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**Promotion et protection de tous les droits de l'homme,
civils, politiques, économiques, sociaux et culturels,
y compris le droit au développement**

Rapport de l'expert indépendant chargé d'examiner les effets de la dette extérieure et des obligations financières internationales connexes des États sur le plein exercice de tous les droits de l'homme, en particulier des droits économiques, sociaux et culturels, Cephias Lumina

Additif

Mission en Argentine (18-29 novembre 2013)* **

Résumé

De la mi-1998 jusqu'à la fin de 2001, l'Argentine a connu une récession sévère. La combinaison de facteurs tels que les prêts douteux, les politiques préconisées par le Fonds monétaire international, la récession mondiale et les crédits sans limites obtenus sur les marchés internationaux du crédit ont placé le pays dans une situation de dette insoutenable qui a abouti à une crise financière, au défaut de paiement et à de graves difficultés sociales. La restructuration de la dette en 2005 et en 2010 a considérablement allégé le fardeau du pays et donné au Gouvernement une certaine marge de manœuvre budgétaire pour l'investissement social et la création de conditions propices à la réalisation des droits de l'homme.

Depuis 2002, l'Argentine a enregistré une croissance économique impressionnante (7 % en moyenne entre 2003 et 2011), et les indicateurs sociaux se sont considérablement améliorés. Les dépenses sociales ont augmenté, passant de 10,3 % à 14,2 % du produit intérieur brut. En 2009, le Gouvernement a élargi ses programmes sociaux, notamment en lançant un programme de transferts monétaires conditionnels ciblant les ménages à faible revenu, afin de réduire la pauvreté et d'améliorer le bien-être des enfants. Le nombre de

* Soumission tardive.

** Le résumé du présent rapport est distribué dans toutes les langues officielles. Le rapport proprement dit est joint en annexe au résumé et il est distribué dans la langue originale et en espagnol seulement.

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personnes vivant dans la pauvreté a baissé de plus des deux tiers, passant d'un niveau sans précédent, à savoir près de la moitié de la population en 2001, à environ un septième de la population au début de 2010. Le nombre de personnes vivant dans l'extrême pauvreté a été ramené à un quinzième de la population en 2010. Le chômage est tombé à environ 8 %.

Ces progrès dignes d'être salués ont été obtenu malgré des circonstances extérieures défavorables, notamment les difficultés d'accès aux marchés de capitaux internationaux, l'insuffisance de l'investissement étranger direct et les longues procédures judiciaires engagées contre l'État par des fonds vautours.

Si l'inflation a augmenté depuis 2007, atteignant au début de 2011 le niveau record de 27 %, les facteurs décisifs pour la situation des droits de l'homme et le bien-être de la population sont la croissance du revenu réel, l'emploi et une répartition équitable des revenus.

La dette actuelle de l'Argentine qui, pour une grande partie, a été contractée dans des circonstances douteuses, en particulier sous le régime militaire de 1976 à 1983, peut par conséquent être qualifiée d'odieuse. Pendant cette période, les banques, les institutions financières internationales et d'autres pays ont continué de prêter à l'Argentine, soutenant de manière indirecte un gouvernement illégitime déterminé à réprimer et faire disparaître ses opposants. Il importe que ceux qui ont prêté de l'argent à la dictature militaire assument leur part de responsabilité et prennent immédiatement des mesures afin d'annuler cette dette douteuse.

Pour sa part, l'Argentine devrait procéder à un audit de la dette transparent, participatif et global, comme le recommandent les principes directeurs relatifs à la dette extérieure et aux droits de l'homme. Cet audit contribuerait à promouvoir le principe de responsabilité dans la gestion de la dette publique et permettrait à l'Argentine de prendre désormais des décisions éclairées en matière d'emprunts, de gestion de la dette, de dépenses relatives aux plans de développement et de réalisation des droits de l'homme.

Annexe

[Anglais et espagnol seulement]

Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephias Lumina

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I. Introduction

1. The Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights conducted a mission to Argentina from 18 to 29 November 2013. The main purpose of the visit was to assess the impact of the country's external debt burden and the restructuring of the debt on the capacity of the Government to realize all human rights, particularly economic, social and cultural rights and the right to development.

2. During his visit, the Independent Expert met with senior government officials at the ministries of Foreign Affairs; Economy and Public Finance; Justice and Human Rights; Social Welfare; Education; Health; and Labour, Employment and Social Security. He also met with the Vice-President of the Supreme Court, the National Ombudsman, as well as representatives of the Second Federal Court, the Central Bank, the World Bank, the Inter-American Development Bank, United Nations agencies, civil society and academia. In addition, he visited the cities of Cordoba and Florencio Varela and the Museum on External Debt at the School of Economics, University of Buenos Aires.

3. Regrettably, he did not have occasion to meet the committees of the Argentine Congress with responsibility for social and economic affairs as he had requested. Parliament has an important legislative and oversight role in relation to budgetary issues and public debt management. As such, its insights would have been critical for a full assessment of the situation.

4. The Independent Expert would like to thank the Government for its invitation and its cooperation during his visit. He also wishes to express his gratitude to all those who shared their perspectives with him and to the United Nations Development Programme for assisting with the preparations for his visit.

II. General context: recession, default and recovery

A. Causes of the debt crisis

5. The Argentine 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.¹ 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.

6. During the period of the military dictatorship from 1976 to 1983 (the so-called National Reorganization Process), the country borrowed extensively for unproductive infrastructure, the conflict over the Falkland Islands (Malvinas) and to finance State take-

¹ For a discussion of the history of the debt crisis, see, inter alia, J.F. Hornbeck, *Argentina's Defaulted Sovereign Debt: Dealing with the "Holdouts"*, CRS Report for Congress (Washington, D.C., Congressional Research Service, February 2013), pp. 1-3; Mark Weisbrot and others, *The Argentine Success Story and its Implications* (Washington, D.C., Center for Economic and Policy Research, October 2011), pp. 2-5; Mario Damill, Roberto Frenkel and Martín Rapetti, "The Argentinean debt: history, default and restructuring", *Economía*, Selecta, Brasilia (DF), vol. 6, No. 3 (January/July 2005), pp. 29-90.

over of private-sector debt.² 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 military rule in 1983. Between 1975 and 1980, the debt increased from 13.2 per cent to 32.4 per cent of gross domestic product (GDP). A devaluation of the peso in 1981 caused the foreign debt to reach a peak of almost 60 per cent of GDP in 1982.

7. In April 1991, the Menem Government introduced the “convertibility plan” with the aim of addressing the chronic inflation which plagued the country. The plan legally guaranteed the convertibility of pesos to United States dollars at a one-to-one fixed rate. Although this macroeconomic framework initially helped reduce inflation and debt service, it set the context for the financial crisis of 2001.³ From 1989 to 1999, the debt increased by 123 per cent while interest payments on the debt rose by 253 per cent.

8. During the late 1990s, vulnerability to external shocks increased. Fiscal balances deteriorated with a strengthening dollar, to which the peso was linked, devaluations by its major regional trading partners (notably Brazil) and falling commodity prices. In particular, the 1998 Russian default and the 1999 devaluation of the Brazilian real put intense pressure on Argentina’s exchange rate.⁴ Inevitably, the country entered a recession, which lasted until 2000.

9. In response, the Argentine authorities implemented a succession of pro-cyclical fiscal adjustment policies supported by IMF that exacerbated the negative socioeconomic impact on the country. A toxic combination of cuts in public spending, public sector wages and jobs deepened the recession. While the hope was that foreign capital inflows would stimulate economic growth and general welfare, the results were disastrous. The country’s debt rose while poverty and inequality increased. High interest rates and negative growth raised the debt-to-GDP ratio by about 10 points between 1997 and 2000.

