



STOP VULTURE CULTURE

In December, 2008, TransAfrica Forum released a document entitled “Inclusive Security: New Approaches for U.S. National Security Policy.” In it, TransAfrica encouraged the incoming Obama administration to consider new strategies as stepping stones toward an improved relationship with Africa and the Diaspora. One request that was made of President-elect Obama was to pursue reform of the structures meant for economic development to reflect interdependence and cooperation, rather than blind reliance on market forces. TransAfrica reiterated the urgency of the rejection of notions that markets will take care of themselves and instead accept that both self-interest and our common humanity require investment in basic economic and social rights for all.

The world now understands the true convulsion and dysfunction of the global financial system. We have seen the largest banks fail, and widespread fraud go unchecked for decades until it wiped out generations of wealth, privilege, and philanthropy. Even as we throw billions of dollars around to patch and fix these problems, the world’s most impoverished nations are left behind. The global financial system has essentially left millions with no access to clean water, adequate schools, and sufficient medical care.

Over the last few months, the world has watched as the U.S. government was prepared to offer a bailout package to AIG totaling over \$170 billion USD. Read that again -- \$170,000,000,000. According to the latest data from the World Bank Global Development Finance Group, the debt burden of all of Sub-Saharan Africa is approximately \$185B USD. People who survive on less than \$1 per day are struggling for basic human necessities while the equivalent of their debt burden is spent to bail out a corporation. One corporation! Is this the legacy we want to leave? A legacy where a company can be “too big to fail,” but human lives are too unimportant to save?

As we look to the future, we consider the beneficial steps that have been taken with respect to the world’s most impoverished nations. Since the Heavily Indebted Poor Countries (HIPC) Initiative was created in 1996, the World Bank, along with other multilateral and bilateral creditors, have pledged more than \$100 billion in debt relief to 30 countries under the Multilateral Debt Relief Initiative (MDRI). Thanks to this unprecedented cooperation, countries like Ghana can use money formerly earmarked for debt repayment to provide micro-credit to farmers, build classrooms for their children, and fund clean water and sanitation projects.

Despite this international effort, it is clear that some institutions continue to disregard the practical implications of debt cancellation to the people who stand to benefit from the relief. These ‘Vulture Funds’ are arbitrage-seeking investors who specialize in obtaining sovereign debt in the secondary debt market at prices far below face value. Essentially, Vulture Funds are specialized types of private investment and hedge funds that seek to squeeze massive profits out of the world’s poorest countries for a minimal investment. After buying sovereign debt for pennies on the dollar, Vultures manipulate the legal system to demand sums that greatly exceed the original debt amount. Frequently using courts in the U.S. and the UK, Vulture Funds attempt to seize the debtor country’s assets worldwide, interfere with and threaten established trade relationships between the sovereign debtor nation and private companies, and attempt to seize interests in debtor nations’ natural resources. These tactics can make it virtually impossible for countries to meet the basic daily needs of their citizens.

In Zambia, for example, 1/5th of the population is HIV positive, less than 15% of the rural population has access to sufficient sanitation, over 40% of rural woman are illiterate, and there are zero psychiatrists and only 600 doctors for a population of 12 million people. Zambia has reached HIPC completion status and is vigorously trying to complete the UN Millennium Development Goals (MDGs) before the 2015 deadline. While countries such as Zambia are struggling to improve living conditions, they are forced by Vulture Fund litigation to allocate substantial amounts of money for debt service. When the Vulture Fund Donegal International sued Zambia, it demanded an amount that was almost equivalent to Zambia’s annual health budget.

Advocates agree that HIPC nations need to be given every opportunity to operate in the international community with a sense of autonomy. In reality, the overwhelming costs of paying Vulture Funds are an impediment to any substantial fiscal independence. As a result, the growth needed to accomplish goals such as universal primary education and declining maternal mortality rates will remain outside the grasp of the world's poorest nations. It should be a universal goal to see that all nations reach a level of self-sufficiency where they can provide health care, clean water and education for their citizens. Yet Vulture Funds are inhibiting the growth required for this to occur by capturing funds intended for development and using it for their own personal financial growth.

VULTURE FUNDS -- *Picking the Carcasses Clean*

Vulture Funds argue that they are just asking countries to pay what they owe. Jay Newman, a manager with Kensington International and Elliott Associates, two notorious Vulture Funds, has been quoted saying that Vulture Funds "do not acquire the debt of countries that have no means to pay."¹ This is inherently untrue. Vultures, including Elliott and Kensington, target the sovereign debt of HIPC nations, which by definition, cannot afford to service their existing debt burden. Moreover, the countries end up spending huge amounts of time and money disputing the exorbitant amount of interest which the Vulture Funds argue is owed. One country in the midst of current litigation has reported a discrepancy of \$40 million in the interest being demanded on the debt, demonstrating how defendant countries face uphill battles in refuting these usurious claims.

