

SM/07/310
Correction 2

January 29, 2008

To: Members of the Executive Board

From: The Secretary

Subject: **Initiative for Heavily Indebted Poor Countries (HIPC) and Multilateral Debt Relief Initiative (MDRI)—Status of Implementation**

The attached corrections to SM/07/310 (8/30/07) have been provided by the staff.

Factual Errors Not Affecting Staff’s Analysis or Conclusions

Page 32, para. 41, 2nd sentence: for “46 litigating creditors” read “44 litigating creditors”

3rd sentence: for “Eight new legal actions” read “Six new legal actions”

5th sentence: for “The HIPCs facing the most litigation cases are Nicaragua, the Republic of Congo, Cameroon, and Uganda, with nine, eight, seven, and six lawsuits, respectively.”

read “The HIPCs facing the most litigation cases are Nicaragua, the Republic of Congo, and Uganda, with nine, eight, and six lawsuits, respectively.”

para. 42, 2nd sentence: for “(home to eight and four litigating creditors, respectively) and the British Virgin Islands (seven).”

read “(home to seven and four litigating creditors, respectively) and the British Virgin Islands (six).”

3rd sentence: for “London with fifteen,” read “London with fourteen,”

Page 33, Text Table 5: number of litigating creditors against Cameroon has been corrected to 5 from 7, and subtotals have been adjusted accordingly.

Page 34, para. 43, 2nd sentence: for “Of the 46 litigation cases”
read “Of the 44 litigation cases”

Page 105, Appendix Table 16: Rumbold International Ltd. and Greylock Global Opportunity have been deleted of the list of litigating creditors against Cameroon, and subtotals have been adjusted accordingly.

Questions may be referred to Mr. Espejo (ext. 37152) and Mr. Kpodar (ext. 34437) in PDR.

This document will shortly be posted on the extranet, a secure website for Executive Directors and member country authorities.

Att: (4)

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Department Heads

Box 4. The Debt Reduction Facility for IDA-only Countries

The World Bank's Debt Reduction Facility (DRF) for IDA-Only Countries plays an important role in reducing exposure to commercial creditors of HIPCs. Established by the Boards of IBRD and IDA in 1989, the DRF helps extinguish commercial debts through buybacks at a deep discount. To date, the DRF has supported 22 buybacks in 21 countries. The DRF has helped extinguish around US\$8 billion of external commercial debt. DRF operations have been completed in 15 post-completion-point HIPCs, in one of the nine interim HIPCs, and in two of the ten pre-decision-point HIPCs. In April 2007, IDA's Board approved a five year extension of the DRF to July 31, 2012. It is expected that the extension of the DRF will encourage commercial creditor participation and help reduce commercial debt in upcoming HIPCs after reaching decision point.

Also in April 2007, IDA's Board approved a second commercial debt reduction operation for Mozambique. This buyback is expected to be closed in September 2007 and to extinguish all of Mozambique's remaining US\$176 million of eligible commercial external debt, including principal, interest, and associated penalties.

In July 2007, IDA's Board approved a second commercial debt reduction operation for Nicaragua. This buyback is expected to be concluded before the end of 2007 and would help eliminate most if not all of Nicaragua's remaining US\$1.4 billion of eligible commercial external debt, including principal, interest and penalties. DRF operations for other HIPCs are currently in the preparatory stage or under consideration.

40. **The information available from the survey suggests that only a few non-bank commercial creditors have provided their share of HIPC Initiative debt relief – directly in the form of debt cancellation or restructurings, or implicitly through market-based buyback operations.**⁴² Some suppliers and non-banks have provided full HIPC debt relief on claims to Guyana and Madagascar, and some non-banks have provided partial debt relief to the Democratic Republic of Congo.⁴³ In the case of Guyana, a supplier dropped its legal action against the country and granted debt relief following pressure from the Guyanese government and several non-governmental organizations. Concessional terms were provided in the restructuring of some commercial loans to the Democratic Republic of the Congo.

⁴² The information on suppliers that have provided debt relief is not exhaustive, as some post-decision-point HIPCs have not responded to the survey.

⁴³ A survey was sent to 30 countries that had reached their decision points by May 2007. Twenty-four countries replied (80 percent). The survey was not sent to pre-decision point HIPCs.

