



**HUMAN RIGHTS COUNCIL
ADVISORY COMMITTEE**

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Item 3.a (x)

Activities of Vulture Funds and Their Impact on Human Rights

Oral statement of the CADTM¹ and the CETIM

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Mr. Chair,

The phenomenon of vulture funds is inextricably linked to states' debt, and it affects most countries. Thus, the CETIM and the CADTM welcome the mandate that the Human Rights Council has given to the Advisory Committee regarding the effect of vulture fund activities on human rights, and we offer the Committee our support in pursuing its mandate.

First, it is appropriate to briefly explain these “vulture funds”. Also known as litigating creditors, “vulture funds” are investment funds that buy up, at negligible prices, states' debt, in order to subsequently undertake legal action intended to force those states to pay the original full face value (the initial amount of the credit) at the time of the issuance, plus accrued interest.

The course of their actions is generally the same: they buy at a very low price the debt of states that are heavily indebted, indeed on the brink of being insolvent, betting on an improvement of these states' financial situation and speculating on the existence of seizable state assets or on the granting to these states of aid or other sums which could be seized. As soon as circumstances are favorable, they undertake legal action in a court of the country that is most receptive to their claim. Once a ruling has been handed down, they execute it by seizures, anywhere in the world, of the state's assets or of claims of this state on a third party. These third parties are thus forced to pay the vulture fund and not the state that is their creditor.

It should also be noted that these vulture funds are often registered in tax havens such as the British Virgin Islands (Donegal international Ltd), the Cayman Islands (Kensington international Ltd) or even the state of Delaware in the United States (FG Hemisphere).

In reality, vulture funds are only visible part of what is called the “debt system”, a system based on the exploitation and the domination of peoples. It is notorious that a substantial part of foreign debt of most countries of the Global South is made up of debt that is odious, illegitimate and indefensible (from the point of view of human rights), arising from colonial heritage, embezzlement, corruption, conditions imposed by the international lenders, the financing of projects harmful to the populations and their

¹ The CADTM participated in 2009 in writing the booklet “Un vautour peut en cacher d'autres” which described in detail the activity of vulture funds and proposed ways to combat them: <http://www.cncd.be/Un-vautour-peut-en-cacher-un-autre>

environment and, in some cases, totally fictitious contracts.

It is worth clarifying that when one speaks of debt, one is speaking of both private and public debt as well as bilateral and multilateral debt, keeping in mind that they can change “category” by “changing hands, through the write-off of debt and its guarantees, through the replacement of maturing debt by new loans, through rescheduling and partial forgiveness subject to conditions, through embezzlement and other fraud, bribes and fictitious registrations...”²

The “debt system” involves the use of public resources to pay creditors and speculators such as vulture funds, to the detriment of satisfying the needs and the basic rights of the population. To guarantee the repayment of the debt, structural adjustment programs are imposed (through the international financial institutions such as the IMF and the World Bank), regardless of the economic and social conditions of the country in question and the consequences for its populations. These programs often result in the elimination of public services and privatization of many sectors, thus very often depriving the most vulnerable of their basic rights. Debt also serves as an excuse to impose upon peoples unjust and often illegal austerity measures. On the other hand, the service of the debt is carefully provided for, whereas in the majority of countries it is the primary expense of the state.

Mr. President,

We shall not linger over the structural adjustment programs' impact on human rights, for several United Nations reports have already dealt with this in depth³. Our point is rather to draw your attention to the close ties between foreign debt and structural adjustment programs and to the impossibility of dealing with vulture funds without going to the root of the problem, to wit the mechanisms by which states become indebted.

For several decades, the international financial institutions (the IMF and the World Bank) and their regional outposts have been imposing neo-liberal economic policies throughout the entire world. In those countries under the direct control of their creditors, the attack on social rights and the sovereignty of peoples is carried out through the conditions attached to loans and false debt relief. The World Bank acts in concert with the IMF in the countries of the Global South. It also promotes programs that dismantle social protection (through the “Doing Business” report) and favors land grabs (through “Benchmarking Business of Agriculture”), which results in a multitude of human rights violations, in particular violations of economic, social and cultural rights. Vulture funds accentuate these violations, for, taking advantage of the vulnerability of indebted states, they seek to siphon off public resources. Thus, the modest state resources available are in a sense grabbed by these speculators.

