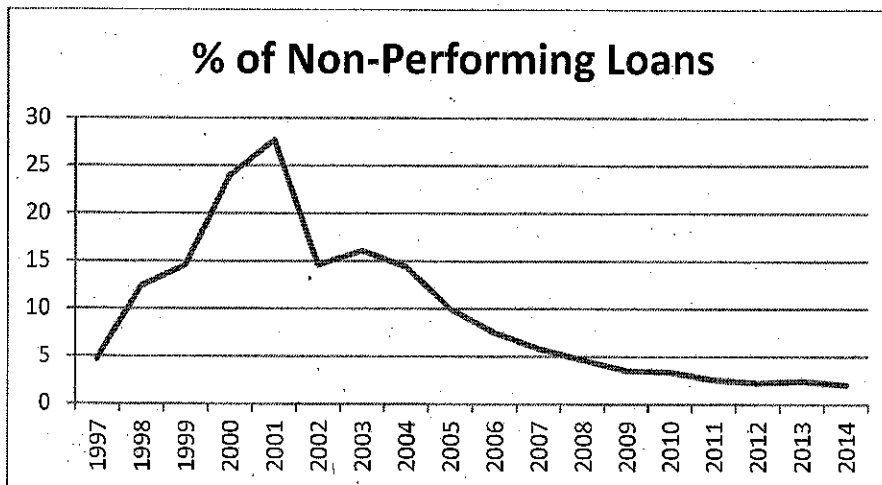


## **Activities of Vulture Funds and the Impacts on Human Rights**

- 1. Could you provide some concrete examples of the negative impact that vulture funds activities may have on the enjoyment of human rights, in particular, economic, social and cultural rights?**
  - a. Vulture funds violate the human rights in terms of being indivisible. All humans have the right to life, development and freedom of self-determination, which is being stripped or put in jeopardy when vulture funds attack. Instead of focusing scarce resources on development of the state, which is quite important for Highly Indebted Poor Countries (HIPC), these countries need to pay debt that they cannot afford.
  - b. Equal rights is also being violated when these vulture funds/companies attack. Equality in terms of having the same basic rights is essential for human development. But these vulture funds are preying on countries that cannot fight back and are heavily burdened in terms of funds.
- 2. Has your country ever been directly or indirectly affected by vulture funds activities? If yes, please specify the following points:**

The Philippines who took a hit during the Asian Financial Crisis saw an increase of Non-Performing Loans Ratio (NPL Ratio) afterwards. The ratio of non-performing loans to total loans, started to increase and reached its peak on 2001 at 27.7%, according to the World Bank. In order to address the problem, the Congress passed a law in 2002 called the Special Purpose Vehicle Act of 2002 (SPV Act of 2002). This law gave huge tax incentives to vulture funds/companies buying distressed debts and assets of banks. In the years succeeding the implementation of the law, a significant and continual decline can be seen in the graph and table below.



1997	4.7
1998	12.4
1999	14.6
2000	24
2001	27.7
2002	14.6
2003	16.1
2004	14.4
2005	10
2006	7.5
2007	5.8
2008	4.65
2009	3.49
2010	3.38
2011	2.56
2012	2.22
2013	2.44
2014	2.02

Source: WorldBank

Banks now have considerably reduced their NPL ratio, disposing billions of distressed debts and assets to vulture funds set up by leading investment banks such as Deutsche Bank, Lehman Brothers, JP Morgan Chase, Morgan Stanley, Amroc Investments, and Barclays Capital.

One example of this is the Government-owned LandBank of the Philippines, which kicked off the process by auctioning about half of its nonperforming loans in 2004. Dozens of foreign investors soon followed and were swarming to the Philippine distressed market.

**a. Was the debt paid from the development budget? If not, under what alternative budget head?**

Since the Philippines as a nation hasn't been attacked by vulture funds/companies, this question is not applicable. Bank loans that vulture funds are interested in here in the Philippines will not put at risk the country but majority of the risk will really be on those vulture companies.

**b. What group or sector of the population was primarily affected?**

Again, the Philippine setting is different from those that Argentina and Zambia is facing. The Philippine bonds don't have problems. Only banks that give out private loans are being bought by vulture funds. So in this case, these financial institutions are the ones primarily affected.

Philippine financial institutions generally cannot absorb such large discounts even when the Philippine Central Bank allows them to book the losses over a seven-year period. More importantly, the local sentiment is that similar schemes adopted in the ASEAN region had negative consequences for local companies and were a windfall for foreign investors.

c. **Was any public service privatized in order to serve the vulture funds debt?**

No.

d. **Could you provide some figures or statistics?**

No.

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

No. The Philippines have not yet created a preventive measurement on the effects of vulture funds. But in other related cases, during the 1997 Asian Financial Crisis, the Philippines Non-Performing Loan (NPL ratio) against total loans of banks reached its peak of 27%. To address this problem, the government passed a law called Special Purpose Vehicle Act of 2002, an act granting tax exemptions and fee privileges to special purpose vehicle which acquires or invests in non-performing asset.

