

When talking about activities of vulture funds, the first thing comes to mind would be the most recent and the most notorious hedge fund activity namely NML against Argentina in a US lower court and then the supreme court. It has been dubbed as the litigation of the century, dominating newspaper and website headlines for many months last year. However in absolute numbers, the successful litigations by hedge funds against the heavily indebted poor countries (HIPC) would outnumber by far any other groups of countries. As you are aware in 1996, under a lot of political pressure, the IMF and the World Bank and some regional development banks started the HIPC initiative to reduce the debt stock of some poorest countries on the planet, most of them are sub-Saharan African countries. Vulture funds took the HIPC countries as their easy preys. Easy in the sense, debt relief would free funds for these countries so that they can pay vulture funds. As these countries are normally weak in defending themselves legally, they are easy to defeat at the court. Just as the vulture funds expected, most the HIPC countries being sued paid the vulture funds. With a number of exceptions, not much was reported in the international media. These HIPC countries belong to the voiceless bottom billion.

For instance, Zambia owed to Romania money for purchasing agricultural machinery. By 1984, the government had difficulty to service the debt which amounted to about \$30 million with interest included. In 1999, just when Zambia was about to reach the decision point under the HIPC initiative for a comprehensive debt relief, a vulture fund based in British Virgin Islands, bought the claim at about US \$ 3 million, or 11% of the debt's face value. This is a very clever calculation, because the government will be in a position to pay with debt relief. In 2005, the hedge fund sought \$55m repayment in total. By the time litigation ended, London's High Court had awarded the vulture fund a \$15.5 settlement, roughly a 370% return. What is the impact of this claim on Zambia? The total expenditure of the central government on social benefits according to the IMF was around US\$ 140 million, thus the vulture fund took away almost 15% of the total government social benefits expenditure. Money that could have been channeled to education, health care and poverty alleviation thus had to be used to pay the victorious vulture fund.

Out of 36 HIPC countries going through debt relief, at least 20 of them have been threatened with or been subject to legal actions by commercial creditors and vulture funds since 1999. Per capital income of many HIPCs is between 1 to 2 dollars per day. The HIPCs lost the cases systematically and have been obliged to pay the original debt, interest and fees accrued since the debt entered arrears, as well as the hefty legal costs of the lawyers.

Sometimes for some countries, the ratio of lawsuit costs to debt service obligations could reach 200%, so much so in 2009, the African Development Bank launched its African legal support facility to provide legal help to countries facing litigation from commercial creditors.

According to country surveys, vulture funds are engaged in claims seeking a total of \$1.5 bn from HIPC countries..

These vulture funds have **won most of their law suits** with a success rate of 72 percent. In some cases, the claims by vulture funds constitute as much as 12 to 13 percent of a nation's GDP. **After** winning the case in court, vulture funds have used various means to get paid. Sometimes, it can be very aggressive. They chase the sovereigns around the world, attempting to seize the overseas assets of the country. In the case of an oil producing HIPC country **the Republic of Congo**, the vulture fund intercepted proceeds of a Congolese oil sale to recoup \$39 million. The vulture fund is expected to get its \$90 million claim eventually. This prevents a profitable industry of a poor country from having any impact on alleviating poverty and promoting economic development. Instead, it is turned into a milking cow for paying fraudulent claims of vulture fund located in an offshore island. This indeed is **"a morally outrageous outcome"**.

Hedge funds have no ideological baggage, they attack developing and developed countries alike. Take Greece debt restructuring of 2012 for an example Holders of over €6bn refused to swap Greek debt. To avoid legal complications, Greece at one point made a repayment of €436m on its foreign law -governed debts. Of this total, 90% reportedly went to one hedge fund located in Cayman island. For the Greek government, it received bailing out money from the IMF, EU and ECB with the left hand and gave it out with the right hand to the vulture fund. As for the Greek people, we know with long period of austerity, the Greek welfare state has been on the verge of collapses and the society has been suffering. Almost half of the young people are unemployed.

According to studies, suicide rate increased dramatically. Where is the human rights of the poor people in Greece?

A sovereign debt crisis is like a financial tsunami. It brings a great deal of economic destruction and economic reversal. A country could lose 5-15% of its GDP. With it, human rights would also be sacrificed to various extent. A speedy and equitable debt restructuring could reduce economic and human suffering. However, hedge funds can hamper and delay debt restructuring relative effectively.

With the US supreme court ruling on the Argentina case, debt restructuring is likely to become more difficult and vulture fund litigations would be on the rise.

There has been a lot of discussions ongoing in various international fora, among academics and NGOs about how to contain hedge funds. Now there have been some proposals to tighten up debt contract languages and introduce stricter debt contract clause including parri passu and collective action clause. However, we all know it cannot fix all the problems and most important of all is that existing, outstanding debt contracts without the new clauses will last for years. Allow me to give you an example. If the mortgage terms has introduced a more favourable condition for borrowers, only the new house buyers can benefit from it and the people with old mortgages are stuck with the old terms. According to the IMF, now there are around 900 billion dollars of sovereign debt outstanding. So they cannot benefit from the contractual improvements. Some of the bonds would last for 30 years. It would not be an exaggeration that one or two debt crises would have taken place within this period. Therefore, it is expected that vulture funds activities will increase instead of declining.

With the global financial crisis and the messy litigation against Argentina, there is the convergence that the global system on sovereign debt workout is not working, the system is broken and needs to be fixed. How to fix it, in particular the hedge fund problem is being heatedly discussed in the UN General Assembly in NY. Last September, the UN GA had a resolution on towards the establishment of a multilateral legal frame-work for sovereign debt restructuring processes. The UN Secretary General set up an Ad Hoc Committee to conduct intergovernmental discussions on the issue. Countries may have different views on many aspects

of a legal framework. However, most of the countries are sympathetic to contain the vulture funds activities.

I hope the work in the Human Rights Council on vulture funds would lead to recommendations relating to concrete actions. This could be at both national and multilateral level.

For instance, at the national level, the UK government's Debt Relief Act 2010 did play a role in stopping creditors, including "Vulture Funds", from using the UK courts to extract harsh and inequitable payments from poor countries for debts.

At the multilateral level, the United Nations process and the process in the IMF are progressing. However, it may take some time. Nevertheless, we should work together to curtail predatory activities of vulture funds and protect human rights of the poor who would be negatively affected by such activities