

# Appendix II: Commercial Lawsuits to Collect Unpaid Debt from Debt Relief Countries

Lawsuits by commercial creditors to collect on outstanding HIPC country debt can erode gains made through debt relief. International courts and U.S. federal courts have allowed commercial creditors to pursue legal action in order to recover funds owed to them, but these creditors are sometimes viewed as creating difficult circumstances for countries that have received debt relief from other creditors.<sup>1</sup> As of the end of 2007, based on survey data provided by country governments, 47 litigating creditors had filed suits against 11 countries receiving HIPC Initiative and MDRI debt relief (see table 7). Over \$1 billion has been awarded by courts and is due to commercial creditors. About one-third of this total, or over \$440 million, has been awarded against the Republic of Congo, followed by over \$350 million against Liberia, and \$100 million against the Democratic Republic of the Congo.

**Table 7: Commercial Creditor Lawsuits against Countries Receiving HIPC Initiative and MDRI Assistance (As of the end of 2007)**

(Dollars in millions)

Country	Number of litigating creditors	Creditor claims	Court awards
<i>Completion Point Countries</i>			
Cameroon	4	\$158	\$51
Ethiopia	2	187	— <sup>a</sup>
Guyana	3	46	—
Honduras	1	1	—
Nicaragua	5	9	0 <sup>b</sup>
Sierra Leone	5	29	25
Uganda	6	36	30
Zambia	2	55	16
<i>Decision Point Countries</i>			
Democratic Republic of the Congo	1	100	100

<sup>1</sup>Under the Foreign Sovereign Immunities Act, foreign states are not immune from the jurisdiction of U.S. courts in any case in which immunity has been waived, or in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States (28 U.S.C. §1605(a)(1), §1605(a)(2)).

**Appendix II: Commercial Lawsuits to Collect  
Unpaid Debt from Debt Relief Countries**

Country	Number of litigating creditors	Creditor claims	Court awards
Republic of Congo	8	575	443
Liberia	10	130 <sup>c</sup>	357
<b>Total</b>	<b>47</b>	<b>\$1,326</b>	<b>\$1,022</b>

Source: "Heavily Indebted Poor Countries (HIPC), Initiative and Multilateral Debt Relief Initiative (MDRI) – Status of Implementation," prepared by IDA and IMF staff, Aug. 2008; and IMF officials.

<sup>a</sup>Dashes indicate no information.

<sup>b</sup>Court awards against Nicaragua do not include amounts resolved through the Debt Reduction Facility.

<sup>c</sup>Creditor claims against Liberia appear to be less than court awards because data regarding creditor claims are incomplete.

Treasury officials told us that while a court can award claims in favor of commercial creditors, actually enforcing the judgments and receiving payment is a separate, potentially more difficult exercise.

The international community has taken numerous actions to address such cases:

- The World Bank's Debt Reduction Facility (DRF) allows governments to buy back—at a deep discount—country debts owed to external, commercial creditors. Through grants, the DRF supports heavily indebted IDA-only countries that undertake reforms to retain professional services necessary in preparing these commercial debt reduction operations and assists the countries in funding the cost of these operations. For example, court judgments against Nicaragua were settled through the DRF-supported buyback. All four litigating creditors participated in the buyback operation and accepted a significant cut in the value of their legal claims. The Nicaragua buyback extinguished about \$1.3 billion in commercial debt. Another buyback operation has been concluded for Mozambique. Furthermore, according to Treasury officials, a DRF operation is currently being prepared for Liberia, and the United States intends to contribute \$5 million to help fund the cost of this buyback.
- Paris Club creditors have committed as a group not to sell claims on HIPC countries to creditors who do not intend to provide debt relief.<sup>2</sup>

<sup>2</sup>Press Release of the Paris Club on the Threats Posed by Some Litigating Creditors to Heavily Indebted Poor Countries, Paris Club (May 22, 2007).

- In April 2008, AfDB approved a proposal to establish the African Legal Support Facility (ALSF), which would provide (1) technical legal advice to members of the facility in creditor litigation, and (2) technical legal assistance to members of the facility to strengthen their legal expertise and negotiating capacity in matters related to debt management and other issues.<sup>3</sup> The U.S. government was the only participating state to vote against establishment of the ALSF, and Treasury officials have noted that countries that have been the target of recent litigation have had very able legal representation to date, calling into question the need for ALSF assistance. In addition, Treasury staff expressed a position that some of the proposed activities for the ALSF are not an appropriate use of AfDB funds and noted concerns over the substantial administrative costs associated with ALSF. Furthermore, Treasury staff have emphasized that the DRF—an option already in operation that is achieving results in reducing country debt burdens to commercial creditors—is a preferred alternative.

---

<sup>3</sup>The African Legal Support Facility, which is not yet operational, will come into existence when the agreement creating the facility is signed by at least 10 participating states or international organizations, and instruments of ratification, acceptance, or approval are deposited by at least 7 of those participating states or international organizations.