

Preying on the poor – the impact of ‘vulture funds’ on development goals and human rights

By Lisa Harrison, Castan Centre In-House Intern

For heavily indebted developing countries, the practices of unscrupulous ‘vulture funds’ pose an insurmountable barrier to development and the fulfilment of the basic human rights of their people, according to Dr Cephias Lumina, the UN Independent Expert on the Effects of Foreign Debt and other Related International Financial Obligations on Human Rights. ‘Vulture funds’ are the debt collectors of the global market place, private investment firms that purchase the sovereign debts of developing nations at a significant discount so that they can pursue the full amount, plus interest, late fees and legal costs, through strategic litigation in favourable jurisdictions. In February 2011, Dr Lumina addressed a full house at an event hosted by the Castan Centre, in conjunction with the Human Rights Law Centre, to discuss his recent report to the Human Rights Council and expose the workings and human rights impacts of these commercial enterprises.

Dr Lumina’s mandate centres on the debilitating levels of sovereign debt owed by developing countries forcing them to divert much-needed money away from primary services such as health, water, sanitation, housing and education. In recognition of this problem, the international community has developed a number of debt relief schemes that provide for the cancellation in full of debts to a number of multilateral financial institutions. Dr Lumina pointed to the abolition of primary school fees in Ghana, Malawai and a number of African nations, as well as the abolition of user fees for health care in Zambia as evidence of the progress enabled by such initiatives. However, these programs are voluntary and cannot compel commercial creditors to drop their claims.

The problem, Dr Lumina explained, is that vulture funds seek to recover sums vastly greater than the price they pay to the original creditor, a price they are under no obligation to disclose. Court judgments impose a debt burden far greater than that originally incurred, due to interest and penalties. As Dr Lumina noted, \$6.5 million borrowed by Liberia in 1978 soared to \$18.4 million when a New York court entered default judgement in 2002, and rose to over \$20 million in 2008 when that judgement was registered in a London court. By aggressively pursuing their claims, often in multiple jurisdictions, vulture funds also add upwards of hundreds of thousands of dollars in legal fees to the existing debt.

Court awards represent an intolerably high proportion of the GDP of indebted countries, ranging from 0.5% to 49% in the case of Liberia. Litigation enables the funds to freeze and seize a nation’s foreign assets, giving them preference over other creditors, and more significantly giving them preference over the nation’s impoverished citizens. As the Independent Expert highlighted, vulture funds “prevent heavily indebted poor countries from using resources freed up by debt relief for their development and poverty reduction programmes, and therefore diminish the capacity of these countries to create the conditions necessary for the realization of human rights for their people.”



Dr Lumina explains the impact of vulture funds on human rights.

Dr Lumina’s condemnation extended beyond those profiteering at the expense of developing states to the developed nations who offer ‘creditor-friendly’ jurisdictions in which vulture funds can seek to pursue their debts. Developed states purport to recognise the inability of heavily indebted countries to repay debt by contributing to debt relief programs, yet their courts continue to make awards against those countries at the suit of vulture funds. Such conduct is not only disingenuous but a waste of taxpayers’ money. The solution, at least in the short term, appears to be legislation restricting or prohibiting the recovery of such debts in the jurisdictions in which heavily indebted countries own assets. Dr Lumina endorsed the UK model, also proposed in the US, which limits the amount vulture funds can recover to reasonable compensation for the amount they outlaid to purchase the debt. Such legislation, particularly in jurisdictions favoured by vulture funds, would minimise the commercial incentive for the funds and reduce the prevalence of unscrupulous activity. Dr Lumina stressed that such legislative measures must be met with international efforts to tackle tax havens, move toward compulsory debt relief schemes, and undertake broader global financial reform.

Video of the event is available via the Castan Centre website (www.law.monash.edu.au/castancentre) and its YouTube channel (www.youtube.com/castancentre).