

The UK Debt Relief (Developing Countries) Bill: An Instrument of Statutory Plunder

The Free Market Foundation of Southern Africa

The Free Market Foundation of Southern Africa is an independent non-profit policy organisation founded to promote and foster an open society, the rule of law, personal liberty, and economic and press freedom as fundamental components of its advocacy of human rights and democracy based on classical liberal principles.

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The late Lord Peter Bauer and debt relief

In his book *Equality, the Third World and Economic Delusion*, published in 1981, Lord Peter Bauer said, “While debt cancellation favours governments who have wasted capital or who refuse to honour their commitments, it simultaneously damages the credit standing of those Third World governments who are willing and able to honour their obligations – and thus it also damages the prospects of those best able to use capital productively.”

Indian economic journalist, Sauvik Chakraverti, said of Bauer in *Economics of Prosperity*, “In the West, Peter Thomas Bauer is being remembered as the man who opposed foreign aid most trenchantly. He called aid ‘government-to-government transfers’ and said that they went from the poor of the developed world to the rich of the underdeveloped.” Chakraverti also writes, “In this tribute to the greatest development economist that ever lived, I will take the position that, contrary to the views of the bleeding hearts brigade, Bauer was really a true friend of the poor people of the Third World.”

Perverse effects

All coins have two sides. The reverse side of the debt coin is finance. Third World debt, as perceived by the lender, is what finance is to the borrower. To be anti-Third World debt, therefore, is to be anti-Third World finance. For bad debtors, the benefit of the proposal would be static – immediate debt relief. The impact would be dynamic – curtailed access to future finance. The proposal would have other perverse effects, such as the possibility of similar measures being adopted elsewhere. In anticipation, creditors will react rapidly and ruthlessly to recover what is due to them before they too have their assets abolished.

The beneficiary becomes the victim

In short, the finance poor countries have already received will be foreclosed on the slightest pretext, with none of the customary opportunities to obtain latitude, and future finance will no longer be available (except from rich-country governments willing to make aid donations as opposed to providing more substantial finance). The secondary implications would not be merely counter-productive, they would be maximally so. Countries most in need of finance – the world’s poorest countries – would, far from being primary beneficiaries, become pre-eminent victims. They would be plunged into the *de facto* inability to reschedule existing finance, and at the same time, subjected to an unprecedented inability to access future finance.

This measure, like so many well-intentioned, though thoroughly immoral, measures, will harm primarily intended beneficiaries and penalise their benefactors.

The South African experience

This has been the fate of South African credit-receivers under a similarly ill-conceived measure supposedly intended to protect those defined as “over-indebted” and to penalise “reckless” credit-grantors. The effect was an overnight clamping down (foreclosure and seizure of assets) on anyone guilty of the slightest default, and the virtual disappearance of credit for low-income people and emerging businesses. Gone are the “good old days” when debtors in trouble could sit co-operatively with creditors and negotiate ways out of a debt predicament. For creditors, it is no longer in their self-interest to devote time and effort to the plight of hapless debtors; their self-interest now is rapid and ruthless reprisal.

NAFCOC, the leading national body representing small (predominantly black) business, supported the measure because of the promise of short-term relief for its credit-receiving constituency. Now it calls for

its repeal. Successful credit applications have fallen by half (from 40% to 50%, to 20% to 25%), and formal sector bad debts have doubled (from 0.9% to 1.8%). Needy people who used to access credit from lawful and legitimate credit-providers are being driven into the hands of underground “black market” operators (“loan sharks”), who resort to illegal means of debt-collection because they have no access to the courts. Conversely, the measure has no quantifiable benefits, a few anecdotal touching tales at best. The emerging consensus amongst credit-providers who supported the law because they thought it would “clean up” the industry, is that it is a nightmare of unintended consequences.

International consequences

The proposed British Bill will have precisely the same effect, but on an international scale.

Accordingly, the Bill’s title is a misnomer. It has more to do with the confiscation without compensation of lawful and legitimate assets (claims) in the hands of financiers, and the denial of future access to finance for poor countries. A more accurate title would be *The (Developing Countries) Finance Prevention Bill*.

Some critics of development aid, nominally on the opposite side of the ideological spectrum from those who support the proposal, can be expected to rejoice at it because of the degree to which it would reduce access to finance by what they perceive to be “reckless” governments in developing countries. Their conception of finance for such governments is that it is a perverse reward for implementing policies that cause maximal destitution. The emergence of an unholy alliance of the far “left” and far “right” on the Bill will be no surprise.

Debt incurs responsibility

Governments that incur foreign debt are mature adults, who should take responsibility for their actions and pay their debts. They, and hopefully their countries, benefited from the finance they received, and it is morally reprehensible to expect their financiers to pay for their failure to honour their obligations. It is also morally reprehensible, specifically demeaning and patronising, to treat these governments as if they are juvenile delinquents.

South Africa is a developing country and we in the Free Market Foundation work alongside other similar institutions in developing countries throughout the region, the poorest region on earth, a region where virtually all the countries are Heavily Indebted Poor Countries (HIPCs) as listed in the Bill. We work tirelessly to turn our countries into mature, prosperous and emancipated democracies. We regard a measure that seeks to reward and promote irresponsible behaviour by our governments as reprehensible. Our region needs the opposite: it needs to receive a clear message that honouring obligations is a precondition for sustainable development.

