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**Argentina 1976 – 2007:**  
**The paradigmatic case of an extraordinarily legitimate debt**

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**Abstract**

The persistence of a massive stock of illegitimately accrued public debt claims against the Argentine state, constitutes a gross and systematic violation of the Argentine people's right to self-determination, to development, and to the full enjoyment of all their human and environmental rights.

This process of debt accumulation, studiously pursued as a central policy of the civilian-military dictatorial regime which terrorized the country between 1976 and 1983, has been the subject of an important judicial ruling in Argentina, establishing clear evidence of its fraudulent and arbitrary nature, the relationship between the expansion of external debt claims and the discriminatory deterioration of human rights and social welfare, and the complicity of the International Financial Institutions –the IMF in particular- in the process as a whole. Subsequent judicial denunciations and investigations point to the ongoing pattern of criminal association between local elites and transnational corporate interests, international financial institutions, and authorities of the national government, insuring the continued accumulation of fraudulent debt claims as a key component of a model that also entails the cession of national sovereignty, the plunder and denationalization of public resources and wealth in such a way as to inhibit the future exercise of such sovereignty and self-determination.

Judicial processes, nonetheless, have yet to bring about significant results in terms of halting the criminal debt build-up and/or redressing its consequences. It is thus imperative that new avenues of judicial and/or political redress be activated in order both to prevent further deterioration of the human rights situation in Argentina and to galvanize a new era of human rights protection and promotion. Concerted global action against the impunity of those responsible for the accumulation of illegitimate debt claims is one such avenue; integral and participatory Audits and judicial demands focused on obtaining recognition, restitution, and reparation of the Argentine people's legitimate claims of historic, social, and ecological debt are another.

## **Case development**

### Setting the foundations

When the Bretton Woods institutions were created in 1944, Argentina was not among the founding states. It was, indeed, the military coup of 1955 that put an abrupt end to the ongoing process of social organization, resource nationalization, income redistribution, and promotion of basic social and political rights, that also determined the country's entrance into the IMF, the World Bank, and the Paris Club. Then, as now, the principal argument invoked was the need to generate confidence among (potential) external investors.

The Economic Plan inaugurated by that military dictatorship was widely criticized for its tendency toward the denationalization of the economy and a regressive income distribution. Obviously elaborated and put into practice in flagrant contradiction to the expressed will of the people, the Plan had the formal approval of the International Financial Institutions -which thus inaugurated their 50-plus years of intervention into the internal affairs of the country-, concentrated its benefits in the hands of a privileged few, and marked the country's first timid steps into the modern era of external debt accumulation by converting floating commercial debt into one billion US dollars of financial debt with the Paris Club, by the end of the military rule in May, 1958.

### 1976 - 1983

The more recent era was inaugurated once again by a flagrant combination of military might, local economic elites, and international financial institutions and interests. The civilian-military coup of March 24, 1976, was preceded by nearly a year of frustrated negotiations with the IMF, which argued "political instability" as the motive for denying the elected government a stand-by agreement to ease the balance of payments crisis brought on, in no small part, by the implementation of the previous 20 years of IMF-induced policy prescriptions. Proof of its complicity in the coup itself was the rapidity with which the IMF recognized the military junta –second only to the US government– and the fact that in less than 24 hours it authorized a loan to what was already in motion to become the bloodiest regime in modern Argentine history. The Inter-American Development Bank quickly followed suit, and in rapid succession, the Economic Plan announced on April 2<sup>nd</sup> was flooded with external credits then anxious to find placement in the less respectable but much more profitable "emerging markets" of South America – most of which, oh coincidence, were also quick in the process of succumbing to highly repressive civilian-military dictatorships.

Between 1976 and the end of that regime in 1983, the external debt claimed of Argentina, largely by international banks headquartered in the U.S., Europe, and Japan, rose from some US\$ 7 billion to US\$ 43 billion. Six years to the day after Martínez de Hoz inaugurated the profoundly regressive *National Reorganization Plan*, Argentine citizen Alejandro Olmos filed a complaint in Federal Criminal Court charging the then ex-

Finance Minister with having conceived and implemented an economic plan with the intent of producing a disproportionate and irregular external indebtedness, the access to hard currencies being used for interest rate manipulation which in turn lead to the bankruptcy and closure of local enterprises and difficulties for the country's production, export capacity, and growth. Particular emphasis was placed on the abusive indebtedness of what were then still powerful public enterprises, among them the national petroleum company, the national telecommunications company, the national water and sewage company, and the national airline, as well as the nationalization of external debts accrued by private firms – often large multinationals including the very same banks and external financial interests then making loans to the civilian-military dictatorship.

