
CHAPTER 10

Conclusion

Where's their conscience? What do they say as a conscience? They don't care?

President Ellen Johnson Sirleaf of Liberia

This Handbook has shown the importance of understanding the nature of vulture fund operations and lawsuits. It has highlighted the need to persist with practical action, vigilance and capacity building, and the potential for wider solutions, especially legislation.

To date, claims under lawsuits that have already been lodged are estimated to be worth US\$1.5bn; a total of 54 creditors have lodged cases. In 2007, US\$1.2bn was awarded by the courts. The number of lawsuits may increase, as there are many commercial loans which have not been resolved in Liberia, Côte d'Ivoire and Central African Republic. However, while no recorded lawsuits were lodged in any court in 2008, there was no such success in 2009, when Liberia, Argentina and DR Congo faced legal action by their creditors.

Vulture fund lawsuits have hampered the progress of debt relief in vulnerable poor countries, as this Handbook shows. However, at international level there is a formidable consensus that unsustainable debt must be resolved and eradicated. Though the process of debt relief has been slow and the HIPC Initiatives have not been completely successful, the actions of the G8, Norway and China are highly commendable. Similarly, Belgium's action in legislating to protect sovereign debtors against the actions of vulture funds has given an impetus to positive change. The recent UK legislation will bring about a reduction in the amount claimed and obtained by vulture funds and this may force them either not to lodge cases in the UK or to negotiate and obtain out of court settlements for one year. It is hoped that the Bill introduced in the USA will eventually become law. If debt relief programmes succeed, the countries concerned will be set on the path of debt sustainability. In addition, if these countries can establish a clear procedural framework for borrowing and debt management, coupled with the necessary accountability and transparency, this will pave the way to greater economic stability and further sustainable development in the long run.

It is strongly argued on the basis of the evidence contained in this Handbook that the way forward lies in basic principles of law and legislation. Technical and advisory assistance or financial support towards legal costs cannot on their own eradicate vulture fund lawsuits. The only way in which vulture funds can be tackled is by legislation such as that passed by Belgium and the UK and under consideration in the USA.

In the absence of such legislation, campaigns such as those waged by the Jubilee Debt Campaign and other NGOs will continue to raise awareness and exert moral pressure. G8 country initiatives in writing off debts have helped in the recent financial crisis, which would have been even more of an uphill struggle without them. Ironically, however, after the financial crisis of 2008, the advanced economies are facing their own debt crises, with the challenge of reducing debt loads which could hamper their economic growth.

When vulture funds target the assets of a sovereign debtor, they hold the country to ransom. In the case of Liberia, where the vulture funds Hamsah Investments and Wall Capital Ltd obtained a judgment for US\$20m in November 2009, the funds opted to sue in order to reap the benefits of debt relief monies. It does not matter to the funds that Liberia has been plagued by war for decades and is one of the poorest countries in the world. A sovereign country is advised always to resist the claims of vulture fund creditors on moral grounds.

In defence of unethical vulture fund activities, the financial world argues that vulture fund operations are necessary for the smooth functioning of the secondary debt market. However, looking at the results of attachment orders and garnishee orders against a sovereign debtor in the cases brought against DR Congo, it is not clear how they have served this aim. Most vulture funds have been created specifically to buy one or two sovereign distressed debts and little is known about them, while reputable hedge funds and commercial creditors have co-operated in writing off debts or in the buy-back processes.

It can be argued that there are natural obligations under a loan agreement – that the sovereign debtor has an obligation to pay and the creditor a right to obtain payment. The Commonwealth Secretariat Legal Debt Clinic argues that people have a fundamental right to dignity and a decent life. Many people in the indebted countries live on less than a dollar a day, and the action of the vulture funds in taking away debt relief monies is a breach of this fundamental human right.

This brings us back to our introduction. The question that arises is whether the principles of legal egalitarianism should apply when the sovereign debtor is a country in debt distress, and where poverty and hunger prevail. Should concerned parties react differently when action is being taken to alleviate poverty and prevent the

situation worsening in hard times? The simple answer is yes, we should react differently as it is a matter of an overriding human right. The Legal Debt Clinic hopes that such an argument will be forcefully presented in future court cases where the actions of vulture funds are eroding the benefits of debt relief. It hopes too that a responsible attitude to both lending and borrowing, a transparent and accountable debt framework with effective reporting mechanisms, and the efforts of the international financial community will open the way to greater stability and economic justice.

Notes

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