis of the restructuring debt implications for the States that have to deal with these processes and correlated international financial obligations.

The issue of foreign debt has been on the agenda of various United Nations human rights bodies for more than two decades. Since the 1990s, the Committee on Social, Economic and Cultural Rights has been concerned about "the adverse impact of the debt burden and the relevant adjustment measures on the enjoyment of economic, social and cultural rights in many countries".

The Commission on Human Rights and, subsequently, the Human Rights Council, have, in a number of resolutions and decisions, adverted to the challenges that excessive foreign debt burdens and economic reform policies pose for the realization of human rights. Moreover, the HRC endorsed the Guiding principles on foreign debt and human rights by Resolution 20/10.

Also, the concluding observations of various treaty bodies on country reports submitted to them, also indicate that high external debt burdens and dependency on

foreign assistance can constitute obstacles to efforts by States parties to comply with their human rights treaty obligations.

In this context, as indicated by the United Nations Independent Expert on the effects of foreign debt and human rights, Juan Pablo Bohoslavsky, international law applicable to sovereign debt restructuring is still in its infant stage. Although some international rules and principles are emerging and are being consolidated, further normative developments are needed.

On the other hand, in recent years the type of actors involved in sovereign debt restructuring has changed, since the number and importance of private creditors have increased significantly. According to UN figures on developing and transition economies, "long-term debt represented approximately 72% of total debt stocks in 2013, and was mainly owed to private creditors. This situation gives immeasurable power to private creditors, specially vulture funds.

In 2010 there were already more than 50 claims by vulture funds against highly indebted countries, and many of them are still pending. According to the World Bank and the IMF, 54 court cases were instituted against 12 Heavily Indebted Poor Countries (HIPC) between 1998 and 2008. The Report of the former Independent Expert studies, in particular, the cases of Liberia, Democratic Republic of Congo and Zambia.

Commercial creditor litigation is not confined to Heavily Indebted Countries: according to a study by the Trade Association for the Emerging Markets (EMTA), at least nine non- Heavily Indebted Countries have been the subject of such litigation (Argentina, Brazil, Bulgaria, Costa Rica, Ecuador, Panama, Paraguay, Peru and Poland).

2. THE CASE OF ARGENTINA

2.1. CONTEXT

Much of Argentina's current debt was incurred during the dictatorship from 1976 to 1983. Neoliberal economic policies introduced during this period led to significant economic and social problems, including massive capital flight and unemployment

estimated at 18 per cent at the end of the military regime in 1983. Between 1975 and 1980, the debt increased from 13.2% to 32.4% of GDP. A devaluation of the peso in 1981 caused the foreign debt to reach a peak of almost 60% of GDP in 1982.

The "Convertibility Plan" introduced in the 1990s deepened these negative trends: from 1989 to 1999, the debt increased by 123% while interest payments rose by 253%, creating the context that would have led to the 2001 crisis.

As stated in the report of former the Independent Expert on foreign debt and human rights on his visit to Argentina, the debt crisis of 2001 is attributable to a number of factors, including questionable lending and policy advice by the International Monetary Fund (IMF), a global recession and reckless lending by the international credit markets. Structural reforms such as deregulation, trade liberalization and privatization of State-owned enterprises made Argentina extremely vulnerable to external shocks, prompting an overvalued exchange rate, producing jobless growth and raising external and fiscal deficits that ultimately led to unsustainable debt levels.

The 2001's crisis has had a series of economic, political and social consequences for Argentina. GDP shrank in the period from 1998 to 2002 by 18,4%. According to the World Bank, 53% of the population lived in poverty and 24.8% faced extreme poverty. The public health system collapsed, with hospitals suffering a serious shortage of basic supplies and prices of medicines soaring.

2.2. DEBT RESTRUCTURING AND THE ACTION OF VULTURE FUNDS

As a result of the events caused by the crisis of 2001 and the deferral of the debt payment, Argentina carried out two successful restructurings with private creditors – in 2005 and in 2010 - with the purpose of allowing the State to resume its debt service and, at the same time, to comply with its international obligations in the field of human rights, guaranteeing, thereby, growth and development of its economy with social inclusion.

Indeed, in 2005 Argentina made a unilateral offer and the 76% of all bondholders accepted this offer. In 2010, Argentine reopened a debt restructuring offer.

As a result of both processes of debt restructurings in 2005 and 2010, Argentina reached an agreement with almost 92,4% of its creditors, who have been paid in timely fashion since the bond swap agreements were reached. As a consequence of the implemented measures, Argentina successfully reduced its public debt from 166,5 % of GDP by settling with the majority of creditors for a repayment of 30% of its sovereign debt.

This has enabled the Argentinean Government to significantly increase its social spending, including on education, health and social security, which increased from 7.3% of GDP in 2003 to 13.4% of GDP in 2013. Overall social spending (by the national, provincial and municipal governments) rose to around 22.5% of GDP by 2009.

The restructurings processes were performed in good faith and are the product of arduous and complex negotiations which ultimately concluded with a mutually satisfactory agreement for the parties involved. However, a tiny group of creditors refused to renegotiate its debts to litigate against the Republic by the total of the amount owed, giving rise to the conflict which currently faces Argentina with vulture funds.