10. By mid-2001, Argentina’s country risk premium was the highest in the world, rendering the country unable to borrow on the international markets. Capital flight was also a critical problem for the Government. In the fourth quarter of 2001, the Central Bank of Argentina lost \$11 billion in liquid reserves (approximately 40 per cent of its reserves). The country’s banking system lost 25 per cent of its total deposits.

11. It should be noted that the international financial markets and IMF were complicit in deepening the severity of Argentina’s crisis. Despite the fact that Argentina faced an impending crisis, IMF, foreign Governments and investment banks determined to chase high-yielding debt continued to lend generously to Argentina. In addition, investment banks and credit agencies overstated the country’s economic health.⁵ Questionable policy prescriptions by IMF compounded the problem.⁶

² In 1981-1982, the public sector absorbed a considerable proportion of the private sector foreign debt, with the approval of the international banks, see Damill, Frenkel and Rapetti, “The Argentinean debt”.

³ Hornbeck, *Argentina’s Defaulted Sovereign Debt*, p. 2. The convertibility plan led to capital flight, exchange and financial crises, devaluation and default, see Damill, Frenkel and Rapetti, “The Argentinean debt”, p. 38.

⁴ The convertibility plan in effect prohibited the devaluation of the peso to increase exports.

⁵ Paul Blaustein, *And the Money Kept Rolling in (And Out): Wall Street, the IMF, and the Bankrupting of Argentina* (New York, Public Affairs, 2005), pp. 5-8, 31-35, 198-200.

⁶ From 1991 to 2001, IMF provided finance under five successive arrangements: two under the Extended Fund Facility approved in 1992 and 1998, and three Stand-By Arrangements approved in 1991, 1996 and 2000. In addition, it provided technical assistance in the fiscal and banking areas. In 2004, IMF partially accepted responsibility for its role in the Argentinean crisis. See IMF, “The IMF

12. In the view of the Independent Expert, these actors should accept their share of responsibility for Argentina's debt problem in line with the principle of shared responsibility underscored in the Monterrey Consensus.⁷

13. The financial crisis had a profound impact on Argentina. GDP shrank in the period from 1999 to 2002 by 25 per cent, official unemployment peaked at over 21.5 per cent in May 2002, savings and pensions were devaluated, and inflation of up to 41 per cent contributed to a drop in real wages by 23.2 per cent in 2002.⁸ Fifty-three per cent of the population lived in poverty and 24.8 per cent faced extreme poverty.⁹ The crisis also severely affected the public health system, with hospitals suffering a serious shortage of basic supplies and prices of medicines soaring.¹⁰ In addition, the drastic drop in employment left roughly 60 per cent of the population outside the social health insurance system.

14. The crisis also resulted in the deterioration of health indicators such as infant mortality, affecting in particular the relatively more disadvantaged provinces in the north of the country, where the infant mortality rate was 25 per 1,000 live births.¹¹ Facing increased pressure to provide social services to a large number of poor people, the Government was forced to decrease its per capita spending on social services by 74 per cent.

B. Default

15. In December 2001, after four years of severe recession and mounting social unrest and unable to fulfil its debt obligations, the Government was forced to default. Shortly thereafter, the Government abandoned the convertibility plan and devalued the peso. Total public debt increased sharply from 45.7 per cent of GDP in 2000 to an unsustainable 166.3 per cent in early 2002.¹² The debt burden rose sharply partly due to the devaluation, which significantly increased, in terms of pesos, foreign currency-denominated obligations (most of which were in United States dollars and euros).

16. It has been suggested that Argentina had an alternative to default.¹³ However, in the Independent Expert's considered view, default was inevitable: Argentina was faced with an unsustainable situation and was simply in no position to repay its massive debt without risking economic and social implosion. It is important to note that the Government made several efforts to prevent the default, including, among other measures, passing a Fiscal

and Argentina, 1991-2001", Evaluation Report (Washington, D.C., Independent Evaluation Office, 2004), available from www.imf.org/External/NP/ieo/2004/arg/eng/pdf/report.pdf.

⁷ Report of the International Conference on Financing for Development, Monterrey, Mexico, 18–22 March 2002 (A/CONF.198/11, chap. I, resolution 1, annex), para. 47.

⁸ See Argentina, National Statistics and Census Institute, www.indec.gov.ar/.

⁹ PNUD/Consejo Nacional de Coordinación de Políticas Sociales, *Objetivos de Desarrollo del Milenio: Informe País Argentina 2012* (Buenos Aires, 2012), p. 3.

¹⁰ See, for example, Centre of Legal and Social Studies, Submission to the Inter-American Commission on Human Rights, 18 October 2002, available from http://cels.org.ar/common/documentos/salud_denuncia_cidh.pdf; also Estado de los hospitales públicos del país, available from www.cels.org.ar/common/documentos/anexo_hospitales.pdf.

¹¹ Rafael Cortez and Daniela Romero, "Argentina: Increasing utilization of health care services among uninsured population, the Plan Nacer program", Universal Health Coverage Studies Series No. 12 (Washington, D.C., World Bank, 2013), p. 1.

¹² At the time, the country owed, among other obligations, private investors bonds with a face value of US\$81.8 billion, the Paris Club countries US\$6.3 billion and IMF US\$9.5 billion.

¹³ See, for example, Doug Bandow, "Supreme Court moves us closer to holding deadbeat Argentina accountable", available from www.forbes.com/sites/dougbandow/2013/10/21/supreme-court-moves-us-closer-to-holding-deadbeat-argentina-accountable/.

Responsibility Law in 1999 that set a mandatory declining target for the public deficit to bring it to zero in a few years, and implementing significant tax increases and expenditure cuts (including a 13 per cent cut in public sector wages and pension benefits).

C. Debt restructuring

17. In 2005, after prolonged, contentious and unsuccessful attempts to restructure its debt, Argentina made a unilateral offer, involving a write-off of 75 per cent of the outstanding debt, but at present value rather than on a nominal basis. The Argentine legislature codified this commitment with the so-called Lock Law (Ley Cerrojo), which prohibited the Government from reopening the exchange or making any kind of future offer on better terms, and suspended any future payments on the untendered debt.¹⁴

18. In the end, 76 per cent of all bondholders accepted this offer; the remaining 24 per cent refused to participate. Thus, of the \$81.8 billion face value of debt, \$62.3 billion was exchanged for \$35.2 billion of new bonds. This left a debt of \$18.6 billion in dispute together with accrued interest, \$6.3 billion of Paris Club arrears and \$9.5 billion of IMF debt.

19. In 2006, the Government decided to repay in full the \$9.5 billion owed to IMF ahead of schedule, thus freeing it from IMF policy constraints. In 2009, the Argentine legislature suspended the portion of the Lock Law that prohibited reopening a debt restructuring offer, and in 2010, the Government exchanged approximately \$12.4 billion of the \$18.6 billion in bonds.

20. Together, the debt restructurings of 2005 and 2010 had a participation rate of 91.3 per cent. It is estimated that \$11.2 billion (including \$6.8 billion in principal past and coming due, and \$4.4 billion in past due interest) was owed to the “holdouts” as at the end of 2010. Of this amount, \$1.3 billion is the subject of litigation by vulture funds in courts in the United States of America.

