

**Argentina 'vulture fund' ruling reflects global human rights threat**

*This joint statement, signed by dozens of human rights organizations from all over the world, has been issued in response to the US Supreme Court decision on Argentina's sovereign debt. It has been coordinated by CESR's partner in Argentina, the Center for Legal and Social Studies (CELS).*

In a recent decision, the U.S. Supreme Court denied a petition filed by the Republic of Argentina in the case initiated by the vulture fund NML Capital. The company acquired Argentine sovereign debt bonds after the 2002 default and refused to accept the terms of an agreement reached with over 92% of the bondholders in 2005 and 2010. With its decision, the Supreme Court reaffirmed a lower court opinion that interprets the standard pari passu clause (equality of rank and treatment) as forbidding Argentina from making payments on its restructured debt if it does not also pay the bondholders who did not accept the terms of the agreement with a 1600% return on their original investment. This interpretation diverges from the meaning that has been given to these clauses for decades and threatens agreements States reach with creditors in debt restructuring negotiations.

In 2010 there were already more than fifty claims of this sort against highly indebted countries, and many of them are still pending. As a result, the conflict between Argentina, the vulture funds and the judicial branch of the United States should not be viewed as an isolated case, but rather as the expression of a global problem that impacts the effective implementation of human rights. This centers on the conflict between a few bondholders who rely on predatory practices furnished by the financial system and the ability of States to reach agreements with the majority of their sovereign debt holders and guarantee the economic, social and cultural rights of their people.

Today, this tension is at the center of one of the most heated debates in the international community; how to balance the interests of creditors and debtors in ways that ensure States can respect their obligations in the promotion and protection of rights.

Article 1 of the International Covenant on Civil and Political Rights establishes that “all peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any objections arising out of international economic co-operation, based upon the principle of mutual benefit and international law. In no case may a people be deprived of its own means of subsistence.”

Since the early 90s, one of the main concerns of the Committee on Social, Economic and Cultural Rights, the body in charge of monitoring implementation of the International Covenant on Economic, Social and Cultural Rights, has been “the adverse impact of the debt burden and of the relevant adjustment measures on the enjoyment of economic, social and cultural rights in many countries”. This issue has been on the Committee’s agenda in its periodic evaluations of States Party and in its observations about the extent and content of the rights enshrined in the Covenant, particularly with regard to the rights to education, nutrition, employment, social security and culture.

In 2012, the United Nations Human Rights Council endorsed the Guiding Principles on Sovereign Debt and Human Rights. Principle 6 establishes that States should ensure that any and all of their activities concerning decisions on lending and borrowing, the negotiation and implementation of loan agreements or other debt instruments, the utilization of loan funds, debt payments, and the renegotiation and restructuring of external debt, do not derogate their human rights obligations. In addition, Principle 8 establishes that “any foreign debt strategy must be designed not to hamper the improvement of conditions guaranteeing the enjoyment of human rights and must be directed, inter alia, to ensuring that debtor States achieve an adequate level of growth to meet their social and economic needs and their development requirements, as well as fulfillment of their human rights obligations.”

In November 2013, Cephas Lumina – former United Nations Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights– staged a fact-finding mission to Argentina. At the end of this visit, Mr Lumina stated his support for “the position of the Government not to yield to unreasonable demands by some vulture funds that continue to litigate against the country in foreign jurisdictions” and urged “all countries to enact legislation, as a matter of priority, to limit the ability of unscrupulous investors to pursue immoral profits at the expense of the poor and most vulnerable through protracted litigation.” At the time, Lumina recalled that the Principles “emphasize that States should ensure that the rights and obligations arising under an agreement or deal on external debt […] are not inconsistent with their obligations to meet the minimum basic levels of each economic, social and cultural right, and do not lead to the deliberate adoption of regressive measures.”

These international human rights norms, which precede the U.S. judiciary’s decision about vulture funds, are not the only ones that have been ignored. By redefining the meaning of pari passu clauses, the new decision increases the incentives for sovereign debt holders to refuse to negotiate in future debt crises, which will in turn render all but impossible the implementation of debt restructuring processes for countries in need.

