

## NEWS RELEASE



### Human rights impact must be addressed in vulture fund litigation – UN experts

GENEVA (27 November 2014) – Litigation between Argentina and so-called vulture funds in the US courts highlights the need to take human rights into account when negotiating and ruling on debt restructuring, two UN independent human rights experts said on Thursday.

"Vulture fund litigation complicates debt restructuring processes and undermines the ability of indebted countries to combat poverty and realize social and economic rights," said Juan Pablo Bohoslavsky, the Independent Expert on the effects of foreign debt on the enjoyment of all human rights, particularly economic, social and cultural rights.

"Past debt crises had serious consequences for the human rights of many Argentines, and the danger exists that this could happen again," said Philip Alston, Special Rapporteur on extreme poverty and human rights. Mr. Alston noted that after Argentina defaulted on its international debt in 2001, the number of people living in poverty in the country reached a record 53 per cent. Although social investment increased in Argentina following debt restructuring, challenges remain in effectively addressing poverty and providing adequate social services to its population.

The litigation regarding Argentina dates from 2008 when NML Capital Limited, a subsidiary of the US hedge fund Elliot Capital Management, bought Argentine defaulted bonds for USD 48 million, a fraction of their face value. Together with other such companies, often referred to as "vulture funds", NML Capital refused to participate in Argentina's debt restructuring and to write off two-thirds of the bonds' pre-crisis value. Instead, NML Capital sued Argentina in the US courts to obtain 100 per cent of the bonds' value plus interest.

The US courts ruled in June in favour of NML Capital and blocked Argentina from making any payments on its restructured bonds until NML Capital and other funds holding out for the full value are repaid.

"If Argentina paid NML Capital according to the US court rulings, the hedge fund would receive USD 832 million and Argentina could face demands of up to USD 140 billion\* from other holdouts and holders of restructured bonds who could demand repayment on equal terms," said Mr. Bohoslavsky.

"The effect on the enjoyment of human rights should be given due consideration in sovereign debt litigation," the experts stressed. "The case of Argentina highlights the need for better rules to allow predictable and efficient debt restructuring." "This case is not only about Argentina", the experts added, pointing to evidence that "disruptive litigation by holdouts has actually increased during the last decade."

Citing the UN Guiding Principles on Business and Human Rights, the experts emphasised that business enterprises should identify and assess actual or potential adverse effects of their activities on human rights. States should also take into account the consequences of courts' debt rulings on the enjoyment of human rights, even if the impact is in another country.

"We encourage States to work towards a multilateral legal framework for sovereign debt restructuring processes, which fully integrates human rights obligations and standards," the experts concluded.

The experts also responded to arguments that the Human Rights Council should not discuss the issue of foreign debt: "If not the Human Rights Council, then who should discuss human rights problems related to debt? Financial bodies like the IMF do not have an impressive record on human rights," Mr. Alston and Mr. Bohoslavsky said.

Mr. Bohoslavsky and Mr. Alston have raised their concerns with the Governments of Argentina and the United States, as well as NML Capital Limited, and regretted that the latter did not respond.

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*Philip Alston (Australia) took office as UN Special Rapporteur on extreme poverty and human rights in June 2014, following his appointment by the Human Rights Council. He is John Norton Pomeroy Professor of Law at New York University School of Law. Mr. Alston has previously served the UN in several capacities including as Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Special Adviser to the UN High Commissioner for Human Rights on the Millennium Development Goals, as well as chairperson of the UN Committee on Economic, Social, and Cultural Rights. As Special Rapporteur, he is independent and acts in his personal capacity. Learn more, log on to:*  
<http://www.ohchr.org/EN/Issues/Poverty/Pages/SRExtremePovertyIndex.aspx>

*Juan Pablo Bohoslavsky was appointed as Independent Expert on the effects of foreign debt and human rights by the United Nations Human Rights Council on 8 May 2014. Before, he worked as a Sovereign Debt Expert for the United Nations Conference on Trade and Development (UNCTAD) where he coordinated an Expert Group on Responsible Sovereign Lending and Borrowing. His mandate covers all countries and has most recently been renewed by Human Rights Council resolution 25/16. As Independent Expert, he acts in his personal capacity. Learn more, log on to:*  
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*Read the letter of the Independent Expert on foreign debt relating to the General Assembly initiative on a multilateral legal framework on sovereign debt restructuring*  
[http://www.ohchr.org/Documents/Issues/IEDebt/letter\\_Chairman\\_of\\_the\\_Group\\_G77.pdf](http://www.ohchr.org/Documents/Issues/IEDebt/letter_Chairman_of_the_Group_G77.pdf)

*Report on the country visit to Argentina by the previous Independent Expert on foreign debt and human rights, Mr. Cephias Lumina*  
[http://www.un.org/ga/search/view\\_doc.asp?symbol=A/HRC/25/50/add.3](http://www.un.org/ga/search/view_doc.asp?symbol=A/HRC/25/50/add.3)

*Read the report on vulture funds submitted to the Human Rights Council in April 2010 by the previous Independent Expert, Mr. Cephias Lumina.*

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