21. As a result of the debt restructurings and settlement of IMF obligations, the debt as a percentage of GDP declined from 166.3 per cent in 2002 to around 45 per cent in 2012, with public external debt representing only 14 per cent of GDP. This has enabled the Government to significantly increase its social spending, including on education, health and social security. Social spending for health, education, social security and housing in the national budget increased from 9.5 per cent of GDP in 2003 to 15.5 per cent of GDP in 2013. Overall social spending (by the national, provincial and municipal governments) rose to around 27.7 per cent of GDP by 2009.¹⁵

22. In January 2014, the Government began informal negotiations with the Paris Club with the aim of reaching an agreement on the settlement of Argentina’s arrears to Paris Club creditors. In this context, the Independent Expert calls upon the Government of Argentina and the Paris Club to ensure that any debt restructuring agreement reflects the primacy of human rights as underscored in the Guiding principles on foreign debt and human rights (A/HRC/20/23, annex) and, in particular, that it is consistent with Argentina’s obligation to ensure the satisfaction of minimum essential levels of economic and social rights and does not compromise Argentina’s ability to address ongoing concerns related to the realization of these rights as mentioned below.

¹⁴ See Hornbeck, *Argentina’s Defaulted Sovereign Debt* (see footnote 1), p. 5.

¹⁵ Gisell Cogliandro, *Gasto Público Social en la Ley de Presupuesto Nacional 2013* (Buenos Aires, Konrad Adenauer Stiftung, 2013) p. 16, available from www.kas.de/wf/doc/kas_34958-1522-1-30.pdf?130920200601.

D. Economic recovery

23. The default and devaluation contributed to a profound financial crisis and a sharp economic contraction, with GDP shrinking by around 5 per cent in the first quarter of 2002. However, recovery followed only one quarter after the default and devaluation as a result of policies designed to restore the “basic macroeconomic equilibrium”, including imposition of exchange controls, introduction of taxes on exports and a flexible monetary policy.¹⁶

24. Pro-growth policies implemented by the Government since 2003 have helped spur economic growth and restore debt repayment capacity. Policies focusing on job creation, as well as the introduction of a non-contributory social security scheme and a cash transfer of 150 pesos a month for unemployed household heads (Programa Jefes y Jefas de Hogar), reaching two million beneficiaries in May 2003, helped to reduce unemployment and poverty rates to below pre-crisis levels by 2006.

25. From 2002 to 2011, the Argentine economy grew 94 per cent — among the highest growth rates worldwide.¹⁷ This remarkable recovery has been achieved in the face of reduced access to international financial markets and relatively little foreign direct investment.¹⁸

E. Debt situation

26. According to the Ministry of Economy and Public Finance, as of 30 June 2013, total public debt stood at \$196 billion, of which around \$66 billion is public external debt. Total external debt (private and public) was approximately \$135 billion. Approximately \$25 billion of the public debt is owed to multilateral financial institutions, such as the World Bank and the Inter-American Development Bank, and Paris Club creditors.¹⁹ However, these figures do not include bonds held by creditors who did not participate in the 2005 and 2010 restructurings, which are estimated at \$11.5 billion.

27. It is notable that debt service still comes at a high cost to the country. The exclusion of the country from the international financial markets has forced the Government to draw on the country’s foreign reserves to service debt. As a result, reserves have fallen sharply from about \$50 billion to less than \$30 billion, as of November 2013. If this trend continues, the Government may face difficulties in fulfilling its debt obligations.

28. The 2014 national budget foresees that 9 per cent of the budget (up from 6.4 per cent in 2013) will be devoted to debt service alone, exceeding funds allocated for education (7.1 per cent) and health care (3.4 per cent).²⁰ As education and health care are largely within the competence of the provinces, the national budget does not give a complete picture of actual government spending on health care and education. The consolidated public budget

¹⁶ See Damill, Frenkel and Rapetti, “The Argentinean Debt” (see footnote 1), pp. 59-60.

¹⁷ Weisbrot and others, *The Argentine Success Story* (see footnote 1), p. 1.

¹⁸ Ibid. According to some commentators, the 2001 default was one of the key conditions that facilitated the economic recovery that occurred shortly after. This was due to the positive fiscal effect and the suspension of debt payments and the fact that it was no longer necessary for Argentina to continuously issue signals aimed at facilitating the rollover of the debt obligations, see Damill, Frenkel and Rapetti, “The Argentinean debt”, p. 34.

¹⁹ Argentina, Ministerio de Economía y Finanzas Públicas, Oficina Nacional de Crédito Público, “Deuda Pública del Estado Argentino – Datos al 30-06-2013”, available from www.mecon.gob.ar/finanzas/sfinan/?page_id=37.

²⁰ See Argentina, Ministerio de Economía y Finanzas Públicas, Presupuesto nacional 2014, gastos por programa (expenditure by programme), available from http://sitiodelciudadano.mecon.gov.ar/sici/cal1_gastos_progr.html.

(including national, provincial and municipal budgets) indicated that, in 2009, around 14 per cent of all public spending was devoted to health care, 22 per cent to social security and 15 per cent to education.²¹

F. Key challenges

29. As a result of the default, and the refusal of a minority of creditors to participate in the debt restructurings, and subsequent legal action by these creditors and “vulture funds”,²² Argentina continues to face difficulties in accessing the international financial markets. Moreover, since it has not been able to settle its debt with the Paris Club countries, Argentina has been denied some export credits, while foreign direct investment has remained modest, at an average of around 1.7 per cent of GDP between 2003 and 2011. Thus, the Government continues to rely on domestic sources of finance, including intra-government transfers.

30. Argentina has been facing litigation in United States courts by a group of vulture funds. For example, on 21 November 2012, a court in the United States ruled that, with respect to a payment due to exchange bondholders on 15 December 2012, the bondholders and the vulture funds would have to be treated equally on the basis of its interpretation of the *pari pasu* (equal treatment) clause of the bond contracts. In effect, Argentina was required upon making its regular payment to exchange bondholders to also pay the vulture funds their full \$1.3 billion claim.²³ The decision left Argentina with the unpalatable choice of fulfilling a larger and immediate financial obligation or paying neither group. This would effectively force it to default on the exchange bonds.

31. An alternative payment plan proposed by Argentina that would essentially have given the vulture funds a deal similar to that of the exchange bondholders was rejected by the vulture funds on 19 April 2013.

32. It is not the intention of the Independent Expert to discuss the merits of the lawsuit. However, he considers that Argentina’s proposal would have presented a considerable return on the original investments of the vulture funds in 2008 and would have also met the equal treatment provisions. It should be noted that the vulture funds were not the original lenders to Argentina; they purchased most of the debt that they are claiming at a significant discount in the aftermath of the default. For example, NML Capital paid approximately \$48.7 million for more than \$220 million in defaulted bonds but is claiming an amount that would represent a profit of 1,380 per cent.

33. Moreover, the case raises broader issues beyond the particular case of Argentina. Significantly, 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

²¹ See Argentina, Gasto público consolidado (consolidated public spending), available from www.mecon.gov.ar/peconomica/docs/GPC1980-2009.xls.

²² For an assessment of the impact of vulture funds from a human rights perspective, see A/HRC/14/21.

²³ United States District Court, Southern District of New York, *NML Capital, Ltd. v. Republic of Argentina*, No. 08 Civ. 6978 (TPG) 2012 WL 5895786 (S.D.N.Y. Nov. 21, 2012); United States Court of Appeals for the Second Circuit, *NML Capital, Ltd. v. Republic of Argentina*, 699 F. 3d 246 (2d Cir. 2012).

opinion, such a decision, if upheld, will undermine the ability of countries facing similar difficulties to restructure their debt in an orderly, timely, fair and efficient fashion.²⁴

34. Argentina has made important progress in improving the social conditions of its people. Vulture funds and irresponsible financing decisions must not be allowed to derail that progress. The Independent Expert, therefore, firmly supports 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. In this regard, he reiterates his call on 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. Such legislation has been enacted in the United Kingdom of Great Britain and Northern Ireland and the Channel Island of Jersey.²⁵ It will not affect legitimate participants in the secondary debt market but will help address the predatory behaviour of vulture funds.

