
1. Background:

Over the past decade, poverty eradication initiatives and development strategies focusing on African countries have increased in leaps and bounds. At the forefront of these initiatives are donor agencies, be it developed countries or multilateral organizations. No time in recorded history has such activities gathered momentum like in the last few years. Central to these initiatives is the Highly Indebted Poor Country Initiative (HIPC). This is a mechanism aimed at reducing and in certain instances, cancelling the debts of poor countries, including many African countries. As policy makers, government experts and economists gathered to chart the course of poor countries’ trip towards development through the HIPC process, hedge fund managers and managers of other funds and financial institutions were also meeting to develop strategies on how to prey on funds given to poor countries, especially African countries. These strategies took the form of incorporating vulture funds in some tax havens, buying outstanding debts from lender countries and bringing law suits against debtor countries claiming the principal, interests and legal costs. Sometimes, the amount claimed was 17 times more than the original debt.

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1 For instance in the case pitting Donegal (a vulture fund) v. Zambia, Donegal brought a suit against Zambia claiming $55 million, which was 17 times the original debt Zambia owed Romania which Donegal had bought.
2. The African Legal Support Facility (ALSF) and Capacity Building

This practice by vulture funds reached crescendo in 2007 when Donegal sued Zambia claiming $55 million - principal, interest and costs - on a debt it bought from Romania for about $3.4 million. The claim brought widespread condemnation not least as Donegal was calculating to benefit from donor and other funds given to Zambia to boost the latter's poverty eradication and development efforts through the HIPC initiative. In fact, most vulture funds failed to take part in the HIPC negotiations and refused to be part of the debt eradication process.

As a riposte to vulture funds, the African Development Bank (AfDB) created the African Legal Support Facility in 2009. The aim of this Facility is to:

i. help African countries involved in litigation with a vulture fund by identifying a competent law firm in the world to represent the said African country on negotiated legal fees;

ii. provide technical assistance to African countries involve in contract negotiations be it in the mining, petroleum or building of infrastructure.

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3 Available at http://www2.humnet.ucla.edu/aleph/images/stories/farry_aleph.pdf. (last visited on August 13, 2010)
sectors. This will be done by selecting a competent law firm and footing the bills of the law firm to negotiate on behalf of African countries.\textsuperscript{4}

All the AfDB regional (African countries) and non-regional (non-African countries) members belong to the Facility. However, membership is open to any country in the World that deems it necessary to join the Facility. The Facility is a legal institution in its own right and has five members and is expected to mobilize about US$ 50 million and to operate for 14 years and thereafter, Members would decide on whether to continue with it. The AfDB has contributed US$15 million to the Facility while some non-regional members, financial institutions and banks based in non-regional member countries like the U.S. and the U.K have pledged to contribute to it.\textsuperscript{5}

From the above, one notes two things. First, the Facility would clearly be playing a facilitative role and second, the Facility would heavily depend on donor funding. These two functions are limitative and might come to haunt the Facility at some point in the future. For instance, what happens if donor funding dries up or what happens if many competent international law firms contacted by the Facility refuse to represent African countries as a result of conflict of interest issues or some other reason? I believe the Facility could become more useful and sustainable if it goes a step further by creating a medium for capacity building of Member Countries’ attorneys. This might help carter for the problem of sustainability of the Facility,

\textsuperscript{4} allAfrica Interview with Mr. Kalidou Gadio, General Counsel, African Development Bank, May 13, 2009, \url{www.allafrica.com} (last visited on August 13, 2010)

\textsuperscript{5} Id.
should donors supporting the Facility pull out. Secondly and most importantly, African Countries would have a pool of local lawyers to select from if they are involved in international litigation or contract negotiations. This invariably will solve the problems related to ownership of the Facility and Countries’ sovereignty as these Countries might rightly want to be masters of their own process – not some foreign law firm taking the lead.

3. How African Law Schools and Attorneys can get involved in the activities of the Facility

There are many ways in which African law schools and attorneys can get involved with the Facility for capacity building purposes. These are:

3.1. Law School Clinics

One of the ways with which practical legal skills are experimented, taught and inculcated on law students is by creating legal clinics and having students enrolled in them. The idea is to identify niche areas and have students conduct practical research and studies on them. The main elements involved are conducting interviews with clients, conducting legal research, producing back ground papers, writing and filing briefs and memos, advising clients on specific legal issues, undertaking field visits etc.

African law schools can become more active with the Facility by creating clinics focusing on the Facility in cooperation with the African Development Bank. Law
schools offer important resources for education, information, training and advocacy campaigns. Such a project will link law students, researchers, government officials and other experts working in the field to leverage university time and resources (including access to research libraries, etc.) to increase the efficacy of on-the-ground government officials, local lawyers and state attorneys. Access to a full legal research library and the capacity to attract and train teams of researchers for short-term projects is rare for most Governments in Africa. Law schools therefore provide key opportunities in this regard, often having the best law collections in the country on their campuses and having ready access to scores of students looking for experiential learning and advocacy projects.

African law schools can be at the forefront of the Facility’s activities by creating legal clinics to conduct research and provide background studies on aid, development, vulture funds, international laws and treaties. Work in the clinic would be done on a credit basis under the guidance of a clinic supervisor. This would create a platform for the dissemination of knowledge and information about international aid and vulture funds and at the same time, provide a pool of talented law students from which African countries as well as the Facility can draw from.

Legal clinics are currently found in many African Law Schools and have become central to legal training notably in some South African Universities. For instance, for over a decade now, the Human Rights Program at the University of Pretoria has run clinics ranging from issues relating to monitoring of elections to access to medicines
with unparalleled success and acclaim.\textsuperscript{6} Other law schools can borrow this model by creating clinics and tailoring them to focus on the African Legal Support Facility.

3.2. Continuous Legal training and short courses

Short courses and continuous legal training offer an efficient and convenient way to sustain the interest of lawyers and at the same time creating a platform to discuss critical legal issues in a succinct manner. It’s brevity means that lawyers might be able to create time to attend and experts would find it convenient to teach.

With respect to capacity building on the Facility, the Facility might get into a partnership with a University to have a week’s course on the subject. The short course might be made an elective or incorporated in the curriculum of a course like international organizations law or international finance law. Once such partnership is created, the course will be advertised to the network of lawyers in both private and public practice as well as practitioners and officials from throughout Africa. The African Development Bank or the Facility might want to fund a number of participants for the first few years of the course’s inception and thereafter require countries to pay for their lawyers to attend or accept self-funded lawyers. The Facility might co-opt international law firms to provide some of the lawyers to teach in the course. The international law firms might use this as part of their pro bono program.

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\textsuperscript{6} The author used to coordinate the access to medicines clinical group at the University of Pretoria
Part of the training might take place within the national bar associations or the relevant government agency. In such a scenario, the Facility would enter into a partnership with a national bar wherein they train select lawyers from the national bar and state attorneys from the relevant state departments.

3.3 Online training

Online courses are en vogue in today's digital world. At an advance stage, the Facility might develop an online course. They might want to follow the model adopted with much success by the United Nations Training and Research Institute (UNITAR) wherein students are involved in interactive discussions with a tutor and take quizzes from time to time and are sometimes obliged to write an end of course paper.

3. Structure of Presentation

- Brief Discussion on Vulture Funds
- Brief Discussion on the African Legal Support Facility
- Why should ALSF build capacity in its regional Member States?
- How can the said capacity be built?
- Concluding remarks