

Curbing Predatory Behavior and Protecting the Poor

By Eric LeCompte

Financing for Development Conference

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It's a great honor to be with you. Thanks to UNCTAD for inviting my comment today on solutions to predatory and hold-out actors for developing countries.

As you all are aware, at this point, the United Nations, world governments, investor associations, big banks and the International Monetary Fund all agree that predatory and hold-out behavior must be stopped.

There is clear global consensus to stop the behavior and mutual support of several solutions – but there is division about how far we should go.

The following 3 solutions are proposed and in various stages of action. In fact all of the solutions are clearly noted or alluded to in paragraphs 97 – 101 in the July 7th draft of the Financing for Development Agreement:

- 1.) Contracts/Market Changes – After the crisis in Greece, US Treasury convened one of the largest groups of investors and banks, the International Capital Markets Association, to discuss contract changes that would ensure the parity clause would force hold-outs and “vulture funds” to participate when countries restructure their debts. Over the last year, Mexico, Kazakhstan and Vietnam have added these to new bond contracts. The International Monetary Fund and the G20 generally support similar proposals. These proposals, while important and supported by Jubilee USA, are not comprehensive enough to deal with the various types of debts that can be bought beyond sovereign bonds. Further, the contract clauses don't deal with 900 billion in existing debt stock governed under New York law. This leads us to the need for statutory or law changes to the laws that govern the various financial jurisdictions.
- 2.) Statutory/Law Changes in Financial Jurisdictions – In the IMF's October 2014 paper where they demonstrated support for changes in bond clauses, they also noted that if the precedent in this case impacts other countries,

there should be changes to New York law. In particular, the IMF noted that changes to the Foreign Sovereign Immunities Act could prevent this type of behavior. Jubilee USA has previously introduced bipartisan legislation in the US Congress that would make the behavior less profitable. There's also laws that could be introduced that would force hold-outs to sit at the table. Laws that deter predatory hedge funds have been passed in several financial jurisdictions in Europe like the United Kingdom and Belgium. We believe that every country in the world – whether they are a primary financial jurisdiction or not, should pass these kinds of laws. In addition to these statutory changes, there also needs to be shifts to the global financial system. This brings us to the final solution which also enjoys significant global support.

3.) Bankruptcy Process for Countries – In September of 2014 we won a vote at the UN General Assembly to begin a process to create a legal framework for bankruptcy for countries. Only 11 countries voted against this resolution and this year the General Assembly has held two framing sessions to prepare a global proposal. A bankruptcy process, similar to US Chapter 11 could force all debt holders to sit at the table during a debt restructuring. However, we need to understand that the global support for this process is derived from more than just wanting to stop the vulture funds. What the overwhelming support of the process shows, especially from poor countries and what are considered to be “middle income” countries, is that there is concern over the entire financial system. A global bankruptcy process, similar to what Adam Smith, the father of modern economics argued for, could do much more than stop predatory behavior. The process could prevent countries from defaulting in the first place and limit regional and global financial crisis. Yes, this process is important for preventing the next global financial crisis and increasing stability and predictability in the market. A bankruptcy road map from the UN Conference on Trade and Development (UNCTAD) was released to guide this process just a few weeks ago. I participated in this work which raises domestic bankruptcy procedures to a global level. The International Monetary Fund, through a series of papers over the last year and a half, explored aspects of global bankruptcy. Not as expansive as the work of the United Nations, but just as important, is the road map released in April of 2013 from the International Monetary Fund. Currently, the Executive Directors of the International Monetary Fund are pursuing this

road map under the mantra that global debt restructuring is often, “too little and too late.”

It’s exciting that there is consensus to stop the predatory behavior and incredibly exciting that consensus is growing to actually change how the financial system operates to limit default and prevent global and regional financial crisis.

In closing, I’d like to share a selection of Jubilee USA’s Supreme Court filing that is available along with other legal documents on the case on our website.

(http://jubileeusa.org/fileadmin/13-990__-991_Amici_Brief_filed_3-24-14.pdf)

Quotes from Jubilee USA’s Amicus Brief:

"The opinion...now threatens to unravel United States debt relief policy and undo much of the progress made on behalf of the poor."

"The presence of even a single holdout can deter otherwise cooperative creditors from agreeing to restructure a country's debt...the...decision below would make holding out and suing...the most rational strategy for creditors."

"Allowing the decision below to stand would...equip financial companies that prey on the poorest nations and people of the world with a game-changing legal precedent to accelerate their predation."

"If allowed to stand, the decision in this case...has the potential to generate systemic risks in the international system."

"Upholding the decision...would harm or frustrate numerous established policies of the United States...[that] began during the Bush administration and have been continued by the Obama administration."

"It is now accepted that it is more efficient and equitable to distribute debtor’s assets among all the creditors than to give one creditor total satisfaction and make the rest go away emptyhanded. Bankruptcy thus serves the collective interests of creditors while at the same time preserving, to the extent possible, the viability of the debtor firm."

AND

"Using law to dispossess the poor for the pleasure of the powerful offends not only the sense of justice embodied in United States policy, but the even more ancient principles of biblical justice revealed in the scriptures of our faiths."

Thanks again for inviting me to participate in this crucial and vital discussion.