

Tuesday, 8 March 2016

## Hold-out deal in Argentina makes solving debt crises more difficult, UN rights experts say

*In the context of the Argentinean Congress discussing the implications of a proposed agreement between Argentina and hedge funds, the Independent Expert on the effects of foreign debt on human rights, Juan Pablo Bohoslavsky, and the Independent Expert on the promotion of a democratic and equitable international order, Alfred de Zayas, have decided to issue the following statement:*

Geneva - The Argentinean offer to pay \$ 4,65 billion to hedge funds holding bonds it defaulted on 14 years ago will increase moral hazard and encourage disruptive hold-out litigation worldwide.

This amount corresponds to only a part of the 7.7 per cent of the non-restructured debt on which Argentina defaulted at the end of 2001. The country has been under massive financial pressure to reach an agreement with hold-out hedge funds that had bought Argentine debt on the secondary market at a huge discount and are likely to make enormous profits.

A settlement would validate the type of predatory litigation that has been on the increase during the last decade. Such deals will make it more difficult to solve debt crises in a fair, timely and efficient manner by emboldening and rewarding the behavior of those who refuse to participate in debt restructuring efforts. These are no good news for attempts to solve debt crises in a timely and human rights sensitive manner.

Only recently, in September 2014, the Human Rights Council expressed in a resolution its concern that repayment of vulture funds may undermine the capacity of Governments to fulfil their human rights obligations in the field of social, economic and cultural rights.<sup>1</sup> The message of a deal would be that it pays off refusing to participate in debt restructuring processes by holding out on the public debt of an insolvent State.

Encouraging such behavior is to the detriment of many people in countries affected by debt crises. The proposed out-of court settlement after many years of litigation confirms the need for more predictable and effective debt restructuring mechanisms at the international level to settle debt disputes timely.

It remains to be seen whether the deal between Argentina and the hedge funds, if approved by the Argentina congress, will be to the benefit of the people of Argentina. Making a settlement with the "vulture funds" may enable Argentina to borrow again on international financial markets, but in order to be able to pay the hold-outs the State will have to increase its borrowing.

It is necessary to ask whether this deal and the further borrowing on international financial markets will pay off from a human rights perspective.

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<sup>1</sup> Human Rights Council resolution [27/30](#) from 24 September 2014.

Issuing new debt beyond certain prudent thresholds, for the sake of an absolutist view of the *pacta sunt servanda* principle,<sup>2</sup> or to reduce chronic fiscal deficits, would not only negatively affect the necessary economic environment for the full realization of economic and social rights, but would likely also exacerbate economic inequality and create the conditions for future financial instability,”<sup>3</sup>

We hope the Argentine Congress and the general public will carefully consider the consequences of the proposed deal. It is necessary to decide carefully how much debt could be prudently taken and how borrowed funds should be spent to foster inclusive and sustainable growth. Before deciding on such wide-ranging matters, a human rights impact assessment would be appropriate.

While Argentina has been a promoter of the United Nations “Basic Principles on sovereign debt restructuring processes” calling for equal treatment of creditors, it is now about to pay “vulture funds” much more than what the Argentine state paid to cooperative creditors in past debt restructurings. This shows that market forces and awkward judicial interpretations of *pari passu* clauses impair the enforcement of international standards aimed at resolving debt crises in a fair, transparent and human rights compliant manner. It is even more urgent now that the international community finds better solutions to this problem.

*Read as well the earlier press release by the Independent Expert on foreign debt and human rights and the Special Rapporteur on extreme poverty on vulture fund litigation against*  
Argentina,  
[www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15354](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15354)

*and the report of the previous Independent Expert on foreign debt and human rights on his visit to Argentina, [A/HRC/25/50/Add.3](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15354).*

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<sup>2</sup> See the report of the Independent Expert to the General Assembly, A/70/275.

<sup>3</sup> See report of the Independent Expert to the Human Rights Council, A/HRC/31/60.