Vulture Funds such as Elliott Associates, Kensington International, and Donegal International habitually pursue the defaulted sovereign debt from countries who simply cannot afford to service their debt. It is simply a part of their business model. HIPC nations that are so often the target of Vulture activity are also the nations least able to defend themselves in litigation that takes place all around the world. Even in the midst of a global financial crisis where the well being of those all over the world is in question, Harvard Business School offers a case on Vulture behavior, training the future elite financiers how to profit in the same unethical manner

Regardless of the well-financed public relations campaigns run by these Vultures, their behavior has absolutely no redeeming qualities, except for its tendencies to allow unethical investors to reap ludicrous profits on minimal investments.

Vultures are manipulating mass-media to mask the disastrous effects of their profiteering. For example, Michael Sheehan who runs Donegal International stated that "We offered to donate debt to a low-income housing initiative, which was a charitable initiative, which did end up building over several thousand houses for the poor." However, no information about the supposed houses is available, raising the question as to whether they were ever built. Further claims by Sheehan that he donated funds to the "President's favorite charity" are unsubstantiated, and were questioned by the UK Court during the court case.

Perhaps the most illogical and ridiculous argument that Vulture Funds have twisted to defend their exploitative actions is the claim that they "expose corruption."² Statements, such as those made by Jay Newman of the Vulture Fund Kensington International, that "corruption in Africa is out of control" and mainstream media headlines, such as an article published in the Times Online subtitled "Hedge Funds lift the lid on African deception" are intentionally misleading. They are insinuating that the allegedly corrupt activities of a single country's government are somehow an accurate reflection of the country, or of an entire continent. This manipulation of the mainstream media's pre-conceived notion that Africa is a single country, rather than a diverse continent of over 50 nations, each with their own identity and history, is uninformed and offensive.

The fact is that Vulture Funds are not an asset to the citizens of the countries they target. It simply does not follow that merely because a Vulture Fund has diverted negative attention away from themselves and toward a single government, that the Vulture Fund is somehow providing a service to the international community. The Vulture Fund which has promulgated the argument, Elliott Associates, merely relied on information provided by Global Witness, an anti-corruption group based in London. It was simple arrogance that allowed the Times Online to claim that "[i]n the

¹ http://business.timesonline.co.uk/tol/business/industry_sectors/banking_and_finance/article4138445.ece

² Tony Allen-Mills, 'Vulture' expose corruption: Hedge funds lift the lid on African deception Jun. 15, 2008, Times Online http://business.timesonline.co.uk/tol/business/industry_sectors/banking_and_finance/article4138445.ece

course of its near-decade-long pursuit of Congo [Brazzaville], Elliott has probably done more than any other national or corporate entity to expose corruption in Africa.” The Vulture Fund twisted the Global Witness information to suit its financial interests, not for some altruistic purpose of exposing corruption on the continent.

The irony is that it is Vulture Funds that operate in secrecy jurisdictions, function on a lack of transparency, and have been accused of corrupt practices. This was established in the case of *Donegal v. Zambia*, where the English court acknowledged Donegal’s bribery of government officials, the difficulty in ascertaining the persons interested in Donegal, and the Vulture Fund’s incorporation in an offshore tax haven. There are even questions as to whether Sheehan’s behaviors would trigger investigations under the Foreign Corrupt Practices Act.

The Vultures champion that they are exposing corruption and proliferation, claiming they help the citizens of the countries which they admit “survive” on less than \$1 per day. However, those same Vultures pursue expensive litigation which aims to rip what money remains in the countries out of the hands of the people who need it most. In some cases, as seen in the *Donegal v. Zambia* case, they pursue the debt with such vigor that they bribe and incentivize parties in an effort to acquire the interest. Vulture Funds, including Donegal and Kensington International, are often incorporated in offshore tax havens; for the Vultures to claim that they are riding in on white horses as champions of transparency, they would need to answer serious questions regarding their own secretive business conduct.

Hiding in the Trees

Tax havens undoubtedly facilitate Vulture Fund activity. Regardless of their actual country of incorporation, Vultures use these jurisdictions to set up subsidiaries and sham organizations to avoid the regulation and taxation of their activities. Tax havens provide Vultures with an almost impenetrable veil of secrecy, allowing them to avoid their own tax-paying obligations. Common tax havens include: Andorra, Bermuda, The Isle of Man, Netherlands, Antilles, U.S. and British Virgin Islands, Belize, Panama, Cayman Islands, Liechtenstein, and Samoa.