E. Commercial Creditor Litigation against HIPCs

41. **A number of commercial creditors and distressed debt funds have engaged in litigation against HIPCs** (Table 5 and Appendix Table 16).⁴⁴ Eleven out of the 24 respondents to the staffs' survey reported that they have been targeted with lawsuits by a total of ~~46~~44 litigating creditors. ~~Eight~~Six new legal actions are reported since the 2006 survey, of which five are against Nicaragua, ~~two against Cameroon~~, and one against Ethiopia. Over the same period, eight previously reported cases have been reclassified. The HIPCs facing the most litigation cases are Nicaragua, the Republic of Congo, ~~Cameroon~~, and Uganda, with nine, eight, ~~seven~~, and six lawsuits, respectively.⁴⁵

42. **The HIPC authorities have reported that lawsuits are most frequently filed in industrial country courts, which are often the applicable jurisdiction of the legal obligation, or where litigating creditors are often based.**⁴⁶ Responses to the survey indicated that litigating creditors are concentrated in the United States and United Kingdom (home to ~~eight~~seven and four litigating creditors, respectively) and the British Virgin Islands (~~six~~seven). Lawsuits against HIPCs have been filed mainly in New York, Paris, and London with ~~fifteen~~fourteen, seven, and seven litigations, respectively. Another eight cases are disputed in other foreign courts, and ten were filed in courts in the HIPCs themselves (Appendix Table 16).

⁴⁴ Given the voluntary nature of the HIPC Initiative, creditors do not have a legally binding obligation to participate in the Initiative.

⁴⁵ Some countries have reported being threatened by litigation, specifically Sierra Leone (four cases) and Cameroon (one case). The staffs have not included this information in the tables.

⁴⁶ Based on the authorities' responses to the survey on commercial creditor participation.

Table 5. HIPC Initiative: Commercial Creditor Participation and Lawsuits^{1/}
(Status at end-2006)

Table 5. HIPC Initiative: Commercial Creditor Participation and Lawsuits by Country

Status at end-2006 1/

	NPV of Debt Owed to Commercial Creditors at Decision Point	Commercial Creditor Participation 2/		Commercial Creditor Lawsuits 2/				
		Expected Debt Relief under HIPC 3/	Delivery of Debt Relief 4/	Number of Litigating Creditors	Claims of Litigating Creditors		Court Awards 5/	
					(In millions of U.S. dollars, in end-2006 NPV terms)	(In units)	(In millions of U.S. dollars)	(In percent of GDP)
22 Completion-Point HIPCs 6/								
TOTAL	3,923	753	23	34	992		399	
Benin	11	2	...	0	...	...	...
Bolivia 7/	28	9	0	0	...	...	...
Burkina Faso	0	0	...	0	...	...	...
Cameroon	1,026	81	...	5	340	1.8	51	
Ethiopia	165	37	0	2	187	1.4	...	
Ghana	559	280	...	...	...	...	...
Guyana	72	25	20	3	46	5.3	...	
Honduras	68	4	0	1	1	0.0	...	
Madagascar	25	3	3	0	...	...	...
Malawi	65	10	0	0	...	...	...
Mali	9	3	0	0	...	...	...
Mauritania	0	0	0	0	...	...	...
Mozambique	219	66	0	0	...	...	...
Nicaragua	1,188	75	0	9	285	5.3	276	
Niger	6	3	...	...	...	...	...
Rwanda	1	1	...	0	...	...	...
São Tomé and Príncipe	7	2	0	1	9	11.2	...	
Senegal *	4	1	0	0	...	...	...
Sierra Leone	201	109	0	5	31	2.2	27	
Tanzania	153	0	...	0	...	...	...
Uganda	65	13	0	6	36	0.4	30	
Zambia *	50	30	0	2	55	0.6	16	
9 Interim HIPCs 6/								
TOTAL	3,847	813	40	10	724		592	
Afghanistan 8/	0	0	...	...	...	...	...
Burundi *	7	6	...	0	...	...	...
Chad *	7	2	...	0	...	...	...
Congo, Dem. Rep. of the *	330	184	40	2	149	1.7	149	
Congo, Rep. of	3,490	618	0	8	575	7.8	443	
Gambia, The	0	0	...	...	...	...	...
Guinea *	12	3	...	...	...	...	...
Guinea-Bissau	2	1	...	0	...	...	...
Haiti	0	0	...	0	...	...	...
31 Post-Decision-Point HIPCs	7,771	1,566	63	44	1,715		991	

Source: Survey on Commercial Creditor Participation and Creditor Lawsuits against HIPCs.

1/ Commercial creditors lawsuits against HIPCs are reported without assessing the merits of these disputes.

2/ The survey was responded by the HIPC authorities of 24 countries out of 30, surveyed in May 2007. No response or insufficient information are shown with three dots.

3/ At decision point.

4/ As reported by the authorities of HIPCs. It does not include information on debt relief provided by the Creditors Committee.

5/ Some lawsuits are pending or in arbitration.

6/ No response to the survey is shown with an asterisk on the side of the country name.

7/ Debt owned to Spanish banks was treated as bilateral debt at the Paris Club in 2001.