International public law also establishes principles for conflict resolution mechanisms that favor consensus-building to restrict abusive practices. In 2012, the United Nations Conference on Trade and Development unveiled the Principles on Promoting Responsible Sovereign Lending and Borrowing. These do not create any new law, but are rather based on general principles and jurisprudence present in existing national and international laws on the matter. Principle 7 establishes that all “lenders should be willing to engage in good faith discussions with the debtor and other creditors to find a mutually-satisfactory solution” and that “a creditor that acquires a debt instrument of a sovereign in financial distress with the intent of forcing a preferential settlement of the claim outside of a consensual workout process is acting abusively.” Principle 15 highlights that “if a restructuring of sovereign debt obligations becomes unavoidable, it should be undertaken promptly, efficiently and fairly.”

Principles of good faith and non-abusive use of the law are part of the ‘general principles of the law recognized by civilized nations’ (article 38 of the Rules of the International Court of Justice) and are reflected in rules and practices regarding debt restructuring widely endorsed by States’ legal frameworks. They become relevant in light of the gaps left by treaty and customary international law, and thus serve as norms to guide the behavior of States, including that of their judicial bodies. The practices of those who acquire bonds of countries in crisis with the sole intent of obtaining preferential treatment through abusive measures are inconsistent with principle of good faith.

The decision of the U.S. judiciary evinces the arbitrary and inconsistent nature of the courts’ interpretation of contractual clauses and will hamper States’ ability to fulfill their basic human rights obligations.

The actions of vulture funds are just one of many expressions of the injustice inherent in the global financial system. Thus, the measures taken to fight them must become a necessary part of the current system’s reform agenda, which requires urgent collective action in order to:

* Ensure that all States, and particularly the United States and other jurisdictions where similar claims have been filed, enact laws that restrict the predatory activities of creditor funds.
* Ensure that debtor States implement procedural safeguards that limit foreign jurisdictions’ ability to impact the full enjoyment of human rights.
* Create an international mechanism that is neutral and independent, designed to resolve disputes concerning the restructuring of sovereign debt in accordance with the obligation of States to respect, protect and enforce human rights, both in their territories and extraterritorially. Such a mechanism must be comprehensive and binding for all creditors, public and private, bilateral and multilateral and contemplate an immediate stay of all payments as of the initiation of proceedings. This mechanism should also make a determination about what constitutes a sustainable debt burden, taking into account the need to recover economic viability and ensure the population’s human rights are met, and on that basis decide what level of restructuring is necessary. Such a mechanism should recognize that a sovereign debtor is different from a private debtor and provide opportunities for participation, accountability and transparency that encompass the debtor country’s population.

The elaboration of a new set of Sustainable Development Goals, and of a renewed framework of commitments for international cooperation in the financing of development, provides an opportunity to promote the creation of such a mechanism along with other measures to resolve unsustainable debt scenarios in line with human rights principles.

* *For enquiries about this joint statement please contact Erika Schmidhuber of the Center for Legal and Social Studies at* *eschmidhuber@cels.org.ar*