In the U.S., Vulture Funds are privately held companies and are not subject to the same reporting requirements to which public companies must usually adhere. Problems with this lack of governmental oversight and transparency are currently seen in the chaos surrounding fund manager Bernard Madoff. Non-governmental organizations (NGOs) and private citizens concerned with socially responsible investing struggle to track the Vultures’ actions, discover who truly owns and operates the funds, and to determine whether any unethical or illegal measures were taken by the Vultures during the negotiations surrounding the debt purchase.

The effect of tax havens on developing countries is even more dramatic. Oxfam International contends that developing countries miss out “on up to \$124 billion every year in lost income from offshore assets held in tax havens.” According to Richard Murphy of the Tax Justice Network, “the value of illicit flows surpasses the amount of Official Development Assistance entering [these] countries.” Tax haven usage by Vulture Funds needs to be urgently addressed by governments around the world. Increased regulation and transparency pertaining to Vulture Fund activity is vital in preventing further profiteering off of impoverished countries’ debt at the expense of their citizens.

Advertising the Economic Re-colonization

History clearly demonstrates the effect of colonization on the people of the African continent and throughout the African Diaspora. The worrisome trend toward what amounts to economic re-colonization is simply one more method of inhibiting organic and sustainable development through the exploitation of people and resources. Companies such as Omni Bridgeway Holding advertise their business by claiming to hunt down “distressed debt in emerging markets” from “political risk countries.” On their website, Omni states that “countries including Africa” are targeted in a combined method of litigation and “identification of attachable assets,” and goes as far as to outline a hit-list of over twenty nations where they believe countries will default on sovereign debts. The countries Omni lists include some of the world’s poorest nations, who Omni believes will turn the greatest profit for investors with the least effort required. The company’s newsletter even details the financial situation of countries who could potentially default on debts in the near future and countries reaching HIPC completion in relation to investment opportunities. Claiming it “offers solutions for legal problems,” Omni offers its services to help those who wish to sue the world’s poorest nations who, despite the obvious inability to pay debts, Omni Bridgeway views as “well resourced defendants.”³

³ Comments reflect statements on Omni Bridgeway’s website as of June 2009

By refusing to participate alongside the Paris Club, London Club, IMF, World Bank, and other responsible creditors, these Vulture Funds knowingly disrupt debt restructuring negotiations that are vital for the economic development and autonomy for heavily indebted nations.

Vulture creditors often force indebted countries to grant them preferential treatment at the expense of responsible creditors who may also be renegotiating debt instruments with the countries. This Vulture activity discourages good faith negotiations with responsible creditors, and impedes the countries' ability to operate autonomously in the secondary debt market.

The Paris Club is an informal group of creditor governments that collaborate to collectively agree on how to reschedule the debt of impoverished nations. The Paris Club has key principles when rescheduling debt, including a "comparability of treatment" clause. This clause prevents the indebted nation that signs a rescheduling with the Paris Club from accepting terms of treatment of its debt less favorable to the debtor than those in the agreement with the Paris Club from any non-Paris Club creditor. It prevents the indebted nation from giving preferences and better repayment terms to non Paris Club members.⁴ Similarly, the London Club is an informal group of commercial bank creditors, and differs from the Paris Club in that its structure is much more flexible and rules and procedures may vary, depending on the country.⁵ In direct opposition to the Paris and London Clubs' creditors, Vulture Funds force indebted nations to give them better repayment options, often demanding payment in full plus interest and penalties.

Vulture Fund activity increases the cost of doing business with the U.S.

Vulture Fund litigation adds an additional level of risk for any company doing business in or with a country that has become a target for the Vultures. Vulture Funds not only litigate against debtor countries, they also pursue solvent companies contracted to do business with these countries.

In 2001, the Vulture Funds FG Hemisphere Associates, LLC and Af-Cap, Inc sued CMS Nomeco, an oil and gas company in Texas, in an attempt to garnish payments that CMS Nomeco owed to the Republic of Congo. Although the Court of Appeals held that the Vulture Funds were unable to garnish the payments, the Court relied on an interpretation of Texas garnishment law and the Foreign Sovereign Immunities Act.⁶ Clearly, the implications of, and fallout from, this particularly savage tactic are severe. The Vulture Funds not only dragged the Republic of Congo through six years of litigation,⁷ wasting the country's precious time and money, but they also threatened a U.S. oil company's business interests in the Republic of Congo and the country's ability to attract that interest. As a result of this case, in order to protect themselves from Vulture Fund litigation, trading partners of countries targeted by Vulture Funds may adjust the price of their contracts to adjust for expensive litigation from competing claims of Vulture Funds.⁸ This places U.S. companies at a competitive disadvantage against countries such as China, which do not allow Vulture Fund litigation.

