



**PERMANENT MISSION OF THE REPUBLIC OF MAURITIUS TO THE UNITED NATIONS AND
OTHER INTERNATIONAL ORGANISATIONS**

**MISSION PERMANENTE DE LA REPUBLIQUE DE MAURICE AUPRES DES NATIONS UNIES
ET DES AUTRES ORGANISATIONS INTERNATIONALES**

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The Permanent Mission of the Republic of Mauritius to the United Nations and other International Organizations in Geneva presents its compliments to the Secretariat of the Human Rights Council Advisory Committee and with reference to its email dated 20 March 2015 pertaining to the Human Rights Council resolution 27/30 has the honour to attach herewith responses to the questionnaire in relation to "*Activities of Vulture Funds and the Impact on Human Rights*" from the Government of the Republic of Mauritius.

The Permanent Mission of the Republic of Mauritius to the United Nations and other International Organizations in Geneva avails itself of this opportunity to renew to the Secretariat of the Human Rights Council Advisory Committee the assurances of its highest consideration.



**The Secretariat of the Human Rights Council Advisory Committee
Office of the High Commissioner for Human Rights
Palais Wilson Room 4-062
CH-1211
Geneva 10**

Human Rights Council Advisory Committee Questionnaire

On

Activities of Vulture Funds and Impact on Human Rights

1. Could you provide concrete examples of the negative impact that vulture funds activities may have on enjoyment of human, in particular, economic, social and cultural rights.

- Vulture funds are private commercial funds that acquire at a high discount on the secondary market the debt of poor highly indebted countries that are on the point of defaulting or have defaulted on payment of their debt, and then seek through litigation or political pressures repayment of the full value of the debt with interest. Some examples of the negative impact that their activities may have on the enjoyment of human, particularly, economic, social and cultural rights are given below:
 - a. Vulture funds activities may discourage other creditors, whether bilateral, multilateral or commercial, to agree to debt restructuring arrangements and provide debt relief to a country in distress.
 - b. Requiring payment of the full value of distressed or defaulted debt, in respect of which debt restructuring arrangement has been agreed upon runs counter to the principle of providing debt relief.
 - c. The activities of vulture funds may lead a country to further default as happened in the case of Argentina in the last decade. Litigations and default reduce the inflow of funds to the country and impact negatively on economic growth. In turn this may lead to a rise in unemployment and negatively impact on the ability of its citizens to meet basic needs such as food, shelter and clothing, let alone human rights, particularly, economic, social and cultural.
 - d. Such funds may also limit the ability of the state to provide for the welfare of its citizens, such as social benefits, sanitation, health care and education. For instance, one vulture fund sued the Democratic Republic of Congo for USD 400 million for a debt it had acquired for USD 10 million on the secondary market and ended up with USD 127 million, making a profit of over 12 folds. Other developing countries that have been the targets of vulture funds include Cameroon, Ethiopia, Honduras, Nicaragua, Sierra Leone and Uganda.

- e. Debt problems in one country may also have economic impact on other countries through the ripple effect. For instance, the default of Argentina on its debt payment impacted on the stock market across the world.
- Governments sometimes need to restructure their debts. Otherwise, a country's economic and political stability may be threatened. But, in the absence of an institutional rule of law for resolving sovereign defaults, the world pays a higher price than it should for such restructurings.
 - (i) **The actions of vulture funds are a threat to the stability of the international financial system.**
 - The incapacity for a government to organise successful debt restructuring may extend the length of debt crises and therefore increase the risk of contagion; it makes it difficult to regain debt sustainability and economic growth.
 - This may ultimately provoke a new debt crisis.
 - (ii) **The social impact on the poor**
 - The actions of vulture funds have huge social costs.
 - They undermine the capacity for a country to finance its development and should therefore be considered immoral and unjust.
- Besides their effect on individual nations of slowing down or preventing economic recovery, the actions of vulture funds are jeopardizing debt restructuring worldwide.
- Vulture funds oblige indebted countries to divert financial resources saved from debt cancellation and diminish the impact of, or dilute the potential gains from, debt relief for these countries, thereby undermining the capacity of governments to guarantee the full enjoyment of human rights of its population.
- E. Stiglitz, a Nobel Laureate in economics and professor at Columbia University, harshly criticized the New York appeals court ruled that ordered Argentina to pay USD 1.33 Billion to hedge funds that refused to accept steep amounts when the nation restructured its debt. He explained that "Argentina had no choice but to devalue its currency and default on its debt. Under the existing regime, the country had been on a rapid downward spiral of the kind that has now become familiar in Greece and elsewhere in Europe."