8/ Responses to the survey were received in May 2007. For this reason, Afghanistan did not participate in the survey as it reached decision point in July 2007.

43. More than half of the litigating creditors have won lawsuits against HIPCs

(Table 5 and Appendix Table 16). Of the ~~46~~44 litigation cases reported in the survey, 25 creditors have obtained court judgments against seven HIPCs (Cameroon, the Democratic Republic of the Congo, Republic of Congo, Nicaragua, Sierra Leone, Uganda, and Zambia), amounting to about US\$1 billion on original claims of US\$427 million (see Box 5 for details on the case of Zambia). A few HIPCs have reached agreements with some commercial creditors through out-of-court settlements (Guyana, Sierra Leone, and Uganda). In addition, the HIPC authorities reported the presence of international commercial arbitration proceedings involving four HIPCs (Cameroon, the Democratic Republic of the Congo, Republic of Congo, and São Tomé and Príncipe). In the case of the Republic of Congo, creditors have obtained at least five court judgments against the country and are seeking to enforce them in multiple jurisdictions. Five lawsuits (against Cameroon, Honduras, Sierra Leone, and Uganda) are still pending.

Box 5. Litigation Against HIPCs: Donegal versus Zambia

In 1979, Romania extended a US\$15 million credit facility to Zambia for purchasing agricultural machinery. Zambia defaulted and fell into arrears in 1981. Subsequent efforts to reschedule this debt under Paris Club terms failed. In 1999, Donegal offered to buy the debt from Romania. After lengthy negotiations and, notwithstanding Zambia's slightly higher offer, Romania sold the debt to Donegal for US\$3.2 million (on a claim with a face value of US\$30 million). Following the debt assignment to Donegal, and in controversial circumstances, Zambia acknowledged the validity of Donegal's claims.

Donegal tried to convert the claim into investments in Zambia. After three years of unsuccessful negotiations, Donegal commenced litigation in the British Virgin Islands seeking compensation of US\$42 million. A settlement agreement was reached in return for Donegal discontinuing the British Virgin Islands legal proceedings, and Zambia agreed to repay US\$14 million over a three-year period. The settlement agreement, governed by English law and including a waiver of sovereign immunity, stipulated that if Zambia defaulted on its obligations, Zambia would pay the original debt plus interest. Zambia fell into arrears in 2004, upon which Donegal commenced litigation in England seeking US\$55 million. In February 2007, the English High Court ruled in favor of Donegal, but accepted one of Zambia's defenses that the stipulated interest rate under the settlement agreement was an illegal penalty. The end-result was a reduction of Donegal's claim to US\$15.4 million.

44. Lengthy court proceedings may impose severe burdens on budgets and institutional resources of HIPCs. When lawsuits are filed in overseas courts, most HIPCs have secured the services of legal firms and financial advisors established in France, the United Kingdom, and the United States. For cases filed in local courts, HIPCs have relied on their own public counselors/lawyers.⁴⁷

⁴⁷ Staffs included questions on litigation costs in the 2007 survey, but not enough responses were provided to make a reliable estimate of legal costs.