In addition to disrupting trade with the Republic of Congo, the Vulture Funds jeopardized a much needed donation from Belgium. In 2007, Belgium had planned on making a 10.5 million Euro development donation for a thermal power station and a 587,000 Euro grant to the National Television to the Republic of Congo⁹. Before Belgium could complete the transaction, Kensington International, a Vulture Fund registered in the Cayman Islands, swooped into a Belgium court and attached the donation. In response, the Belgium Government canceled the loan, and passed a law no longer allowing Vulture Funds to bring suits in Belgium courts. However, if Kensington International had been successful, the money specifically designated for development of the Republic of Congo would have been pocketed by a few greedy and wealthy investors.

⁴ Paris Club website <http://www.clubdeparis.org/>

⁵ http://www.worlddebt.info/index.php?name=london_club&op=cat&id=4

⁶ Af-Cap Inc v. Republic of Congo, 462 F.3d 417 (5th Cir. 2006); FG Hemisphere Associates v. Republique du Congo, 455 F.3d 575 (5th Cir. 2006).

⁷ The Vulture Funds did not exhaust all of their appeals until 2007 when the Supreme Court denied certiorari in Af-Cap, Inc v. Republic of Congo, 127 S. Ct. 1511 (2007).

⁸ More information on the difficulties caused to companies doing business with poor countries being targeted by Vulture Funds is described in Andrew B. Derman & Andrew Melsheimer, Recent Developments in Foreign Sovereign Immunity and Texas Garnishment Law: A New Threat Facing U.S. Oil and Gas Companies, 29 Hous. J. Int'l L. 277 (2007).

⁹ Pol Vandervoort, Policy Officer IFI's and Debt Feb. 2008

Vulture Funds often attempt to attach indebted countries' assets worldwide. Although they are not always successful, this is yet another tactic they use to threaten and coerce indebted nations to acquiesce to the Vulture demands. Currently, FG Hemisphere is pursuing litigation in Washington, DC against the Democratic Republic of Congo (DRC). The DRC is a country plagued by civil war – the deadliest war since World War II – and yet FG Hemisphere has obtained an order demanding fines of up to \$80,000 a week because the DRC has not disclosed the location of all of its assets everywhere in the world. Vultures do not like to advertise that they attack countries in courts all around the world. The most sophisticated of defendants would find it difficult to monitor the worldwide actions, and yet countries that are not nearly as savvy as the Vultures are expected to keep up with unreasonable demands and deadlines.

Give Me Your Resources

Another weapon in the Vultures' arsenal is their attempt to coerce the indebted nations into swapping minimal portions of the Vulture held debt for an interest in mineral and other natural resources. This is labeled as "local investment" and Vultures claim such actions are in the best interest of the indebted nation. In reality, the Vulture Fund is exploiting the country's most precious sources of income in an attempt to pad their pockets in perpetuity. It is not privatization, it is resource extortion, and countries find themselves stuck between standing up for what is best for their citizens, and acquiescing to the Vultures demands.

One example of this particularly troublesome issue surrounds current litigation against the DRC, one of the most mineral rich nations in the world. Regardless of the glaring humanitarian crisis in the DRC, the Vulture Fund FG Hemisphere continues to bring collection actions against the DRC in various courts around the world. It is worrisome to think that while the DRC is at this vulnerable state, FG Hemisphere is circling, waiting for the right moment to swoop in and seize an interest in the DRC's minerals.

As part of the litigation on extreme interest rates, FG Hemisphere has demanded documents and the DRC is being held in contempt until the documents are produced. Five million primary-school aged children in the DRC are without any formal education, many because of the lingering education-related fees the DRC is financially unable to abolish. These children are easy prey for recruitment by military forces that routinely use child soldiers to fight in battles in Eastern DRC. Without the extreme cost of servicing the debt or defending against Vulture Funds, the DRC could possibly lower or even abolish the fees and millions of children could go to school.

