

**VULTURES, HYENAS, AND THIRD WORLD DEBT  
PRIVATE EQUITY AND ZAMBIA**

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Vultures roost where marauding hyenas roam.<sup>1</sup>

Where there is a carcass, vultures will be present.<sup>2</sup>

## I. THE GLOBALIZATION OF PRIVATE EQUITY

### A. *Donegal v. Zambia: Vulture Funds in Africa*

A 2007 U.K. court case involving Donegal, a private equity fund, and the Republic of Zambia, has contributed to an ongoing debate about the operation of so-called vulture funds in African and other Third World countries.<sup>3</sup> Donegal sued Zambia for more than fifty five million U.S. dollars in connection with a debt owed by Zambia to Romania for Zambia's acquisition of agricultural machinery from Romania pursuant to a credit agreement dated April 17, 1979.<sup>4</sup> Donegal acquired the Zambian debt from Romania in 1999.<sup>5</sup> Although the face value of the debt was close to thirty million U.S. dollars in principal amount, Donegal acquired the debt at some eleven percent of face value, or approximately US\$3.2 million.<sup>6</sup>

Donegal's attempt to collect the full face value with twelve percent interest occurred during a time that global multilateral institutions and developed world governments were engaged in significant amounts of debt reduction for poor countries. The composition of debt of many Third World countries is potentially complex and varied, and may include debt from

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<sup>1</sup> African proverb.

<sup>2</sup> African proverb.

<sup>3</sup> *Donegal Int'l Ltd. v. Zambia & Anor*, [2007] EWHC 197 (Comm) (2007), available at <http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Comm/2007/197.html>; (2007) 1 Lloyd's Rep. 397 [hereinafter *DONEGAL DECISION I*].

<sup>4</sup> *DONEGAL DECISION I*, *supra* note 3, ¶¶ 1–6.

<sup>5</sup> *Id.* ¶ 6.

<sup>6</sup> *Id.* ¶¶ 79, 200.

private, government, and multilateral agency creditors.<sup>7</sup> Further, some debt incurred by Third World countries, particularly from official lenders, may effectively be commercial only in form, but more akin to a grant in substance.<sup>8</sup>

A number of countries, including Zambia, have received significant amounts of debt reduction from mostly official and multilateral creditors.<sup>9</sup> The Heavily Indebted Poor Countries Initiative (“HIPC”), which began in 1996, has involved billions of dollars in debt reduction for a number of countries, including Zambia,<sup>10</sup> which has received significant debt relief. In 2005, for example, the International Monetary Fund determined that Zambia was eligible for a \$2.5 billion in debt relief,<sup>11</sup> which represented a 62.6% reduction in Zambia’s public debt.<sup>12</sup> Zambia has also negotiated debt reduction arrangements for debt incurred as a result of loans from other governments. Since 1983, Zambia has negotiated debt reduction arrangements with the Paris Club, an informal group of largely developed world creditor governments.<sup>13</sup> Attempts by private creditors to enforce and collect developing country debts are thought by many to compromise the

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<sup>7</sup> Anna Gelpern, *Odious, Not Debt*, 70 L. & CONTEMP. PROBS. 81, 82, 90–100 (2007) (noting that recent cases involving odious debt have involved in large part other governments and public institutions rather than foreign private creditors).

<sup>8</sup> *Id.* at 83 (noting that official debt given by government to developing countries is likely commercial in form only and given as loans due to domestic political opposition to outright grants or a desire to reinforce a long-term political relationship).

<sup>9</sup> See *infra* notes 10–14 and accompanying text.

<sup>10</sup> THE WORLD BANK, DEBT RELIEF FOR THE POOREST: AN EVALUATION UPDATE OF THE HIPC INITIATIVE vii (2006), <http://siteresources.worldbank.org/INTDEBTDEPT/Resources/ieghipcupdateevaluation2006.pdf> (noting HIPC aggregate debt reduction). See also Daniel Cohen, *The HIPC Initiative: True and False Promises*, 4 INT’L FIN. 363, 363 (2001) (noting that cancellation of poor countries’ debt has been high on the policy agenda); DONEGAL DECISION I, *supra* note 3, ¶ 331 (noting twelve percent interest rate sought in Donegal proceedings against Zambia in the British Virgin Islands).

<sup>11</sup> INT’L MONETARY FUND, ZAMBIA: ENHANCED INITIATIVE FOR HEAVILY INDEBTED POOR COUNTRIES—COMPLETION POINT DOCUMENT, IMF Country Report No. 05/137, at 3 (2005).

<sup>12</sup> *Id.* at 7.

<sup>13</sup> DONEGAL DECISION I, *supra* note 3, ¶¶ 39–47; Press Release, Paris Club, Paris Club Reduces Zambia’s Debt Under the Enhanced HIPC Initiative (May 11, 2005), available at <http://www.clubdeparis.org/sections/services/communiques/zambie/switchLanguage/en> (noting the Paris Club’s reduction of Zambian debt under the Enhanced HIPC Initiative).







































