The Paris Club, an informal group comprising the 20 richest creditor states, who work as intermediaries for debt restructuring, also sometimes behave like vulture funds, as seen in Argentina.⁴

Faced with these wide-scale human rights violations, the Advisory Committee should recommend that states, at both the national and international level, take the following measures.

- The immediate adoption of laws against vulture funds, effectively blocking the actions of these funds before the national courts, following the example of Belgium and the United Kingdom,

2 *Let's launch an enquiry into the debt! A manual on how to organise audits on Third World debts*. CETIM and CADTM, October 2006, http://www.cetim.ch/en/publications_ouvrages/140/let-s-launch-an-enquiry-into-the-debt-a-manual-on-how-to-organise-audits-on-third-world-debts

3 See in particular E/CN.4/Sub.2/1995/10, 4 July 1995; E/CN.4/Sub.2/1991/17, 18 July 1991; and E/CN.4/1999/50, 24 February 1999. See also Melik Özden, *Debt and Human Rights*, Geneva: CETIM, 2007: http://www.cetim.ch/en/publications_dette.php?currentyear=&pid=

4 In the case of Argentina, for example, on 29 May 2014, the Paris Club member states managed to reach an agreement providing for the repayment of Argentina's odious debt. The 2014 agreement provides for the payment of \$ 9.7 billion, of which \$ 3.6 billion corresponds to punitive interest on overdue amounts.

- which adopted such laws in 2008 and 2010 respectively.⁵
- The suspension of debt repayment when its repayment prevents the public authorities from guaranteeing the basic human rights of their populations. It should be noted that human rights trump other state commitments such as those regarding its creditors, by virtue of Article 103 of the United Nations Charter, which has been reaffirmed many times by the United Nations human rights protection mechanisms.
 - The carrying out of audits of public debt,⁶ as recommended by Cephias Lumina, former United Nations independent expert on debt, in his guidelines adopted by the Human Rights Council.⁷ With citizen participation, these audits make it possible to identify and cancel unconditionally illegal, odious, illegitimate and unsustainable debt. These audits can be combined with unilateral suspension of public debt repayment. They would also make available to states legal and political arguments with which to justify the repudiation/cancellation of illegitimate debt as well as contravene legal action by vulture funds.
 - Specify, in the bonds issued by states, that any future litigation must be dealt with by national courts. This will make it possible to avoid unjust court rulings similar to the one handed down by the New York judge against Argentina.
 - End the conditions imposed by the international financial institutions with a view to bringing their actions into conformity, in particular, with the *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights*. These international treaties enshrine in particular the right of peoples to self-determination and economic, social and cultural rights.

Finally, it would be particularly useful for the Advisory Committee to establish a register of vulture funds.

All these measures are based on international law and United Nations reports such as those of the United Nations Independent Expert on the effects of foreign debt and other related international financial obligations of states on the full enjoyment of all human rights, particularly economic, social and cultural rights. These measures are all the more urgent that there is now a great risk of another foreign debt crisis.

As already stated, states must act on the problem of public debt in general. Dealing with the matter of vulture funds obliges us to deal with the matter of public debt. This debt is mostly illegitimate as regards the countries of the Global South, but also as regards the countries of the North.

Geneva, 25th February 2015

5 In 2008, Belgium passed a law making money allocated for cooperation and development inaccessible and unseizable. In 2010, the United Kingdom passed a law in 2010 limiting the amounts of that vulture funds can demand in payment when these funds take HIPC's (heavily indebted poor countries – as classified by the World Bank) to court.

6 The CADTM network and the CETIM have just published a second manual on auditing debt. This publication retraces in detail the experiences of citizen and government audits carried out in all parts of the world. It is worth recalling that Ecuador was able to regain control of its indebtedness by carrying out a thorough audit of its public debt in 2007 and 2008, resulting in Ecuador's decision to unilaterally suspend payment of a part of its commercial debt. In 2009, the Ecuadorian government then imposed on its creditors a major debt reduction. The resulting savings allowed the government to invest more in the social sector. It was a historic experience radically different from debt restructuring that, in the great majority of cases, benefits only the creditors. Although this book's purpose is to train citizen movements for carrying out audits, we reckon that it also behooves the United Nations to take an interest in this sort of experience, indeed to financially and logistically support the setting up of debt audits, be they citizen, parliamentary, judicial or governmental.

7 See §§ 67-70 *Guiding principles on foreign debt and human rights*, A/HRC/20/23, 10 April 2012.