It is undeniable that the countries involved in these lawsuits are struggling. Vultures "swoop in" as a country reaches HIPC status, and buy debts that may have otherwise been restructured. The debt on which Donegal sued Zambia was originally from Romania, and was used to purchase tractors with the hopes of heightening crop production and feeding the population. Zambia suffers from unstable crop seasons, and most of the agriculture uses low-technology farming methods which exasperate the food shortages. It is disputable whether the tractors ever arrived in Zambia, or whether they functioned correctly if indeed they did arrive. Donegal purchased the debt from Romania for \$3.3 million USD, and then sued Zambia for over \$55 million. The UK Court recognized that Donegal, and Michael Sheehan, used underhanded tactics in the acquisition and negotiation of the debt, but still held that Zambia was to pay Donegal \$15.5 million. Zambia continues to suffer from an inadequate food supply, and is now \$15 million poorer. Funds earmarked for use in obtaining the Millennium Development Goals are now being funneled directly into Donegal's pocketbook. It is documented fact that Vulture Funds sue the impoverished nations, asking for a sizable percent of the nation's annual GDP. Legitimate secondary debt market participants do not purchase sovereign debts with the expressed intent of suing for collection of usurious interest rates from struggling economies. Vultures do.

World Voices Agree – STOP THE VULTURES

World leaders and financial institutions recognize the threat posed by Vulture Funds. In 2007, the G-7 Finance Ministers voiced their concerns about "the problem of aggressive litigation against HIPC countries." UK Prime Minister Gordon Brown has condemned "the perversity where Vulture Funds purchase debt at a reduced price and make a profit from suing the debtor country to recover the full amount owed - a morally outrageous outcome." The World Bank has publically called the Vulture Funds "a threat to debt relief efforts."

In a letter from the African Diplomatic Corps, the Ambassador to the U.S. from Djibouti, Dean Roble Olhave, stated "the western media describes these entities as 'vulture funds'. We Africans look at them as a mortal threat to the future of our continent..... We ask for your support to join with multilateral institutions in seeking a common solution with other donor countries to address this vexing problem."

On June 18, 2009, the *Stop Very Unscrupulous Loan Transfers from Underprivileged Countries to Rich, Exploitive Funds* or Stop VULTURE Funds Act (H.R. 2932) was reintroduced in the U.S. House of Representatives by Rep Maxine Waters (D-CA). The Stop VULTURE Funds Act is designed to protect developing nations from lawsuits by so-called Vulture Funds, and would prevent U.S. companies from buying the debt of impoverished countries at cut-rate prices and then suing to collect exponential profits. **Responsible creditors would not be adversely impacted by this law**; instead it seeks to restrict those who operate in secret and are claiming exceptionally large interest rates on sovereign debts from the world's poorest nations. Additionally, to end the devious nature of the Vulture Funds, this bill requires that the amount a Vultures Fund paid for a debt is public information, and that anyone involved in the potential litigation is named. Without this Act, debt relief money intended to help the world's poor will continue to make Vultures rich, as nations are forced to use money earmarked for public works to instead pay out-of-control interest rates on Vulture controlled debt.

In the UK Parliament, Sally Keeble MP has led the charge against Vulture Funds. On May 6, 2009, Ms. Keeble introduced the Developing Country Debt (Restriction of Recovery) Bill as a Ten Minute Rule Bill to the House of Commons. The Developing Country Debt Bill outlaws profiteering from sovereign debt, and caps the amount of profit that a fund can reap from litigation to collect defaulted debts from poor countries. It also requires disclosure of information from any creditor that pursues developing country debt through the UK courts – something that would help tackle the secrecy on which they thrive. An Early Day Motion (EDM), no. 1440, has been tabled in support of the Bill, and as of July 1, 2009, EDM 1440 contained over 130 signatures, and has gathered extensive support among all the major parties within the British Parliament.¹⁰

THE TIME IS NOW!

Governments, NGOs, multilateral and bilateral lending institutions, socially responsible investors, and the at-risk countries are all calling for the reprehensible activities of Vulture Funds to be stopped. Taxpayer dollars in the U.S., and around the world, have been wisely used to cancel the debts of countries whose citizens' lives have depended on it. For the world to now turn a blind eye as these vital advances are eaten away by a group of unethical investors is unacceptable. Profiteering investors should not be allowed to pocket the tax dollars of developed countries being used to invest in the lives of our brothers and sisters on the African continent and around the world. These Vultures cannot continue to operate in the shadows and feed off the carcasses of nations and their people. Monitor your investments. Contact your government officials. Tell your friends and family.

STOP THE VULTURES!!!

TransAfrica Forum is the oldest and largest African American human rights and social justice advocacy organization promoting diversity and equity in the foreign policy arena and justice for the African World.

TransAfrica Forum envisions a world where Africans and people of African descent are self-reliant, socially and economically prosperous, and equal participants in a just international system structured to benefit their self-determined governments and peoples.

www.transafricaforum.org

¹⁰ <http://edmi.parliament.uk/EDMi/EDMDetails.aspx?EDMID=38604&SESSION=899>