

## **VULTURE FUNDS:**

### **EXECUTIVE SUMMARY**

#### **1. Who are the vulture funds, how do they operate?**

Vulture funds are speculators who buy the debt(s); deemed to be irrecoverable, of distressed nations at low prices on the secondary debt market.

The primary debt market is a market where property rights or claims are processed in stocks or bonds traded at a defined value, called the issue value. This process is called securitization.

The secondary debt market is distinguished from the primary market in that the sale price of shares is below its issue price. The lower the price, the more the market believes the debtor can not repay its debt. So it is a speculative market, purchasers of securities focusing on improving the creditworthiness of debtors or on the success of court actions for recovery.

Once the acquisition is complete, the vulture fund starts debt recovery proceedings, usually in Anglo-Saxon jurisdictions (mainly New York and London), claiming repayment of the nominal amount of debt - and not just the cost of acquisition - plus damages and legal costs, or penalties. For example, the vulture fund Kensington International Ltd has bought back \$ 1.8 million a claim against the Republic of Congo at an initial value of \$ 29.6 million, and obtained a conviction in its favor for \$ 118.6 million.

Sometimes vulture funds exploit the failures of States to get paid. The vulture fund Kensington International Ltd., in support of its claim for payment against the Republic of Congo, has shown that oil revenues were misappropriated, and that as the Congolese Government could not show proof that it was itself victim or insolvent. Thus the vulture fund was able to capture € 10.8 million which the Belgian State had earmarked for cooperation with the Congo. Following this action, the Belgian parliament adopted a law prohibiting attachments on funds dedicated to development assistance.

It should be noted that the vulture funds primarily seize the courts of the United States of America, the United Kingdom and tax havens (Virgin Islands, Cayman Islands, Bermuda, Bahamas), which traditionally support creditors.

#### **2. What consequences for developing countries?**

These practices have the effect of diverting a portion of development assistance, as vulture funds generally expect that challenged States will benefit from debt relief and recover some credit before being sued and in order to make profit on discounts granted by institutional creditors.

In the end, the most vulnerable developing countries are denied resources that could be dedicated to social programs or education.

### 3. Examples

Below is a summary of some claims against African States (amounts are in US dollars)

Country	Vulture Funds	Original debt	Debt transfer price	Amount claimed by the Vulture Fund	Judgment
Congo	FG Hemisphere (USA)	35,9	Unknown	152	151,9
Congo	AF-CAP Inc. (Bermuda)	9,6	Unknown	20,8	10,9
Congo	Kensington International Ltd (Cayman Islands)	29,6	1,8	118,6	118,6
Congo	Walker International Holding Ltd (British Virgin Islands)	20,8	Unknown	47,8	47,8
Democratic Republic of Congo	FG Hemisphere (USA)	55,8	Unknown	81,7	81,7
Zambia	Donegal International Ltd (British Virgin Islands)	15,4	3,2	55	15,4

N.B. Republic of Congo has settled all claims out of court.

Source: Report *Taming the Vultures: Are new measures enough to protect debt relief gains?*, [www.eurodad.org](http://www.eurodad.org)

### 4. How to fight against vulture funds?

To enable countries to keep their full resources and carry out their development programs, several agencies and organizations focused on ways to fight against vulture funds. Platform Debt & Development and the National Centre for Development Cooperation (NCCD-11.11.11), elaborated a comprehensive report entitled *A vulture may conceal another, or how our laws encourage predators indebted poor countries*. Most of the proposals contained in that report are summarized below.

#### 4.1 On the contractual side

It is possible to immediately introduce the following clauses in contracts between States and creditors, either by direct inclusion in new contracts, either by amendment to the contracts already signed, which implies a renegotiation of the contract that must be accepted by creditors. These clauses are:

- The prohibition to assign to third parties the contract or debts, unless prior consent of the State;
- Prohibition of securitizing loans and debts;
- If the sale or the securitization is approved by the State, capping the debt at the price it has been bought, plus interest for late payment only;
- Ban the creditor to seize some assets belonging to the State, including funds earmarked for development or essential public expenditures;
- Capping the penalty or default interest in case of non-payment
- The use of an ad hoc arbitration tribunal and the submission of contractual relationships to the rules of public international law;
- The introduction of limitation periods for debt recovery proceedings.

#### **4.2 On the financial side**

Encourage African States to redeem their debt if possible in the secondary debt market under the same conditions as vulture funds, using among other the resources of the World Bank's Debt Reduction Facility.

#### **4.3 On the legislative front**

- Encourage the creation of an international debt tribunal;
- Mandating the ratification of the loan contracts by national parliaments;
- Prohibiting attachments on funds allocated to development assistance.

#### **For more information :**

[www.dette2000.org](http://www.dette2000.org) : Site of the platform Debt & Development. You can download the full report on vulture funds entitled *Un vautour peut en cacher un autre, ou comment nos lois encouragent les prédateurs des pays pauvres endettés*.

[www.eurodad.org](http://www.eurodad.org) : Site of the European Network on Debt and Development. You can download the full report on vulture funds entitled *Taming the Vultures: Are new measures enough to protect debt relief gains?*.

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