2. Has your country ever been directly or indirectly affected by vulture funds?

- Mauritius has not been affected by vulture fund activities as it has always settled its sovereign debt obligations on time.
- The Bank of Mauritius is also not aware of any instance in which this may have occurred.

3. Has your country or organisation taken, individually or collectively, any particular measure to present the negative effects vulture funds may have on the enjoyment of human rights, in particular, economic, social and cultural rights?

- No. However, the Republic of Mauritius supports the initiatives of the Human Rights Council to establish a multilateral legal framework for the orderly restructuring of the sovereign debt of countries facing severe debt problems.
- In so far as the banking sector is concerned, banks are required to seek the prior approval of the Bank of Mauritius before envisaging the sale of any of their pool of assets. The bank of Mauritius has, however, not taken any specific measure regarding vulture funds.

4. Under what particular circumstances, if any, would it be acceptable that a state refuse the full repayment of the vulture funds debt?

- Refusing the full repayment of vulture funds debt could be acceptable when a debt restructuring arrangement has been reached with the majority of creditors measured by the amount of debt of the concerned country held by them.
- When it is possible to question the legitimacy of debts, so that odious regimes cannot contract debts unaccountably, then pass these on to the people they have oppressed once they are removed from power.
- In Argentina, government refused to repay its debt to vulture funds. These "vulture funds" never lent money to Argentina – they were profiteering from a country in debt crisis. In addition, much of the debt originated from the time of Argentina's military dictatorship.

5. To what extent would the establishment of an international mechanism for sovereign debt restructuring and relief contribute to palliate the negative impact of the activities of vulture funds on the enjoyment of human rights?

- The extent to which the establishment of such a mechanism would help to reduce the negative impact of vulture funds activities on enjoyment of human rights would depend on what it would provide for. To be effective such a mechanism must provide that when a debt restructuring arrangement has been agreed by a simple majority of creditors in terms of the percentage of debt of the country held, then other creditors, including vulture funds must comply with the arrangement. The percentage must be in respect of the total sovereign debt of the country and not in respect of certain category of debt or certain types of instruments or certain specific issuances of an instrument. The mechanism must also provide that when litigation has been initiated by one party/fund against a country, this should not prevent that country from meeting its debt service obligations to other parties. Preventing a country to do so would, in fact, lead that country to technically default on its payment obligations, with all the attendant negative consequences on enjoyment of human rights
- The lack of a comprehensive international framework to deal with debt restructuring means that vulture funds can continue to operate. Argentina has been the latest country to fall victim to the harmful actions of vulture funds.
- The setting up of multilateral framework on sovereign debt restructuring, which will meet the needs of many countries that have been affected by gaps in regulation of the international financial system, can help to stop vulture funds from paralysing debt restructuring efforts.
- Regulation of sovereign –debt restructuring cannot be based at the International Monetary Fund, which is too closely affiliated with creditors. To minimize the potential for conflicts of interest, the framework could be implemented by the United Nations, a more representative institution that is taking the lead on the matter, or by a new global institution.
- There is need to improve the transparency of vulture funds. Some of these funds are located in tax heavens and their owners are usually unknown. This affects the capacity of targeted countries to deal with their actions. The creation of public registries of vulture funds would be a good solution to this problem.

6. How can human rights law contribute to determine whether Vulture Funds claims or profit are excessive?

- It is worth noting that a bill entitled "Stop the Vulture Act (H.R. 2932)" was introduced in the US Congress in the year 2009. The bill primarily aims at preventing vulture funds from making excessive profit at the expense of poor countries.

7. Can a judge under the law of your country seek disclosure of the precise amount for which the plaintiff /vulture fund or vulture company has purchased the debt?

No law has been enacted regarding vulture funds in Mauritius.

8. Can a judge explore or ask a plaintiff to demonstrate good faith while commencing litigation based on purchase of a debt?

Please refer to the answer of question 7.

9. Is there any case-law on precedent of cases disallowing unjust enrichment of vulture funds arising for purchase of debts?

NIL

10. Can a judge reject a claim if he/she is of the opinion that the litigant/ vulture fund is misusing the legal process to unjustly enrich itself through the purchase of a debt?

Please refer to the answer to question 7.