Last 2014, the Human Rights Council noted the concern expressed in the declaration that heads of state and government of the Group of 77 and China issued at their June summit in Santa Cruz de la Sierra, Bolivia, that reiterated the importance of not allowing vulture funds to paralyze the debt restructuring efforts of developing countries, and that these funds should not supersede the state's right to protect its people under international law.

The Council affirmed that debt burden contributes to extreme poverty and hunger and is an obstacle to sustainable human development, to the realization of the Millennium Development Goals and to the right to development, and is thus a serious impediment to the realization of all human rights.

The resolution on the activities of vulture funds was adopted by a vote of 33 (including the Philippines) in favour, five against and nine abstentions.

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

It would be acceptable to refuse full payment of the vulture fund debt if the well-being of its citizens is put in jeopardy because of the debt.

**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?**

Unsystematic restructuring of sovereign debt could lead to costly socializing of private debt, consequent economic distress and significant human suffering. So, in September 2014, the

United Nations General Assembly had passed a resolution to create new legal rules to stop financial speculations like vulture funds from destabilizing debt restructuring. With a majority vote of nations, United Nations would create a "Multilateral Legal Framework for the Sovereign Debt Restructuring Process".

The framework's resolution represents an important step forward in fixing global debt system in some developed countries and most developing countries. Such an act would call vulture funds and other similar activities to be stopped from paralyzing debt restructuring efforts of the Heavily Indebted Poor Countries (HIPC). After the United Nations General Assembly discusses about the economic and financial details of the framework, representatives would meet once more to discuss the effects of the proposed framework on Human Rights Settlement. But at present, there are still no rules regarding how to restructure debts of defaulting countries.

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## HUMAN RIGHTS COUNCIL ADVISORY COMMITTEE

### QUESTIONNAIRE

6. How can human rights law contribute to determine whether vulture funds claims or processes are excessive?

*-Intervene in the lawsuit, if allowed.*

*-Set up own body, independent of the International Monetary Fund and Paris Club, that will investigate whether or not such claims or processes are excessive.*

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?

*-Yes*

*- Section 1, Rule 27 of the 1997 Philippine Rules of Court, states:*

*"Section 1. Motion for production or inspection; order. – Upon motion of any party showing good cause therefor, the court in which an action is pending may a) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody or control; xxx"*

*- Section 17, Rule 132 of the 1997 Philippine Rules of Court, states further:*

*"When part of a writing or record is given in evidence by one party, the whole of the same subject, may be inquired into by the other, and when a detached writing or record is given in evidence, any other writing or record necessary to its understanding may also be given in evidence xxx"*

*- In the case of Eagleridge Development Corporation (EDC), et. al vs. Cameron Granville 3 Asset Management, Inc. (Cameron)<sup>3</sup>, the Philippine Supreme Court applied the above-mentioned Rules. In this case, petitioners Eagleridge, et. al., were sued for collection of a sum of money by Export and Industry Bank which by virtue of a Deed of Assignment transferred EDC's outstanding loan obligations to respondent Cameron, a special purpose vehicle. EDC filed a Motion for Production/Inspection of the Loan Sale and Purchase Agreement (LSPA) referred to in the Deed of Assignment alleging that since its loan obligations may be reimbursed up to the extent of the amount paid by the respondent in the acquisition thereof, it becomes necessary to verify the amount of the consideration from the LSPA considering that the Deed of Assignment was silent on this matter.*

*The Supreme Court held for the petitioners stating that "it must be remembered that "litigation is essentially an abiding quest for truth undertaken not by the judge alone, but jointly with the parties/Litigants, therefore, must welcome every opportunity to achieve this goal; they must act in good faith to reveal documents, papers and other pieces of evidence material to the controversy." Courts, as arbiters and guardians of truth and justice, must not countenance any technical ploy to the detriment of an expeditious settlement of the case or to a fair, full and complete determination on its merits."*

<sup>3</sup> G.R. No. 204700, Promulgated April 10, 2013.

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

-Yes

*- As in the above-cited case, a Judge can require the production of pertinent documents to see if litigants act in good faith in filing a case based on purchase of a debt. As above-stated, "litigation is essentially an abiding quest for truth undertaken not by the judge alone, but jointly with the parties/Litigants, therefore, must welcome every opportunity to achieve this goal; they must act in good faith to reveal documents, papers and other pieces of evidence material to the controversy."*

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

*- None yet. Based on research, albeit there are various cases involving Special Purpose Vehicles (SPVs) in the Philippines, there is yet no decided Philippine jurisprudence disallowing unjust enrichment by SPVs arising from the purchase of debts.*

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?

-Yes

*-However, this opinion should be supported by a legal basis and after evidence presented during the trial are weighed proving misuse of the legal process and not merely based on the judge's personal opinion.*

X-----X