III. Legal and institutional framework

A. Human rights obligations

35. Argentina has ratified all the core international human rights instruments and has also recognized the competence of most of the treaty bodies to consider petitions from persons claiming to be victims of violations of their rights under those instruments.

36. The 1994 constitutional reform explicitly gave constitutional status to several international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights, and further provided for those treaties to be considered as complementing the rights guaranteed in the Constitution.²⁶

37. In the terms of article 2 of the Covenant, Argentina is required to utilize “the maximum of its available resources” to ensure the full realization of the rights enshrined therein, including the rights to food, health, education, social security and work. The implication of this is that the State is obliged to ensure that these rights are adequately satisfied before using public resources to achieve other State objectives unrelated to human rights, such as debt service.²⁷ At the very least, the State must ensure the satisfaction of minimum essential levels of each economic, social and cultural right.²⁸

38. It should be noted that the Guiding principles on foreign debt and human rights underline that States should ensure that their rights and obligations arising from an external debt agreement or arrangement, particularly the obligation to repay external debt, do not derogate from their minimum core obligations to ensure the satisfaction of minimum essential levels of each economic, social and cultural right and do not lead to a deliberate

²⁴ See United States Court of Appeals for the Second Circuit, *NML Capital, Ltd. and Others v. Republic of Argentina*, Case No. 12-105-cv, Brief for the United States of America as Amicus Curiae in Support of the Republic of Argentina, 28 December 2012.

²⁵ United Kingdom, Debt Relief (Developing Countries) Act 2010, available from www.legislation.gov.uk/ukpga/2010/22/pdfs/ukpga_20100022_en.pdf; and Jersey, Debt Relief Law (Developing Countries) (Jersey) Law 2013, available from www.jerseylaw.je/law/LawsInForce/htm/lawfiles/2013/L-01-2013.pdf.

²⁶ Constitution of Argentina, art. 75(22).

²⁷ See the Guiding principles on foreign debt and human rights (A/HRC/20/23, annex), para. 6, which underscores the primacy of human rights in relation to lending and borrowing decisions of States.

²⁸ See Committee on Economic, Social and Cultural Rights, general comment No. 3 on the nature of States parties' obligations, para. 10.

adoption of retrogressive measures.²⁹ The principles further emphasize that unreasonable or excessive obligations to repay external debt should not hinder the progressive realization of economic, social and cultural rights,³⁰ and recommend that States conduct transparent and participatory periodic audits of their debt portfolios to ensure accountability in the management of the State's external debt stock and to inform future borrowing decisions.³¹

B. Institutions

39. The Republic of Argentina is a federal State, comprising 23 provinces and the Autonomous City of Buenos Aires (which in many ways has a similar legal status to the provinces). The provinces, the Autonomous City of Buenos Aires and the municipalities enjoy autonomy, subject to the Constitution.

40. At the national level, a number of institutions have responsibility for the promotion, protection and fulfilment of human rights.

41. Both federal and provincial courts have jurisdiction over human rights matters, while the Supreme Court and the lower courts have competence to rule on all matters governed by the National Constitution, national legislation or international treaties. It is notable that the Supreme Court has played an important role in enforcing social and economic rights through its power of review. For example, it has upheld the rights to health,³² food³³ and housing;³⁴ recognized the constitutional right of retirees to pension increases;³⁵ and struck down public sector wage cuts imposed in the aftermath of the 2001 debt crisis to meet debt payment obligations.³⁶ In the case of Hugo Galli,³⁷ Supreme Court judges Raúl Zaffaroni and Ricardo Lorenzetti held that while contractual debt repayment obligations usually have to be fulfilled, such obligations may be limited in situations of extreme crisis where the State would otherwise not be able to provide essential services for its citizens and uphold the minimum standards of human rights as required by international treaties that have constitutional rank.

42. The Office of the Secretary for Human Rights in the Ministry of Justice deals with a broad range of human rights, including economic, social and cultural rights.

43. Finally, a number of independent public bodies at both the national and provincial levels play an important role in protecting and promoting human rights. For instance, the mandate of the National Ombudsman (*Defensor del Pueblo de la Nación*) is to defend and protect human rights as well as to investigate public maladministration.³⁸ In this regard, the Ombudsman has been active on several issues, such as access to social security benefits, pensions and family allowances; health and education; services of public utilities, such as water and sanitation; environmental pollution affecting, among others, the rights to health,

²⁹ A/HRC/20/23, annex, paras. 18 and 20.

³⁰ Ibid., para. 16.

³¹ Ibid., paras. 67-70.

³² Supreme Court of Argentina, *Asociación Benghalensis y otros*, 2000, Fallos: 323:1339, ordering the Federal Government to provide comprehensive medical treatment, including access to drugs, to all those infected with HIV in the country.

³³ Ibid., *Rodríguez, Karina Verónica*, 2006, Fallos: 329:553.

³⁴ Ibid., *Q.C.*, S.Y., 2012, Fallos: 335:452, ordering the City of Buenos Aires to provide decent accommodation to a foreign-born woman and her disabled child who were living on the streets.

³⁵ Ibid., *Badaro, Adolfo Valentín*, 2006, Fallos: 329:3089.

³⁶ Ibid., *Tobar, Leonidas*, 2002, Fallos: 325:2059.

³⁷ Ibid., *Galli, Hugo Gabriel*, 2005, Fallos: 328:690.

³⁸ National Constitution of Argentina, art. 86; see also Act 24.284 on the Organic and Functional Regulation of the Office of the *Defensor del Pueblo*.

adequate housing and water and sanitation;³⁹ and access to public transport of persons with disabilities.

C. Framework for public debt management

44. Under the National Constitution, the Congress⁴⁰ is empowered “to borrow money on the credit of the Nation”⁴¹ and to settle the payment of the domestic and foreign debt of the country.⁴² It has been asserted that this requirement is fulfilled by the Congress through the approval of budget acts which determine annually the budget of the State, including its provision for debt service payments. In the Independent Expert’s view, however, article 75, paragraph 7, of the National Constitution provides for a more active role of Congress in public financial management than the mere passing of budgetary acts.

45. In the terms of article 85, the National General Auditing Office, a technical advisory body of the Congress, must participate in the approval or rejection of the public revenue and investment accounts.

46. The Fiscal Responsibility Law of 2004 sets out rules of fiscal transparency as well as fiscal targets for the national and provincial governments and the federal capital district. The procedural rules and transparency requirements include three-year budgets; that new borrowing or guarantees must be approved by the Ministry of Economy and Public Finance; that provincial governments may not issue non-peso domestic bonds; and the publication of fiscal accounts and all debt-related transactions. The Law further enjoins the national and provincial governments to put money into stabilization funds and establishes a federal council for fiscal responsibility, with membership from the national and all the provincial ministries of finance.

47. In terms of fiscal targets, the provinces have to budget primary surpluses sufficient to bring their debt service gradually below 15 per cent of current revenues (net of transfers to municipalities) and may not engage in new borrowing if their debt service exceeds the ceiling. The national Government has to maintain a downward trend in debt, measured in terms of GDP.