**Signatory organizations/organizaciones firmantes:**

Center for Economic and Social Rights
Centro de Estudios Legales y Sociales (CELS)
Center for Concern
Association for Women's Rights in Development (AWID)
Centro de Derechos Humanos Miguel Agustín Pro Juárez, (Centro Prodh)
Comisión Colombiana de Juristas
Comité de América Latina y el Caribe para la Defensa de los Derechos de las Mujeres (CLADEM)
Comité de Familiares de Detenidos-Desaparecidos en Honduras (COFADEH)
Conectas Direitos Humanos
Development Alternatives with Women for a New Era (DAWN)
East and Horn of Africa Human Rights Defenders Project
Egyptian Initiative for Personal Rights
European Network on Debt and Development (Eurodad)
Federación Internacional de Derechos Humanos (FIDH)
Fundación Myrna Mack Guatemala
Fundar, Centro de Análisis e Investigación, A. C. México
Asociación Latinoamericana de Medicina Social (ALAMES), Región México
Habitat International Coalition (HIC)
Instituto de Estudios Legales y Sociales del Uruguay
Jubilee USA Network
Justiça Global
Kenya Human Rights Commission (KHRC)
Legal Resources Centre
Movimiento Nacional Campesino Indígena (MNCI )
Vía Campesina Argentina
Observatorio Ciudadano de Chile
Observatorio de Derechos Humanos de Pueblos Indígenas
People's Movement for Human Rights Learning
Plataforma Interamericana de Derechos Humanos, Democracia y Desarrollo (PIDHDD Regional)
Realizing Sexual and Reproductive Justice (RESURJ)
Red Latinoamericana de Deuda y Desarrollo Third World Network (TWN)
Abogados y Abogadas del Noroeste Argentino en Derechos Humanos y Estudios Sociales ANDHES
Ahmed Bonjeq's Center to Support Freedoms and Human Rights
Algmehoria Center for Studies and Human Right (ACHRS)
Arab Committee for the defense of freedom of opinion and expression
Arab Organization for Human Rights in Syria
Asociación Pro Derechos Humanos
Asociación Pro Derechos Humanos de España (APDHE )
Cátedra Libre de Soberanía Alimentaria de la Facultad de Medicina/Nutrición de la Universidad de Buenos Aires
Center for Democracy and Civil Rights in Syria
Centre national de coopération au développement, CNCD
Centro de Derechos Humanos de la Montaña "Tlachinollan" México
Centro de Documentación en Derechos Humanos “Segundo Montes Mozo S.J.” (CSMM)
Centro de Estudios Jurídicos e Investigación Social de Bolivia CEJIS
Comisión Ecuménica de Derechos Humanos
Comisión Nacional de los Derechos Humanos
Committees for the defense of democracy freedoms and human rights in Syria (C.D.F)
Coordinadora de Trabajo Carcelario
Corporación Humanas
Ebla Center for Peace and Transitional Justice
Escuela Nacional Sindical, con sede en Colombia
Finnish League for Human Rights
Fundación Jubileo Bolivia
Hand in hand for Syria
Human Rights Commission of Pakistan
Human Rights Organization in Syria (MAF)
Instituto de Género, Derecho y Desarrollo (INSGENAR)
Kaskay Organization for the Protection of Environment
Kurdish Committee of Human Rights in Syria
Kurdish Organization Advocating Human Rights and General Freedoms in Syria
Kurdish-Syrian Center of Documentation.
La ligue des Electeurs
Labour, Health and Human Rights Development Centre
League for Human Rights Netherlands (LvRM)
Ligue Algérienne Pour la Défense des Droits de l'Homme
Ligue de droits de L´Homme
Línea de Investigación sobre Derechos humanos, convivencia y seguridad ciudadana de GIS XXI
Movimiento de Mujeres por la Paz “Visitacion Padilla”
Narina Association for Children and Youth
National Coordinate Advocating the Missing in Syria
National Gathering for the Rights of Women and Children.
National Organization of Human Rights in Syria
Observatorio de Derechos Humanos de Río Negro Argentina
Organización SurDH - Red Alternativa de Derechos Humanos
Organization of Defending Prisoners of Opinion in Syria
Plataforma Colombiana de Derechos Humanos, Democracia y Desarrollo
Programa Venezolano de Educación Acción en Derechos Humanos (Provea)
Proyecto de Derechos Económicos, Sociales y Culturales A.C. (ProDESC)
Syrian Center for Democracy and Rights of Development.
Syrian Center for Educating Human Rights Syrian Center for Human Rights
Syrian Center for Rehabilitating Victims of Violence and Torture.
Syrian Center for Transitional Justice and Promotion of Democracy
Syrians for Democracy.
The Syrian Center for Civil Society and Human Rights Studies
The Syrian Center For Searches And Studies On Immigration And Asylum
The Syrian Center for Transitional Justice (MSAA)
The Syrian Coalition Against the Death Penalty
The Syrian Committee for Environmental Rights
The Syrian Federation for Human Rights Organizations and Bodies
The Syrian Platform for Non-Governmental Organizations
The Ugarit Center for Training and Human Rights Union for Civil Liberty Thailand