As you all know, Argentina has been facing litigation in United States courts by a group of vulture funds. In particular NML Capital Limited, a subsidiary of the United States –based investment firm Elliot Capital Management. After failed legal efforts to seize Argentinean assets directly, the holdout bondholders took out lawsuits based on the *pari passu* or equal treatment clause in bond contracts, which would deny any future payments on restructured bonds until payment in full to holdout bondholders took place.

It should be noted that the vulture funds were not the original lenders to Argentina, since they purchased most of the debt that they are claiming at a significant discount in the aftermath of the default.

The interpretation given by US courts, who interpreted the standard *pari passu* clause as forbidding Argentina from making payments on its restructured debt, without paying at the same time the bondholders who did not accept the terms of the 2005 and 2010 agreements, diverges from the meaning that has been given to

these clauses for decades and endangers the agreements States reach with creditors in debt restructuring negotiations. This can trigger serious consequences to Argentina and pose difficulties for debt restructurings for others countries in the future.

The decision essentially reinforces the notion among creditors that refusing to participate in sovereign debt restructurings and suing for recovery of the full face value of the debt plus interest is an appropriate avenue to follow. In the Independent Expert's opinion, such a decision will undermine the ability of countries facing similar difficulties to restructure their debt in an orderly, timely, fair and efficient fashion.

On the other hand, if Argentina had to implement the Judge Griesa's rule to the holdouts only, this would entail obligations by USD 15 billion. Such amount would represent 4 years and a half of the "Asignación Universal por Hijo"¹, 25 years of allowance per child with disability or 17 years of "Plan Progresar".² In addition, it would represent 4 months without paying pensions, 1 month and half of the salary of all reported jobs, 4 years without National Government health care, 2 years and half without National Government investment in education or more than 10 years without National Government investments in science and technology. As it can be clearly observed, abiding by the American justice rule would entail a serious deterioration in the human rights of the Argentinean people. This would be a result of the material impossibility of the State to give economic support to the population, together with the terrible economic crisis that would unleash if the country had to use a substantial part of its international reserves.

3. CONCLUSION

¹ In November 2009 the Argentine Government introduced the programme Universal Child Allowance (Asignación Universal por Hijo), a cash transfer programme for children. The participants (parents, a tutor, or relative up to the third degree of consanguinity) receive an amount of money for every child under 18 years of age (Decreto N° 1.602/2009).

² In January 2014, the Argentine Government launched the Progresar Plan, aimed at promoting the improvement of employability and the probability to find a registered job. The program encourages beneficiaries –young people who do not work, work informally or have a salary below the minimum wage– to complete their studies and/or their professional training, thus increasing their chances of productively entering the labour force. Young people receive a universal allowance of ARS 600.

The Argentine Government has adopted a series of measures, at the national and multilateral level, aimed at enhancing the full enjoyment of human rights.

3.1. INITIATIVES AT THE NATIONAL LEVEL

Argentina has been paid its creditors since the first 2005 swap, showing its willingness to pay its debts through a series of payments made on time until today. As a result of the orders from judge Griesa, the Argentinean National Congress sanctioned the Law on Sovereign Payment (Law N° 26.984), through which payments on the restructured instruments between 2005 and 2010 will be made in the Republic of Argentina. The law also declared the sovereign debt restructuring of 2005 and 2010 a matter of public interest, as well as the full payment to these bondholders in fair, legal and sustainable conditions.

The Law is a continuation of the course taken in 2003 from a human rights perspective, since it is in line with a debt repayment process that is fair to creditors as well as sustainable and proportional to the capabilities of the country, as provided by the Guiding Principles on Foreign Debt and Human Rights.

On the other hand, it is important to highlight that in 2006 Argentina paid its debt with the International Monetary Fund. In 2013, the country has reached an agreement with creditors with favorable arbitration of the International Centre for Settlement of Investment Disputes (ICSID). Finally, in May 2014, Argentina has reached an agreement with the Paris Club group of international creditor governments to repay its overdue debts over a five-year period.

3.2. INITIATIVES IN THE MULTILATERAL LEVEL

At the multilateral level, Argentina sponsored the United Nations General Assembly Resolution 68/304, that decided to develop and adopt, through an intergovernmental process of negotiations, a multilateral legal framework for sovereign debt restructuring, aimed not only to increase efficiency, stability and predictability of the international financial system but also to achieve growth and an inclusive and sustainable economic development, according to the circumstances and priorities of the country.

Within the Human Rights Council, the Republic of Argentina promoted Resolution A/HRC/27/30 that condemned the activities of the vulture funds due to the negative impact on the enjoyment of human rights and encouraged all States to participate in negotiations to establish a multilateral legal framework. The Resolutions also asks the Advisory Committee to prepare a based research report on the negative impact of vulture funds in human rights. During its February session, a draft group has been constituted and a questionnaire prepared, and in august a progress report will be presented. Let me also recall that during this session of the Human Rights Council, Cuba will be presenting its resolution on foreign debt and human rights.

The main drive of Argentina, when promoting these initiatives in the international fora, has been not only to put in evidence the global nature of the problem, but also the threat that the activities of vulture funds represent for all countries. No country is safe from speculation, that is to say, that any country going through a debt restructuring process is liable to be victim of the predatory behavior of vulture funds.

The debt crisis in Greece and the negotiations of the new government remind us that it is not only developing countries that are at risk.

The support given to these initiatives evidences, also, the will of the international community to breach the existing gaps in a multilateral effort, gaps that were undermining the sovereignty of States and affecting its capacity to guarantee the fulfillment of the human rights of its population.