48. It is notable that the National Public Credit Office provides technical assistance to the provincial debt management offices.

IV. Realization of human rights

49. It is generally accepted that the debt crisis of 2001 had a severe impact on the enjoyment of a broad range of human rights, including the rights to work, social security, health and education.⁴³ However, the restructuring of the debt has provided the Government with larger fiscal space for social investment. In addition, since 2003, the Government has implemented a number of policies to promote economic growth with social inclusion.

³⁹ See, for example, the work of the National Ombudsman on the Mantanza-Riachuelo Basin, available from www.dpn.gob.ar/areas.php?cl=24&act=list.

⁴⁰ Consisting of the House of Deputies, comprising representatives directly elected by the people of each province and the Autonomous City of Buenos Aires or the capital city, and the Senate, comprising three senators from each province and three from the City of Buenos Aires.

⁴¹ National Constitution of Argentina, art. 75(4).

⁴² *Ibid.*, art. 75(7).

⁴³ See, for example, E/C.12/1/Add.38, paras. 10 and 28; Jason Morgan-Foster, “The relationship of IMF structural adjustment programs to economic, social and cultural rights: the Argentine case revisited”, *Michigan Journal of International Law*, vol. 24 (Winter 2003), pp. 577-646.

These policies have significantly contributed to the establishment of the conditions for the realization of human rights and improvement of the well-being of the Argentine population.

50. Nevertheless, some challenges remain, particularly with regard to addressing poverty and ensuring social inclusion. In the following sections of the present report the impact of the Government's policies on the realization of the rights to work, social security, health, education and adequate housing as well as on poverty is briefly discussed.

A. Work

51. In the aftermath of the 2001 crisis, the Government of Argentina implemented a series of policies aimed at creating jobs and improving working conditions. In October 2003, for example, the Government adopted the 2003–2015 Millennium Development Goals for Argentina, which included a goal on promoting decent work. Specific objectives under the goal included reducing the unemployment rate to less than 10 per cent; reducing the rate of informal employment to less than 30 per cent; extending social protection coverage to 60 per cent of the unemployed population; decreasing to less than 30 per cent the share of workers earning a salary below the cost of the basic family food basket; and eradicating child labour.

52. In 2004, the Government reviewed the minimum wage determined by the National Council for Employment, Productivity and Minimum Living and Mobility Salary, a body consisting of representatives of the State, employers and workers.

53. As a result of these policies, the official unemployment rate has fallen and the minimum wage has been increased. According to official estimates, during the third quarter of 2013, the unemployment rate was 6.8 per cent. The monthly minimum wage for the period from August to December 2013 was 3,300 pesos (about \$500 at the official exchange rate at the end of 2013) and has been increased to 3,600 pesos as of 1 January 2014.⁴⁴ According to the Ministry of Labour, Employment and Social Security, the average real salary of registered workers grew constantly after the crisis low of 2002, reaching levels of the mid-1980s by 2009.⁴⁵ As a consequence, the number of workers employed in the formal sector earning a salary below the cost of the basic food basket was reduced by 66.3 per cent in 2011.⁴⁶

54. However, a number of challenges remain, which require attention. First, there are high gender-based inequalities in the labour market: women earn lower incomes than men; have higher rates of unemployment (8.7 per cent compared with 6 per cent for men); enjoy lesser access to formal salaried employment (63 per cent compared with 69 per cent for men); and earn a lower income per hour worked.⁴⁷

55. Second, although informal unregistered employment declined from 42.8 per cent in 2003 to 33.3 per cent in 2011, it remains one of the most serious challenges in the Argentine labour market.⁴⁸ Informal workers do not have health insurance coverage for

⁴⁴ Different minimum wages apply for domestic workers; as of 1 September 2013, the minimum wage for domestic workers was 3,220 pesos.

⁴⁵ Argentina, Ministerio de Trabajo, Empleo y Seguridad Social, *Work and Employment in the Bicentenary: Changes in employment and social protection dynamic for an extended inclusion, 2003-2010*, September 2010, p. 43.

⁴⁶ PNUD/Consejo Nacional de Coordinación de Políticas Sociales, *Objetivos de Desarrollo del Milenio: Informe País Argentina 2012* (Buenos Aires, 2012), p. 22.

⁴⁷ International Labour Organization (ILO), *3rd Decent Work Country Programme for Argentina: 2012-2015 Period*, (Buenos Aires, 2013), p. 19.

⁴⁸ *Ibid.*, p. 21.

themselves or members of their families, and do not contribute to pension funds, nor are they protected by unemployment insurance.⁴⁹ While the Independent Expert acknowledges the progress made, further efforts on the part of the Government are required to reach the goal of moving non-registered employment below 30 per cent by 2015.⁵⁰ He urges the Government to intensify its efforts to promote the registration of employment, as some surveys indicate that the percentage of workers not contributing to the social security system may have increased slightly during the past few years, notwithstanding government campaigns.⁵¹

56. Finally, more effort is required to address the problem of child labour, particularly in the agricultural and informal sectors. While the Prohibition of Child Labour and Protection of Adolescent Employment Act (No. 26.390) is an important step in the fight against child labour, children continue to bear the highest costs of poverty and, in many cases, provide substitute or complementary labour to satisfy household needs. Research indicates that in urban areas, 6.2 per cent of children between the ages of 5 and 13 years undertake economic activities, and a further 2.7 per cent of children in that age group are engaged in intensive domestic work.⁵²

B. Social security

57. The additional fiscal space after 2005 has allowed the Government to significantly expand its non-contributory social protection schemes. The increase of formal employment and a simplified regime for small taxpayers (*el monotributo*) has ensured that a large number of workers now have access to social security. A pension inclusion plan, allowing pensioners who, owing to the economic crisis, had not completed 30 years of contributions to receive a reduced pension benefit, and the introduction of a non-contributory minimum pension in 2005 increased overall pension coverage for elderly people from 47 per cent in 2005 to about 96 per cent in 2010. The overall number of persons receiving retirement benefits increased from 3.2 million in 2005 to 5.4 million in 2012. In addition, a law was passed ensuring automatic adjustments of pension benefits based on consumer price indices.⁵³

58. In November 2009, a universal child allowance (*Asignación Universal por Hijo*) for all children under 18 years of age was introduced with the goal of reducing poverty and improving the welfare of children. This was a conditional cash transfer programme for low-income households. In April 2013, 3.28 million children received this benefit.⁵⁴ Evaluations by the Ministry of Labour and independent research show that the allowance has helped to reduce extreme poverty for families with children; has increased primary school enrolment by 10 per cent and secondary school enrolment by 20 per cent; and has expanded the participation of children in regular medical checks and vaccinations, as

⁴⁹ Non-registered workers and their family members can, however, access the public health system which provides universal access, see para. 61 below.

⁵⁰ ILO, *3rd Decent Work Country Programme for Argentina*, p. 23.

⁵¹ According to the Argentina Social Debt Observatory (ODSA), the overall percentage of persons working without contributing to the social security system increased from 47.2 per cent in 2010 to 49.4 per cent in 2012, see Agustín Salvia and others, *Desajustes en el desarrollo humano y social (2010-2011-2012)* (Buenos Aires, ODSA, Universidad Católica Argentina, 2013), p. 164.

⁵² Ianina Tuñón, (coordinator), *Hacia el pleno ejercicio de derechos en la niñez y adolescencia: propensiones, retos y desigualdades en la Argentina urbana (2010-2012)*, (Buenos Aires, ODSA, Universidad Católica Argentina, 2013) pp. 120-121.

⁵³ Information provided by the Ministry of Labour.