“Vulture fund” versus “statutory plunder”

Activists have cleverly dubbed the proposal the “Vulture Bill” which deflects attention away from the fact that it constitutes a serious erosion of the rights of British citizens and foreign investors in Britain. While the tactics of the purchasers of HIPCs’ debts overstep the bounds of what might be considered by many to be “fair play”, there is no doubt that creditors have acted perfectly legally. Accordingly, British courts have upheld their claims and thereby upheld the hallowed principles of good law.

The Bill proposes the confiscation, without compensation, of the assets of United Kingdom-based creditors and foreigners investing in good faith through them in developing country finance. It therefore

victimises not just British financiers, but foreigners. It may, as such, be a violation of international law. It is certainly a violation of natural justice. If the British government wants to provide debt-relief for HIPC's, it should do so out of general revenue and not institute 'statutory plunder'.

The mentality of statutory plunder is lamentably common. In health care, for instance, people who provide health care services are targeted by hostile laws, instigated by critics who are not involved in the provision of health care. If promoters of the Bill provide no developing country finance and are in good faith, they should themselves fund debt-relief and call on others like themselves to join them, rather than propose a draconian and confiscatory law against financiers who risk their livelihoods to provide such finance. The proposed measure confuses reality; it portrays the people who are helping poor countries as villains, and those who are not doing so, as benefactors, when, in truth, it is the other way around.

If the assets targeted for confiscation were corporeal (conspicuous and tangible), the Bill would have less superficial appeal, and unlikely to have a smooth passage through to the legislature.

Disappointment with First World country

As citizens of a developing country, we are shocked that the Parliament of the United Kingdom could give this legislation serious consideration. Section 25 (1) of the South African Constitution states, for instance, that, "*No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.*" Section 25 (2), dealing with government expropriation of property, states: "*Property may be expropriated only in terms of law of general application (a) for a public purpose or in the public interest; and (b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.*"

The proposed UK Bill, in South Africa and many other countries where there is protection of property rights, would be plainly unconstitutional.

Statutory plunder is NOT permissible

MPs in developed countries, such as the United Kingdom, must be aware that governments of developing countries look to them for guidance and see them as role models in the conduct of the affairs of state. Adoption of this Debt Relief Bill will send the damaging message to developing country governments that statutory theft (the taking of property without compensation through legislative enactments) is a correct and proper action for a responsible government to take.

The Free Market Foundation fought long and hard to ensure that the South African Constitution, enacted in 1996, protects private property from arbitrary and capricious confiscation by government. We are therefore entitled to feel aggrieved at our former colonisers who now appear to show such disrespect for the principles of good law and the property rights of citizens that not even one strong voice has been raised in total dissent. Where is the John Bright of the 21st Century who can provide a ringing defence of sound values and principles? Who will spare former British colonies the spectacle of a great and internationally respected nation sending a message to the developing world that obligations, rights and assets need not be respected.

An alternative proposal

All decent people are sympathetic towards the plight of over-indebted people and countries, and espouse legitimate forms of relief. The majority of people in HIPCs, as so many have attested, have nothing to do with their countries' indebtedness and receive little or no benefit from the foreign aid their governments receive. Indeed, as many critics of aid have pointed out, the usual result of "government-to-government aid" is an inverse relationship between aid and prosperity: countries with more aid have regressed, stagnated or, at best, had retarded rates of development and economic growth.

The developing countries concerned, hoped that the aid they received would have had the opposite effect and enabled them to repay their debts. This is not the place to attribute blame, but they will raise in their defence that they were encouraged by the countries they look up to, as they now do the UK. To ensure that they do not have to continue to endure the impact of excessive debt, we suggest that the government of the United Kingdom consider the following:

- Earmark an appropriate proportion of aid funds for debt-relief.
- Inform the HIPCs that the purpose is to assist them in reducing the burden of past loans. As this will necessarily take some time, they should immediately, judiciously and purposefully implement fiscal and monetary rectitude, and take great care not to incur more unserviceable debt.
- Engage in good faith with creditors to establish on what terms they will agree to settle or reschedule debts owing to them, and enter into mutually volitional agreements with them.
- Attempt to ensure that the return on investments in the so-called "vulture funds" is not exorbitant, possibly by inserting the UK government in a mediation role between debtors and creditors, or applying UK usury laws, thus achieving by negotiation what should not be achieved by predatory legislation.
- Encourage HIPCs to adopt proven high-growth economic policy reforms of the kind adopted in India, Mauritius, Ghana, China's SEZs and elsewhere where prosperity is growing at spectacular rates. (Fortuitously, many African countries are moving in the right direction by adopting such policies – at varying rates – which explains why Sub-Saharan Africa, the only region to get poorer for thirty years, now fluctuates between being the highest and second highest growth region *despite its debt burden.*)

Steady relief from the payment of capital and interest on loans will allow the HIPCs to utilise self-generated funds for their countries' urgent budgetary purposes. If excessive aid by means of debt is discontinued, Third World governments will have an incentive to be more perspicacious.

Debt relief through aid should always be conditional on benchmarked and quantified indicators of good governance, economic liberalisation, property rights and the rule of law.

This alternative and constructive approach would provide the desired debt relief without recourse to statutory plunder, and would avoid sending the wrong message regarding prudent government, respect for citizens' rights and the rule of law to the governments of developing countries in greater need of such virtues than debt-relief.

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