

Statement by Aldo Caliarì

Center of Concern (and on behalf of Jubilee USA Network)

14th Session of the Human Rights Council Advisory Committee

February 25, 2015 - Geneva, Switzerland

Thank you, Mr Chairman.

I am with Center of Concern, but I will be speaking on behalf of Jubilee USA, which is a network of 75 US-based organizations and 400 faith congregations that has been working for debt cancellation and responsible lending and borrowing for more than 15 years.

For us the discussion on vulture funds is a critical one. The way Jubilee came in contact with the issue was that, as you may remember, Jubilee USA, alongside its counterparts in many countries, was part of the Jubilee campaign that acted globally to obtain debt cancellation for the poorest countries. This demand came from a deep moral conviction that there was something wrong when countries had to starve their people to pay debt. The amount of money going to debt service was in some countries a large portion of the budget that could have been used for investment in basic social services.

There were successive rounds of debt cancellation in 1996, 1999 and 2005. We then learned that countries were being sued by financial firms that had bought the debt when it was cheap and were now demanding full repayment. While other creditors had foregone the recovery of part or whole of their claims these firms – the vulture funds – were demanding full payment. So countries that had received debt cancellation could not apply such funds to the intended social investments, because they had to pay vulture funds.

Moreover we found out this was not an isolated instance. In 2010 the former Special Rapporteur on Foreign Debt and Human Rights calculated that there had been more than 50 lawsuits against HIPC countries, several of them still pending resolution (Report Cephias Lumina 2010, para 9).

One example of how this threat to human rights works is that in 1999, a "vulture fund" called Donegal International bought Zambian debt for \$3.3 million – the original loan had been worth \$15 million. Six years later, Zambia's debt to the IMF and World Bank was cancelled and the country was able to save \$40 million a year. Donegal sued Zambia for the full amount of its claim, plus interest and costs, seeking \$55 million, or a 1600% profit. The amount Donegal attempted to collect was roughly equivalent at the time to Zambia's national health budget. In April 2007, a London court ruled that Zambia had to pay \$15.4 million plus a share of legal costs to Donegal.

Some countries have established legislation to prevent vulture funds from taking these actions. Unfortunately, the US is not one of them, and the US is a jurisdiction where a large part of bonds have to be adjudicated, in particular, New York. We are most struck by this inaction because the US has been a

leader on the debt cancellation efforts that vulture fund actions undermine, and the US Administration has more often than not sided with the victims in Court proceedings.

The lack of this legislation creates other risks. In 2012 New York's legislature, lobbied by vulture funds, attempted to introduce legislation that would have left judges no option but to grant vulture funds recovery of 100 % of their claims (plus damages and interest). Jubilee USA was able to mobilize citizens and once they became aware they massively called their lawmakers and that attempt was, fortunately, stopped.

We know that did not prevent judicial enforcement in favor of a 100 % payment to vulture funds by a New York judge in a later case (*Argentina v. NML*). But it is important to say this was a judge's unfortunate choice (which was later convalidated by the Supreme Court, of course). Not a course of action imposed by law, but an interpretative choice made by the judiciary.

Still, it would be extremely important to introduce legislation that unambiguously prevents vulture funds from profiteering from debt they bought on the cheap at the expense of other creditors that accepted a restructuring, and of course, of the debtor and its people.

We think it would be very important that the Advisory Committee takes full advantage of this opportunity to convey a clear message about the legal grounds 1) for States, especially those that are major bond adjudication jurisdictions, to pass legislation that can decisively prevent the deleterious practices of vulture funds and 2) engage in the design and implementation of a multilateral legal framework on sovereign debt restructuring as mandated by the General Assembly by its resolution of September 2014.

Ultimately, we believe only this second measure will provide a definitive remedy to the harmful activities of vulture funds. But this should not stop the Advisory Committee from making recommendations across the full spectrum of actions that could prevent such behavior and, in that regard, reforms of legal regimes in jurisdictions that matter for this purpose will be a very important one.

We (and I speak for many colleagues now, not just Jubilee USA) stand ready to support this process contributing our thoughts, views, our experience and the evidence we have collected over so many years about the negative impacts this practice has on human rights, specially economic, social and cultural rights.

Thank you , Mr. Chairman.