⁵⁴ Ibid.

applicants for this benefit are required to show proof of schooling and participation in an official health programme for their children in order to receive the full amount.

59. The Independent Expert commends the Government for the social policies described above. Nevertheless, he is concerned that some of the social benefits exclude certain marginalized and disadvantaged groups, such as migrants and their children. For example, access to non-contributory old age pensions requires 40 years of continued residence in the country; access to a disability pension, 20 years of continued residence; and access to a pension for mothers with more than seven children, 15 years of continued residence. In the case of the universal child allowance, Decree No. 1602/2009, establishing the benefit, requires that the child beneficiary have Argentine nationality, be a child of an Argentine national or have at least three years of legal residence in Argentina, before his or her guardian is able to access this benefit.⁵⁵ Although in September 2007 the Supreme Court declared the 20-year residence requirement unconstitutional in a case concerning disability benefits, excessive residency requirements to access social benefits remain.

60. The Independent Expert therefore urges the Government to implement the recommendations of the Committee on Economic, Social and Cultural Rights (E/C.12/ARG/CO/3, para. 20), the Committee on Migrant Workers (CMW/ C/ARG/CO/1, paras. 29 and 30) and the Committee on the Rights of Persons with Disabilities (CRPD/C/ARG/CO/1, paras. 45 and 46) and adopt the necessary measures to ensure unrestricted coverage of social benefits, including non-contributory pensions and the universal child allowance, for marginalized and disadvantaged groups, such as migrants and their children.

C. Health

61. The country's public health system provides universal access. At around 10 per cent of GDP, health expenditure is higher than that of other Latin American countries, but resources are unevenly distributed. Health expenditure of around 8 per cent of GDP serves about 64 per cent of the population, who have either private health insurance or are covered by social security-based health insurance, while the remaining 36 per cent of the population have to rely exclusively on public sector health services, which receive only about 2 per cent of GDP.⁵⁶ Depending on province, region and location, there are significant discrepancies in the quality and accessibility of health care. For example, between 2003 and 2009, the City of Buenos Aires spent 24 per cent of its budget on health care. However, more disadvantaged regions, like the provinces of Misiones and Buenos Aires, devoted only about 7 to 8 per cent of their budget to health care.⁵⁷ The Government has acknowledged that such inequalities still need to be addressed in order to guarantee effective compliance with the right to health in the country.⁵⁸

62. In November 2004, the Government introduced the Plan Nacer programme, a maternal and infant health programme, which strengthened health services provided to uninsured pregnant women and women who had just given birth, as well as children under

⁵⁵ For more information, see Centro de Estudios Legales y Sociales, *Derechos humanos en Argentina, Informe 2012* (Buenos Aires, Siglo Veintiuno Editores, 2012) pp. 344-348, available from <http://cels.org.ar/common/documentos/Informe2012.pdf>.

⁵⁶ For information on health insurance coverage, see National Statistics and Census Institute (INDEC), *Censo 2010, Cuadro P11. Total del país. Población en viviendas particulares por cobertura salud y sexo, según provincia*, available from www.indec.mecon.ar/nuevaweb/cuadros/65/P11-Total_pais.xls.

⁵⁷ Cortez and Romero, "Argentina: Increasing utilization of health care services" (see footnote 11), p. 5

⁵⁸ Argentina, Ministerio de Salud, *El derecho a la salud. 200 años políticas sanitarias en Argentina*, (Buenos Aires, 2012), p. 304.

the age of 6. By April 2012, Plan Nacer had provided health coverage to more than 4.5 million pregnant women and children, and reached 89.7 per cent of the eligible population.⁵⁹ The programme provided additional funds to provincial ministries of health, based on delivery of services and 10 tracers to measure results, one of them tracking the inclusion of indigenous communities in health services.

63. While Plan Nacer has contributed to the improvement of the health of uninsured women and children, including a reduction in infant mortality from 16.5 per 1,000 live births in 2003 to 11.9 in 2010, Argentina has so far been less successful in reducing maternal mortality, which has remained above 4 per 10,000 births in recent years. A high percentage of these deaths is related to unsafe abortions.⁶⁰ Women and girls continue to face obstacles in accessing reproductive health-care services, such as contraception, resulting in a high rate of unwanted pregnancies and abortions, including unsafe abortions. Common barriers include long delays in service provision, unnecessary referrals to other clinics, financial barriers and outright refusals of service provision.⁶¹

64. Concerns have also been raised with the Independent Expert about the health effects of agropesticide spraying, including increased congenital birth defects and child cancers in certain areas that have witnessed an intensive increase in soybean production. Similar concerns have also been raised by the National Ombudsman,⁶² the Committee on the Rights of the Child (CRC/C/ARG/CO/3-4, paras. 29 and 30) and the Special Rapporteur on the rights of indigenous peoples (A/HRC/21/47/Add.2, para. 39). The Independent Expert has transmitted the concerns brought to his attention to the relevant thematic special procedures for their further consideration. Nevertheless, he encourages the Government to take measures to prevent health impairments caused by agrochemicals, including through improved regulation and control of their use.

D. Education

65. Argentina's school system and school infrastructure face ongoing challenges, including disparities across the provinces, improving the quality of education, and access to education and full enjoyment of the right to education for children with disabilities and indigenous children.

66. The Independent Expert welcomes the fact that the National Education Act (No. 26.206) explicitly recognizes the right to education and extends compulsory education to secondary level. He also commends the Government for Act No. 26.075 on Educational Spending which provides for at least 6 per cent of GDP to be devoted to education. While nearly all children of primary school age (99 per cent) are enrolled in primary schools and 96.5 per cent of children aged 12 to 14 are enrolled in secondary schools, the completion rate for secondary school (44.1 per cent) is rather low.⁶³ Census data indicate that the Government managed to halve the number of adolescents aged 12 to 17 years dropping out

⁵⁹ For an evaluation of the Plan Nacer programme, see Cortez and Romero, "Argentina: Increasing utilization of health care services".

⁶⁰ PNUD/Consejo Nacional de Coordinación de Políticas Sociales, *Objetivos de Desarrollo del Milenio*, p. 59-64.

⁶¹ See CEDAW/C/ARG/CO/6, para. 37; and Human Rights Watch, *Illusions of Care: Lack of Accountability for Reproductive Rights in Argentina* (New York, 2010).

⁶² Argentina, Defensor del Pueblo de la Nación, *Informe especial sobre agrotóxicos y discapacidad*, Resolution No. 06/2012, 25 January 2012, available from www.dpn.gob.ar/noticias/noti421001.pdf.

⁶³ PNUD/Consejo Nacional de Coordinación de Políticas Sociales, *Objetivos de Desarrollo del Milenio*, p. 12.

of school between 2001 and 2010, but the drop-out rate was still 8 per cent in 2010, with children from disadvantaged communities being the most affected.⁶⁴

E. Adequate housing

67. Argentina continues to have a serious shortage of adequate housing and millions of Argentines continue to live in substandard conditions, including in slums and other types of inadequate housing (A/HRC/19/53/Add.1, para. 6). The Independent Expert is further concerned that only about 1 per cent of the national budget is devoted to addressing problems relating to housing.⁶⁵ This contrasts sharply with the 9 per cent of the national budget expected to be absorbed by debt service payments in 2014.

