

STATEMENT AT THE CONSTITUTIVE ASSEMBLY OF
THE AFRICAN LEGAL SUPPORT FACILITY

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Good morning and welcome to Tunis. Thank you very much for your time. My special thanks to those of you who have come long distances to join us at this African Legal Support Facility Constituency Assembly.

We have come a long way since the idea first germinated and our Board endorsed the creation of the Facility in April 2008. By the date of December 15, 2008, 29 countries and one international organization had ratified, enabling the Facility to enter into force.

Many more countries are in the process of doing so. With this Constituent Assembly, purpose of your presence, the Facility will be operational. I want to thank all, in the Bank, and outside who have made this possible. I want in particular, to say thank you to several donor countries who have expressed support and willingness to be part of this endeavour.

But it is necessary to go back and ask – with so many institutional bodies, initiatives, often under-funded, criss crossing: Did we need yet another body?

Our answer is an unequivocal affirmative. The structure, the process is always subject to refinement but the purpose and the *raison d'être* is clear.

It is to provide our countries with support that enable them to avoid shoddy counsel and obtain sound legal advice. It is about enabling them to get a fair deal and get full benefit from the value of their resources.

After so many years of efforts, by the African countries themselves, and the international community to reduce debt to sustainable levels, nothing should be done to undermine it.

Much has been done, through HIPC, MIDRI and the Paris Club. This initiative comes to fill an important gap. I fully understand that all these debt cancellation efforts have not fully resolved the “financing of development” conundrum, but they are vital piece of the jigsaw.

Vulture Funds – have exhibited “hold out” behaviours not consistent with this desire of the international community to make debt sustainable; preying on debt-distressed states, purchasing debt at huge discounts on the open market and then seeking via complex litigation to recover the full value, while at the same time, refusing to participate in voluntary restructuring.

We have, all, in the past watched helplessly as countries with limited litigation capacity are put under incredible pressure by such Funds, eventually caving in facing legal firms in what is clearly asymmetrical negotiations.

The ASLF will, where needed, when requested, provide the support. The ASLF is an emanation of, but is independent of the Bank. It is not, will not be part of the litigation process. It will only provide capacity support where that is a problem, and it is so requested.

But this is not simply about Vulture Funds. It is about debt sustainability and development sustainability in the broader sense.

In recent five years, in sub Saharan Africa alone, commodity exports have averaged 120 billion US\$ a year, almost a quarter of the region’s GDP even with the recent decline in oil and mineral prices. The challenge remains of how to ensure these resources fully benefit the countries.

There are some pre-conditions to that. We are still a long way in understanding fully how to do so, but progress is being made on such things as:

- Governance
- Transparency
- Efficiency in public expenditure
- Managing the Dutch disease and so on.

This must be supplemented by initiatives to:

- get a better deal in contracts. Contracts that are fair to all and follow best practices. Contracts that ensure, in a transparent way that the resource value is captured for the benefit of the country, while of course providing an appropriate return on investment.

As Paul Collier, one of the leading experts in this domain has put it, it is about negotiating the tax regimes, royalties, profit sharing and the like, but it is above all, getting a balanced deal at the initial sale of rights. You will recall that he even suggested a system of auctions.

Frustrations at not being able to get balanced deals in contracts have sometimes caused instability in the business environment and even social and political tensions. We have witnessed a spate of renegotiations and even outright cancellations of many contracts in the extractive industry, because the countries in question did not benefit from independent, engaged sound legal advice prior to signing such deals.

In 2006/2007, the Contracts Review Commission of Liberia cancelled 27 concessions. In 2007, the Democratic Republic of Congo classified over 60 concession agreements for renegotiations. In 2008, the Government of Guinea has at different times threatened to cancel concessions in the mining sector.

I am, not by any means, suggesting that weak capacity, asymmetric negotiations is the only cause of bad deals. There may well be others related to Governance and rent seeking behaviours which indeed have caused enormous difficulties in the past.

But the existence of a facility like this, available to member countries, will be an additional instrument in our arsenal of the search for governance equity, and stronger business environment.

I look forward to the Constituent Assembly operationalizing the Facility today and for more members to join us.

At this time, when we are dealing with the aftermath of deficit in Global Corporate Governance, an initiative such as this deserves our support.

I am certain, we will learn as we go and make the necessary improvement in due course to strengthen this improvement on how best the ALSF can provide support for the debt and fiscal sustainability of our countries and a stronger business environment.

I wish you a successful deliberation, and once again, thank you for your time.