Eighteen years passed – more than ample time to consider the peoples' right to justice to have been systematically denied – before a judicial ruling could be obtained (July 2000) whose central elements, even then, contributed little to prevent the further exacerbation of that human rights violation, the continued growth of a publicly-recognized illegitimate debt, and the worsening of its consequences in terms of political-economic domination, denial of other human and environmental rights, and the deepening plunder of the country's resources and wealth to the detriment of popular sovereignty, self-determination and any pretense of development.

What the Federal Judge did recognize to have been proven, however, was *the manifest arbitrariness with which the highest political and economic authorities of the Nation conducted themselves ...in no fewer than 478 occasions*, provoking a situation in which, inter alia, the *...external debt of the Nation...has been grossly incremented since 1976 by means of a vulgar and offensive political economy that forced the country to its knees as a result of the diverse methods used and which were described in the course of this ruling....* The Judge further concluded that *the existence of an explicit link between the external debt, the entry of short term external capitals and high interest rates in the domestic market, and the corresponding sacrifice of the national budget beginning in 1976 could not have gone unnoticed by the authorities of the International Monetary Fund who supervised the economic negotiations... In effect, it must be remembered that since 1976 the country was placed at the will of its external creditors and in those negotiations, functionaries of the International Monetary Fund participated actively.*

Meanwhile, innumerable citizen initiatives were undertaken in an attempt to draw attention to the illegitimacy and illegality of the debt claims accumulated during the dictatorship and their profound consequences, including the holding of an “Ethical Tribunal on the External Debt and Neoliberal Adjustment Policies”, in September 2000. Among the considerations cited in that Ethical Tribunal's Sentence, is the fact that *to insure their Impunity, those involved modified the Procedural Code to make it possible to defer jurisdiction to foreign courts. They also modified the law establishing the incompatibility between being a public official and an agent of foreign interests.*

#### 1984 - 2001

The return to constitutional rule was accompanied, in 1984, by a strong public recognition of the illegitimacy of existing external debt claims; the election of

presidential candidate Raúl Alfonsín was often credited to his promise not to repay those claims found to be illegitimate and one of his first actions as president was to call on the Federal Parliament to conduct the necessary investigation. Such action was thwarted by imposition of the IMF, which in June 1984 refused approval for the popularly elected government's economic plans unless the Parliamentary investigation, then underway, was suppressed. The Argentine Finance Minister resigned, both Parliamentary and Judicial investigation of the debt claims were stopped, and the final steps were taken by the government to legalize the unquestioned nationalization of private debts assumed under the dictatorship.

Combined with the effects of the unprecedented and unilateral rise in interest rates, the fall in relative commodity prices on the world market, and the anatocism applied to the subsequent interruption of regular payments on the external claims, this denial of justice ushered in an almost uninterrupted 18 year period characterized by another four to five-fold increase in the volume of external debt claims, a massive pauperization and social decline of the Argentine population, the denationalization of public patrimony, recommodification of the economy's productive profile, and the continued plunder and destruction of natural resources.

This manifest denial of the Argentine people's right to development, including the gross and systematic violation of their human rights to education, healthcare, decent housing, dignified work, wages, and employment conditions, access to land, among others, evidencing furthermore a systematic discrimination against children, women, and the elderly, was supervised and encouraged on a permanent basis – and indeed praised as a relevant model for other South countries – by the same International Financial Institutions –the IMF, WB, IDB- that lent their support to the earlier periods of civilian-military dictatorship. Indeed, after supervising the conversion of outstanding commercial debt claims into “sovereign” public debt in the early '90s, these institutions took on an increasingly important role as direct lenders, accompanying and imposing on greedy, spineless, or overpowered national authorities the 10 Commandments of the Washington Consensus until such time as the implosion of the model in 2001 moved them even more forcefully into the role of unrepentant and privileged claims collectors.

### 2002 – ¿?

The present period is marked by the contradictory combination of a reluctant but ineluctable moratorium on the payment of commercial debt claims (December 2001), followed by the “sovereign” decision to negotiate the resumption of payment on said claims (2003-2005), advance payment to the IMF in contravention of the judicial questioning of its claims (December 2005), and preparations to regularize outstanding bilateral debt claims in the Paris Club – including the negotiation of a renewed supervisory role for the IMF and other IFIs. The securitization of public debt claims, implemented significantly in the early '90s is further complemented by the “internalization” of the “external” debt.

What has not changed significantly in the ensuing period, is the pressure to accumulate in a continued, massive, and systematic manner, the only truly legitimate debt emerging

from this more than 30-year old history: the debt that the international financial institutions, their owners and policy setters (North governments), the concentrated financial and corporate interests they serve, and their handful of local accomplices, owe to the people of Argentine as a result of the violation of their right to self-determination and development, to the full enjoyment of their human and environmental rights, to international cooperation and the development of an international economic environment favorable to the respect and promotion of those same rights.