68. According to surveys by the Catholic University of Argentina in 2010, 2011 and 2012, 14.2 per cent of all persons in urban areas are without secure legal tenure, a problem affecting in particular residents of informal or precarious settlements, where more than half are without secure tenure. In addition, 13.4 per cent of the urban population lack direct access to the public drinking water network, a problem that is particularly widespread in the Greater Buenos Aires region, where 38.3 per cent of all households are excluded. Finally, 34.1 per cent of all urban households are not connected to a sewage network, a problem affecting 68 per cent of all households in informal settlements.⁶⁶

69. The Independent Expert urges the Government to expand its investment in housing programmes, with a view to ensuring access to adequate and affordable housing with legal security of tenure for everyone, in line with recommendations made by the Committee on Economic, Social and Cultural Rights (E/C.12/ARG/CO/3, para. 21) and the Special Rapporteur on adequate housing (A/HRC/19/53/Add.1, paras. 59–75).

F. Poverty

70. It is generally acknowledged that poverty has been significantly reduced since the 2001 debt crisis. However, official statistics related to poverty and consumer price indices have generated much debate in recent years. Data from the National Statistics and Census Institute (INDEC) show that the poverty and extreme poverty levels have constantly declined since 2003, from 47.8 and 20.5 per cent to about 4.7 and 1.4 per cent respectively, according to the latest available data for the first half of 2013.⁶⁷ Conversely, independent research institutions, such as the Institute for Social, Economic and Public Policy Research (ISEPCi), estimate that nearly a quarter of the Argentine population (24 per cent) lives in poverty and that 5.6 per cent face extreme poverty.⁶⁸ Similar results have been presented by the Argentine Social Debt Observatory (ODSA) of the School of Economics, Catholic University of Argentina, and other research institutes.⁶⁹

⁶⁴ Ibid., p. 14.

⁶⁵ Cogliandro, *Gasto Público Social* (see footnote 15), p. 33, indicates that, in 2013, 5.7 billion pesos were allocated to social housing programmes, while the overall 2013 national budget was 573 billion pesos.

⁶⁶ All data can be found in Salvia and others, *Desajustes en el desarrollo* (see footnote 51), pp. 85–138.

⁶⁷ Data available from National Statistics and Census Institute (www.indec.gov.ar).

⁶⁸ ISEPCi, *Mapa de la pobreza y la exclusión*, Buenos Aires, July 2013.

⁶⁹ See, for example, Salvia and others, *Desajustes en el desarrollo* (see footnote 51), pp. 51–60, estimating that in December 2012 between 24.5 and 26.9 per cent of the population in urban regions lived below the poverty line and that between 4.9 and 5.8 per cent faced extreme poverty. Similar results have been reported in CIPPES, *Pobreza e Indigencia en Argentina 2013*, Diciembre 2013, available from www.cippes.org/cippes-uploads/archivos/boletin_pobreza_jun_2013_cippes.pdf.

71. According to official statistics, both the national minimum wage (3,300 pesos a month in 2013) and the minimum pension (2,165 pesos in May 2013) are significantly above the poverty line of 1,734 pesos (during the third quarter of 2013).⁷⁰ However, independent research shows some discrepancies relating to the food basket. For example, the Centre for Participatory Economic and Social Policy Research (CIPPEs) found that, depending on the province, between 4,191 and 4,922 pesos would be required to purchase the goods and services included in the basket used to calculate the poverty line. According to CIPPEs, in October 2013, the extreme poverty line was somewhere between 1,838 and 2,159 pesos, depending on the province. This suggests that basic products and services required for maintaining a decent life may in reality be more than twice as expensive as official statistics indicate.

72. The Independent Expert further notes that both the Committee on the Rights of the Child (CRC/C/ARG/CO/3-4, para. 64) and the Committee on Economic, Social and Cultural Rights (E/C.12/ARG/CO/3, para. 11) have previously expressed concern about the reliability of poverty and other official statistics. It would appear that as at the time of his visit to Argentina these issues had not yet been satisfactorily addressed.

73. It is not the intention of the Independent Expert to draw conclusions on these divergent statistics. Rather, he wishes to underscore that the fight against poverty is a long-term process that requires significant investment and that, despite much progress, challenges remain, with a part of the population still facing extreme poverty, although its actual size may be contested. He calls upon the Government to continue its efforts to reduce poverty, in particular among children and adolescents, residents of informal settlements, indigenous people and other disadvantaged groups, as part of a comprehensive social equity strategy that goes beyond financial measures.

74. Finally, the Independent Expert considers that the Government should enhance its efforts to evaluate the impact of its social policies from a human rights viewpoint. For example, there is a need to study whether existing measures and the level of existing benefits are sufficient to meet the essential minimum levels of social rights enumerated in international human rights treaties, and whether they are sufficient to move the impoverished out of poverty.

V. Need for a public debt audit

75. A significant share of the debt which the country is paying was incurred in questionable circumstances, particularly during military rule from 1976 to 1983. During that period, banks, international financial institutions and other countries continued to lend to Argentina, indirectly supporting an illegitimate government engaged in the repression and disappearance of its opponents. Most of the loans taken up during that period were not used for productive investments.⁷¹ In 1982, when Argentina started to face a financial crisis, the military government assumed the foreign debt of private Argentine companies through a system of exchange rate guarantees, thereby transforming in a questionable manner

⁷⁰ The official poverty line is measured by INDEC based on a basket of basic goods, food and services, while the extreme poverty line (*indigencia*) is based on a food basket containing only products representing minimum dietary needs.

⁷¹ World Bank, *Argentina - Economic Memorandum*, vol. 1, Main report, A World Bank Country Study (Washington D.C., 1985), p. 17, para. 1.16, available from <http://documents.worldbank.org/curated/en/1985/01/4392081/argentina-economic-memorandum-vol-1-2>.

private debt into public debt. Needless to say, the country's debt grew exponentially, from \$7.8 billion in 1975 to \$40.7 billion in 1982.⁷²

76. According to World Bank estimates, of the nearly \$45 billion dollars of loans taken up during that period, \$2.5 billion were used to increase national foreign reserves; \$13 billion to service interest payments; \$10 billion for unregistered imports, most of which are considered to have been related to arms purchases; and \$19 billion were capital outflows.⁷³ Beneficiaries included senior government officials who transferred funds to their foreign bank accounts; businessmen who engaged in financial speculation and transferred their profits abroad; and the armed forces, which used loans to purchase arms. The losers were the export industry; the formerly prosperous nationalized enterprises; and the Argentine people, who had and still have to repay the debts, making up a large percentage of the country's GDP.⁷⁴

77. Given the questionable legitimacy of the military government and of many of its loan operations, the first democratic Government of President Raúl Alfonsín initially held the view that the debt inherited from the military dictatorship should not be repaid without a thorough investigation to clarify to what extent the debt was in fact legitimate. A moratorium on debt repayments was declared and, in February 1984, the Senate Investigatory Commission on Illicit Economic Activities was created and tasked with carrying out an investigation of the foreign debt incurred by the military regime. However, the mandate of the Commission was not extended beyond 1985 and it lacked sufficient budgetary resources and time to present a conclusive report. An investigating commission set up by the Central Bank and tasked with investigating the legitimacy of the external debt of the private sector was similarly dissolved before it could present any findings.

