

# THE VULTURES ARE HOVERING!

Peter Henriot

Today, Tuesday 24 April, may be a bad day for Zambia. Today is the day we will know the amount of money that may be taken from our poverty reduction programmes and sent to a very rich USA citizen by the name of Michael Sheehan. Mr. Sheehan is a “vulture,” or, to be more specific, is the manager of a “vulture fund” that picks clean the remnants of old debts, in this case, the old debt originally owed by Zambia to Rumania.

Mr. Justice Andrew Smith of the Royal Courts of Justice in London will hand down an award judgment to tell Zambia how much money it must pay Sheehan and his Donegal International (based in British Virgin Islands). In his original judgment 15 February, Justice Smith hinted that Donegal won't receive the USD 50 million-plus being asking for, but probably somewhere between USD 15 and 20 million.

The Donegal case has been widely reported and analysed in the Zambian media and elsewhere (check [www.jctr.org.zm](http://www.jctr.org.zm)), so it isn't necessary to go into details here. But I believe the case teaches us important lessons about the past, present and future of Zambia's economy. They are lessons we must learn if this country is ever to move forward to sustainable development for all the people.

## PAST LESSON

Reading the 140 pages of Justice Smith's earlier judgement, one is surely disturbed by the revelations of corruption and deceit in the original transactions and evasiveness and contradictions in the recent judicial proceedings. It appears that some major documents relating to the transactions have been destroyed in the Ministry of Finance and others have been forged. Actions taken by key Ministry officials (some of whom are actually on trial now for other corruption cases) were dubious in intent and damaging in outcome to the best interests of the Zambian people.

Even with proper judicial reserve, the Justice cannot but help comment on testimony given by Sheehan as being “deliberately evasive and even dishonest,” and “not merely careless but cavalier” in arguing the case. Efforts in the proceedings to get a clear record of what took place were difficult because of contradictory testimony, partial answers, and confusing arguments. The patience of Justice Smith must surely have been tried, as it is clear that he was not at all pleased with the details laid before him during the court hearings.

Reading about the involvement of prominent Zambians in deals that clearly were injurious to Zambia, learning about offers of “donations” to the Presidential Housing Initiative (PHI) in order to “facilitate” further deals, makes one indeed sad. Given the current strong focus on curbing corruption in Government – widespread corruption eating away at the vitals of an economy that should benefit the people, especially the poor -- surely one of the lessons of the proceedings is the need to institute court prosecution where possible and to promote public shame where necessary.

The obvious lesson to learn from this past experience is that where debt negotiations are “confidential and not publicly available” (language from Justice Smith's judgment), there is great danger of corruption that will poison the entire proceedings. According to Ms. Nachilala Nkombo, Coordinator of JCTR's Debt and Trade Project, “Our law on loan contraction failed us and our public officials also failed us.”

## PRESENT LESSON

Probably the hardest lesson to learn right now is that the Zambian people will have to suffer at the hands of past dishonest activities and present vulture greed. The anti-Donegal campaigns of our colleagues in OXFAM, Jubilee UK, and Jubilee USA have all emphasised the obvious point that to drain scarce resources from Zambia at this moment is surely immoral. An award of USD 20 million to Donegal could drastically cut the available funds assigned in the 2007 Budget to health and education expenditures. New teachers won't be hired, more medicines won't be procured.

Justice Smith was clear in his February judgement to state that "I am concerned, of course, with the legal questions that are raised by the applications before me and not with questions of morality and humanity." But I think it's possible to read between the lines of his carefully argued judgement that he had a particular disgust at the way Sheehan and friends (including Zambian friends) were aiming to reap extraordinary profits at the expense of the Zambian people. Truly an action that is immoral and inhumane!

*"A legally correct decision but a morally wrong decision"* is the way many of us would evaluate the Donegal case. But I'm not happy with such niceties of distinctions when we are dealing with the lives and deaths of people. I'm surely influenced by the teaching of Jesus that the law is made for women and men, women and men are not made for the law! (See Mark 2:27) Should we be forced to follow legal constraints that don't take into account immoral activities, with a consequence of great suffering for the poor of this country?

A similar point is being made even right now in the dispute over the renegotiations of the contracts signed for sale of the mines. As the recent study "For Whom the Windfalls?" shockingly reveals, the secret Agreements signed between the Government of Zambia and the foreign investors are open to many questions about to whom the exploitation of our rich resources were going to benefit. Now that the world price of copper has gone from USD 1500 to USD 8000 per metric tonne, surely there should be sharp renegotiations of the earlier contracts as well as fair negotiations for new contracts.

But the Zambian public has been repeatedly told that there are "legalities" that must be respected even at the expense of "equitable returns." I surely would not argue for wholesale ousting of legal arrangements but for much more aggressiveness in bargaining for greater ethical returns on investments. A few months ago I suggested in this column the need to look at the possibility of "windfall taxes" being imposed. Let the government take a hard look at that option right now, not in the distant future.

## FUTURE LESSON

A lesson that might cost Zambia USD 20 million is very expensive, so it better be a very good lesson indeed! Well, it is a very obvious lesson: "Zambia must immediately put in place stronger control of debt contraction," states Ms. Nkombo, "if we are to stem the tide of legal but unscrupulous outflows of financial resources from our public purse."

For example, we at JCTR are pleased that the Mung'omba draft now waiting for the Constituent Assembly contains the recommendation we made to the Constitutional Review Commission (CRC), namely that Parliament should have oversight on all large loans agreements. The Minister of Finance should not be allowed simply to sign documents that bind Zambia to future loans without wider independent evaluation of economic impact, social consequences and human rights implications.

Moreover, the Zambian citizens have the right to know what other “vultures” are hovering around today and what this might mean for the future economy and well being of the people. We are told by colleagues from Jubilee UK that Zambia is currently on trial in a private London court where the petitioner is demanding millions of dollar more than Donegal claimed. It surely is fair to ask the Government if this is true and what it might mean for our future!

A final lesson is the need for the international community to address this issue of vulture funds – so destructive of the HIPC arrangements Zambia and other countries have gone through at such great human expense. Already World Bank President Paul Wolfowitz has described the case against Zambia as “appalling” and said, “I’m hoping that...increased attention on this issue may enable the international community to come up with some effective legal remedies that protect countries like Zambia from that kind of unfair dealing and in time sustain an effective credit system for poor countries.” And USA officials have expressed willingness to search for legal constraints on the operations of vulture funds that prey on impoverished countries like Zambia.

I invite readers to go to our JCTR website to join the campaign to shoot down the vultures now before it is too late!

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