### **Country profile**

Argentina is the second largest country in South America, with an overwhelmingly urban population of nearly 40 million people and a life expectancy of some 74 years. While adult literacy is widespread and primary education nearly universal, maternal and infant mortality rates are relatively high (82 per 100.000 and 19 per 1000 respectively). Gross national income is registered at more than US\$4000 per capita (2002) and the extreme inequality in its distribution is similar to the levels registered in most of Latin America and the Caribbean (In early 2007, national statistics would indicate that the bottom 10% of the population perceives 30 times less income than the top 10% - a figure that was only 12 times less in 1974). (Guía del Mundo, 2005/2006 - INDEK). More than 20% of the population remains below the poverty line.

According to the most recently available statistics, total public debt claims against Argentina are calculated at US\$ 136 billion, US\$ 15 billion of which is claimed by International organisms (WB, IDB, CAF, EIB and others), some US\$ 6.5 billion by the Paris Club (Spain, Germany, and Japan), and US\$ 80 billion by holders of hard currency and locally-denominated public issue securities. Debt claims due to be collected in 2008 total US\$ 14 billion, relative to a GNP of approximately US\$ 102 billion. Argentina made an accelerated payment to the IMF of nearly US\$ 10 billion in early 2006, canceling all outstanding claims.

### **National debt laws and debt policy**

The Argentine National Constitution confers on the National Parliament responsibility for the National Debt (art. 75, inciso 7). The National Parliament refuses however to assume this responsibility, routinely delegating its powers to the Executive in an unconstitutional manner (ref. Art. 65 Law 24.156, delegating faculties for “arranging” the national debt to an office of the Finance Ministry). The Federal Court ruling in the Olmos Case, referred to earlier, which enjoined the Argentine Parliament to investigate responsibilities for the massive, fraudulent, and arbitrary indebtedness committed by the authorities of the ruling military juntas between 1976 and 1983 – with the knowledge and consent of the IMF and other IFIs - has to date never been debated even in Commission. A similar fate of silence and inaction has been the destiny of various parliamentary bills and the Citizens’ Initiative presented in March, 2006, whose stated intention was to galvanize the investigation and Audit of the external debt as well as to nullify those claims already identified in the Olmos Case as fraudulent or arbitrary.

Numerous criminal and civil complaints have been filed in national jurisdiction, including Case No. 17.718, originally filed by Alejandro Olmos in 1992 as a continuation

of his 1982 denunciation, and covering the period of indebtedness immediately following on the 1983 conclusion of the civilian-military dictatorship. One central finding of this judicial investigation – still in process – is that all of the credits solicited of the IMF, the World Bank, and diverse foreign private banks by the Argentine government, after 1983, were for the exclusive effect of refinancing the debt claims accrued during the dictatorship.

The reform of the National Constitution in 1994 incorporated a series of international human rights pacts and treaties (art. 75, incisa 22), granting them constitutional status and reinforcing the social guarantees and rights already enumerated in previous versions of the Constitution. On some occasions, these rights have been successfully invoked to prevent actions that would be deemed deleterious to their defense (ie. the collective right to health, in order to prevent closure of the National Health and Medicines Institute). The Supreme Court of Justice has also, in recent actions, advanced in the development of jurisprudence establishing a broad interpretation of the rights incorporated into the Constitution and an active role for the judicial authority in regard to their implementation.

In this regard, although the Supreme Court has yet to act, for instance, in any of a number of complaints filed in relation to the deferral of jurisdiction incorporated into any number of public credit documents, as well as the more than 50 bilateral investment protection and promotion treaties that have given rise to more than US\$ 80 billion in pending or future claims against the country in the ICSID, just days before the Executive announced its decision to anticipate payment of “services” to the IMF, the Court did instruct the Federal Appellate Court to investigate the denunciation pertaining to the illegality and illegitimacy of the IMF credit to the country in December 2000, which was used to fuel the enormous capital flight during 2001, bringing about the final collapse of the Washington Consensus model, one year later (Judicial investigation still pending).

On a final note, it should be stated that notwithstanding the ineffectiveness of judicial recourse to date, in resolving matters arising either from the illegitimacy or illegality of the claims, or the application of economic and social rights, or the right to development itself, the Argentine government now pursues an official policy of reducing indebtedness (*desendeudamiento*). Decisions to resume payments on the claims of commercial bondholders in 2005, and to make an advance pay-off of IMF claims against the country, according to official discourse, form part of this policy of debt reduction. At the same time, recent official statistics recognize that over the past year, the external debt claimed of Argentina rose nearly 10 billion US dollars, growing in the most recent quarter by some 8.8%. The Federal Budget recently proposed for the year 2008 suggests that interest payments alone will account for nearly 15% of Federal revenues.

Without legal and political enforcement of the right of the Argentine people to their own self-determination and development, entailing among other aspects the repudiation and non-payment of illegitimate and illegal debt claims and the restitution and reparation of historical, social, and ecological debt claims legitimately held against those responsible for perpetrating the illegitimate financial debt, it will be increasingly difficult to break this spiral of debt, death, and destruction.