78. Neither the first democratic Government after the 1976 to 1983 military dictatorship, nor subsequent governments conducted any thorough investigation into the legitimacy of the debt incurred during the military dictatorship. The closest thing to an official investigation was a judicial inquiry based on a case filed before the Second Federal Criminal and Correctional Court of Argentina that culminated in a ruling after 18 years of investigation.⁷⁵

79. In 1983, Alejandro Olmos, an Argentine national, filed a claim against the former Finance Minister, José Alfredo Martínez de Hoz, for fraud and abuse of authority in relation to the public debt incurred during the military dictatorship. His initial claim and other proceedings before the Argentine courts were later consolidated into a case that was investigated by the Second Federal Criminal and Correctional Court. In a lengthy judgement, summarizing the evidence and testimony presented during the investigation, Judge Jorge Ballesteros concluded as follows:

The evidence introduced throughout these proceedings shows that the highest political and economic authorities of the country clearly acted in an arbitrary manner during the periods under consideration. This was also true for the directors and managers of some government-owned and privately-owned companies and organizations. The authorities did not hesitate to violate the Charter of the Argentine Central Bank; legal instruments were modified in order to extend the jurisdiction of foreign courts to cases that fell under the jurisdiction of domestic courts; and there were no accounting records of the

⁷² Juan Pablo Bohoslavsky and Veerle Opgenhaffen, "The past and present of corporate complicity: financing the Argentinean dictatorship", *Harvard Human Rights Journal*, vol. 23 (2010), p. 189.

⁷³ World Bank, *Argentina - Economic Memorandum*, vol. 1 (see footnote 71), p. 17, para. 1.16.

⁷⁴ Sabine Michalkowski, *Unconstitutional Regimes and the Validity of Sovereign Debt* (Aldershot, Ashgate Publishing, 2007), p. 13.

⁷⁵ Second Federal Criminal and Correctional Court, Argentina, case No. 14.467, *Olmos, Alejandro S/Denuncia*, available from www.dipublico.com.ar/3844/olmos-alejandro-sdenuncia/.

foreign debt. For the purpose of sustaining the economic policy, government-owned companies were forced to incur debt in order to receive foreign currency that was kept by the Central Bank, and was later placed on the foreign exchange market. Furthermore, there was a lack of control over the debt incurred by government-owned companies and guaranteed by the State.⁷⁶

80. Since the statute of limitations precluded the conviction of any accused person, the Court decided to refer its findings to the Congress, emphasizing at the same time that “the dismissal of this case should not preclude the members of the Argentine Congress from analysing the conclusions arrived at in these proceedings, in order to determine the potential political responsibility of each and every person involved in the events causing the enormous foreign debt of the Argentine Republic”.⁷⁷ The court stated:

This may be the time to reiterate such request in order to obtain a reduction in the financial cost of the debt, notwithstanding any other benefit that may be offered by creditor countries. However, as is clear from this ruling, the task of making such complex decisions is incumbent upon other branches of government. For that reason, this Court will send a copy of this decision to the Argentine Congress so that it may adopt — through the respective committees — such measures as it may deem fit with a view to arriving at the best solution possible regarding the negotiation of Argentina’s foreign debt.⁷⁸

81. To the knowledge of the Independent Expert, the Congress has not addressed to date the issues identified in the case. As mentioned earlier, he was not able to meet members of Congress to discuss the subject in more detail as he had hoped. This is regrettable given the obvious challenges that the debt problem has posed for the country.

82. It is critical that any strategy to address the country’s debt problem in a decisive manner should include a transparent, participatory and comprehensive audit to ascertain the legitimacy or otherwise of the public debt. Under international law, debts assumed by unrepresentative regimes and not used for the benefit of the people are odious and not repayable.⁷⁹ In this regard, the Independent Expert calls upon the country’s international lenders to support a transparent and participatory audit of Argentina’s public debt and to unconditionally cancel any claims they may have should the audit find these to be odious or otherwise illegitimate.

VI. Conclusions and recommendations

83. **Argentina’s experience highlights fundamental flaws in the global financial system and offers two important lessons. First, economic growth is a key precondition for debt repayment capacity, while unbridled fiscal austerity can only deepen a country’s poor economic situation. Second, there is an urgent need for an independent international mechanism based on a clear set of binding rules and procedures for resolving sovereign debt problems and addressing capital flight.**

84. **In the light of the above, the Independent Expert makes the following recommendations to the Government of Argentina and its international creditors.**

⁷⁶ Ibid., Conclusiones, first paragraph (translated from the Spanish).

⁷⁷ Ibid., seventh paragraph.

⁷⁸ Ibid., twelfth paragraph.

⁷⁹ See A/64/289.

A. Government of Argentina

85. The Government of Argentina should:

(a) Conduct a transparent, participatory and comprehensive audit of its public debt in order to obtain a clear picture of the circumstances in which the debt was incurred and, in particular, to ascertain the extent to which the debt can be deemed to be odious;

(b) As a matter of priority, enact national legislation to limit the ability of vulture funds to pursue before Argentine courts immoral profits at the expense of the poor and most vulnerable through protracted litigation, and actively promote the enactment of such legislation by other countries both within and outside its region;

(c) Renew its efforts to promote social, economic and cultural rights, including the rights to education, health, water and sanitation and adequate housing, and to ensure the minimum essential levels of these rights for all;

(d) Take measures to address gender-based inequality in the labour market as outlined in the present report;

(e) Intensify its efforts relating to the inclusion of workers in the social security system so as to reduce informal employment to less than 30 per cent by 2015;

(f) Take measures to eliminate the social and economic factors contributing to child labour and continue to strengthen its efforts and structures to eliminate child labour, especially its worst forms;⁸⁰

(g) Take measures to address the problems of children remaining outside the education system, illiteracy, course repetition and school dropout;

(h) Strengthen its efforts to remove disparities in access to and the quality of education between different social groups, including implementing necessary measures to ensure the education of children with disabilities in its regular school system;⁸¹

(i) As a matter of urgency, adopt measures to ensure unrestricted and non-discriminatory coverage of social benefits, including non-contributory pensions and the universal child allowance, for marginalized and disadvantaged groups, such as migrants and their children;

(j) Strengthen its efforts to reduce poverty, particularly among children and adolescents, residents of informal settlements, indigenous people and other disadvantaged groups, as part of a comprehensive social equity strategy that goes beyond financial measures;

(k) Ensure women's, including teenagers, access to health services, including sexual and reproductive health services, and adopt the necessary measures to further reduce the high maternal mortality rate;⁸²

(l) Take measures to improve the availability of reliable, disaggregated and comprehensive data to inform the formulation and implementation of public policies, including statistics on inflation and poverty, and to ensure that the methodologies

⁸⁰ See also CRC/C/ARG/CO/3-4, para. 74.

⁸¹ See also E/C.12/ARG/CO/3, para. 24; CRC/C/ARG/CO/3-4, para. 68; CRPD/C/ARG/CO/1, paras. 37 and 38; and A/HRC/21/47/Add. 2, para. 106.

⁸² See also CEDAW/C/ARG/CO/6, para. 38.

used and data gathered by the National Statistics and Census Institute (INDEC) are accessible to external users and adequately disseminated;

(m) Enhance its efforts to evaluate the impact of its social policies from a human rights viewpoint, including assessing whether existing measures, such as minimum wages, minimum pensions and other social benefits, are sufficient to meet the essential minimum levels of social rights enumerated in international human rights conventions, including whether their level is sufficient to move the impoverished out of poverty.

B. Argentina's international creditors

86. Argentina's international creditors should:

(a) Support a transparent, participatory and comprehensive audit of Argentina's public debt and, in keeping with the principle of shared responsibility for preventing and resolving unsustainable debt situations, unconditionally cancel any claims they may have should the audit find these to be odious;

(b) As a matter of priority, enact national legislation to combat extortionate litigation by vulture funds;

(c) Support the establishment of an international rules-based framework for the impartial, efficient and rights-sensitive resolution of sovereign debt problems;

(d) Ensure that any sovereign debt restructuring agreements reflect the primacy of human rights obligations, particularly those of Argentina to its population.