Table 16. Commercial Creditor Lawsuits Against HIPCs 1/

HIPC Debtor	Creditor 2/	Domicile of Creditor	Court Location	Status of Legal Action	Original Claim	Amount Claimed by	Judgment for
					3/ 4/	the Creditor 5/	Creditor 6/
(In millions of U.S. dollars)							
Cameroon					52.7	340.4	50.9
	(1) Winslow Bank	Bahamas	France, UK and USA	Judgement awarded	9.0	46.3	46.3
	(2) Del Favero	Italy	UK	Judgement awarded	0.8	4.6	4.6
	(3) SCONSET	British Virgin Islands	Switzerland	In arbitration	18.2	53.9	...
	(4) Gracechurch (Paris)	Cayman Islands	France	In court	9.5	39.7	...
	(5) Antwerp	British Virgin Islands	...	In arbitration	15.2	196.0	...
Congo, Dem. Rep. of					55.8	148.9	148.9
	(1) FG Hemisphere	USA	Belgium	Judgement awarded	55.8	81.7	81.7
	(2) KHD Humboldt Wedag AG Koln and others	...	Royal court of Jersey	Judgement awarded	...	67.1	67.1
Congo, Rep. of					527.2	465.6	443.3
	(1) Groupe Antoine Tabet (GAT)	Lebanon	Switzerland and France	Judgement awarded	126.0	88.6	92.2
	(2) NUFI-AIG. C. ITHO Middle East	USA	USA	Judgement awarded	11.2	24.3	8.3
	(3) FG Hemisphere Associates LLC	USA	USA, France and Belgium	Judgement awarded	35.9	152.0	151.9
	(4) AF-CAP, Inc.	Bermuda	USA and Europe	Judgement awarded	9.6	20.8	10.9
	(5) Berrebi	France	France	Judgement awarded	2.1	13.7	13.7
	(6) Kensington International Ltd	Cayman Islands	UK, USA, and others	Judgement awarded	29.6	118.6	118.6
	(7) Walker International holding LTD	British Virgin Islands	UK, USA, and others	Judgement awarded	20.8	47.8	47.8
	(8) Commisimpex	Rep. of Congo	France	Out of court settlement	292.0	...	...
Ethiopia					131.5	186.7	...
	(1) Kintex-Bulgaria	Bulgaria	Russia	In arbitration	8.7	8.7	...
	(2) Yugoimport	Serbia	Russia	In arbitration	122.8	178.0	...
Guyana					42.5	46.4	...
	(1) Citizens Bank Guyana Inc.	Guyana	Guyana	Out of court settlement	24.3	24.7	...
	(2) Booker plc.	UK	ICSID	Dropped	4.1	7.5	0.0
	(3) Export Services Incorporated	USA	Guyana	Judgement awarded	14.1	14.1	...
Honduras	(1) BAGO Laboratories	Argentina	...	In court	1.5	1.5	...
Nicaragua 7/					79.8	285.2	275.6
	(1) LNC Investment, Inc.	New York, USA	USA	Judgement awarded	26.3	87.1	87.1
	(2) Hemisphere Associates (Nicaragua Claim) L.L.C.	New York, USA	USA	Judgement awarded	30.9	126.0	126.0
	(3) Greylock Global Opportunity Marster Fund Ltd	British Virgin Islands	USA	Judgement awarded	10.5	50.9	50.9
	(4) Hamsah Investments, Ltd.	British Virgin Islands	USA	Judgement awarded	2.5	11.6	11.6
	(5) Inex-Interexport Belgrade						
	(6) 14 October Krusevac						
	(7) IMT AD Belgrade	Belgrade, Serbia	USA	In court	9.6	9.6	...
	(8) DP FAP Famos						
	(9) MFK Corporation Ltd						
São Tomé and Príncipe	(1) Annadale Associates	UK	France	In arbitration	3.0	8.9	...
Sierra Leone					25.3	31.1	27.4
	(1) J& Franklin Ltd	UK	UK	Judgement awarded	1.1	3.4	3.4
	(2) UMARCO	France	UK	In court	0.6	0.6	0.6
	(3) Executive Outcome Panama	Sierra Leone	Sierra Leone	Judgement awarded	19.5	23.0	23.0
	(4) Chatelet Investment Ltd	Sierra Leone	Sierra Leone	In court	0.4	0.4	0.4
	(5) Scancem International ANS	Norway	Norway	Out of court settlement	3.7	3.7	...
Uganda					18.4	36.2	29.6
	(1) Banco Arabe Espanol	Spain	Uganda	Judgement awarded	1.0	2.7	2.7
	(2) Transroad Ltd	UK	Uganda	Judgement awarded	4.0	16.7	16.7
	(3) Industry Machinery 14 Oktober	Former Yugoslavia	Uganda	Judgement awarded	7.0	8.9	8.9
	(4) Sour Fap Famous	Former Yugoslavia	Uganda	Judgement awarded	0.3	1.4	1.4
	(5) Iraq Fund for International Development	Iraq	Uganda	In court	6.0	6.4	0.0
	(6) Shelter Afrique	Kenya	Uganda	Out of court settlement	0.1	0.1	...
Zambia 8/					16.3	55.3	15.7
	(1) Connecticut Bank of Commerce	USA	...	Judgement awarded and	0.9	0.3	0.3
	(2) Donegal International Limited	British Virgin Islands	UK	In court	15.4	55.0	15.4

Source: Survey on Commercial Creditor Participation and Creditor Lawsuits against HIPCs.

Note: The survey was responded by the HIPC authorities of 24 countries out of 30 surveyed in May 2007. Responses to previous surveys have been included in the table, with the exception of lawsuits against Mozambique and Niger which were determined to be official claims.

1/ Commercial creditors lawsuits against HIPCs are reported without assessing the merits of these disputes. The information reported in this table reflects the authorities' responses to the survey only, and it should not be considered a complete summary of all commercial creditor proceedings against HIPCs.

2/ Either original creditor or holder of current claim.

3/ Exchange rates at decision point were used for reporting claims in U.S. dollars.

4/ Excludes accumulated interest and charges.

5/ Amount could include interest, charges, and penalties.

6/ Settlement amounts are not reported, as confidentiality agreements might be in place.

7/ Joint litigation for cases 5 through 9.

8/ "Fap Famos Belgrade" claim, reported in the 2006 survey, was reclassified as a bilateral debt.